

## Hard fight on unilateral trade measures to combat climate change

Kuala Lumpur, 18 Dec. (Hilary Kung) – Decisions on the ‘Just Transition Pathways’ (JTP) work programme and ‘The Forum on the Impacts of the Implementation of Response Measures’ (the Forum) were adopted during the closing plenary of the Dubai climate talks, on 13 Dec, which ended a day later than the scheduled closure.

These decisions were gavelled, away from the limelight in the afternoon of 13 Dec, after the big focus on the Global Stocktake (GST) outcome and its inclusion of language on “transitioning away from fossil fuels”.

A major issue that developing countries tried very hard to include under the JTP and the Forum was the need to address “trade-related unilateral measures to combat climate change with cross-border impacts”, which was firmly opposed by developed countries. Developing countries wanted the issue of carbon taxes, such as the European Union’s carbon border adjustment measures (CBAMs) to be addressed at the talks.

It was with this in mind that the **BASIC** group comprised of **Brazil, South Africa, India and China**, at the opening of the climate talks on Nov 30, called for the inclusion of a new agenda item on “Concerns with unilateral trade measures related to climate change and their potential adverse impact on equitable and just transitions, in

*the context of sustainable development and efforts to eradicate poverty*”. At the opening plenary, the COP 28 President, Dr Sultan Al Jaber, had proposed that this matter be dealt with under the relevant agenda items, including under the GST.

While the issue of ‘unilateral trade measures’ was not addressed in the decisions of the JTP or the Forum, it was addressed in the decision of the [GST](#), under the “*International cooperation*” section, in paragraph 154 which reads: “*Recognizes that Parties should cooperate on promoting a supportive and open international economic system aimed at achieving sustainable economic growth and development in all countries and thus enabling them to better to address the problems of climate change, noting that 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.*”)

This decision, does not expressly mention Article 3.5 of the UNFCCC, which is what developing countries wanted. (Article 3.5 of the Convention establishes that “*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. 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.”)* Although the GST decision does not expressly refer to Article 3.5 of the Convention, the words in paragraph 154 implicitly appear to follow the said article.

The JTP work programme, together with the decisions on the Loss and Damage fund and funding arrangements, the outcomes on the GST, the Mitigation Work Programme, Global Goal on Adaptation, and on the Youth Climate Champion, the package was announced by the COP28 President as the ‘[UAE Consensus](#)’.

## JUST TRANSITION PATHWAYS WORK PROGRAMME

Among the most contentious issues during the negotiations, prior to the gavelling of the [adopted decision](#) were over the ‘preamble’ and ‘scope’ of the JTP.

On the preamble, **Brazil** speaking for itself, **Argentina** and **Uruguay (ABU)**, and supported by **China** and **India**, called for reference to Article 3.5 of the UNFCCC in relation to the issue of “trade-related unilateral measures to combat climate change with cross-border impacts”, which was opposed to by developed countries.

The contentious reference to Article 3.5 of the Convention in the preamble remained bracketed until before the closed-door consultations with groups by the Presidency on 12 Dec, which continued into the early morning of 13 Dec. The final decision adopted saw the removal of the following words, which were in the earlier version of the text (of 9 Dec) - “*Recalling Article 3, paragraph 5, of the Convention*”, due to the opposition of developed countries.

The preamble of the decision adopted recalls Article 2.1 of the PA, “*which provides that the Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable*

*development and efforts to eradicate poverty, including by holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change; increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emission development, in a manner that does not threaten food production; and making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development”.*

The preamble also recalls Article 2.2 of the PA which reflects the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC), and the phrase “*underscoring the importance of urgent delivery of means of implementation (capacity building, climate finance and technology development and transfer to...support for just transition pathways, especially for developing countries Parties*”.

The preamble also acknowledges the obligations of Parties on “human rights” with a new addition on “*...the rights to a clean, healthy and sustainable environment...*”.

On the scope of the work programme, developing countries wanted the scope to be broad and cover all three pillars of sustainable development (social, economic and environmental) in the context of equity and CBDR-RC, while developed countries preferred it to be narrower and focus on the JTP for the workforce, primarily in relation to the energy transition and also enhance ambitious domestic climate actions. (See TWN [Update 16](#) and [Update 1](#) for background.)

On the objective of the work programme, the decision adopted confirms “*that the objective of the work programme on just transition shall be the discussion of pathways to achieving the goals of the PA outlined in Article 2.1, in the context of Article 2.2.*”

According to the decision in paragraph 2, it was decided “*that the work programme shall include the following elements:*

- *Just transition pathways to achieving the goals of the PA outlined in Article 2.1, in the context of Article 2.2;*
- *Just and equitable transition, which encompasses pathways that include energy, socioeconomic, workforce and other dimensions, all of which must be based on nationally defined development priorities and include social protection so as to mitigate potential impacts associated with the transition;*
- *Opportunities, challenges and barriers relating to sustainable development and poverty eradication as part of transitions globally to low emissions and climate resilience, taking into account nationally defined development priorities;*
- *Approaches to enhancing adaptation and climate resilience at the national and international level;*
- *Just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities, including through social dialogue, social protection and the recognition of labour rights;*
- *Inclusive and participatory approaches to just transitions that leave no one behind;*
- *International cooperation as an enabler of just transition pathways towards achieving the goals of the PA."*

The final text above had more balance, with the coverage of national and international dimensions in its scope, in relation especially to adaptation and international cooperation. The "*recognition of labour rights*" was also included in the scope of the work programme.

The decision also states that the implementation of the JTP work programme will start next year under the UNFCCC's Supervisory Body for Scientific and Technological Advice (SBSTA) and Subsidiary Body for Implementation (SBI), with a view to the work programme informing the second GST (in 2028).

As for the timeframe of the work programme, Parties agreed to review the effectiveness and efficiency of the work programme and consider its continuation at the 8<sup>th</sup> session of the Conference of Parties to the CMA (CMA8) in 2026, as a compromise. Developed countries did not want the work programme to continue beyond another three years, while developing countries wanted a longer time frame.

The work programme will convene a joint contact group at each of the sessions of the subsidiary bodies (SBs), with an annual decision at each CMA, up to CMA8 in 2026. This was initially proposed by the **G77 and China** in their September 2023 submission and has been the key ask for developing countries since the start of the negotiations in Dubai.

There will also be at least two dialogues held each year, with the first one before the 60<sup>th</sup> SBs session in June 2024 and another one before the 61<sup>st</sup> SBs session in Nov. 2024, in a hybrid format.

The decision text also includes a call for Parties, observers and other non-party stakeholders to submit views on the work programme, including the possible topics for the dialogues by 15 Feb each year beginning in 2024. The Chairs of the SBs, after taking into consideration the submissions, should decide on the topic for the dialogue. Parties, observers and other non-Party stakeholders are also invited to submit views on opportunities, best practices, actionable solutions, challenges and barriers relevant to the topics of the dialogues no later than 4 weeks before each dialogue.

In terms of the output, there will be an annual summary report on the dialogues to be prepared by the Chairs of the subsidiary bodies; while the secretariat will prepare a report summarizing information on the activities under the work programme to inform the second global stocktake. On the linkages to other work streams, the decision text notes that the work programme may take into consideration the outcomes of the annual high-level ministerial round table on just transition, outcomes of the relevant work under the other UNFCCC workstreams and also ongoing work on pathways to just transition outside of UNFCCC.

There was no explicit mention of the linkage between the JTP work programme and the Response Measures Forum in the final decision text. (Please see [TWN update](#) on the outcome from the June intersession where developed countries called for having the UNFCCC's Katowice Committee of Experts (KCI) serve as the expert body during the initial phase of the informal consultations and this was opposed by the developing countries, led by G77 and China, for the

reason that KCI has a distinct mandate and limited scope).

## RESPONSE MEASURES

The [adopted decision text](#) covers the review of the functions, work programme and modalities of the forum on the impact of the implementation of response measures, mid-term review of the workplan and report of the forum.

The final decision text saw the deletion of the contentious reference to Article 3.5 of the Convention in the preamble and also did not have any explicit language on “trade-related climate measures with cross border impacts” or “unilateral trade measures related to climate change”.

Negotiations in Dubai had been tough with continued opposition by developed countries against any attempts from developing countries to discuss the potential adverse impacts of trade-related climate measures with cross-border impact (which has been a contentious subject of discussions since the beginning of the Katowice Committee of Experts on the Impacts of the Implementation of Response Measures (KCI)’s workplan in 2020). (See [TWN Update 16](#) and previous [TWN Update 13](#) from Bonn).

(The KCI was established in Katowice, Poland, in Dec 2018 to support the work programme of the forum on the impact of the implementation of response measures, arising from the implementation of mitigation policies, programmes and actions, could have both positive and negative impacts, especially cross border environmental, social and economic impacts. The agreed KCI’s workplan for 2020- 2025 includes activities that refer to the just transition of the work force and creation of decent work and quality jobs, as well as economic diversification and transformation.)

A shorter list of the work programme with only 4 areas of work remained in the final outcome, which are:

- “(a) Economic diversification and transformation;*
- (b) Just transition of the workforce and the creation of decent work and quality jobs;*
- (c) Assessing and analysing the impacts of the*

*implementation of response measure; and*  
*(d) Facilitating and building capacity on the identification, development, customization and use of tools and methodologies to assess the impacts of the implementation of response measures.”*

The **G77 and China** wanted the inclusion of work related to unilateral carbon border taxes, such as the European Union’s carbon border adjustment mechanism (CBAM), and called for *“The assessment and analysis of the impacts of implementation of climate change related unilateral measures with cross-border impacts measures, and to explore ways to minimize the negative impacts to Parties, especially developing countries”*

This was strongly opposed by the **United States (US)** and the **European Union (EU)** and was eventually dropped from the final text.

Another major divide which was now removed from the final text was on *“Environmental, social, and economic co-benefits and adverse impacts of climate change policies and actions” proposed by developing countries.*

The **US** was strongly against the addition of the words “adverse impacts” during the informal consultations, citing that it *“does not add any value for us”*. The **US** said it could only support the text if it does not have the “adverse impact” wording and instead, focuses on the “co-benefits” and the “positive impacts” of climate change policies and actions.

Another new activity introduced by **China** to *“Enhance capacity and understanding of Parties, on the assessment and analysis of the impacts of implementation of climate-related unilateral measures...and cross-border impacts, to address the negative impacts to Parties especially developing countries...”*, which was bracketed in the previous draft text, also never made its way into the final text on the Forum.

**South Africa** said during the informal consultations that the COP 28 Presidency said it would tackle the problem of “unilateral measures” in Dubai but expressed dismay that it was not able to discuss it under the response measures agenda item.



The final activities arising from the outcomes of the midterm review of the work plan saw a total of 5 activities listed, with a new addition on *“Facilitate, exchange and share experience and best practices in the assessment of the environmental, social and economic co-benefits of climate change policies and actions informed by the best available science, including the use of existing tools and methodologies, to be implemented at SB 62 by the KCI through concrete examples and input from experts, practitioners and relevant organizations, and by the forum through exchange and sharing of experience, best practices and key findings.”*

The **EU**’s proposal to *“Build awareness about the positive and negative impacts associated with subsidising electric vehicle (EV) industry to be implemented at SB60....”* was also changed to *“Build awareness about the positive and negative impacts associated with low and zero emission transport technologies, to be implemented at SB 60 (June 2024)...”*. This was based on the interventions from several Parties including **Saudi Arabia, Kenya, Ghana** on behalf of African Group and the **US** that the focus on subsidising EV was too narrow.

The modalities listed in the final decision text was also reduced and some of the key deletions included *“(e) developing tools and methodologies”, “(i) developing a toolbox to identify, analyse and assess the positive and negative impacts of response measures and make this UNFCCC toolbox available to all Parties.”*

Parties agreed with the following:

*“(a) Building awareness and enhancing information-sharing through the exchange and sharing of experience and best practices;*

*(b) Preparing technical papers, national, regional, and sector specific case studies, concrete examples and guidelines;*

*(c) Receiving input from and facilitating collaboration with experts, practitioners and relevant organizations;*

*(d) Organizing workshops.”*

The final decision also saw a new inclusion for the secretariat to organize a two-day global dialogue on the impacts of the implementation of response measures in conjunction with intersessional meetings of the KCI in 2024 and 2025.

Meanwhile, the Response Measures section in the GST decision text *“recognizes the importance of maximizing the positive and minimizing the negative economic and social impacts of the implementation of response measures”* and also *“notes further efforts are needed to strengthen the work of the forum and its KCI”*.

It also contains text such as *“Encourages Parties to consider developing... methodologies and tools including modelling tools for assessing and analysing the impacts of the implementation of response measures”*. It also *“encourages Parties to develop more national case studies...”* and *“...to establish capacity building partnerships and networks...”*;

It also *“Encourages Parties, in their efforts to diversify their economies, to pursue relevant policies in a manner that promotes sustainable development and the eradication of poverty...”*, and *“Also encourages Parties to provide detailed information...on the assessment of the economic and social impacts of the implementation of response measures”*.