

Written evidence submitted by Trade Justice Movement (TJM) (NZT0005)

About us

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.

Summary

International trade policy provides a fundamental underpinning of the modern global economy, and has been instrumental in the spread of polluting and extractive economic models which prioritise corporate profits over the future of the planet. However, it does not have to be this way. Just as international trade rules have shaped the status quo, so a reformed set of rules can facilitate and encourage urgent climate action.

The impact of international trade rules on the climate goes far beyond the emissions of particular supply chains. Trade rules have a significant bearing on the policies that are required to achieve climate and environmental goals, and can impact the policy and regulatory space needed for the pursuit of net zero. Provisions including those around investment, intellectual property, subsidies and regulations and standards can pose particular challenges to achieving international climate goals.

In the UK, post-Brexit trade policy has been characterised by an absence of an overarching strategy beyond the pursuit of individual FTAs. This has led to piecemeal policy and provisions around trade and the climate, including inadequate climate protections in new FTAs and an inconsistent approach to issues such as subsidies and international investment provisions.

The below submission seeks to provide a synopsis of some of the most significant ways in which trade policy interacts with the pursuit of climate goals. It then describes the UK's approach to trade and net zero in recent years. Finally, it offers some recommendations for the UK to adopt as the basis for a trade strategy with climate action at its core.

1) How can trade help in the pursuit of net zero?

Climate policy and the international trade system

International trade is primarily governed through the World Trade Organisation (WTO) and the trade and investment agreements that countries negotiate bilaterally. In the founding agreement of the WTO, signatories recognise in the very first paragraph that trade rules should allow for “the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.”¹

¹ World Trade Organisation (1995) “Agreeing the Establishment of the WTO”. Available at:

Many countries, including the UK, now include chapters relating specifically to the environment in new bilateral and plurilateral trade agreements.

However, such warm words have done little to change the overall trajectory of trade policy. Measures to tackle climate change include both border measures which we commonly associate with trade policy, such as tariffs or restrictions on certain types of products, and “behind the border” measures such as regulations, subsidies and procurement rules. Both types of measures can be at odds with WTO rules. Some policies are banned outright, whilst others are open to interpretation and can be challenged at the WTO or through investment tribunals. The US Trade Representative Katherine Tai has argued that “the WTO is considered by many as an institution that not only has no solutions to offer on environmental concerns, but is part of the problem.”²

The questions raised in this inquiry are timely as key UK trading partners move towards more interventionist, green industrial policy platforms, each of which have significant trade implications. The United States is first among these; it has spoken of a shift towards ‘worker-centric’ trade as a component part of its green industrial policies, and the \$369 billion package of subsidies and tax breaks for clean energy and green technology under the Inflation Reduction Act conflicts with the established rules of the international trade system. Indeed, China has already raised a WTO challenge against what it considers discriminatory electric vehicle tax credits.³ The European Union, similarly, has launched a myriad of overlapping initiatives, including the Green Deal Industrial Plan and a Carbon Border Adjustment Mechanism, in addition to an estimated \$250bn net spend by member states on domestic green initiatives.⁴ Understanding the ways in which these initiatives conflict with established trade rules is imperative for understanding how trade rules must change to facilitate the UK’s own net zero ambitions and industrial policy.

Specific areas of concern

There are several policy areas which serve as helpful cases in point to understand how trade policy interacts with and at times can hamper net zero ambitions.

Renewable energy and fossil fuel subsidies

State investment in renewable sources of energy has proven controversial in terms of trade rules. The WTO’s rules on subsidies are governed by the Subsidies and Countervailing Measures Agreement (the “SCM Agreement”), alongside the General Agreement on Tariffs and Trade (“GATT”). Subsidies can be challenged through the WTO dispute settlement system or, where subsidised products affect the domestic market, by the adoption of domestic countervailing

https://www.wto.org/english/res_e/booksp_e/agrmtseries1_wto_e.pdf

² Tai, K (2021) “Remarks on Trade Policy, the Environment and Climate Change”. Available at: <https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2021/april/remarks-ambassadaor-katherine-tai-trade-policy-environment-and-climate-change>

³ Information available at: <https://www.citizen.org/news/chinas-attack-on-u-s-inflation-reduction-act-shows-need-for-reform-of-wto-rules-to-remove-barriers-to-climate-action/>

⁴ Lydgate & Messenger (2023) “The UK in a World of Green Industrial Strategies”. Available at: <https://blogs.sussex.ac.uk/uktpo/2023/03/13/the-uk-in-a-world-of-green-industrial-strategies/>

measures. Until 2000, some environmental subsidies were deemed non-actionable, but that exemption has not been renewed.⁵

There have been a significant number of cases being brought to challenge environmental measures. Between 2008 and 2014, 41 trade remedy investigations were initiated in the renewables sector.⁶ The UK has been vulnerable to such challenges; in 2022, the EU raised a dispute with the UK regarding the local content requirements built into a subsidy scheme for UK offshore wind projects.⁷ Such measures aim to link action on climate with the creation of local jobs or links to local industry, but the UK was forced to concede there would be no preferences for local UK content to conclude the challenge; ministers set out that disclosure of the levels of UK content in the projects of prospective beneficiaries would be for information only.⁸ Such disputes regarding local content requirements are rife.⁹ There have also been many far more protracted dispute processes internationally. One such example was the recent conclusion of a seven-year settlement process between India and the US, with India successfully arguing that renewable energy subsidies in eight American states were in contravention of WTO provisions on subsidies.¹⁰ India's case against the US was in itself a retaliatory measure taken in response to a previous US case against India for local content requirements in its own solar energy programme.¹¹ This potential for disputes to be raised clearly limits the policy space available to governments to invest in renewable projects.

Worryingly, subsidies to fossil fuel industries have not been challenged in the same way. The WTO system fails to facilitate challenges in this area because the definition of a notifiable subsidy is unclear and member state reporting on subsidies has been patchy.¹² As currently designed, WTO rules prohibit subsidies if they promote exports or if they favour domestic over foreign companies; subsidies are actionable if they are limited to a specific sector or group of companies. This means that subsidy schemes with a more generalised effect, for example on fuel prices, are out of scope. The UK government claims to have no fossil fuel subsidies at all, instead defining them as government action which "lowers the pretax price to consumers to below international market levels".¹³ It is clear that trade rules as currently drafted facilitate challenges to subsidies aimed at

⁵ Mattoo and Subramanian (2013) "Four Changes to Trade Rules to Facilitate Climate Change Action". Available at: https://www.cgdev.org/sites/default/files/Mattoo_Subramanian-four-changes.pdf

⁶ Opeida (2017). Climate Change and Energy Subsidies: Is There a Role for the WTO? Available at: <https://www.linklaters.com/en/insights/blogs/tradelinks/climate-change-and-energy-subsidies-is-there-a-role-for-the-wto#:~:text=The%20present%20WTO%20framework%20thus,be%20revised%20in%20two%20ways.>

⁷ Information available at: https://policy.trade.ec.europa.eu/news/eu-challenges-discriminatory-practices-uks-green-energy-subsidy-scheme-wto-2022-03-28_en

⁸ Information available at: https://policy.trade.ec.europa.eu/news/eu-and-uk-agree-way-forward-wto-dispute-concerning-uks-green-energy-subsidy-scheme-2022-07-01_en#:~:text=On%2028%20March%202022%2C%20the,of%20WTO%20non%2Ddiscrimination%20rules.

⁹ QMUL & TJM (2021). "How trade can support climate action: a 2021 agenda". Available at: https://www.tjm.org.uk/documents/reports/TJM_Trade-support-climate-action_Jul21_download.pdf

¹⁰ Information available at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds510_e.htm

¹¹ Information available at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds456_e.htm

¹² IISD (2013) "Shining a light on fossil fuel subsidies at the WTO". Available at: https://www.iisd.org/system/files/publications/fossil_fuel_subsidies_WTO.pdf

¹³ Carrington (2019) "UK has biggest fossil fuel subsidies in EU, finds commission". Available at: <https://www.theguardian.com/environment/2019/jan/23/uk-has-biggest-fossil-fuel-subsidies-in-the-eu-finds->

achieving environmental and climate goals whilst failing to address those that support damaging industries.

Regulations and standards

Governments use a variety of regulatory tools within their decarbonisation programmes, such as measures to increase the energy efficiency of products. But under the WTO Technical Barriers to Trade Agreement (TBT), governments must show that such regulations do not “create unnecessary obstacles to trade.”¹⁴ 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.¹⁵ Important regulations that will be needed to address the climate and environmental threats that we are facing can thus be stymied by trade rules that view regulations and standards as impediments to trade.

FTAs go beyond WTO provisions on regulation and standards by including so-called ‘regulatory cooperation’ chapters. These are featured in the UK’s recent post-Brexit FTAs. Though they are often framed in positive terms, in practice, such provisions seek to reduce barriers to trade by minimising the autonomy of governments to establish their own regulatory regimes, pushing towards the elimination of divergent standards and in so doing undermining the ‘precautionary principle’ model followed by many countries. Inevitably, as a result, there is a tendency towards deregulation and a lowering of standards. A number of European and North American NGOs have cited examples brought under the North American Free Trade Agreement (NAFTA) of weakening standards in public health areas such as chemical hazard labelling, concluding that regulatory cooperation provisions create a “risk of locking in a deregulatory framework that seeks to eliminate ‘unnecessary’ barriers to global trade and investment...posing a serious threat to much needed public interest regulations, including precautionary environmental, labour, consumer and public health policies”.¹⁶ Such measures can therefore be a hindrance in the pursuit of higher standards.

In addition, trade liberalisation can increase trade in more carbon-intensive products, such as beef, soy and palm oil which are driving deforestation. In January 2021, Malaysia requested consultations with the EU at the WTO over the EU’s policy to limit imports of palm oil biofuels on the basis that the product contains a high risk of Indirect Land Use Change, claiming that this constituted a Technical Barrier to Trade.¹⁷ The issue of sustainability became a point of contention in a UK context during accession to CPTPP after the UK agreed to eliminate tariffs on Malaysian palm oil imports as part of accession.¹⁸ A joint statement agreed between the two nations as part of this concession contains no binding safeguards to guarantee sustainable palm oil production.¹⁹

[commission](#)

¹⁴ WTO (1995) “Agreement on technical barriers to trade”. Available at:

https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm

¹⁵ Information available here: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds381_e.htm

¹⁶ Powershift (2019). “How good regulatory practices in trade agreements erode protections for the environment, public health, workers and consumers”. Available at: <https://power-shift.de/wp-content/uploads/2019/05/International-regulatory-cooperation-web300.pdf>

¹⁷ Information available here: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds600_e.htm

¹⁸ Goncalz (2023). “Malaysian palm oil tariffs relaxation comes under fire”. Available at:

Investment protection provisions

Investment chapters in FTAs and Bilateral Investment Treaties (BITs), together with the WTO's Trade Related Investment Measures (TRIMs) agreement, offer significant protections to international investors. There is clear evidence that these provisions are in direct contradiction with efforts to phase out fossil fuels and improve environmental standards.

Most high profile among these investment provisions is the investor-to-state dispute settlement (ISDS) mechanism through which investors can sue governments. There are around 3,000 international treaties containing ISDS provisions and, at the most recent count, there were 1,303 documented arbitration cases that have been brought internationally under ISDS²⁰ including a wide range of cases being brought against environmental measures. High profile cases have seen governments challenged by private investors over the phase out of coal-fired power²¹, bans on offshore exploitation of oil and gas²², and moves to strengthen environmental impact assessments²³ on high-emissions natural resource projects. In addition to such cases, the presence of ISDS brings a substantial regulatory chill, deterring governments from introducing policies that seek to strengthen regulations. The governments of Denmark and New Zealand have already acknowledged that this is happening.²⁴ UN climate scientists have warned in an IPCC report of the risk of "ISDS being able to be used by fossil-fuel companies to block national legislation aimed at phasing out the use of their assets".²⁵ Last year, the UN Special Rapporteur on human rights and the environment warned that ISDS is a "daunting obstacle" to governments' climate plans, and that such provisions have "catastrophic consequences for the environment and human rights".²⁶

Green technology transfer

<https://www.thegrocer.co.uk/commodities/malaysian-palm-oil-tariffs-relaxation-comes-under-fire/678677.article>

¹⁹ UK Government & Government of Malaysia (2023). "Joint Statement on Sustainable Agricultural Commodity Trade and Cooperation to Conserve Forests" Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1170962/UK-Malaysia_Joint_Statement_on_Sustainable_Agricultural_Commodity_Trade_and_Cooperation_to_Conserve_Forests_-_FINAL.pdf

²⁰ Information available here: <https://investmentpolicy.unctad.org/investment-dispute-settlement>

²¹ Information available here: <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/1145/rwe-v-netherlands>

²² Information available here: <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/800/rockhopper-v-italy>

²³ Information available here: <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/304/clayton-bilcon-v-canada>

²⁴ Meager (2022). "Cop26 targets pushed back under threat of being sued". Available at:

<https://capitalmonitor.ai/institution/government/cop26-ambitions-at-risk-from-energy-charter-treaty-lawsuits/>

²⁵ IPCC (2022). "Climate change 2022". Available at: <https://www.ipcc.ch/report/sixth-assessment-report-working-group-3/>

²⁶ UN (2023). "Investor-State dispute settlements have catastrophic consequences for the environment and human rights: UN expert". Available at: <https://www.ohchr.org/en/press-releases/2023/10/investor-state-dispute-settlements-have-catastrophic-consequences>

Intellectual property rules incorporated within global trade rules play a key role in preventing the dissemination of green technologies. The WTO's Agreement on Trade Related Aspects of Intellectual Property (TRIPs) and intellectual property chapters of FTAs provide for the expansion of intellectual property rights. This is often through extensions on intellectual property protections, and in the case of TRIPs enforces a minimum 20-year protection for patents and ten years for industrial designs.²⁷ This can prevent countries from developing their own versions of green technologies, adapting them to their own circumstances (for example, by making them more resilient to particular climates) or innovating to improve efficiency. Whilst the most significant debates in this area have been about pharmaceuticals, there have been a number of challenges to developing countries who require technology sharing as a condition of trade or investment.

It is vital that countries overhaul intellectual property rules at the WTO to achieve a better balance between encouraging innovation and ensuring that green technologies are available and affordable to support a global green transition.

Liberalisation of green goods

One mechanism for making environmental goods such as solar cells, smart meters or electric vehicles more affordable is for countries to eliminate tariffs on such goods. The Environmental Goods Agreement (EGA) was an attempt by some members of the WTO to make progress on this issue, but it stalled in 2016. While this agenda can be welcome, it is fraught with difficulties; one of the first issues is that there is very little consensus on how far the definition of green goods should stretch.

Crucially, many developing countries remain sceptical of this initiative because the burden of liberalisation would fall largely on them as tariffs on such goods between richer countries are already low. There are also concerns that the very broad list of products proposed signals an attempt by developed countries to improve their market access for products in which they were already highly competitive.²⁸ Without an accompanying relaxation of intellectual property and local content rules that would enable them to develop their own industries, developing countries could become dependent on expensive, high-maintenance imported technologies. This agenda is not, therefore, a panacea for ensuring trade policy supports climate goals.

2) Is the UK's trade policy consistent with its goals for net zero?

At present, the UK has no consistent trade strategy. However, there are aspects of good practice in the UK's approach to trade and climate which should feature in a published trade strategy.

Absence of a strategy

²⁷ WTO (1994). "Agreement on Trade-Related Aspects of Intellectual Property Rights". Available at: https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm

²⁸ Khor, Montes, Williams, and Yu (2017) "Promoting Sustainable Development by addressing the impacts of climate change response measures on developing countries". Available at: https://www.southcentre.int/wp-content/uploads/2017/11/RP81_Promoting-Sustainable-Development-by-Addressing-the-Impacts-of-Climate-Change-Response-Measures-on-Developing-Countries_EN.pdf

One of the key obstacles to assessing the consistency of UK trade policy with net zero is the absence of a published trade strategy which lays out how trade policy will contribute to the UK's broader aims and obligations on climate and environment. This would provide a benchmark against which new trade agreements could be assessed.

Parliament and civil society have repeatedly urged the Government to produce an overarching strategy for trade and investment.²⁹ This would ensure the Government had given comprehensive consideration to the significant ways in which trade impacts on other policy areas, including climate change, where it has domestic and international commitments. It would also allow Parliament and civil society to hold the Government to account in respect of its delivery against the strategy.

The Government has not to date published such a strategy. Though the Department produces scoping assessments ahead of new, individual FTA negotiations, these have included limited analysis of the likely social and environmental impacts of any prospective agreement, and do not establish firm negotiating objectives beyond the top line. They create little sense of a coherent vision for UK trade running through FTA negotiations.

Discussion in the UK of the relationship between trade and climate change has been limited, and at times, actively disparaged by ministers. In March 2024, Politico reported that Secretary of State Kemi Badenoch had responded to a question regarding trade and climate policy by saying “I don’t work for Just Stop Oil, I work for the British electorate” at a Chatham House trade conference.³⁰ There have been few indications that the UK government is thinking seriously about the role trade policy can play in climate action. In 2021, for example, the Board of Trade published a ‘Green Trade’ report which focused almost exclusively on the benefits trade liberalisation can bring, specifically increased UK exports of green goods and services.³¹ As discussed earlier in this submission, this is a highly limited way to assess trade’s impact on net zero ambitions; a 2022 report by the Climate and Trade Commission, a group of international trade experts convened to produce a report on the issue, described such narratives as being “dominated by a rather simplistic paradigm, rejected even by most free-traders, that sees liberalisation as the answer to most trade challenges – including climate change – and which has focused on ‘win-wins’, preferring to avoid difficult discussions about necessary trade-offs.”³²

²⁹ See, for example, House of Commons, ITC (2022) ‘UK trade negotiations: Parliamentary scrutiny of free trade agreements’. Available at:

<https://publications.parliament.uk/pa/cm5803/cmselect/cmintrade/815/report.html>

House of Lords, International Agreements Committee (IAC) (2023) ‘Letter to the Secretary of State for Business and Trade’. Available at: <https://committees.parliament.uk/publications/34536/documents/190085/default/>

National Audit Office (2021) ‘Progress with trade negotiations’. Available at: <https://www.nao.org.uk/wp-content/uploads/2021/12/Progress-with-trade-negotiations.pdf>

Institute for Government (2017) ‘Taking back control of trade policy’. Available at:

https://www.instituteforgovernment.org.uk/sites/default/files/publications/IFGJ5448_Brexit_report_160517_WEB_v2.pdf

³⁰ Politico (2024) “Morning Trade UK: 11th March 2024”. Available at: <https://pro.politico.eu/news/hello-uncertain-world>

³¹ Board of Trade (2021) “Green Trade”. Available at: <https://www.gov.uk/government/publications/board-of-trade-report-green-trade>

³² UK Climate and Trade Commission (2022). “Towards a fair and strategic climate and trade policy”. Available

All of this raises questions about what a strategy for trade and climate policy should look like. The International Agreements Committee (IAC) has posed a list of questions which ought to be answered in full in a strategy developed by the Department for Business and Trade.³³ These questions include how DBT will seek to ensure trade policy is aligned with environmental standards through trade negotiations, what the Government's position is on WTO reform, and whether negotiators will prioritise the inclusion of mechanisms such as investor-state dispute settlement (ISDS). Each of these questions have major implications for the UK's net zero goals, but at present, it is unclear what negotiating position the government is taking.

UK trade policy and climate commitments

In recent years, the Government has prioritised new FTA negotiations which have each been based on their own, bespoke negotiating objectives, and has so far concluded "from-scratch" arrangements with Australia and New Zealand, as well as accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Each of these agreements contains climate provisions, but for the most part these provisions are non-binding and unenforceable. CPTPP is a helpful case in point; the text of the agreement does not refer to climate change, but only to acknowledgement and cooperation for voluntary measures for lower emissions. Article 20.15.1 states: "The Parties acknowledge that transition to a low emissions economy requires collective action."³⁴ For the UK-Australia FTA, the Government's assessment has predicted an increase in transport-linked carbon emissions of 31% to 40%.³⁵

Other agreements, such as the UK-NZ FTA, have set a slightly more promising precedent with regard to environmental provisions. The New Zealand Government is currently facing a challenge from civil society organisations which argue that the Government's "war on nature", in which environmental commitments are being watered down, constitutes a breach of the terms of the agreement.³⁶ The success or otherwise of this challenge will be a key test of the enforceability of the agreement's environmental provisions.

These FTAs have also included the kinds of provisions discussed in the response to Q1. One such example is CPTPP's ISDS clause. The UK has agreed side letters with CPTPP members Australia and New Zealand to disapply ISDS, likely at the behest of their Governments, who have both made

at: https://www.tjm.org.uk/documents/briefings/TJM_QMUL_Trade-Climate-Policy-Brief_Dec22_final.pdf

³³ International Agreements Committee (2023). "Letter from IAC to Kemi Badenoch" Available at:

<https://committees.parliament.uk/publications/34536/documents/190085/default/>

³⁴ MFAT (2018) "Comprehensive and Progressive Agreement for Trans-Pacific Partnership texts". Available at:

<https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text-and-resources/>

³⁵ UK Government (2022) "Impact assessment of the FTA between Australia and the UK". Available at:

<https://www.gov.uk/government/publications/uk-australia-fta-impact-assessment/impact-assessment-of-the-fta-between-the-uk-and-australia-executive-summary-web-version#:~:text=The%20estimates%20suggest%20that%20the,associated%20with%20trade%20with%20Australia.>

³⁶ RNZ (2024) "Environmental groups say government's plans breach free trade agreement". Available at:

<https://www.rnz.co.nz/news/national/509211/environmental-groups-say-government-s-plans-breach-free-trade-agreement>

commitments to exclude ISDS from future free trade agreements.³⁷³⁸ However, this is a clear example of the lack of clarity in the UK's approach to ISDS in trade agreements; ministers have vehemently defended the importance of ISDS³⁹, and yet have clearly happily acceded to the demands of some trade partners to exclude its use. A significant number of NGOs and academics have signed a joint letter calling for the suspension of ISDS provisions under CPTPP between the UK and Canada on the basis of concerns about its implications for climate policy, but these calls have been rejected by the Government.⁴⁰

Concurrently, the UK Government has taken the extremely welcome step of announcing its intention to withdraw from the Energy Charter Treaty (ECT), a significant vehicle for ISDS claims, on the basis that the treaty is now outdated and without a clear path to reform. Ministers from the Department for Energy Security and Net Zero have stated that ECT membership “does not align with our unwavering commitment to energy security and net zero”.⁴¹ The UK should now coordinate with the other, numerous withdrawing parties to multilaterally disapply the ECT's sunset clause, which could otherwise see the Government exposed to legal challenges for the next 20 years.

One trade tool with climate implications that the Government has begun the process of designing is a Carbon Border Adjustment Mechanism (CBAM). A CBAM is a border tax which seeks to ensure that goods imported into a country have paid the same carbon costs as domestic producers, protecting domestic industries as they seek to reduce emissions and potentially incentivising greater action in ‘laggard’ countries by removing the competitive advantage that can be obtained via low environmental regulations. Though the aim is laudable, there are many outstanding questions about the efficacy or the unintended consequences of such a scheme. An LSE study found that the EU's CBAM would reduce worldwide CO2 emissions by only between 0.03% and 0.002% depending on the scenario, while also suggesting that the scheme will disproportionately affect African countries, reducing Africa's GDP by up to 0.91%. Mozambique, Mauritania, Sierra Leone and Senegal are at risk of being particularly badly affected.⁴² Developing country economies tend to be less diversified and more reliant on carbon-intensive technologies for production, and the introduction of a CBAM will not resolve these issues given that those countries often lack the resources to invest in cleaner technologies or production methods. It is therefore imperative that the design of any such scheme

³⁷ Financial Review (2022). “Aussie companies to lose right to sue under free trade pacts”. Available at: <https://www.afr.com/politics/federal/aussie-companies-to-lose-right-to-sue-under-free-trade-pacts-20221113-p5bxs1>

³⁸ Government of New Zealand (2017) “Foreign speculators house ban”. Available at: <https://www.beehive.govt.nz/release/foreign-speculators-house-ban>

³⁹ Hansard (2024) “Trade (CPTPP) Bill: Second Reading”. Available at: [https://hansard.parliament.uk/commons/2024-02-20/debates/817b0e42-74c6-469f-8207-dcabf3344cbe/Trade\(ComprehensiveAndProgressiveAgreementForTrans-PacificPartnership\)Bill\(Lords\)\(SecondSitting\)](https://hansard.parliament.uk/commons/2024-02-20/debates/817b0e42-74c6-469f-8207-dcabf3344cbe/Trade(ComprehensiveAndProgressiveAgreementForTrans-PacificPartnership)Bill(Lords)(SecondSitting))

⁴⁰ Global Justice Now (2023). “A side letter between the UK and Canada excluding ISDS as a condition of UK accession to the CPTPP”. Available at: <https://www.globaljustice.org.uk/wp-content/uploads/2023/10/Call-for-a-Canada-UK-ISDS-Side-Letter-in-CPTPP.pdf>

⁴¹ Parliament (2024). “UK withdrawal from the Energy Charter Treaty”. Available at: <https://questions-statements.parliament.uk/written-statements/detail/2024-02-22/hcws279>

⁴² LSE (2023). “Implications for African countries of a carbon border adjustment mechanism in the EU”. Available at: <https://www.lse.ac.uk/africa/assets/Documents/AFC-and-LSE-Report-Implications-for-Africa-of-a-CBAM-in-the-EU.pdf>

should be approached with caution and designed sensitively alongside developing countries, with provisions such as exemptions or transition periods in place and revenues raised being ring fenced to support the international green transition.

While adopting such internationally-inspired measures, however, it is noteworthy that the UK Government has failed to follow welcome European initiatives such as the recent Corporate Sustainability Due Diligence Directive (CSDDD); the UK should seek to replicate positive policy interventions where possible.⁴³

In sum, it is clear that the UK's trade policy measures relating to climate and the environment reflect a lack of wider strategic thinking about the role of trade in achieving net zero ambitions. A clear strategy setting out approaches to a range of policy interventions would be invaluable.

3) How can the UK's trade policy further help with its goals for net zero?

There are a number of ways in which the UK Government can respond to the concerns raised in this response and ensure that trade policy serves its net zero ambitions. From the UK's perspective, future trade and investment policy must be brought in line with its commitments on climate and the environment. This means that core environmental principles such as the precautionary principle and commitments under multilateral environmental agreements should be the cornerstones of trade agreements. Care must be taken to ensure that trade is shaped by environmental and climate goals, rather than seeking to achieve environmental and climate goals with trade. The steps it could take to meet this framework should therefore include:

- Establish a clear trade strategy that establishes and defines the UK's approach to trade and climate policy, including specific ambitions around both the environmental provisions of future FTAs and its approach to reform at the WTO that would give space for countries to pursue their climate goals.
- Commit to ex-post assessments of the climate implications of new trade agreements, including bench-marking of existing domestic standards and mechanisms to hold partner countries to account where further action is needed. Provisions that impinge on the right to regulate in the public interest should be excluded from trade agreements, and any environmental commitments in such agreements should be enforceable via the agreement's dispute settlement mechanism.
- Commit to exclude Investor State Dispute Settlement (ISDS) from future trade and investment agreements, request exemption side letters with new partners under the UK's membership of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) accession, and commit to review all existing bilateral ISDS provisions in other trade and investment agreements. Withdrawal from the Energy Charter Treaty should be conducted in a coordinated manner with other withdrawing member states to negate the risks posed by the ECT's sunset clause.

⁴³ E3G (2024). "EU reaches agreement on Sustainability Due Diligence"

Available at: <https://www.e3g.org/news/eu-reaches-agreement-on-sustainability-due-diligence/>

- Proactively seek reform to international trade rules at the WTO and via trade and investment agreements that would ensure:
 - Local content measures that deliver green jobs and support local businesses are permissible.
 - New rules established for green ‘non-actionable’ subsidies at the WTO and exemptions in Free Trade Agreements (FTAs) while fossil fuel and other harmful subsidies are disciplined.
 - A strengthening and extension of the climate and environmental measures that are WTO compatible.
 - Reform of intellectual property rules to facilitate green technology transfer.
 - Equitable access to environmental goods including through liberalisation, though with clear definitions of what those goods are and prioritisation of the needs of developing countries.
- Ensure the prospective introduction of CBAM measures focus on support for and cooperation with developing countries and ultimately seek to support an international green transition.
- Develop a climate and development programme that combines genuinely concessional finance, investment at scale and meaningful technology transfer.

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