International Trade Committee
Inquiry on COP26 and International Trade

Evidence from the Trade Justice Movement
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September 2021

*Recommendations are highlighted in **bold***

About us

1. The Trade Justice Movement is a UK-wide network of sixty civil society organisations, with millions of individual members, calling for trade rules that work for people and 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

2. The UK Government claims to be a world-leader in the fight against climate change. The UK was the first major economy to set a carbon-zero target of 2050, an ambition which was recently increased to a 78% reduction in emissions by 2035 (compared to 1990 levels).[1] This year, the UK has the G7 Presidency and will host the COP26 Climate Conference in Glasgow, which hopes to build on the Paris Agreement to set new, ambitious targets for global emissions reduction.

3. At the start of this administration's time in office, in 2019, Prime Minister Boris Johnson pledged that his government would make Britain the "cleanest, greenest country on Earth".[2] Since then the Government has announced investment in green technologies, regulations towards decarbonisation and the maintenance of high environmental standards after Brexit.[3] [4] Trade is also an area of ambition for this Government, since the UK regained competence for trade policy after the end of the Brexit transition period, in January 2021.

4. However, we (along with many other civil society organisations and business groups) are concerned about a disconnect between the UK's climate ambition and its new trade policy. The Department for International Trade (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'

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[1] Department for Business, Energy and 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

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 standards.[6]

5. Notably, Trade and investment policies are not covered by the Paris Climate Agreement, and, on the current trajectory, COP26 will not lead to a change of approach. The existing agreements do not require countries to make changes to their trade policy as part of their climate goals.[7] **It is therefore essential that the UK uses its COP26 Presidency to start the process of putting trade on the agenda. This is our overall recommendation: that the UK includes the trade and climate issues discussed in our response in its policies ahead of COP26 and that it uses its COP26 presidency to encourage other countries to do the same.**

6. Furthermore, there are specific ways in which trade agreements can be damaging to the environment and hinder climate ambition. We are particularly concerned that, if not carefully designed, the following provisions could have negative impacts: Investor-to-State Dispute Settlement (ISDS), regulatory cooperation, production methods and standards (particularly in relation to food), WTO rules and restrictions on technology transfer. These are explored in more detail in our response.

Investor-State Dispute Settlement (ISDS)

7. Investor-State Dispute Settlement (ISDS) provisions, included in trade and investment agreements, allow private investors to sue governments for measures which harm their profits. This can include expected future returns on investments. ISDS has been used to challenge all sorts of important environmental regulations, including: the phase out of coal-fired power stations, water pollution controls in Germany, a ban on fracking in Canada, and various regulations on mining in East Asia and South America.[8]

8. Furthermore, there are concerns that ISDS can have a ‘chilling’ effect on regulation designed to combat climate change. If governments (either the UK or partner countries) fear the possibility of investor challenge, they may delay or decide not to introduce important new regulations designed to combat climate change. This is a particular risk for developing country governments, which are most vulnerable to challenge and least able to cover the costs of a dispute.

9. The UK Government has officially remained committed to ISDS, though it has not sought ISDS in the UK-Australia Agreement in Principle, we do not expect to see ISDS in the proposed UK-New Zealand trade agreement and the provisions have been suspended in the UK-Canada deal. However, the UK has not ruled out ISDS in the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), for which it would need to seek specific exemptions from ISDS via side letters. Furthermore, the UK has not given any indication of altering or leaving its many Bilateral Investment Treaties, which include ISDS, with over 100 countries, including China, Russia and various other fossil-fuel producing countries in the Middle East.[9] These provide any existing investors from these countries

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

[7] The Commonwealth, The Trade Implications of the Paris COP21 Agreement, 2016

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

[9] UNCTAD Investment Policy Hub, International Investment Agreements Navigator: United Kingdom, accessed

with protection for their investments in the UK, and make it harder for governments in the UK and abroad to transition economies towards greener alternatives.

10. Perhaps most concerning of all is the UK's continued support for, and membership of, the Energy Charter Treaty (ECT). The ECT was set up specifically to protect energy firms and make it easier for them to operate across national borders, with minimal regulatory barriers. The vast majority of these companies are fossil fuel firms, and the treaty has been repeatedly invoked by many of these firms to bring ISDS challenges against member countries. For obvious reasons, regulation of fossil fuel use will be essential in the fight against climate change - for the UK and all other countries. UNFCCC states that the phasing out of fossil fuel use is by far the most important action that Governments need to take to tackle climate change. Governments therefore must be free to introduce climate measures as they see fit: from phasing out fossil fuels in home energy and transport, to introducing taxes on fossil fuels. It is therefore completely inappropriate for the UK to continue to support the ECT, whose explicit aim is to protect energy firms from regulation. It would also send a positive signal to other countries, ahead of COP26, for the UK to withdraw from this agreement.

11. A recent example of the damaging implications of ISDS is that of Rockhopper, a UK oil drilling company, vs. Italy. Public environmental campaigning led to a national ban on oil and gas projects within 12 nautical miles of the Italian coast, and therefore the removal of Rockhopper's permit, something which has been challenged using an ISDS mechanism. The authority for this challenge lies in the UK and Italy's membership of the ECT.[10]

12. **The UK must end its commitment to ISDS and end all trade and investment agreements which include ISDS measures. ISDS should not be pursued in new trade agreements, and the UK should follow in the steps of New Zealand in seeking side letters on ISDS in CPTPP accession negotiations. In particular, the UK should exit the ECT, which is fundamentally incompatible with ambitious action on climate of the kind that is necessary ahead of COP26.**

Regulatory cooperation and standards

13. Trade agreements can encourage a race to the bottom on standards, which risks severely hampering meaningful climate regulation. This can happen through multiple avenues: first, trade negotiations may put pressure on the UK to reduce its product standards or allow imports of goods made using practices banned in the UK, as part of seeking a trade agreement. For instance, many campaigners have highlighted the risk of the UK reducing or removing standards based on the EU's precautionary principle, in a bid to increase trade with the US or other countries.[11] Another example is Malaysia's efforts to stop a proposed ban on palm oil, as part of the UK's CPTPP accession bid. Palm oil leads to deforestation and therefore an increase in greenhouse gasses.[12]

14. 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

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February 2021

[10] Guardian, Outrage as Italy faces multimillion pound damages to UK oil firm, 25 July 2021

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

[12] Financial Times, Malaysia levels palm oil demands over post-Brexit trade deal, 19 August 2019

number of World Trade Organization (WTO) cases, even if other countries' PPMs are harmful for the environment.[13] For instance, imported goods may be produced in carbon-intensive ways which are either banned or uncommon in the UK. Trade deals may make these products even more competitive through the removal of tariffs.

15. Furthermore, imported carbon-intensive goods, such as steel, do not necessarily face the same carbon taxes as they would in the UK and EU. This means that carbon-intensive imports are cheaper and more competitive, penalising companies and countries which produce products to higher environmental standards, or through less carbon-intensive methods. This disparity has led many to call for a Carbon Border Adjustment Mechanism (CBAM), which is currently being pursued by the EU. There are a number of reasons why some sort of CBAM is a necessary addition to a carbon taxation system, of the kind adopted by the UK and the EU, both to prevent 'carbon leakage' and to avoid penalising climate-friendly products and practices.

16. However, we have a number of concerns about a CBAM. Most importantly, a CBAM could hit developing countries particularly hard, as they tend to rely on less climate-friendly methods of production, and are also often dependent on exports to Global North countries. The increased costs caused by a CBAM could affect the most vulnerable workers in supply chains without necessarily reducing emissions. It is also worth remembering the historical context for such trade relations: while wealthy, Global North countries were able to develop through carbon-intensive, polluting practices, a CBAM would constrain the ability of developing countries today to do the same. Furthermore, we have concerns that a CBAM would be difficult to enforce and could distract from other important reforms to trade policy necessary to tackle climate change, of the kind recommended in this paper. **It is therefore essential that the UK does not pursue a CBAM in isolation to other, more radical climate reforms, and that the CBAM is produced with collaboration and consent from developing countries, that the government engages with those in the most precarious situations along supply chains to mitigate against negative impacts, and that those countries which receive other trade preferences (such as the EU's 'Everything But Arms' countries) are exempt from the CBAM.**

17. Third, trade deals themselves increasingly contain regulatory cooperation chapters, which encourage regulators in each country to discuss, assess and harmonise regulations.[14] 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.

18. 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.[15] **The UK Government must urgently ensure that: (1) trade negotiations are not used to lower standards or delay important regulations for tackling climate change. This means moving away from a 'trade deal at all costs'**

[13] Trade Justice Movement, Sustainable Regulation and Trade Agreements for the EU-UK relationship, April 2020
[14] Trade Justice Movement, Dynamic Alignment and Regulatory Cooperation between the UK and the EU after Brexit, September 2019
[15] Trade Justice Movement, Alternative Trade for the Planet, aligning trade policy with climate and environmental goals, December 2020

approach to negotiations, but instead making deals conditional on shared, high standards. (2) The UK must retain the ability to ban or tax imported carbon-intensive products, and penalise trade partners and companies which adopt harmful environmental practices. However, this should not be at the expense of sustainable development for the poorest countries. (3) The UK should resist regulatory cooperation provisions in trade agreements, particularly where these affect climate regulation.

Agriculture and food

19. It is estimated that agriculture is directly responsible for up to 8.5% of all greenhouse gas emissions with a further 14.5% coming from land use change (mainly deforestation in the developing world to clear land for food production).[16] Meat production, such as beef, is particularly carbon intensive, and Global North countries consume by far the largest amount of meat per capita. Trade can increase overall consumption, and mean that food on UK supermarket shelves is produced in more carbon-intensive ways. In particular, trade rules encourage a transition towards more intensive forms of farming, which are often associated with higher greenhouse gas emissions, as well as concerns about biodiversity, deforestation and animal welfare.

20. The liberalisation commitments in FTAs make it very difficult for any country to effectively protect its agricultural sectors. For developing countries this has meant exposing their smaller farmers to competition from industrialised agricultural exports. The WTO Agreement on Agriculture sets out rules for agricultural tariffs and the type of agricultural subsidies that are allowed. It was designed in such a way to allow the US and the EU to continue with their extensive agricultural subsidy programmes, albeit in a revised form, yet at the same time required developing countries to lower their applied tariffs, leaving their small farmers exposed.

21. Lowering tariffs and reducing non-tariff barriers to trade can increase consumption of climate-intensive agricultural products, such as beef. Furthermore, many of these imports are produced to lower standards and more cheaply, putting more sustainable UK producers at risk. For example, one risk of a UK-Australia deal is that a UK ban on growth hormones in cattle puts UK farmers in a disadvantageous position vis-à-vis their Australian counterparts. Removal of tariffs in the trade agreement would make Australian meat more competitive, and also put pressure on the UK to reverse its ban on growth hormones (or regulate more lightly in the future). **The UK should ensure that tariff reductions in new trade agreements do not lead to increased competitiveness or consumption of agricultural products with high greenhouse gas emissions.**

22. Although the UK has protected food and farming standards for rollover trade agreements via the Trade Act, these protections do not apply to new trade deals. Furthermore, many of these protections only apply to UK domestic practices, and not to practices used to produce agricultural products abroad. WTO case law, namely the cases involving turtles (India, Malaysia and others vs. US) and seals (Canada and Norway vs. EU), shows that it is possible to ban products based on Processes and Production Methods (PPMs). **The UK should take advantage of this to ban or apply tariffs on agricultural products**

[16] IPCC's Special Report on Climate Change and Land, 2019

with high greenhouse gas emissions.

Impact assessment and scrutiny

23. The UK's current model of treaty scrutiny fails to provide businesses, the public and civil society organisations with transparency and predictability. This makes it difficult for organisations to know what the government's plans are, and how the UK's new trade policy might impact on climate change. It also means that there is no system of accountability, whereby MPs can delay, amend or reject trade agreements which are shown to be bad for the UK's action on climate change.

24. The principle of public involvement in environmental policy is enshrined in the Aarhus Convention. An absence of democratic oversight can lead to bad trade deals, as new FTAs are unlikely to have popular support; and without transparency, businesses and other organisations are less well prepared for regulatory and cross-border changes. It is also difficult for the public, civil society and environmental groups to highlight when trade agreements are damaging for the UK's climate ambition.

25. When it comes to transparency and parliamentary scrutiny, the UK lags behind international counterparts, including many of our most important trading partners - notably the US, the EU and Japan (see Table 1).

Table 1 - the UK's scrutiny processes compared to key partners

Before negotiations	✗ MPs have legal right to see objectives ✗ MPs votes on general objectives ✗ Objectives published for public consultation	✓ Congress has legal right to see objectives ✓ Congress votes on general objectives ✓ Objectives published for public consultation	✓ MEPs have legal right to see objectives ✓ (Some) parliamentary votes on objectives ✓ Objectives published for public consultation ✓ Council votes on objectives	✗ Guaranteed debate in Diet ✗ Diet votes on general objectives ✗ Objectives published for public consultation
During negotiations	✗ MPs have legal right to regular updates ✗ Public have access to texts	✗ Congress has legal right to updates ✗ Public have access to texts	✓ MEPs have legal right to regular updates ✓ Public have access to (some) texts	✗ Diet has legal right to regular updates ✗ Public have access to texts
After negotiations	✗ Guaranteed debate in Parliament ✗ Guaranteed vote in Parliament ✗ Parliament can reject trade deal outright	✓ Guaranteed debate in Congress ✓ Guaranteed vote in Congress ✓ Congress can reject trade deal outright	✓ Guaranteed debate in Parliament ✓ Guaranteed vote in Parliament ✓ Parliament can reject trade deal outright	✓ Guaranteed debate in Diet ✓ Guaranteed vote in Diet ✓ Diet can reject trade deal outright

26. Under the existing scrutiny system, set out in the Constitutional Reform and Governance (CRAG) Act (2010), MPs have very little say in the development of trade policy. Parliament is not involved in setting a mandate for trade agreements, is excluded from the negotiation process and there are no guaranteed votes or debates on new trade agreements. It is very difficult for MPs to secure a debate on a new deal.[17]

27. During the passage of the Trade Act, the Government made a number of verbal and written promises on treaty scrutiny, all of which fell short of legislative amendment, but nonetheless slightly strengthened the UK's treaty scrutiny processes. However, there is still a severe democratic deficit which could impact on environmental and climate policy. This is why TJM, along with many green groups including Greener UK, Friends of the Earth, WWF, RSPB and ClientEarth have called for greater scrutiny of trade agreements. International development groups focused on climate change, including ChristianAid, Fairtrade, Global Justice Now and Traidcraft have also supported these demands.

28. **The UK must urgently put in place robust systems of treaty scrutiny which ensure that all new trade agreements are negotiated transparently, and have full parliamentary accountability. This should include votes on negotiation objectives before new trade negotiations, regular release of texts during negotiations, a guaranteed vote on the final deal prior to ratification, and full impact assessments. These impact assessments should cover climate change and other environmental factors.**

29. Environmental language has increasingly been used in Sustainability Impact Assessments (SIAs) of trade agreements and also in trade agreements themselves, notably the preamble, trade and sustainable development chapters and/or trade and environment chapters. Elsewhere, it is common for various chapters in the agreements to reaffirm the right of parties to use the general exceptions clause (established under WTO agreements and replicated in FTAs) which in theory allows them to "adopt measures to protect the environment and human health", including those pursuant to multilateral environmental agreements to which they are party. However our analysis of these measures argues that they have little bearing on the final content of the agreement and generally lack enforceability.

30. There are a number of problems with the current approach to impact assessments. Potential environmental harm is often given less weight than forecast economic benefits. Proposed actions to mitigate any dangers are often piecemeal, unenforceable and usually rely on the willingness of both parties to take proactive measures in the future, rather than changing the deal itself. Insufficient time is built into assessment processes to amend deals in response to findings. Impact assessments generally deal with issues in silo so that, for example, environmental and gender equality issues are considered separately, despite the impact that lack of environmental protection can have on women's rights. One of the reasons for this is that it is very difficult to draw very specific conclusions about impacts, particularly in a context where the details of negotiating positions cannot be revealed or are not yet known (in the case of the other party's priorities). The EU has, for example, committed to take action on any 'red light' findings, however the uncertainty surrounding the assessment means that such findings are extremely rare.

[17] House of Commons Library, How Parliament treats treaties, June 2021

31. Finally, impact assessments often occur whilst negotiations are ongoing, rather than in advance of negotiations. This severely limits their ability to influence the content of agreements. In their current form impact assessments have little influence over trade agreements. However, comprehensive and independent impact assessment will be essential for delivering climate-friendly trade, and the EU's model offers a good starting place for a UK model, which currently fails to comprehensively address climate issues at all. **The UK must inform its impact assessment process to ensure that findings are fully enforceable, and that there is plenty of time for these to be built into the trade agreement. Environmental issues should not be treated in silo, and should also be prioritised to a much greater extent. In particular, there should be more emphasis on potential climate risks.**

Conditions for new trade agreements

32. The Paris Agreement, designed to limit global warming to 1.5 degrees, is the cornerstone of global climate cooperation, and will set the benchmark for discussions at COP26. It is therefore essential that all trade agreements are subject to the provisions within COP. **The UK should not proceed with trade agreements with partners who are not able to demonstrate that they have signed and are implementing the Paris Climate Agreement.** This may mean that the UK and partner countries would spend a period of time working to increase or improve action on Nationally Defined Contributions on one or both sides before trade negotiations begin.

33. Furthermore, **provisions within trade agreements should be made subject to the Paris Agreement on climate change.** This could be done through a ‘climate clause’ in trade agreements; a binding provision committing all parties to progressing their commitments under the Paris Agreement. Such a clause could build upon the approach taken in the EU-UK Trade and Cooperation Agreement and should ensure that parties can take action under the FTA where the aims of the Paris Agreement are undermined by a partner nation. Alternatively, there should be changes to domestic legislation which subjects trade agreements to the Paris Agreement, and this should be reflected in the text of trade agreements.

34. Environmental commitments in trade agreements are not binding in the same way as other clauses, such as those on ISDS (discussed earlier). For example, in CETA, the basis for the UK-Canada interim trade agreement, parties agree to: ‘promote’, ‘enhance coordination on’, engage in ‘dialogue and cooperation on’ environmental commitments and to ‘recognise’ each others’ right to set environmental priorities. This language includes no concrete commitments, no monitoring system for non-compliance, no timeframes and no sanctions for not meeting commitments. These sections of trade agreements are also not subject to the same enforceable dispute resolution process as the rest of the deal: instead a panel is mandated to produce a report which ‘stakeholders’ are encouraged to ‘take forward’. This is in stark contrast with provisions in other chapters of agreements, which include specific and enforceable commitments. **The UK must include binding and enforceable language on climate change in trade agreements. This means that the UK is able to use available levers against countries that do not keep to their climate commitments, and vice-versa.**

35. WTO rules are a potential blocker on climate action if they make it harder for governments to introduce climate regulations, which may sometimes hinder trade. To ensure that WTO rules are not used to prevent legitimate and important climate regulation, there should be a climate waiver to ensure that action on climate change is a legitimate policy goal of governments, and such action is not deemed to be discriminatory or unnecessarily trade-restrictive. **The UK should support a climate waiver at the WTO.**

36. WTO rules prohibit any forms of export subsidy, including for clean energy and green technology. Although countries are able to introduce domestic subsidies to support the development and production of green products, WTO rules provide other nations with the option to retaliate if they believe that these subsidies adversely affect their own production or exports – and these rules have often been used to challenge transition away from fossil fuels. There were 41 unilateral trade remedy investigations in the renewable energy sector between 2008 and 2014, while during the same period there were no unilateral trade remedies against fossil fuel production subsidies.

37. Evidence shows that a number of measures by nations taken to meet Nationally Determined Contributions may conflict with restrictions contained within FTAs, such as Venezuelan import bans on incandescent bulbs and tax reductions for energy efficient appliances in India and South Africa.[18] The UK government has already committed to a number of measures to meet domestic net-zero commitments, 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. These would all require WTO notification and could all be subject to challenge.

38. Both WTO agreements and FTAs contain 'general exceptions clauses' which are intended to preclude action against parties for good faith measures taken to pursue public welfare objectives. These clauses are qualified so that an exception can only be made if it can be shown that it is not being "applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade". In addition, regulations can fall foul of the WTO provision that measures "shall not be more trade-restrictive than necessary to fulfil a legitimate objective". This so-called 'chapeau' has been used to challenge a range of measures.

39. Some agreements introduce what is sometimes referred to as a 'non-regression clause' for example CETA states that: "1. The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the levels of protection afforded in their environmental law. 2. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental law, to encourage trade or the establishment, acquisition, expansion or retention of an investment in its territory. 3. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental law to encourage trade or investment."[19]

[18] See Venezuela Analysis, Venezuela Announces Special Measures to Boost Electricity Production, Lower Consumption, 5 November 2009; Energy Policy, Design of incentive programs for accelerating penetration of energy-efficient appliances, 2014
[19] CETA; Article XXIII:iv

40. These qualifying phrases mean that climate measures are only in contravention of the trade deal if they can be demonstrated to be encouraging trade or investment. Recent case law suggests that this is a very high burden of proof. There are no examples of cases being brought in response to violations of environment provisions, however environment and labour provisions are often grouped together and there is one example of a case brought under the latter. The US launched a case against Guatemala for alleged violations of the labour provisions in the Central American Free Trade Agreement (CAFTA). In this case, the panel found that whilst there were labour violations, they were not trade distorting and therefore did not warrant any trade action.[20]

41. Agreements including CETA and the EU-South Korea FTA establish a 'Committee on Trade and Sustainable Development' to oversee the implementation of the labour and environment chapters of the agreements. There is a commitment to convene this committee within the first year of the agreement, and further meetings are to be held "as the Parties consider necessary". It is difficult to see how these committees will be useful given that their role is restricted to reviewing unenforceable provisions. Whilst some agreements make provision for dispute resolution under environmental chapters, they are separate and distinct from the general dispute resolution procedures, lack enforceability, are limited to actions such as consultation, the establishment of a panel of experts or reviews through committee. This is quite different from sanctions, for example in the form of increased tariffs or other penalties.

42. **The UK should support reform of WTO rules to ensure that countries are able to transition towards more sustainable economies and take action to meet NDCs and domestic goals. This should include removing policy space for fossil fuel subsidies while increasing the potential for the support of truly renewable energy, for example via a 'climate waiver' that would allow nations to impose trade-restrictive climate policy measures in order to advance Paris Agreement obligations.**

Technology Transfer

43. 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 wealthy countries in the 'Global North' to developing countries in the 'Global South'. 90% 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% of the low-carbon inventions patented globally from 2005 to 2015.[21] Rules within trade agreements make it harder for this technology transfer to take place.

44. One of the most contentious provisions within trade agreements 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

[20] Sandler, Travis & Rosenberg, P.A., First FTA Labor Case Results in U.S. Loss, Report Says, June 2017

[21] Vieira, H., Intellectual property rights and the transfer of low-carbon technologies to other countries, LSE Business Review, March 2018

and production of green products are not prohibited, they are also actionable by partner countries if the latter believe that their domestic production or exports are adversely affected; countries can choose to apply tariffs or raise disputes at the WTO in retaliation. Until 2000, some environmental subsidies were deemed non-actionable but that exemption has not been renewed.

45. These provisions are increasingly used to challenge environmental policies. In 2012, the US imposed anti-subsidy duties of around 15% in response to Chinese state support for solar panels. This ongoing dispute has resulted in the WTO upholding the US's challenge.[22] This was closely followed by a similar case launched by the EU against China. In 2019, India won a case against the US arguing that renewable energy subsidies in eight American states were in contravention of WTO provisions on subsidies (the panel also found the US in breach of the TRIMS agreement for using similar local content requirements to those used by Canada).[23] But 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. This tit-for-tat use of the WTO to challenge measures that a number of countries clearly wish to use to support their renewable energy sectors suggests that a different approach is urgently needed.

46. Intellectual property rules play a similar 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, 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.

47. **In its new trade agreements, the UK should make a break from the status quo approach to subsidies and Intellectual Property (IP). This could help speed up technology transfer from Global North to Global South countries, ensuring that future carbon emitters have the technology they need to enforce the Paris commitments on climate change.**

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[22] Reuters, WTO backs U.S. in solar cell case brought by China, September 2021
[23] WTO, United States — Certain Measures Relating to the Renewable Energy Sector, 2019

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