GREEN TRADE AND SUSTAINABLE INVESTMENTS: LEGAL PATHWAYS FOR ENVIRONMENTAL PROTECTION

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Abstract

The intersection of trade, investment, and environmental protection represents one of the most critical challenges in the global push for sustainable development. While international trade and investment have driven economic growth and globalization, they have also contributed to environmental degradation, resource exploitation, and climate change. This tension underscores the urgent need for robust legal frameworks that harmonize economic objectives with environmental sustainability. This study examines legal frameworks' evolution, efficacy, and challenges for environmental protection in trade and investment. It evaluates key international instruments, such as trade-related environmental provisions in World Trade Organization (WTO) agreements, bilateral investment treaties (BITs), and regional trade agreements (RTAs), highlighting their potential to promote environmental objectives. The analysis also considers soft law instruments, such as the United Nations Sustainable Development Goals (SDGs) and principles from international environmental law, including the precautionary principle and the polluter-pays principle. A central focus is the balance between liberalization and regulation—how to ensure environmental protections

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without undermining the economic benefits of trade and investment. The paper also critiques existing frameworks for their gaps and inconsistencies, particularly in addressing the environmental impacts of transnational corporations, the exploitation of natural resources, and the challenges posed by investor-state dispute settlement (ISDS) mechanisms. To move forward, this work proposes a paradigm shift in trade and investment law, advocating for stronger environmental safeguards, binding commitments to sustainability, and integration of climate change mitigation measures. It also emphasizes the role of developing countries in shaping future frameworks to ensure equity and inclusivity. This paper calls for urgent legal innovation to align trade and investment with global environmental imperatives, fostering a system that supports economic growth while safeguarding the planet for future generations.

1.0 Introduction

The intersection of trade, investment, and environmental protection is a complex yet pressing global issue. International trade and investment have long been engines of economic growth, fostering globalization, technological advancement, and wealth creation.[1] However, they have also contributed significantly to environmental degradation, resource depletion, and climate change.[2] Industrialized economies and multinational corporations (MNCs) have historically prioritized profit maximization over ecological concerns, often leading to unsustainable exploitation of natural resources, deforestation, and pollution.[3] This tension between economic expansion and environmental sustainability underscores the urgent need for robust legal frameworks that reconcile these competing interests.

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1 Xiuping Ji,Feiran Dong, Chen Zheng andNaipeng Bu, The Influences of International Trade on Sustainable Economic Growth: An Economic Policy Perspective' *Sustainability* [2022] 14(5), 2781;IMF, 'Global Trade Liberalization and the Developing Countries' [November 2001]. https://www.imf.org/external/np/exr/ib/2001/110801.htm#:~:text=Recent%20decades%20have%20seen%20rapid,benefiting%20the%20industrial%20countries%20themselves.

2 Lin Zhang, et al, 'Globalization, Green Economy and Environmental Challenges: State of the Art Review for Practical Implications' *Front. Environ. Sci.,* [2022] 10, 870271; Christopher Wright, and Daniel Nyberg, 'Corporations and climate change: An overview' *WIREs Climate Change* (2024) 15, 6

3 *Ibid*; Michelo Chilwalo, 'Multinational Corporations: Corporate Social: Responsibility versus Environmental Problems' European Scientific Journal [2016] 12, No.17

One of the most striking examples of this tension is the case of *Vattenfall v. Germany* (ICSID Case No. ARB/09/6), where the Swedish energy company Vattenfall sued Germany under the Energy Charter Treaty for implementing stricter environmental regulations on coal-fired power plants.[4] The company claimed that Germany's environmental policies negatively impacted its investments, leading to a legal dispute that highlighted the challenges of balancing investor rights with sovereign environmental regulation. Similarly, in *Chevron v. Ecuador* (PCA Case No. 2009-23), Chevron was held liable for extensive environmental damage caused by oil extraction in the Amazon rainforest, yet the legal battle lasted decades due to the complex interplay between investment treaties and environmental accountability.[5] The case of *Gbemre v. Shell*[6] stands as another landmark authority on the environmental consequences of economic activities and its impact on human rights. Gbemre, representing the Iwherekan community in the Niger Delta, filed a lawsuit against the Nigerian government for failing to prevent Shell from engaging in decades-long gas flaring. Shell was also joined as a defendant for its continuous and large-scale flaring of gas during its oil exploration and production activities. The Federal High Court in Nigeria ruled that the persistent gas flaring in the applicant's community violated fundamental rights to a clean and healthy environment. This violation was recognized due to the severe and long-term environmental and health consequences suffered by the community. Given the history of gas flaring in the region and its detrimental effects, the court found that the respondents displayed a blatant disregard for the environmental and human costs of their actions. Despite clear evidence of the harmful effects of gas flaring, the respondents failed to take necessary measures to mitigate its impact. By neglecting to enforce regulations and implement compliance measures, they contributed to persistent air pollution and serious health risks for community members. This inaction directly infringed upon the residents' right to a safe and livable environment, forcing them to endure toxic emissions and their harmful consequences. Furthermore, the respondents demonstrated a lack of commitment to addressing environmental degradation, disregarding the need for ecosystem preservation and wildlife protection. Their actions underscore the urgent need for legal intervention and strict enforcement of environmental laws to ensure corporate

4 See more discussions at Nathalie Bernasconi, 'Background paper on Vattenfall v. Germany arbitration' International Institute for Sustainable Development Foreign Investment for Sustainable Development Program https://www.iisd.org/system/files/publications/background_vattenfall_vs_germany.pdf

5 See more discussions at Judith Kimerling, 'Lessons From The Chevron Ecuador Litigation: The Proposed Intervenors' Perspective' *Stanford Journal Of Complex Litigation,* [2013] 1(2)

6 *Gbemre v. Shell* (2005) FHC/B/CS/53/05

accountability. Stronger regulatory measures are necessary to impose a duty of care on companies like Shell, compelling them to comply with environmental standards and protect affected communities from ongoing harm.

These cases exemplify the broader challenge of creating legal pathways that support economic activities and environmental imperatives without undermining either. The role of international legal instruments in addressing these challenges is crucial. The World Trade Organization (WTO) agreements, particularly Article XX of the General Agreement on Tariffs and Trade (GATT), provide limited exceptions for environmental protection but often prioritize free trade.[7] The Bilateral Investment Treaties (BITs) and Regional Trade Agreements (RTAs), while increasingly incorporating environmental clauses, remain inconsistent in enforcement. Moreover, soft law instruments, such as the United Nations Sustainable Development Goals (SDGs) and the precautionary principle, shape legal discourse but lack binding enforcement mechanisms. The Investor-State Dispute Settlement (ISDS) system, as seen in the Vattenfall and Chevron cases, often favors investors over environmental protection, creating regulatory chilling effects where states hesitate to implement strict environmental laws.

This study will employ a doctrinal legal analysis, critically examining international treaties, arbitration cases, and environmental agreements to assess the strengths and weaknesses of existing frameworks. Case studies, such as the European Green Deal and the African Continental Free Trade Area (AfCFTA), will illustrate best practices and legal innovations in green trade governance. Corporate accountability mechanisms, including Environmental, Social, and Governance (ESG) criteria and green finance initiatives, will be evaluated to assess their impact on sustainable investment.

By identifying the legal gaps and inconsistencies in current trade and investment frameworks, this study aims to propose a paradigm shift toward binding environmental commitments, reformed ISDS mechanisms, and integrated climate change mitigation measures. Strengthening legal pathways for green trade is imperative to achieving a sustainable balance between economic growth and environmental protection, ensuring a future where global trade serves both prosperity and planetary well-being.

1.1 The Evolution of Green Trade and Sustainable Investments

The concept of sustainable trade and investment has evolved significantly over the past few decades. Initially, trade and investment agreements primarily focused on economic liberalization, with little consideration for environmental

7 WTO, *General Agreement on Tariffs and Trade* (adopted 30 October 1947, entered into force 1 January 1948) 55 UNTS 194, art XX; see also Steve Charnovitz, 'The WTO's Environmental Progress' *Journal of International Economic Law* [2007] 10(3) 685.

impacts.[8] However, growing concerns over climate change, biodiversity loss, and resource depletion have prompted a shift towards integrating environmental considerations into global economic governance.[9]

1.1.1 Historical Development

The early international trade agreements, including the General Agreement on Tariffs and Trade (GATT) of 1947, did not explicitly address environmental concerns, although they did include provisions for protecting human, animal, and plant life, as well as natural resources, under certain conditions.[10] Trade liberalization was seen primarily as a tool for economic recovery and growth in the post-World War II era. However, as industrialization and globalization accelerated, the environmental consequences of unchecked economic expansion became apparent. The 1972 Stockholm Conference on the Human Environment marked the first global effort to address the relationship between economic development and environmental protection.[11] The United Nations Conference landmark event led to the establishment of the United Nations Environment Programme (UNEP) and the adoption of the Stockholm Declaration, which outlined fundamental principles for environmental action. The conference underscored the importance of leadership and inclusive dialogue in fostering international cooperation on environmental and sustainable development issues, proving that collaborative solutions are achievable when diverse perspectives are heard and considered.

By the 1990s, awareness of environmental issues had grown significantly, leading to the establishment of the World Trade Organization (WTO) in 1995. Subsequently, GATT/WTO members explicitly acknowledged the need to reconcile international trade with environmental considerations. Recognizing the potential conflicts between trade liberalization and environmental protection, the World Trade Organization (WTO) established the Committee

8 Dennis Kolcava, Quynh Nguyen, Thomas Bernauer, 'Does trade liberalization lead to environmental burden shifting in the global economy?' *Ecological Economics*, [2019] 163, 98-112.

9 EPA, 'Historical Background of Environment, Trade, and Investment at EPA' https://www.epa.gov/international-cooperation/historical-background-environment-trade-and-investment-epa; Marius Dotzauer, Lisa Biber-Freudenberger, Thomas Dietz; The Rise of Sustainability Provisions in International Investment Agreements. *Global Environmental Politics* [2024] 24 (4): 10–36.

10 World trade Organization, 'WTO at a "Crossroads" in Addressing Trade and Climate Nexus' 03 September 2024. https://tessforum.org/latest/wto-at-a-crossroads-in-addressing-trade-and-climate-nexus

11 IISD, 'Stockholm and the Birth of Environmental Diplomacy https://www.iisd.org/articles/deep-dive/stockholm-and-birth-environmental-diplomacy

on Trade and Environment (CTE) in January 1995.[12] The CTE was tasked with examining these intersections, identifying challenges, and proposing policy recommendations to ensure a balanced approach to trade and sustainability.[13] In November 1996, the CTE adopted a comprehensive report, which was later presented at the WTO Ministerial Conference in Singapore in December. The report addressed key issues, including the ongoing debate over ecolabeling programs and their alignment with the Agreement on Technical Barriers to Trade (TBT Agreement). By highlighting these concerns, the CTE underscored the importance of developing trade policies that support environmental objectives while maintaining fair and predictable market conditions. While the WTO primarily focused on trade facilitation, it acknowledged the need for environmental considerations through Article XX of GATT, which allows for trade restrictions necessary to protect human, animal, or plant life and conserve exhaustible natural resources. Despite these provisions, conflicts often arose between trade liberalization and environmental measures, as seen in disputes like the *Shrimp-Turtle Case* (WTO Case DS58)**,** where the U.S. banned shrimp imports from countries that did not use turtle-excluder devices, leading to a legal challenge under WTO rules.

Another key international environmental regulation milestone is the 1992 Rio Earth Summit and Agenda 21.[14] This event laid the foundation for sustainable development by emphasizing the need to integrate environmental policies into economic decision-making. It led to the adoption of the Rio Declaration and Agenda 21, promoting sustainability principles in international trade and investment.

The United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol subsequently set the stage for legally binding commitments to reduce greenhouse gas emissions. While not directly trade-related, these agreements influenced investment policies by encouraging carbon trading and green finance initiatives.

In the same vein, the Paris Agreement (2015)**,** building on previous climate agreements, established binding commitments for nations to limit global temperature rise. This has had significant implications for trade and

12 Erik P. Bartenhagen, 'The Intersection of Trade and the Environment: An Examination of the Impact of the TBT Agreement on Ecolabeling Programs' http://www.velj.org/the-intersection-of-trade-and-the-environment.html; RG Tarasofsky, *The WTO Committee on Trade and Environment: Making a Difference?* mpil.de, https://www.mpil.de/files/pdf2/mpunyb_tarasofsky_3.pdf

13 *Ibid*.

14 Geoffrey Palmer 'The Earth Summit: What Went: Wrong At Rio? *Washington University Law Quarterly* [1992] 70, 4

investment as governments and businesses increasingly incorporate carbon reduction targets into economic policies.[15]

1.2 Assessing Soft Law Instruments on Green Trade, Investment, and Environment

Soft law instruments are non-binding but highly influential in shaping international environmental policies and practices.[16] They encourage voluntary compliance and cooperation among countries and businesses, allowing flexibility while guiding green trade and investments. UN SDGs (Sustainable Development Goals) emphasize the interconnectedness of trade, economic growth, and environmental sustainability, advocating for policies that promote inclusive economic development while ensuring environmental protection and sustainable resource use. Particularly Goal 12 (Responsible Consumption and Production) and Goal 13 (Climate Action) reinforced the importance of sustainable trade and investment. Governments and multinational corporations now use the SDGs as benchmarks for shaping trade policies and corporate sustainability strategies.[17]

The SDGs help align global, national, and local agendas, providing a shared roadmap for governments, businesses, and civil society to contribute to a more sustainable future. They also help track progress through measurable targets. Achieving all 17 goals, however, requires significant financial, political, and social efforts, and progress is uneven across regions. Some goals may conflict, making it challenging to balance competing priorities in practice.

The OECD Guidelines provide detailed recommendations on responsible business conduct, covering human rights, environmental protection, anti-corruption, and other ethical standards for multinational enterprises (MNEs). These guidelines help foster responsible business practices globally by offering clear standards and promoting corporate accountability in both developed and emerging economies. Since they are voluntary, the guidelines lack binding enforcement, and MNEs may not adhere to them without external pressure or incentives, limiting their overall impact in some cases.

The UN Global Compact encourages businesses worldwide to adopt sustainable and socially responsible practices by aligning their strategies with

15 Samuel Pienknagura, 'Trade in Low Carbon Technologies: The Role of Climate and Trade Policies' [2024] *IMF Working Papers WP/24/75*

16 Kenneth W Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance' *International Organization* [2000] 54(3) 421; Ans Kolk, Arno Kourula and Natalia Pisani, 'Multinational Enterprises and the Sustainable Development Goals: What Do We Know and How to Proceed?' [2017] 24(3) Transnational Corporations 9.

17 I Montiel, *et al,* 'Implementing the United Nations' Sustainable Development Goals in international business'. *J Int Bus Stud [2021] 52, 999–1030.*

10 universally accepted principles on human rights, labour, environment, and anti-corruption. It serves as a platform for businesses to commit to corporate sustainability principles, enhancing their reputation and fostering collaboration on global challenges. Similar to the OECD Guidelines, the Compact lacks enforcement mechanisms as a voluntary initiative, and businesses may sign on without making substantial changes to their operations, leading to concerns about its true impact.

ISO standards, such as ISO 14001 for environmental management systems, provide internationally recognized frameworks for businesses to manage their environmental impact and improve sustainability practices. These standards offer clear guidelines for organizations to integrate environmental management into their operations, improving efficiency, compliance, and environmental performance. Implementing ISO standards can be costly and time-consuming, particularly for small businesses, which may be deterred by the resources required for certification and ongoing compliance.

On the positive side, these instruments help create norms and standards for sustainable practices without imposing strict legal obligations, making them particularly useful for fostering collaboration between governments, industries, and civil society. The lack of enforceability, however, can lead to inconsistent implementation, as countries or businesses may not prioritize compliance without legal obligations. This can undermine the effectiveness of soft law in driving substantial environmental change.

1.3 Modern Trends in Green Trade and Sustainable Investments

The integration of environmental considerations into international trade and investment frameworks has become a pivotal aspect of global economic policy. This evolution reflects a collective acknowledgement of the need to harmonize economic growth with environmental sustainability. Many recent bilateral investment treaties (BITs) and regional trade agreements (RTAs) include environmental clauses to ensure that trade liberalization does not come at the cost of environmental degradation. The following analysis delves into modern trends in green trade and sustainable investments, supported by statistical data and case studies, and highlights specific provisions within key agreements addressing environmental issues.

1.3.1. Environmental Provisions in Trade Agreements

Recent international trade agreements have increasingly incorporated enforceable environmental provisions to ensure that trade liberalization does not lead to environmental degradation.

a. **Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)**

The CPTPP, which came into force in December 2018, includes a dedicated environment chapter. Article 20.5 of the CPTPP stipulates that parties shall 'adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under the multilateral environmental agreements to which it is a party.' This provision underscores the commitment of member countries to uphold environmental standards in line with international agreements.

b. European Union-Mercosur Agreement

The EU-Mercosur Agreement, concluded in December 2024 after extensive negotiations, features a comprehensive chapter on Trade and Sustainable Development.[18] This chapter includes commitments to effectively implement multilateral environmental agreements, such as the Paris Agreement on Climate Change. Specifically, the agreement contains an explicit reference to the Paris Agreement, with both sides committing to combat climate change and work towards its objectives.

1.3.1.1 Bilateral Investment Treaties

Bilateral Investment Treaties (BITs) are agreements between two countries that protect and promote foreign investments by establishing rules and guidelines for the treatment of investors and their investments. BITs can be categorized into traditional BITs and modern 'green' BITs. Traditional BITs primarily focus on investor protection, ensuring that foreign investors receive fair and equitable treatment, protection from expropriation, and access to dispute resolution mechanisms. However, these treaties often fail to incorporate strong environmental safeguards, as they were typically designed to attract and protect foreign investments without considering environmental concerns. Key Provisions in traditional BITs typically include Fair and equitable treatment (Article 2 of the Model BIT), guaranteeing that foreign investors are treated no less favorably than domestic investors, National treatment clauses, ensuring that foreign investors receive the same treatment as domestic investors; and protection from expropriation, requiring compensation if the host country seizes investments. However, these treaties are often criticized for prioritizing economic interests over environmental protection, which may inadvertently lead to practices that harm the environment.

18 European Commission 'Questions and answers Key elements of the EU-Mercosur trade agreement' Brussels, 28 June 2019.

In contrast, modern Green BITs are evolving to include sustainability clauses and emphasize corporate responsibility for environmental impacts. These treaties aim to balance the protection of foreign investments with the need for countries to address environmental challenges, such as climate change, pollution, and biodiversity loss. Key provisions in green BITs might include Sustainability clauses that require investors to adopt environmentally friendly practices or contribute to sustainable development (e.g., UN Sustainable Development Goals); Corporate social responsibility (CSR), where investors must adhere to specific environmental and social standards in their operations; and environmental safeguard measures, ensuring that investments do not harm the environment or violate international environmental obligations. For example, the Canada–Colombia Free Trade Agreement (FTA) includes provisions on environmental protection and allows both countries to regulate their environmental policies without violating the treaty. It also includes mechanisms for cooperation on environmental issues and the enforcement of environmental laws. Specifically, the Environment Chapter (Chapter 22, Article 2201-2208) establishes commitments for both parties to uphold and enforce environmental laws. It acknowledges the right of each country to regulate in favor of environmental protection and sustainable development. The Sustainability Clause in Article 2201 outlines that both countries recognize the importance of sustainable development, which includes the protection of the environment, and the role of trade in promoting sustainable development. The Corporate Social Responsibility (CSR) provision in the agreement encourages investors to respect labor rights, environmental laws, and social policies. Article 2203 on 'Environmental Protection' states that the countries shall not relax or waive environmental regulations to encourage trade or investment, and it guarantees that both parties can implement their own environmental protection measures without breaching the FTA.

Green BITs also emphasize the regulatory space of host countries, recognizing the state's right to regulate for environmental protection. This is a key feature because it helps prevent conflicts between investor rights and the state's ability to implement laws that protect the environment. Green BITs often clarify that states can impose regulations aimed at environmental protection without violating investor rights, so long as these regulations are non-discriminatory and not expropriatory. For example, the Australia–United States Free Trade Agreement (AUSFTA) ensures that both countries retain their right to regulate in favour of public health and environmental protection. The AUSFTA also emphasizes the need for cooperation between the two nations to promote sustainable practices while ensuring the right of each state to regulate environmental matters. In this light, the Environment Chapter (Chapter 20) encourages both countries to maintain high environmental standards and promotes cooperation on environmental matters.

The agreement significantly enhances the regulatory space for environmental protection. Section 20.3 of the agreement guarantees that both parties retain the right to regulate in the public interest, including for environmental protection. It explicitly states that countries can adopt laws or regulations to protect health, safety, and the environment without violating the treaty. On sustainability commitments, Article 20.2 calls for protecting and conserving the environment and promoting sustainable development through trade policies. The agreement includes also cooperative initiatives for environmental matters, such as climate change, wildlife protection, and pollution control. Article 20.4 on 'Environmental Cooperation' establishes a framework for both countries to engage in environmental cooperation, sharing expertise and collaborating on sustainability issues.

Other examples of BITs and their specific provisions that reflect a focus on sustainability and environmental protection include the Germany–Uganda Bilateral Investment Treaty (BIT).[19] The Germany–Uganda BIT reflects an effort to align investment with environmental sustainability by incorporating provisions that allow the host state to regulate in favor of environmental protection while still ensuring investor rights. The BIT encourages German investors to adhere to responsible business practices, particularly concerning environmental and social impacts. Further, the BIT includes a provision that allows Uganda to adopt measures to protect the environment, such as regulating natural resource extraction or enacting pollution controls, without being in violation of the treaty's investor protection clauses. Article 6 of the Germany–Uganda BIT allows Uganda to introduce environmental protections as part of its regulatory framework, balancing the investor's rights and environmental goals. The United Kingdom–Kenya Investment Treaty (BIT) serves as another indicative example by including provisions to ensure that foreign investments contribute positively to sustainable development goals, including environmental sustainability.[20] The BIT acknowledges the right of

19 Jus Mundi, 'Treaty Between the Federal Republic of Germany and the State of Uganda Concerning the Encouragement and Reciprocal Protection of Investments (1966)' https://jusmundi.com/en/document/treaty/en-germany-uganda-bit-1966-germany-uganda-bit-1966-tuesday-29th-november-1966; UNCTAD, 'Germany - Uganda BIT (1966)' https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/1773/germany---uganda-bit-1966-

20. UNCTAD, 'Kenya - United Kingdom BIT (1999)' https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/2225/kenya---united-kingdom-bit-1999-; Electronic Database of Investment Treaties (EDIT), 'Kenya - United Kingdom BIT (1999)' https://edit.wti.org/document/show/8d89b35d-9fbb-4b72-8d50-90bc948f7dc8; UK Government, 'Agreement for the Promotion and Protection of Investments' (2018) https://www.gov.uk/government/publications/ts-no22018-ukkenya-agreement-for-the-promotion-and-protection-of-investments

both parties to regulate environmental and public health standards. It includes provisions that allow Kenya to take action to prevent environmental degradation from investments. Specifically, Article 3 of the BIT encourages investment that contributes to sustainable economic development, with a focus on environmental responsibility. The BIT emphasizes CSR and ensures that investors contribute to the social and environmental well-being of the host country. Article 9 addresses the host state's right to regulate environmental protection and clarifies that such regulations will not constitute a violation of the treaty's investment protection provisions. The Chile–Argentina Bilateral Investment Treaty (BIT) is also at the forefront of environmental regulation vis a vis trade and investment. Provisions in the Chile–Argentina BIT set out to ensure that investments contribute to sustainable development, focusing on environmental protection and corporate responsibility.[21] The BIT specifically refers to the importance of environmental protection in Article 6, allowing each state to introduce and enforce regulations aimed at environmental preservation. The BIT includes provisions that encourage investors to adopt environmentally responsible practices and respect local laws, particularly in relation to natural resource extraction and pollution control. It also recognizes that both Chile and Argentina have the sovereign right to regulate environmental matters, including the implementation of laws and regulations that ensure environmental sustainability. In particular, Article 6 includes the provision that environmental measures should not be seen as a violation of the treaty's protections for investors, provided that the measures are consistent with the goals of sustainable development.

Progressively, green BITs represent a significant advancement in promoting green trade, as they encourage investments that align with sustainability goals.[22] Specifically, these treaties can enhance environmental stewardship by compelling investors to adopt eco-friendly practices.[23] They can also foster sustainable development, as they help ensure that foreign investments contribute to long-term environmental and social goals. However,

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21 UNCTAD, 'Argentina–Chile BIT (1991)' https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/115/argentina---chile-bit-1991-

22 Organisation for Economic Co-operation and Development (OECD), 'Greening Regional Trade Agreements on Investment' (2020) https://doi.org/10.1787/4452a09d-en; United Nations Conference on Trade and Development (UNCTAD), 'Sustainable Development Takes on Heightened Significance in Investment Treaties' (2024) https://unctad.org/news/sustainable-development-takes-heightened-significance-investment-treaties; Yulia Levashova, 'Role of Sustainable Development in Bilateral Investment Treaties: Recent Trends and Developments' *Journal of Sustainable Finance & Investment* [2012] 1(3-4) 222–229

23 *Ibid*.

the effectiveness of Green BITs is still debated. Critics argue that weak enforcement mechanisms and lack of clear compliance guidelines can undermine the potential benefits.[24] Moreover, some Green BITs still contain vague language around sustainability, making it difficult to hold investors accountable for environmental harm.

As with many policy regulations and frameworks, enforcement is often difficult due to the lack of comprehensive monitoring and sanctioning mechanisms in Green BITs. The inclusion of Investor-State Dispute Settlement (ISDS) provisions in Green BITs may still allow investors to challenge environmental regulations, potentially deterring states from implementing strict environmental policies. Some Green BITs may include broad sustainability provisions without providing clear, measurable standards for corporate environmental conduct, weakening their practical impact.

1.3.2 The European Green Deal

The European Green Deal represents the EU's ambitious strategy to integrate sustainability into its economic policies, aiming to make Europe climate-neutral by 2050.[25] A notable component of this strategy is the Carbon Border Adjustment Mechanism (CBAM), designed to impose tariffs on imports from countries with lower environmental standards. This mechanism seeks to prevent "carbon leakage," where companies might relocate production to countries with less stringent emissions regulations, thereby maintaining the competitiveness of EU industries while promoting global environmental standards. European Union (EU). The European Union (EU) has made other significant strides in promoting a green economy within the context of trade, economic growth, and liberalization through its comprehensive regulatory framework. However, the efficiency of its approach presents both strengths and challenges. Directive 2013/30/EU on the safety of offshore oil and gas operations mandates that member states conduct thorough risk assessments and implement safety measures to prevent and mitigate accidents, ensuring the

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24 Mekonnen, S.D., 'The Compliance of Foreign Investment Projects with Local Environmental Standards and the Role (Non-Role) of the Applicable BITs: The Case of Ethiopia' (2023) 15(1) *Journal of Property, Planning and Environmental Law* 20–44 https://www.emerald.com/insight/content/doi/10.1108/JPPEL-07-2022-0025/full/html; Alistair Lieser, 'Bilateral Investment Treaties as a Tool for Global Climate Governance?' (2024) *Völkerrechtsblog* https://voelkerrechtsblog.org/bilateral-investment-treaties-as-a-tool-for-global-climate-governance/; OECD, 'Greening Regional Trade Agreements on Investment' (2020) https://www.oecd.org/daf/inv/international-investment-policy/greening-regional-trade-agreements-on-investment.htm

25. European Commission, 'European Green Deal' (2024) https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en.

safe containment of hydrocarbons. This directive aligns with the EU's broader commitment to safeguarding marine ecosystems while promoting responsible resource management. The EU's Directive 2013/30/EU, by enforcing strict environmental compliance, ensures that economic activities involving hydrocarbons align with sustainability goals. The EU Hydrocarbon Directives, alongside the Green Deal, enforce stringent environmental impact assessments and emission controls in hydrocarbon production, reinforcing the bloc's commitment to sustainable energy development. These regulations essentially push for low-carbon energy production, encouraging investments in renewable energy and cleaner technologies. The EU's Energy Policy prioritizes energy security, environmental sustainability, and market liberalization, while the Energy Charter Treaty (ECT) governs cross-border energy investments and trade, including hydrocarbons. Through mechanisms like the Energy Charter Treaty (ECT) and the EU Emissions Trading System (ETS), the EU integrates market-based solutions into environmental policies. This approach ensures that industries operate under carbon pricing schemes, incentivizing cleaner production while maintaining trade competitiveness. The EU's climate finance mechanisms and sustainable finance regulations promote green investments, fostering economic growth in clean energy sectors. By setting stringent environmental impact assessments, the EU also compels businesses to innovate, accelerating the transition toward a circular economy. The North Sea Offshore Authorities Forum (NSOAF) also fosters cooperation among North Sea oil and gas-producing nations. Similarly, the EU's market liberalization policies facilitate the growth of renewable energy markets and cross-border electricity trade, reducing reliance on fossil fuels. Policies promoting energy efficiency and carbon neutrality help integrate environmental considerations into economic expansion.

While the EU promotes renewable energy, hydrocarbon reliance remains significant, especially in times of energy crises. The transition to a fully green economy is resource-intensive and requires long-term structural changes, which could slow economic growth in fossil fuel-dependent industries. Moreover, despite ambitious policies, gaps in enforcement and corporate greenwashing remain concerns. Stringent environmental regulations, such as the Carbon Border Adjustment Mechanism (CBAM), while promoting sustainability, may pose challenges for trade competitiveness. Non-EU exporters may struggle to meet these high standards, leading to potential trade barriers and economic disparities. The effectiveness of the Green Deal and climate policies depends on stringent monitoring, compliance, and financial incentives to ensure real impact.

1.3.3 The African Continental Free Trade Area (AfCFTA)

The African Continental Free Trade Area (AfCFTA) which commenced trading in January 2021, is Africa's largest trade agreement, encompassing 54 of the 55 African Union nations. AfCFTA is a transformative initiative aimed at boosting intra-African trade, economic integration, and sustainable development. The agreement has incorporated sustainability considerations, particularly in sectors like agriculture and energy. For instance, the AfCFTA aims to foster green industrialization by promoting sustainable agricultural practices and encouraging investments in renewable energy projects across the continent.[26] These initiatives are expected to enhance sustainable investment flows and support environmental goals within member countries. While its primary focus is on trade liberalization and economic growth, its potential role in fostering a green economy remains an evolving aspect of its implementation. Particularly, AfCFTA's elimination of tariffs and non-tariff barriers can facilitate trade in green technologies, renewable energy equipment, and environmentally friendly products. By encouraging cross-border investment in sustainable industries, the agreement can drive Africa's transition to a low-carbon economy. The agreement also provides an opportunity for Africa to embrace eco-friendly industrialization by incentivizing businesses to adopt clean energy solutions, resource-efficient production methods, and circular economy practices. Countries can leverage trade to develop green value chains in sectors like agriculture, manufacturing, and renewable energy. Its strength is also lies in facilitating investment in renewable energy. With many African nations focusing on solar, wind, and hydro energy, the AfCFTA can help attract foreign and regional investments in renewable energy projects. By creating a unified market, the agreement enables cross-border energy trade, helping landlocked and energy-deficient countries access sustainable power sources. Furthermore, through regional trade cooperation, the AfCFTA can set harmonized environmental standards for sustainable trade, reducing pollution, deforestation, and carbon emissions.

26 United Nations Economic Commission for Africa (ECA), 'Africa Should Leverage the AfCFTA to Promote Green Transition' (5 October 2023) https://www.uneca.org/stories/africa-should-leverage-the-afcfta-to-promote-green-transition; African Climate Foundation, 'Towards an African Green Industries Value Chain Within the AfCFTA' (2024) https://africanclimatefoundation.org/research-article/towards-an-african-green-industries-value-chain-within-the-afcfta/; African Development Bank, 'Greening the African Continental Free Trade Area' (2024) https://aec.afdb.org/en/papers/greening-african-continental-free-trade-area-701; United Nations Conference on Trade and Development (UNCTAD), 'Inclusion of Green Initiatives in AfCFTA National Implementation Strategies' (2024) https://unctad.org/project/inclusion-green-initiatives-afcfta-national-implementation-strategies-20-african-countries.

Standardized policies can help African nations enforce environmental impact assessments (EIAs) and climate-friendly regulations.

In spite of its glowing potential, it is ridden with challenges and limitations. One of which is the lack of explicit green economy provisions. Unlike the European Union's Green Deal, the AfCFTA does not have a strong environmental governance framework built into its trade policies. Without dedicated green trade policies, there is a risk that economic liberalization could lead to increased resource exploitation and environmental degradation. Secondly, Africa's trade structure remains heavily dependent on natural resource exports, including oil, gas, and minerals. Without stringent sustainability policies, increased trade could accelerate deforestation, carbon emissions, and biodiversity loss, counteracting green economy objectives. In addition, many African countries still lack the infrastructure for sustainable trade, such as green transport networks, efficient logistics, and renewable energy grids. Without investment in climate-resilient infrastructure, trade expansion may not necessarily contribute to a low-carbon economy. As with many agreements, weak implementation and environmental governance mar its efficiency. Many African nations struggle with policy enforcement and environmental governance. Even with trade liberalization, weak institutions and regulatory frameworks may limit the AfCFTA's ability to drive green economic transformation.

1.3.4 African Union (AU) Climate and Environmental Policies

While AfCFTA presents an opportunity for sustainable trade, several African policies, agreements, and initiatives outside of AfCFTA focus on green trade, economic growth, and environmental protection. These frameworks aim to balance economic development with sustainability, ensuring that trade expansion does not come at the expense of Africa's natural resources and ecosystems. The African Green Stimulus Programme (AGSP) (2021) was developed by the African Union (AU) and the African Ministerial Conference on the Environment (AMCEN).[27] The AGSP supports a green recovery post-COVID-19. It focuses on renewable energy, climate finance, biodiversity conservation, and sustainable trade. Generally, it aims to enhance Africa's role in green industrialization and climate-resilient infrastructure. African Union Climate Change and Resilient Development Strategy (2022-2032). This strategy provides a framework for climate adaptation and low-carbon growth across Africa. Within the context of green trade, it encourages sustainable trade policies, reducing reliance on fossil fuel exports while promoting green investments. Of significant note is the provision of the strategy that supports the implementation of the Paris Agreement within the context of African trade

27 African Union, 'African Green Stimulus Programme' https://agsp.nepad.org/

and development. The African Environmental Action Plan (AEAP) it was developed to mainstream environmental sustainability into economic and trade policies. It addresses pollution, deforestation, desertification, and climate resilience while promoting sustainable industrial practices.

Another example is the African Renewable Energy Initiative (AREI). This pan-African initiative launched at COP21 in 2015, aiming to generate 300 GW of renewable energy by 2030. It encourages foreign and intra-African investments in clean energy trade and infrastructure. The Bamako Convention (1991, enforced in 1998) is a legally binding treaty prohibiting the import of hazardous waste into Africa. Within the context of green trade, it ensures sustainable waste management and pollution control across African nations. The Congo Basin Forest Partnership (CBFP) supports sustainable forest management and green trade in timber and forest products. It helps African nations balance economic growth with biodiversity conservation.

Several regional Economic Communities (RECs) that support environmental conservations add impetus to the issue of green trade. For example, the Economic Community of West African States (ECOWAS) Renewable Energy Policy (EREP) promotes regional energy integration with the goal of increasing the share of renewable energy in the West African power sector. It encourages investment in solar, hydro, and wind energy, reducing reliance on fossil fuels. The East African Community (EAC) Climate Change Policy supports carbon trading, climate-smart agriculture, and eco-friendly trade regulations in East Africa and encourages member states to incorporate green policies into trade agreements. The Southern African Development Community (SADC) Green Economy Strategy (2022-2032 aims to integrate sustainable practices into industrialization, trade, and energy sectors while also promoting regional cooperation in carbon markets, green technology innovation, and climate adaptation.

The forgoing initiatives, strategies and frameworks offer great support for Africa's green economy and trade policies. Many initiatives, such as the AfCFTA, AU Green Stimulus Programme, and national Green Economy Strategies, promote low-carbon industrialization, renewable energy trade, and circular economy models. They help African businesses adopt sustainable production methods and enhance intra-African trade in green goods and services. Programs like the African Renewable Energy Initiative (AREI) and the ECOWAS Renewable Energy Policy drive investments in solar, wind, and hydro energy. Morocco, South Africa, and Kenya are leading examples of successful renewable energy transitions supported by these frameworks. Treaties like the Bamako Convention prevent the import of hazardous waste, while the Congo Basin Forest Partnership helps combat deforestation and biodiversity loss. These measures ensure that trade and industrialization do not come at the cost of environmental destruction. Most importantly, they

encourage regional cooperation and policy harmonization to facilitate green trade and investment in the African continent. For instance, the African Union Climate Strategy, SADC Green Economy Strategy, and EAC Climate Change Policy enhance cooperation among African nations. By harmonizing climate policies and trade regulations, these initiatives create a unified approach to sustainable development. Lastly, Policies like the African Green Stimulus Programme integrate climate adaptation into trade and economic growth strategies. This helps nations reduce vulnerability to climate-related disruptions while maintaining sustainable development.[28]

While the forgoing has great potential for green trade, there are challenges that impact effectiveness. Despite strong policy frameworks, many African countries struggle with poor enforcement due to weak regulatory institutions and limited government capacity. For example, deforestation and illegal mining persist in countries with environmental protection laws but ineffective enforcement mechanisms. Although Africa has abundant renewable energy potential, limited financing and investment gaps can stand in the way of implementation. many projects suffer from insufficient funding. Green energy and infrastructure investments require significant capital, and African countries often lack access to affordable financing. Many African economies still heavily depend on oil, gas, and mining exports. Trade liberalization may accelerate resource exploitation rather than shifting economies towards sustainable industries. Countries like Nigeria, Angola, and Libya still rely on fossil fuels for economic stability, making the transition to green trade difficult. In a similar light, the development of sustainable transportation, efficient logistics, and renewable energy grids remains slow in many African regions. Without the necessary infrastructure, cross-border green trade and energy-sharing agreements face significant technical and logistical challenges. Some African governments and corporations engage in greenwashing, making false or exaggerated claims about their sustainability efforts without real action. Additionally, contradictions between economic growth policies and environmental commitments can hinder the effectiveness of green economy initiatives. While regional and subregional agreements aim to boost intra-African trade, bureaucratic hurdles, border inefficiencies, and inconsistent regulations make it difficult for businesses to expand in green markets. Small and medium enterprises (SMEs) face high compliance costs when adapting to eco-friendly trade standards. Many governments struggle to align trade policies with environmental commitments. For example, while some nations promote renewable energy through subsidies, they simultaneously support fossil fuel industries through trade agreements. Many developing economies rely on resource-based exports, making stringent

28 https://agsp.nepad.org

environmental standards in trade agreements a potential economic barrier. There is a need for international support to help these countries transition to greener economies.

1.4 Environmental Awakening: Introduction of sustainability provisions

In recent times, environmental awakening has marked a pivotal shift towards sustainability by integrating eco-conscious provisions into trade, economic policies, and regulatory frameworks, ensuring a balance between development and environmental stewardship.

1.4.1 Corporate Sustainability Initiatives

Businesses worldwide are increasingly adopting Environmental, Social, and Governance (ESG). Tesla's business model, for example, centers on producing electric vehicles and renewable energy products, directly contributing to reducing greenhouse gas emissions.[29] The company's commitment to sustainability is shared by similar firms that influenced global trade patterns by accelerating the adoption of electric vehicles and stimulating investments in related industries. Many other corporations are laying blueprints in the arena of corporate sustainability. Unilever has integrated sustainability into its corporate strategy through initiatives like the Sustainable Living Plan, aiming to decouple business growth from environmental impact.[30] This approach aims to facilitate environmentally conscious innovation in product development and supply chain management, setting benchmarks for sustainable practices in the consumer goods industry. Patagonia has also embedded environmental activism into its brand identity, focusing on producing sustainable outdoor apparel and funding environmental conservation projects. Citigroup has committed to investing in sustainable finance, aligning its investments with ESG principles. The company has pledged to direct $1 trillion toward climate-related initiatives by 2030, focusing on sustainable projects in areas like renewable energy and low-carbon technologies. Businesses worldwide are increasingly adopting Environmental, Social, and Governance (ESG) criteria in their investment decisions. Companies like BlackRock, Microsoft, Apple, Goldman Sachs, CitiGroup have incorporated ESG criteria into their investment decisions, focusing heavily on environmental sustainability. By embedding sustainability in their business models, they influence global trade patterns.

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29. 'Tesla, Impact Report 2023: A Sustainable Future is Within Reach' https://www.tesla.com/impact
30 Oriol Amat, 'Case Study: Unilever's Sustainable Living Plan (USLP) Universitat Pompeu Fabra, 2024 https://www.bsm.upf.edu/documents/2024-case-study-unilever.pdf

Although these corporate ESG present opportunities for green trade, there are challenges associated with genuine implementation of the practices. The lack of standardization stands out. ESG reporting lacks uniformity, making it difficult to compare companies' performance. Companies may also mislead stakeholders by claiming ESG achievements without making substantial changes. ESG regulations are still evolving, and inconsistent rules can lead to a lack of accountability. Furthermore, assessing social impact (e.g., diversity, community engagement) is often subjective and harder to measure.

Companies may prioritize short-term financial gains over long-term ESG objectives, and balancing profitability with ESG goals can be challenging, especially when ESG efforts require higher upfront costs. Even with the best intentions, ensuring ESG standards across complex global supply chains is difficult. In some cases, smaller companies may lack the resources or expertise to implement effective ESG strategies. Since it is based on company policies, different stakeholders (investors, customers, employees) may have conflicting expectations regarding ESG priorities. Another significant drawback is that shifting to sustainable practices involves high initial costs and technological challenges. While these challenges highlight the complexity of adopting ESG principles, addressing them can lead to long-term benefits for companies.

1.4.2 Green Finance and Investment

Green finance and investment have emerged as key components in addressing global sustainability challenges.[31] This is in line with Behera et al. (2024),[32] who stated that sustainable financial practices improve environmental quality. Financial markets are increasingly responding to environmental issues by developing instruments like green bonds, which are specifically designed to fund environmentally friendly projects. These bonds provide a way for governments and corporations to raise capital while ensuring that the funds are used for initiatives that promote environmental sustainability, such as renewable energy, clean transportation, and waste management.[33] Green bonds are essential in bridging the financing gap needed to achieve global climate goals and transition to a low-carbon economy. According to the Climate

31 Fredj Jawadi, Thierry M. Pondie, Abdoulkarim Idi Cheffou, 'New challenges for green finance and sustainable industrialization in developing countries: A panel data analysis' *Energy Economics,* [2025] 142, 108120,

32 B. Behera, P. Behera, N. Sethi, 'Decoupling the role of renewable energy, green finance and political stability in achieving the sustainable development goal 13: empirical insight from emerging economies' Sustain. Dev., [2024] 32 (1) 119-137

33 A. Sinha, V. Ghosh, N. Hussain, D.K. Nguyen, N. Das, 'Green financing of renewable energy generation: capturing the role of exogenous moderation for ensuring sustainable development' *Energy Econ.,* [2023] 126 Article 107021

Bonds Initiative, the cumulative issuance of green bonds reached approximately $1 trillion by the end of 2022, reflecting a growing investor appetite for sustainable investment opportunities.[34] Green Investment Funds are dedicated financial resources specifically allocated to industries and projects focused on environmental protection and sustainability. These funds support initiatives that aim to reduce environmental impact, promote renewable energy, and enhance natural resource management.[35]

International organizations, such as the International Finance Corporation (IFC) and the World Bank, play a pivotal role in driving sustainable investments, particularly in developing economies.[36] The IFC, as part of the World Bank Group, has been instrumental in mobilizing capital for sustainable projects, especially in emerging markets where environmental challenges are more pronounced and access to financing can be limited.[37] By providing expertise, risk mitigation, and funding support, these organizations help develop financial instruments that encourage private sector participation in sustainable development. Their efforts are essential in scaling up investments that promote climate resilience and sustainable growth in regions most vulnerable to environmental risks.

The mobilization of green finance is not without its challenges, including ensuring transparency, measuring the impact of investments, and overcoming regulatory hurdles. However, the growing recognition of climate-related risks and opportunities and increasing demand from investors for sustainable investment options have led to a positive shift in global financial markets.

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34 Climate Bonds, '1Trillion Annual Green Bond Milestone Tipped for end 2022 in Latest Survey: Sean Kidney calls for $5Trillion per year by 2025' https://www.climatebonds.net/2021/10/1trillion-annual-green-bond-milestone-tipped-end-2022-latest-survey-sean-kidney-calls#:~:text=Green%20bond%20investment%20in%20a%20single%20year,to%20a%20new%20Climate%20Bonds%20market%20survey.&text=Globally%20the%20cumulative%20$1trillion%20mark%20was%20reached,since%20the%20first%20green%20bond%20of%202007.

35 L. Chang, F. Taghizadeh-Hesary, H. Chen, M. Mohsin 'Do green bonds have environmental benefits?' *Energy Econ*. [(2022] 115 Article 106356.

36 The International Finance Corporation (IFC) and the World Bank, 'Building Green: Sustainable Construction In Emerging-Markets' https://www.ifc.org/content/dam/ifc/doc/2023/building-green-sustainable-construction-in-emerging-markets.pdf

37. World Bank Treasury, 'Green Bonds' (2024) https://treasury.worldbank.org/en/about/unit/treasury/ibrd/ibrd-green-bonds; International Finance Corporation (IFC), 'Green Bonds' (2024) https://www.ifc.org/en/about/investor-relations/green-bonds. These provide detailed information on the green bond programs of both institutions, highlighting their roles in financing climate-resilient projects in developing regions

1.4.3 Carbon Markets and Trade

The growth of carbon trading markets demonstrates how trade mechanisms can support environmental goals by creating financial incentives for companies to reduce emissions.[38] The EU Emissions Trading System (EU ETS) is the world's largest carbon market, covering approximately 40% of the EU's greenhouse gas emissions.[39] The system operates on a cap-and-trade principle, setting a cap on the total amount of certain greenhouse gases that can be emitted by installations covered by the system. Companies receive or buy emission allowances, which they can trade with one another as needed, creating a financial incentive to reduce emissions. China's National Carbon Market, launched in 2021, is the largest in the world by volume, initially covering the power sector, which accounts for about 40% of the country's carbon emissions.[40] The market is expected to expand to include other high-emission industries, reinforcing China's commitment to reducing its carbon footprint and promoting sustainable development. Carbon markets and trade face challenges related to the lack of consistent global standards and regulatory frameworks, which can create inefficiencies and hinder effective implementation.[41] Additionally, issues such as market volatility, fraudulent carbon credits, and the potential for companies to exploit loopholes can undermine the credibility and impact of carbon trading systems.

1.5 Striking the Delicate Balance Between Liberalization and Regulation

Legal disputes between investors and states over environmental regulations continue to challenge sustainability efforts. Cases like *Vattenfall v. Germany* reveal the difficulties governments face when implementing environmental policies that affect foreign investments. *The Vattenfall v. Germany case (2012)* involved a dispute where Vattenfall, a Swedish energy company, sued Germany for damages after the country decided to phase out nuclear power, arguing that the policy violated the Energy Charter Treaty (ECT) by depriving

38 Michael Mehling, "Market-Based Approaches to Climate Change" in Daniel A Farber and Michael Gerrard (eds), *Climate Change Law* (American Bar Association 2010) 265–280.

39 European Commission, 'The EU Emissions Trading System (EU ETS)' (European Commission, 2023) https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets_en; International Carbon Action Partnership (ICAP), *Emissions Trading Worldwide: Status Report 2023* (ICAP 2023) 18–22 https://icapcarbonaction.com/en/publications accessed 23 April 2025.

40 International Carbon Action Partnership (ICAP), *China Emissions Trading Scheme (ETS)* (ICAP, updated 2023) https://icapcarbonaction.com/en/ets/china-national-ets accessed 23 April 2025.

41 World Bank, *State and Trends of Carbon Pricing 2023* (World Bank, 2023) 39–45 https://www.worldbank.org/en/topic/climatechange/publication/state-and-trends-of-carbon-pricing-2023

the company of its investment, with the arbitration tribunal ruling that Germany's actions were not justified under international law. The case underscores the tension between national regulatory decisions aimed at environmental protection and the protection of foreign investments under international trade agreements, highlighting the challenges in balancing environmental policy and investor rights in the context of climate change and energy transitions (Vattenfall v. Germany, 2012).

Striking a balance between liberalization and regulation is necessary to foster economic growth through free trade and investment while still safeguarding the environment. A well-regulated trade framework can promote sustainability without stifling economic benefits.[42] For instance, the European Union (EU) has been successful in integrating environmental regulations with trade policies, such as through its European Green Deal, which aims to reduce net carbon emissions by 55% by 2030 while supporting economic growth. This balance allows countries to benefit from the economic advantages of trade, such as access to broader markets, foreign direct investment, and enhanced technology transfer, while ensuring that environmental standards are maintained. An example can be seen in the Paris Agreement on climate change, which aligns international trade policies with environmental goals. Under this framework, countries engage in trade and investment activities that encourage the adoption of green technologies, renewable energy, and sustainable resource management practices. Moreover, countries like Costa Rica have demonstrated that environmental protection can be a cornerstone of trade, using eco-tourism and sustainable coffee production to generate significant revenue without compromising their environmental goals.[43]

The primary challenge here lies in balancing the liberalization of trade with environmental protections that may limit short-term economic benefits. For example, Brazil's expansion of agriculture, particularly in the Amazon rainforest, has been linked to increased global demand for soy and beef exports, which has led to deforestation and biodiversity loss.[44] While trade

42 Antweiler, W., Copeland, B. R. and Taylor, M. S., 'Is Free Trade Good for the Environment?' *American Economic Review* [2001] 55 877; Korves, M., Martínez-Zarzoso, I. and Voicu, M., 'The Effects of Trade Liberalization on the Environment' *InTech Open Access* (2011) https://www.intechopen.com/chapters/19627; Gallagher, K. P., *Free Trade and the Environment: Mexico, NAFTA, and the Globalization of Trade* (Stanford University Press 2004).

43 United Nations Environment Programme (UNEP), *Green Economy and Trade: Trends, Challenges and Opportunities* (UNEP 2013) 46–50 https://www.unep.org/resources/report/green-economy-and-trade-trends-challenges-and-opportunities

44 Food and Agriculture Organization of the United Nations (FAO), *The State of the World's Forests 2022: Forest Pathways for Green Recovery and Building Inclusive, Resilient and Sustainable Economies* (FAO 2022) 33–38

liberalization has boosted Brazil's economy, it has come at a significant environmental cost. Another example is the tension seen in the Trans-Pacific Partnership (TPP), where countries like the United States and Vietnam sought to increase trade liberalization, but environmental groups raised concerns over the potential for weaker environmental protections in favour of expanded trade. These scenarios highlight the difficulty in creating a regulatory environment that ensures both environmental protection and the economic benefits of trade.

The debate surrounding this balance is polarized, with one side advocating that liberalization leads to economic growth that can fund environmental protection, while the other warns that deregulation and increased trade often result in environmental degradation. For example, critics of trade liberalization in the World Trade Organization (WTO) argue that global trade can exacerbate environmental harm when countries lower environmental standards to attract foreign investment, as seen in the cases of China's rapid industrialization or the deforestation linked to palm oil production in Indonesia. On the other hand, proponents of trade liberalization argue that it can drive the adoption of green technologies and market-driven solutions to environmental challenges. In this context, eco-labelling and the integration of green tariffs are examples of how regulation can incentivize environmentally responsible trade practices without undermining economic benefits.

Although the balance between liberalization and regulation is complex, it is achievable through collaborative international efforts, well-crafted trade agreements, and the adoption of green technologies. With the right policies and frameworks, environmental protections and economic growth can indeed complement each other. However, careful management of both sides is necessary to ensure a sustainable future.

1.6 The Way Forward: Strengthening Legal Pathways

Addressing the complex intersection of trade, investment, and environmental protection requires a fundamental shift in legal frameworks to promote sustainability while maintaining economic growth. This transformation should prioritize legally binding environmental commitments, equitable dispute resolution mechanisms, and stronger corporate accountability, ensuring that global trade and investment contribute to, rather than undermine, environmental integrity. These efforts should focus on:

Stronger Environmental Safeguards: Embedding binding environmental obligations in trade and investment agreements will ensure that economic

https://www.fao.org/documents/card/en/c/cb9360en

activities uphold sustainability goals. Agreements such as the EU-Mercosur Trade Agreement demonstrate the potential of integrating environmental protections, but stricter enforcement mechanisms are needed to prevent deforestation and biodiversity loss.

Reforming ISDS Mechanisms: Investor-State Dispute Settlement (ISDS) frameworks should be restructured to balance investor rights with states' ability to enforce environmental laws. Cases like *Vattenfall v. Germany* highlight how investment treaties can challenge national climate policies, emphasizing the need for mechanisms that prioritize public interest and ecological sustainability.

Integration of Climate Change Mitigation: Climate-related provisions should be explicitly included in trade and investment agreements to align with the Paris Agreement and global decarbonization targets. The US-Mexico-Canada Agreement (USMCA) incorporates environmental clauses, setting a precedent for future trade deals to include enforceable climate action commitments.

Empowering Developing Countries: Trade and investment rules must consider the unique environmental and developmental challenges of developing nations. Facilitating technology transfer, capacity building, and climate financing, such as through the Green Climate Fund (GCF), can help these nations adopt sustainable practices without compromising economic growth.

Enhancing Corporate Accountability: Legal frameworks should require corporations to conduct environmental due diligence throughout their global supply chains. The EU's proposed Corporate Sustainability Due Diligence Directive is a step forward, ensuring businesses are held accountable for their environmental and social impacts. Public reporting and mandatory sustainability disclosures should be required to improve transparency and consumer trust.

Promoting Green Finance and Sustainable Investments: Financial markets must be leveraged to drive sustainability through green bonds, ESG criteria, and climate-friendly investment funds. Institutions like the World Bank and the International Finance Corporation (IFC) play a crucial role in channeling capital toward environmentally responsible projects.

Public-Private Partnerships for Sustainability: Strengthening collaboration between governments, businesses, and civil society is essential for sustainable

policy implementation. Initiatives like the UN Global Compact encourage businesses to integrate environmental responsibility into their operations, fostering a global shift towards greener economies.

By embedding environmental considerations into trade and investment laws, the global community can ensure that economic progress aligns with ecological sustainability.

Ultimately, a legally binding, inclusive, and climate-conscious approach will be key to shaping a resilient and sustainable global economy. A multi-stakeholder approach, supported by other regulatory reforms, corporate accountability, and financial incentives, will also be critical. By implementing these recommendations, the global community can create a trade and investment system that prioritizes environmental protection while fostering economic prosperity.

1.7 Conclusion

Legal innovation in trade and investment law is urgently needed to address the environmental challenges posed by globalization. To achieve a meaningful paradigm shift in trade and investment law, a set of concrete legal, financial, and policy reforms must be adopted. By reforming existing frameworks, strengthening environmental commitments, and empowering developing nations, the international legal system can foster economic growth while safeguarding the planet for future generations. This transformation is essential to achieving a sustainable balance between trade liberalization and environmental stewardship.