**Written evidence submitted by Transform Trade (NZT0022)**


**Summary**

Trade impacts on climate change both through increases in emissions via increased production and through limitations on the policies that countries are able to use to address climate change. It can also support climate action, for example where it facilitates the proliferation of low-carbon technologies or disciplines subsidies that support damaging activities. There are some moves towards trade measures that are supportive of climate action, such as UK and EU countries withdrawing from the Energy Charter Treaty. However action is piecemeal and is not commensurate with the scale of the climate crisis. Urgent attention is needed in specific areas such as technology transfer, subsidies, agriculture and investment, to ensure trade plays its part in tackling the climate emergency.

In the UK there is a lack of overarching strategy to guide action and ensure the most effective, coherent menu of policies is being pursued. The UK must urgently set out a strategy that shows how its trade and climate policies will align, and this must be guided by the internationally-accepted principles of Common But Differentiated Responsibility, Special and Differential Treatment and the aim of ensuring a just transition. It could take some steps unilaterally, including certain measures in its bilateral trade deals and annulling its 85 Bilateral Investment Treaties. It must then work with allies to ensure that provisions in key areas are aligned with international climate commitments. Above all, it will be critical to ensure that countries in the Global South are not disadvantaged by climate-related trade measures.


## 1. About Us

Transform Trade is a trade justice charity working in partnership with networks of workers, farmers and social entrepreneurs to fight for trade that values people over profit. Its roots are in the fair trade movement in the north east of England. The charity's focus areas are fashion, tea and farming. In the UK we campaign and advocate for improvements in the practices of the UK Government and businesses relating to trade. Transform Trade is a registered charity (no 1048752) and was previously called Traidcraft Exchange.

## 2. How can trade help in the pursuit of net zero?

Tackling climate change is not something that the UK can achieve alone, it is a global problem that requires global solutions. As Antonio Guterres has been keen to stress, we need all the tools in the tool box, and that must include trade.

This submission focuses on the rules agreed via the multilateral World Trade Organisation (WTO), bilateral or plurilateral Free Trade Agreements (FTAs) and Bilateral Investment Treaties (BITs). With the exception of BITs, these agreements tend to follow a pattern of tariff liberalisation plus chapters setting out commitments on areas including intellectual property, sanitary and phytosanitary standards, procurement and investment rules.

Although legally separate, FTAs have to be "notified" at the WTO and must comply with certain standards and all have the overarching objective of increasing 'free trade'. BITs focus exclusively on international investment and offer investors far-reaching protections.

In general terms, there are a number of ways that trade interacts with climate change:

- Freer trade can lead to **higher emissions** through increases in overall production, production in highly-emitting sectors, or transport.
- The obligations countries sign up to in trade and investment agreements, and at the WTO, can **reduce the policy space** they have to tackle climate change, and can expose them to disputes and lawsuits.
- Measures to tackle climate change can have **unintended consequences on Global South countries' trade** and supply chains, making it harder for them to export or access climate-friendly technology
- It can also lead to **greater availability of the raw materials** and goods countries need to tackle climate change, although this can have negative consequences for the environment and local communities.
- Cooperative trade action can **help end destructive policies** such as overfishing or deforestation.

Measures to tackle climate change include both border measures, such as tariffs or restrictions on certain types of products, as well as "behind the border" measures such as regulations, subsidies and green procurement.

Both types of measures can be at odds with free trade principles. For example, regulations, such as stipulating more climate-friendly production techniques, can be seen as a barrier to trade, and incentives, such as subsidies for renewable energy, can be seen as distorting free trade by giving national companies an advantage over foreign companies. Some policies are banned outright, whilst others are open to interpretation and can be challenged at the WTO or through investment tribunals. These cases are time consuming and costly to defend which can deter countries from action. This is especially the case for smaller countries in the Global South who lack the resources to defend costly and time-consuming trade disputes.

If trade rules are to help tackle the climate emergency, they must be proactively shaped to lead to net reductions in emissions. The guiding principles to ensure this happens can be taken from both existing trade rules and climate agreements, namely:

- **Common But Differentiated Responsibility**, which recognises that rich countries have a greater historical responsibility for causing climate change and must therefore shoulder more of the financial cost of addressing it;
- **Special and Differential Treatment** at the WTO, which affords some South countries exemptions and longer transition periods for a range of trade rules.
- The aim of a '**just transition**', whereby workers globally do not suffer the negative impacts of shifts away from high-carbon production.

Key elements of trade rules will need to be reviewed and redesigned to ensure they are aligned with these principles:

**Intellectual property rules.** Current trade agreements offer significant protections, particularly to large multinational companies, through Intellectual Property (IP) Chapters. These chapters extend protections on things like patents for up to 20 years. This can pose an obstacle to the transfer of technologies and impact on farmers, for example their ability to save and exchange seeds, both of which are recognised as critical to climate action under the Paris Climate Agreement and the Sustainable Development Goals.

**Agriculture.** The WTO Agreement on Agriculture sets out rules for agricultural tariffs and the type of agricultural subsidies that are allowed. It allows rich countries to continue with their extensive agricultural subsidy programmes, albeit in a revised form, yet at the same time required Global South countries to lower their applied tariffs, leaving their small farmers exposed. Around the world, governments are putting in place programmes to support more sustainable agriculture. These range from subsidies to support small family farms, subsidised seeds and extension services, tariffs on sensitive agriculture products and minimum pricing schemes. At present, these measures are vulnerable to challenge at the WTO and through other trade deals. Members have consistently failed to reach agreement to progress the rules at the WTO, including on Global South countries' key demands for a Special Safeguard Mechanism that would allow them to raise tariffs to protect their farmers in certain circumstances. This has led to the decimation of agricultural sectors in some countries, for example Ghana's poultry sector.

**Investor-to-State Dispute Settlement (ISDS).** This mechanism, which can be included in Bilateral Investment Treaties (BITs) and FTAs, enables investors to sue a government if it brings in regulations that they feel negatively affect the profitability of their investment. The country then has to defend its policy. Irrespective of whether the Government prevails, the process is extremely costly – the average cost of defending a case is $8 million .In reality this means that governments think twice about proceeding with regulations because they fear an ISDS challenge, sometimes referred to as "policy chill". Environmental regulations, such as raising water quality standards, protecting areas of special scientific interest and bans on mining in environmentally-sensitive areas have been responsible for the largest number of challenges under this system.

**Subsidies for renewables.** Subsidies for renewable energy schemes have been at the heart of a number of trade challenges in recent years. For example Canada's Feed in Tariff scheme was challenged by the EU in 2013, and the US and the EU have started WTO proceedings against wind towers from China, India, Malaysia and Spain. Until 2000 some environmental subsidies were exempted from these rules (so-called "green light subsidies") however that exemption was not renewed. There is a growing consensus that WTO rules need to be revisited to allow more policy space for governments to support renewable energy programmes.

**Subsidies to the fossil fuel industry** are estimated at anywhere between $370 billion and $5.3 trillion globally. Eliminating these would free up considerable resources and have a direct impact on emissions. But pledges by the G7 have been voluntary and, in contrast to action on renewables, fossil fuel subsidies have largely remained undisciplined at the WTO. It is increasingly recognised that WTO rules in this area need attention and that more countries could exploit the existing scope to bring challenges.

**Regulations.** Governments use a variety of regulations as part of their climate commitments, for example measures to increase the energy efficiency of products. But under trade rules, governments must show that such regulations do not "create unnecessary obstacles to trade." This rule has been used to challenge a number of green initiatives. Canada's 2012 challenge to the EU's Fuel Quality Directive prevented the EU from differentiating between different kinds of fuels according to their greenhouse gas intensity, it was therefore not allowed to treat tar sands fuels differently to other kinds of fuels.

**Local content requirements** including for example directing international investment to the creation of local jobs, are specifically prohibited in a number of deals. This is extremely problematic for governments seeking to ensure workers are not disadvantaged as they transition to a lower carbon economy. In 2022, the EU threatened to challenge the UK at the WTO for local content requirements in the criteria for some renewables contracts. As a result, the UK removed these provisions from the contracts.

**Public procurement** represents on average 15 percent of GDP for OECD countries, making it a critical tool for supporting a greener economy. A number of countries are seeking to do just that. Some trade agreements such as the WTO Government Procurement Agreement and the EU-Canada agreement explicitly allow environmental and other sustainability criteria such as women-owned or SMEs to be used when awarding procurement contracts. However if these programmes are felt to advantage domestic over international companies, they are vulnerable to challenge. The rules are often so complex that procurement bodies do not feel confident to use the flexibilities that exist.

The **Environmental Goods Agreement (EGA)** was an attempt by some members of the WTO to ensure eliminate tariffs on green goods, however it stalled in 2016. This was because countries in the Global South feared that the burden of liberalisation would fall on them as tariffs on such goods amongst richer countries are already low. There were also concerns that rich countries had proposed a very broad list of products, not all of which appeared easily justified under climate criteria. Global South countries were concerned that, without an accompanying relaxation of intellectual property and local content rules that would enable them to develop their own industries, they could become dependent on expensive, high maintenance imported technologies.

**Precedent for similar measures.** There are already signals of a willingness to review existing provisions in the light of climate and environmental imperatives. In particular, countries have been testing the WTO's General Agreement on Tariffs and Trade (GATT) article XX exemptions, including those for "measures necessary to protect public morals", measures "necessary to protect human, animal or plant life or health" and measures "relating to the conservation of exhaustible natural resources."

A number of WTO rulings, for example the dispute panel's finding against Mexico's challenge to US requirements for dolphin-friendly tuna, have confirmed that it is possible for states to place restrictions on imports on the basis of how a product is made (Processes and Production Methods – PPMs), not just on the characteristics of the final product, using environmental or public morals exemptions and provided certain conditions are met.

There has been some progress at the WTO towards recognising the need to eliminate harmful subsidies and re-direct programmes towards delivering environmental public goods. In a ground-breaking example of the use of trade rules for environmental purposes, in 2022 WTO members concluded the Fisheries Subsidies Agreement which eliminates subsidies for illegal, unreported and unregulated fishing and prohibits certain forms of subsidies that contribute to overcapacity and overfishing. The negotiation was unique in that the development dimension was integrated from the outset. However, through the course of the 15 years of negotiation, the ambition of the agreement was rolled back by the political-economic interests of powerful fishing nations. Countries are hoping for a stronger deal in future but this first iteration could already set a precedent for the WTO to take a more active role in disciplining other unsustainable subsidies

3. **Is the UK's trade policy consistent with its goals for net zero?**

The absence of a published UK strategy for trade makes it difficult to assess the Government's approach. However, the consistent signals from the Department for Business and Trade and the current Secretary of State are that they don't consider addressing climate change to be a priority for them. This is deeply disappointing give the growing evidence that trade both impacts on emissions and the policy space for tackling climate change.

As a result, the UK approach is not sufficiently joined up. Government is not yet effectively or consistently considering how the trade deals it is signing up to will impact climate action. Rather than actively aiming for trade negotiations to contribute to emissions reductions, the Government has been content with scoping studies that show either the maintenance of the status quo or small increases in emissions.

Nevertheless, the UK has introduced or is considering a number of possible trade measures that could help tackle emissions. In its first independent tariff schedule the Government liberalised 200 environmental goods. It also systematically pursues (non-binding) environmental chapters in its trade agreements and it has explored introducing core environmental standards as a border measure that would prevent the import of higher carbon goods that might undermine UK standards.

The Government has also announced that it will introduce a Carbon Border Adjustment Mechanism, although this is not scheduled until 2027 and since there will be a General Election in the intervening period, there remains uncertainty as to whether it will be introduced. Technically, this lies outside the trade regime as it will not be included in trade agreements, although it is potentially controversial at the WTO.

A CBAM could be a useful tool but there are still many unknowns and reasons for caution. Calculating the carbon content of any particular product is likely to be extremely complex and there is not yet an internationally agreed methodology. Careful thought must also be given to ensuring that schemes are designed so they do not disadvantage Global South producers who lack the resources either to reduce emissions, to measures them or to comply with relevant 'paper trails'. Glboal South countries could be supported by providing exemptions or longer transition periods, as well as financial and technical support for emissions calculations and documentation. A CBAM must be introduced alongside measures such as revised intellectual property and local content requirements, as set out elsewhere.

Finally, the UK has announced that it will withdraw from the Energy Charter Treaty (ECT), one of many investment treaties to which it is a party. However it has no plans to review or withdraw from its remaining 85 BITs.

**4. How can the UK's trade policy further help with its goals for net zero?**

There are a number of measures that the UK could introduce to ensure that its trade policy is in line with climate commitments:

- The UK must as a matter of urgency develop a trade strategy, in consultation with key stakeholders, that clearly shows how it will align with climate commitments.
- As part of the strategy development, the Committee on Climate Change should audit the UK's trade commitments for their compatibility with climate obligations.
- Introduce a climate waiver to its own deals and work with allies to introduce such a provision at the WTO. This would offer blanket protection to all initiatives aimed at tackling climate change so that they could not be challenged under trade rules.
- Review the specific chapters in its own trade deals, as outlined above, and work with international partners on WTO rules to ensure they are aligned with climate goals, including intellectual property, local content bans, subsidies and agriculture.
- Commit to annulling the remainder of its Bilateral Investment Treaties (BITs) and to excluding the mechanism from future trade agreements.
- Work with allies to clarify the climate and environmental measures that are WTO compatible.

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