



## **Submission to the International Trade Committee Inquiry on Trade and the Environment**

**Trade Justice Movement, September 2019**

### **Introduction**

1. The Trade Justice Movement (TJM) appreciates the opportunity to respond to the International Trade Committee inquiry on trade and the environment. TJM is a UK coalition of sixty civil society organisations with millions of members, calling for trade rules that work for people and planet. Our members include trade unions, aid agencies, environment, social justice and human rights campaigns, Fair Trade organisations and consumer groups.

2. A significant number of UK organizations and activists from a range of constituencies have long understood the huge importance of trade and investment for achieving goals ranging from poverty reduction to climate targets. This constituency includes individuals with significant expertise who are well-placed to contribute to the development of a new UK trade and investment strategy.

### **· What is the relationship between trade and investment liberalisation and environmental outcomes?**

3. Climate change and environmental destruction are two of the most pressing issues of our time. The IPCC has suggested that it is now likely that the world will experience between 3 and 3.5 degrees of warming, far above the 2 degrees that are considered to keep us within safe limits. In this context, TJM welcomes the government's commitment to achieving net zero carbon emissions by 2050 and Parliament's declaration of a climate emergency.

4. Delivering on these positions will mean taking significant action across all areas of the economy. Since the export of goods and services represents around 30% of UK GDP and plays a significant role both in terms of emissions levels and policy options, international trade should be high on the list of areas to address.<sup>1</sup> TJM believes that UK trade and investment policy must urgently be explicitly and rigorously designed to be compatible with climate and environmental goals.

5. International trade policy as it is currently configured is a blunt instrument: its aim is simply to increase international trade, with little reference to the kind of trade that this might entail. There is broad consensus that this approach tends to lead to an overall increase in greenhouse gas emissions.<sup>2</sup> This is because there is nothing to direct trade policy away from

---

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

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

trade and production in carbon-intensive sectors such as steel and cement, and towards the kind of trade that would support measures such as technology transfer and the development of low-carbon sectors. Increased international trade in goods also increases emissions where more carbon-intensive products (whether due to production processes or transportation) increase their market share as a result of a deal.

6. However, the impact of trade on the environment goes beyond its overall impact on economic activity. Trade rules influence the policies that are required to achieve climate and environmental goals. Rules on investment, intellectual property, services, procurement, regulations and standards, and agriculture can pose particular challenges to achieving climate goals.

7. The clearest example of this is in the energy sector: the IPCC states that, in order to meet emissions targets, countries will need to rapidly phase out the use of fossil fuels. However, investment protection provisions in treaties such as the Energy Charter Treaty (ECT), Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs) can make it difficult to do this. In particular, the inclusion of the investor to state dispute settlement mechanism (ISDS) in these treaties allows international investors to directly challenge government policy. Cases against attempts to place limits on the use of fossil fuels include: Lone Pine vs. Canada<sup>3</sup> in response to Quebec's introduction of a moratorium on fracking under the St. Lawrence river; Rockhopper vs. Italy<sup>4</sup> for a ban on oil and gas exploitation within 12 nautical miles of the coastline; Westmoreland<sup>5</sup> and Uniper<sup>6</sup> vs. Canada and the Netherlands respectively, both challenging the phase out of coal-fired power stations.

8. Broader investment provisions also hinder action in the energy sector. The WTO's Trade Related Investment Measures (TRIMs) agreement illustrates how this can happen. The central aim of TRIMs is to prevent governments from requiring international investors to use local inputs, with the intention of creating a level playing field for domestic and international investors. However the agreement has been blind to the political realities facing governments who wish to support renewable sectors. For example, the EU brought a case against Canada challenging Ontario's renewable programme. Ontario was offering a preferential 20-year purchase price for wind and solar generated electricity but, in order to qualify for the preferential price, producers had to guarantee that 50% of wind and 60% of solar costs originated in Ontario.<sup>7</sup> A two-year review of the project found that it had brought in CDN \$27 billion of private sector investment and created more than 20,000 jobs.<sup>8</sup> However, the EU successfully argued that the requirement to guarantee that a proportion of the costs originated in Ontario breached the TRIMs local content provisions. As a result, the programme has been significantly scaled back.

---

<sup>3</sup> Lone Pine Resources Inc. vs Canada ICSID Case No. UNCT/15/2

<sup>4</sup> Rockhopper Exploration Plc, Rockhopper Italia S.p.A. and Rockhopper Mediterranean Ltd v. Italian Republic (ICSID Case No. ARB/17/14)

<sup>5</sup> Westmoreland Coal Company vs Canada, NAFTA (2018)

<sup>6</sup> <https://www.en24.news/2019/09/uniper-wants-to-sue-the-netherlands-for-a-coalition-exit.html>

<sup>7</sup> <https://www.iea.org/policiesandmeasures/pams/canada/name-24662-en.php>

<sup>8</sup> Centre for International Governance Innovation (2017) *Advancing Sustainable Energy in Ontario The Case of Regional Renewable Energy Cooperatives* p.4

<https://www.cigionline.org/sites/default/files/documents/Paper%20no.133web.pdf>

9. A second, related goal for achieving carbon reduction in the energy sector is a rapid increase in the development of renewable technologies and in technologies that make a range of processes more energy efficient. This is most significant in the areas of construction and building design, land use and agriculture (sharing of low-carbon management techniques) and waste management (methane capture and storage). The vast majority of renewable technologies are developed in the Global North: Japan, the USA, Germany, South Korea and France together account for around 75 percent of the low-carbon inventions patented globally from 2005 to 2015. However 90 percent of the increase in emissions until 2050 will happen in the Global South, a significant proportion of which will be emissions that have been ‘offshored’ from countries in the Global North.<sup>9</sup> It will therefore be necessary to ensure rapid global sharing of green technologies.<sup>10</sup>

10. However the stringent intellectual property rules in trade agreements could undermine this aim. The WTO’s Agreement on Trade Related Aspects of Intellectual Property (TRIPS) and intellectual property chapters of FTAs lock-in intellectual property rights and often increase the duration of patents and other protections. TRIPS requires a minimum 20-year duration for patents and ten years for industrial designs. This can make it prohibitively expensive for developing country producers to purchase patented technologies. For example, in photovoltaic power generation, it is likely that newer thin-film technologies will be subject to much more extensive patenting than older silicon-slice technology which means that the more efficient technology could be out of reach for the next 20 years.<sup>11</sup> Thus countries can be prevented from developing their own versions of green technologies or adapting them to their own circumstances, for example by making them more resilient to particular climatic conditions, or innovating to improve effectiveness.<sup>12</sup>

11. Other trade provisions also have potentially damaging implications for reducing carbon emissions in the energy sector. For example, the CETA services chapter could prevent participating countries from preferencing less carbon-intensive cross border trade in services such as energy. Over the course of the CETA negotiations, the EU succumbed to pressure to alter the Fuel Quality Directive because Canada objected to a differential classification of fracked oil. As a result, the EU weakened the directive so that it no longer differentiates between kinds of oil production, instead allocating the same emissions level to conventional, oil shale and oil sands production.<sup>13</sup> Limitations on government procurement could similarly prevent governments from preferencing low-carbon goods and services.<sup>14</sup>

12. Beyond energy, trade rules interact with a number of other sectors in which significant action will be needed to reduce carbon emissions. For example, the WTO agreement on Technical Barriers to Trade (TBT) is the key WTO mechanism for governing technical regulations, standards and conformity assessment procedures, including those on climate change mitigation objectives. It contains two basic obligations for WTO Member States: first, a provision prohibiting discrimination against and between foreign products; and second, the

---

<sup>9</sup> Mattoo, Aaditya & Arvind Subramanian (2013) *Four Changes to Trade Rules to Facilitate Climate Change* Action Center for Global Development Policy Paper 21

<sup>10</sup> WTO-UNEP (2009) *Trade and Climate Change* WTO Secretariat, Geneva

<sup>11</sup> Mattoo, Aaditya & Arvind Subramanian (2013) *Four Changes to Trade Rules to Facilitate Climate Change* Action Center for Global Development Policy Paper 21

<sup>12</sup> <https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1066&context=ilmr>

<sup>13</sup> <https://theecologist.org/2014/jul/23/ignore-tar-sands-emissions-eu-buckles-under-us-canada-pressure-ttip-talks>

<sup>14</sup> [https://www.foeeurope.org/sites/default/files/eu-us\\_trade\\_deal/2016/11\\_free\\_trade\\_or\\_climate\\_protection.pdf](https://www.foeeurope.org/sites/default/files/eu-us_trade_deal/2016/11_free_trade_or_climate_protection.pdf)

so-called 'necessity test' which prevents WTO members from adopting standards that are "more trade-restrictive than necessary" for achieving "legitimate policy objectives."<sup>15</sup> It further specifies that technical regulations and standards must not "create unnecessary obstacles to international trade."<sup>16</sup> 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.<sup>17</sup> Important regulations that will be needed to address the climate and environmental threats that we are facing can thus be severely delayed or stymied by trade rules that view regulations and standards as impediments to trade.

13. FTAs go beyond WTO provisions on regulation and standards by including so-called 'regulatory cooperation' chapters. To date the chapters are relatively tentative but the direction of travel is towards a process by which countries agree to consult with trade partners on any proposed new regulation that is considered to have an impact on trade. This could mean that environmental or climate regulations have to pass an additional hurdle before implementation.

14. Trade rules also have implications for policies which address the climate emissions and environmental impact of agriculture and deforestation. Current trade rules tend to benefit large-scale industrial agriculture and can drive deforestation, both of which contribute significantly to climate change. For example, the WTO's Agreement On Agriculture places significant restrictions on domestic support to farmers whilst also committing countries to liberalise their agricultural sectors through lower tariffs.<sup>18</sup> Small scale farmers using less carbon intensive production methods can lose vital domestic support which is not compensated for by tariff reductions because they don't operate on international markets, often driving them out of business. As noted above, trade liberalisation can increase trade in more carbon-intensive products, in terms of agriculture this could include increased trade in products such as beef, soy and palm oil which are driving deforestation.

· **How effectively do trade and investment agreements address environmental issues, including climate change?**

15. Trade agreements are currently designed with very little meaningful reference to climate and environmental commitments. References to environmental commitments are generally contained in the non-binding preamble. In some treaties, such as the CPTPP, reference is made only to a very limited number of environmental agreements. The central, binding commitments of trade agreements, such as those on goods, services, investment and intellectual property, are not bound by environmental and climate commitments. Many countries require environmental assessments of trade agreements that they enter into. However to date these impact assessments have had very little bearing on the negotiations themselves: in the case of the TTIP negotiations, the assessment was to be delivered only

---

<sup>15</sup> WTO Agreement on Technical Barriers to Trade, article III

<sup>16</sup> WTO Agreement on Technical Barriers to Trade, article IIv

<sup>17</sup> <https://www.reuters.com/article/us-usa-mexico-wto/mexico-loses-10-year-wto-battle-over-u-s-tuna-labeling-idxUSKBN1OD233>

<sup>18</sup> ActionAid (no date) *The WTO Agreement on Agriculture*

[https://www.actionaid.org.uk/sites/default/files/doc\\_lib/51\\_1\\_agreement\\_agriculture.pdf](https://www.actionaid.org.uk/sites/default/files/doc_lib/51_1_agreement_agriculture.pdf)

once the negotiations had finished, giving no opportunity for it to shape the content of the proposed deal. Assessments also tend to focus on national rather than cross-border or global pollutants - this means in particular that transport emissions are not accounted for.

16. A number of trade agreements contain environmental chapters. These chapters generally recognise each Party's environmental commitments and reiterate the potential to use exceptions provisions for environmental reasons. However the wording in these clauses is non-binding and the language used is limited to that of 'best endeavour'. For example, CETA's environmental chapter states that "Each Party shall **seek to ensure** that those laws and policies provide for and encourage high levels of environmental protection, and shall **strive to continue to improve** such laws and policies and their underlying levels of protection" (emphasis added).<sup>19</sup> The chapters often have no enforceability (as is the case with EU chapters) or are very rarely used in practice (as is the case with US chapters which do have enforceability mechanisms). What this means in practice is that there is nothing to discipline trade provisions to ensure that they are in line with environmental and climate goals.

· **How does and should the Government approach issues of the environment and climate change in its trade and investment policy, and its work on export promotion?**

17. The UK's 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, the polluter pays 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 - as outlined above, the system is simply not designed to do this.

18. Ex-ante and ex-post impact assessments that shape the trade negotiations must be undertaken, with the possibility of halting negotiations or withdrawing from deals where negative impacts are found. Assessments should include a review of both parties' ratification and implementation of international environmental agreements. Benchmarking of existing domestic standards, regulation and best practice should be undertaken. There should also be a dialogue on future cooperation to ensure that when one or more partners are not achieving the highest possible level of ambition there are domestic and bilateral plans in place to support further action. Where prospective trading partners are disproportionately impacted by climate change or poverty, the environmental audit should also include the development of a funded cooperation agreement designed to support mitigation and adaptation.

19. Meaningful and enforceable commitments to non-regression should be included in new FTAs, to prohibit any weakening of environmental laws. In addition, parties to FTAs must be guaranteed the freedom to develop domestic law and policy which enhances environmental protection without hindrance, even if they have the effect of restricting international trade.

---

<sup>19</sup> CETA, chapter XXIV, article iii [https://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/index\\_en.htm](https://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/index_en.htm)

Environmental commitments must be enforceable. There are various mechanisms that could serve this purpose, including, for example, a provision that would grant direct effect to the provisions of an agreement including the environmental chapter. It would be important to ensure that the environmental provisions are as effective as possible through accessible and affordable judicial supervision and an effective role for civil society in monitoring the implementation of the commitments.<sup>20</sup>

20. Investment protection provisions should be excluded from future trade agreements and the UK should withdraw from the Energy Charter Treaty and cancel its existing Bilateral Investment Treaties. Cooperation on regulation and standards should also be done in fora separate to those set up by trade agreements and any provisions on intellectual property should favour the sharing of technology, rather than setting ever-longer patent terms.

21. Businesses are the primary operators within the international trade system and as such their behaviours have significant implications for ensuring trade supports climate and environmental goals. Trade agreements need to establish a means for communities to challenge companies if they are in breach of environmental agreements - the Binding Treaty on Business and Human Rights is a good example of the kind of thing that might be needed. Treaties could also offer incentives to businesses - for example, a 'business passport' could be introduced to allow businesses to access more trade benefits (such as lower tariffs or the ability to bid for government procurement contracts) the more they are able to demonstrate positive environmental and social impacts. In effect, the 'trusted trader' scheme would be improved to become an 'ethical trader' scheme.

**· How can the imposition or reduction of tariffs on trade in goods be used to pursue environmental aims?**

22. There are a number of difficulties in using tariffs or a 'Border Tax Adjustment' to address climate and environmental concerns. The first is a question of justice. The distribution of global supply chains has been driven by a number of historical and international political factors, including colonialism, World Bank and IMF policies and a process of globalisation that has seen industries seek to relocate to countries with relatively cheaper costs of production, often related to lower environmental standards. Differentiated tariffs based on carbon emissions alone would be a blunt instrument, potentially disadvantaging the countries that are least able to introduce more environmentally efficient production methods. Given that the UK has effectively offshored its carbon emissions, there is also an inherent unfairness in raising barriers to goods from those countries, particularly when this entails generating additional revenue for the UK in the form of trade taxes.

23. Furthermore, whether or not changes in tariffs impact on trade in particular goods depends to a significant extent on the proportion that tariffs constitute of the overall cost of production and marketing. It is likely that high-value, high emissions industries like coal, oil, gas, steel and cement would be slow to respond to a border tax, in terms of lowering carbon emissions. Complex supply chains could mean either that the tax is not levied on the most carbon-intensive part of the process or that companies at the top of the supply chain push

---

<sup>20</sup> <https://europeanlawblog.eu/2017/02/09/silver-linings-what-to-expect-from-environmental-chapters-in-the-eus-free-trade-agreements/>

the cost of the tax down the chain onto suppliers and workers who already experience significant precarity.

24. The only real rationale for introducing a border tax seems to be to ensure a level playing field with producers who are bound by a domestic carbon tax. This seems more a common-sense measure to ensure a domestic tax is not rendered ineffective, than a tool that is likely to generate significant impacts in terms of lowering emissions from imports.

For further information please contact: Ruth Bergan, Senior Advisor, [ruth@tjm.org.uk](mailto:ruth@tjm.org.uk)

Trade Justice Movement, 66 Offley Road, London SW9 0LS

Tel: +44 (0)207 440 4931