

A Climate Retrofit for UK Trade



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Executive Summary

The pandemic has exacerbated existing gender¹, class² and racial³ inequities and sent an unprecedented shockwave through the global economy with devastating consequences for levels of trade. But prior to this crisis, international trade faced a multiplicity of problems against a backdrop of sluggish recovery in the aftermath of the global financial crisis and growing concerns about the distributional consequences of global value chains.⁴ As states attempt to contend with the immediate health challenges from the spread of the virus and the economic and social damage from the resulting crisis, the graver emergency of climate disaster is approaching a point of no return, exacerbated by an unbalanced trade system that prioritises corporate interests over climate and economic justice.

The UK's departure from the European Union could be a moment to fundamentally reassess our approach to trade and investment, both for our own economy and the role we play in shaping economic opportunities in other countries. The danger remains, however, that the UK Government will exploit the uncertainty of Brexit to double-down on some of the worst aspects of the status quo: an accelerated race-to-the-bottom in support of a 'competitive' business environment; prioritising short term gains over a state-led just transition; and eroding our environmental and climate safeguards at a time when they need to be strengthened.

Having gone from being part of the world's largest single market to negotiating trade deals alone amid a global economic crisis, we may find ourselves at the receiving end of the types of extractive trade deals we have inflicted on others, damaging our already underwhelming performance in achieving a green and just transition. In this new landscape, it is imperative that we strive to build something better, not only for the interests of our own communities and workers, but also for lower and middle income countries who have been strong-armed into extractive deals for too long.

The scale of transformation required to bring about a Green New Deal for trade is immense and the political realities of this will be exceptionally challenging, particularly with regard to steering major polluters and corporate and financial hubs away from their current strategy. This report does not set out to offer quick and easy solutions to transform trade for the better in the aftermath of the pandemic, or to account for all of the complexities of the trade and climate connection; rather, it suggests a series of interrelated measures that the UK could initiate to challenge corporate power, advance climate justice, tackle inequities, and build a more reparative approach to trade:

- 1. An accelerated national commitment to net zero before 2035 that explicitly orients trade policy as a tool to deliver a rapidly decarbonised, green economy and a more equal society, both in the UK and around the world.**
- 2. Immediately seeking temporary continuity agreements for our current**

trading arrangements and pausing existing negotiations to secure the policy space for the UK and trading partners to respond to the pandemic and mount a comprehensive Green New Deal. Expanding policy space now will mean advocating for a Peace Clause for pandemic-related emergency measures and a targeted Climate Waiver for climate action.

- 3. A climate retrofit of UK trade policy in service to a Green New Deal, the principles of which should be:**
 - a. Greening our trading ambitions to accelerate climate action: ensuring any 'green trade' measures have a development and redistributive mechanism and ending fossil fuel financing**
 - b. Safeguarding and enhancing public services: protecting public services against trade liberalisation and using public procurement as a key tool to build resilient supply chains**
 - c. Reining in corporate power to advance climate justice: ending corporate lawsuits against public interest policies, supporting exploitation-free supply chains with extraterritorial access to justice, and challenging intellectual property rules which protect corporate monopolies**
 - d. Transforming multilateral trade and investment architecture for a global Green New Deal: expanding policy space for governments in the Global South to define and build their own green and just transitions, securing new sources of finance, and enabling green technology transfers**
 - e. Leading with a green industrial strategy to guide trade and investment: decarbonising our economic activities, changing consumption to reduce emissions, scaling green jobs and industries across the UK, and rooting out intersectional inequalities with stronger social protections and rights.**

An ambitious Green New Deal for trade would link our domestic agenda with transforming international economic governance in pursuit of a just global transition. This will mean a principled foundation for our own policy approach combined with unprecedented multilateral cooperation to deliver a post-carbon future of prosperity and security for all. Given the scale of the challenge and the time limitations of avoiding irreversible climate breakdown, small tweaks to a trading model accelerating climate breakdown will not suffice. A systemic crisis requires a systemic response.

Introduction

This year has been a reckoning for the interlinked injustices our world faces: climate breakdown, eye-watering inequality within and between states, racial injustice, and hollowed out state infrastructure brought to its knees by the pandemic. While the virus itself does not discriminate, our economy does, and those that are already marginalised have faced the sharp end of this crisis. So profound is its devastation that Covid-19 and the consequent deep economic crisis have triggered urgent questions around the operation of our economic system: how it is run, who benefits from it, and who does not.

As governments are forced to intervene in multiple ways to preserve livelihoods and stimulate recovery from lockdown, the prevailing mantra that the state should continue to shrink to allow market forces to drive the economy towards a more efficient future is rapidly losing credibility.⁵ This is compounded by the failure of a market-led approach to tackle the climate crisis at the scale and pace necessary to secure a safe and resilient future.^{6/7} Considering the chronic under-delivery on climate commitments both at the domestic and global level and the urgency of steering our economies towards a just transition, hard-learned lessons of the pandemic must lead to a realistic programme of action that is fit to respond to the existential threat of global climate breakdown. Governments and international financial institutions must dust off the industrial policy toolbox to build Green New Deals that rapidly decarbonise existing industries, nurture new green industries, secure a safe future for all, and create a wave of well-paid, unionised green jobs in the process.⁸

1 Having contributed to the majority of current and historic carbon emissions⁹, including through colonial exploitation and resource extraction from other countries, there is an enhanced onus on wealthy states like the UK to rapidly decarbonise and shift our role in the international community, away from one rooted in subjugation and power imbalances and towards a reparative agenda of climate and economic justice.¹⁰ Next year, the eyes of the world will turn to the UK, as it hosts the United Nations Climate Change Conference (COP26): a landmark moment with the opportunity to showcase a bold, transformative agenda.

There remains, however, an architecture of institutions and legal frameworks in place that can simultaneously fuel climate breakdown and inequality, the design and operation of which a global Green New Deal must challenge, reclaim and repurpose. The global trading system is one such example. Far from the simple rules-based-system for the exchange of goods and services as it is so often portrayed, the trade and investment regime today encroaches on policy and regulatory space in everything from public services to labour rights, and from food security to climate and environmental regulations. This power is coded in legal frameworks designed to boost and protect corporate profits that subsequently deepen global power imbalances: between wealthy and poorer countries, and between multinational corporations and the workers in their supply chains and on the frontline of climate breakdown.

Regardless of the outcome of the Brexit negotiations, we cannot allow the aftermath to be a deregulated race-to-the-bottom of social, labour, climate and environmental standards, the consequences of which would be devastating for climate change and working class people. The world has changed a great deal since 2016 when the EU Referendum took place. Fresh calls for reform at the WTO are no longer inconceivable, even to its biggest cheerleaders, and new agendas for the future of trade are emerging. Amid the growing crisis of democracy and

the rise of the far right, it is our collective duty to ensure that the trade and investment regime of the future is both aligned with and helps to deliver climate justice, economic rights, and sustainable development.

This will not be achieved by defending conventional wisdoms on trade or through hostile relationships with other regions of the world to try to discipline them to suit our interests, but with international solidarity. The climate crisis will require unprecedented resource mobilisation, cooperation and levels of trust if we are to tackle this existential threat. As the multilateral system descends further into crisis, engulfed in governance gridlock, xenophobia-driven trade tensions, entrenched inequality and looming climate collapse, now is not the time to retreat. Instead, out of the wreckage we must build a better vision of international trade that helps to deliver a climate-just world where everyone can thrive and future generations are guaranteed a stable and healthy environment.

Abbreviations

ACCTS: Agreement on Climate Change, Trade and Sustainability

ASCM: Agreement on Subsidies and Countervailing Measures

BCA: Border Carbon Adjustment

BIT: Bilateral Investment Treaty

CPTPP: Comprehensive and Progressive Agreement for Trans-Pacific Partnership

DIT: Department for International Trade

ECT: Energy Charter Treaty

EPA: Economic Partnership Agreement

EU: European Union

FTA: Free Trade Agreement

GATS: General Agreement on Trade and Services

GATT: General Agreement on Tariffs and Trade

GIB: Green Investment Bank

GPA: Government Procurement Agreement

GSP: Generalised Scheme of Preferences GVCs: Global Value Chains

IEA: International Energy Agency

ILO: International Labour Organisation

IMF: International Monetary Fund

ISDS: Investor-State Dispute Settlement

ITO: International Trade Organization

MFN: Most Favoured Nation

SDGs: Sustainable Development Goals

SDT: Special and differential treatment

SIA: Sustainability Impact Assessments

TiSA: Trade in Services Agreement

TRIMS: Trade-related Investment Measures

TRIPS: Trade-related Aspects of Intellectual Property rights

WHO: World Health Organisation

WTO: World Trade Organization

1 The global context: Barriers to a Green New Deal trading system

The scale of economic dislocation created by the pandemic sent shockwaves through the heart of the global economy with devastating consequences on levels of trade, with volumes of global merchandise trade dropping by 14.3 percent in the second quarter of 2020.¹¹

Yet even prior to this crisis, international trade faced a multiplicity of problems. Over a decade on from the watershed moment of the 2008 financial crisis, the economic recovery has failed to live up to the promises, leaving in its wake a volatile international economic landscape balancing on mounting levels of debt and gargantuan liquidity injections, a relatively unreformed financial system with a growing number of new and powerful actors beyond the reach of (still weak) regulatory oversight, and persistently wide economic gaps within and across countries. Heightened trade tensions have escalated between competing global powers, fuelled by a persistent weakness in global aggregate demand, broader dissatisfaction with multilateral governance and a rise of xenophobia-driven trade agendas. Meanwhile, the WTO has grappled with buckled judicial functions, outdated agreements, aggressive plurilateral agendas and ambiguity over its future leadership.¹²

Personal Protective Equipment and the global supply chain crisis: a closer look

The pandemic has further highlighted how the trading system is both embedded in and exacerbates global disparities. Intensely concentrated personal protective equipment (PPE) production hubs¹³ faced soaring demands, while demobilised economic activity interrupted production and prices spiked.¹⁴ The WHO Director-General Tedros Adhanom Ghebreyesus avowed that “the chronic global shortage of personal protective equipment is now one of the most urgent threats to our collective ability to save lives”.¹⁵ While wealthy nations like the UK responded to PPE shortages by scrambling to secure equipment, many low and middle income countries were locked out of the bidding war.¹⁶ Amid this rush, the UK ordered protective overalls from factories using North Korean labour working in dire conditions, surfacing the supply chain inequity where wealthy economies win while the rights of working people are at the behest of global demand dynamics.¹⁷ At the same time, a report into the UK’s Covid-19 procurement practices revealed that “companies with political connections were directed to a “high-priority” channel for UK government contracts - where bids were ten times more likely to be successful.”¹⁸

As states and international institutions contended with the immediate and deadly crisis, the even graver emergency of climate disaster has continued to approach a point of no return, demanding we learn from the inadequate collective response to the Covid-19 shock, and consider whether our trade and investment architecture is fit for the even bigger purpose of tackling climate change and environmental breakdown.

— **Looking back at the paths not taken**

Between 1947 and 1948, the United Nations Conference on Trade and Employment met in Havana, Cuba, and drew up the Havana Charter for an International Trade Organisation (ITO). The Charter recognised that a healthy trading system could only emerge from an economy that guaranteed full employment, that distributional issues on trade had to be managed internationally, and that the trade-distorting restrictive business practices of large international firms had to be reined in. It also recognised the legitimate role of industrial policy in an international trading architecture that could support industrialisation in the Global South.¹⁹

While over 50 participated in the ITO negotiations, it faced opposition in the US Congress, and 15 countries began talks in 1945 around reductions to and binding customs tariffs to boost trade liberalisation. The rejection of the Havana Charter meant that between 1948 and 1994, the General Agreement on Tariffs and Trade (GATT) governed trade rules until the establishment of the World Trade Organisation (WTO) in 1995.²⁰

This period of trade governance did not, however, go unchallenged. During the 1970s, the G77²¹, the largest intergovernmental organisation of countries in the Global South at the United Nations, put forward proposals for the New International Economic Order (NIEO) through the United National Trade and Development Conference (UNCTAD) as a revision of the international economic system that had disproportionately benefited wealthy nations. The move to establish NIEO was ultimately quashed, largely due to resistance from wealthy states.²²

It is ironic that while the Havana Charter was criticised for including aspects that encroached on national policy and regulatory sovereignty, the laws and regulations in today's trade and investment regime now stretch deep into national policy making, impacting everything from labour rights to industrial strategy and climate and environmental protections. Just five years into its existence, the WTO's 1999 Seattle Ministerial Conference saw tens of thousands of protesters mobilise to shut down the conference with marches and teach-ins to raise the salience of growing discontent with trade liberalisation's impact on labour rights and environmental and climate progress.²³

While the Seattle uprising was triggered by the ferocity of trade liberalisation under the WTO, it was an expression of broader discontent. The preceding decades were marked by seismic shifts in the international economic landscape, not least through the ascendance of transnational corporations and proliferation of flows of goods, services and money across state lines, aided by global trade governance that increasingly and disproportionately served to benefit multinational corporations, often at the expense of working people, the environment and the climate.

— **Unkept promises of the free trade paradigm**

The corpus of trade and investment policy since the founding of the WTO has accrued around the myth that trade liberalisation in and of itself is unquestionably good for development. According to this ideology, a perfect free trade system with lowered tariffs and minimal state intervention will allow each territory to organically specialise in its comparative advantage, leading to a robust circulation of goods and services around the globe and lowered costs for

consumers as a consequence. This argument, which draws selectively on a canon of classical economic scholarship, rests on dubious assumptions to make its case, not least an unwillingness to recognise the role of economic power in determining the winners and losers from trade liberalisation. In practice, this approach excludes a role for more interventionist policies in bringing about welfare improvements, and, in particular, eschews any role for industrial policy, considered a protectionist approach that undermines the principles of free trade. Indeed, the policy constraints international trade and investment rules place on governments around the world challenge the common misconception of neoliberalism as a project of deregulation. Instead, we should understand the free trade paradigm as part of the broader neoliberal strategy to harness regulation at the international level to protect capital from democracy and sovereign states.²⁴

The prosperity the free trade era was supposed to herald did not arrive for working class communities in the UK, nor did it safeguard the rights of people across the Global South, many of whom have seen a premature deindustrialisation and increasing informality as their fragile industries were moved to regions with a cheaper workforce or more pliable regulatory architecture.²⁵ Many of the poorest regions too did not see the development gains that were promised, locked into trade and investment rules that constrain policy space at the expense of workers and social protection systems. Of those states that have achieved technological upgrading and diversified economies such as South Korea, Singapore, and China, the reality is that much of their success comes from a particular historical context, with different articulations of industrial strategy and the help for some geographically strategic states of cold war financing from the US.²⁶ Crucially, the adverse consequences of trade are often unevenly felt, with vast inequalities across, for example, income and wealth²⁷, geography²⁸, gender^{29/30}, race³¹ and migration status. Indeed as Matthew Klein and Michael Pettis argue, while trade tensions are often presented simply as a clash between national interests, a focus on countries obscures the primary conflict “between bankers and owners of financial assets on one side and ordinary households on the other — between the very rich and everyone else.”³²

A key factor behind the inequality of distributional trends has been the increased bargaining power of corporations, in part due to extremely concentrated export markets. Recent evidence from firm-level data on non-oil merchandise exports demonstrates that, within the restricted circle of exporting firms, the top 1 per cent accounted for 57 per cent of country exports on average in 2014.³³ The distribution of exports is thus highly skewed in favour of the largest firms.

Contributing to the adverse impact of international trade on levels of inequality in many low-and middle-income countries is the proliferation of special processing trade regimes and export-processing zones, which, as UNCTAD notes, “subsidise the organisation of low-cost and low-productivity assembly work by the lead firms in control of [global value chains], with limited benefits for the broader economy.” The mixed outcomes of policies to promote processing trade, they stress, “often reflect the strategies of transnational corporations to capture value in GVCs that are designed on their own terms. High value-added inputs and protected intellectual property content are sold at high prices to processing exporters, and the actual production in developing countries accounts for only a tiny fraction of the value of exported final goods.”³⁴ This means better profits for corporates and limited positive impacts for workers or the economy. It is worrying to note, then, that the UK is pursuing such special processing zones in the form of freeports to turbo charge post-Brexit trade³⁵, which may lead to downward pressure on workers’ rights and standards as well as enable tax evasion and illicit financial flows.³⁶

— The trade and climate connection

Intrinsically linked to the inequality crisis is climate breakdown, the effects of which are unevenly felt: those that have contributed the least to it, both within and between countries, are disproportionately paying the price for it. Beyond a temperature increase of 1.5 celsius - the most ambitious end of the benchmark set in the Paris Agreement,³⁷ which would still lead to sustained biodiversity and livelihood loss³⁸ for many - we will witness worsening drought, floods, extreme heat and poverty for hundreds of millions of people, and the widespread collapse of ecological systems.³⁹

Broadly, there are three dimensions to the trade and climate change relationship to consider: the impact trade can have on exacerbating emissions and escalating environmental and climate damage, the ways trade and investment rules prevent or enable climate action, and the ways climate change can impact a territory's capacity to trade.

The free trade paradigm has heretofore treated our planet like an inexhaustible resource and there is evidence to link the rise in trade in the last few decades⁴⁰ to increased carbon emissions and environmental degradation.^{41/42} Since the current system of international trade governance allows capital to seek unrestricted profit-maximising locations for production - for example through cheaper labour, access to raw materials and lower standards - carbon-intensive goods have become cheaper to produce and export, driving a consumption addiction in wealthy countries. While efforts are ongoing to delink growth from climate change, for example by lowering production emissions through new environmental standards, the risk of carbon leakage - where capital moves production to fossil-fuel friendly locations - threatens to undermine progress.⁴³

On the other side of the coin, market-driven approaches to decrease consumption and encourage ethical, green consumer choices are moving too slowly to meaningfully shift demand.⁴⁴ The growth of extreme inequality has fuelled resource use and pollutant emissions, where the richest 1 percent are responsible for twice as much emissions as the poorest half of the world's population.⁴⁵ However as long as green choices come with a higher price tag, wages are repressed, circular economy technologies lack sufficient scale and there is a place for dirty production to go, it will be difficult to curtail our consumption of carbon.⁴⁶

In the UK, we have run a trade deficit every year since 1998 due to a steady decline in trade in goods, only partly offset by our services trade surplus.⁴⁷ As the UK pursued an economic strategy from the early 1980s that ran down the manufacturing share of output and employment, and thus saw manufacturing leave the UK, much of our production emissions have been exported to other countries, and accordingly, decreased. In 1997, the UK trade deficit in manufacturing goods was worth £7.5 billion; in 2018 it was worth £92.0 billion.⁴⁸ While the UK's carbon footprint has been decreasing, consumption emissions continue to offset reductions in production emissions⁴⁹ and the UK has become the biggest net importer of carbon dioxide emissions per capita in the G7 group.⁵⁰

The challenge of curbing consumption is compounded by a trade and investment architecture that bolsters corporate freedoms while restricting the policy space for states around the world to intervene at the scale necessary to keep temperature rise below 1.5C. Many large scale interventionist policies to improve standards, support green industries, and shift consumption have been interpreted by free trade evangelists as unnecessary barriers to trade which violate its principles. While trade scholars have sought to find the flexibilities within the rules-based-system for example the 'environmental' exceptions (b) and (g) of GATT Article XX, unilateral action has already led to a proliferation in climate-related disputes at the WTO.^{51/52} Further, unilateral climate action might have unintended development outcomes,

since measures are likely to disproportionately penalise workers in supply chains in the Global South, where capital has concentrated dirty production.⁵³

While the free trade era has been defined by capital's ability to move freely across borders, it has had a corollary in the decline in state sovereignty as states are locked into satisfying the demands of the investors they seek to attract and retain.⁵⁴ The primacy of corporate interests over sustainability is further legitimated by the binding mechanisms private investors can use to sue governments whose policy choices undermine profits, even if these policies are in the interests of protecting labour and the environment. As frontline communities deal with infrastructure-devastating climate disasters, their trading capacity is further hindered, leading to a triple jeopardy effect for poorer countries: locked into carbon-intensive or under-diversified supply chains, paying the price for climate damage, and then losing opportunities for future trade and investment. Rather than a neutral mechanism for exchange, this amounts to a trade and investment regime that can hold back ambitious climate action, particularly for poorer countries.

Case study: ISDS, corporate power and climate injustice

One of the central ways in which the current trading system has served to safeguard corporate interests over people, climate and the environment is through the proliferation of the controversial Investor State Dispute Mechanism (ISDS). While sold as a means to protect foreign investors from discrimination, ISDS has been weaponised as a tool to elevate property rights by enabling investors to legally challenge countries for perceived violations of their rights to profits. This has resulted in the coercion of and opposition to domestic policy outcomes, the watering down of climate and environmental regulation, and foreign companies suing governments should they not satisfy their demands, even in instances where government policy has served to prevent environmental harm.^{55/56}

The cost of the corresponding cases and the compensation payouts often run into the billions, redirecting money away from socially productive investment. In 2012, Ecuador was forced to pay \$1.4 billion after terminating an oil production agreement, despite the oil production causing environmental destruction and resulting in human rights violations. And in 2011, Germany lowered its environmental standards after an energy company challenged the states' standards for protecting a river from the impacts of a coal-fired power plant.⁵⁷ As Amandine Van Den Berghe, a lawyer with Client Earth said, the ISDS system has "given rise to an alarming number of claims against environmental measures, which are already the fastest growing trigger for dispute",⁵⁸ with around 40 percent of international arbitration cases initiated by investors against states linked to environmental and energy issues.⁵⁹

— Transforming multilateralism with a Green New Deal

The existential threat of climate breakdown must accelerate what many leading voices in the Global South⁶⁰, feminists⁶¹, and indigenous groups⁶² have been calling on for decades: to transform trade in the interests of people and planet. Yet powerful voices shouting the loudest in the Global North on trade imbalances in recent years have been those of the radical right,

tapping into the unfair distribution of a hyper-globalised and financialised trading system, while not delivering the goods for impacted communities.⁶³

This has coincided with governance gridlocks at the WTO, leading many to question its basic institutional functionality. Mistrust has grown with members from the Global South frustrated that the Doha Development Agenda is yet to be delivered after almost 20 years while new areas like digital trade are negotiated outside of the system by wealthy countries who stand to profit most from continued digital deregulation.⁶⁴ The proliferation of bilateral and plurilateral agreements has further undermined the WTO's role, and opened up new frontiers for liberalisation that extend trade policy further deeper into domestic policy agendas. Given the scale of both inequality and climate breakdown, and the role of the current trade system in exacerbating them within and between many states, the crisis of multilateralism cannot be a moment to retreat, nor should the far right's capture of discontent with trade lead to a defence of conventional wisdoms.

Instead, we need the advancement of an ambitious climate retrofit that attacks this hydra on all fronts; from a domestic agenda to achieve climate-resilient infrastructure and robust social protections to transforming global economic governance in pursuit of a green and just transition.⁶⁵ For trade and investment that will mean a principled domestic policy approach combined with unprecedented multilateral cooperation on a new trade regime that achieves a decarbonised industrial future and secures prosperity for all.

2 UK trade: The need for a Green New Deal approach

The 2016 vote to leave the European Union pushed trade to the forefront of the UK's political priorities, as the UK Government entered into lengthy negotiations with the EU on what type of deal, if any, would define the future EU-UK relationship. Tensions existed between the UK and the EU throughout the years of negotiations, dominated by issues such as a lack of alignment on the 'level playing field', which is used to set common rules and standards, and the future of fishing, with the contentious EU Common Fisheries Policy gaining political weight throughout the negotiation process. The negotiating deadlocks have created uncertainty, not only for trading partners, but for businesses, workers and affected communities left without assurance over what the future will look like.

Amid this fraught landscape, the national debate around post-Brexit trade policy has become locked into an orthodox understanding of the benefits of conventional trade policy. Instead of asking what the benefits of a new trade deal with the United States would look like or whether we should pursue one at all, the question being asked is whether the UK Government will secure one on time. Instead of asking about the conditions we will place on foreign investors

to create good, sustainable jobs and protect our environment, the question is whether the current government is doing enough to ensure 'Global Britain' attracts them. Limiting the public debate to these narrow confines is a legacy of the fidelity of consecutive governments to the free trade paradigm and 40 years of outsourced EU-led trade policy. Such an approach has further generated a recycling of policies gone by, like the rollout of freeports, which were relatively unsuccessful in the 1980s and largely abandoned⁶⁶, and the re-launching of the Royal Britannia yacht as a trade diplomacy tool to, in the words of Jake Berry MP, "make Britain great again."⁶⁷ The prospect of an independent approach to trade has furthermore triggered concerns from industry voices and communities alike, largely centred around the privatisation of the NHS⁶⁸, deregulated food standards⁶⁹, and the future of small agricultural producers in the UK.

While Brexit has indisputably thrown the UK's trading future into bedlam, problems embedded in the UK's trade approach long predate it. Nearly a decade ago, then-Chancellor George Osborne centred the 2011 annual Budget on "a Britain carried aloft by the 'march of the makers'", a rallying cry to reassert UK dominance in international trade. "We want the words: 'Made in Britain, Created in Britain, Designed in Britain, Invented in Britain' to drive our nation forward", he said.⁷⁰ To achieve this, the UK Government announced a series of measures, such as slashing corporation tax⁷¹; a trend replicated in the post referendum landscape, with further corporate tax cuts floated to attract US investment.⁷² The following year, a fresh target was set to double exports to £1 trillion by the end of the decade.⁷³ 2020 marked the date set for this ambitious target, and yet 2019 saw UK companies exporting £689 billion⁷⁴ worth of goods and services across the globe.

In 2018, the newly created Department for International Trade (DIT) launched an export strategy⁷⁵, but it failed to comprehensively outline an approach to reducing emissions and environmental degradation. This was preceded by the UK's 2017 Clean Growth Strategy, a 'blueprint for Britain's low carbon future'⁷⁶, but a 2018 independent assessment of the blueprint by the Committee on Climate Change (CCC) found gaps in the policies and risks of under-delivery.⁷⁷

Further undermining the possibility for a Green New Deal is the hollowing out of state infrastructure, as was recently demonstrated by the sale of the Green Investment Bank (GIB). Established in 2012 to "accelerate the UK's transition to a greener, stronger economy",⁷⁸ it signalled an acknowledgement of the need for public intervention to help steer a just transition. In 2016, however, it was sold to a Macquarie Group led consortium - a company holding investments in coal, oil and gas and mining^{79/80} - without a legally binding commitment to green aims.⁸¹

The bank should have scaled green investment and clean exports, and its relative failure is emblematic of problems in our current approach to greening trade and investment: rather than seeking out long term economic and climate health as joint goals, the UK has embarked on a series of short term, financialised approaches, coded in outdated and often overly-ambitious export targets, without a coherent and integrated strategy for achieving them.

— **A fork in the road: Brexit and climate ambitions**

At the time of writing, the outcome of the ongoing Brexit negotiations is unknown, with a deal still noted as the preferred option by both the UK Government and the EU. This sits amid a growing sense that such an outcome may not transpire, and that by 1 January 2021, we will be trading on WTO terms with those countries we do not yet have a trade or continuity agreement with. According to modelling from the London School of Economics, when measured in terms of their impact on the present value of UK GDP, a 'No Deal Brexit' could bear an economic cost

two to three times that of the Covid-19 pandemic in the long run.⁸² At the same time, a recent report from the CCC casts doubt over whether the UK Government takes the policy challenge of climate change seriously, finding that the UK's current action is far from consistent with even achieving the net zero by 2050 commitment.⁸³

As it stands, over 80 percent of the UKs environmental laws come from the EU⁸⁴, covering climate and environment-related regulations, investments and standards, like support for low carbon technologies, and biodiversity management. While the European Union Withdrawal Act transferred those powers to domestic legislation, many remain concerned that environmental and climate protections could be watered down.⁸⁵ The UK Government has stated a commitment to national and international efforts to tackle climate change, yet the nature of its involvement in EU coordination on climate change mitigation, from carbon pricing and the future of the emissions trade scheme to the extent of inclusion of enforceable climate change obligations as part of the deal, are as of yet unknown.⁸⁶ Environmentalists have highlighted that consequences of a No Deal scenario could be dire, with particular concern for spikes in air pollution caused by queues at ports, the possibility of overfishing, the potential destabilisation of domestic agriculture, and the ongoing issue of the environmental governance gap.⁸⁷

As the climate crisis intensifies and the UK navigates these murky waters in more isolated circumstances, the next steps we take will be vital in shaping the future of the economy.⁸⁸ Leaving the European Union could be a moment to fundamentally reassess our current approach to trade and investment, both for our own economy and the role we play in shaping opportunities in other countries through trade. However, making a success of Brexit will require a comprehensive overhaul of our current approach, a focus on long term strategic economic, environmental and climate goals, and immense political will. Fundamentally, this necessitates a break with seeing free trade as a good in and of itself - something which the Brexit debate shows still permeates across the political spectrum.

There remains a danger, however, that the UK's approach capitalises on the uncertainty generated by Brexit and the Covid-19 shock to double-down on some of the worst aspects of the status quo. Under this scenario, a repeat of the policy response adopted after the global financial crisis would ensure an accelerated race-to-the-bottom over a sustainable economic strategy; short term gains would be prioritised over a planned just transition needed to create an economy fit for the future; and deregulation would erode our environmental and climate safeguards at a time of unprecedented crisis.

There is a concern amid the rush to agree new trade deals that simply securing them will be prioritised over the details included within them. The sense of urgency in law making has led to concerns raised by climate justice groups and devolved governments, for example, around environmental and climate implications of the Internal Market Bill. Under the principles of the Bill, incoming goods will not have to meet standards in one devolved nation if those standards are lower elsewhere in the United Kingdom, possibly leading to what the Green Alliance describe as "a deregulatory race to the bottom and a chilling effect on attempts by individual administrations to improve environmental standards, particularly given the lack of common frameworks agreed between them."⁸⁹ At the time of writing, these same concerns are arising in negotiating the future trading relationship with the EU, where ratchet clauses for the UK to keep pace with progress on EU environmental, social and labour standards as they develop over time or face tariffs on exports is proving a major sticking point for the UK negotiating team.

Having gone from being part of the world's largest single market to negotiating trade deals alone amid a deep economic crisis, the UK's negotiating hand is substantially weakened. Put simply, some of our trading partners are significantly more powerful than us, and our market is not as big as theirs. For all of the talk of getting 'the best deal for Britain', trade is not a one way street, and our trading partners - and their corporate lobbyists - will also seek the best deal for them. We may find ourselves at the receiving end of the types of extractive trade deals we have inflicted on others, damaging our already underwhelming performance in achieving a green and just transition and limiting our policy space to rebalance the economy for a Green New Deal.

In this new environment, it is imperative that we strive to address the inadequacies of the current trade and investment regime and account for our role in perpetuating past injustices, not only for the interests of UK workers and communities, but also for lower and middle income countries who have been strong-armed in this system for too long. Given the scale of the challenge and the time limitations of avoiding irreversible climate breakdown, small tweaks to a trading model accelerating climate breakdown will not suffice.



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3 Steps towards a climate retrofit for UK Trade

The scale of transformation required to bring about a Green New Deal for trade is immense and will necessitate a multipronged approach both at a domestic level and through international cooperation over a prolonged period of time. The political realities of this will be exceptionally challenging, particularly with regards to steering major polluters and corporate and financial hubs away from the current strategy. This report does not assume that the task ahead will be easy or quick; rather, it proposes the interrelated elements necessary to an integrated strategy that simultaneously advances climate justice, tackles inequality, challenges corporate power and builds a reparative approach to trade.

At the same time, the political transformation necessary to achieving a Green New Deal for trade must be treated with urgency. If we continue to silo our remedies to domestic policy agendas and do not build the transnational cooperation we require to transform global economic governance, we will fall far short of our ambitions. The following recommendations set out steps towards a Green New Deal trading strategy:

- 1. Explicitly orient trade policy as a tool to deliver a rapidly decarbonised, green economy and a more equal society both in the UK and around the world.**
- 2. Secure the policy space for the UK and trading partners to respond to the pandemic and deliver a comprehensive Green New Deal**
- 3. A climate retrofit of UK Trade policy in service to a Green New Deal, the principles of which should be:**
 - a. Greening our trade ambitions**
 - b. Safeguarding and enhancing public services**
 - c. Reining in corporate power**
 - d. Transforming multilateral trade and investment architecture for a global Green New Deal**
 - e. Leading with a a green industrial strategy**

1. Trade and investment as tools to achieve our goals

— 1.1 An accelerated commitment to net zero before 2035

According to the UN's Emission Gap Report 2020, compliance with the 1.5°C goal of the Paris Agreement will require the richest 1 percent to reduce their current emissions by at least a factor of 30, while per capita emissions of the poorest 50 per cent could increase by around three times their current levels on average.⁹⁰ The UK must slash 78 percent of emissions by 2035 to achieve its 2050 net zero target, but there is growing recognition that this commitment is itself not enough if we are to have the best chance of keeping warming below 1.5C.⁹¹ The longer we delay action, the steeper emissions cuts will have to be in the future and the more climate-vulnerable regions are exposed to further food insecurity, displacement, health impacts and economic devastation.

Currently, even the most optimistic scenarios from the IPCC on achieving net zero by 2050 rely to some degree on carbon removal that is yet to be developed at scale, meaning we are hedging our bets on technologies that do not currently exist.⁹² Further, other 'solutions', such as monoculture 'nature-based solutions' and renewable technologies dependent on mining precious minerals, have been rightly critiqued as heralding a new wave of green colonialism that will displace people from their land and cause further devastating deforestation to feed the consumption demands of wealthy countries.⁹³⁹⁴ There remains a need to scale efforts to decarbonise, but how we decarbonise matters.

Considering the UK's role as one of the highest historic emitters, and its position at the top of international league tables for consumption emissions, it is time to take the principle of 'common but differentiated responsibilities' seriously.⁹⁵ As COP President, the UK should make an accelerated commitment to achieve net zero before 2035⁹⁶, and take the lead in exceeding current commitments for climate finance in the form of additional grants.⁹⁷ A new commitment should explicitly orient trade and other economic policy levers as tools for achieving these commitments, and root out all activities which lock in an extractive economy both in the UK and around the world. The UK should maintain its 0.7% commitment to Overseas Development Assistance (ODA) and indeed advocate for new sources of budgetary support for poorer economies to mount their own green and just transitions. Such ideas and more are fleshed out more fully in the following recommendations.

— **1.2 Establish an Independent UK Trade Monitoring Body**

To move towards a green and just future, trade policy needs to be crafted in service to these ambitions. This means a fundamental shift in how we measure a successful trade policy: no longer only measuring trade success through the narrow confines of competitiveness, trade deficit or new foreign direct investment, but also prioritising, for example, the number and quality of jobs created, the labour share of GDP, and the tonnes of reductions in greenhouse gas emissions. This body would also be charged with ongoing ex ante and ex post Sustainability Impact Assessments (SIAs) of new trade policy which would be connected to a review mechanism to adjust trade agreements should they fail to deliver expected outcomes. Such SIAs must collect and analyse data on impacts across gender, race, region, nation, age, and sector, as well as on climate and environmental impacts, to recognise and therefore intervene where trade exacerbates inequalities. We must also urgently democratise scrutiny of trade deals: leaving the EU to simply reserve all oversight of new trade policy to the Executive goes against the democratic contract of the four nations union, and undermines the ability of parliamentarians to represent their constituents' interests.⁹⁸ Indeed democratising trade policy is a crucial plank of any progressive trade agenda.

2. Secure policy space for pandemic response and a comprehensive Green New Deal

— **2.1 A Peace Clause for Covid-19 Response**

It is simply indefensible that governments cannot take necessary economic and climate actions to protect their people for fear of WTO disputes and corporate lawsuits during a global pandemic.⁹⁹ To ignore this is to shelve ambitious climate action and policies that uphold and strengthen rights. As stated in a recent letter to Trade Ministries and the WTO signed by more than 400 organisations, "The first and only priority for trade negotiators at this time should be to remove all obstacles, including intellectual property rules, in existing agreements that hinder timely and affordable access to medical supplies, such as life-saving medicines, devices, diagnostics and vaccines, and the ability of governments to take whatever steps are necessary to address this crisis."¹⁰⁰ The UK should join UNCTAD in advocating for a 'Peace Clause'¹⁰¹ on all trade and investment rules on pandemic-related actions. This would prevent disputes between states and thus ensure governments have the policy space they need to overcome rule-related barriers to emergency Covid-19 measures.

— **2.2 Policy Space for Climate Action**

By the same token, it is past time to ensure international trade rules do not prevent climate action. Far from being a neutral system, there are a number of existing cases of countries facing disputes as a consequence of climate policies that contravene core WTO rules, for example increasing tariffs on fossil fuels or promoting 'buy local' job-creation programmes.¹⁰² A Climate Waiver at the WTO could be one way to have targeted exemption from trade rules for action commensurate with the Paris Agreement.¹⁰³ Such an initiative would require consensus-building negotiations and full consideration of development impacts to avoid preference erosion. In the meantime, if the UK pursues any new bilateral or plurilateral trade agreements, there should also be a specific carve out for climate policies and broader public interest initiatives. This would help avoid disputes and give the UK and trading partners the confidence and policy space they need to reduce emissions and tackle inequality and poverty. An independent panel of climate experts could support in disputes by determining whether the challenged policy satisfied the terms of the WTO Climate Waiver or climate carve out. This would provide a strong basis for countries to confidently take decisive climate action without fear of reprisal.

— **2.2 Continuity agreements to allow time to get our house in order**

There are huge imbalances between the size and scale of economies the UK is prioritising for new trade deals, which could leave the UK economy vulnerable to sharp changes in our balance of trade. An independent trade policy can instead be turned to our advantage by having a more nuanced schedule of goods and services, strategic tariff hikes, and considered free trade areas that fit our green industrial ambitions, rather than a copy and paste job of our terms as an EU member. Instead of barrelling ahead into expanded FTAs with economies multiple times our size, the UK should be putting the brakes on new major trade deals and instead seek temporary continuity agreements, such as that secured with Canada, to see a smooth Brexit transition while preparing a more robust analysis of how trade and investment can be utilised to achieve domestic goals. Time-limited continuity agreements would provide time to get our house in order: establish an Independent Monitoring Body, conduct SIAs of our current terms of trade, democratise our trade negotiation process, strengthen labour and environmental regulations, consider targeted adjustments to our goods and services schedules (our country-specific terms of trade as a WTO member), and ensure protections are in place for at-risk sectors and communities to mitigate negative impacts.

— **2.3 Reparative Preference Scheme**

Many countries in the Global South have traded on preferential terms with the UK as part of the EU's Generalised Scheme of Preferences (GSP). This means they have improved market access to trade their goods with the UK without having to reciprocate. It is commendable that the UK committed to upholding these schemes during the transition period to avoid a cliff edge change in trade, which will also allow countries to benefit from continuity and harmonisation with their EU trade. However, the UK should not pursue the much-debated Economic Partnership Agreements the EU has sought with regional blocs in Africa, which have been criticised for prioritising market access for wealthy countries over the resource mobilisation, regional integration and preferential access of developing economies.¹⁰⁴ Maintaining non-reciprocal access for poorer trading partners is one of the few benefits of the current trade and investment regime and must be protected. The UK should also go further than the current tiers of the GSP, for example, by offering optional preferential terms and budgetary support additional to ODA for those countries who are looking to pursue emissions reduction policies.

3. A climate retrofit for trade

A. Greening our trading ambitions

— A.1 Trade as a tool for climate action

We must urgently explore how trade policy can help drive a race to the top on worker protections and climate actions. The UK recently pushed back against the EU's proposal to include the Paris Agreement in the UK-EU trade agreement being negotiated, which would have allowed either party to renege on the conditions of the agreement should Paris commitments not be fulfilled.¹⁰⁵ While there is justifiable cynicism around the trend of including many issues such as environmental commitments inside trade agreements that subordinate domestic policy space to bilateral and plurilateral trade interests¹⁰⁶, there remains a need to shape our trade and investment in the pursuit of these higher ambitions without disadvantaging poorer trading partners.

In the past, this has manifested as labour and environment chapters in trade agreements. Often, these sections are non-binding statements that have little to no impact on the terms of trade established by the agreement. While there are examples of more impactful measures, such as the success of women workers in Mexican maquiladoras stopping discrimination¹⁰⁷ and the US inclusion of legally binding decisions and sanction-based enforcement provisions for climate clauses¹⁰⁸, many have also been justifiably interpreted by poorer countries as measures that disproportionately benefit wealthy countries who have adequate fiscal space and strong regulatory frameworks already in place.¹⁰⁹

Clearly, we must find a way to hold wealthy countries who are the highest current and historic emitters accountable, ensure that poorer countries are supported to uphold human rights and climate targets while sustainably industrialising, and avoid climate free-riders from benefiting from these flexibilities. While measures such as a targeted Climate Waiver on WTO trade and investment rules would open up policy space for domestic action and green industrial policy, this would not in itself ratchet in climate action. Instead of social and environmental chapters that push trade further into domestic policy space, going back to trade tools such as tariffs and import controls would instead be a more targeted approach. Design here is key, however, as such measures risk being punitive towards countries in the Global South if not carefully crafted, which if not taken seriously, amounts to undermining realistic global progress on climate and sustainable development goals.

At the moment, there is a growing consensus from both the EU and the incoming Biden administration to explore a Border Carbon Adjustment (BCA), which would essentially impose a carbon tariff on imports.¹¹⁰ There is a live debate on the specific contours of such a new tariff regime; how it would be calculated and how it would comply with WTO rules. What must not happen is that such an issue be taken out of the multilateral rules-based-system and decided between a small group of the most wealthy economies, undermining the trust of WTO members from the Global South who stand to be most impacted, similar to what has transpired with the Joint Statement Initiative pertaining to digital trade.¹¹¹ Moreover, any such measure must recognise the role of wealthy nations in locking poorer nations into trade deals and other economic relationships that facilitate fossil fuel exploitation, as was the case in the EU-Mexico modernised FTA.¹¹²

The same caveat can be made for other emerging initiatives on 'greening trade' at the WTO. The acceleration of negotiations on reducing tariffs on 'Environmental Goods and Services' and the related programme on reducing plastics is one such potential Green Herring. High-emitting plastic supply chains are key industries in the Global South, which stand to lose most if we shift consumption away from these products, for example if these goods face higher

tariff barriers. Given this, promoting emerging circular economy technologies and lower tariffs for green goods will disproportionately benefit industrialised economies who have the resource to innovate and subsidize such industries.¹¹³ Further, there is reason to be suspicious of the green credentials of the list of ‘environmental goods and services’ which includes incinerators and steam generators that are used in dirty energy generation, and public utilities such as waste disposal that would be consequently liberalised.¹¹⁴ Finally, this ignores the reality that much of the Global South has never stopped being a circular economy, and even the highest emitters such as India and Brazil have nowhere near the per capita emissions of wealthy countries.¹¹⁵ While the recent Agreement on Climate Change, Trade and Sustainability (ACCTS) might seem like a positive step forward because of its attempt to build consensus on eliminating fossil fuel subsidies, it also focuses on liberalising environmental goods and services rather than a more useful project to transfer green technologies.¹¹⁶ These North-led initiatives may have rhetorical righteousness, but will only deepen North-South asymmetries if they do not both tackle the challenges facing Southern WTO members and reduce the high-emitting consumption of wealthy countries.

Designing any new climate trade regime would best serve the interests of our human rights, development and climate commitments by baking in a redistributive mechanism that ringfences new tariff revenue for the green transitions of poorer countries and job-creation for affected workers for example in the fossil fuel industry. Any requirement on governments in the Global South must be contingent on the more effective policies of green technology transfers and new sources of financing. Incentive-based approaches should also be considered, for example aforementioned optional preference schemes for low income country trading partners, and connecting the UK’s commitments on cutting shipping emissions¹¹⁷ to tariff reductions for trading partners who use greener transport for goods arriving in the UK.

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— **A.2 Stronger action on the fossil fuel industry**

The UK Government’s commitment at the recent Climate Ambition Summit to stop funding for overseas fossil fuel projects is a notable step forward.¹¹⁸ The UK currently spends £10.5 billion per year on fossil fuel subsidies; more than any EU member and significantly more than the £7.4 billion spent on renewable energy.¹¹⁹ To remain below 1.5C, 84 percent of fossil fuels simply cannot be burned.¹²⁰ If we are serious about a rapid transition, we need a clear strategy for winding down dirty energy and instead maximising our renewable potential while ensuring the poorest households do not pay the price.

This should mean closing any loopholes and exceptions in the new commitment, and ensuring current fossil fuel projects under consideration for export finance are not approved. Redirecting these subsidies to affected communities and publicly-owned green energy projects will start us on a path for a more equitable energy system. Multilateral measures must also be explored such as import and export controls on fossil fuels and a specific exemption in the ASCM for renewable energy subsidies. Further, as a global financial hub, one of the key driving forces behind perpetuating climate breakdown, the UK should undertake a comprehensive assessment as a core component of a Green New Deal of how the finance sector can be rapidly decarbonised, for example by greening the Bank of England’s corporate quantitative easing programme.¹²¹

At the same time, poorer countries should not be left to pick up the bill for writing down the fossil fuel industry’s stranded assets when the writing has been on the wall for decades. The Global South will need more financial support to transition away from dirty energy and should be afforded extra room within remaining carbon budgets to ensure a transition does

not devastate communities or hinder development. Stopping all fossil fuel subsidies could see trillions¹²² being redirected to industries of the future and places adversely impacted by the transition if the UK worked alongside the international community.

B. Public goods, not private profits: Safeguarding public services against liberalisation

While the Covid-19 recovery must rapidly decarbonise the economy, there remains a need to tackle levels of inequality that scar communities, and change course from the privatisation policies that have undermined our public goods and weakened our response to the health crisis. From investing in the NHS to the need to reimagine social care, well funded universal public services are a crucial pillar of any Green New Deal strategy. There are several ways trade and investment policy can impact our public services. Firstly it can impact the funding and cost of services; secondly it can limit governments' ability to strengthen local capacity for example through public procurement; and lastly it can enforce liberalisation which opens up services to privatisation.¹²³ Following on from the crisis, there must be renewed efforts to reimagine public services - not only with regards to their capacity and funding, but with an expansion of what services are included in public ownership.

— B.1 Exclude public services from all trade deals

Trade and investment policy can enforce the broader liberalisation of public services, as seen in their inclusion in recent bilateral and plurilateral agreements such as the Trade in Services Agreement (TiSA)¹²⁴ and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).¹²⁵ As the Trades Union Congress notes, the UK should not join CPTPP as they "share concerns of trade unions across CPTPP countries that the deal significantly threatens workers' rights, regulatory standards, public services and democratic decision making and puts millions of jobs at risk."¹²⁶ In accordance with the Trade Justice Movement's demands, TiSA should be scrapped worldwide, as it is heavily skewed to the benefit of corporations. At a UK level, the country should pull out of the negotiations and make it a matter of future trade policy that public services are excluded completely.¹²⁷

Complementing the steady privatisation we have seen across key public services in the UK - England, for example, is the only country in the world with a completely privatised water system¹²⁸ - these new agreements go farther than the General Agreement on Trade and Services (GATS)¹²⁹, which allows carve outs for government services and often include Standstill and Ratchet clauses that prohibit the reversal of privatisation once a service has been opened up. While expanding market access for some services is key for the UK economy where services make up around 80 percent of GDP¹³⁰, public services should always be off the table. As UNISON notes, "Public services need to be fairly funded, protected and excluded from any new global trade deals and unfair private investment courts. Public services must also be removed from trade deals which encourage a global 'race to the bottom' through deregulation, little enforcement protections of core ILO conventions and increased privatisation."¹³¹ In addition to protecting current services, taking key utilities back into public ownership should be pursued to bring their operations under the mandate of our climate and social justice ambitions, and prevent further liberalisation. Running such vital services for profit maximisation has had devastating impacts on our climate and environment: this year alone, the private companies that run England and Wales' water services polluted beaches with dumped raw sewage and storm water almost 3000 times.¹³²

— B.2 Leave the Government Procurement Agreement

Public services are crucial anchor institutions in our economy that can support a thriving local private sector through procurement. The UK currently spends £284 billion a year on buying goods and services from external suppliers, amounting to around a third of all public expenditure.¹³³ While not all of this procurement is necessary or desirable (for example the external contracting of core NHS services, which should be brought into public ownership and delivery) government procurement contracts are prohibited from being connected to local production through the Government Procurement Agreement (GPA) at the WTO.

Membership of this Agreement means procurement processes are liberalised and open to bids from suppliers across the world, which can have negative environmental impacts and undermine the domestic private sector here and in other countries participating in the GPA. While the liberalisation of government procurement is supposed to support our services industry to access contracts overseas, the majority of contracts in the UK are won by 28 'strategic suppliers'; multinational companies like Serco and G4S which use subcontracting and access to global supply chains to maximise profits.¹³⁴ Far from using government procurement in public services as a tool to support and strengthen UK SMEs and create jobs, it has become a rent-seeking opportunity that embeds corporate giants into our public service supply chains. Since we are currently renegotiating entry to the GPA, we can take this opportunity to leave it altogether, and set a new standard for government procurement that prioritises local firms, exploitation-free supply chains and sustainability without downward pressure on wages.

C. Reining in corporate power to advance climate justice

At its core, the WTO's purpose has been to pursue further and deeper liberalisation to support the free movement of capital across borders. While finance and multinational companies have enjoyed the relaxation of rules, state sovereignty has in turn been diminished as governments face shrinking policy space and discipline from 'the markets'. This is widely termed 'deregulation', but when it comes to trade and investment policy, it is more accurate to understand the last 30 years as an era of intense regulation in the interests of upholding corporate power over governments and their duty to advance the rights of their people.

An approach that prioritises corporate power over the rights of workers, communities, climate and the environment will have detrimental outcomes on levels of inequality; a trend replicated throughout the pandemic. While wealthy billionaires saw their net worth soar during Covid-19, working people in the UK and around the world suffer precarious jobs and hollowed out social protections.¹³⁵ This level of inequality has bred a deep mistrust in established political processes¹³⁶, manifesting in a surge of reactionary movements that threaten the security and safety of all, with the greatest consequences felt by those targeted by these movements such as Black, Asian and minority ethnic people, women, migrants, indigenous groups and LGBTQ people. One outcome of this mistrust is a popular cynicism with climate action that falls heaviest on household budgets, which is unsurprising when 71 per cent of total emissions since 1988 come from the operations of just 100 companies.¹³⁷

— C.1 Revise all Bilateral Investment Treaties to exclude ISDS

One of the most egregious norms in the trade and investment architecture is the binding one-way ISDS mechanism, which allows corporations to sue governments in secret courts for any action that violates their 'legitimate expectations' of profits, from implementing a minimum wage to enacting environmental protections. ISDS is a billionaire business, and legal firms specialise in finding winnable cases and convincing corporates to take them on.¹³⁸ This has led to a new wave of third-party corporate investment in these lucrative lawsuits,¹³⁹ essentially

making ISDS an asset class. The highest numbers of cases were brought by investors from the UK and US, and of all known cases, investors from the US, UK and the Netherlands have filed the largest shares.¹⁴⁰

Several calls have been made to establish a multilateral ISDS moratorium during the Covid-19 crisis and response; an effort that the UK should support.^{141/142} This is vital to create policy space for countries in the Global South who are already facing intense pressures from plummeting remittances, capital outflows, and debt distress and for whom an ISDS case would create another drain on budgets. As a more permanent step, the UK could seek to revise its BITs to exclude ISDS altogether and ensure that states do not face legal action from UK firms through ISDS.

Instead, the UK can encourage investments that further the public interest, including investments that reduce greenhouse gas emissions and bolster climate change adaptation. A new approach to protecting investments would use public courts for arbitration, only apply to investments that meet clear public interest criteria and should not include exceedingly broad rights, such as a guaranteed “minimum standard of treatment” and compensation for “indirect expropriation”.¹⁴³ Further, the UK should enforce basic obligations on foreign investors and UK-headquartered companies to uphold domestic legislation and key international conventions protecting workers, environment, human rights, and indigenous rights including upholding the right to free, prior and informed consent.¹⁴⁴

— **C.2 Withdraw from the Energy Charter Treaty**

The fossil fuel industry has its own dispute settlement mechanism in the Energy Charter Treaty (ECT), which the UK is party to. The ECT is the most commonly used ISDS mechanism in the world, and the overwhelming number of known cases brought under ECT have been successfully won.

This could, for example, result in a fossil fuel company suing a government for policies that support a transition to renewable energy. Through the ECT, government budgets are drained to pay compensation to the dirty energy giants, diverting much-needed cash away from public services, social protection systems, and green industries, and causing a chilling effect on pro-climate policy decisions.¹⁴⁵ Moreover, according to the research undertaken by OpenEXP, cumulative CO2 emissions protected by the ECT between 1998-2018 are estimated at 57 Gt CO2 out of which 61% are committed emissions from Intra-ECT investments in fossil fuels. This was almost double the EU carbon budget for the period 2018- 2050.¹⁴⁶

While there is language in the ECT that recognises the importance of energy sovereignty and environmental protections, these amount to window-dressing with none of the enforceability of the ISDS system. Given the speed and scale of the rapid transition required to avert irreversible climate breakdown, and the clear barrier to this in the form of the ECT, the UK should follow Italy and withdraw from the treaty as a responsible step towards securing a safe future. The investments that were made under the protection of the ECT, however, would continue to benefit from Treaty protections for twenty years, which has meant that Italy was sued by a UK-based oil and gas company for prohibiting oil drilling in the Adriatic Sea.¹⁴⁷ To avoid such a calamitous outcome, the UK should encourage other countries to leave and to initiate a Peace Clause for any pro-climate measures that contravene the broad protections given to fossil fuel investments.

— **C.3. Energise the United Nations Binding Treaty on Business and Human Rights**

While companies benefit from these powerful tools to hold governments accountable, there continues to be no such equivalent mechanism for communities and states to seek compensation from multinational corporate actors who violate human rights and pollute land and water.

Efforts are ongoing at the UN to seek a Binding Treaty on Business and Human Rights that can have such enforceability for communities to hold businesses accountable for violations. To be effective, it must cover all recognised human rights abuses, including environmental rights, and ensure extraterritorial regulation to secure access to justice in the corporation's headquartered state. This will also enforce human rights due diligence policies and procedures across supply chains and needs to be supported by strong international monitoring and enforcement mechanisms.

This is particularly true in light of Covid-19, as voluntary corporate social responsibility unravelled, allowing companies to evade responsibility to workers that allowed them to accumulate immense profits. As Sharan Burrow, General Secretary for the International Trade Union Confederation (ITUC) said: "Mandatory due diligence legislation would, for the first time, give workers a legal framework to seek redress wherever their employer resides and prevent companies from evading their responsibilities to their workers, society and the planet."¹⁴⁸

The UK can take independent steps too, for example by attending to civil society critiques of the Modern Slavery Act 2015¹⁴⁹ and ensuring UK companies do not hide abuses in global supply chains by making human rights and environmental due diligence a legal obligation for companies. Regulation of UK headquartered companies should include pathways to justice and compensation for violations of human rights and environmental protections in other parts of the world.

— **C.4 Reforming Intellectual Property Rules**

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) requires countries to adapt their laws to the minimum standards of Intellectual Property Rights (IPRs) protection. According to Third World Network, this has allowed de facto corporate monopolies to arise which has also hindered the technological upgrading of developing countries.¹⁵⁰ While industrial lobbyists make the case that these IPRs protect innovation, a review of 23 empirical studies found little to no evidence to prove that strengthened patent protection increased innovation.¹⁵¹ At the same time, the reality is that public funding from an entrepreneurial state plays a huge role in new R&D, and is more often the precursor to private



investment in many patented technologies.¹⁵² Upholding TRIPS essentially allows a privatisation of profits from public innovation, while at the same time granting corporate monopolies. This has had devastating development outcomes across health, food security, and climate action. The UK must stop behaving like a lobbyist for these monopolies on the WTO TRIPS Committee, and start supporting public goods via patent pools for the benefit of people here in the UK and around the world.

The pandemic has further highlighted how the trading system is both embedded in and exacerbates global disparities, notably through IPRs, a hallmark of today's trading system. TRIPS outlines a legal framework to establish minimum requirements for IPR. This could allow a patent holding pharmaceutical company to acquire exclusive rights for a 20-year period at a minimum, in many instances, enabling them to charge a premium rate for the drug.¹⁵³ While many states such as India and Argentina have used TRIPS flexibilities - a safeguard to limit IP protections - effectively hindering medicine monopolies, many, namely Europe and the US, have pressurised countries not to pursue such an avenue. For example, the Swiss-based pharmaceutical company Novartis threatened to sue Colombia in an international investment tribunal under the terms of a bilateral trade deal in 2016 for their attempt to access affordable medicine for leukaemia using TRIPS flexibilities.¹⁵⁴

The need to reform this approach is particularly urgent amid the pandemic. At least half the global population lacked access to essential health services and technologies prior to Covid, in part due to cost-related access barriers, according to the World Health Organization (WHO).¹⁵⁵ As the African Union expressed in a recent communiqué, IP rights have often hindered "timely introduction of affordable vaccines in developing countries."¹⁵⁶ Despite a joint proposal put forward by India, South Africa, Kenya, Eswatini, Mozambique and Pakistan¹⁵⁷, calling on the World Trade Organization to suspend key IP rights to ensure universal access to the Covid-19 vaccine, and despite the WHO launching a voluntary global patent pool for the vaccine¹⁵⁸, many wealthy nations, like the UK, have failed to back such a move.¹⁵⁹ While the successful Oxford University and AstraZeneca-produced vaccine will be available on a non-profit basis to low- and middle-income states, World Health Organization Director Tedros Adhanom Ghebreyesus said £3.2bn was still needed in order to share vaccines fairly.¹⁶⁰ There remains a need for a global pool of Covid-19 response technologies, which would enable the compulsory sharing of IP and data relating to medicines, medical equipment and vaccines throughout the pandemic.¹⁶¹

D. Transforming multilateral trade and investment architecture to create conditions for a global Green New Deal

The Covid-19 pandemic has been crushing for billions of households across the world. However while governments, disproportionately wealthy governments, have been able to deliver more than \$12 trillion¹⁶² in response packages to combat the virus and save lives, the poorest countries simply do not have access to the same fiscal and monetary levers. Almost \$60 billion left the Global South in capital outflows in the first month as global value chains collapsed and remittances floundered.¹⁶³ Compounding this squeeze is the debt crisis at their doorstep, which is looming for reasons largely out of their control, promising credit downgrades and further challenges to accessing resources. Some countries have already defaulted and many

are spending vastly more on debt service payments than on health budgets.¹⁶⁴

We cannot deal with these crises in isolation. The Covid-19 response should also be a green reset, but many countries are unable to safeguard people from the impact of the pandemic, never mind mounting a comprehensive green and just transition. The UK is one of the biggest historic emitters and built its wealth from the plunder and extraction of other people and regions around the world. It is a point of global justice that the UK and other wealthy countries take reparative action to uphold the principle of common but differentiated responsibility for climate action¹⁶⁵. This will mean unprecedented levels of international solidarity and should amount to a climate and human rights retrofit for the multilateral trade and investment regime. If political leaders are unwilling to prioritise and expedite such a transformation, it must fall to social movements across the world to make this a reality.

— **D.1 Expand Policy Space for climate action**

The right of states to policy space to pursue national development strategies should be enshrined in global rules. According to Bhumika Muchhala of Third World Network, “Ensuring adequate policy space and an enabling international environment for industrial development is vital in order to create diversified, employment-generating and value-added domestic economies”¹⁶⁶. While poorer WTO members are promised Special and Differentiated Treatment, the reality is that wealthy countries are often happy to allow flexibilities on some rules when their own powerful interest groups hold sway (such as in agriculture) or as long as they do not interfere with the more lucrative receipts. While there is still some legroom for the poorest countries, few countries have been in a position to exploit it.¹⁶⁷ Southern countries need to have the policy space and financing to define and achieve their own ambitious green industrial strategies, which means expanding allowable policy levers for example through the aforementioned Climate Waiver, to build diversified, resilient economies.

Other flexibilities or reforms are urgently needed for specific obligations for example under agricultural subsidies, TRIPS and TRIMS, which severely inhibit development objectives, including with respect to climate change¹⁶⁸. Concluding the Doha Development Agenda would be one way to restore trust, and ensure all emerging negotiations for example on digital trade and environmental goods are not multilateralised until their development considerations are established. This includes maximising poorer countries’ capacity for resource mobilisation, where tariffs can constitute a significant portion of total tax collected. For digital trade in particular, the e-commerce moratorium has prevented governments from imposing a customs duty on electronic transmissions since 1998, which UNCTAD estimated amounted to a loss of \$10billion in tax revenue for developing countries in 2017 alone.¹⁶⁹ Some of these reforms must be connected to reining in footloose capital for them to be effective, for example developing a global competition authority, collaborating on an independent credit rating agency, clamping down on tax avoidance and evasion, and new standards for capital controls.

— **D.2 Climate Equity Fund**

A number of measures in this paper call for resources ‘freed’ by climate action such as a ban on fossil fuel subsidies or receipts from any new carbon tariffs to be ring fenced for affected communities and as a new source of reparative financing for governments from historically low-emitting countries to pursue their own green and just transitions. Such supranational redistributive mechanisms are not entirely new, for example the EU’s Structural and Investment Funds and NAFTA’s North American Development Bank. Further analysis could explore how much new resource different policies could generate, and how to maximise impact of such financing.

A number of other policy proposals must be pursued at the same time to expand financing for climate equity, including debt relief and restructuring through, for example, the creation of an independent debt workout mechanism, a new allocation of IMF Special Drawing Rights, and a range of new global tax policies.¹⁷⁰ Additionally, given the UK's central role in a system of colonialism, and disproportionate share of historic emissions, which climate-vulnerable states and regions are now heavily shouldering the cost of through extreme weather events and patterns, climate reparations can provide a programme for loss and damage to marginalised and former colonised states; a means of generating funds for those already at the sharp end of both an unequal economic system and the climate crisis.¹⁷¹

— **D.3 Green Technology Transfer**

Intellectual property rules are a major barrier for green technological upgrading that will accompany any climate-friendly industrialisation and so need to be urgently reformed to prioritise public goods. According to the late Martin Khor of the South Centre, “technology transfer is essential for meeting the human and sustainable development objectives of providing people and enterprises in developing countries with the means to create employment based on principles and practices that are both environmentally sound and economically efficient.”¹⁷² The current strict regime can negatively impact the advance of green transitions by discouraging new R&D and keeping patent technology prohibitively expensive. Removing such restrictions is vital for Southern countries to be able to develop their own green technologies, products and services. The UK should support initiatives to transform intellectual property rules, such as a WTO Ministerial Declaration on TRIPS and Climate Change in order to expand TRIPS flexibilities for Southern countries in relation to climate-related goods and services.¹⁷³ In the meantime, as a wealthy WTO member in a position to publicly fund innovation in a number of green sectors, the UK should consider how to open-source emerging technologies to developing country partners, for example by revising TRIPS requirements in BITs and keeping key technologies in public ownership. This would facilitate cheaper transitions and build transnational solidarity on climate action.

— **D.4 An Independent Commission on the WTO in its First 25 Years**

Despite being a fairly young institution, the WTO has drifted far from its original stated aims. At its foundation in 1995, the Marrakesh Agreement imagined an institution that would support the achievement of full employment, growing incomes, and sustainable development. While there was much doubt if the WTO's architects ever prioritised these goals even at the time, there is no doubt that we now find ourselves far from this vision. This should prompt even the most zealous supporters to undertake a retrospective analysis of the WTO's performance and a commensurate overhaul of its mandate and operations. An independent commission should be sought at the next Ministerial Conference (MC) in 2021 which commits the WTO into a programme of transformation to be agreed at the 2023 MC. A UN-led initiative could engage across members and civil society to advance such institutional transformation and, in the words of a statement to the WTO from more than 200 feminist organisations and allies in 2017, build a vision for an alternative “multilateralism...based on solidarity, democracy and human rights, rather than the interests of unaccountable multinational corporations or wealthy states.”¹⁷⁴

E. Industrial Vision: A Green New Deal industrial strategy to guide trade and investment

In order to maximise the impact of the aforementioned recommendations, these must go hand in hand with a Green New Deal industrial strategy. The debate is no longer whether

or not we should implement industrial policies, but how we leverage these policies in the most impactful way to guarantee we meet our commitments on sustainable development and decarbonisation. A Green New Deal industrial strategy should aim to achieve four things: first to decarbonise our economic activities; second to change consumption to reduce emissions; third to scale good green jobs and industries across the UK; and fourth to root out intersectional inequalities.

While wealthy countries like the UK have undoubtedly benefited most from the international trade architecture, they too still face policy space constraints. While it is debatable whether prohibited industrial policies would have been exploited by UK Governments since the creation of the WTO, what is clear is that the lack of industrial vision has had implications for working class households and communities in the UK, as jobs have been offshored and vital public services underfunded, privatised and disintegrated. Achieving a comprehensive Green New Deal is faced then with a two-pronged task. Firstly, we need to identify the flexibilities within our trade and investment rules within which we can achieve our industrial strategy without undermining the development and transition of others. Secondly, and as discussed in section 3.D, we must turn our attention to reforming the multilateral system, which should not be a barrier to a safe and prosperous future for all of humanity.¹⁷⁵

— **E.1 An expansionary recovery to invest in our industrial strategy**

We should only consider entering into negotiations on bilateral and plurilateral trade deals when we are equipped with a vision and strategy of the green industries we need to grow, the technologies we want to innovate, and the domestic policy we will implement to achieve full employment and support impacted communities through a green transition. Anything else would be tantamount to trying to build a house without a blueprint. While the current UK Government has tried to make inroads on this front with its recently announced ‘10-Point Plan for a Green Industrial Revolution’,¹⁷⁶ critics rightly recognised it as nowhere near the scale of ambition or state intervention we will need to make a success of Brexit and decarbonise our economy.¹⁷⁷

A robust plan with unprecedented public investment is more crucial than ever considering the existential threat to life on Earth: we simply cannot afford not to direct our industrial future. With interest rates historically low and even traditional advocates of austerity urging countries to spend¹⁷⁸, the time is now to borrow and invest in an industrial strategy, rather than enabling the misinformation of fiscal and inflation hawks¹⁷⁹. New institutions could be created to complement this and leverage clean exports, like a green infrastructure bank, a publicly owned venture capital fund, and an ecosystem of mission-oriented national and regional investment banks, akin to that of the Scottish National Investment Bank.^{180/181}

— **E.2 Decarbonising to build resilient, local supply chains**

The CCC recommendations from its 2020 report to Parliament on UK emissions can provide a starter pack for a new industrial strategy: the most ambitious house building and climate retrofitting programme in our history; a new era of green infrastructure and public transport that connects every community; protection of biodiversity and expansion of green spaces; and a world class circular industry to decrease and repurpose waste. Specific protections will be needed for at-risk sectors such as small producers in agriculture and fisheries, which are particularly vulnerable to tariffs, tariff quotas, and regulatory standards but vital for food security.

Building more resilient, local supply chains needs to be prioritised, which means weaning ourselves off of measuring our trade success through export league tables alone. Despite a programme of austerity in the aftermath of the last financial crisis, the last decade witnessed a trend of significant growth in dividends and stock buybacks relative to company income from the 100 largest UK-domiciled companies.¹⁸² In the aftermath of the Covid-19 crisis and as we navigate Brexit, it is vital that industrial policy does not simply benefit major institutional investors and shareholders, but instead be a moment to rebalance power throughout the UK economy.

Crucially, as we have learned during the pandemic, there remains a need to protect and expand our health and care workforce - disproportionately staffed by women and migrants - where millions of green jobs are to be found. The Women's Budget Group this year found that investing in care is highly effective for job-creation compared to other industries, and that increasing care salaries to the real Living Wage would increase employment and tax revenue, while tackling the gender pay gap.¹⁸³ There are many such win-win avenues to consider that will allow the UK to build resilient local supply chains, increase employment and rights, and uphold our green commitments.

— **E.3 Tackling inequalities with green job-creation and retraining**

A forward-looking UK Government should recognise that in taking a more active role in nurturing the industries of tomorrow, we have the opportunity to exceed commitments to 'level up', tackling structural racism, gender inequities, and regional and national asymmetries within the UK labour market. A new deal for workers should be brought forward to root out insecurity and inequity in our labour market and strengthen our industrial strategy.¹⁸⁴ Delivering a green and just transition will mean the end of some industries alongside the rapid expansion of others. This will mean large scale unemployment without requisite reskilling and training programmes. Considering the scale of the challenge just to retrofit our housing and infrastructure and adequately staff our public services, workers in carbon-intensive industries should not have to fear joblessness in a Green New Deal future, where for example investment in clean industries could create more than three jobs for every oil and gas job at risk.¹⁸⁵

Such a transformation must go alongside a co-produced transition owned and driven by the workers and communities affected.¹⁸⁶ At a national level, the ongoing development of industrial strategy and green trade policy should be co-produced alongside, for example, SMEs, pluralist business models, clean industry voices, and trade unions, particularly workers in key industries such as small agricultural producers, to build a more equitable industrial future.

4 Conclusion

The devastation of the pandemic has generated fresh questions about how our economic system operates and whose interest it operates in. As such, it is the latest in a long line of tumultuous episodes in a trading system wrestling with a surfeit of strains, while the grave prospect of climate breakdown hurtles towards us; the single biggest threat to our future, necessitating rapid and collaborative action. Today's trade and investment regime impacts everything from public services to labour rights, and from health and safety standards to climate and environmental regulations, coded in legal frameworks designed to boost and protect corporate power above all else. To tackle this, an ambitious Green New Deal must repurpose trade to deliver our climate goals and tackle intersecting inequalities.

In the UK, Brexit has thrown the future of trade into further disarray. The UK has gone from being part of the world's largest single market to negotiating trade deals alone amid an economic crisis. There remains an urgent need for progressives to demand a strategy that avoids a race-to-the-bottom where corporate interests are prioritised over human rights and the protection of the environment and climate. For the best chance of success, the UK should use an independent trade policy as one part of an integrated Green New Deal agenda, reframing trade and investment as tools for climate justice; harnessing a green industrial strategy; safeguarding and enhancing public services; reining in corporate power to achieve climate justice; and retrofitting multilateral trade and investment architecture to create the conditions for a global green and just transition. The scale of transformation needed to bring this about will be vast and exceptionally challenging, but a systemic crisis requires a systemic response, and the time is now to change the course of conventional wisdoms. Out of the wreckage we must build a better vision of international trade for a climate-just world where everyone can thrive.

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