



218 D Street SE, 1st Floor - Washington, DC 20003

National Caucus of Environmental Legislators
Mr. J.R. Tolbert, Executive Director
218 D Street SE, 1st Floor
Washington, DC 20003

September 2, 2014

The Honorable Michael Froman
United States Trade Representative
600 17th Street NW
Washington, DC 20508

Docket number: USTR 2014-0012

Re: Comments regarding the environmental review of the proposed Transatlantic Trade and Investment Partnership (TTIP), *submitted via* <http://www.regulations.gov>

Dear Ambassador Froman:

We, the undersigned state legislators, wish to submit the following comments on the scope of issues that should be addressed in the environmental review of the Transatlantic Trade and Investment Partnership (TTIP). We write to specifically urge that the required environmental review of TTIP include a comprehensive assessment of this international agreement's impact on global warming and climate change.

The TTIP's impact on climate change is both foreseeable and urgent. As discussed below, the TTIP could exacerbate climate change in several ways. In addition to increasing emissions related to economic activity generally, TTIP will increase transportation-related emissions; restrict federal, state and local policies promoting renewable and low carbon intensity energy; and encourage increased production and consumption of high-carbon-intensity fossil fuels.

Since the Clinton Administration, Executive Order 13141 and the Environmental Review Guidelines¹ developed by the Office of the U.S. Trade Representative (USTR) and the Council on Environmental Quality have called for environmental review of trade agreements "to identify whether reasonably foreseeable global and transboundary impacts might be associated with the proposed trade agreement."² Relevant global and transboundary impacts that should be considered surely must include those related to climate change.³

¹ See United States Trade Representative and Council on Environmental Quality, *Guidelines for Implementation of Executive Order 13141, Environmental Review of Trade Agreements* (Dec. 19, 2000), available at <http://www.ustr.gov/sites/default/files/guidelines%20for%2013141.pdf>.

² *Id.*, Section IV.B.5.

³ *Id.*, Appendix C, Section IV.G.1.

Economic and transportation-related increases in CO₂ emissions

The European Commission has already established that the potential for the TTIP to exacerbate climate change is “reasonably foreseeable.” The EC’s impact assessment predicts that the TTIP will increase global CO₂ emissions, including an increase in emissions from China.⁴ This finding is consistent with a study prepared by the World Trade Organization (WTO) and the United Nations Environmental Program in 2009, which concluded that trade liberalization in general “most likely lead(s) to increased CO₂ emissions.”⁵ According to the EC, the TTIP could increase emissions due to increases in the scale of economic activity, increased emissions from transportation, and a “re-location of production outside the EU and US (which induces the ‘leakage’ of emissions).”⁶

Restrictions on federal, state and local government climate policies

In addition to scale and transportation-related effects, the TTIP could also promote increased CO₂ emissions by restricting government policies that are designed to promote alternative energy, including policies at the state and local level. The USTR/CEQ Guidelines call for consideration of these types of regulatory effects.⁷ Trade rules are increasingly being used to challenge government programs that are designed to mitigate climate change by promoting renewable energy. According to a recent study,⁸ since 2008 at least 41 antidumping and countervailing duty actions have been brought against renewable energy products (including 18 cases targeting solar energy products), and nearly a dozen WTO disputes have been instituted against renewable energy programs.⁹

The TTIP could provide additional grounds for trade challenges to renewable energy programs including programs already in place or under consideration in our respective states. The European Union, for example, has suggested that the TTIP should impose new restrictions on local content requirements in renewable energy programs.¹⁰ Such programs are of great interest to us as policymakers at the state level, where effective renewable energy policies are often linked to economic development measures.

Such trade-based challenges to effective climate policy are not limited to our trading partners. Ambassador Froman has reportedly been using the TTIP negotiations to pressure the EU to revise its Fuel Quality Directive, which requires a reduction in the carbon intensity of transportation

⁴ 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.

⁵ 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

⁶ EC Impact Assessment, *supra*, at 48-49.

⁷ See Environmental Review Guidelines, Appendix C, Section 1.

⁸ Cathleen Cimino & Gary Hufbauer, *Trade Remedies—Targeting the Renewable Energy Sector* (April 2014), available at http://unctad.org/meetings/en/SessionalDocuments/ditc_ted_03042014Petersen_Institute.pdf.

⁹ See *id.* at 10, 19.

¹⁰ 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.

fuels in the EU, which would facilitate the export of more high-carbon-intensity oil that is extracted from tar sands.¹¹

Increased production and trade in fossil fuels

As confirmed by an EU “non-paper” that was leaked in May, a principle objective of the EU 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.”¹² Providing the EU with an automatic right to U.S. crude oil and gas exports would promote greater production and consumption of these fuels, resulting in increased CO₂ and methane emissions.

The conventional thinking has been that natural gas is generally a lower-carbon source of energy than other fossil fuels such as coal and oil. Analysis by the World Resources Institute, however, suggests that exports of natural gas in the form of liquefied natural gas (LNG) could increase net emissions of greenhouse gases for several reasons. First, the process of liquefying, transporting and regasifying natural gas is energy-intensive. As a consequence, exported LNG being approximately 15% more carbon-intensive than natural gas used domestically. Second, exports of LNG will raise the price of natural gas in the United States, which will likely increase the use of coal to produce electricity. Third, exporting LNG will increase the volume of natural gas produced through hydraulic fracturing (“fracking”) technology, which will result in more fugitive methane emissions from natural gas production and distribution systems.¹³

Fugitive emissions

Because 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.”¹⁴ Studies by Robert Horwath, et al. and Tom Wiley found that fugitive methane emissions from extraction of shale gas of just 2% to 3% would make the GHG footprint of shale gas worse than oil or coal.¹⁵ Horwath estimates that fugitive methane emissions from producing shale gas range between 3.6 and 7.9%. This level of methane leakage means that over 20 years, the GHG footprint of shale gas is at least 20% higher than coal (and potentially double that of coal). The shale gas footprint is 50% higher than oil (and potentially 2.5 times that of oil).¹⁶ These values are expressed per quantity at the time of combustion. Over a 100-year

¹¹ See Froman Pledges to Preserve Jones Act, Criticizes EU Clean Fuel Directive, INSIDE U.S. TRADE (Sept. 19, 2013) (subscription), available at <http://0-insidetrade.com.gull.georgetown.edu/Inside-US-Trade/Inside-U.S.-Trade-09/20/2013/froman-pledges-to-preserve-jones-act-criticizes-eu-clean-fuel-directive/menu-id-710.html>.

¹² 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), available at <http://www.scribd.com/doc/233022558/EU-Energy-Non-paper>.

¹³ World Resources Institute, *What Exporting U.S. Natural Gas Means for the Climate* (May 20, 2013), available at <http://www.wri.org/blog/2013/05/what-exporting-us-natural-gas-means-climate>.

¹⁴ *Id.*

¹⁵ Howarth, Robert W., Renee Santoro, and Anthony Ingraffea, *Methane and the greenhouse-gas footprint of natural gas from shale formations*, CLIMATIC CHANGE 106.4, 679-690 (2011); Tom, M.L. Wigley, *Coal to gas: the influence of methane leakage*, CLIMATIC CHANGE 108.3, 601-608 (2011).

¹⁶ Howarth, et al. (2011), at 679-690.

timeframe the GHG footprint of shale-gas is comparable to that of coal and oil – and potentially 35% higher than that of oil.¹⁷ In 2012, Horwath et al. confirmed their estimates, this time factoring in all manners of final use, not only electricity generation.¹⁸

In light of this evidence of the potential effects of fugitive methane emissions, the environmental review of the TTIP should include a detailed evaluation of the effects of any changes in U.S. policies regarding exports of LNG or other fossil fuels on net global greenhouse gas emissions.

Analysis of options for mitigating the adverse climate impacts of the TTIP

The Environmental Review Guidelines state that “[w]here significant regulatory and/or economically driven environmental impacts have been identified, there shall be an analysis of options to mitigate negative impacts”¹⁹ Accordingly, the environmental review of the TTIP should explore options for mitigating the increased CO₂ and methane emissions that would likely result from the TTIP. Possible mitigation measures that could be negotiated in the TTIP and that should be considered in the environmental review include (1) limits on fossil fuel subsidies, and (2) protections for renewable energy programs.

Limiting fossil fuel subsidies

Fossil fuel subsidies promote increased greenhouse gas emissions by encouraging the production and consumption of high carbon intensity fossil fuels. The Organization for Economic Cooperation and Development (OECD) and the International Energy Agency (IEA) have estimated that eliminating fossil fuel consumption subsidies by 2020 would reduce greenhouse gas emissions 10% by 2050.²⁰ Doing so would make a significant contribution to efforts to limit the increase of global temperature to 2°C as suggested by the Intergovernmental Panel on Climate Change. The United States and the European Union, as members of the G20, have already made a commitment to phase out inefficient fossil fuel subsidies.²¹

In addition to stimulating fossil fuel consumption, fossil fuel subsidies consume scarce resources that could be reallocated to renewable industries that create sustainable jobs.²² The environmental review of the TTIP should therefore address options for using the TTIP to restrict fossil fuel subsidies in order to mitigate the TTIP’s projected adverse effect on climate change.

¹⁷ *Id.*

¹⁸ Horwath, Robert W., Renee Santoro, and Anthony Ingraffea. "Venting and leaking of methane from shale gas development: response to Cathles et al." *Climatic Change* 113.2 (2012): 537-549. This study responds to other scientists who saw the data as less conclusive.

¹⁹ Environmental Review Guidelines, Section V.D.2.

²⁰ IEA, OPEC, OECD, World Bank Joint Report, *Analysis Of The Scope Of Energy Subsidies And Suggestions For The G-20 Initiative* at 5, 32 (June 16, 2010), available at <http://www.oecd.org/env/45575666.pdf>. <http://www.oecd.org/environment/cc/44287948.pdf>.

²¹ 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.

²² See Natural Resources Defense Council, *Governments Should Phase out Fossil Fuel Subsidies or Risk Lower Economic Growth, Delayed Investment in Clean Energy and Unnecessary Climate Change Pollution* (June 2012), available at <http://www.nrdc.org/energy/files/fossilfuel4.pdf>.

Including protections for renewable energy programs

The environmental review should also evaluate the potential to include provisions in the TTIP that would protect renewable energy programs from challenges under trade rules. The approaches considered should include rules that would protect renewable energy programs from trade challenges not only under the TTIP but also under other agreements to which the United States and the European Union are parties, including the relevant WTO agreements.

As state legislators, we are working hard to evaluate different options and make the difficult political decisions that will be necessary to address climate change, including meeting the Obama Administration's targets for reducing CO₂ emissions from power plants. We expect a similar commitment from our federal government to ensure that U.S. trade policy is consistent with our efforts to address climate change. The environmental review of the TTIP presents an important opportunity to begin that process.

Sincerely,

Representative Max Tyler
Colorado

Representative John Kowalko
Delaware

Representative Phylis King
Idaho

Representative Marti Anderson
Iowa

Representative Charles Isenhardt
Iowa

Senator Joe Bolcom
Iowa

Representative Joni Jenkins
Kentucky

Representative Mary Lou Marzian
Kentucky

Representative Herbert Dixon
Louisiana

Representative Katherine Cassidy
Maine

Representative Mick Devin
Maine

State Legislators TTIP Scoping Comments

Representative Chuck Kruger
Maine

Representative Sharon Treat
Maine

Delegate Elizabeth Bobo
Maryland

Delegate Barbara Frush
Maryland

Delegate James Hubbard
Maryland – Assistant Majority Leader
NCEL President Emeritus

Delegate Dan Morhaim
Maryland – Assistant Majority Leader

Representative Denise Provost
Massachusetts

Representative David Bly
Minnesota

Representative Rick Hansen
Minnesota

Representative Joe Mullery
Minnesota

Representative Jean Wagenius
Minnesota

Representative Rochelle Gray
Missouri

Representative Margaret MacDonald
Montana

The Honorable Don Priester
Nebraska

Representative Robert Backus
New Hampshire

Representative Naida Kaen
New Hampshire

Representative Marjorie Shepardson
New Hampshire

State Legislators TTIP Scoping Comments

Senator Martha Fuller Clark
New Hampshire

The Honorable Richard Russman
New Hampshire

Representative Jeff Steinborn
New Mexico

Assemblyman Brian Kavanagh
New York

Assemblywoman Barbara Lifton
New York

Assemblywoman Donna Lupardo
New York

Assemblywoman Michelle Schimel
New York

Representative Pricey Harrison
North Carolina
NCEL Chairwoman

Senator Tim Mathern
North Dakota

Representative Mike Foley
Ohio

Senator Floyd Prozanski
Oregon

Representative David Deen
Vermont

Delegate Patrick Hope
Virginia

Delegate Kaye Kory
Virginia

Senator Barbara Favola
Virginia

Senator A. Donald McEachin
Virginia

State Legislators TTIP Scoping Comments

Senator John McCoy
Washington

Senator Kevin Ranker
Washington
NCEL Board Member