

Need for SEC rules on climate risk within trade associations and their members

A. MY INTRODUCTION

I am a professor of sustainable energies and energy management. I have been teaching about climate change for 41 years. I am also President of the U.S. Partnership for Education for Sustainable Development. I also have degrees from Yale and University of Michigan, including an MBA and PhD in Business. With this expertise, I am submitting this comment on my own behalf in response to Acting Chair, Allison Herren Lee's, letter "Public Input Welcomed on Climate Change Disclosures." I have edited and send you today my version of the comment prepared by *Change The Chamber* (changethechamber.org), which is a coalition of over 100 student and environmental groups from across the United States. Formed in June 2020, it is a volunteer organization of students and young professionals who share the goal of advocating for science-based climate legislation and changing the climate-lobbying of the U.S. Chamber of Commerce. I have mentored many of the core team at Change the Chamber. I am interested in this for the benefit of the country, the business community, the environment and my self-interest as an investor.

Change The Chamber has conducted extensive research on the U.S. Chamber of Commerce's climate lobbying, and the commenter recognizes that the Chamber is one part of a larger group of trade associations that lobby against science-based climate policy. At the same time, the commenter has noticed that many of the companies which are members of the U.S. Chamber and its peer trade associations are seriously engaged in mitigating climate risk. This comment springs from the observation of this misalignment.

Companies are not required to disclose their membership in, or donations to, trade associations. Investor funds are used to pay these undisclosed donations. Increasingly, as shown by initiatives like CA100+, the investor community is anxious to mitigate climate risk. The commenter believes that the lack of disclosure around trade association membership creates a lack of key information about how investor funds are being used to oppose public policy measures that would curtail climate risk.

In addressing the Securities and Exchange Commission's 1st, 2nd, and 10th questions, the commenter respectfully requests that companies be mandated to issue yearly reports that audit the climate lobbying positions of all their trade associations. These reports must further assess both how their trade association's lobbying aligns with the goals of the Paris Agreement and how their trade associations' climate lobbying specifically aligns with their company's climate public policy position.

B. FACTUAL BACKGROUND

i. The mechanics of climate change, our carbon budget, and market failure

In this section, the commenters give a brief summary of the mechanics of global warming, introduce the concepts of a “carbon budget” and “unburnable carbon,” and argue that the market has failed to adequately price the primary contributor to climate risk: greenhouse-gas emissions.

Greenhouse gasses (GHGs) trap heat in the atmosphere and warm the planet. Examples of GHGs are carbon dioxide, methane, nitrous oxide, and water vapor, and fluorinated gases. GHGs absorb infrared radiation through a combination of bond vibrations and molecular rotations. This absorption is quantized and occurs at specific frequencies unique to each greenhouse gas. The Greenhouse Effect is when an atmospheric greenhouse gas enables a planet to radiate at a temperature lower than the ground temperature if there is cold air aloft. It therefore causes the surface temperature of the planet to balance with a given amount of absorbed solar radiation, and allows the planet’s surface temperature to go higher than would be the case if the atmosphere was transparent to infrared radiation (IR). In short, the Greenhouse Effect insulates the planet and makes it comfortable for life to exist.

The existence of life on this planet however, depends on humanity’s decision whether to disturb the environment and climate or not. The Anthropocene, a proposed geological age where humans are the dominant influence on Earth’s climate and environment, has been popularized due to the irrefutable fact that humans impact ecosystems and climate systems in all areas of the planet, with dramatic effects in some places. By adding CO₂ to the atmosphere, we are making it less transparent to thermal radiation. Therefore the GHGs must go higher into the atmosphere to release thermal radiation into space. The higher in the atmosphere, the colder it gets, and so the Earth begins to radiate at a lower temperature. This means there is less energy radiating from Earth. The same amount of energy is coming from the Sun but less energy is leaving the Earth. The Earth, as an object, is warming up. Therefore, the more CO₂ and greenhouse-gas in the atmosphere, the warmer the Earth. **A recent Princeton research study shows the lives of 3 billion people are at risk if the average temperature increases by more than 1.5 degrees.**

Only about 10% of surface infrared emissions pass through the atmosphere and go into space. Atmospheric GHGs and clouds determine how much surface IR is actually being absorbed. Therefore the strength of the Greenhouse Effect is dependent on the atmospheric composition and clouds. This is global warming; we are changing the atmosphere of the Earth. As the Earth gets warmer due to global warming, we are seeing and will continue to see continental ice melting, the sea level rising, and ocean acidification. The anticipated effects of climate change are beyond the scope of this comment, but the commenters are aware that there will be more extreme heat waves, extreme drought in the subtropics and precipitation in wet tropics and in places of high latitudes. The droughts will produce dry soils and higher incidence of wildfires. The changes in extreme rainfall will increase hurricane intensity. There will be unanticipated, abrupt changes to local weather patterns as well as global tipping points, such as the melting of

the permafrost in the Arctic circle, or the disruption of ocean currents, or massive die-offs of coral reefs. There will be extreme food shortages all around the world, large populations migrating because of the destruction of their life-support systems, and unprecedented economic disasters (Fourth National Climate Assessment, 2017).

Fossil fuels are the main source of CO₂ in the atmosphere. According to the IPCC 2014, 65% of global greenhouse-gas emissions are from CO₂. Therefore, fossil fuels are the primary contributors to global warming and climate change (National Geographic, 2019). To state the obvious, the greenhouse-gas emissions from fossil fuel combustion are the primary cause of climate risk.

The IPCC has stated that there is a limit on how much carbon can be burned in order to keep global warming to ‘acceptable’ levels. This is what the Carbon Tracker Initiative calls the “Carbon Budget.” According to the Carbon Tracker Initiative:1. “At the 2015 UNFCCC Paris COP, world governments confirmed their intention to limit global warming “well below 2°C” and pursue efforts to “limit the temperature increase to 1.5°C”. The Carbon Tracker initiative publishes on the following on their website:

“We calculate that the remaining 1.5°C carbon budget was c.495GtCO₂ as at the beginning of 2020 (based on the carbon budgets updated by the IPCC in 2018 and emissions data from the Global Carbon Project). Based on 2019 emissions of 43.1GtCO₂ this budget can be expressed in terms of years remaining at current emissions levels – as of 2020 this equates to 11.5 years for a 50% probability of a 1.5°C warming outcome.” (<https://carbontracker.org/resources/terms-list/#unburnable-carbon>).

Borrowing another term from the Carbon Tracker Initiative, “unburnable carbon” refers to the fossil fuel resources which cannot be burned if the world is to achieve a given goal of climate change mitigation. Note that the world’s indicated fossil fuel reserves amount to 2,860 gigatons of CO₂, and it is estimated that the level of listed reserves could double to 1541GtCO₂ if all prospective reserves are developed (Carbon Tracker Initiative, Grantham Research Institute, 2013). The remaining “carbon budget” to limit global warming to well below 2 degrees celsius is less than a quarter of the existing reserves. This means that around three-quarters of the world’s current fossil fuel reserves, and all prospective reserves, are “unburnable carbon.”

This leads the commenters to our main point in this section: Markets have failed to adequately price climate risk into the cost of fossil fuels. The vast majority of current and prospective fossil fuel reserves cannot be burned. Yet, in 2013, \$647 billion was invested in finding new reserves: *reserves which we cannot afford to burn*. Meanwhile, according to the Carbon Tracker Initiative, the asset value of all fossil fuel reserves is between \$14 and 129 trillion USD (Carbon Tracker,

2021). If they are not burnt, these are stranded assets which pose a substantial risk to the integrity of global financial markets (Bank of England, 2019). If they are burnt, then average global temperatures will continue to rise rapidly, and the risks associated with climate change, referenced above, will have severe, negative impacts on all sectors of society. This market failure requires public policy intervention.

*ii. Trade associations as contributors to climate risk. **Their actions are having major impacts.***

In this section, the commenters argue that for the past thirty years trade associations have been, and continue to be, primary contributors to the climate risk now facing the “universal investor,” because of their opposition to public policy interventions that would address climate risk. This claim is contested, because the politics of mitigating the risk of climate change are extraordinarily complex. It is beyond the scope of this comment, and the knowledge of the commenters, to fully contextualize the role of trade associations in climate policy-making. However, the commenters identify trade associations as primary contributors to climate risk because of their negative contribution to the details of climate policy: *by the actions that they have prevented*. Our argument is primarily based on the work of the independent watchdog group, InfluenceMap, as well as on the October 2020 report by the Senate Democrats’ Special Committee on the Climate Crisis.

Mitigating climate change risk requires public policy. This is because the scale of the challenge is enormous, since the economy still overwhelmingly relies on fossil fuels for energy. The 2018 IPCC report says that, “[r]ealizing 1.5°C-consistent pathways would require rapid and systemic changes on unprecedented scales” (IPCC, 2018). It is a hugely complex problem, and matching the scale of the problem, there are many potential solutions. Although the commenter does not advocate for any specific solutions here, the commenter does not think it is up for discussion that public policy interventions are required to achieve this “unprecedented scale” of change. In recent history, across multiple jurisdictions, trade associations have consistently and successfully advocated against all the proposed public policy solutions that would adequately address the scale of the challenge.

It is also worth clarifying the kinds of trade associations that have contributed to climate risk. The lobbying industry has boomed over the past few decades, and there are a multitude of different trade associations, social welfare organizations, as well as a wide variety of Non-Governmental Organizations that lobby lawmakers. In the United States in 2019, according to CNBC, there were 11,885 registered lobbyists who were paid over \$3.5 billion by their clients that year. Within this large industry, there are two kinds of trade associations that have contributed to climate risk by opposing science-based climate legislation: (1) large, cross-sector trade associations, for example the U.S. Chamber of Commerce and the National Association of Manufacturers, and (2) trade associations that represent the oil and gas, steel, concrete, and

chemical industries, for example the American Petroleum Institute, the American Iron and Steel Institute, the Portland Cement Association, and the American Chemistry Council. The opposition to climate policy by these groups is well documented (Influence Map, 2017, 2019; Senate Democrats' Special Committee on the Climate Crisis, 2020).

The focus of our comment is the opposition to science-based climate solutions by the large, cross-sector trade associations. Since the industries represented by the second group of trade associations would face the highest regulatory burden as a result of any policy to reduce greenhouse-gas emissions at the scale required to meet the goals of the United Nations Framework Convention on Climate Change, their trade associations' opposition is understandable and could be expected. However, the opposition by large, cross-sector trade associations, which claim to speak for the business community as a whole, is extremely problematic. As the commenters will demonstrate in section B.iii, there is a clear misalignment around the approach to climate risk mitigation between these trade associations and their memberships. What's more, the economic and systemic risks posed by climate change are substantial and will have severe, negative impacts on macroeconomic and Human Development Index indicators such as GDP growth and access to clean water (National Intelligence Council, 2021): the commenters strongly believe that it is in the interests of the wider business community to mitigate climate risk as much as possible. The misalignment on how to address climate risk mitigation is all the more material given the extent to which these large, cross-sector trade associations continue to use their powerful platforms to oppose science-based climate policy.

The opposition by large, cross sector trade associations to science-based climate action is not unique to the United States. In Japan, Keidanren, which comprises 1,601 direct members, 129 industrial associations, and 47 regional economic organizations, has consistently opposed explicit carbon pricing policy and carbon taxes (InfluenceMap, 2017). Meanwhile, BusinessEurope, which claims to represent 20 million companies through its network of affiliated trade associations, has consistently lobbied to dilute the ambition of the post-2020 climate policy of the European Commission (<https://www.business-humanrights.org/en/latest-news/unilever-quits-businesseurope-following-tensions-over-lobby-groups-stance-on-environment-climate-change/>). In Australia, the Business Council of Australia has advocated for reduced taxes on the oil and gas industry to accelerate the development of renewable energy alternatives <https://www.abc.net.au/news/2020-09-23/business-lobby-groups-stymie-climate-action-uk-think-tank-finds/12695162>). Across multiple jurisdictions, trade associations lobby against policies that would mitigate climate risk.

The legal actions of the large, cross-sector trade associations are the most visible way in which they oppose science-based climate policy. For example, in 2015, the U.S. Chamber of Commerce sued the Environmental Protection Administration and successfully obtained a court stay on the promulgated "Clean Power Plan." The Clean Power Plan would have mandated reductions in

greenhouse-gas emissions from electrical power generation across the US by 32 percent by 2030, relative to 2005 levels. More recently, on September 16, 2020, the U.S. Chamber of Commerce submitted an amicus brief to defend a set of rules promulgated by the National Highway Traffic Safety Administration and Environmental Protection Administration to preempt California state from passing greenhouse-gas emission and zero-emission vehicle standards for cars and light trucks. For context, in 2019, 1.89 million light cars and trucks were sold in California, ranking it as the world's 10th largest car market among all countries. These two legal actions by the U.S. Chamber of Commerce prevented, and aimed to prevent, policies that would avoid millions of tons of greenhouse-gas emissions and substantially curtail climate risk.

Moreover, the large, cross-sector trade associations in the United States have opposed all of the policy alternatives that could substantially curtail greenhouse-gas emissions and climate risk. Firstly, in the 2000s, the most prominent policy alternative to reduce emissions at scale was to implement a “cap-and-trade” system whereby companies were allocated, and could trade, a given number of carbon credits, which would be reduced year over year. The U.S. Chamber of Commerce opposed: (1) H.R. 6, the Energy and Policy Act of 2005 (<https://www.uschamber.com/letter/key-vote-letter-hr-6-energy-policy-act-2005>); (2) S.2191, America's Climate Security Act of 2007 (<https://www.youtube.com/watch?v=XevRKc82soI>); and (3) H.R. 2454, the American Clean Energy and Security Act of 2009 (<https://www.uschamber.com/letter/letter-opposing-hr-2454-american-clean-energy-and-security-act-2009>). Secondly, another prominent policy alternative to curtail emissions at scale is called a “Renewable Energy Standard” (RES), which would mandate a reduction in emissions but also give actors like states, utilities, or municipalities the discretion in how to implement the reduction. The Clean Power Plan, mentioned above, was an RES. Thirdly, some advocates propose using the tax code to create a subsidy structure that accelerates the uptake of low-emissions energy production to replace high-emissions energy production. For context, in 2019, the IMF found that subsidies for fossil fuels remain high: according to their estimates, global subsidies amount to \$4.7 trillion, and there are \$649 billion worth of subsidies to the fossil fuel industry in the United States (IMF, 2019). Meanwhile, on June 2, 2021, the U.S. Chamber of Commerce wrote to the Senate Committee on Finance regarding the S. 1288, the Clean Energy for America Act, urging the Senators to not increase taxes on, or reduce subsidies for, the oil and gas industry (<https://www.uschamber.com/letters-congress/joint-letter-the-senate-committee-finance-opposition-proposed-changes-the-internal>).

Lastly, large, cross-sector trade organizations constantly lobby on details of public policy that have material implications for climate risk, and they oppose measures that would help mitigate climate risk. **Below are just a few of the many examples from 2020-2021:**

- (1) Shareholder proposals have been an avenue for successful advocacy in favor of mitigating climate risk. Meanwhile, in January 2020, the U.S. Chamber of Commerce,

- the National Association of Manufacturers, and the Business Roundtable (<https://www.sec.gov/comments/s7-23-19/s72319-6730870-207447.pdf>; <https://www.businessroundtable.org/archive/resources/responsible-shareholder-engagement-long-term-value-creation>; https://www.uschamber.com/sites/default/files/200727_amendment18_h.r._7617_house.pdf) have lobbied your colleagues at the Securities and Exchange Commission to implement the “Modernization of Shareholder Proposal Rule” (Exchange Act Rule 14a-8), which would increase the barriers to submitting and voting on shareholder proposals.
- (2) In January 2020, the U.S. Chamber of Commerce and the National Association of Manufacturers (<https://www.regulations.gov/comment/EBSA-2020-0004-0595>; <https://www.regulations.gov/comment/EBSA-2020-0004-0584>) have lobbied the Department of Labor to adopt the “Financial Factors in Selecting Plan Investments” rule, which discourages fiduciaries from considering ESG factors in their investments, limiting their ability to integrate ESG risks and opportunities into their portfolios.
 - (3) On February 16, 2021, the Chamber sent a letter (https://www.eenews.net/assets/2021/02/16/document_pm_01.pdf) to several government agencies asking to be consulted on the Biden administration’s new “social cost of carbon.” The Chamber lobbied in 2015 and 2017 to completely get rid of this policy for climate risk mitigation
 - (4) On March 16, 2021, the Chamber sent a letter (<https://www.cfo.com/disclosure/2021/03/chamber-urges-sec-caution-on-climate-disclosure/>) to the Securities and Exchange Commission (SEC) acting Chair, asking the Commission to delay action on its new Climate and ESG Task Force, which will “develop initiatives to proactively identify ESG-related misconduct,” according to the SEC.
 - (5) On March 17, 2021, the U.S. Chamber of Commerce published a set of “Principles and Priorities” (<http://image.uschamber.com/lib/fe3911727164047d731673/m/10/3fef9b8f-7da8-435d-b09e-9296cfa86f5c.pdf>) aimed at informing the Administration’s upcoming National Determined Commitment to reenter the Paris Agreement. The white paper: (a) makes no mention of science-based targets; (b) argues to limit the scope of the administration’s goals, which they want to be, “presented as a range that allows for ambition flexibility;” (c) argues for continued public policy support for coal, which is the most polluting source of energy.

In conclusion, the large, cross-sector trade associations are substantial contributors of climate risk through their negative contributions. In very recent history, and across multiple jurisdictions, they have opposed public policy measures to mitigate climate risk. In the United States, these large, cross-sector trade associations have opposed all of the prominent policy alternatives to reduce greenhouse-gas emissions at scale. Moreover, they continue to use their capacity to lobby against policy details and proposed agency rules that would help mitigate climate risk.

Investor funds are being used by companies to fund trade associations. These trade associations then use these resources to oppose public policy measures that would reduce climate risk.

iii. Corporate America & trade association misalignment

The commenters conducted a survey of the S&P 500 to measure the misalignment on climate issues between corporate America and its large, cross-sector trade associations.

The commenters wanted to measure two things: (1) which companies disclose their membership in one of the large, cross-sector trade associations, and (2) which companies have taken actions that indicate they are trying to mitigate climate risk in line with the goals of the UNFCCC.

To answer the first question, the commenters looked for each company's disclosure of political contributions to see if they were members of the U.S. Chamber of Commerce or the National Association of Manufacturers.

To answer the second question, commenters used four proxy indicators, each of which the commenters believe show that a company has seriously committed to mitigating their contribution to climate risk: (1) has the company publicly expressed support for the Paris Agreement? (2) does the company claim to have set an emissions reduction target in line with the goals of the Paris Agreement? (3) has the company set an emissions reduction target that had been approved by the Science Based Targets initiative (SBTi)? and (4) does the company report on climate risk indicators following the recommendations of the Task Force on Climate-related Financial Disclosures?

We found that:

- (1) 116 of the S&P 500 companies disclose membership in the U.S. Chamber.
 - (a) 49 of these companies have declared public support for the Paris Agreement.
 - (b) 52 of these companies claim to have set an emissions target in line with the goals of the Paris Agreement.
 - (c) 37 of these companies have set an emissions reduction target that has been approved by the Science Based Targets Initiative.
 - (d) 52 of these companies produce reports of climate risk indicators in line with the recommendations of the Task Force on Climate-related Financial Disclosures..
 - (e) 70 of these companies have taken one or more of the above actions.
- (2) 60 of the S&P 500 companies disclose membership in the National Association of Manufacturers.
 - (a) 31 of these companies have expressed public support for the Paris Agreement.

- (b) 37 of these companies claim to have set an emissions target in line with the goals of the Paris Agreement.
- (c) 31 of these companies have set an emissions reduction target that has been approved by the Science Based Targets Initiative.
- (d) 31 of these companies produce reports of climate risk indicators in line with the recommendations of the Task Force on Climate-related Financial Disclosures.
- (e) 42 of these companies have taken one or more of the above actions.

The results are also available on this spreadsheet:

https://docs.google.com/spreadsheets/d/1SNZsxQNh0R7bBr_1hzUrxiFcgcY640s_rsUYOr8mrs/edit?usp=sharing

These results show that, for both of the large, cross-sector trade groups, a clear majority of their membership is in favor of mitigating climate risk.

C. REMEDY

The commenters strongly recommend that the Securities and Exchange Commission requires companies to produce the following in order to address this misalignment:

- (1) A list of all of their payments to trade associations, including the amounts of the contributions.
- (2) A report on the alignment of their trade associations on climate issues, focusing in particular on the following questions:
 - (a) Does the trade association explicitly support the Paris Agreement?
 - (b) Does the trade association explicitly support a goal to reach net-zero?
 - (c) Does the trade association explicitly support carbon pricing?
 - (d) Does the trade association explicitly support energy efficiency measures?
 - (e) Does the trade association explicitly support policies to accelerate the transition to renewable energy?
 - (f) Does the trade association explicitly support policies to create nature-based *and* other carbon sinks?

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