

International Trade Committee Consultation: Trade and the Environment

28th February 2022

The Trade Justice Movement (TJM) is a UK-wide network of sixty civil society organisations, with millions of individual members, calling for trade rules that work for people and the planet. Our members include trade unions, NGOs, consumer groups and faith organisations. Together we are calling for trade justice, where the global system of trade ensures sustainable outcomes for ordinary people and the environment.

How well are the Government's free trade agenda and its environmental policies aligned? And is the Government ambitious enough in its approach?

1. Climate change and environmental destruction are two of the most pressing issues of our time. Delivering on the UK Government's climate ambitions will mean taking significant action across all areas of the economy. Since the export of goods and services represents around 30% of UK GDP and plays a significant role both in terms of emissions levels and policy options, international trade should be high on the list of areas to address.¹ TJM believes that UK trade and investment policy must urgently be explicitly and rigorously designed to be compatible with climate and environmental goals.
2. International trade policy as it is currently configured is a blunt instrument: its aim is simply to increase international trade, with little reference to the kind of trade that this might entail. There is broad consensus that this approach tends to lead to an overall increase in greenhouse gas emissions.² This is because there is nothing to direct trade policy away from trade and production in carbon-intensive sectors such as steel and cement, and towards the kind of trade that would support measures such as technology transfer and the development of low-carbon sectors. Increased international trade in goods also increases emissions where more carbon-intensive products (whether due to production processes or transportation) increase their market share as a result of a deal.
3. However, the impact of trade on the environment goes beyond its overall impact on economic activity. Trade rules influence the policies that are required to achieve climate and environmental goals. Rules on investment, intellectual property, services, procurement, regulations and standards, and agriculture can pose challenges to achieving climate goals. The Government should ensure that a minimum set of core standards are applied in these policy areas with climate ambitions a central part of them, ideally as part of a comprehensive, published trade strategy. The UK should only enter into trade negotiations with countries that have meaningful climate and environmental commitments, and where new commitments are made, they should be binding.

To what extent have the Department for International Trade and UK Export Finance changed their working practices in order to bring together the Government's environment and trade policies?

4. The Department for International Trade has established several Thematic Working Groups (TWGs), which are fora for stakeholders to provide input on UK trade policy. However, there are number of concerns about their practice; there is a lack of transparency about TWGs, particularly (i) what the different groups are; (ii) the membership of each group; (iii) how organisations are selected or

¹ <https://www.theglobaleconomy.com/United-Kingdom/Exports/>

² Mattoo, Aaditya & Arvind Subramanian (2013) *Four Changes to Trade Rules to Facilitate Climate Change Action* Center for Global Development Policy Paper 21, pxii

rejected for group membership; (iv) how groups inform policymaking, and how suggestions from organisations are taken on board; and (v) the standing and purpose of groups, and how they tie with the Strategic Trade Advisory Group (STAG) and the government's wider policymaking process. Communication ahead of meetings is often limited and those meetings occur infrequently, and several participants have raised significant concerns about the use of confidentiality agreements required to take part.³ This stakeholder engagement must improve to ensure civil society is properly consulted on trade and the environment.

What might be the impacts of measures introduced by the UK's trading partners designed to reduce reliance on carbon-intensive fossil fuels – for example carbon border adjustment mechanisms – on UK trade? And what could a UK carbon border adjustment mechanism mean for its imports and exports?

5. TJM recognises the argument that a CBAM might be a necessary component of a well-functioning domestic carbon tax. We hope that a CBAM will help prevent carbon leakage, and not allow the UK and other developed countries to be absolved for climate emissions caused by domestic consumption of goods produced abroad. We also hope that a CBAM will be part of a package of measures that will incentivise companies and countries to adopt greener methods of production and reward firms and countries who are already adopting greener practices by making them more competitive.
6. However, we do hold specific concerns about the use of a CBAM. Its use could hit developing countries particularly hard, especially those with high carbon emissions who also rely heavily on exports to the EU and UK. While their exports may make up a small proportion of the overall CBAM revenue, they may make up a high proportion of that country's exports and have drastic economic consequences.
7. This disadvantage for developing producers seems particularly unjust in the context of historic relations between Global North and Global South: while Western European, North American and some East Asian countries were free to rapidly industrialise through carbon-intensive production (e.g. coal power in Victorian Britain), those same developed countries are now imposing taxes on fossil fuel-based production in the Global South. Furthermore, many developing countries liberalised their energy and manufacturing industries under pressure from Global North countries, whose 'Washington Consensus' ideology dictated the policies of the International Monetary Fund, World Bank and other institutions from the 1980s through to today (although some of this 'consensus' is now rightly being challenged). Part of this process was a shift in carbon-intensive production from the Global North to developing countries. These relations also contributed to many developing countries lacking the resources to shift to lower-carbon production.
8. Although the EU's CBAM currently only applies to particularly carbon-intensive goods, namely steel, other metals and energy production, it is possible that the CBAM will be extended in the future to other industries such as agriculture, manufactured goods or textiles. This could hit developing countries which have high rates of poverty, and could affect small-scale farmers. As with all taxes on products and corporations, it is important to ensure that the costs are not simply passed down to the most vulnerable, such as workers, or those producers at the bottom of supply chains.
9. A CBAM could be implemented in isolation, without the appropriate flanking measures to ensure all countries are shouldering a fair level of responsibility for emissions and could eclipse other important

³ Sky News, [Trade experts reject government gagging orders](#), 23 July 2020

climate policies, including policies related to trade. There is a risk that the trade and climate debate becomes dominated by CBAM at the expense of other policy interventions. This would be particularly problematic if the CBAM did little to change overall emissions; at present there is little evidence that a CBAM would contribute to a significant shift in production processes.

What are the benefits and costs of the UK's approach to environmental and climate change commitments in free trade negotiations to date? And to what extent might the inclusion of Investor-State Dispute Settlement clauses in free trade agreements affect the UK's climate change policies?

10. ISDS allows firms to sue governments for policies which harm their profits. While the aim is to mitigate against unreasonable and unpredictable government behaviour, in practice, ISDS has been used to challenge all sorts of important environmental regulations.⁴
11. In particular, the inclusion of the investor to state dispute settlement mechanism (ISDS) in these treaties allows international investors to directly challenge government policy. Cases against attempts to place limits on the use of fossil fuels include: Lone Pine vs. Canada⁵ in response to Quebec's introduction of a moratorium on fracking under the St. Lawrence river; Rockhopper vs. Italy⁶ for a ban on oil and gas exploitation within 12 nautical miles of the coastline; Westmoreland⁷ and Uniper⁸ vs. Canada and the Netherlands respectively, both challenging the phase out of coal-fired power stations.

By what measures should the environmental impacts of new free trade agreements be assessed?

12. Trade agreements are currently designed with very little meaningful reference to climate and environmental commitments. References to environmental commitments are generally contained in the non-binding preamble. In some treaties, such as the CPTPP, reference is made only to a very limited number of environmental agreements. The central, binding commitments of trade agreements, such as those on goods, services, investment and intellectual property are not designed with climate and environmental commitments.
13. Many countries require environmental assessments of trade agreements that they enter into. However, to date, these impact assessments have had very little bearing on the negotiations themselves: in the case of the TTIP negotiations, the assessment was to be delivered only once the negotiations had finished, giving no opportunity for it to shape the content of the proposed deal. Assessments also tend to focus on national rather than cross-border or global pollutants - this means in particular that transport emissions are not accounted for.
14. A number of trade agreements do contain environmental chapters. These chapters generally recognise each Party's environmental commitments and reiterate the potential to use exceptions provisions for environmental reasons. However, the wording in these clauses is non-binding and the language used is limited to that of 'best endeavour'. For example, CETA's environmental chapter states that "Each Party shall **seek to ensure** that those laws and policies provide for and encourage high levels of

⁴ https://www.citizen.org/wp-content/uploads/egregious-investor-state-attacks-case-studies_4.pdf

⁵ Lone Pine Resources Inc. vs Canada ICSID Case No. UNCT/15/2

⁶ Rockhopper Exploration Plc, Rockhopper Italia S.p.A. and Rockhopper Mediterranean Ltd v. Italian Republic (ICSID Case No. ARB/17/14)

⁷ Westmoreland Coal Company vs Canada, NAFTA (2018)

⁸ <https://www.en24.news/2019/09/uniper-wants-to-sue-the-netherlands-for-a-coalition-exit.html>

environmental protection, and shall **strive to continue to improve** such laws and policies and their underlying levels of protection” (emphasis added).⁹ The chapters often have no enforceability (as is the case with EU chapters) or are very rarely used in practice (as is the case with US chapters which do have enforceability mechanisms). What this means in practice is that there is nothing to discipline trade provisions to ensure that they are in line with environmental and climate goals.

15. To build a comprehensive understanding of the environmental impact of UK trade policy, the Government should ensure environmental impact assessments (EIAs) are conducted as part of the negotiating process. Such EIAs should then inform commitments made in binding chapters in any negotiated deal.

How effective is the Government’s engagement with international forums to ensure that there is a broad consensus among its trading partners on how to align trade with environmental issues?

16. Shared international trade rules on issues such as investment, intellectual property, services, procurement, regulations and standards, and agriculture as they currently exist can pose particular challenges to achieving climate goals.
17. The clearest example of this is in the energy sector: the IPCC states that, in order to meet emissions targets, countries will need to rapidly phase out the use of fossil fuels. However, investment protection provisions in international treaties with wide memberships such as the Energy Charter Treaty (ECT) can make it difficult to do achieve.
18. The WTO’s Trade Related Investment Measures (TRIMs) agreement illustrates this. The central aim of TRIMs is to prevent governments from requiring international investors to use local inputs, with the intention of creating a level playing field for domestic and international investors. However, the agreement has been blind to the political realities facing governments who wish to support renewables sectors. For example, the EU brought a case against Canada challenging Ontario’s renewable programme. Ontario was offering a preferential 20-year purchase price for wind and solar generated electricity but, in order to qualify for the preferential price, producers had to guarantee that 50% of wind and 60% of solar costs originated in Ontario.¹⁰ A two-year review of the project found that it had brought in CDN \$27 billion of private sector investment and created more than 20,000 jobs.¹¹ However, the EU successfully argued that the requirement to guarantee that a proportion of the costs originated in Ontario breached the TRIMs local content provisions. As a result, the programme has been significantly scaled back.
19. Similarly, the WTO’s Agreement on Trade Related Aspects of Intellectual Property (TRIPS) and intellectual property chapters of FTAs lock-in intellectual property rights and often increase the duration of patents and other protections. TRIPS requires a minimum 20-year duration for patents and ten years for industrial designs. This can make it prohibitively expensive for developing country producers to purchase patented technologies. For example, in photovoltaic power generation, it is likely that newer thin-film technologies will be subject to much more extensive patenting than older silicon-slice technology which means that the more efficient technology could be out of reach for the next 20 years.¹² Thus countries can be prevented from developing their own versions of green

⁹ CETA, chapter XXIV, article iii https://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/index_en.htm

¹⁰ <https://www.iea.org/policiesandmeasures/pams/canada/name-24662-en.php>

¹¹ Centre for International Governance Innovation (2017) *Advancing Sustainable Energy in Ontario The Case of Regional Renewable Energy Cooperatives* p.4 <https://www.cigionline.org/sites/default/files/documents/Paper%20no.133web.pdf>

technologies or adapting them to their own circumstances, for example by making them more resilient to particular climatic conditions, or innovating to improve effectiveness.¹³

20. Finally, the WTO agreement on Technical Barriers to Trade (TBT) is the key WTO mechanism for governing technical regulations, standards and conformity assessment procedures, including those on climate change mitigation objectives. It contains two basic obligations for WTO Member States: first, a provision prohibiting discrimination against and between foreign products; and second, the so-called ‘necessity test’ which prevents WTO members from adopting standards that are “more trade-restrictive than necessary” for achieving “legitimate policy objectives.”¹⁴ It further specifies that technical regulations and standards must not “create unnecessary obstacles to international trade.”¹⁵ This agreement has been used to challenge a number of environmental measures: for example, Mexico used it to challenge US dolphin-safe labelling that prohibited certain kinds of practices in tuna fishing. Whilst the US eventually won the case, it was required to make a number of changes to its regulations and the case dragged on for ten years.¹⁶
21. Important regulations that will be needed to address the climate and environmental threats that we are facing can thus be severely delayed or stymied by trade rules agreed in international forums that view regulations and standards as impediments to trade. Governments must behave differently in international forums to achieve meaningful change.

**What can the UK learn from other countries’ experiences of aligning trade and environmental policies?
How have other countries innovated in this area?**

22. As has been raised by a number of organisations including businesses, trade unions, environmental organisations and other NGOs, the UK’s democratic and scrutiny processes during its trade negotiations are extremely weak compared to other countries, and expose a democratic deficit in an important area of government policy. Improving these scrutiny processes is crucial for alignment of trade and environmental policies. TJM has long called for the Government to incorporate the following procedural safeguards throughout negotiations:
 - a. During negotiations: there should be a presumption of transparency and the Government should provide regular updates to MPs and the public, with opportunities for questions, and release the texts from negotiation rounds where appropriate.
 - b. After negotiations: MPs should have a guaranteed debate and vote on the final deal, with the ability to reject it.
 - c. At all stages: there should be public consultation with civil society groups and businesses, to ensure the deal has broad support from a variety of constituencies.

To what extent is the UK’s trade policy keeping up with demands from consumers on issues such as sustainability, deforestation, eco-labelling and greener supply chains?

¹² Mattoo, Aaditya & Arvind Subramanian (2013) *Four Changes to Trade Rules to Facilitate Climate Change Action* Center for Global Development Policy Paper 21

¹³ <https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1066&context=ilmr>

¹⁴ WTO Agreement on Technical Barriers to Trade, article III

¹⁵ WTO Agreement on Technical Barriers to Trade, article IV

¹⁶ <https://www.reuters.com/article/us-usa-mexico-wto/mexico-loses-10-year-wto-battle-over-u-s-tuna-labeling-idUSKBN1OD233>

23. Environmental standards being upheld in trade negotiations is a priority for consumers. A June 2021 study by which found that 84% of respondents felt that the UK should prioritise ensuring high environmental standards are enshrined in trade deals.¹⁷ The same study found that 87% of respondents were concerned about animal welfare standards and 93% about food production methods, but there have already been major concerns expressed about standards on these issues in UK negotiations with Australia and other countries.¹⁸

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¹⁷ <https://www.which.co.uk/policy/euexit/8502/consumer-priorities>

¹⁸ <https://www.nfuonline.com/updates-and-information/minette-batters-the-detail-of-the-uk-s-deal-with-australia/>