

TOWARDS A FAIR AND STRATEGIC TRADE AND CLIMATE POLICY

UK Climate and Trade Commission
Policy Brief

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**TRADE JUSTICE
MOVEMENT**



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About the UK Climate and Trade Commission

The UK Climate and Trade Commission is a short-term project established by Queen Mary University of London (QMUL) and the Trade Justice Movement (TJM) bringing together a group of experts to discuss the intersection between trade and climate change and jointly develop practical proposals for the UK government.

This report is a synthesis of individual and group discussions amongst the UK Climate and Trade Commissioners. It reflects the rich discussions and, where necessary, explains the range of views held on a topic.



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EXECUTIVE SUMMARY

As efforts to fight climate change reach into every aspect of policy making, governments around the world are beginning to turn their attention to the connection between trade and climate change. This is welcome as the area has long been overlooked, and it is vital that trade policy is coherent with climate objectives. But, as with all trade policy, this is a complex area and there is a danger that this new-found enthusiasm for using trade as a climate lever can lead to policies that are either little more than climate window dressing or that neglect important principles of justice, development and multilateralism. The United Kingdom (UK) is in a unique position to avoid these errors. It is in the process of building a new trade policy and has an unprecedented degree of autonomy in how it goes about this. Given the UK's strong development expertise, its commitment to the multilateral trading system and its convening power, it has an opportunity to chart a new course where fighting climate change is a central part of UK trade policy and to champion an approach that is fair as well as effective.

Twenty practical recommendations from the UK Climate and Trade Commission for how the UK government could make its trade policy coherent with climate objectives:¹

Develop a trade strategy which clearly addresses climate change

1. Develop a much-needed trade strategy that aligns trade policy with climate goals as part of a joined up economic strategy.
2. Help to facilitate a national conversation about trade and climate change.

Overhaul trade scrutiny and stakeholder engagement processes

3. Ensure that elected representatives can input into, scrutinise, amend and reject trade policies.
4. Overhaul stakeholder processes to ensure meaningful engagement.
5. Conduct timely, independent and cumulative trade policy impact assessments.

Prioritise multilateral approaches to trade and climate change

6. Prioritise multilateral cooperation on trade and climate change, including greater discussion of trade-related issues as part of the United Nations Framework Convention on Climate Change (UNFCCC) process.
7. Work with a diversity of countries to explore how World Trade Organisation (WTO) rules can act as positive agents for change.
8. Champion an inclusive approach to WTO climate and trade initiatives.
9. Support coordinated, inclusive global cooperation on carbon pricing and leakage.
10. Champion industry initiatives to address specific decarbonisation challenges at a sector level.

¹ Recommendations are majority opinions and not necessarily shared by all. Commissioners are acting in an individual capacity and opinions expressed do not necessarily reflect those of their employer.

Take positive unilateral action

- 11.** Exit the Energy Charter Treaty (ECT), exclude Investor State Dispute Settlement (ISDS) from future trade and investment agreements and request exemption side letters as part of Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) accession.
- 12.** Develop a climate and development programme that combines genuinely concessional finance, investment at scale and meaningful technology transfer.
- 13.** Commit to transparency and rapid phase out of fossil fuel subsidies.
- 14.** Support new rules for green ‘non-actionable’ subsidies at the WTO and exemptions in Free Trade Agreements (FTAs).
- 15.** Invest in the UK’s new green industries and support UK businesses to decarbonise.

Carefully evaluate the range of climate-related trade policies

- 16.** Champion a decision-making framework and a set of principles for addressing the potential adverse development impact of climate-related trade measures.
- 17.** Consider policies which have market access consequences for developing countries only as part of a package that includes appropriate exemptions, sequencing, monitoring and support/finance.
- 18.** Consider a range of positive policy levers that will support the UK and trading partners to decarbonise in parallel, in order to address consumption emissions and avoid carbon leakage.

Strengthen the alignment of FTAs with climate change

- 19.** Develop a mature, pro-climate approach to FTAs as part of a wider trade strategy.
- 20.** Consider measures to improve the climate impact of FTAs, including a limited set of pre-conditions, stronger non-regression clauses, pro-climate exemptions and positive incentives.

THE RELATIONSHIP BETWEEN TRADE AND CLIMATE CHANGE

Given the urgency of the climate crisis, it is vital that policy makers understand the role that trade policy can play in both helping and hindering climate action.

Freeing up trade can lead to increased emissions. While trade liberalisation can help increase the availability and lower the cost of climate-friendly technology and raw materials, growth in trade can lead to increased trade in high-emission products as well as increased transport and production emissions.² The impact assessment of every new UK FTA has predicted an increase in emissions.³

Trade policies can restrict the space for climate action. Most current trade policy is geared towards making trade easier and removing barriers. Conversely, climate policies tend towards the regulatory, aiming to support green industries and production whilst restricting high carbon goods.⁴ Such policies are sometimes proscribed by WTO rules or FTAs. There is also a discrepancy in enforceability. Trade agreements tend to have a stronger enforcement mechanism (for example the WTO Dispute Settlement Understanding), while climate commitments detailed in Nationally Determined Contributions (NDCs) under the 2015 Paris Agreement are not enforceable under the auspices of the UNFCCC. Environmental provisions in FTAs also tend not to be enforceable, whilst economic provisions are.

Tackling consumption emissions has extra-territorial and potential development implications. NDCs under the Paris Agreement are largely (with a few limited exceptions) based on territorial production emissions. Countries are now moving to better understand and tackle their emissions associated with consuming goods produced overseas. While it is important for countries to take on their full carbon responsibilities, shifting the lens in this way can lead to extraterritorial impacts and so policies need to be carefully designed and implemented to not disproportionately penalise economic development and access to international markets for developing countries.

Discussions amongst Commissioners revealed a range of ways that governments can approach these challenges. They can adopt a 'do no harm' approach where they try to ensure that trade commitments do not impede countries from taking action on climate change. They can take a 'national competitive' approach where trade policy is employed to protect domestic industries from cheaper high carbon imports, while also using trade liberalisation to promote exports and imports of climate-friendly goods and services. They can take a more 'activist' or 'conditional' approach where trade policy is used as a lever (either carrot or stick) to encourage other countries (or in some cases companies) to do more on climate change, for example banning the import of products produced on illegally deforested land or providing tariff incentives for low carbon goods. And they

² World Trade Organisation (2022) 'World Trade Report'

³ According to the Department for International Trade (DIT), UK Government (May, 2022) 'Impact assessment of the Free Trade Agreement between the UK and Australia' Australian production emissions are expected to rise by 0.1% and transport emissions by 31-40%. The equivalent increase in transport emissions associated with the UK-New Zealand FTA is 50%.

⁴ See Lydgate, E. and Anthony, C. (2020) 'Can the UK Government be 'World-Leading' in Both Trade and Climate Policy?' UK Trade Policy Observatory Briefing Paper and Economic Intelligence Unit and International Chamber of Commerce (2019) 'Climate Change and Trade Agreements: Friends of Foes?'

can explore a ‘pro-development’ approach that seeks to ensure that all countries transition towards a low carbon future in a fair and just way, recognising developing countries’ right to economic development, their Common But Differentiated Responsibilities (CBDR) for climate change and their differing capacity to respond.

These approaches are not mutually exclusive, but it is useful for governments to consider what they want to prioritise in this rapidly shifting landscape. The UK’s biggest trading partners are already starting to make these choices: the United States (US) is shifting towards ‘worker-centric’ trade and green industrial policies and has signalled its intention to support domestic green jobs and production through its Inflation Reduction Act which includes a \$369 billion package of subsidies and tax breaks for clean energy and green technology.⁵ The European Union (EU) looks likely to challenge this particular US policy arguing “the green transition is not something to be achieved at the expense of others”, yet it is flexing its own trade muscles through a series of more activist green trade policies, including a Carbon Border Adjustment Mechanism (CBAM), designed to support its ‘Fit for 55’ plan and pressing other countries to do more.⁶

A NEW PLACE IN THE WORLD

The UK is working to find its place in the world outside of the EU. In terms of trade, initial ideas of pivoting toward the US have been replaced by the ‘Indo-Pacific tilt’, but as yet there is no clear theme emerging. In this context it is important to acknowledge that outside of the EU bloc the UK is less powerful in terms of market size and so policies which rely on using market access to influence the behaviour of other governments are unlikely to be successful and bilateral negotiations are already proving tougher. The UK is also having to carefully consider the impact of EU and US policies on its own companies and workers and on the UK’s ability to both compete on and access the US and EU markets. But the UK does have soft power and is respected for its expertise in international development and commitment to the rules-based trading system. It is these strengths – to convene and to champion new practical and fair approaches – that Commissioners agree should be the hallmarks of the UK’s approach to trade and climate change. The UK also has a seat at a number of important multilateral forums and so prioritising a multilateral approach will be an important way for the UK to influence change.

5 Tai, K. (10 June 2021) ‘U.S. Trade Representative Katherine Tai Outlines Biden-Harris Administration’s Historic “Worker-Centered Trade Policy’, Office of the United States Trade Representative
Bounds, A. (6 November 2022) ‘EU accuses US of breaking WTO rules with green energy incentives’ Financial Times

6 Ibid. European Council (2022) [Fit for 55](#)

KEY AREAS OF FOCUS FOR THE UK GOVERNMENT

The Commissioners agreed that the UK Government should focus attention on the following areas.

1

DEVELOP A TRADE STRATEGY WHICH CLEARLY ADDRESSES CLIMATE CHANGE

Since leaving the EU single market and customs union, the UK has started to develop the building blocks of an independent trade policy. It has established its own UK Global Tariff, replicated a host of FTAs and signed at least two new ones, established a trade preference scheme for developing countries and set up a Trade Remedies Authority. However the UK has not so far developed or articulated a clear trade strategy which sets out how the government sees trade contributing to wider policy objectives.

Discussion in the UK of the relationship between trade and climate change has been limited. In 2021 the Board of Trade published a ‘Green Trade’ report which focused almost exclusively on the benefits trade liberalisation can bring, specifically increased UK exports of green goods and services.⁷ This sentiment was echoed in a recent policy speech by the Secretary of State for International Trade who said “We all know that climate change is a challenge for us all, wherever we live in the world. But we know that we can and should solve it by using free trade and investment to accelerate the technological progress that will protect the planet”.⁸ The narrative has been dominated by a rather simplistic paradigm, rejected even by most free-traders, that sees liberalisation as the answer to most trade challenges – including climate change – and which has focused on ‘win-wins’, preferring to avoid difficult discussions about necessary trade-offs.

Commissioners agreed that developing and articulating a trade strategy is an important process and that the lack of such a guide can result in disjointed policy making. A clear strategy would set out how trade policy will support the government’s wider economic and climate objectives as well as linking up with industrial, foreign, development, food and agriculture policy. Strategy development also provides an opportunity for a much-needed ‘national conversation’ – including in

⁷ UK Board of Trade (2021) ‘Board of Trade report: green trade’

⁸ Badenoch, K. (2022) ‘UK and US must work together to promote free trade and future-proof our economies’ Speech to Cato Institute

the media, civil society and parliament – about the purpose of trade, how the UK should approach it and what trade-offs are involved. The aim would be to ensure that the strategy is ‘politically resilient’ with broad backing and a good level of technical input. Once the objectives are clear, the Government can prioritise where to spend limited resources as well as ensure joined-up action across different government departments.

There are some interesting examples from around the world that the UK could build on. The US Trade Representative publishes a five-year Strategic Plan which includes a series of goals which it reports on annually.⁹ The EU has had a number of trade strategies, the latest, launched in 2021 sets out a vision for an “Open, Sustainable and Assertive” trade policy and was the product of a public consultation as well as discussions amongst member states and with the European Parliament.¹⁰ New Zealand’s Trade for All process in 2018 involved a wide trade policy consultation and culminated in the establishment of a Trade for All Advisory Board.¹¹ The Australian government recently announced the creation of a Trade 2040 Taskforce that will bring together government, industry, trade union and community representatives to “consult on how we seek to shape our trade with the world.”¹²

UK POLICY RECOMMENDATIONS

- **Develop and publish a trade strategy that aligns trade policy with climate goals as part of a joined up economic strategy.**
- **Help to facilitate a national conversation about trade and climate change.**

⁹ United States Trade Representative (2021) [Strategic Plan 2022-2026](#)

¹⁰ European Commission (18 February 2021) [‘Commission sets course for an open, sustainable and assertive EU trade policy’](#) Press Release

¹¹ See Government of New Zealand [‘Trade for All Agenda’](#)

¹² Farrell, D. (14 November 2022) [‘More trade, not less, the key to Australia’s prosperity’](#) Australian Financial Review

2

OVERHAUL TRADE SCRUTINY AND STAKEHOLDER ENGAGEMENT PROCESSES

Commissioners agreed that an effective scrutiny process and quality stakeholder engagement are vital ingredients in ensuring both good policy making and consent for implementation. It is important that the Government sees the value in listening to the expertise provided by stakeholders and the consent provided by parliamentary oversight. In an FTA negotiation, stakeholder groups in other countries are often considered part of the national 'team' and are central to the development of negotiation strategy, feeding in technical expertise and depth of understanding. Having a strong stakeholder process and parliamentary scrutiny can also provide political cover to negotiators knowing that they cannot give way on red lines as they will not get the measure through parliament.

In many countries the legislature has the power to approve a mandate for trade negotiations, track and then amend or reject agreements.¹³ In the US and EU, climate stakeholders have a meaningful role through their influence on Congress/the European Parliament, both of which have the power to veto trade policy measures. The UK parliament does not have the power to amend or block trade agreements and is not even guaranteed a debate. This lack of a clear accountability mechanism makes meaningful parliamentary scrutiny of trade measures impossible.

In terms of stakeholder engagement, the UK has put in place two thematic working groups (TWGs), a range of sectoral Trade Advisory Groups (TAGs), a multi-stakeholder Strategic Trade Advisory Group (STAG) and has established a Board of Trade and a statutory Trade and Agriculture Commission (TAC). In practice, and despite members being required to sign non-disclosure agreements, there has been a reluctance to share negotiating texts; whilst this has changed recently it has been limited to finalised texts, limiting the extent to which stakeholders can help to shape the content. Exchanges in these groups have tended towards limited information sharing rather than constructive input, leading to frustration on the part of members. The TAC's remit is defined very narrowly to assess whether UK agricultural standards are compromised directly and immediately by a trade deal. It does not cover the indirect ways environmental and animal welfare standards could be compromised by unfair competition over time. Commissioners agreed that the system needs to be overhauled with a much clearer emphasis on openness and the value that stakeholders bring.

There is a recognition that the Government needs to get further advice and support in terms of its trade impact assessments, particularly when looking at the climate impacts of trade policies. At present impact assessments of FTAs are too broad, lack granularity, are conducted 'in-house', have

¹³ House of Commons International Trade Committee (2022) '[UK trade negotiations: Parliamentary scrutiny of free trade agreements](#)'

no meaningful connection to the decision-making process and do not suggest mitigating measures for any negative impacts they do find. In future it will be important to not just look deal by deal but to understand the cumulative climate impacts of the trade commitments the UK is making.

UK POLICY RECOMMENDATIONS

- **Ensure that elected representatives can input into, scrutinise, amend and reject trade policies.**
- **Overhaul stakeholder processes to ensure meaningful engagement.**
- **Conduct timely, independent and cumulative trade policy impact assessments.**

3

PRIORITISE MULTILATERAL APPROACHES TO TRADE AND CLIMATE CHANGE

Climate change is an existential challenge which requires countries to work together collaboratively, but also at pace. These two objectives can sometimes conflict, as it takes time to get differing interests to unite behind a course of action leading some governments to prefer to take the faster unilateral approach. This tension is amplified in the field of trade policy which is underpinned by a competitive, rather than collaborative drive; where some WTO trade and environment negotiations characterised by narrow perceived national political economy interests rather than a multilateral focus on the global commons.¹⁴ Despite known constraints, there was agreement amongst Commissioners that countries should prioritise multilateral and collaborative approaches wherever possible.

The two most relevant multilateral forums are the UNFCCC process and the WTO. Despite some formal observing of processes, these two bodies operate in silos. The UNFCCC has shied away from directly addressing trade issues, although its preamble and articles contain a warning against governments using climate change measures as a disguised restriction on trade as well as an affirmation of the legitimate priority needs of developing countries for economic growth and poverty eradication.¹⁵ As a voluntary process the UNFCCC lacks the WTO's dispute handling powers. Despite recognition, in its founding agreements, that trade agreements needed to "allow for the optimal use of the world's resources... seeking both to protect and preserve the environment", the WTO has been slow to take forward climate issues; that is now rapidly changing.

Action at UNFCCC

As a priority the UK should back the UNFCCC as the legitimate climate venue to take a bigger role in discussions of trade and climate issues.

- Issues such as product standards and carbon leakage, where developed countries are moving ahead on a unilateral or plurilateral basis, should be brought to UNFCCC for consideration.
- The UNFCCC has established a Forum on Response Measures and the Katowice Committee of Experts set up under the Forum is analysing how different countries' climate measures are impacting on economic development and diversification.¹⁶ The UK should provide prominent public support to the work of the Forum and incorporate its analysis into UK government thinking.

¹⁴ Campling L. and Havice E. (2013), 'Mainstreaming environment and development at the WTO? Fisheries subsidies, the politics of rule-making and the elusive "triple win"', *Environment and Planning A*, 45(4): 835 – 852

¹⁵ United Nations (1992) [United Nations Framework Convention on Climate Change](#)

¹⁶ United Nations Framework Convention on Climate Change (2018) [Katowice Committee of Experts on the Impacts of the Implementation of Response Measures](#)

- Article 4.15 of the Paris Agreement requires parties to take into account the impact of their climate measures on developing countries and is legally binding. As part of a drive for greater transparency and as a trust-building tool the UK could take a leadership role in committing to reporting on such measures and how they protect developing countries on a regular basis.
- Article 6.8 of the Paris Agreement provides for a work programme of non-market approaches including addressing issues of technology transfer which is critical if developing countries are going to have access to the tools they need to transition their economies. The UK should champion work to accelerate transfer of technology to developing countries and regions.

Action at the WTO

One of the concerns about greater climate discussions at the WTO has been that, with the exception of the liberalisation of environmental goods and services (which itself proved controversial), WTO rules and jurisprudence are often seen as obstacles to climate action. This stems from underlying WTO principles – that barriers to trade must be gradually removed and that all members should be treated equally, so it is not possible to introduce a measure which favours domestic industry over a foreign one – and also from provisions in specific agreements. For example, the TRIPs agreement entrenches a high level of recognition of intellectual property protection making technology transfer to developing countries more difficult. Rules regarding subsidies, procurement and technical barriers to trade have been used to challenge industrial policy and environmental measures.

Article XX of the General Agreement on Trade and Tariffs enables deviation from WTO principles for a range of reasons including measures “necessary to protect human, animal or plant life or health” and measures “relating to the conservation of exhaustible natural resources.”¹⁷ Despite this, there have been a high number of disputes relating to environmental measures, including 15 on renewable energy programmes alone.¹⁸ Whilst some argue that the Article XX exemptions provide sufficient flexibility, there is little doubt that concern about provoking a possible WTO dispute and general uncertainty about what is permissible can deter climate action, particularly for more economically vulnerable countries.¹⁹

The WTO architecture was built before the full extent and pace of climate change was well-known and there is a strong case that its rules should be updated so that rather than hindering progress on climate policies, they can act as positive agents for change. This should be prioritised as part of the recently mandated WTO reform process.²⁰ Commissioners discussed a range of possible proposals, from a ‘peace clause’ to a ‘climate waiver’, but the common thread is that members would agree not to bring disputes against policies designed to fight climate change while respecting the interests of developing countries.²¹ This could also provide greater certainty for countries that want to provide public support for green innovation and technology development. Commissioners were keen to

¹⁷ [The General Agreement on Tariffs and Trade \(GATT 1947\) Article XX](#)

¹⁸ [World Trade Organisation Dispute Settlement Gateway](#)

¹⁹ Meyer, T. (2017) ‘Explaining energy disputes at the World Trade Organization’ *International Environmental Agreements* 17, 391–410
van Asselt, H. (2021) ‘The Prospects of Trade and Climate Disputes before the WTO’. In: Alogna, I., Bakker, C. and Gauci, J.P. (Eds.), *Climate Change Litigation: Global Perspectives*. Leiden: Brill

²⁰ [World Trade Organisation \(2022\) MC12 Outcome Document](#)

²¹ Bacchus, J. 2022 *Trade Links* Chapter 6. Cambridge University Press
Bacchus, J. (2017) ‘The Case for a WTO Climate Waiver’, Centre for International Governance Innovation
Bacchus, J. (2018) ‘The Content of a WTO Climate Waiver’, Centre for International Governance Innovation

stress that general support for the idea of a climate waiver masks a divergence of motivations and care must be taken that it does not become a backdoor for powerful countries to justify developmentally damaging policies. Nevertheless Commissioners felt it is one option that should be explored. The UK could work with a range of countries and/or UNCTAD to review how best to ensure WTO rules support climate action, including the possible content of a waiver.

Joint Statement Initiatives

There are three climate-related Joint Statement Initiatives (JSI) ongoing at the WTO: the Trade and Environmental Sustainability Structured Discussions (TESSD); the Informal Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade (IDP) and the Fossil Fuel Subsidy Reform Initiative (FFSR).²² A JSI is a tool used by a group of countries at the WTO to advance discussion on an issue outside of the formal ‘multilateral track’.

The TESSD process now has 74 members (accounting for over 82% of world trade) and informal working groups on trade-related climate measures, environmental goods and services, circular economy and subsidies.²³ The IDP has 75 members (around 75% of plastics trade) and has completed a survey of members’ trade policy measures relating to plastics and is working with the World Customs Organisation around customs classification issues. It is also collaborating closely with the United Nations Environment Assembly (UNEA) which is starting negotiations towards a binding international treaty on plastics pollution.²⁴ The FFSR is coordinated by New Zealand and involves 47 WTO members. It is seeking the phase out of inefficient fossil fuel subsidies and actively explores ways to increase transparency.²⁵

There is growing interest from WTO members in these processes, although some countries are uneasy at their JSI status as it is not clear whether standard WTO rules such as special and differential treatment (SDT) apply. The UK is involved in all three and importantly the UK’s Ambassador to the WTO has taken over as Chair of the Committee on Trade and Environment and so has a vital role to play in bringing key elements of these discussions into the more inclusive multilateral track and moving them towards action.

Climate clubs and sectoral initiatives

One of the most high-profile current climate and trade initiatives is the proposal by the German Presidency of the G7 to create a Climate Club. Agreed by leaders in June 2022, details of this initiative are still fairly vague, however it is expected to look at ways for countries adopting different approaches to carbon leakage to recognize each others’ progress.²⁶ There are close to 70 carbon pricing schemes presently in operation worldwide and there is a strong case for more coordinated multilateral action on carbon pricing and carbon leakage.²⁷ This will be an important initiative for the UK to help shape as it will affect how the UK itself deals with carbon leakage, but also because it has the potential to be divisive, with countries already concerned about the

²² See WTO webpages on [TESSD](#), [IDP](#), [FFSR](#)

²³ Ibid.

²⁴ See WTO webpage on “[Plastics pollution and environmentally sustainable plastics trade](#)”

²⁵ See WTO webpage on [Fossil Fuel Subsidy Reform initiative](#)

²⁶ G7 Statement on Climate Club (2022). Carbon leakage occurs when there is an increase in greenhouse gas emissions in one country as a result an emissions reduction by a second country with a strict climate policy

²⁷ WTO (2022) ‘[World Trade Report](#)’

connotations of a 'club'. In their elaboration of the proposal the London School of Economics addresses some of these issues calling for a more inclusive process and collaboration with developing countries.²⁸ The UK should take an active role in this initiative, pressing for it to be as effective and as inclusive as possible, whilst ensuring that multilateral approaches that enhance international cooperation rather than competition are given priority.

The UK can also drive forward multilateral industry-specific conversations and action, including in neglected sectors such as non-ferrous metals, chemicals and plastics. The Forest, Agriculture and Commodity Trade (FACT) Dialogue which the UK launched at COP26 and co-chairs with Indonesia is a promising model. It brings together the largest producers and consumers of internationally traded agricultural commodities such as palm oil and soya, and addresses how to protect forests and other ecosystems while promoting sustainable trade and development and addressing the climate and biodiversity crises.²⁹ Similarly the Industrial Deep Decarbonisation Initiative (IDDI) is a global coalition of public and private organisations working to stimulate demand for low carbon industrial materials. It is coordinated by the United Nations Industrial Development Organisation (UNIDO) and co-led by the UK and India.³⁰

UK POLICY RECOMMENDATIONS

- **Prioritise multilateral cooperation on trade and climate change, including greater discussion of trade-related issues as part of the UNFCCC process.**
- **Work with a diversity of countries to explore how WTO rules can act as positive agents for change.**
- **Champion an inclusive approach to WTO climate and trade initiatives.**
- **Support coordinated, inclusive global cooperation on carbon pricing and leakage.**
- **Champion industry initiatives to address specific decarbonisation challenges at a sector level.**

²⁸ Stern, N., Lankes, H.P. (2022) 'Collaborating and Delivering on Climate Action through a Climate Club' Grantham Research Institute on Climate Change and the Environment

²⁹ [Forest, Agriculture and Commodity Trade \(FACT\) Dialogue](#)

³⁰ UNIDO (n.d.) [Industrial Deep Decarbonisation Initiative](#)

4

TAKE POSITIVE UNILATERAL ACTION

Commissioners identified a number of policies which attract broad support, will make a practical difference and which the UK could proceed with at pace.

Investor State Dispute Settlement

Investor state dispute settlement (ISDS) mechanisms are traditionally included in Bilateral Investment Treaties (BITs), FTAs and in the multilateral Energy Charter Treaty (ECT). ISDS grants investors the right to sue governments for policies that might threaten the profitability of their investment. The fossil fuel industry is the most litigious sector, accounting for around 20% of all known ISDS cases, closely followed by the mining sector with 11% of cases.³¹ A number of cases have directly challenged climate action (Uniper vs. Netherlands; Westmoreland vs Canada; Lone Pine vs Canada; Rockhopper vs Italy).³²

Global support for ISDS seems to be waning, given the lack of evidence that ISDS provisions increase investment, and the chilling impact it can have on countries' abilities to regulate for climate (or indeed other vital public policy) reasons. In 2012 South Africa began terminating its BITs on the basis that their relationship to foreign direct investment was ambiguous at best and that they limited the ability of the Government to pursue its transformation agenda.³³ New Zealand announced its opposition to ISDS in FTAs in 2017 and was most recently joined by the Australian Government which announced in November 2022 that it will not include ISDS in any new trade agreement.³⁴ Italy, The Netherlands, France, Spain, Poland and Germany have (or are in the process of) exited the Energy Charter Treaty arguing it is incompatible with the EU's climate goals and ISDS was not included in the UK's recent FTAs with Japan, Australia or New Zealand.³⁵

The UK should exit the ECT and exclude ISDS from future trade and investment agreements. It should also request side letters excluding ISDS from its commitments as a member of the CPTPP, as New Zealand has done.³⁶

³¹ Di Salvatore, L. (2021) '[Investor-State Disputes in the Fossil Fuel Industry](#)' International Institute for Sustainable Development

³² See Trade Justice Movement and Queen Mary University of London (2021) '[How trade can support climate action: a 2021 agenda](#)'

³³ Investment Treaty News (2012) '[South Africa begins withdrawing from EU-member BITs](#)' International Institute for Sustainable Development

³⁴ Farrell, D. (14 November 2022) '[Trading our way to greater prosperity and security](#)' Speech to the Australian APEC Study Centre

³⁵ Simon, F. (19 October 2022) '[Netherlands follows Spain in quitting Energy Charter Treaty](#)', Euractiv

³⁶ Government of New Zealand (2016) '[Comprehensive and Progressive Agreement for Trans-Pacific Partnership text and resources](#)'

Climate and development partnerships

Current trade rules are largely premised on the importance of pursuing ever freer trade, but if this approach is pursued exclusively, those who are already competitive are often the main beneficiaries. Without deliberate effort some countries will be (indeed are already) consigned to the role of extractive economies reliant on the export of primary commodities, which can hamper development, given that primary commodities tend to have a lower value than manufactured goods. At the same time, many of those commodities are the ones that will be pivotal to the technologies needed in the fight against climate change. To begin to redress this, and to ensure that developing countries can benefit from their participation in the supply chains of green goods, developed countries need to provide meaningful practical support for a green transition including genuinely concessional finance, investment at scale and technology transfer including access to the necessary intellectual property and resources to skill up the labour force for climate-critical technologies.

Given the UK's expertise in mining, offshore wind and other clean technology sectors, as well as its high investment footprint and development expertise, it could play an important role in trailblazing a more equitable approach to a climate and development partnership. The UK Government should consider building on the Just Energy Transition Partnerships (JETPs), announced by South Africa and Indonesia, to develop a programme which includes development support – and possibly export finance – to encourage investment and incentives for technology transfer with developing countries. The JETPs are interesting models, but there is room for improvement: the finance is in the form of loans, there is an overemphasis on privatisation rather than on actual decarbonisation interventions, and there is no technology transfer component, which is a missed opportunity.

Subsidy rules reform – moving away from fossil fuels, supporting renewables

Current trade rules on subsidies mitigate against climate action and are ripe for reform. The continuation of high fossil fuel subsidies sends mixed policy signals, making it harder to justify investment in alternatives. The recent energy crisis, sparked by the war in Ukraine, has seen a surge in fossil fuel subsidies and policy backtracking by numerous governments including the UK. The UK claims not to give any subsidies to fossil fuels, but many find this disingenuous as its extensive use of tax breaks for the oil and gas sector has a subsidising effect. The UK should be transparent regarding its own support to the fossil fuel sector and commit to a rapid phase out of support.

On the flip side, there remains concern that government support for renewables or other green subsidies could provoke action at the WTO. Creating greater clarity on this matter would have wide-reaching effects. Article 8 of the WTO Agreement on Subsidies and Countervailing Measures (SCM) protected certain subsidies deemed beneficial to society or the environment from a formal WTO challenge. The Article lapsed in 1999 and was not renewed.³⁷ The UK could propose the revival of this so called 'safe-harbour' category of 'non-actionable subsidies' at the Subsidies Committee at the WTO and through proposing specific carve-outs in existing and future FTAs – for example the Caribbean Community and Common Market (CARICOM) Agreement, signed in 2001 provides for a set of non-actionable subsidies that support stated environmental objectives.³⁸

³⁷ OECD (2019) 'Greening Regional Trade Agreements - Subsidies Related to Energy and Environmental Goods'

³⁸ CARICOM Secretariat (2001) 'Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy', Article 111 (1)

Supporting UK businesses to deliver green jobs and innovation

Most businesses are keen to play their part in tackling climate change, but they need investment and a supportive policy environment. A well-designed trade policy can ensure businesses and industries investing to improve their environmental and climate footprints are not undermined by competitors who are not held to similar environmental standards. By designing its domestic and trade policy with this in mind, the UK government will maximise the value of its own investments in emerging low carbon technologies and business models, provide a stable and predictable investment climate and will put its businesses in the best possible position to become competitive exporters of low carbon and environmental goods and services.

While the UK government has tended to favour market-based mechanisms, there is a role for a greater focus on industrial policy including through subsidies, infrastructure support, regulations and innovation policies, as well as for scaled-up public investment in those sectors which have green jobs potential and where the UK has some technical advantages. Government can also use public procurement to promote demand for low-carbon technology and can build in positive list exclusions in procurement chapters in FTAs. Government can support businesses more directly, for example by providing zero-interest business loans to support business energy efficiency and expanding UK Export Finance's range of low-carbon projects.³⁹ Government can also support innovation through funding collaborative research and development and green technology skills development. UK exporters can be supported through green export credits which could integrate a technology transfer component to speed up the transition globally.

UK POLICY RECOMMENDATIONS

- **Exit the Energy Charter Treaty (ECT), exclude Investor State Dispute Settlement (ISDS) from future trade and investment agreements and request exemption side letters as part of CPTPP accession.**
- **Develop a climate and development programme that combines genuinely concessional finance, investment at scale and meaningful technology transfer.**
- **Commit to transparency and rapid phase out of fossil fuel subsidies.**
- **Support new rules for green 'non-actionable' subsidies at the WTO and exemptions in FTAs.**
- **Invest in the UK's new green industries and support UK businesses to decarbonise.**

³⁹ Murphy, L. *et al* (2021) 'Fairness and opportunity: A people-powered plan for the green transition', Final Report of the Institute for Public Policy Research (IPPR) Environmental Justice Commission

5

CAREFULLY EVALUATE THE RANGE OF CLIMATE-RELATED TRADE POLICIES

As countries become more engaged in the relationship between trade and climate change they are considering a range of measures, some of which restrict market access for high carbon or climate-damaging products.⁴⁰ Such policies are proposed for a variety of reasons including to drive more ambitious climate action or to better hold businesses accountable for the carbon impacts of their production processes. Such policies must be carefully considered in order not to undermine the economic prospects of developing countries. The EU's proposed Carbon Border Adjustment Mechanism (CBAM) in particular has been met with considerable concern, with some countries arguing that it is in breach of the UNFCCC principle of Common But Differentiated Responsibilities (CBDR) and/or that it is a disguised restriction on trade. Coupled with developed countries' repeated failure to provide promised levels of climate finance this has seriously undermined trust at climate negotiations.

The UK is considering a range of climate-related trade policy measures, including a possible CBAM, due diligence legislation and minimum environmental standards. These all have a climate rationale, but effectively limit access to the UK market for goods including those from developing countries.

There was a range of opinion amongst Commissioners regarding whether and how the UK should approach such conditional climate-related trade policy measures. Some argued that, given the need for rapid action, they should be considered on a case-by-case basis as part of a package of measures with appropriate exemptions, sequencing and finance for developing countries. Others felt that the positive case for such measures was weak and they ought not to be considered. This report will set out the considerations for each policy area and suggest a decision-making framework (based on analysis by the Trade Policy Observatory for the UK Climate Change Committee) as well as a set of principles for the Government to consider.⁴¹

The main conditional climate-related trade policies under consideration in the UK are:

Minimum/core environmental standards There are growing calls for the UK to develop minimum core environmental standards. These would form a baseline in FTA negotiations, but could also be applicable unilaterally, for example through import controls with a system of licenced exporters or through checks at the border as currently happens with Sanitary and Phyto-Sanitary (SPS) controls. This would ensure that domestic environmental standards are not undermined by imports, particularly as the UK negotiates more FTAs.

⁴⁰ Morris, M. (2022) 'Trading up: Proposals for a progressive US-UK trade partnership' IPPR

⁴¹ Lydgate, E., *et al* (2021) Trade policies and emissions reduction: establishing and assessing options' UK Trade Policy Observatory

However, this would have impacts on developing country exporters who are already struggling to comply with the multiplicity of competing and overlapping requirements. Any core environmental standards and systems for verification would need to be designed in consultation with developing country exporters and implemented as part of a package of measures that address capacity and support needs.

Due diligence legislation The EU's Deforestation Regulation will impose a due diligence obligation on EU businesses to ensure that the commodities they place on the EU market have not been grown on deforested land and there are also environmental elements in the EU's Corporate Sustainability Due Diligence Directive. The UK's Environment Act also contains deforestation due diligence provisions, although these are less ambitious than the EU's approach.⁴² The UK also has due diligence provisions in the Modern Slavery Act. These various pieces of legislation and programmes contain overlapping obligations which could be simplified into one piece of legislation.

In general, such provisions have received a positive response from progressive businesses seeking a level playing field, however developing country governments have expressed concerns about how large multinational companies may pass on the costs and risks of implementing due diligence provisions to weaker supply chain actors or use the threat of withdrawing from a country to drive down prices. Any streamlined due diligence legislation should be developed closely with affected countries and have strong mechanisms in place to monitor price and market impacts.

CBAMs A number of countries are beginning to look at measures to address 'carbon leakage'. This is when the domestic climate measures (including, but not exclusively, carbon pricing) begin to impact the competitiveness of domestic industry and there is concern that business operations will relocate to countries with lower controls, thus having no overall impact on lowering greenhouse gas emissions. The approach that the EU has taken – to develop a unilateral CBAM that extends EU carbon pricing to imports via a tax on the carbon content of a product at the border – is one of the most contentious policy areas in the trade and climate space at the moment. Criticisms of the EU approach come from a range of different perspectives and include: the impact on developing countries, most prominently Mozambique's aluminium exports⁴³ and the failure to provide a generalised exemption for least developed countries; lack of meaningful consultation which has undermined trust and created unnecessary tension in the UNFCCC; questions regarding effectiveness in terms of climate impact; questions regarding the complex nature of the instrument, how embedded emissions will be calculated, how it will account for countries that do not have a pricing system and the burdensome and costly administration it entails (even for more sustainable producers if they are in a country without an Emissions Trading Scheme (ETS)); questions about WTO compatibility; questions about the use the resources generated; concerns about transfer of additional costs onto weaker supply chain actors and concerns about the possible premature extension of carbon pricing into non-industrial areas.

By aligning its ETS with the EU, the UK could exempt itself from the EU's CBAM requirement, which would greatly ease burdens on UK exporters. However, this will not address the possible problem of leakage for UK producers. The UK government has committed to a consultation on carbon leakage in Spring 2023 which will also look at CBAM and alternatives including regulatory measures such as product standards as well as voluntary approaches. The UK should consider

⁴² UK Legislation (2021) [UK Environment Act](#)

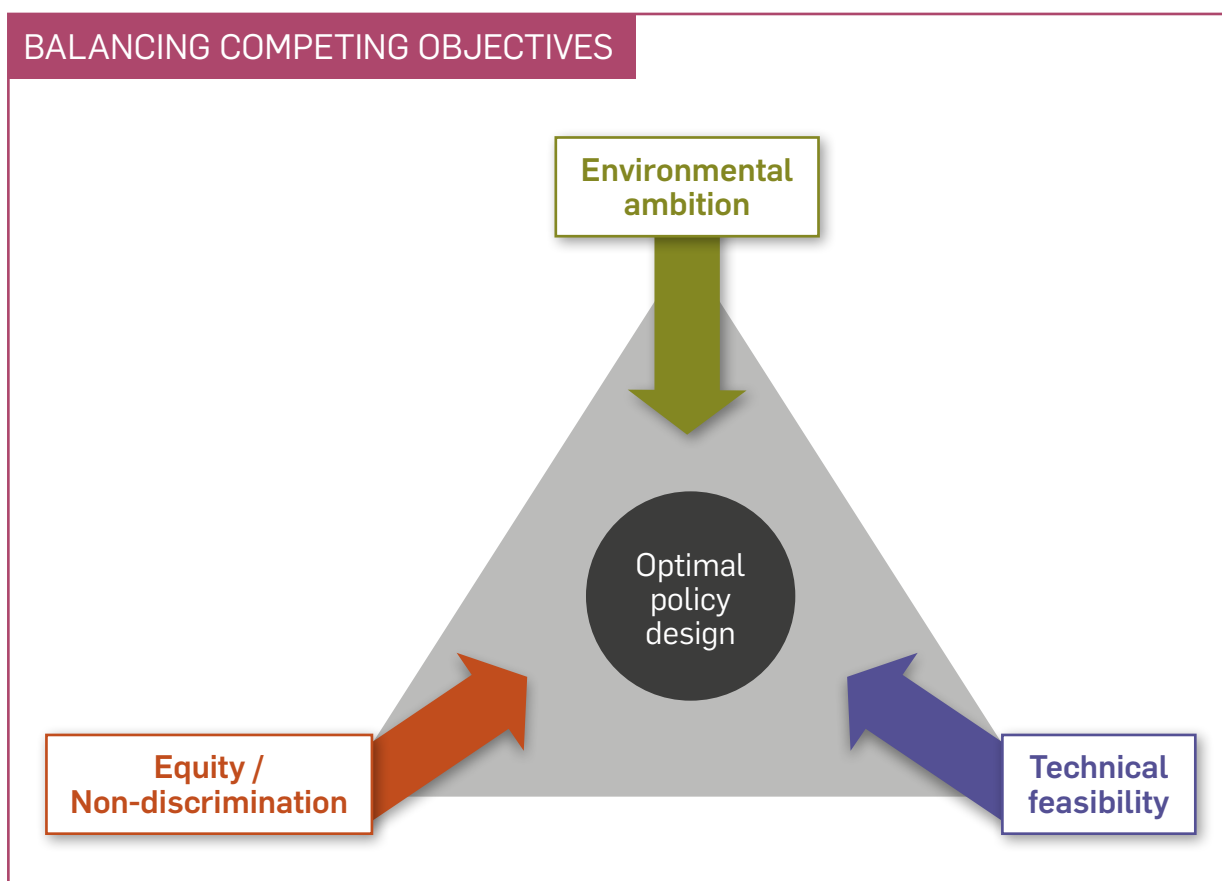
⁴³ Pleek, S., Denton, F. and Mitchell, I. (2022) '[An EU Tax on African Carbon - assessing the impact and ways forward](#)' Centre for Global Development

addressing carbon leakage through a step change in the levels of investment and finance targeted at supporting sectors around the world to decarbonise.

Some Commissioners felt that a CBAM could be a useful tool to create a level playing field for strategic UK industries while they transform, but cautioned that it must include a robust and clear timeline for the elimination of free allowances under the ETS and that it should be designed to exempt least developed countries. Others argued the CBAM model could be improved by combining exemptions for developing countries with more positive and time bound incentives (such as tariff preferences) to encourage a more rapid transition. Others were opposed, advocating a full exploration of alternatives, including but not limited to: investment and financing to support global decarbonisation of emission intensive industries; demand side and market creation measures as well as multilateral rather than unilateral action on carbon pricing.⁴⁴

Pro-development decision-making framework and guiding principles

When approaching these difficult policy areas, the UK Trade Policy Observatory recommends a useful conceptual framework for balancing the 'trilemma' of competing objectives of **environmental ambition**, **technical feasibility** and **fairness and equity** dimensions (both national and international). This is more specifically broken down into nine summary measures.⁴⁵



⁴⁴ For more discussion of the pros and cons of the EU's CBAM see UNCTAD (2021) '[A European Union Carbon Border Adjustment Mechanism: Implications for developing countries](#)'
House of Commons Environmental Audit Committee (2022) '[Greening imports: a UK carbon border approach](#)'
Morris, M. (2022) '[Trading up: Proposals for a progressive US-UK trade partnership](#)' IPPR

⁴⁵ Lydgate, E. *et al* (2021) '[Trade policies and emissions reduction: establishing and assessing options](#)', UK Trade Policy Observatory

To complement this framework the UK government could work with developing countries to develop and champion a set of guiding principles, based on pre-existing treaty obligations, that it will apply to ensure that its trade-related climate policies do not have unintended consequences.⁴⁶

UK POLICY RECOMMENDATIONS

- **Champion a decision-making framework and a set of principles for addressing the potential adverse development impact of climate-related trade measures.**
- **Consider policies which have market access consequences for developing countries only as part of a package that includes appropriate exemptions, sequencing, monitoring and support/finance.**
- **Consider a range of positive policy levers that will support the UK and trading partners to decarbonise in parallel, in order to address consumption emissions and avoid carbon leakage.**

⁴⁶ Examples of possible principles suggested by Commissioners include: Trade-related responses to climate change should take into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty; Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade; The idea of differentiation between developed and developing countries contained in CBDR and in special and differential treatment should be reflected in policy design and implementation; There should be appropriate sequencing, exemptions and commensurate complementary measures put in place in advance to help adversely affected developing countries address costs and/or build the needed capacity to apply or develop similar measures.

6

STRENGTHEN THE ALIGNMENT OF FTAS WITH CLIMATE CHANGE

Since Brexit the UK has focused on rapid conclusion of FTAs, signing agreements with 71 countries since 2016.⁴⁷ The vast majority of these were ‘continuity’ deals required to maintain market access, but since 2021 the UK has concluded new deals with Australia and New Zealand, launched negotiations with India, the Gulf Cooperation Council, Israel, Mexico and Canada and applied to join the CPTPP.⁴⁸ There is concern that the emphasis on quantity rather than quality of deals, in the absence of a clearly articulated trade strategy, has led to mixed outcomes particularly for the farming and services sectors.

In terms of climate change, the lack of a clear UK strategy has led to outcomes heavily influenced by the priorities of negotiating partners – as illustrated in the contrast between the climate provisions in the UK’s FTAs with New Zealand and Australia.

Securing trade liberalisation commitments in FTAs can support UK imports and exports of low carbon goods and play to the UK’s strengths in clean technologies, however it is unclear to what extent tariffs are really a barrier in this area (with the notable exception of India) and whether these objectives can be better achieved via other policy instruments.

While FTAs are one of the more enforceable trade policy instruments, due to the nature of the negotiating process and the breadth of competing issues covered they often lack depth and ambition in the areas of climate and the environment. There are some interesting examples of FTAs which have gone further than the norm in terms of efforts to address climate change – although these commitments should be carefully scrutinised to understand their real potential impact. For example, the UK-New Zealand and EU-New Zealand FTAs include a commitment to take steps to eliminate fossil fuel subsidies, the EFTA-Indonesia FTA incentivises trade in sustainable palm oil, and the US-Peru FTA conditions increased market access on prevention of illegal logging. The EU-UK Trade and Cooperation Agreement (TCA) contains a global first in designating the fight against climate change and implementation of Paris Agreement commitments as an ‘essential’ element, violation of which can lead to the termination of all or parts of the Agreement.

⁴⁷ Edgington, T. (20 September 2022) ‘Brexit: what deals has the UK done so far?’, BBC Reality Check

⁴⁸ Webb, D. (2022) ‘Progress on UK Free Trade Agreement negotiations’ House of Commons Library

Commissioners suggested a number of ways that the climate impact of FTAs could be improved including:

- Develop minimum pre-conditions, such as the partner country must be a Paris Agreement signatory or based on each partners' NDC commitments.
- Include strong and specific non-regression clauses such as that in the EU-UK TCA. Some suggested clearer trade sanctions for partners that move away from their Paris commitments, others suggested such clauses would be best focused on targeting specific firms, industries or sectors.
- Exercise caution regarding regulatory cooperation provisions as these can have a chilling effect on climate policies such as fuel efficiency or energy efficiency regulations.
- Include pro-climate exemptions in subsidies and procurement chapters.
- Respect the need for asymmetry in FTAs with developing countries and recognize that the proliferation of behind the border measures can impact industrial policy and often reach beyond Common But Differentiated Responsibilities.
- Exclude ISDS provisions.
- Include positive incentives such as tariff preferences for goods produced in climate friendly/sustainable ways.

However, Commissioners agreed that FTAs are only one possible trade policy tool and that there may be other more effective pro-climate trade policies which the UK needs to bear in mind as it develops a more mature approach to the negotiation of FTAs.

UK POLICY RECOMMENDATIONS

- **Develop a mature, pro-climate approach to FTAs as part of a wider trade strategy.**
- **Consider measures to improve the climate impact of FTAs, including a limited set of pre-conditions, stronger non-regression clauses, pro-climate exemptions and positive incentives.**

Glossary

BIT	Bilateral Investment Treaty
CARICOM	The Caribbean Community and Common Market
CBAM	Carbon Border Adjustment Mechanism
CBDR	Common But Differentiated Responsibilities
CPTPP	The Comprehensive and Progressive Agreement for Trans-Pacific Partnership
ECT	Energy Charter Treaty
ETS	Emissions Trading Scheme
EU	European Union
FFSR	Fossil Fuel Subsidy Reform Initiative
FTA	Free Trade Agreement
IDP	The Informal Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade
IPPR	Institute for Public Policy Research
ISDS	Investor State Dispute Settlement
JSI	Joint Statement Initiative
NDC	Nationally Determined Contribution
SCM	Agreement on Subsidies and Countervailing Measures (WTO)
SDT	Special and Differential Treatment (WTO)
SPS	Sanitary and Phyto-Sanitary
STAG	Strategic Trade Advisory Group
TAG	Trade Advisory Group
TAC	Trade and Agriculture Commission
TCA	The EU-UK Trade and Cooperation Agreement
TESSD	Trade and Environmental Sustainability Structured Discussions
TWG	Thematic Working Group
UK	United Kingdom
UNEA	United Nations Environment Assembly
UNCTAD	UN Conference on Trade and Development
UNFCCC	United Nations Framework Convention on Climate Change
UNIDO	United Nations Industrial Development Organisation
US	United States
WTO	World Trade Organisation

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The Trade Justice Movement is a network of nearly 60 organisations, including trade unions, environmental groups and justice campaigns, who push for trade policy that works for people and planet.

 www.tjm.org.uk

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