

Questions to Cecilia Malmstrom, EU Trade Commissioner, on TTIP's impact on climate legislation such as the FQD, and CETA with regards democratic process

Draft questions written by Dr Henry Adams to assist Tim Farron MP write a letter to Malmstrom – as agreed in a surgery meeting on 18 March 2016.

(written as if addressing the Commissioner)

A number of my constituents are strongly concerned at the impact that TTIP, CETA and an associated Regulatory Cooperation body will have in constraining our democratic ability to introduce or improve on climate legislation such as the Fuel Quality Directive (FQD). They are concerned that TTIP and CETA head in the opposite direction to satisfying the temperature goals of the Paris Agreement, and have written a document endorsed by 2 local groups, to summarize in one page, a minimum of '[climate red lines](http://www.bit.ly/CLIMATEredlinesTTIPCETA)' that should not be crossed by TTIP or CETA: www.bit.ly/CLIMATEredlinesTTIPCETA

I would be grateful if you could answer the following questions that Dr Henry Adams, on their behalf, has put forward:

TTIP and climate

1. Will TTIP include text that (i) gives legal primacy to legislation aiming to protect our climate, over and above that to protect trade and investment principles? (ii) explicitly states that the Paris temperature goals come first over trade and investment principles? and (iii) gives robust legal protection to any climate legislation?

2. An example of 1.(iii) would be legislation that disincentivizes the trade or investment in sources of oil or gas that are of higher life-cycle carbon intensities as compared with other sources of oil or gas (or other fossil fuel category).

A more specific example is the **Fuel Quality Directive**, which intended to give such disincentive principally by distinguishing between oil feedstocks of differing life-cycle carbon intensity. Such distinction was strongly supported by Liberal Democrat MEPs, but was unfortunately removed from the FQD during the negotiation period for TTIP, on the grounds of it showing trade "discrimination". **If on future review of the FQD, distinctions on differing carbon intensity were re-proposed, would there be text within TTIP, such as in the proposed Energy chapter (or Energy and Climate chapter?), that would robustly protect such proposals from the very inevitable challenge of "discrimination" from oil interests?**

Without such explicit text, Dr Adams expects TTIP and CETA are likely to enlarge the scope and power for oil interests (including politicians representing their interests) to challenge proposed or existing climate legislation not just by lobbying as at present but also via stakeholder representations within the proposed Regulatory Cooperation body or Council, and/or "chilling" threats referring to investor-to-state dispute settlement powers in TTIP and CETA.

CETA and democratic process

3. Is CETA a 'mixed agreement'?

4. Will CETA be provisionally implemented prior to ratification by member-state parliaments?

5. If member-state parliaments vote against ratifying CETA, how long will it take (in years) before the 'dispute settlement' mechanism (i.e. the one that is in one direction: investor-[to]-state) ceases to be available to foreign and transnational companies?

Dr Adams is strongly concerned that CETA is on course to be at least provisionally implemented *prior* to ratification by member-state parliaments, and if CETA is not declared to be a 'mixed' agreement, it could dodge ratification by member-state parliaments altogether. He regards both these arrangements as showing an unacceptably high degree of democratic deficit, especially as the CETA text still includes a dispute settlement mechanism that is "investor-state" (investor-to-state to clarify the 1 direction), which could be active for many years even if member-state parliaments do not ratify CETA.