TRADE JUSTICE MOVEMENT

Queen Mary University of London
Humanities and Social Sciences

How trade can support climate action: a 2021 agenda for the UK

Policy Briefing

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Introduction

A wave of energy around tackling the climate emergency is building ahead of the Conference of the Parties (COP) 26 Summit to be held in Glasgow in November 2021.

In June the G7 promised "a green revolution that creates jobs, cuts emissions and seeks to limit the rise in global temperatures to 1.5 degrees."[1]

US President Joe Biden opened the April Leaders Summit on Climate saying "The signs are unmistakable, the science is undeniable, and the cost of inaction keeps mounting. The US isn't waiting, we are resolving to take action."[2]

Echoing this sentiment, UK Prime Minister, Boris Johnson said "The 2020s will be remembered either as the decade in which world leaders united to turn the tide, or as a failure." He called on leaders to come to the COP26 Summit "armed with ambitious targets and the plans required to reach them."[3]

In November 2020 Johnson announced the UK's "Ten Point Plan for a Green Industrial Revolution" which clearly shows that action to tackle climate change is also seen as an opportunity to deliver the government's levelling up agenda and improve lives through the creation of green jobs, clean air, warm homes and well-functioning transport systems.

But practical progress is too slow. According to the UK's independent expert Committee on Climate Change report to parliament in 2020, the steps taken by the UK government to date "do not yet measure up to meet the size of the Net Zero challenge and we are not making adequate progress in preparing for climate change."[4]

The profound nature of what needs to change – how we live, work, travel, heat our homes, grow and consume food – demands unprecedented focus and coherence from governments. It in particular demands fresh thinking about the intersection between trade and climate change.

At the moment we are not getting the balance right. Some measures designed to tackle climate change can be challenged under World Trade Organisation (WTO) rules or through the trade deals with countries such as Australia, New Zealand, the United States and the Asia/Pacific grouping that the UK is now rushing to negotiate. And with some newer measures the jury is still out on whether they will be permissible under trade rules.[5] This lack of clarity can dissuade governments from taking action, particularly smaller developing countries who cannot afford expensive and time consuming legal challenges.

At home, 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. It doesn't help that there is no published trade strategy to provide focus and guide Ministerial decisions.

This briefing outlines how three important pillars of the UK's approach to tackling climate change – **decarbonising the economy**, creating **green jobs and industries** and delivering more **sustainable food and farming systems** could either be helped or hindered by trade rules. It makes practical recommendations for how the UK can:

1. Develop a more coherent domestic approach, deliberately designing trade policy to support climate ambitions.

2. Use the opportunities of COP 26 and the WTO Ministerial Summit in 2021 to lead international efforts to bring trade rules into the service of climate action.

The global response to the Covid 19 pandemic demonstrates that in times of real emergency, governments can quickly throw off old ways of thinking and rules that once seemed sacrosanct can be gone in the blink of an eye. Governments around the world are committed to Build Back Better and a fresh approach to trade must be central to this.

Six achievable recommendations

As host of COP 26 and a country newly developing its independent trade policy, the UK is in a unique position to bring attention to how the international trade regime can be shaped to support climate action.

1. A logical first step is for the Committee on Climate Change to **conduct an audit of the UK's trade commitments** and their compatibility with climate obligations.

2. To support more coherent policy making, the UK government should **develop and publish a trade strategy**, which must set out how its approach to new trade agreements and the WTO interface with climate commitments.

3. At COP 26 the UK government should work with other like-minded countries to **affirm the need for action to shape international trade rules** in support of climate action.

4. At the WTO the UK government should **spearhead proposals for the reform of the Subsidies Agreement** along with clarifying existing climate flexibility.

5. The UK government should **join the Agreement on Climate Change, Trade and Sustainability Initiative** and work to strengthen and extend it.

6. The UK government should **exit the Energy Charter Treaty, terminate Bilateral Investment Treaties and review all Free Trade Agreements (FTAs)** to remove Investor-to-State Dispute (ISDS) clauses.

How trade rules work

International trade is primarily governed through the WTO and the trade and investment agreements that countries negotiate bilaterally.

The WTO's principles are set out in its founding agreement, the General Agreement on Tariffs and Trade (GATT) which all 164 members sign up to. There are two underlying principles: that barriers to trade must be gradually removed and that all countries should be treated equally. GATT Article XX sets out exemptions from these principles including "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". Countries using these exemptions must do so in a way that is not seen as "arbitrary or unjustifiable discrimination between countries where the same conditions prevail" or a "disguised restriction on international trade."[6]

Rules covering trade related issues such as subsidies, non-tariff barriers, services trade, agriculture and intellectual property are covered through a series of specific WTO agreements. Normally WTO rules apply to all members, but in recent years it has been difficult to achieve consensus so the trend has been towards more "plurilateral agreements" that only apply to those countries who choose to sign up.

Free Trade Agreements (FTAs) are either government-to-government or regional. They tend to follow a predictable pattern of tariff liberalisation plus chapters setting out commitments on areas including services, 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.

This whole architecture applies to government measures only, for example the tariffs they set, the taxes they charge, the regulations they impose and the support programmes they deliver. The rules do not apply directly to companies. One slight exception to this is a process called Investor-to-State Dispute Settlement (ISDS). This mechanism, which can be included in Bilateral Investment Treaties (BITs) and FTAs, enables investors to sue governments through a tribunal process.

Both the WTO and FTAs enforce their rules through dispute settlement processes. At the WTO if a country believes another country has broken the rules, it can bring a case to the Dispute Settlement Body which will set up a panel, take evidence and make a ruling, which can then be appealed. In some instances WTO members can apply countervailing measures, such as extra duties, prior to any dispute finding. In practice, most disputes are resolved among WTO members before going to a formal panel. In FTAs disputes are normally resolved by a panel set up by the parties.

Trade rules and climate change

There are a number of ways that trade interacts with climate change:

- Freer trade can lead to increased emissions through increases in overall production, production in highly-emitting sectors, or transport. It can also lead to greater availability of the raw materials and goods countries need to tackle climate change.
- 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.
- Cooperative trade action can help end destructive policies such as overfishing or deforestation.
- Measures to tackle climate change can have unintended consequences on developing country trade and supply chains, making it harder for them to export or access climate-friendly technology.

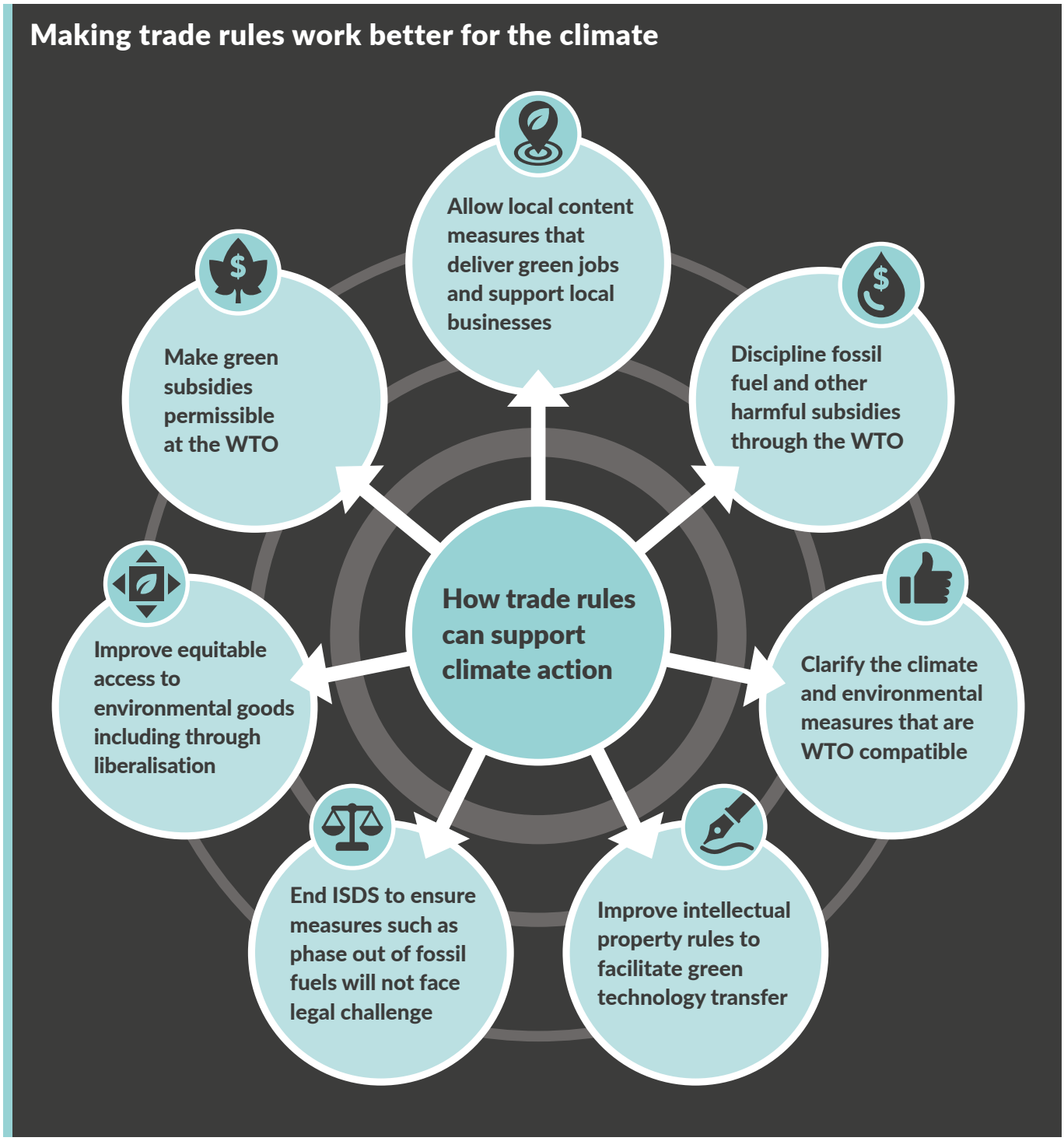
Measures to tackle climate change include both border measures which we commonly associate with trade policy, such as tariffs or restrictions on certain types of products, as well as "behind the border" measures such as regulations, subsidies and green procurement. Both types of measures can be at odds 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 developing countries reluctant to take a possibly expensive risk. US Trade Representative Katherine Tai commented:

> **"This is part of the reason why, today, the WTO is considered by many as an institution that not only has no solutions to offer on environmental concerns, but is part of the problem."**[7]
>
> Katherine Tai
> US Trade Representative

However as global momentum to tackle climate change and protect the environment builds, there has been some positive progress including a number of successful uses of WTO exemptions and dispute rulings that have brought greater clarity about what is permissible.[8]

There is now a need for bold action to lock-in these flexibilities while pushing for a clearer steer about what is permissible so all countries can feel empowered to act and for countries to work together to change those rules which are problematic.


Making trade rules work better for the climate
How trade rules can support climate action
Allow local content measures that deliver green jobs and support local businesses
Discipline fossil fuel and other harmful subsidies through the WTO
Clarify the climate and environmental measures that are WTO compatible
Improve intellectual property rules to facilitate green technology transfer
End ISDS to ensure measures such as phase out of fossil fuels will not face legal challenge
Improve equitable access to environmental goods including through liberalisation
Make green subsidies permissible at the WTO

Pillar 1:
Decarbonising the economy

Reducing carbon emissions is fundamental to tackling climate change and whilst this requires economy-wide action, decarbonising the energy we use in industry, in our homes and for transportation, is central. The Intergovernmental Panel on Climate Change (IPCCC) identifies a transition away from fossil fuel use and towards renewable energy as one of the most important actions that governments need to take.[9]

UK commitments

The UK has made a series of commitments towards decarbonising the economy:

- Coal power to be phased out by 2024
- Offshore wind to be quadrupled by 2030
- First town heated by hydrogen by 2030
- End the sale of petrol and diesel cars by 2030

Some of the policies needed to deliver these targets have faced trade challenges.

Greening homes and buildings

Direct greenhouse gas emissions from buildings in 2019 were 17 per cent of the UK total and three quarters of this was from homes. According to the Committee on Climate Change, buildings emissions have been flat or rising for the last 5 years and in 2018 less than five percent of energy for heating homes and buildings was low carbon. The UK government has prioritised action on buildings including a Future Homes Standard which will require new homes to be "zero carbon ready"; finance initiatives to improve the energy efficiency of around 2.8 million homes; the extension of a renewable heat incentive and plans to grow the UK heat pump industry.

The role played by trade and investment rules

Renewable energy subsidies

The UK is clearly committed to developing and investing in renewables, but this is one of the areas that has been the most controversial in terms of trade rules. As of 2020 there have been 15 WTO disputes relating to renewable energy programmes.[10]

- The US and the EU have imposed anti-dumping duties on Chinese solar panels, claiming that state support enabled them to export their products at prices below the cost of production.
- Canada's Feed in Tariff scheme was challenged by the EU in 2013 on various grounds, including the fact that it was a prohibited subsidy.
- The US and the EU have started WTO proceedings against wind towers from China, India, Malaysia and Spain claiming that countries' support for these sectors amounts to dumping.

The issue centres around how governments subsidise the renewable sector and how measures are designed. The WTO's Subsidies and Countervailing Measures Agreement (SCMA) allows countries to bring disputes or adopt "countervailing measures" (such as a tariff) if they feel a subsidised product from another country has affected their domestic industry or created an unfair advantage for domestic over foreign owned firms. Until 2000 some environmental subsidies were effectively exempted from these rules (so-called "green light subsidies") however that exemption was not renewed.[11]

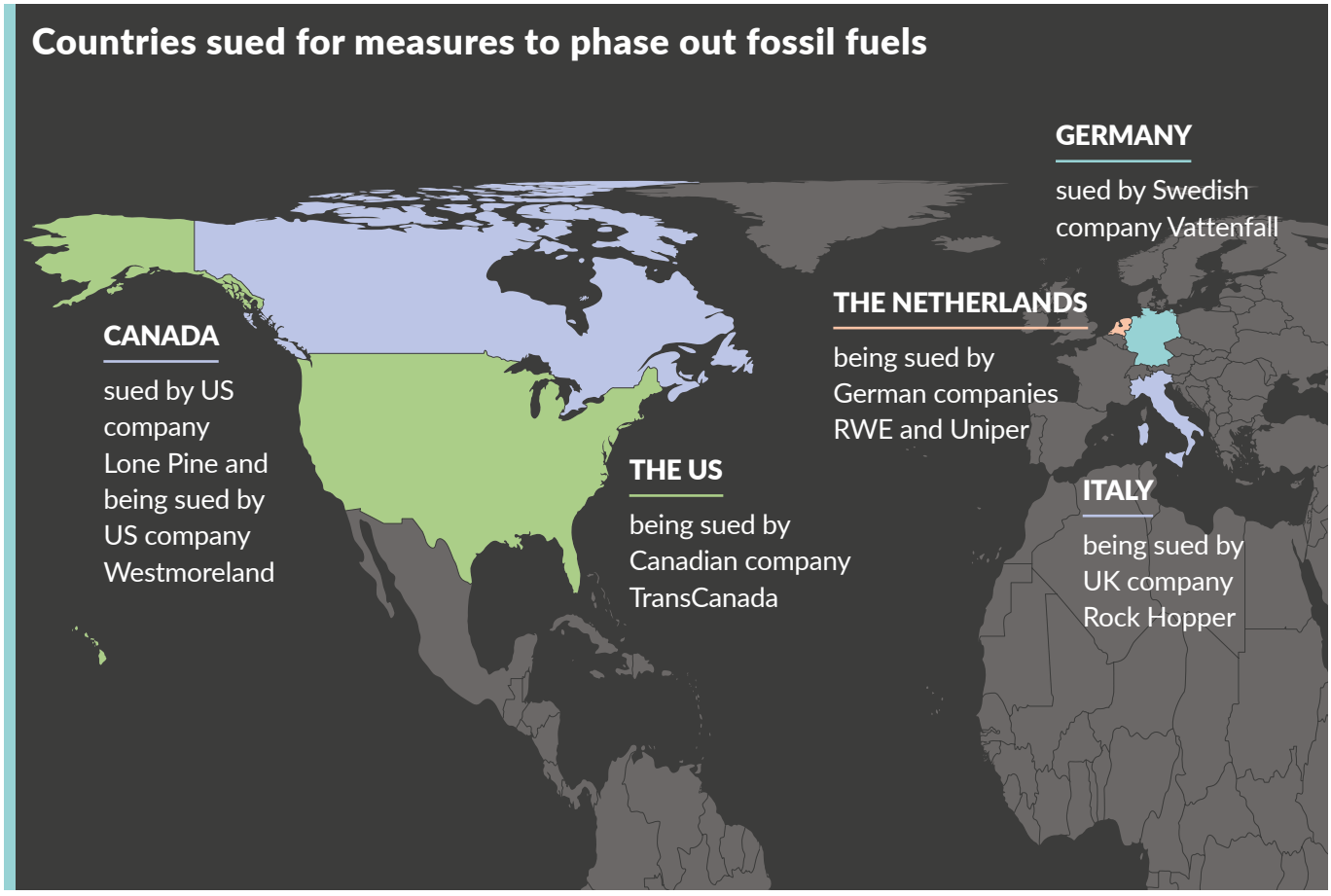
There is a growing consensus that the SCMA needs to be revisited to allow more policy space for government's to support renewable energy programmes.

Phasing out fossil fuels

The UK is a signatory to the Energy Charter Treaty, has over 96 Bilateral Investment Treaties in force and at the time of writing has just announced the start of formal negotiations to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). All of these include a mechanism called Investor-to-State Dispute Settlement (ISDS) which enables investors to sue a government if it brings in regulations that they feel negatively affect the profitability of their investment. This can be any policy measure from plain cigarette packaging and moratoriums on mining, to wage legislation. The country then has to defend its policy. Irrespective of whether it prevails, the process is extremely costly – the average cost of defending a case is $8 million.[12] In reality this means that governments think twice about proceeding with regulations because they fear an ISDS challenge, sometimes referred to as "policy chill".

There have been a large number of ISDS cases in the energy sector, including many under the Energy Charter Treaty, particularly as governments around the world start to phase out fossil fuels:

- Swedish company Vattenfall sued **Germany** for trying to regulate the amount of river pollution caused by a coal-fired power station.
- US company Lone Pine sued **Canada** for its ban on fracking under the St Lawrence River.
- UK company Rock Hopper is suing **Italy** for its ban on oil and gas exploration within twelve miles of their coastline.
- US company Westmoreland is suing **Canada** for its plans to phase out coal fired power stations.
- German companies RWE and Uniper are suing **The Netherlands** for phasing out coal-fired power stations.
- Canadian energy company TransCanada is suing **the US** for blocking the development of the Keystone XL tar sands pipeline.[13]



Regulations and standards

Governments use a variety of regulations as part of their decarbonisation programmes, for example measures to increase the energy efficiency of products. But under the WTO Technical Barriers to Trade Agreement (TBT), governments must show that such regulations do not "create unnecessary obstacles to trade."[14]

- In 2012 Canada threatened to challenge the EU's Fuel Quality Directive at the WTO. The Directive was designed to support the decarbonisation of fuel in the EU and assigned different sources of fuel different greenhouse gas intensity values, including for tar sands and oil shale – essentially ranking them as highly polluting fuels. In 2014 the EU backed down and amended the Directive.[15]
- In January 2021 Malaysia requested consultations with the EU at the WTO over its policy to limit imports of palm oil biofuels on the basis that the product contains a high risk of Indirect Land Use Change, claiming that this constituted a Technical Barrier to Trade.[16] Indonesia had raised a similar dispute the previous year.

Carbon pricing and border measures

On 1 January 2021 the UK introduced its own Emissions Trading Scheme (ETS) "to increase the climate ambition of the UK's carbon pricing policy, whilst also protecting the competitiveness of UK businesses."[17]

While the ETS itself is not a problem as far as trade rules go, the possible complementary policy of a Carbon Border Adjustment Mechanism (CBAM) is more controversial. A CBAM is a tax at the border based on the carbon content of a product and is designed to enable a country to increase its carbon price without their industries being competitively disadvantaged by products from countries with lower environmental standards. Both the EU and US are actively considering introducing CBAMs and this will be an important topic at COP26.

CBAMs 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 would need to be given to ensuring that schemes are designed so they do not disadvantage developing country producers. In terms of compatibility with WTO rules CBAMs are an untested area. A great deal will depend on how a scheme is designed and particularly whether the additional cost of exporting disadvantages foreign companies over domestic producers.[18]

Reigning in fossil fuel subsidies

Subsidies to the fossil fuel industry are estimated at anywhere between $370 billion and $5.3 trillion globally compared to just US $120 billion for renewables.[19] 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.

This area is plagued by problems of definition. For example the UK government claims to have no fossil fuel subsidies at all as it defines them as government action which "lowers the pretax price to consumers to below international market levels" so it effectively excludes tax breaks for the oil industry.[20] As currently designed, WTO rules "prohibit" subsidies if they promote exports or if they favour domestic over foreign companies; subsidies are "actionable" (meaning they can be challenged) if they are limited to a specific sector or group of companies. This means that subsidy schemes with a more generalised effect, for example on pricing for fuel prices for consumers, are out of scope.[21]

It is increasingly recognised that WTO rules in this area need attention and that more countries could exploit the existing scope to bring challenges. A group of WTO members (Costa Rica, Fiji, Iceland, New Zealand and Norway) have come together to launch an initiative – The Agreement on Climate Change, Trade and Sustainability – aimed at improving WTO rules so that fossil fuel subsidies can be effectively disciplined, as well as supporting other climate and sustainability measures. It is understood that the UK is actively considering joining this initiative.

Pillar 2:
Delivering green jobs and industrialisation

Around the world governments are promising climate action alongside quality new green jobs and the birth of new clean industries that will boost employment and set economies on a better future path. These "green new deal" promises from the United States to the European Union are popular with voters.[22]

UK commitments

The UK government has committed to making the UK a world-leader in green industry and has set up a Green Jobs Taskforce to support the drive to create two million green jobs by 2030.[23] In common with other governments, most climate pledges come with the promise of green jobs and links to local supply chains.

- The PM's Ten Point Plan for a Green Industrial Revolution promises to support up to 250,000 highly skilled green British jobs.
- The expansion of offshore wind will support 60,000 jobs.
- Advancing nuclear as a clean energy source could support 10,000 jobs.
- There are plans to support car manufacturing bases in the West Midlands, North East and North Wales to accelerate the transition to electric vehicles.

> **"Our green industrial revolution will be powered by the wind turbines of Scotland and the North East, propelled by the electric vehicles made in the Midlands and advanced by the latest technologies developed in Wales, so we can look ahead to a more prosperous, greener future."**[24]
>
> Prime Minister Johnson

But so far there seems to have been little discussion about how this green industrial policy – with its more interventionist approach – sits with the UK's trade ambitions and commitments.

The role played by trade and investment rules

Green jobs and industrial programmes

Policies aimed at linking action on climate with the creation of local jobs or links to local industry may seem logical, but "local content requirements" are specifically prohibited within some Bilateral Investment Treaties and the WTO Trade Related Investment Measures Agreement (TRIMS) on the grounds that they discriminate against foreign (or non-local) businesses. Factors such as the environmental benefits of shorter supply chains are not considered.

Many local content schemes around the world have been challenged at the WTO:

- Mexico and the EU recently questioned Argentina's policy which grants advantages to car manufacturing companies that favour local auto parts. They argued it is trade-distorting and incompatible with the TRIMs Agreement and requested its withdrawal.[25]
- The EU and Japan have challenged Brazil's use of tax policy to favour domestically produced inputs for the car sector.
- India challenged certain US states regarding domestic content requirements in the renewable energy sector.
- The EU challenged Canada's feed-in tariff programme for renewable energy because it favoured local suppliers.
- The US challenged India regarding local content requirements for solar cells and solar modules, drawing on the conclusions from the Canada-EU feed in tariffs dispute.[26]

Green procurement

Public procurement represents on average 15 percent of GDP for OECD countries making it a critical tool for supporting a greener economy.[27] The EU, Canada and other countries have developed sustainable procurement programmes which encourage procurers to look at a range of factors including the environmental and social costs of a good when contracting.

The WTO Government Procurement Agreement and some FTAs such as the EU-Canada Comprehensive Economic and Trade Agreement (CETA) explicitly allow environmental and other sustainability criteria such as women-owned or SMEs to be used when awarding procurement contracts. But when these programmes cross the line into supporting local businesses over foreign ones they are vulnerable to challenge. The rules and countries' obligations across their WTO and FTA commitments are often so complex that procurers do not feel confident to use the flexibilties that exist.[28]

Green technology transfer

Developing and ensuring wide availability of new clean technologies is a critical part of the response to climate change, whether it is improving batteries for electric cars, developing hydrogen systems for heating homes or carbon capture technology. It is also important for a just transition that developing countries have access to new technologies and are able to develop their own. This is important for job creation but also to ensure technology is adapted to local circumstances. It is for this reason that technology transfer is a treaty commitment under United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol.[29]

As we have seen with Covid vaccines, intellectual property rules at the WTO and intellectual property chapters in FTAs can make it more difficult for countries in the global South to be able to use, adapt and build on technological innovations.[30] At a minimum the rules enforce a 20 year duration for patents and 10 years for industrial design and special permission is required to go outside of this framework. There have been some moves to reduce tariffs on green goods but wealthy countries have tended to resist tackling the impact of global intellectual property rules instead leaving transfer of technology to the market and company decisions.[31] It is vital that countries revisit the balance between encouraging innovation and ensuring equitable access to green technologies and look at how the intellectual property rules at the WTO can better facilitate this.

Liberalisation of green goods

Making environmental goods such as solar cells, smart meters or electric vehicles more affordable is another important aspect in the fight against climate change. One mechanism to do this is for countries to eliminate tariffs on such goods. The UK has shown leadership on this issue, using the opportunity of setting its first independent tariff schedule to liberalise 200 new environmental goods (although disappointingly bicycles and hybrid electric vehicles – sectors where the UK is looking to develop – were excluded).[32]

The Environmental Goods Agreement (EGA) was an attempt by some members of the WTO to make progress on this issue, but it stalled in 2016. Many developing countries were sceptical of this initiative because the burden of liberalisation would fall largely on them as tariffs on such goods amongst richer countries are already low. They were also concerned that the very broad list of products proposed, signalled an attempt by developed countries to improve their access for products in which they were already highly competitive. Developing 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.[33]

The new Director General of the WTO, Ngozi Okonjo-Iweala has mentioned that working on an improved version of the Environmental Goods Agreement would be an upcoming priority.[34] There are clearly some important lessons to be learned to ensure a revived initiative can achieve buy-in from the widest possible group of countries.

Pillar 3:
Sustainable food and agriculture

Agriculture and food production have important impacts on climate change and biodiversity. Food imports often come with a high carbon footprint and industrial agriculture is a significant source of greenhouse gas emissions as well as an important global polluter. According to the IPCC, between 2007 and 2016 agriculture, forestry and other land use activities accounted for around 13% of global carbon dioxide, 44% of methane and 82% of nitrous oxide emissions, representing 23% of total net manmade greenhouse gas emissions.[35]

UK commitments

The UK government has made a number of high profile commitments around sustainable agriculture, nature and biodiversity including:

- A legislated target for nature recovery.
- 30 per cent of land to be protected by 2030.
- An Environmental Land Management scheme to incentivise sustainable farming practices, create habitats for nature recovery and establish new woodland to help tackle climate change.
- Investing in improving animal health and welfare.
- A new Sustainable Farming Incentive.[36]

The role played by trade and investment rules

Supporting sustainable agriculture

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. A number of these areas have been controversial, particularly at the WTO, where failure to agree on agriculture was a central factor in the derailment of the Doha round of negotiations and in particular to developing countries' loss of faith in the process. But agriculture is also very often a sticking point in FTA negotiations as well:

- 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. At the Nairobi WTO Ministerial conference in 2015 agreement was reached to end agricultural export subsidies entirely. This was welcome progress but there was a failure to agree on one of the developing countries' key demands for a Special Safeguard Mechanism that would allow them to raise tariffs to protect their farmers in certain circumstances.
- Sustainable farming practices can be supported when farmers can control, save and reuse seeds and when they plant varieties that require minimal inputs and irrigation. Seed companies however are increasingly concentrated globally and have an interest in ensuring that farmers have to repeat-purchase seeds and other inputs from them. The position of the seed companies is supported by stringent intellectual property rules (called UPOV 91) that are often a condition for signing FTAs. The US, EU and Japan are increasingly insisting on UPOV 91 in their FTAs. This extends the intellectual property rights that seed companies have, making it illegal for farmers to save, share or re-use seeds.
- 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 (see box on NAFTA).

- As the UK begins to negotiate new FTAs, if it lowers tariffs on agricultural products, this will pit UK farmers – including small scale family farms – against farmers from countries which may have lower standards, higher carbon footprints and more damaging practices for biodiversity (e.g. large scale monocrops, higher petro-chemical use, and deforestation).

The impact of NAFTA on Mexico's environment and small farmers

The North America Free Trade Agreement (NAFTA) was signed by the United States, Mexico and Canada in 1995. Under the terms of this FTA Mexico had to eliminate tariffs on corn and other commodities. It also had to revoke programmes to support small farmers, but US subsidies were untouched. This led to a massive influx of cheap, environmentally damaging US corn, significant loss of biodiversity in Mexico and between 1991 and 2007 the loss of 2 million Mexican livelihoods.[37]

Food and farming standards

FTA negotiations contain chapters that cover food and farming regulations. Although tariffs on some agricultural products remain high, it is broadly recognised that there is more to gain by tackling non-tariff barriers to trade, hence negotiations tend to focus on whether trade partners will recognise each others' standards or grant "equivalence".

We can see this playing out in the UK-Australia FTA where the UK ban on growth hormones in cattle puts UK farmers in a disadvantageous position vis-à-vis their Australian counterparts. The same issues have been central to preparations for negotiations with the US and will be significant if the UK enters talks with the Mercosur group of countries. The EU-Mercosur FTA has already proven controversial because Mercosur includes a number of countries with a much more industrialised and unsustainable model of agriculture, such as Brazil where the razing of rainforest, universally recognised as crucial to tackling climate change, makes way for cattle ranches and large scale plantations.

Environmental regulations

As with food standards, both the WTO and FTAs cover how countries are allowed to regulate trade in order to meet environmental objectives. There have been a number of important cases where countries' policies have been challenged:

- In 2009 Mexico challenged the United States dolphin-safe product labelling under the WTO Technical Barriers to Trade Agreement (TBT), arguing that this disadvantaged Mexican tuna products. Ten years later after a number of rulings, retaliatory measures, changes in US regulations and appeals the WTO finally ruled that the US labelling scheme was compliant with WTO rules.[38]
- India, Malaysia and others challenged a United States import ban on shrimp caught without the use of a Turtle Excluder Device. After five years the WTO Appellate Body finally confirmed that WTO members "can and should" adopt effective measures to protect the environment, including animal or plant life and health, endangered species and exhaustible resources.
- The United States challenged the EU's ban on beef products treated with growth hormones, citing a range of WTO agreements. The WTO Dispute Settlement Body ruled against the EU and the parties settled the matter by the EU offering the US a duty free quota for hormone-free beef.
- Canada and Norway challenged the European Union's decision to ban the sale of seal products in the EU.[39] The case took five years to conclude and finally found that the EU's measures were justified under the public morals exemption of Article XX which was hailed as a victory for animal rights campaigners.[40]

There are several important precedents contained within these WTO rulings. The turtle and seal cases 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. It is important that countries who are able to use these exemptions in order to lock in that progress. However the continuing risk of a lengthy and expensive dispute case undoubtedly dissuades some countries from

taking action. Greater clarity would empower more countries to use such provisions.[41]

Reigning in damaging subsidies

As with fossil fuels, trade rules do offer an opportunity to bring subsidies which promote damaging practices under control. According to analysis conducted by the International Food Policy Research Institute (IFPRI) for the Food and Land Use Coalition, just 1% of the $700bn (£560bn) a year given globally to farmers is used to benefit the environment. Much of the total instead promotes high-emission cattle production, forest destruction and pollution from the overuse of fertilisers. Eliminating harmful subsidies and re-directing programmes towards delivering environmental public goods can be a powerful tool to combat climate change. Such policies supported the remarkable "return of the forests" in Costa Rica.[42]

In a ground-breaking example of the use of trade rules for environmental purposes, WTO members have been working to secure an agreement which would eliminate subsidies for illegal, unreported and unregulated fishing and to prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing. The negotiation is also unique in that the development dimension was integrated from the outset, rather than tagged-on at the end. However, through the course of the last 15 years of negotiation, the ambition of the agreement has been rolled back by the political-economic interests of powerful developed and developing fishing nations.[43] Although talks were delayed due to the Covid epidemic, there is hope for an agreement by the end of 2021. If agreement is reached it could set a precedent for the WTO to take a more active role in disciplining other unsustainable subsidies.

Conclusion

It is clear that action needs to be taken to make sure that trade rules support, rather than hinder action on climate change.

Some rules need to change to allow countries the policy space they need to tackle climate change in the best way given their national context. In other areas there needs to be greater clarity about what climate and environmental measures are allowed and how they can be best designed. And countries in a position to do so need to make bold policy choices, to lock-in precedents and make the best use of the existing flexibilities.

2021 with the COP26 Summit and WTO Ministerial will be a pivotal year and the UK has a unique opportunity to provide the leadership needed to put trade rules in the service of climate action.

Policy aim	Policy tool	Trade connection
Phasing out fossil fuels	Banning coal power stations, blocking oil and gas exploration or pipeline developments	Could provoke an ISDS case
	Eliminating fossil fuel subsidies	Clearer WTO rules needed
Shift to renewables	Various subsidies and incentives	Could be challenged under the WTO subsidies agreement
Delivering green jobs and supporting local supply chains	Local content requirements	Prohibited at the WTO
Developing green industries	Technology transfer to countries in the global South	Made more difficult by intellectual property rules at the WTO and in FTAs
Maintaining environmental regulations and food standards	Domestic regulations e.g. on pesticide use or production techniques	May come under pressure in FTA negotiations Greater clarity on exemptions and WTO compatible design needed
Supporting sustainable agriculture	Protecting sustainable/family farming through tariffs	Will come under pressure in FTA negotiations
	Promotion of seed re-use and seed banks	Outlawed by UPOV 91 which is contained in many newer FTAs

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The Trade Justice Movement is a network of nearly sixty organisations, including trade unions, environmental groups and justice campaigns, who push for trade policy that works for people and planet.

For more information please see
www.tjm.org.uk

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