

International Development Committee - Evidence from the Trade Justice Movement

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Background

1. 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 some of the UK's largest environmental and development NGOs. Together we are calling for trade justice, where the global system of trade ensures sustainable outcomes for ordinary people and the environment, particularly in developing countries.
2. We welcome the committee's important and timely inquiry on climate change ahead of COP26. The UK has a unique opportunity for global leadership on climate change, which is already having a devastating effect on the planet and disproportionately impacts on less developed countries. While the Government has set ambitious targets for tackling climate change, a significant gap remains in its trade policy: there has been no explicit attempt to ensure that the UK's trade policy helps achieve these targets and in particular little to align its policy regarding trade with developing countries with climate targets.
3. International trade is an important policy area for both climate change and development. The Sustainable Development Goals (SDGS) include a number of commitments that should mean the UK and other countries actively seek to align their climate, trade and development (as well as other) policies, the most obvious being an explicit commitment to "policy coherence for development" (goal 17.14), which cuts across the other goals. SDG 13 commits countries to "take urgent action to combat climate change and its impacts", widely accepted to be fundamental to tackling poverty. A number of targets under goal 17 relate directly to trade: 17.10 Promote a universal, rules-based, open, nondiscriminatory and equitable multilateral trading system under the WTO including through the conclusion of negotiations within its Doha Development Agenda"; 17.11 commits governments to "increase significantly the exports of developing countries, in particular with a view to doubling the Least Developed Countries' (LDC) share of global exports by 2020". Finally, under goal 10, target 10.a commits countries to "implement the principle of special and differential treatment for developing countries, in particular least developed countries, in accordance with WTO agreements."
4. Our response is divided into two parts: the first part looks at various ways in which trade policy can affect climate and the environment. The second looks at various ways in which trade affects international development. There are a number of cross-cutting issues which are also highlighted.
5. The context for this submission is that the UK has adopted a new, independent trade policy as a result of leaving the EU. As part of this, the UK has rolled over dozens of

trade agreements with developing countries which it previously had through EU membership - including the EU's Generalised System of Preferences (GSP), the Everything But Arms (EBA) scheme for Least Developed Countries (LDCs) and Economic Partnership Agreements (EPAs) with countries which receive UK Official Development Assistance (ODA), including Cameroon and Ghana. The roll over of these agreements was welcome to the extent that it ensured trade continuity with the UK for developing countries, however we believe the UK could have gone further to improve these deals (see detail below). In addition to rolling over EU deals, the UK is also pursuing new deals with the Trans-Pacific Partnership group of countries, which includes developing countries in Southeast Asia, Latin America and South America; India; plans to 'deepen' existing EPAs; and is also reviewing its own GSP offer to developing country partners. Trade and development is therefore, like climate change, a very 'live' issue, and the months and years ahead offer a unique opportunity to ensure the UK's trade policy is in line with its commitments under the Paris Climate Agreement and the Sustainable Development Goals (SDGs).

1. The environment and climate change

6. The UK claims to be a world-leader in the fight against climate change, and was the first major economy to set a carbon-zero target of 2050. Earlier this month, the target was increased to cut 78% of emissions by 2035.¹ Later this year, the UK will host the G7 and the COP26 Climate Conference, which hopes to build on the Paris Agreement to set new, ambitious targets for global emissions reduction. In 2019, Prime Minister Boris Johnson pledged that his government would make Britain the "cleanest, greenest country on Earth",² and has announced investment in green technologies, regulations towards decarbonisation and the maintenance of high environmental standards after Brexit.^{3 4}
7. Despite this, there is a concerning disconnect between the UK's climate ambition and its new trade policy. DIT has been given free rein to negotiate new FTAs with countries which have far lower environmental standards than the UK, including the US, Australia and various countries in the Trans-Pacific bloc.⁵ 'Rollover' FTAs with existing partners have not been reformed to account for climate change, and the Government refused to accept amendments to the Trade Bill which would have maintained high environmental standards.⁶
8. As currently configured, trade rules pose a significant barrier to achieving climate and environmental goals. At the most basic level, trade rules operate as a blunt instrument: they seek to indiscriminately liberalise and increase trade. This inevitably leads to increases in greenhouse gas emissions, for example where greenhouse gas-intensive industries, or industries that contribute to deforestation, expand their market share as a

¹ Department for Business, Energy & Industrial Strategy, [UK enshrines new target in law to slash emissions by 78% by 2035](#), 20 April 2021

² Energy Live News, [Boris Johnson pledges to make Britain 'cleanest, greenest country on Earth'](#), 13 December 2019

³ Department for Business Energy and Industrial Strategy, [£84 million boost for technology to power a green aviation revolution](#), 17 January 2021

⁴ Department for Business Energy and Industrial Strategy, [£11 million boost for energy entrepreneurs to turn green dreams into reality](#), 4 February 2021

⁵ Trade Justice Movement, [A US-UK trade deal: issues from a civil society perspective](#), June 2020

⁶ Guardian, [UK ministers gain power to allow lower-standard food imports](#), 19 January 2021

result of increased trade. This is borne out by impact assessments such as for the proposed UK-US deal, which shows a predicted overall increase in emissions.

9. Climate and environmental agreements have very little enforceability but trade agreements are both binding and enforceable with all the necessary infrastructure to do so. Enforcement can take the form of state-to-state action, for example where tariffs are raised on particular products or cases are brought to the World Trade Organisation dispute resolution body, or through investor to state dispute settlement, which allows investors to challenge governments directly and is discussed below.
10. Trade agreements impact on many areas where it is agreed that rapid and far-reaching change is needed if climate targets are to be met. The most important of these is energy, where trade agreements have a significant impact on countries' ability to undertake a rapid transition away from fossil fuel use. A particular area of concern in this regard is Investor-State Dispute Settlement (ISDS). ISDS provides any existing investors from participating countries with protection for their investments, including the ability to sue governments directly for policies that harm their profits. This makes it harder for governments in the UK and abroad to transition economies towards greener alternatives. 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, particularly in the energy sector. For example a number of governments are being challenged for measures intended to reduce fossil fuel use: RWE and Uniper are suing the Netherlands, and Westmoreland is suing Canada for their plans to phase out the use of coal-fired power stations. The UK is a significant source of cases against countries; for example, Rockhopper are currently suing Italy for a ban on the exploitation of oil and gas within 12 nautical miles of its coastline.
11. ISDS is also often used to challenge other environmental policy and has a 'chilling' effect on regulation designed to combat climate change. Other environmental challenges include: the enforcement of environmental regulations at a mine in Peru, water pollution controls in Germany, a ban on fracking in Canada, and various regulations on mining in East Asia and South America.⁷
12. ISDS disproportionately affects developing countries: they are both at higher risk of facing a claim and most impacted by awards. It costs millions of dollars to defend a case and awards are generally in the millions, if not billions, of dollars, costs that developing countries can ill-afford.⁸ One of the reasons that developing countries are at higher risk of facing a claim is that they tend to have a relatively greater need to introduce new or amend existing regulations to meet their climate and development goals.
13. The UK Government has remained committed to ISDS and is expected to seek new, more far-reaching investment agreements with Japan and Canada as part of their respective rolled-over FTAs. The UK has 96 Bilateral Investment Treaties in force, approximately three-quarters of which are with developing countries; others are with partners including China, Russia and various other fossil-fuel producing countries in the Middle East.⁹ The UK is also a party to the Energy Charter Treaty, which has been the

⁷ All examples detailed in Trade Justice Movement, [Shaping future UK trade policy: Investment Protection Provisions](#), September 2020

⁸ UNCTAD Investment Policy Hub, [Fact Sheet on Investor–State Dispute Settlement Cases in 2018](#), accessed May 2021

source of a large number of cases relating to energy. It has also indicated that it wants to 'deepen' roll-over FTAs with developing countries, which might include introducing investment protection chapters.

14. Another concern is that trade agreements encourage a race to the bottom on standards, which severely hampers environmental regulation and could create a significant barrier to the transition to low-emission, sustainable land management. This can happen through multiple avenues: first, trade negotiations may put pressure on countries to reduce product standards or allow imports of goods made using practices that they have banned, as part of seeking a trade agreement. For instance, many campaigners have highlighted the risk of the UK reducing or removing standards that were originally based on the EU's precautionary principle, in a bid to increase trade with the US or other countries.¹⁰ One example is the blocking of a proposed ban on palm oil, which is an important step in reducing deforestation and the associated greenhouse gas emissions.¹¹
15. Second, trade rules at the World Trade Organization make it difficult for countries to ban products on the basis of process and production methods (PPMs), as shown by a number of WTO cases, even if other countries' PPMs are harmful for the environment.¹² For instance, imported goods may be produced in carbon-intensive ways which are either banned or uncommon in importing countries. Trade deals may increase the competitiveness of these products through the removal of tariffs.
16. Third, trade deals themselves increasingly contain regulatory cooperation chapters, which encourage regulators in each country to discuss, assess and harmonise regulations.¹³ Since this cooperation is geared towards increasing trade rather than tackling issues like climate change, it is likely to lead to a reduction in standards rather than a shared raising of standards.
17. Widespread access to green technologies is crucial to meet the Paris Agreement goal of limiting the increase in global temperatures to well below 2 degrees Celsius. This will require considerable technology transfer from North to South because 90 per cent of the increase in global carbon emissions until 2050 is expected to occur in the developing world, while the vast majority of low-carbon technologies are still invented in developed countries. Japan, the US, Germany, South Korea, and France together account for 75 per cent of the low-carbon inventions patented globally from 2005 to 2015.¹⁴ International trade rules contain a number of provisions ostensibly aimed at preventing 'protectionist' or mercantilist behaviour. However, in recent years, it has become apparent that in practice they are often at odds with the measures needed to promote and disseminate green technologies.

⁹ UNCTAD Investment Policy Hub, [International Investment Agreements Navigator: United Kingdom](#), accessed February 2021

¹⁰ Trade Justice Movement, [A US-UK trade deal: issues from a civil society perspective](#), June 2020

¹¹ Financial Times, [Malaysia levels palm oil demands over post-Brexit trade deal](#), 19 August 2019

¹² Trade Justice Movement, [Sustainable Regulation and Trade Agreements for the EU-UK relationship](#), April 2020

¹³ Trade Justice Movement, [Dynamic Alignment and Regulatory Cooperation between the UK and the EU after Brexit](#), September 2019

¹⁴ Dussaux, D., Dechezlepretre, A. and Glachant, M. (22 March 2018) '[Intellectual Property Rights and the Transfer of Low-Carbon Technologies to Other Countries](#)' November 2020

18. One of the most contentious provisions in relation to green technologies is on subsidies. Any form of export subsidy, including those for clean energy or green technologies is prohibited under Part II of the WTO Agreement on Subsidies and Countervailing Measures (ASCM). Whilst domestic subsidies for specific industries for the development and production of green products are not prohibited, they are nevertheless open to challenge by partner countries if the latter believe that their domestic production or exports are adversely affected. Until 2000, some environmental subsidies were deemed non-actionable but that exemption has not been renewed.¹⁵ These provisions are increasingly being used to challenge countries' environmental measures: in late 2012, the US imposed anti-subsidy duties of around 15 percent in response to Chinese state support for solar panels. The EU has also challenged China, India has challenged the US and the US has challenged India. This tit-for-tat use of the WTO to challenge comparable measures that a number of countries clearly wish to use to support their renewable energy sectors suggests that a different approach is urgently needed at the WTO.
19. In order to meet its own net-zero commitments, the UK has already committed to a number of measures, including the phase-out of petrol and diesel vehicles by 2030, increased investment in wind power and infrastructure for electric vehicles, the incentivisation and installation of low-carbon heating, and the decarbonisation of industry. Implementation of these measures is likely to require subsidies. This would have to be notified at the WTO and could be subject to challenge. To ensure measures are effective, flanking trade measures such as restricting higher emissions imports or the imposition of energy efficiency requirements will also be necessary. It is therefore both in the interests of the UK and developing countries that the UK take steps to help steer trade agreements in a new direction.
20. 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, in the case of TRIPs enforcing a minimum 20-year duration for patents and ten years for industrial designs. 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 and the ability of countries like India to produce cheap generic versions, there have been a number of challenges to countries who require technology sharing as a condition of trade or investment.
21. As the UK 'takes back control' of trade policy after Brexit, there is a unique opportunity to build safeguards into new trade deals to protect the environment and help in the fight against climate change.¹⁶

2. Development and human rights

22. The UK is a signatory to the Sustainable Development Goals (SDGs) and there is cross-party agreement that the UK must champion global human rights. UK politicians have

¹⁵ Mattoo, A. and Subramanian, A. (2013) [Four Changes to Trade Rules to Facilitate Climate Change Action Washington](#) Accessed November 2020

¹⁶ Trade Justice Movement, [Alternative Trade for the Planet, aligning trade policy with climate and environmental goals](#), December 2020

rightly condemned recent reports of human rights abuses in China, Russia, Saudi Arabia, Cambodia and elsewhere, as well as standing up for democratic freedoms in Hong Kong, Myanmar and elsewhere.

23. As noted above, the SDGs commit countries to complete the Doha round of WTO trade negotiations, billed as a 'round for development'. However, to date, the promises of this round are still to be fully met, including tackling distortions in trade in agricultural products, addressing the significant costs to developing countries of implementation of some agreements, and only non-binding commitments for financial assistance and preferential access for Least Developed Countries (LDCs). In 2015 wealthier countries went a step further and withdrew their support from the Doha round negotiations. The direction of travel of the UK government appears to be to further diverge from developing country priorities and to instead support 'plurilaterals', in which countries with the most negotiating capacity address their own priority issues (for example digital and services trade).
24. The commitment to policy coherence for development should mean ensuring all countries, but in particular developing countries, have maximum flexibility to choose the most appropriate policy mix for their circumstances and also to reverse, change or modify particular approaches if they are shown to be ineffective. This will be particularly important in the context of climate change, where, for example, a rapid shift away from the use of fossil fuels is likely to require reskilling of parts of the labour force, the creation of new industries and the deployment of public resources to support sustainable production and consumption (for example through subsidised green housing measures or the use of procurement budgets to help drive positive change in economic activity). As currently configured, trade rules tend to do the opposite: they reduce policy space and flexibility because they prioritise predictability for businesses operating internationally and are based on an assumption of ever-increasing liberalisation. This could significantly reduce countries' abilities to ensure a 'green recovery' in the wake of Covid.
25. Trade deals can hinder the ability of governments to raise standards in areas such as labour rights, gender rights, economic justice and public health. ISDS cases have been used to challenge minimum wage rises and health measures such as bans on plain packaging for cigarettes and the introduction of a sugar tax.¹⁷ Provisions in areas such as services and procurement tend to be blind to the different impact of changes in those areas on men and women. Liberalisation of services can lead to increased privatisation or reduced provision of 'less lucrative' services or in poorer areas, which can in turn lead to increases in cost or a requirement for greater care in the home, the burden of which is more often borne by women.¹⁸
26. The UK has rolled over the EU's preference scheme for the world's poorest countries, which should help to provide continuity as the UK exits the EU. However it has not taken the opportunity to improve these schemes, for example by offering more generous rules of origin to help support regional trade. It has also agreed trade deals with Kenya and Cote d'Ivoire, a move which risks disrupting trade in the EAC and ECOWAS regional blocs. The UK has also not yet clarified whether it will seek to pursue negotiations on issues beyond goods, something that most developing countries have long resisted.

¹⁷ Trade Justice Movement, [Shaping future UK trade policy: Investment Protection Provisions](#), September 2020

¹⁸ Trade Justice Movement, [Gender Equality and Trade: recent developments and ways forward](#), June 2018

27. In terms of human rights, there is once again a noticeable gap between the UK's rhetoric and its trade policy. Evidence shows that Western multinationals are often indirectly implicated in human rights abuses: for example, recent research identified 83 well known brands which benefit from the use of Uyghur workers caught in potentially abusive labour transfer programs, including Nike, Adidas, Google and Marks & Spencer.¹⁹ Similar concerns have been raised about labour rights in supply chains across Asia, Africa and South America.
28. Meanwhile, the UK continues to be signatory to Bilateral Investment Treaties with countries which have perpetrated human rights abuses, including China, Russia and various Middle Eastern countries.²⁰ There has been no announcement of any review of these treaties, or any other proposals to consider trade and human rights in tandem. Amendments to the Trade Bill designed to protect against trade with countries accused of genocide, and provide full human rights impact assessment, have been consistently resisted by the Government.²¹

Conclusions:

- 29. The UK should seek to establish a position of global leadership by aligning its trade, environment and climate objectives. As a first step, the government should set out a clear strategy for trade, showing how it will be proactively shaped to support climate and environmental goals and development objectives. Climate, environment and development commitments should be given formal precedence over trade agreements.**
- 30. The UK must urgently withdraw from Bilateral Investment Treaties, the Energy Charter Treaty and investment protection provisions in existing trade agreements. It must also exclude investment protection chapters from proposed new agreements.**
- 31. The UK must design trade agreements so that UK standards can continue to increase without downward pressure from lower standard imports. This must include both the incorporation of the precautionary principle and mechanisms to ensure that developing countries are not negatively impacted. For example, the UK could offer support to producers to ensure they can meet UK standards. The UK must also play a leadership role to ensure all countries can pursue similar policies without being penalised at the WTO.**
- 32. The UK should put its full diplomatic weight behind ensuring developing country issues are addressed at the WTO as the building blocks for negotiations in other areas.**
- 33. The UK should ensure that a presumption of policy space is built into agreements at the WTO and in its own bilateral agreements, particularly with a view to allowing for the mix of measures that will be needed for a post-Covid 'green recovery'.**

¹⁹ Business and Human Rights Resource Centre, [China: 83 major brands implicated in report on forced labour of ethnic minorities from Xinjiang assigned to factories across provinces](#), March 2020

²⁰ UNCTAD Investment Policy Hub, [International Investment Agreements Navigator: United Kingdom](#), accessed February 2021

²¹ Financial Times, [Tory MPs rebel over genocide amendment to trade bill](#), 19 January 2021

- 34. Trade negotiations with developing countries must prioritise the countries' development objectives and be done in such a way as to facilitate regional trade; for instance, the UK should offer the same preferences and opportunities to all countries in the East Africa trade bloc, rather than negotiate separate agreements which have the potential to lead to a 'race to the bottom' on standards and tariffs. In order to achieve this, the Department for International Trade needs to continue to operate in partnership with former DfID staff in the newly formed Foreign, Commonwealth and Development Office (FCDO).**
- 35. The UK must build in transparency and civil society engagement at all stages of negotiations with developing countries, including trade unions, NGOs and businesses from partner countries to ensure a broad range of interests are represented.**
- 36. Prioritising human rights will require looking beyond trade agreements. The UK should support recent efforts at the UN for a Binding Treaty on Business and Human Rights, and consider primary legislation to enforce compliance amongst British companies operating overseas, as well as bilateral action with the EU. As things stand, human rights chapters in trade agreements tend to be unenforceable, and the UK is very willing to conduct trade with countries whose leaders have been accused of gross human rights abuses, such as Saudi Arabia.²² As with climate change, enforceable chapters in trade deals will be essential for ensuring that our trade policy protects human rights.**

For more information or briefing on any of the issues discussed above, please visit the Trade Justice Movement [website](#)

²² Guardian, [UK on collision course with Saudis over new human rights sanctions](#), 6 July 2020