

Corporate Courts Threat to Insects

The shadowy parallel court system of major trade agreements makes it difficult for countries to ban broad-spectrum insecticides.

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Countries around the world have been slow to ban insecticides such as neonicotinoids despite the ongoing loss of insects, including key pollinators, globally.

One reason may be the threat of litigation in a system of secret corporate courts that exists to adjudicate Investor-State Dispute Settlement (ISDS) clauses in international trade agreements.

The ISDS system allows companies to sue national governments for damages and lost profits if they pass laws banning hazardous chemicals.

Banned

Jean Blaylock, of Global Justice Now, an NGO campaigning on trade agreements, told *The Ecologist*: “ISDS has often been used by big business, including pesticide and chemical companies, as a tool to bully and pressure governments to make the decisions that the corporations want.”

History shows that bans on dangerous chemicals work.

In Japan, the Minamata disaster of the mid-20th century involved serious birth defects due to methyl mercury effluent that contaminated fish that people then ate.

It was ended with strict environmental regulations in the early 1970s that banned mercury in industrial effluent at detectable levels.

However, it is likely that Japan would have difficulty passing such laws in the present situation with trade agreements.

Trade

Blaylock gave two examples from Canada. In the first, when Quebec in Canada banned the use of pesticides for cosmetic purposes – meaning to tidy lawns and gardens – Canada was

sued by pesticide maker Dow Agrosience, forcing the government to settle out of court.

In another case with ominous implications for emerging disasters like Minamata, she said “when Canada banned the chemical MMT in petrol, which is suspected of causing nerve damage, they were sued by the manufacturer, Ethyl.”

Canada was forced to remove the ban in 1998, paying \$13 million in lost profits to Ethyl under the terms of a settlement. Subsequently, a 2001 study published in the *American Journal of Industrial Medicine* stated there were “major concerns with regard to public health effects” from exposure to MMT.

Scott Sinclair of the Canadian Centre for Policy Alternatives explained by email about pressure against Mexico, which passed a decree banning glyphosate which is used in the herbicide Roundup manufactured by German chemical giant Bayer.

“The reaction from US agribusiness was swift. In March, a coalition of agribusiness groups including CropLife America demanded the US government take trade action against Mexico for violating the United States Mexico Canada Agreement (USMCA).”

Laws

Sinclair said that the USMCA retains ISDS provisions with regard to Mexico, although they were removed between Canada and the US. In addition, the old North American Free Trade Agreement (NAFTA) which it replaced allows legal action to be taken by companies for another three years.

Thus Bayer, which is a member of CropLife America, still has the possibility to sue the Mexican government.

In the Asia-Pacific region, two competing trade agreements that have recently been agreed are starkly different regarding corporate courts. One, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) includes provisions for companies to sue governments.

However, in an indication that corporate courts may be starting to fall out of favor, the Regional Comprehensive Economic Partnership (RCEP) that is to come into force in late 2021 is reported to not include ISDS.

Sinclair said the decision is definitely a step in the right direction, and a huge improvement over the CPTPP. He added that in North America the majority of ISDS claims have been related to environmental protection, causing a huge problem for governments that want to pass laws contrary to corporate interests.

Catastrophic

However, Japan has signed both the CPTPP and the RCEP, one with corporate courts and one without, and Sinclair said that private investors tend to be aggressive in using the dispute settlement mechanism.

In light of this, it seems likely that chemical companies will not hesitate to sue for damages under the agreement that allows them to do so, and the threat of this continues to exist if

Japan passes necessary laws banning harmful pesticides.

The landmark ban on methyl mercury, the chemical responsible for the Minamata disaster, ended one of the worst human tragedies of the last century, and stands as an example for the present.

Against the background of the ongoing worldwide insect extinction event, rice-field insects such as dragonflies that were common only 30 years ago have one by one become endangered, with broad-spectrum insecticides playing a devastating role.

As insect species after insect species ends up on Japan's Red List, the failure to heed this lesson of a previous generation is likely to have catastrophic consequences.

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