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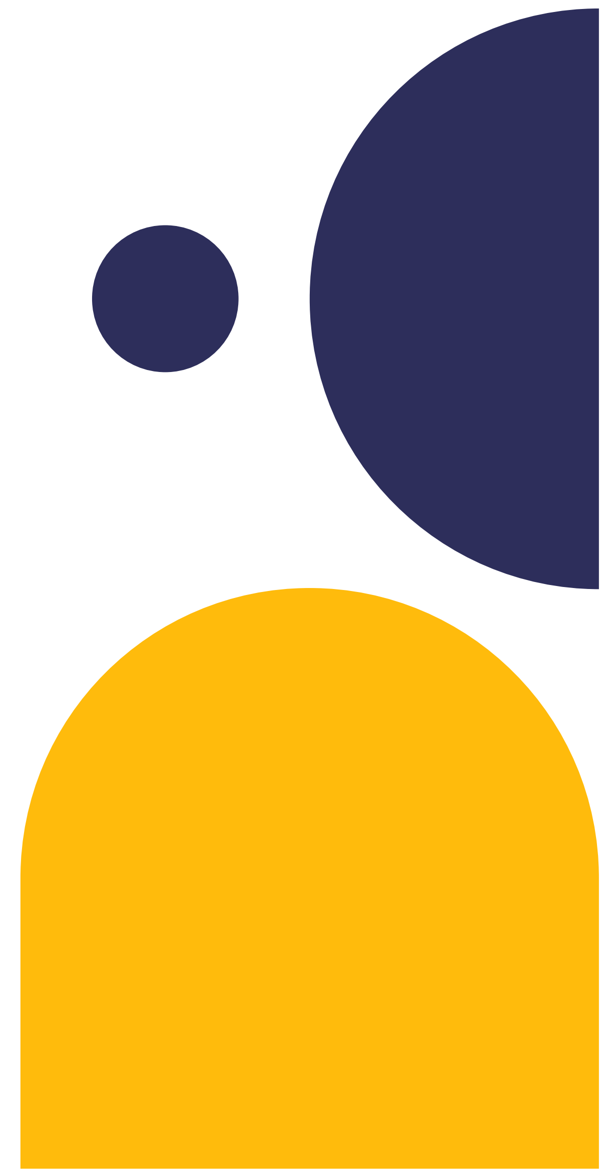
Is the Long Arm Reach of a Nation's Carbon Pricing a Win?

As the world converged yet again for the United Nations General Assembly meetings in New York the last week in September, a key discussion topic was meeting the world's climate change goals. One point most Nations and experts agree on is the need for countries to develop their carbon pricing mechanism through policies and standards geared towards ensuring the Paris Agreement targets are met. Experts also discuss a global carbon price to unify carbon pricing regimes.[1] The existence of different standards and mechanisms render the process of measuring progress amongst nations in the race to carbon reduction cumbersome. It promotes forum shopping for low carbon pricing nations, encourages trade imbalance amongst nations, makes compliance by businesses with operations in different countries tasking and increases project financing costs.

[1] The editorial board of Financial Times, September 22, 2024, referencing an interview with Ngozi Okonjo-Iweala, the head of the World Trade Organisation.

Although direct intervention by nations through the various carbon pricing mechanisms push countries closer to the end goal, indirect intervention through the mandates of capital providers play an important role as well. Climate change financing is pivotal to meeting climate change goals. Funds to catalyse financing of projects critical for climate change are growing globally. Investors and project financiers ensure their financing mandates are in line with Funds mandates and project developers structure projects to ensure they meet the due diligence requirements of financiers. This cycle ensures that carbon pricing mechanism in one part of the world affects another part of the world.



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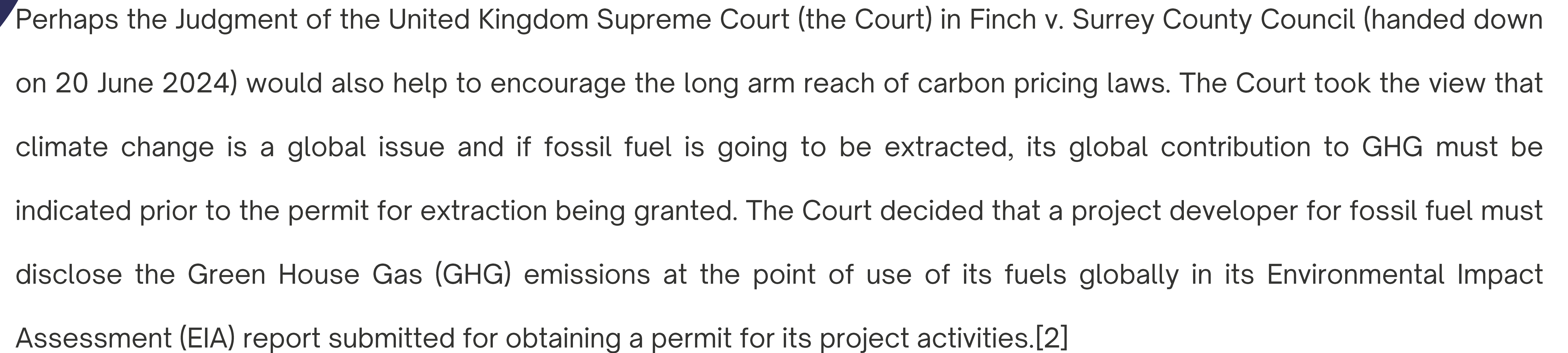
Financiers' due diligence include environmental, social, governance, project details, KYC requirements, amongst others. Climate change effects fall under environmental effects and the project developer would have to show its project's carbon footprints (albeit negative and positive), any carbon offsetting plans or carbon tax payable. This is the case in any project involving infrastructure development or industry generally, including projects for extraction or utilisation of natural resources – fossil fuels, energy, metals.

A project involving mining of critical metals for example would list the climate benefits of the lithium or copper being mined as its importance for use in electric vehicles but cannot use that benefit to offset any other environmental issues affecting the project like deforestation or proximity to conservation sites. The project developer would have to meet due diligence criteria regarding other environmental matters separate from those regarding climate change. Just as is the case where the financier may decide to implement international standards as regards wildlife or conservation even where such standards are not adopted into local law, financiers may decide that the project must meet certain carbon pricing mechanism required by its capital providers despite local project laws not requiring this. This certainly would give carbon pricing laws of one country a long arm reaching projects located far away from it.



Perhaps the Judgment of the United Kingdom Supreme Court (the Court) in Finch v. Surrey County Council (handed down on 20 June 2024) would also help to encourage the long arm reach of carbon pricing laws. The Court took the view that climate change is a global issue and if fossil fuel is going to be extracted, its global contribution to GHG must be indicated prior to the permit for extraction being granted. The Court decided that a project developer for fossil fuel must disclose the Green House Gas (GHG) emissions at the point of use of its fuels globally in its Environmental Impact Assessment (EIA) report submitted for obtaining a permit for its project activities.[2]

Disclosure of GHG emission at point of use of fossil fuel has also been included in Scope 3 of the GHG Protocol Corporate Standard as adopted by the International Financial Reporting Standards (IFRS) S2. Many countries, including the United Kingdom, are still considering the way they would adopt the IFRS S2. Some countries (such as Nigeria) that have adopted the IFRS S2 fully have introduced a phased approach to its implementation.

[2] This judgement was relied on by the High Court in Friends of Earth Limited v Secretary of State for Levelling up in quashing the permit granted to a coal project handed down on 9 September 2024.

Where the judiciary of developed countries interpret laws to favour carbon pricing where national laws have not expressly provided for this, financiers of projects may review their risk exposures to climate change to anticipate similar judicial interpretations in project nations. Local project developers would have to meet the laws governing similar projects in a foreign country, which may be not be part of the project's initial plans.

Is this long arm of carbon pricing a win?

Environmental advocates would applaud, fossil fuel nations may argue their law-making powers are being infringed upon and assets being left stranded, project developers would lament the additional costs, relevant experts would sharpen their skills and host communities may lament the lost economic development. The answer depends on the viewpoint of the ‘shoe-wearer’.

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