



FREE RIDING ON THE CLIMATE

The possibility of legal, economic and trade restrictive measures to tackle inaction on global warming

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nef The New Economics Foundation is a registered charity founded in 1986 by the leaders of The Other Economic Summit (TOES), which forced issues such as international debt onto the agenda of the G7/G8 summit meetings. It has taken a lead in helping establish new coalitions and organisations, such as the Jubilee 2000 debt campaign; the Ethical Trading Initiative; the UK Social Investment Forum; and new ways to measure social and environmental well-being.



According to the most recent Third report of the Intergovernmental Panel on Climate Change (IPCC) the global average surface temperature has increased over the 20th century by about 0.6°C. They say that, “There is new and stronger evidence that most of the warming observed over the last 50 years is attributable to human activities.” They also conclude that the combustion of fossil fuels is mostly to blame. IPCC climate models project that global average surface temperature will increase by 1.4° to 5.8°C by 2100. The projected rate or speed of change is very likely to be without precedent during at least the last 10,000 years.

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The state of play

According to the most recent Third report of the Intergovernmental Panel on Climate Change (IPCC) the global average surface temperature has increased over the 20th century by about 0.6°C. They say that, "There is new and stronger evidence that most of the warming observed over the last 50 years is attributable to human activities." They also conclude that the combustion of fossil fuels is mostly to blame. IPCC climate models project that global average surface temperature will increase by 1.4° to 5.8°C by 2100. The projected rate or speed of change is very likely to be without precedent during at least the last 10,000 years.

But things could be getting worse. The next report due in 2007, is likely to reveal that the scale and rate of change will be even greater.

New work done by the UK's Hadley Centre incorporating so-called environmental feedback mechanisms such as forests dying suggests that, "The rise in global mean surface land temperature between 2000 and 2100 is around 3°C greater... compared to the previous model estimates."

More than 180 nations including the United States, Australia and Russia signed up to the 1992 United Nations Framework Convention on Climate Change (UNFCCC). Under Article 2 of the Convention they are committed to:

"Achieve stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system."

Past and current emissions already commit the world to an increase in temperature of 1–1.5°C. A consensus has emerged that temperature rises beyond 2°C are likely to trigger runaway global warming. There is a danger that without radical short-term action to shift onto a low-carbon path, commensurate with up to 80 per cent cuts in emissions within this century, the option of limiting the temperature increase to 2°C will disappear within the next two decades.

Emissions, however, are rising. And, lacking enough support, the Kyoto Protocol, agreed to begin implementing the UNFCCC, is yet to come into force. And, even if it does, whilst the United States and Australia remain outside its targets are unlikely to be kept. The Protocol required developed countries to adopt emission reductions of 5.2 per cent below 1990 levels by 2008–2012.

In the meantime, the European Union has ratified the Protocol and begun to internalise the costs of meeting its commitments to reduce emissions. It has designed a trading scheme to help achieve its goal. Early indications suggest that substantial costs in terms of higher energy prices will be passed on to householders and the private sector. Some analysts point to costs rising by up to 60–70 per cent.

In these circumstances the likelihood is that European businesses will quickly feel at a competitive disadvantage with businesses based in countries that are not internalising the costs of meeting Kyoto targets. They are likely to view the double whammy of the US's cheap fuel, and its rejection of Kyoto with its implied costs, as an effective subsidy to US-based businesses and manufacturers.

The absence of key industrialised countries from the Kyoto Protocol – the US, Australia and Russia – not only puts the businesses of signed-up countries at a competitive disadvantage, it also delays a solution to global warming thus putting businesses at risk in a different way.

Certain changes in the nature of the physical world as a result of climate change are inevitable. And the changes will have a growing impact on all sectors of the economy – an impact that is currently largely unaddressed. The extent of the value at risk from climate change could be as much as 15 per cent of the total market capitalisation of major companies¹ – that translates into potentially £165 billion of the market capitalisation of companies on the FTSE All Share Index.²



The rise of international legal initiatives

In recent years there has been a general rise in the culture of litigation in Britain and the US. On top of that, using the courts to right historical wrongs and settle disputes is increasingly popular between people and countries spread around the globe. As political processes fail, more and more, the pursuit of reparations for wrongdoing by both nations and corporations is becoming a matter for the courts.

In the last few years alone, a plethora of cases and potential lawsuits have emerged. Actions on the crimes of slavery and restitution for Nazi looting are well known, but there are many others. Swiss banks, UBS and Credit Suisse were named in legal actions in US lawsuits brought on behalf of victims of apartheid South Africa. An eight-year-old Iranian boy refugee took a civil action against the Australian Government after detention left him with possibly chronic, post-traumatic stress disorder. The King of Bunyoro in modern day Uganda sought £2.8 billion compensation from Britain for acts of brutality and exploitation clearly admitted in British military diaries dating from the 1890s.

Perhaps more than anything, the cases against 'big tobacco' made people believe in the potential of the law to tackle great injustices. Global warming, however, could make big tobacco look like small beer.

Carbon goes to court

In 2001 the annual *World Disasters Report*, published by the International Federation of Red Cross and Red Crescent Societies, predicted that an international legal challenge over climate change was inevitable. The following year the same report produced new figures showing a huge increase in the number of people affected by climate related disasters.

The United Nations Environment Programme's attempts to assess the economic costs of global warming show the figure could soon reach around \$300 billion per year. But technical problems in accurately assessing costs in poor countries mean that figure could easily be double, or more. No proper global assessment has been made yet of what it will cost poor countries to physically adapt to climate change. Large numbers of people and

amounts of infrastructure are typically concentrated in areas that will be most affected, such as near coasts and rivers.

None of these calculations, however, can measure the losses due to nations faced with their own extinction, the loss of their land, history, exclusive economic zone, and sacred sites. A new size and type of balance sheet will have to be invented.

When heads of state from around the world gathered in Johannesburg for the disappointing tenth anniversary of the Earth Summit, a shock was waiting. In the exhausted world of global deal making a new strategy was stirring. One small vulnerable country was preparing to abandon the negotiating table for the courtroom.

The Prime Minister of Tuvalu Koloa Talake surprised the international community by announcing his country's intention to bring legal action against the world's worst polluters over their emissions of greenhouse gases (GHGs).

It shouldn't have surprised anyone. Rising sea levels, coupled with extreme and unpredictable weather resulting from global warming will devastate Tuvalu and any other low-lying island country. Their small size and marginalisation from world affairs left them few options to seek redress. The lawsuit is an almost inevitable result of the increasing legalisation of international relations to meet the greatest environmental threat of our times.

The trend towards legalisation has happened for several reasons. One driver is the failure of diplomacy coupled with frustrations with a complex and constantly undermined United Nations. Another, ironically, is the success of economic globalisation.

As more and more business deals take place across national borders, an increasingly mature and comprehensive body of international law is needed to protect them. Also, wherever the US goes it tends to take along its uniquely litigious political culture. Around half of all legal cases in the US are so-called 'tort' actions. These are claims for compensation and punitive damages where injury or harm has resulted from reckless, negligent or improper behaviour.

The US is a country where, as Tocqueville famously observed, there is *"scarcely any political question... that is not resolved sooner or later into a judicial question."*

Things will not be straightforward. The law needs evidence, litigants, appropriate jurisdiction, and both the ability to assess compensation commensurate with damages, and to constrain the perpetrators of harm. There is now no shortage of evidence and angry people. And the insurance industry is putting lots of very big numbers against damages.

The problem of enforcement

Once signed the greatest problem with any international treaty or convention is ensuring compliance. When countries are members of international economic institutions such as the World Trade Organisation, the World Bank or the International Monetary Fund, non-compliance with rules and regulations can lead to swift and effective economic sanctions. Many multilateral environmental and social agreements are, however, voluntary in effect.

The original UNFCCC did, though, set up a mechanism to solve disputes in a provision for a Conciliation Commission. Such a commission, however, has not been set up because it needs the Conference of the Parties (COP) to the Convention to first adopt conciliation procedures, which they have not yet done.

The Convention provided for non-binding greenhouse gas emission reduction targets but specified that industrialised countries take measures to limit their emissions. Article 14 of the Convention also allows countries to opt into 'binding arbitration or dispute resolution' before the International Court of Justice.³

There is also language in other international treaties, which could be interpreted to cover global warming. One such is the Law of the Sea Convention in force since 1994. It allows for binding conflict resolution, which although the US does not directly adhere to, it is arguably bound to most of its provisions by customary international law and through other



unilateral declarations.⁴ The Convention says: "States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment!"

Other potential courses of action include using the broad language and binding dispute resolution mechanisms that go before the International Court of Justice (ICJ), contained in many bilateral 'Friendship, Commerce and Navigation' treaties. The ICJ can also issue 'advisory opinions' on the legality of the actions of states and can be asked to do so by the UN General Assembly. International human rights law raises other possibilities but none of these courses of action are clear-cut. And, they are also limited in their effectiveness if the purpose of the exercise is to raise the costs of inaction over joining an international agreement to curtail global warming.

Preparing the brief

Yet, at a simple level, there are few basic principles in law. One is that if someone does you harm two things should happen. First, they should stop what they're doing, and second, they should compensate you for the harm done. The rest is just detail that a queue of hungry lawyers will help work out.

According to professor of international law Andrew Strauss, there are three broad types of action that could be taken. People harmed by global warming could take action against governments in countries' own courts. Or, action could be taken against corporations with a large impact on global warming also in their country's own courts. Or, countries could be hauled up before an international tribunal.

Already several small cases are under consideration and a couple are under way. A group of individuals together with pressure groups and three US municipalities are suing the US export credit agency over its funding of fossil fuel projects. Another action is trying to apply the US' Clean Air Act to force greenhouse gas reductions. The future looks set for slow, drawn out legal guerrilla warfare.



But, intriguingly, in the context of the current trade stand-off over steel and GM food between the European Union and the US, there is another, less direct, but entirely legitimate route that could be more effective than any of the above.

The US is, as explained, not the only potential target for action; Russia and Australia too are yet to ratify the Kyoto Protocol, but it is a particularly compelling target.

The United States with 4.6 per cent of the world's population accounts for 25 per cent of human-driven greenhouse gas emissions, and the Bush Administration has refused to submit the international climate agreement, the Kyoto Protocol for Senate ratification. Figures released by the British Government's Environment Secretary Margaret Beckett, suggest that the current Bush energy plan could leave US emissions 25 per cent higher in 2010, compared to the seven per cent cut that the US agreed to when negotiating in Kyoto.

The potential of trade measures for enforcement of global warming mitigation

There are few tools to ensure that industrialised countries live up to their commitments under the UNFCCC and the Kyoto Protocol. As outlined above, enforcement mechanisms for any multilateral environmental or social agreements are notoriously weak. After conventional diplomacy, ultimately the international community has only two approaches to encourage compliance, military or economic. The first is unthinkable, which leaves the second – trade restrictive measures. In practical terms the main arena for economic sanctions is trade. And some interesting precedents exist.

At the time of the Earth Summit in 1992 the European Commission was considering a climate change tax. The precedent cited was the US Hazardous Substances Trust Fund, popularly known as Superfund.

Superfund is geared towards the clean up of domestic toxic sites and is paid for by taxes levied on the petro-chemical industries. Higher rates of tax are levied against imports of

petrol and chemicals. This means that a direct trade measure is being used to pursue clear environmental objectives.

Superfund was considered by a GATT (General Agreement on Tariffs and Trade) Dispute Settlement Panel following a complaint made by the European Community. The Panel decided that the tax was consistent with Article III of the GATT and that the effective border tax adjustment was not an unacceptable restraint of trade.⁵ Examples like this raise the possibility of legitimate trade measures being used to pursue the goals of the UNFCCC. More orthodox trade measures may also be applied if non-ratification of the Kyoto Protocol can be shown to create its own trade distortions, in which non-compliance is shown to create an effective subsidy.

Action within the WTO – border taxes and countervailing duties

In this case as part of the climate change regime it would be possible to incorporate multilateral trade restrictions against countries that chose to avoid their responsibilities to cooperate in reducing GHG emissions, where other states are reducing emissions and internalizing costs.

These restrictions would most likely be in some form of duty on exports. Such duties could be devised to match the amounts saved by manufacturers in such countries as a result of their not having to bear the costs of complying with Kyoto. The choice of a basket of relevant goods to target for trade restrictive measures would be the responsibility of the European Commission if, for example, it sought to level the economic playing field over climate change costs with regard to the United States.

This approach would be consistent with traditional neoclassical trade theory. Production costs avoided by manufactures in non-complying countries can be thought of as the equivalent of a subsidy subject to traditional redress under the GATT by countervailing duties.

According to Andrew Strauss, "Countervailing duties are surcharges on imported goods and, in this case, would be equal to the savings that producers realized from not having met the more stringent internationally defined environmental standards. The Organization currently allows states to impose countervailing duties when foreign companies 'dump' goods into their markets at less than the market value, and to offset the previously discussed competitive trade advantage that foreign companies gain when they receive subsidies from their governments."

The use of remedial trade restrictions are allowed in particular where there has been a "good faith effort to reach an international agreement" with a country. This was a principle laid down by WTO rulings in the famous Shrimp/Turtle cases.⁶ The previous ruling makes the extent to which states can target other states with multilateral trade restrictive measures for failing to live up to environmental standards dependent upon first attempting to negotiate with them.

Alternatively, added production costs incurred by manufacturers in complying countries can be thought of as the equivalent of a tax subject to traditional redress under the GATT by a border tax adjustment.⁷

Such an approach is likely to be acceptable under the GATT. It would involve embellishing the concept of either a **subsidy** to include failure to comply, or a **border tax** to include compliance with Kyoto. A solid legal foundation, however, can be found in the exception to the prohibition to restraints on trade, where necessary to support multilateral environmental agreements. This has come out of recent WTO decisions.

Summary of subsidies in WTO law

The objective of the Subsidies and Countervailing Measures (SCM) Agreement is to curb the use of such government subsidies. Only subsidies that are “*specific to an enterprise or industry or group of enterprises or industries*” are challengeable.

Article 3 of the SCM Agreement prohibits two specific types of subsidies:

- i. Subsidies contingent, in law or in fact whether solely or as one of several other conditions, upon export performance; and
- ii. Subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods. Such subsidies are subject to discipline within the WTO dispute resolution mechanism.

For all other forms of subsidies, compatibility with the SCM Agreement is determined by their status as “actionable” or “non-actionable,” under Article 5. Article 5 provides that no Member should cause through the use of any subsidy adverse effects to the interests of other Members.

Adverse effect is defined as “(a) ***injury*** to the domestic industry of another Member; or (b) ***nullification or impairment*** of benefits accruing directly or indirectly to other Members under GATT 1994; or (c) ***serious prejudice*** to the interests of another Member.” Non-specific subsidies, for example infrastructure investment, fall into the non-actionable category. They are not challengeable.

If a Member country is faced with an actionable subsidy, Article 7 of the SCM Agreement provides that countries may take action against the adverse effects of subsidy practices through the dispute settlement procedures set out by the WTO or by means of a unilateral countervailing duty action.

This means that a subsidy challenge under WTO law has the significant advantage of the threat of a binding judgment rendered by a Panel or Appellate Body. That threat, in itself, could lead to the abandonment or diminishment of adverse subsidies. The difficulty of a WTO subsidy challenge lies in finding a prohibited or actionable subsidy and a State government that is willing to pursue the case.⁸ In addition, once a subsidy and a willing State are found, the challenge is to prove that a subsidy is prohibited, or proving economic injury, nullification or impairment, or serious prejudice in the case of climate unfriendly subsidies.

A subsidy is only a subsidy for WTO purposes if it is:

- one of four specified “financial contributions” from government; or...
- if it is a certain type of “income or price support”.

If the financial contribution in question does not fall into one of these five categories, then the WTO isn't interested in it. If the matter in question doesn't involve a financial contribution or income or price support, then again, the process doesn't get off square one. If a subsidy is in one of the five categories, it will be a “prohibited subsidy” if it is:

- “contingent... upon export performance”; or
- “contingent... upon the use of domestic over imported goods”.

There are ten categories of prohibited subsidies – five categories of subsidies, each to be tested against these two alternative possibilities. If a subsidy is not contingent on export performance or on the use of domestic goods, then the next question is: is it an “actionable subsidy”?

An actionable subsidy is less straightforward. Basically, they are subsidies, just like for prohibited subsidies, but instead of being contingent on export performance or the use of domestic goods, they must be “specific”⁹ and they must, in one of three specified ways, cause adverse effects to the interests of other Members:

- Injury to the domestic industry of another Member;
- Nullification or impairment of benefits negotiated in the 1994 GATT; and
- Serious prejudice to the interests of another Member, including the threat of serious injury.

One approach suggests that it would be possible to identify individual industries that have export subsidies that are prohibited under Article 3.1 of the SCM Agreement. Under Article 3, a Member state would only have to show infringement of the law, but not that the subsidy results in a disadvantage for its own industry. That is, all export subsidies or measures which link a certain benefit to the use of domestic over imported goods are prohibited *per se*. Trade distortion is therefore assumed. As such, this cause of action is relatively easy to bring.

It would also be possible to identify a subsidy that causes “*serious prejudice*” to the interest of another member state, or does any of the other things listed in Article 5 of the SCM Agreement.

The meaning of serious prejudice could be much more seriously explored than it has to date. Either, for example via a case brought by a developing country under Article 5.1 of the SCM Agreement or via legal campaigning.

There is nothing inherently limiting in the words ‘*serious prejudice to the interests of another Member*’ in Article 6. The impacts of climate change already do and will continue to constitute ‘serious prejudice to interests’ under any interpretation. Moreover, serious prejudice also includes the threat of serious prejudice.¹⁰ The ambiguity contained in Article 6 makes it ripe for constructing a case that could be quite powerful.

Another interesting issue is the current quarrel between the US and Europe over steel. It could be examined to see whether the calculations of serious prejudice and the extent of the subsidy given also take into account environmental costs.

Conclusion

The threat of global warming grows worse by the day. Hanging over the whole world is the unthinkable prospect of runaway climate change. All countries, rich and poor, will sooner or later be irreversibly damaged. After more than a decade, an effective international climate deal still seems a long way off.

The failure of conventional dialogue suggests that new strategies urgently need to be tried. This paper argues that economic and trade measures offer a new and entirely legitimate way to raise the costs of inaction to industrialised countries that are not supporting the Kyoto Protocol. The failure to win comprehensive support for the Protocol among already developed countries is also distressing given the Protocol's modest targets to reduce greenhouse gas emissions. Already, work has begun on what must follow Kyoto's first implementation period, without one of the most important countries, the US, on board.

Both the UNFCCC and the Kyoto Protocol were negotiated in good faith. Based on existing rulings of the WTO, it would now be effective, appropriate and legitimate for countries, or groups of them, to use economic measures including trade measures, against other industrialised countries. This would both level the playing field in terms of trade, for those countries that are bearing the costs of implementing their Kyoto targets and it would raise the costs of inaction for those who are not. There seem few other options left to the international community to progress a deal that is urgently needed to avoid disaster.

Appendix 1:

Trade between the European Union and the United States, the Russian Federation and Australia

As a major source of export revenue for the countries that have so far refused to ratify the Kyoto Protocol, the European Union has potentially huge bargaining power. The United States, Australia and the Russian Federation are all major exporters to the EU, with many of these goods containing high levels of embedded CO₂ in their production. Several of these products are also highly sensitive; either because they represent a significant share of the economy or because they employ a large proportion of the workforce. Table 1 shows the value of certain exports to the EU, by country of origin

Russia

The EU is now by far Russia's largest trade partner, accounting for nearly 25 per cent (close to R20 billion) of Russia's imports and some 35 per cent (R45 billion) of her export trade. This figure could go up to 50 per cent after EU enlargement. The structure of bilateral trade continues to display a marked imbalance, with fuel and primary products accounting for 60 per cent of EU imports in 1999 (Russia provides over 15 per cent of the EU's needs in imported fuel; and oil and gas enter the EU at zero tariffs).¹¹

United States

The United States economy is also heavily reliant on exports to the European Union. Between them, the country's three largest state economies – California, Texas and New York – took in almost \$45 billion from exports to the EU in 2001 (see Table 2).¹² Almost 370,000 jobs are supported by exports to the EU in these three states alone.¹³

California exported some \$22.8 billion, or almost 22 per cent of the state's total overseas sales, in 2001 with **transportation equipment, agricultural products, chemicals, computers and electronic equipment, and non-electric machinery** topping the list.¹⁴ The top value-added Texas exports are **computer and electronic products, chemicals, industrial machinery** (not electrical), and **transportation equipment**. Texas exports to the EU went from \$10.7 billion (11 per cent of exports) in 2001 to \$9.5 billion (9.9 per cent of exports) in 2002.¹⁵

In terms of overall sectors, the main US exports to the European Union that could be vulnerable to a trade-related climate levy include chemicals, aircraft, automobiles, agricultural products and steel – a product already the subject of intense controversy due to the continuation of import tariffs by the US Government. US exports of chemicals to the EU were worth about \$17 billion in sales in 2001, while auto exports to the UK and Germany alone were worth \$5.2 billion in the first nine months of 2003 alone.

Australia

In 2001, Australian exports to the EU increased by 17.4 per cent to reach \$A14.7 billion, or 12 per cent of total Australian exports, with the EU being the 3rd most important market for Australian exports after Japan (19.3 per cent of total Australian exports) and ASEAN (12.5 per cent). For the fourth year running, **coal** was the most important export from Australia to the EU, increasing by 44.5 per cent to \$A2.133 billion, accounting for 17.7 per cent of total Australian exports of coal and 14.5 per cent of Australia's total exports to the EU. Next was **wool**, which increased by 2.7 per cent to \$A1.091 billion, with the EU accounting for over 30 per cent of total wool exports. **Alcoholic beverages**, principally **wine**, was the third most important export from Australia to the EU, increasing by 23.3 per cent to \$A1.046 billion and accounting for just over 50 per cent of exports of this item.¹⁶

Table 1 Value of EU Imports, by Country of Origin (\$m)

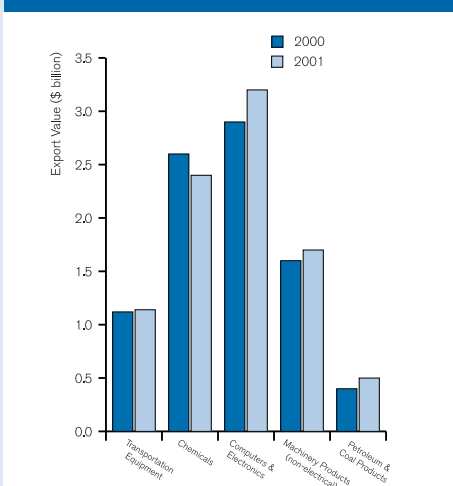
Manufactured Goods	
United States	145,876
Russian Federation	5,337
Australia	2,586
Agricultural Products	
United States	10,534
Australia	375
Russian Federation	50
Iron and Steel	
Russian Federation	1,370
United States	566
Australia	104
Textiles	
United States	2,322
Australia	4
Russian Federation	1
Automotive Products	
United States	6,581
Office Machines and Telecom Equipment	
United States	22,235

Table 2 10 States Exporting to European Union, 2001

State	Total Value US\$ billion	% 2000 –2001
California	22.8	11.3
New York	11.0	0.9
Texas	10.7	2.9
Washington	8.7	-21.6
Massachusetts	7.1	-6.6
Illinois	6.6	-2.9
New Jersey	5.9	1.7
Ohio	5.2	13.0
Pennsylvania	4.6	7.0
Michigan	4.3	-10.4

Source: U.S. Census Bureau, Foreign Trade Division/MISER 2002. Figures are for 2001.

Chart 1 Top 5 Texas Exports to the EU, 2000–2001



Notes

- 1 Estimate by Innovest Strategic Value Advisors Inc. See: www.innovestgroup.com/pdfs/NYT_081802.pdf
- 2 Total market Capitalisation of the FTSE All Share index at 12-12-2002 was £1,100.351billion
- 3 Andrew L Strauss (2003) *The Legal Option: Suing the United States in International Forums for Global Warming Emissions*, Environmental Law Review 3 – 2003
- 4 *Ibid* Strauss (2003)
- 5 Business guide to the World Trading System, WTO, Geneva; also, *Salting the Earth, The Case for Repealing Superfund*, by Jerry Taylor, in *Regulation: The Cato Review of Business and Government*
- 6 See GATT Dispute Settlement Panel Report on U.S. Restrictions on Imports of Tuna, 33 I.L.M. 839 (June 16, 1994) (interpreting Article XX(b) of the GATT to mean that to the extent that states can target other states with unilateral trade sanctions for failing to live up to environmental process and production method standards they must first attempt to negotiate multilateral environmental agreements); Appellate Body Report, United States –Import Prohibition of Certain Shrimp and Shrimp Products WT/DS58/AB/R (12 Oct. 1998) (interpreting the chapeau of Article XX of the GATT to mean that states must be nondiscriminatory in negotiating with other states multilateral environmental agreements as an alternative to unilateral trade sanctions); Appellate Body Report, United States–Import Prohibition of Certain Shrimp and Shrimp Products WT/DS58/AB/RW (22 Oct. 2001) (interpreting the chapeau of Article XX to mean that states must only “make a good-faith effort to reach international agreements that are comparable from one forum of negotiation to another”).
- 7 Border Tax Adjustments are explicitly allowed by the General Agreement on Tariffs and Trade provided that the tax imposed on imports is no greater than the domestic tax and the rebate of tax on export is no greater than the tax previously paid. The GATT provision is as follows:

GATT Art. III:2 “The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall apply internal taxes... to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.” The referenced language in Art. III:1 provides that internal taxes “should not be applied to imported or domestic products so as to afford protection to domestic production.”
- 8 Environmentally friendly subsidies are not protected under the SCM Agreement. Thus, counter claims against renewable energy subsidies are possible.
- 9 Actually, the prohibited subsidies also have to be specific, but they are deemed to be specific, so that requirement effectively doesn't exist, a clever legal trick.
- 10 To clarify potential for action in this area the WTO could restate the definition of 'serious prejudice' and/or 'subsidy'. These terms are probably ambiguous enough for a case to be developed for litigation.
- 11 European Union External Relations Website. “EU-Russia Trade” http://europa.eu.int/comm/external_relations/russia/intro/trade.htm; European Union. *Country Strategy Paper 2002-2006: National Indicative Programme 2002-2003, Russian Federation*, December 2001. http://europa.eu.int/comm/external_relations/russia/csp/02-06_en.pdf
- 12 U.S. Census Bureau, Foreign Trade Division/ MISER 2002
- 13 European Union in the US. EU-US Partnerships: Top 10 Lists of EU-US States Relations <http://www.eurunion.org/partner/usstates/top10.htm>
- 14 The CalTrade Report. “EU Threatens Tariffs on US Exports” 11/06/03 <http://www.caltraderreport.com/eWebPages/front-page-1068166608.html>
- 15 Business and Industry Data Center “Overview of the Texas Economy” <http://www.bidc.state.tx.us/overview/2-2te.htm>; European Union in the US. EU-US Partnerships: Texas and the EU http://www.eurunion.org/partner/usstates/TX_Sept2002.ppt
- 16 European Union. “Australia's Trade in Goods: 2001”



One of the other things we do



Current priorities are climate change, ecological debt and local sustainability



Local Works: Local people must be put back at the heart of their local economies. Policies that favour the large and remote are threatening the vibrancy and diversity of our communities, bringing Ghost Town Britain. Giving real power to local people can reinvigorate our local rural and urban economies.

nef is leading this campaign characterised by a highly diverse membership that seeks to combat the spectre of 'Ghost Town Britain'. It promotes the importance of local sustainability and self-determination. For example, Local Works was a big part of the campaign to defend community pharmacies. Taking as a starting point the fact that local communities should be more in charge of their own economies, education, healthcare, consumer and leisure needs, Local Works is campaigning for a legal framework that can make this happen.

The needs of communities must be at the heart of environmental, social and political justice. At a time of growing disenchantment with political processes, individuals and communities can and should have a real impact on how money is spent in their communities and what they invest in. Having a tangible impact on the delivery of services is a vital tool for political, social, environmental and economic reinvigoration in all of our communities.

Local Works recognises that there is no single blueprint, but that communities should draw up and implement their own plans to achieve these goals.

**For more information please call
020 7820 6300**



environment
lifestyles must
become sustainable

A briefing by **nef**

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