Issue Brief
March 2014

No fracking way:

how the EU-US trade agreement risks expanding fracking

A major trade deal currently being negotiated between the European Union (EU) and the United States (US) threatens the power of governments to protect communities, citizens and the environment from risky new technologies such as fracking.

The Transatlantic Trade and Investment Partnership (TTIP) covers a huge range of issues and sectors, including food safety, genetically modified products, toxic chemicals, highly polluting fuels and data protection. The talks threaten to weaken or roll-back democratically agreed safeguards put in place to protect the environment and citizens – for the sake of corporate profits.

The talks are likely to favour safeguards for corporate investments over safeguards for citizens and the environment, allowing companies to seek compensation when government decisions affect their profits. This could benefit companies seeking to exploit natural resources through hazardous technologies whose activities may be affected by environmental or health regulations.

Fracking – or high-volume hydraulic fracturing – is used to extract hard-to-access unconventional fossil fuels, such as shale gas and oil, tight gas and coal bed methane. Fracking will increase available gas supplies, locking us into fossil fuel dependency for several decades.

There is growing evidence of huge health and environmental risks and impacts from fracking and this is leading to widespread public opposition at the community level, both in the EU and the US.

This brief analyses how the TTIP could limit governments' ability to regulate the development and expansion of fracking. It argues that the TTIP could dangerously thwart government efforts to address climate change and to protect citizens; could expand fracking by removing the ability of governments to control natural gas exports; and could mean that states would be forced to pay millions in compensation to corporations for profits lost to regulation. It calls on the EU and the US to exclude investor-state dispute settlement rights from the agreement and from other trade deals in the pipeline – including the EU-Canada Comprehensive Economic and Trade Agreement (CETA).[1]

No fracking way:
how the EU-US trade agreement risks expanding fracking

Prepared by: Natacha Cingotti (Friends of the Earth Europe); Pia Eberhardt (Corporate Europe Observatory), Timothé Feodoroff (Transnational Institute), Antoine Simon (Friends of the Earth Europe), Ilana Solomon (Sierra Club)

Contributions from: Maxime Combes (ATTAC France), Paul de Clerck (Friends of the Earth Europe), Peter Fuchs (Powershift), Pietje Vervest (Transnational Institute)

Editing by: Helen Burley

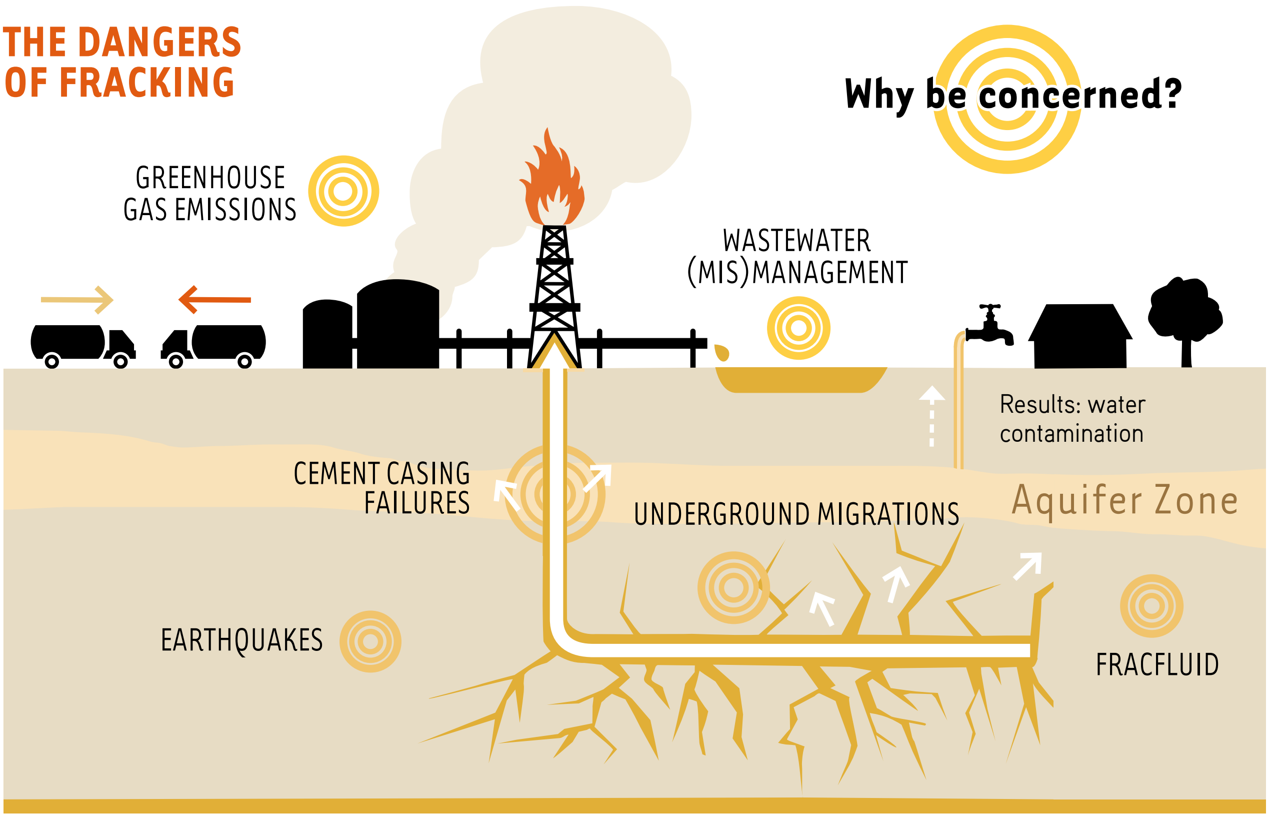
The TTIP investment chapter : Protecting investments; threatening democracy

The TTIP deal threatens to give more rights to companies through a clause called an 'investor-state dispute settlement' (ISDS). If included in the deal, this would enable corporations to claim damages in secret courts or 'arbitration panels' if they deem their profits are adversely affected by changes in a regulation or policy. This threatens democratically agreed laws designed to protect communities and the environment.

Fracking is a recipe for disaster for communities and the environment.

Companies which claim their investments (including expectations of future profits) are affected by a change in government policies could have the right to seek compensation through private international tribunals. US companies (or any company with a subsidiary in the US) investing in Europe could use these far-reaching investor rights to seek compensation for future bans or other regulation on fracking. These tribunals are not part of the normal judicial system, but are specifically set up for investment cases. Arbitrators have a strong bias towards investors[2] – and no specialised knowledge about our climate or fracking. Companies are already using existing investment agreements to claim damages from governments, with taxpayers picking up the tab.

Investor-state dispute settlement is becoming increasingly controversial as mining and energy firms use it to challenge public policies. For example, the Swedish energy giant Vattenfall is seeking more than €3.7 billion from Germany in compensation after the country voted to phase out nuclear power[3]; Pacific Rim, a Canadian-based mining company is demanding US$315 million in compensation from El Salvador after the government refused permission for a potentially devastating gold mining project[4]; and Lone Pine Resources is suing Canada for Cdn$250 million over a fracking moratorium in the Canadian province of Quebec (see box 2).[5]



Growing opposition to fracking in the United States

Fracking is widespread across the United States. The oil and gas industry are fracking or want to frack in 31 states, with more than 500,000 active natural gas wells throughout the country. The most heavily fracked states are Pennsylvania, Ohio, West Virginia, Oklahoma, and Texas.

Fracking and natural gas production are poorly regulated at both the federal and state level. At the federal level, the oil and gas industry is exempt from seven major environmental laws, including the Safe Drinking Water Act, the Clean Air Act, and the Clean Water Act.

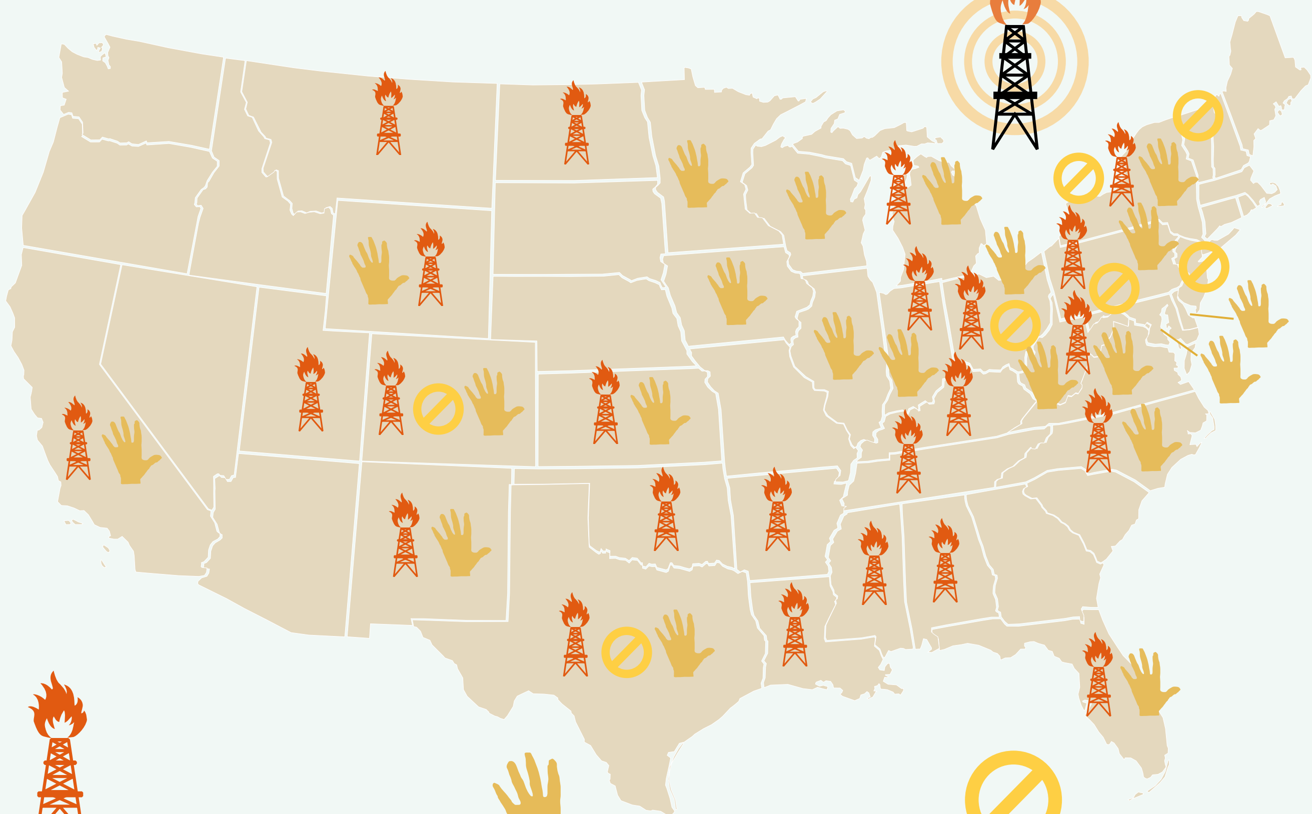
Fracking is an inherently dangerous process, making the lack of effective regulation a recipe for disaster for communities and the environment. Millions of Americans live, work, and go to school near natural gas wells and pipelines. There is growing evidence that gas production, including fracking and waste disposal, is contaminating drinking water, polluting air and soil, destroying our climate, and triggering earthquakes. As a result, communities across the United States are experiencing serious health risks and impacts.

Widespread opposition has led to hundreds of cities and town across the US to pass bans or moratoria on fracking.

At the local level, widespread grassroots opposition to fracking has led hundreds of cities and towns to pass bans or moratoria on fracking.

Given the need to protect American communities, it is critical that the TTIP does not undermine efforts to tighten regulations for the natural gas industry, including closing existing loopholes, and putting in place bans and moratoria on fracking.

FRACKING AND ITS RESISTANCE IN THE US



Where fracking is happening

CALIFORNIA, NORTH DAKOTA, MONTANA, WYOMING, COLORADO, UTAH, NEW MEXICO, TEXAS, OKLAHOMA, ARKANSAS, MISSISSIPPI, ALABAMA, INDIANA, KENTUCKY, MICHIGAN, OHIO, WEST VIRGINIA, PENNSYLVANIA, NEW YORK, TENNESSEE, KANSAS, LOUISIANA, NORTH CAROLINA, FLORIDA

Resistance in states

CALIFORNIA, COLORADO, ILLINOIS, INDIANA, IOWA, MARYLAND, MICHIGAN, MINNESOTA, NEW MEXICO, NEW YORK, OHIO, PENNSYLVANIA, TEXAS, VIRGINIA, WEST VIRGINIA, WISCONSIN, WYOMING, KANSAS, FLORIDA, DELAWARE, NORTH CAROLINA

Restrictions in place

including bans, moratorium, and zoning restrictions at the state or local level

VERMONT, NEW JERSEY, NEW YORK, MUNICIPALITIES IN COLORADO, TEXAS, OHIO, PENNSYLVANIA (DELAWARE RIVER BASIN, NOT THE ENTIRE STATE OF PA)

* This map reflects our best knowledge of that state of play of fracking in the US at the time of printing of this paper

In Europe – citizens are saying no to fracking

Public opposition to fracking is spreading across Europe as people become more aware of the potential risks. There is a growing sense of distrust among citizens and signs of public resistance in every European country where fracking has been proposed or is underway.[6] Several governments have responded to public concern with moratoria, factual bans or strengthened environmental regulations.[7]

Although some exploration has gone ahead in the UK, Poland and Romania[8], France and Bulgaria have introduced fracking bans, and several other countries have temporarily stopped developments. Austria and Lithuania have strengthened their regulatory frameworks.

Citizens campaigns across Europe have resulted in fracking bans, moratoria and strengthened regulatory frameworks.

Companies fighting fracking bans in Europe

Powerful corporations are constantly fighting EU and national attempts to regulate fracking (see box 1). In 2011, following the introduction of a ban on fracking in France, the licenses of US-based oil and gas company Schuepbach and French trans-national company Total were cancelled. The two companies filed separate legal actions against the French state to recover their respective licences. Total has argued that it will respect the French law and not use fracking. The two legal cases are being investigated by French tribunals. Schuepbach has also challenged the French ban on fracking as unconstitutional. France's Constitutional Council ruled against the company, arguing that the ban was a valid means of protecting the environment.

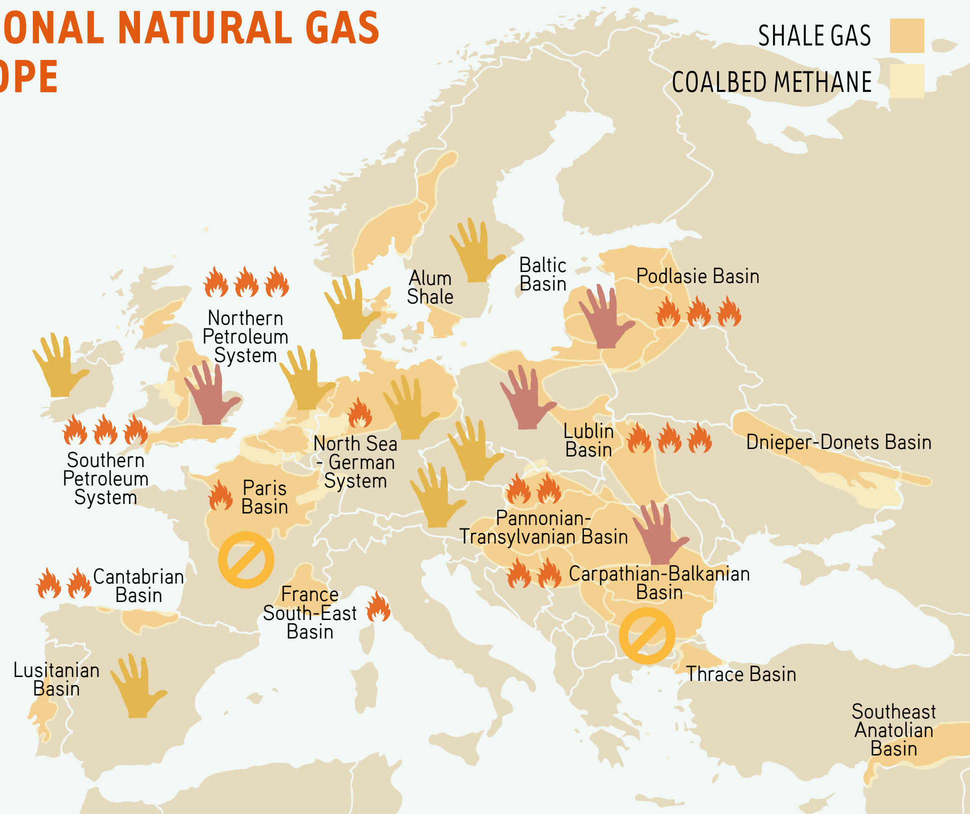
Energy companies are already looking to the courts to roll-back fracking bans. The inclusion of an investor-state dispute settlement in the TTIP would give them an extra-legal tool – and in some cases a second chance – to challenge public-interest policies.

MAJOR UNCONVENTIONAL NATURAL GAS RESOURCES IN EUROPE

Banned
FRANCE, BULGARIA

Citizens' campaigns preventing/ed fracking
DENMARK, SWEDEN, IRELAND, CZECH REPUBLIC, SPAIN, NETHERLANDS, AUSTRIA, GERMANY

Citizens' campaigns to ongoing fracking
UK, POLAND, ROMANIA, LITHUANIA



NUMBER OF CONCESSIONS/LICENSE PERMITS

🔥	0-25	PARIS/SOUTH-EAST FRANCE BASINS; NORTH SEA GERMAN SYSTEM
🔥🔥	25-100	CANTABRIAN BASIN; PANNONIAN/CARPATHIAN BASIN
🔥🔥🔥	100+	NORTHERN AND SOUTHERN PETROLEUM SYSTEMS; LUBLIN/PODLASIE BASIN

* Every effort has been made to access up to date and accurate information, however, this may not be exhaustive

BOX 1 UNCONVENTIONAL FOSSIL FUELS: NO REGULATORY FRAMEWORK AT THE EU LEVEL

It is impossible to impose a ban on 'fracking' at the European level as the EU does not have the power to determine the energy mix for member states.[9] This makes national and local democratic processes to decide regulatory frameworks all the more important. The EU framework does contain important environmental safeguards, but these are not designed for the specificities of unconventional fossil fuels and there are significant gaps in the implementation of the European legislation at country level.[10] Two European Parliament reports[11] have stressed the need for this framework to be strengthened, but extensive corporate lobbying, and pressure from certain member states (UK, Poland, Romania, Lithuania, Romania and Hungary in particular) have meant that the European Commission has decided not to put forward a legal framework addressing impacts of shale gas, but only non-binding recommendations for member states.[12]

Investor-state dispute settlement – Big energy's backdoor plan to break the fracking resistance

The proposed investment chapter in the TTIP is expected to include far-reaching rights for foreign investors that could undermine government decisions to ban and regulate fracking. US companies investing in Europe could directly challenge fracking bans or regulations at private international tribunals – potentially paving the way for millions of euro in compensation, paid by European taxpayers. EU companies investing in the U.S. would also be able to challenge federal and state-based regulations on fracking.

"Transnational corporations in the extractives sector are increasingly turning to international arbitration tribunals to resolve resource disputes."

Institute for Policy Studies in its report Mining for Profits in International Tribunals[13]

Investor-state dispute settlement is increasingly being used by mining and energy firms to challenge environmental, public health and other policies that companies see as reducing the value of their investment, ie. their expected profits.

The Lone Pine case is alarming as it shows how governments can be vulnerable to investor-state disputes related to fracking and other controversial energy and mining projects. Firms eager to extract unconventional fossil fuels in Europe will be able to challenge measures taken in the public interest – as long as they have a subsidiary in the US. Several US energy companies, such as Chevron and Conoco Philips, are involved in projects to extract unconventional fossil fuels in Europe. Companies investing in the US with a subsidiary in an EU country would have the same rights. An investor-state dispute settlement in the proposed TTIP puts European and US communities at risk, undermining the ability of our governments to regulate and ban dangerous practices like fracking.

BOX 2 INVESTOR RIGHTS TRUMP DEMOCRACY: THE ALARMING PRECEDENT OF LONE PINE VS CANADA

Gas and energy firms are staking out claims to Canada's large shale gas basins. The Utica basin sitting underneath the St. Lawrence River Valley in Quebec, is estimated to contain some 181 trillion cubic feet of natural gas.

But public resistance to fracking, as well as growing evidence of water pollution, persuaded Quebec's government to impose a fracking moratorium in June 2011, banning drilling under the St. Lawrence River until an environmental assessment was completed. Mining rights were revoked – including the licenses of oil and gas company Lone Pine Resources. In 2012, the moratorium was extended to cover all shale gas exploration and development in Quebec.

Lone Pine Resources announced it intended to challenge the moratorium. But instead of going to a Canadian court, the Canadian-based company is using its US-incorporation in Delaware to sue under the North American Free Trade Agreement (NAFTA), which is only available to US and Mexican companies. The company is demanding Cdn$250 million in compensation plus interest from Canada.[14]

Lone Pine claims Quebec's moratorium is an "arbitrary, capricious, and illegal revocation of [its] valuable right to mine for oil and gas." The firm says the government acted "with no cognizable public purpose." Yet the moratorium is only temporary, allowing the environmental impacts to be studied. Milos Barutciski, a lawyer with Bennett Jones, representing Lone Pine, described it as a "capricious administrative action that was done for purely political reasons – exactly what the NAFTA rights are supposed to be protecting investors against."[15]

It may seem unbelievable but under NAFTA, Lone Pine's right to make a profit may be more important than the right to clean water or the right of communities to say no to destructive extractive projects like fracking.

BOX 3 RISKY BUSINESS: HOW VULNERABLE ARE US AND EU GOVERNMENTS TO INVESTOR-STATE ATTACKS?[16]

* Globally, there were **514** known investor-state disputes at the end of 2012. **Fifty eight** claims were launched in 2012 alone, the highest number known in one year.
* The US has already faced nearly **20** investment claims under NAFTA's investment chapter.[17] At least **15** EU member states have faced one or more investor-state challenges.
* More than **one in three** cases at the International Center for Settlement of Investment Disputes (ICSID), related to oil, mining or gas in early 2013, up from one in four in 2000.[18] More than **half** of foreign direct investment in the EU comes from the US; and over **half** the foreign direct investment in the US comes from the EU.[19]
* So far, only **9** EU member states, all Eastern European, have a bilateral investment treaty with the US[20]; TTIP would be **one** of the first EU-wide investment protection agreements.
* There are **14,400** US-based corporations with more **than 50,800** subsidiaries in the EU; more than **3,300** EU companies with more than **24,200** subsidiaries in the US. All of these **75,000** cross-registered firms could be used for an investor-state claim under the TTIP.[21]
* Around **42%** of the known completed investor-state cases were decided in favour of the state, **31%** in favour of the investor and **27%** of cases were settled (which could also involve payments or other concessions for the investor). So in **58%** of cases, companies were partly or fully successful.
* Legal costs in investor-state disputes average over **US$8 million**, and exceed **US$30 million** in some cases.[22] They are not always awarded to the winning party.

Polluters lobbying for special corporate rights

No wonder energy giants such as US-based Chevron are lobbying for "a world-class investment chapter" in the TTIP. The company – which is an official advisor to the United States Trade Representative – focused its entire response[23] to the US government's TTIP consultation on investment protection, "one of our most important issues globally" as they put it. Chevron is currently in a controversial investment arbitration battle with Ecuador, seeking to avoid paying US$9.5 billion to clean up oil-drilling-related contamination in the Amazonian rainforest, as ordered by Ecuadorian courts.[24] The case has been lambasted as "egregious misuse"[25] of investment arbitration to evade justice. According to the company, the TTIP's investment protection chapter should oblige governments "to refrain from undermining legitimate investment-backed expectations".

"A strong investment protection regime within the TITP would allow us and other US Businesses to better mitigate the risks associated with large-scale, capital-intensive, and long term projects overseas."

Chevron, Response to US government's TTIP consultation[26]

Chevron to US trade negotiators

If Chevron gets its way, companies exploiting unconventional fossil fuels would have their investment risks reduced to near zero. If affected communities speak out against fracking, or if the government if the government puts in place new regulations, taxpayers could end up picking up the tab.

Evidence shows that the mere threat of an investor-state dispute can have a chilling effect on governments' willingness to regulate, with corporations using the threat of legal action to kill off legislation. Countries considering unconventional fossil fuel projects, or lacking a strong protective legal framework are particularly at risk. Communities suffering the negative health and environmental impacts of dirty energy projects will have no rights to defend themselves.

A transatlantic corporate bill of rights

The US government and the European Commission seem determined to build investor-state provisions into the TTIP. The US trade representative listed "procedures for resolving disputes between US investors and the EU and its Member States" as one of its key objectives when briefing Congress.[27] The leaked EU negotiation mandate contains details of a "state-of-the-art investor-to-state dispute settlement mechanism" and far-reaching investor rights (see table 1).[28]

Similar provisions are also included in the EU-Canada trade agreement CETA, seen as a blueprint for the TTIP. Despite official denials[29], the investor rights in CETA will put policies at risk and are likely to create a chilling effect on new rules to protect the environment and society (see table 1). If ratified, it will be the first EU-wide agreement to grant foreign investors such far-reaching rights in international law. Even if cancelled by either party, these will remain in force for 20 years. No wonder, mining specialists are celebrating CETA as a "landmark" agreement, which could have "major implications for miners".[30]

Risks go beyond investor privileges

Fracking has created an opportunity for the United States to become a major natural gas exporter for the first time. EU member states, which produce little natural gas, are eager to import gas from the US. The gas industry is keen to export US fracked gas to Europe, where it can charge about three times more than within the United States.

The TTIP would facilitate liquefied natural gas (LNG) exports from the US to the EU. In fact, if the TTIP includes so-called "national treatment for trade in natural gas" the US Department of Energy would be legally bound to automatically approve exports of US LNG to the EU without even reviewing the impacts. The EU wants even more, asking for expedited access to US gas (and oil and coal), and proposing new language that would mean US and EU governments would not be able to put any restrictions on coal, oil or gas exports.

> **"Corporations are attempting to achieve by stealth – through secretly negotiated trade agreements – what they could not attain in an open political process."**
>
> Joseph Stiglitz, winner of the Nobel Prize for economics[31]

Increasing exports of LNG would threaten our environment and climate in a number of ways, including:

- Increased fracking: exporting natural gas encourages increased gas production—most of which will come from unconventional gas sources, which almost always require fracking.
- Exacerbating climate change: LNG is a carbon-intensive fuel, with life-cycle emissions significantly greater than that of natural gas. The energy needed to cool, liquefy, and store natural gas for overseas shipment makes LNG more energy – and more greenhouse-gas-intensive than ordinary natural gas. Opening natural gas reserves to unlimited exports will increase dependency on a fossil fuel with significant climate impacts.
- Locking in fossil fuel infrastructure and increased methane emissions: LNG exports require industrial infrastructure including a new network of gas wells, terminals, liquefaction and regasification plants, pipelines, and compressors. This infrastructure has been found to leak methane, a greenhouse gas that is 86 times more potent than CO_2 over a 20-year period.[32] Increased exports, therefore, are likely to increase methane emissions and exacerbate climate change.

While these policy implications are critical, under the TTIP, countries would no longer be able to control or manage natural gas import levels, locking in yet more fossil fuel dependency for both the US and the EU.

Conclusion – No excessive corporate rights in TTIP

The transatlantic trade deal goes far beyond traditional trade issues. It could have serious consequences for government regulations in the interests of citizens and the environment. This is all the more worrying as the TTIP is intended as a model for future trade and investment agreements, which transnational corporations such as Chevron hope will be replicated globally.

Oil and gas operations are risky investments that can have irreversible impacts on local communities, families, and the environment. It is governments' role to protect their people against such impacts and ensure that companies pay compensation in case of damage. Granting special and excessive rights to investors has the opposite effect, as it means that the investment risk is passed on to taxpayers and society. Governments could be forced to compensate companies for decisions made to protect citizens and the environment.

The current battle over fracking regulation provides a clear example of what is at stake. International investment tribunals are already being used to challenge a moratorium on fracking in Québec. There is little doubt that, if included in the EU-US and EU-Canada trade deals, investor protection will be used again and again to challenge further fracking bans and regulation at the national and at local level.

It seems unbelievable that sovereign governments would handover their policy powers to investment tribunals, allowing companies to challenge democratically agreed decisions designed taken to protect communities and the environment. The enthusiasm for trade agreements containing such clauses – and more worryingly their increasing use by companies – show that this risk is real.

These developments must be resisted, to avoid catastrophic environmental and climate crises, and in the name of democracy. The first step is to oppose the inclusion of dangerous investor-state dispute settlement in the trade agreements between the EU and US and Canada.

TABLE 1 **THE DEVIL IS IN THE (TRADE DEAL) DETAIL:** THE CORPORATE SUPER-RIGHTS IN TTIP/CETA

INVESTMENT LAW SPEAK: what the EU wants to negotiate according to its TTIP mandate	WHAT IT MEANS IN PRACTICE
Investors have the right to a "minimum standard of treatment" (MST) and "fair and equitable treatment" (FET), "including a prohibition of unreasonable, arbitrary or discriminatory measures".	A catch-all provision most relied on by investors when suing states. In 74% of the cases won by US investors, tribunals found an FET violation[33]. According to a leaked CETA draft text from November 2013[34], the EU is advocating a broad version of the clause, protecting what an investor considers its "legitimate expectation" from unpredictable policy change. Under such a clause in CETA/TTIP a Canadian/US oil or gas company could argue it was under the impression, given favourable signals from the EU or member state governments, that a fracking project was going to go ahead. This is exactly what happened in the Quebec case where strong community resistance halted the project. Lone Pine is arguing that the "revocation" of its "right to mine" violated its "legitimate expectation of a stable business and legal environment".
Investors should be protected against "indirect expropriation", including the right to compensation.	Allows investors to claim compensation as a result of a regulation, law, policy measure, or other government decision that has the effect of *reducing* the profit-making opportunities. Since almost any government measure can fit that definition, legitimate public policies have faced investor-state lawsuits globally. (See Lone Pine example).[35]

Notes

1. http://www.tni.org/sites/www.tni.org/files/download/ceta-fracking-briefingen.pdf
2. http://www.tni.org/briefing/profiting-injustice
3. http://www.tni.org/sites/www.tni.org/files/download/vattenfall-icsid-case_oct2013.pdf
4. https://www.citizen.org/documents/Pacific_Rim_Backgrounder1.pdf
5. http://www.canadians.org/media/lone-pine-resources-files-outrageous-nafta-lawsuit-against-fracking-ban
6. A January 2012 EuroBarometer showed that "74% of Europeans would be concerned if a shale gas project came to their area" (http://ec.europa.eu/public_opinion/archives/flash_arch_360_345_en.htm#360)
   The 2013 European Public Consultation organised by the EC showed that 64% of participants think unconventional fossil fuels "should not be developed in Europe at all" (http://ec.europa.eu/environment/integration/energy/pdf/Shale%20gas%20consultation_report.pdf)
7. Such as in France, Bulgaria, Germany, Ireland, Czech Republic, Denmark, Netherlands, Austria, Lithuania
8. http://www.foeeurope.org/Solidarity-with-Pungesti-071213
9. http://europa.eu/legislation_summaries/glossary/subsidiarity_en.htm
10. DG Environment study, 2012, http://ec.europa.eu/environment/integration/energy/pdf/fracking%20study.pdf and DG Environment study, 2013, http://ec.europa.eu/environment/integration/energy/pdf/Final%20Report%2024072013.pdf
11. European Parliament, 2012, "Own Initiative report on the environmental impacts of shale gas and shale oil extraction activities" http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/2308(INI) European Parliament, 2012, "Own initiative report on industrial, energy and other aspects of shale gas and oil" http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/2309(INI)
12. http://ec.europa.eu/environment/integration/energy/unconventional_en.htm
13. http://www.ips-dc.org/files/6061/Mining%20for%20Profits%202013%20-%20ENGLISH.pdf, p1
14. http://www.italaw.com/sites/default/files/case-documents/italaw1596.pdf
15. http://www.theglobeandmail.com/globe-investor/quebecs-st-lawrence-fracking-ban-challenged-under-nafta/article5577331/
16. http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3_en.pdf
17. http://www.state.gov/s/l/c3741.htm
18. http://www.ips-dc.org/files/6061/Mining%20for%20Profits%202013%20-%20ENGLISH.pdf , p1
19. https://www.fas.org/sgp/crs/misc/RS21118.pdf
20. Bulgaria, Croatia, Czech Republic, Estonia, Latvia, Lithuania, Poland, Romania and Slovakia.
21. https://www.citizen.org/TAFTA-investment-map
22. http://www.oecd.org/daf/inv/investment-policy/ISDSconsultationcomments_web.pdf , p19
23. http://www.regulations.gov/#!documentDetail;D=USTR-2013-0019-0054
24. http://www.chevron.com/ecuador/
25. See the website http://chevrontoxico.com/ . For Chevron's version of the story, see http://www.theamazonpost.com/
26. Chevron Corporation: Comments on Proposed Transatlantic Trade and Investment Partnership, May 7, 2013, http://www.regulations.gov/#!documentDetail;D=USTR-2013-0019-0241
27. http://www.ustr.gov/sites/default/files/03202013%20TTIP%20Notification%20Letter.PDF
28. http://www.s2bnetwork.org/fileadmin/dateien/downloads/EU-TTIP-Mandate-from-bfmtv-June17-2013.pdf
29. Seattle to Brussels' response to DG Trade's claims over reforms of the investor-to-state dispute settlement http://www.tni.org/article/s2b-refutes-european-commissions-defense-controversial-investor-state-dispute-settlement?context=70931
30. http://www.mineweb.com/mineweb/content/en/mineweb-political-economy?oid=209783&sn=Detail
31. http://www.theguardian.com/business/2013/nov/08/trade-agreements-developing-countries-joseph-stiglitz
32. http://thinkprogress.org/climate/2013/10/02/2708911/fracking-ipcc-methane/
33. https://www.citizen.org/documents/MST-Memo.pdf
34. http://www.tradejustice.ca/wp-content/uploads/2013/08/CETA-Draft-Investment-Text-Nov21-2013-203b-13.pdf
35. An annex in the leaked CETA draft text from November 2013 clarifies that non-discriminatory, good faith measures to protect health, safety and the environment do not constitute indirect expropriation and would therefore not be compensable. However, the November text also includes a principle (most favoured nation) that could allow investors to import expropriation clauses from other investment treaties without such public policy exceptions into disputes under the CETA, rendering the annex relatively meaningless.

This publication was made financially possible by EC funding through the project *"Making EU Investment Policy work for Sustainable Development"*. The ideas expressed are those of the contributing organisations and not necessarily that of the EC.

Published by ATTAC, the Blue Planet Project, Corporate Europe Observatory, Friends of the Earth Europe, Powershift, Sierra Club and the Transnational Institute.

With financial assistance from the Dutch Ministry of Foreign Affairs (DGIS), the Isvara Foundation, the Joseph Rowntree Foundation, the Grassroots Foundation, the Warsh-Mott Legacy. The contents of this publication are the sole responsibility of the authors and cannot be regarded as reflecting the position of the funder(s) mentioned above. The funders cannot be held responsible for any use which may be made of the information this document contains.