



A Real Mosaic of Solutions to Respond to Loss and Damage from Climate Change

Trade Reform

lossanddamagecollaboration.org

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Introduction

This publication is part of a [series of briefs](#) unpacking the pieces of a fit for purpose “mosaic of solutions” to respond to loss and damage from climate change. This series expands on our earlier work which presented a five-year vision for Loss and Damage under the [United Nations Framework Convention on Climate Change](#) (UNFCCC) to look beyond the international climate regime at catalysing a wider mosaic of solutions.

In the [flagship paper](#) of the series, we unpack the pieces of the mosaic. In these thematic briefs we dive deeper into existing solutions and how they can be strengthened. We also consider any reforms needed and explore emerging solutions.

This brief unpacks the relationship between loss and damage responses and international trade. It provides a succinct overview of the problems developing countries face as a result of current trade rules and the reforms needed to ensure that these rules enhance, rather than impede, responses to loss and damage.

What is the problem?

Trade is governed by a complex framework of international rules, primarily managed by the [World Trade Organization](#) (WTO), alongside bilateral agreements, regional treaties, and national legislation.

Current trade rules have locked developing countries into underdevelopment through exploitative economic relationships with developed countries.¹ This is because trade rules are one of the ways through which colonial expropriation of the labour and resources of the Global South by the Global North has been legitimised and reproduced.² This relationship both increases the vulnerability of developing countries to loss and damage and reduces their ability to respond to it.

Under existing treaties and agreements, trade rules are being used to water down and eliminate social and environmental safeguards and create major barriers to effective climate action, including responding to loss and damage. Just a few examples include:

1. Trade rules on intellectual property that undermine access to knowledge and technology transfer;
2. The investor-state dispute settlement (ISDS) mechanism restricting governments from enacting climate policies and regulating and taxing polluting companies (see case study 1 below); and
3. Trade rules that increase pressure on countries to privatise public services and facilitate capital flight (i.e. the rapid, large-scale exodus of financial assets out of a country, region or city).

Within UNFCCC discussions on trade, [Carbon Board Adjustments Mechanisms](#) (CBAM) have been a significant focus.³ A CBAM is a tax applied to imports which are deemed to be carbon intensive and have not already been taxed through a carbon taxation system. The EU is introducing a CBAM from 2026 onwards,⁴ with the aim of ensuring that certain imports face the same rates of taxation as they would if they were produced within the EU’s [Emissions Trading Scheme](#) (ETS). However, this will likely hit developing countries particularly hard, especially those with high carbon emissions who also rely heavily on exports to the EU.⁵

Case study 1: ISDS tribunal over fossil fuel windfall tax

ISDS clauses in trade deals are increasingly being used by big corporations to delay and reverse climate policy and force governments to hand over huge sums of money that could otherwise be spent on public services, advancing sustainable development, and responding to loss and damage.

Klesch Group Holdings Limited & others v. European Union

The Klesch Group owns two oil refineries in Denmark and Germany. In 2023, Klesch sued the EU, Germany, and Denmark via the ISDS⁶ mechanism for at least €95 million over a windfall tax on fossil fuel profits introduced during the Ukraine war.⁷ Based on the [Energy Charter Treaty \(ECT\)](#), the lawsuit was intended to stop Klesch from having to pay the windfall tax. In an unprecedented move, the case saw the ISDS tribunal instruct the German Government to stop collecting the tax while the trial was under way.⁸ At the time of writing, the outcome of the dispute is still pending.

The controversial ECT was drafted to protect the interests of energy companies as the Soviet Union broke up in the early 1990s. It is increasingly being used by companies to sue governments. This includes the recent case of *Rockhopper v. Italy*⁹, which saw the UK based oil company Rockhopper awarded a 210 million USD payout in 2022 after Italy stopped it from drilling for fossil fuels.¹⁰

What do we need to see?

The WTO and many aspects of regional and bilateral trade agreements are not compatible with the solutions needed to prevent, reduce, and address loss and damage. Therefore, deep reform is required to ensure that trade rules are fair, particularly for developing countries, and prioritise suitable development. Table 1 highlights a number of key reforms that would significantly enhance loss and damage response.

Table 2: Trade reforms needed to enable adequate responses to loss and damage.

REFORM	WHY IS IT NEEDED	HOW WOULD IT ENHANCE LOSS AND DAMAGE RESPONSE?
Abolishing the investor-state dispute settlement (ISDS) mechanism	The ISDS mechanism protects the interests of high-polluting and environmentally destructive industries, by allowing corporations to sue States for lost future profits when governments make policy changes. Disputes in the oil, gas, and mining sectors accounted for the largest portion of new claims filed in 2025, ¹¹ representing 45 percent of new cases, a sharp increase from 25 percent in the previous year. ¹²	The abolition of the ISDS would allow all States to take climate action without the fear of being sued by corporations. This will further incentivise transitioning away from fossil fuels as part of building back better. It will also encourage the diversion of fossil fuel subsidies and the placing of levies and taxes on fossil fuel extraction and profits to help fund loss and damage responses.
Ensuring trade rules do not undermine access to knowledge and technology transfer	Trade rules on intellectual property are undermining access to the knowledge and technology transfer that developing countries need to undertake climate action, enhance resilience, and advance sustainable development.	Transfer of knowledge and technologies, such as those related to renewable energy, energy efficiency, and resilient infrastructure, will enable developing countries to increase loss and damage prevention and reduction and build back better.
Insulating against capital flight	The WTO's <u>General Agreement on Trade in Services (GATS)</u> treaty facilitates cross-border capital flows, making developing countries more vulnerable to capital flight during or after a loss and damage event. GATS can also limit the use of <u>financial transaction taxes (FTT)</u> and <u>capital management techniques</u> by classifying them as potential violations. ¹³	Eliminating trade rules that enable capital flight and/or suspending or removing market access commitments, ¹⁴ will help developing countries insulate themselves against external shocks. This will reduce impacts caused by capital flight such as local currency depreciation, the reduction of foreign exchange reserves, the loss of jobs, and investments in infrastructure and services. By better enabling the implementation of FTTs, funds can be more easily raised for responding to loss and damage.

REFORM	WHY IS IT NEEDED	HOW WOULD IT ENHANCE LOSS AND DAMAGE RESPONSE?
Rebalancing digital trade away from big tech	Key components ¹⁵ of digital trade chapters within trade deals are serving the interests of big technology companies such as Amazon and Google — and sometimes the developed countries they are based in— rather than people and planet. This bias risks stopping developing countries from potentially implementing digital service taxes ¹⁶ and capitalising on the economic value of data generated within their own borders. These components could also lead to countries being sued under the ISDS mechanism if governments try to put taxes on artificial intelligence (AI) or customs duties on digital transmissions.	By rebalancing or removing chapters on digital trade, developing countries will be able to benefit from digital trade in an equitable manner, retain intellectual property, and generate revenues from their data. This includes regulating and taxing AI and applying customs duties on digital transmissions to raise funds to respond to loss and damage.
Remove pressure to privatise public services	Services and investment rules within trade agreements such as the WTO and GATS can exert significant pressure to privatise public services by prioritising market-driven efficiency, trade liberalisation, and debt reduction over state ownership. This is particularly the case in the aftermath of a loss and damage event when developing countries lack fiscal space. Investment rules also enable foreign investors to sue governments under ISDS if new regulations—such as re-nationalising a water utility—are seen to infringe upon their potential profits.	Reforming trade rules related to public services to prioritise strengthening national systems that centre community needs will reduce pressure on developing countries to privatise public services. It will also allow developing countries to re-nationalise services as part of recovery and reconstruction efforts without the fear of being sued.

REFORM	WHY IS IT NEEDED	HOW WOULD IT ENHANCE LOSS AND DAMAGE RESPONSE?
Ensuring that trade rules do not limit “trade restrictive” response measures	Trade rules on subsidies are primarily enforced through the WTO’s Agreement on Subsidies and Countervailing Measures (ASCM). Despite being designed to prevent protectionism, the ASCM can prevent government interventions to protect local industries (e.g. by subsidising the costs of sustainable locally sourced materials) and make agricultural stockpiling for food security harder,¹⁷ thereby impeding loss and damage responses.	By abolishing trade rules that block climate action aligned subsidies and stockpiling, developing countries would be better able to respond to loss and damage to local and national economies (e.g. by subsidising sustainable farming). They would also be able to stockpile the resources they need to enable anticipatory action (e.g. food to prevent food insecurity) and subsidise local production of renewable energy technologies for building back better. While abolishing trade rules that permit subsidies for high emitting and environmentally destructive activities like fossil fuel extraction and pesticide intensive agriculture,¹⁸ sustainable development would be further incentivised, helping to prevent and reduce loss and damage.
Reduce commodity export dependence	For many commodity-dependent developing countries’ reliance on the export of a narrow range or single commodity compounds their vulnerability¹⁹ to commodity price shocks, debt crises, and loss and damage. It also reduces potential tax revenues.²⁰ The US’s ongoing push for nations to join a critical minerals trading bloc risks further compounding this issue.²¹ Instead, developing countries should be supported to diversify their economies and move up global value chains (e.g. by refining raw materials in country) in a manner that ensures the localisation and regionalisation of production chains and facilitates a just transition.²²	Supporting developing countries to diversify their economies and move up global value chains will increase the resilience of supply chains, reducing their vulnerability to loss and damage. It will also increase tax revenue that can be used for sustainable development and loss and damage responses.

REFORM	WHY IS IT NEEDED	HOW WOULD IT ENHANCE LOSS AND DAMAGE RESPONSE?
Reduce food import dependence	Many of the most vulnerable developing countries are heavily dependent on food imports, increasing the risk of food insecurity during and after a loss and damage event. ²³ For example, Yemen relies on imports for 93 percent of its cereal needs and Haiti for 86 percent, leaving them heavily exposed to global price spikes or supply chain disruptions. ²⁴	By supporting developing countries to increase domestic and regional food production and enhance the resilience of healthy diet-based food systems, they will be dependent on food imports. This will reduce the risk of food insecurity in the aftermath of a loss and damage event.

Whether the WTO itself should be majorly reformed or abolished entirely is the subject of debate.²⁵ Some options for reform include:

- Challenging the core mandate of the WTO to return to its roots as a venue for the negotiation of trade rules;
- Putting in place a climate waiver and suspending WTO rules that come into conflict with climate goals. To be effective, this would also require a suspension of similar rules in bilateral and multilateral trade deals;²⁶
- Bringing conversations on trade —and the work of [UN Trade and Development \(UNCTAD\)](#)— further into UNFCCC discussions and ensuring that UNFCCC decisions override trade rules; and
- Setting up regional coalitions of countries willing to reform trade agreements to advance sustainable development and climate action.

Additionally, some proponents have called for developing countries to strategically disengage developed countries by stopping trading with them, to support the prospect of more trade between developing countries.

When considering trade reform, it is critical to acknowledge that developing countries are not starting from the same point as developed countries, but from the basis of existing inequalities and centuries of ecological and social harm brought about by colonialisation and extractivism.²⁷ Therefore, to be effective, reform of international trade rules must be accompanied by reparations, debt cancellation,²⁸ and the provision of climate finance.

Endnotes

- 1 War on Want (2023). Towards trade justice: Changing trade for a just and sustainable planet. *War on Want*. Available [here](#).
- 2 Ibid.
- 3 To date, conversations on trade under the UNFCCC have been marginal, however at SB 58 and COP 30 unilateral trade measures (UTMs)—specifically carbon border adjustments like the EU’s Carbon Border Adjustment Mechanism (CBAM)—emerged as a major contentious issue. The LMDC proposed an agenda item on “Promoting international cooperation and addressing the concerns with climate change-related trade-restrictive unilateral measures” and paragraph 56 and 57 of the Global Mutirao decision taken at COP 30 did address this by reaffirming that: 1). Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change; and that; 2). 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 decision also requests the subsidiary bodies to hold a dialogue at their sixty-fourth, sixty-sixth (June 2027) and sixty-eighth sessions (June 2028), with the participation of Parties and other stakeholders, including the International Trade Centre, the United Nations Conference on Trade and Development and the World Trade Organisation, to consider opportunities, challenges and barriers in relation to enhancing international cooperation related to the role of trade. It also decided to exchange experiences and views on related matters at a high-level event in 2028 and requested the subsidiary bodies to present a report summarising the discussions at the high-level event.
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- 13 Public Citizen (2010). The WTO Conflict with Financial Transaction Taxes and Capital Management Techniques, and How to Fix It. **Public Citizen**. Available [here](#).
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- 18 United Nations Trade and Development (2023). UNCTAD sets out pathways to ease commodity dependence for greener, inclusive growth. *United Nations Trade and Development*. Available [here](#).
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- 20 War on Want (2023). Towards trade justice: Changing trade for a just and sustainable planet. *War on Want*. Available [here](#).
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- 23 Julien Bliesener & R. Peters (2024). Trade against hunger. *United Nations Trade and Development*. Available [here](#).
- 24 *Ibid.*
- 25 War on Want (2023). Towards trade justice: Changing trade for a just and sustainable planet. *War on Want*. Available [here](#).
- 26 *Ibid.*
- 27 *Ibid.*
- 28 *Ibid.*

