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Stop TPP:

Chevron's Global Strategy to Escape Accountability!



graphic: Eric Drooker, drooker.com

Chevron is a member of the US Business Coalition for TPP, an unholy alliance of polluters, banksters, war profiteers, sweatshop exploiters, and job outsourcers including Walmart, Halliburton, Cargill, ALEC, Citi, Monsanto, News Corp, Gap Inc, and many others, united in their goal of undermining the efforts of social and environmental justice advocates and ensuring the most corporate-friendly terms in the Trans-Pacific Partnership (TPP), an international trade and investment agreement that is currently being negotiated by the Obama administration and the governments of 11 other countries.

In February 2012, Chevron Corp. paid thousands of dollars to sponsor an exclusive corporate reception in Washington, DC, which was attended by foreign ambassadors and U.S. state governors, in an effort to influence ongoing talks of the Trans-Pacific Partnership. This influence peddling occurred on the heels of Chevron's attempt to evade justice in a historic Ecuadorian Amazon contamination case by using extreme foreign investor rights in a little-known investment treaty—rights which would be expanded to additional countries if the 12 nation TPP agreement takes force.

Days earlier, Chevron used this arcane provision in the U.S. Ecuador Bilateral Trade Agreement (BIT) to ask a secret foreign tribunal to allow them to avoid complying with a court judgment to pay \$18 billion in environmental cleanup costs. The controversial legal instrument, known as 'investor-state' enforcement, allows corporations to sue nations to avoid regulations and potentially even overturn national court rulings. After 18 years of litigation in U.S. and Ecuadorian courts, Chevron was ordered to pay \$18 billion to cover the cleanup costs in the Amazonian region of Lago Agrio. For over three decades of oil drilling in Ecuador's Amazon, Chevron dumped billions of gallons of toxic waste into waterways, left toxic pits of sludge in the open air and created a humanitarian crisis that affected thousands of local people.



"Chevron won't pay to clean up the 18 billion gallons of toxic oil waste it deliberately dumped in the Ecuadorian Amazon, which has resulted in a human health crisis for the people living in the region. But it will pay thousands to lobby state leaders and ambassadors to extend its extreme investor rights, and continue to evade justice elsewhere," said Ginger Cassidy, campaign director at Rainforest Action Network at the time of the reception. "The expansion of the 'investor-state' system to eight more countries would allow companies like Chevron to continue to disregard the environment and public health, knowing they have this trade provision to protect them against liability."

"Chevron's own misuse of 'investor-state' arbitration is proof that this system should not be allowed in any new trade deal, despite what corporate lobbyists for Chevron or Phillip Morris may say," said Robert Collier, former Corporate Campaigns Director for Amazon Watch. "Today it's the Ecuadorian Amazon rainforest inhabitants who are getting the shaft from the investor-state system. Tomorrow, it may be U.S. environmental protections and court rulings that are vetoed by these international corporate star chambers, which is probably why Chevron sees sponsorship of the Trans-Pacific Partnership event as such a great opportunity."

The TPP is being negotiated behind closed doors. Members of the press, the public and even members of Congress have extremely limited access to the TPP negotiating text. However hundreds of official "advisers" representing corporations have access to the negotiating texts – including Chevron's Laurence A. Humphries - and are using their advisory role to help craft an agreement that will advance their interests at the expense of human rights and environmental protection.

Background on the Chevron- Ecuador Case:

In 2002, to avoid a trial in U.S. federal court, Chevron selected Ecuador as the venue to resolve the legal claims of indigenous groups and farmer communities affected by the company's oil operations in the Amazon region of that country. Chevron operated in Ecuador from 1964 to 1992 under the Texaco brand; during this time it admitted to dumping more than 16 billion gallons of toxic "water of formation" into the streams and rivers used by local inhabitants for their drinking water, decimating indigenous groups and causing dramatically increased rates of cancer.

In 2011, after conducting an eight-year trial that generated over 220,000 pages of evidence, the Ecuador court ordered Chevron to pay \$18 billion for a clean-up. An Ecuadorian appellate court affirmed the decision on January 3, 2012. Anticipating an adverse judgment, Chevron had stripped its assets from Ecuador. Its executives vowed never to pay despite having promised U.S. courts that it would abide by the decision as a condition of moving the trial to Ecuador.

Arbitration as Escape Hatch:

Having lost on the merits, Chevron sought to escape its liability by commencing a private arbitration to shift the clean-up costs to Ecuador's government. Essentially, Chevron – one of the wealthiest corporations on the planet with revenues of \$240 billion in 2011 – sought a taxpayer-funded bailout in Ecuador where the per capita income is \$4,000 per annum. In other words, it wants the victims of its contamination to pay for the clean-up of their ancestral lands – sort of like executing someone before a firing squad and sending their family an invoice for the bullets.

U.S.-Ecuador Bilateral Investment Treaty:

The tool for Chevron's latest maneuver is to convene a secret investment arbitration panel under the U.S.-Ecuador Bilateral Investment Treaty, or BIT. The U.S.-Ecuador BIT allows U.S. investors to seek monetary damages from the government of Ecuador if they can show unfair treatment. In this case, Chevron has turned the treaty on its head to use it as a tool to try to immunize itself from liability in a private litigation. Further, the BIT should not even be available to Chevron given that it took effect in 1997, five years after the oil company abandoned its Ecuador operations. Interestingly, Chevron has retained as a consultant to its legal team the former Ecuador foreign minister (Benjamin Ortiz) who negotiated the BIT that the company now uses to evade its legal obligations.

The investor arbitration is a grossly unfair process. The panel of three arbitrators – all private sector lawyers – meet in secret. They reap enormous sums of money so they are incentivized to assert “jurisdiction” over any claim, regardless of how trivial or abusive. Members of the panel claim the outrageous power to override decisions of any public court system of any sovereign nation. Rules prohibit third parties who are the most affected (such as the rainforest communities) from even appearing. Chevron essentially gets a private “court” where it has no effective opposition. In reality, the arbitration panel in this instance is functioning as a “kangaroo court” that violates any notion of due process and flouts the fundamental human rights of thousands of Ecuadorians to seek legal redress for the contamination.

On Friday, October 17th, 2012, the secret ‘investor-state’ tribunal ordered the Ecuadorian government to stop its courts from enforcing the \$18 billion penalty. Essentially, the tribunal demanded that the Ecuadorian executive branch violate its own constitution and tell the independent judiciary to stop enforcement. This would be like President Obama telling the Supreme Court not to rule on something.

WHAT YOU CAN DO



As TPP negotiations near their conclusion, the Obama administration has requested Fast Track Trade Promotion Authority from Congress. According to Public Citizen's Global Trade Watch, “Fast Track’ is the process that gives the executive branch the authority to negotiate and write trade agreements and delegates away Congress’ constitutional power to set the terms of U.S. trade policy. Fast Track creates special rules for considering trade agreements by allowing the executive branch to sign an agreement before Congress votes on it and only gives Congress 90 days to vote on the trade deal. Under Fast Track, the president is authorized to negotiate trade agreements with foreign countries without consulting Congress or state legislators. After the executive branch locks down the terms of the deal and writes the implementing legislation, Congress is only permitted a yes or no vote, while states are virtually left out of the process. Thus, state and congressional officials elected to represent the public interest have no role in the process but to approve or disapprove the whole package.” Thus, Congress will be stripped of the power to amend TPP to modify the egregious investment chapter that Chevron is pursuing.

Congress is expected to vote on granting President Obama Fast Track Authority by the end of October. It is VITAL that we let our members of Congress know that they MUST vote against Fast Track!

Please call or email your Congressional Representative and demand that he or she publicly commit to vote against Fast Track Trade Promotion Authority. Let your Rep know that you want Congress to maintain its power to amend trade agreements in order to remove or modify provisions that weaken food safety standards. Let them know that safe food is more important than Monsanto's greed! You can find out who represents you in Congress and find their contact information at <http://gjae.org/leg>. When you call, ask to speak to your Representative's legislative assistant on trade.

To learn more about TPP and Fast Track and find out about additional actions you can take to stop them, contact Global Justice for Animals and the Environment, 219 Carlton Terrace, Teaneck, NJ 07666 * Phone (718) 218-4523 * Email: info@gjae.org * Web: <http://gjae.org>
(portions of this flier were adapted from a press release by Rainforest Action Network (<http://ran.org>) and Amazon Watch (<http://amazonwatch.org>))