

ENVIRONMENTAL CONDITIONALITY IN THE EU FREE TRADE AGREEMENTS AND THE BLUE ECONOMY

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Abstract

Environmental conditionality is increasingly considered as part of the Free Trade Agreements (FTA) in the European Union (EU) as part of its wider efforts towards sustainable development and the development of the blue economy. The following paper critically looks at the legal design, enforceability, and practical implications of such conditionality with specific reference to fisheries partnership agreements, sustainability chapters in new EU FTAs, and how the nexus between trade liberalization and marine environmental protection is changing. Although environmental conditionality shows the effort of the EU to externalize its goals of the Green Deal and biodiversity, its engagement with the international trade law, especially the World Trade Organization (WTO) disciplines, triggers complex issues of non-discrimination, proportionality, and extraterritoriality. In a comparative review of the latest agreements, the article evaluates whether environmental conditionality is an effective governance instrument to protect marine ecosystems, fight illegal, unreported, and unregulated (IUU) fishing, and promote sustainable blue economy practices. It further reflects the issues of monitoring and dispute settlement, as well as the low enforceability of the sustainability provisions. The article maintains that, unless entrenched within a transnational legal framework, which is coherent (in the sense of uniting obligations under the United Nations Convention on the Laws of the Sea (UNCLOS), the jurisprudence of WTO and EU governance systems) environmental conditionality may continue to be a marginal tool. The article ends by suggesting ways in which conditionality could be further bolstered by specifying conditions, further benchmarks, hybrid forms of enforcement, as well as consistency with the duties to conduct due diligence in the creation of global ocean governance of corporations in the EU.

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1. Introduction

1.1. Background: Environmental Conditionality Increase in EU FTAs.

Environmental conditionality has become a peculiarity of the EU external trade policy in recent decades.¹ Although the previous EU FTAs were more market-driven, modern agreements include sustainability chapters and conditionality provisions that indicate a more thorough environmental governance in the trade policy. This turn is indicative of the EU as a so-called normative power and its larger goal to streamline trade policy towards the European Green Deal, the Biodiversity Strategy 2030, and the international commitments of the Paris Agreement.²

The watershed moment came in the EU-Korea FTA (2011), which contained sustainable development chapters that were put to the test later in dispute settlement. In 2018, the EU sought consultations claiming that Korea had not ratified the International Labour Organization conventions, which in turn prompted an initial procedure by the Panel of Experts regarding sustainability matters in 2021.³ The case described the possible and the limitations of enforceability, even though the recommendations of the panel were non-binding. The same can be found in the EU-UK Trade and Cooperation Agreement (2020), which both include sustainability clauses but are largely based on the application of soft law.⁴ Meanwhile, the fisheries arrangements

¹ De Ville, F., Happersberger, S., & Kalimo, H. (2023). The unilateral turn in EU trade policy? The origins and characteristics of the EU's new trade instruments. *European Foreign Affairs Review*, 28(1), 15–34. <https://doi.org/10.54648/eerr2023012>

² Baroncini, E., de Stefano, C., & Rubini, L. (2025). New Institutional Architectures and Substantive Rules in International Economic Law-The EU and the UN Sustainable Development Goals.

³ Aleydis Nissen, *Not That Assertive: The EU's Take on Enforcement of Labour Obligations in Its Free Trade Agreement with South Korea*, *European Journal of International Law*, Volume 33, Issue 2, May 2022, Pages 607–630, <https://doi.org/10.1093/ejil/chac037>

⁴ Marín Durán, G. (2025). The EU's evolving approach to environmental provisions in free trade agreements. In *EU external relations law and sustainability: The EU, third states and international organizations* (pp. 257–276). TMC Asser Press. https://doi.org/10.1007/978-94-6265-655-0_11

like the EU-Mauritius Sustainable Fisheries Partnership Agreement demonstrate that the blue economy governance is continuously combined with environmental provisions.⁵

1.2. Connecting Trade Liberalization, the Blue Economy to Sustainability.

The logic of environmental conditionality in EU FTAs is based on the need to balance the gains of trade liberalization and sustainability requirements.⁶ The opening of trade tends to increase the exploitation of resources and ecological destruction. An example of such tension is the blue economy, which is the exploitation of oceans, seas, and marine resources to produce economic progress or growth, enhance livelihoods, and improve the health of ocean ecosystems. According to the United Nations Commission on Trade and development (UNCTAD), maritime transport supports 80 percent of international trade, and fisheries and marine biodiversity are at the centre of global food security.⁷ There is the possibility that trade development can threaten the ecological basis of the blue economy without strong sustainability protection strategies if appropriate sustainable measures are not established.

The EU wants to either align external trade with Sustainable Development Goal 14 (Life Below Water) and other associated goals by making its entry into the market conditional on meeting the environmental standards.⁸ Environmental conditionality, as Bartels (2012) has put across, not only justifies the EU trade policy but also extraterritorially provides the EU with its regulatory powers, which questions the notions of sovereignty and fairness.⁹ Practically, conditionality requirements on IUU fishing, marine biodiversity conservation, and mitigating climate change appear to be efforts to combine trade and environmental regulation and establish the hybrid pattern of regulation that would sound outside of the territory of the EU.

⁵ Johnson, A. F., Lidström, S., Kelling, I., Williams, C., Niedermüller, S., Poulsen, K. V., ... & Davies, W. (2021). The European Union's fishing activity outside of European waters and the Sustainable Development Goals. *Fish and Fisheries*, 22(3), 532–545. <https://doi.org/10.1111/faf.12533>

⁶ Olmos Giupponi, B., Hofmeister, H. (2024). 'Green Conditionality' in the EU's Trade and Investment Policy: *Quo Vadis?*. In: Wessel, R.A., Bergamaschine Mata Diz, J., Péret Tasende Társia, J., Akdogan, S.E. (eds) EU External Relations Law and Sustainability. Global Europe: Legal and Policy Issues of the EU's External Action, vol 4. T.M.C. Asser Press, The Hague. https://doi.org/10.1007/978-94-6265-655-0_4

⁷ UNCTAD, Review of Maritime Transport 2024 (accessed on 21 september 2025 via: <https://unctad.org/publication/review-maritime-transport-2024>)

⁸ Arias, C., & Varela-Aldás, J. (2025). Sustainable Development as a Transformative Axis of the European Union's Trade Policy. *Sustainability*, 17(15), 7151. <https://doi.org/10.3390/su17157151>

⁹ Giulia Claudia Leonelli, From Extra-Territorial Leverage and Transnational Environmental Protection to Distortions of Competition: The Level Playing Field in the EU–UK Trade and Cooperation Agreement, *Journal of Environmental Law*, Volume 33, Issue 3, November 2021, Pages 611–637, <https://doi.org/10.1093/jel/eqab010>

1.3. Effectiveness and Enforceability of Environmental Conditionality.

The most important question of this study is whether environmental conditionality is efficient and enforceable. Even though EU FTAs have elaborate sustainability chapters, enforcement mechanisms are often little more than a toothless tiger. In contrast to tariff-related commitments, environmental obligations are often not bound by dispute settlement, being instead subject to consultations and dialogue, and cooperation. This weakness was pointed out by the Korea panel: the opinion was positive, but the lack of sanctions diminished compliance incentives by the EU.

The second layer of complexity is the interaction with the WTO law. In the case of US-Shrimp (1998), the Appellate Body confirmed that trade restrictions based on environmental objectives are permissible in Article XX GATT but emphasized that such restrictions should not amount to arbitrary and unjustifiable discrimination.¹⁰ Extraterritorial conditionality, which the EU applies through its IUU fishing regulation or proposes under the name of a Carbon Border Adjustment Mechanism (CBAM), risks being seen as protectionist or disproportionate.¹¹ There are no explicit standards by which compliance can be measured, which further weakens the certainty of the law. As a result, conditionality measures seem to be progressive, but there is a strong question of whether they can be enforced and are legitimate.

The contribution of the article is threefold. First, it gives a doctrinally sound explanation of environmental conditionality in EU trade law that lacks the extant literature that tends to see clauses on sustainability as marginal ones. Second, it puts these clauses into the nexus of trade, environment, and the blue economy, thereby connecting international economic law and ocean governance and marine sustainability discourse. Third, it goes further to promote policy-related proposals to enhance enforceability, such as hybrid forms of compliance monitoring that involve state, corporate, and civil society actors. In such a manner, the article contributes to the developing discussions on the role of environmental conditionality in the catalytic role of a globalized

¹⁰ Vidigal, G., & Donoghue, S. C. (2025). Trade commitments, legitimate regulation, and extraterritoriality: Limits beyond non-discrimination? *Global Trade and Customs Journal*, 20(6), 404–414. <https://doi.org/10.54648/gtcj2025071>

¹¹ Michieli, T. (2025). *Corporate accountability for climate change in the EU: Exploring the interaction and coherence of due diligence obligations*. University of Eastern Finland. Retrieved from <https://erepo.uef.fi/bitstreams/d7e10fd3-530f-41d5-9df3-62327d2ab5f8/download>

convergence in sustainable trade governance, or how it threatens to be a symbolic act or exercise in regulatory diplomacy.

The article follows in the following way. In section 2, the conceptual and legal background of environmental conditionality is given, taking place in the context of EU trade law, WTO jurisprudence, and environmental treaty obligations. The third section of the paper addresses how EU FTAs developed over time in terms of sustainability provisions by using comparative case studies. Section 4 considers the specific intersection with the blue economy, and these include fisheries governance, IUU fishing, as well as marine biodiversity. Section 5 examines WTO tensions as well as legitimacy issues. Section 6 builds suggestions on enforcement enhancement, such as multi-stakeholder monitoring and dispute settlement enhancement. Section 7 represents more extensive policy implications, and Section 8 is a conclusion based on contemplating the transformational possibilities and dangers of environmental conditionality within EU trade governance.

2. Conceptual and Legal Foundations

2.1. Defining environmental conditionality under trade law.

Environmental conditionality is a measure of trade and investment tools that condition some kind of trade favouritism, market access, cooperation, or contractual benefit on the adherence of a specified environmental standard, practice, or reform by the recipient.¹² Conditionality is intermediate between soft (statements of intent, cooperation terms, technical assistance) and hard (implicit, legally binding, helped on by dispute settlement, sanctions, and suspended preferences).¹³ It has two conceptual characteristics that set it apart among other trade-related environmental measures: (a) linkage - it attributes trade rights not only to environmental performance or conduct, but also to extraterritorial expectation - it projects regulatory expectations beyond the territorial jurisdiction of the imposing party.

¹² Espa, I., Tokas, M., Segger, M. C. C., & Gehring, M. W. (2025). Climate change and sustainability advances in EU trade agreements: Policy and legal innovations, interlinkages and implementation. *European Foreign Affairs Review*, 30(Special Issue), 1–6. <https://doi.org/10.54648/eerr2025001>

¹³ Julia Schmidt, The Legality of Unilateral Extra-territorial Sanctions under International Law, *Journal of Conflict and Security Law*, Volume 27, Issue 1, Spring 2022, Pages 53–81, <https://doi.org/10.1093/jcs/lkrac005>

More importantly, the idea is normative as a legal one: it reflects a claim that trade cannot be an end and must be mediated by environmental stewardship. But this normative posture is skeptical. Conditionality may be (and has been) viewed as a type of regulatory diplomacy or a variant of green diplomacy but may also be seen as a tool of regulatory dominance or a form of disguised protectionism if standards are not clear, are used selectively, or are of parochial interest. The design of law thus comes into play in the specificity of benchmarks, transparency in monitoring, equality of treatment, and relevant remedial mechanisms, which conditionality goes either way on sustainability or turns into rhetoric.

2.2. The blue economy framework and the external environmental policy of the EU.

The external policy on trade of the EU is now turning out to be a means of exporting environmental standards.¹⁴ The European Green Deal and its offshoots (Biodiversity Strategy, Farm-to-Fork, CBAM, CSDDD) offer a sound internal policy foundation that the EU is exporting via FTAs, partnerships, and sectoral instruments (e.g., Fisheries Partnership Agreements).¹⁵ The cross-section point between trade policy and environmental protection has become the blue economy, which is interpreted as sustainable economic development, food security, and a healthy ecosystem using the ocean.

At the policy level, the EU conceptualizes conditionality to (i) stop trade-led environmental destruction (e.g., overfishing), (ii) level the playing field (avoid social and ecological race to the bottom), and (iii) export regulatory standards (e.g., monitoring and control systems to curb IUU fishing). Nevertheless, policy ambition collides with the reality of practical challenges, the absence of capacity in partner states, conflicting development aspirations, and political sensitization of sovereignty. In this manner, the EU external environmental policy swings between normative desirability and practical concession- usually leading to hybrid provisions which straddle between cooperation and compliance inducement, instead of direct sanctions.

¹⁴ Almeida, T. F. (2025). Environmental protection or domestic protectionism? The EU deforestation-free regulation and its shift from exporter to importer of foreign capital. In *EU External Relations Law and Sustainability: The EU, Third States and International Organizations* (pp. 167–201). The Hague: TMC Asser Press. https://doi.org/10.1007/978-94-6265-655-0_8

¹⁵ Mainar-Causapé, A., Martínez, Y. The impact of the EU's farm-to-fork strategy on member states' economies: which countries will suffer the most?. *Agric Econ* **13**, 10 (2025). <https://doi.org/10.1186/s40100-025-00354-w>

2.3. Normative tools: SDGs (especially, Goal 14), UNCLOS, WTO regulations, and EU Green Deal.

Environmental conditionality is positioned at the top, and must be aligned with several legal instruments:

2.3.1. The United Nations Convention on the Law of the Sea (UNCLOS) gives the basic framework of how the oceans are governed - areas of jurisdiction, obligations to conserve and preserve the marine environment, and responsibilities of states to cooperate. Conditionality to protect the seas has legitimacy within the confines of the requirements of UNCLOS (e.g., measures to combat over-exploitation and protect biodiversity), but UNCLOS does not provide trade law-like remedies to the problem; it provides normative material on maritime stewardship, rather than procedural remedies.¹⁶

2.3.2. The world offers a point in SDG 14 (Life Below Water). The demands of SDG14 to stop overfishing, protect the ocean, and fight IUU fishing are strong politically, which can be used as reference points in designing conditionality.¹⁷ However, SDGs are normative and not binding; they strengthen the justification, but not the opportunities for legalization.

2.3.3. The main legal limitations and challenges are provided by WTO law. The discriminatory trade measures are restricted by WTO disciplines (Article I and III of GATT on MFN and National Treatment).¹⁸ However, the WTO case law (especially the US-Shrimp case and Article XX jurisprudence) acknowledges the existence of environmental exceptions to the case when these measures are not discriminatory and unjustifiable uniformly and in response to the necessity or suitability under the chapeau of Article XX.¹⁹ Any conditionality that has effects on market access will thus be prone to WTO challenge unless they are well-crafted (non-discriminatory,

¹⁶ Li, J., & Xing, W. (2024). A critical appraisal of the BBNJ agreement not to recognise the high seas decline as a common concern of humankind. *Marine Policy*, 163, 106131. <https://doi.org/10.1016/j.marpol.2024.106131>

¹⁷ Stuchtey, M.R. *et al.* (2023). Ocean Solutions That Benefit People, Nature and the Economy. In: Lubchenco, J., Haugan, P.M. (eds) *The Blue Compendium*. Springer, Cham. https://doi.org/10.1007/978-3-031-16277-0_20

¹⁸ Ullah, I. (2022). Most favoured nation principle and national treatment obligation and their efficacy in elimination of the discrimination. *Al Manhal Research Journal*, 2(2). Retrieved from <https://almanhal.org.pk/ojs3303/index.php/journal/article/view/17>

¹⁹ Ming Du, Voluntary Ecolabels in International Trade Law: A Case Study of the EU Ecolabel, *Journal of Environmental Law*, Volume 33, Issue 1, March 2021, Pages 167–193, <https://doi.org/10.1093/jel/eqaa022>

proportional, transparent, and speaking of procedural fairness). The danger is that improperly tuned conditionality will be accused of disguised protectionism, disabling legal validity as well as policy goals.

2.3.4. Domestic regulatory backgrounds (e.g., CBAM, CSDDD) provided by the EU Green Deal and internal laws are gaining more force, leading to external expectations.²⁰ The internal policies of the Green Deal have externalities: in the case of the EU imposing more domestic standards, it faces the dilemma of extraterritoriality, how far could it insist on similar standards overseas without violating international law or causing a political outcry? All these are normative palettes. The UNCLOS and SDG14 substantiate the means of the protection of the ocean. The constraints of the WTO law mean and insists on non-discrimination; and the EU Green Deal presents the content and the driving force of conditionality.²¹ The key legal issue is to go through their tensions.

2.4. Theoretical perspectives: the trade-environment nexus, regulatory governance and extraterritoriality.

Three theoretical prisms shed light on the rationales and constraints of environmental conditionality:

2.4.1. Regulatory Governance (Multi-level and Transnational Regulation). Conditionality illustrates a non-state regulatory governance: the EU uses trading agreements to have cross-border regulatory impacts, which will be based on a combination of hard law, soft law, private norms, and multi-stakeholder enforcement (corporations, non-governmental organizations, certification agencies). This strategy acknowledges that successful environmental management of the blue economy needs networks and multifaceted tools as opposed to single commands of the law.

2.4.2. Sovereignty and Extraterritoriality. Conditionality usually comes with the expectation of behaviours outside the territorial jurisdiction of the regulator. Procedural fairness and the transparency of normative standards, plus the consent of the recipient (through treaty), determine the legitimacy of the extraterritorial reach of regulation. The danger is politicization and opposition

²⁰ Butt, J. S., & Kousar, F. (2024). Driving sustainable growth: The Corporate Sustainability Due Diligence Directive as a catalyst (CSDDD) for public administration reform and corporate accountability in the European Green Deal. *The Journal of Accounting and Management*, 14(3), 7–25. <https://doi.org/10.37075/jam.2024.3.7>

²¹ Baroncini, E., de Stefano, C., & Rubini, L. (Eds.). (2025). *New institutional architectures and substantive rules in international economic law: The EU and the UN Sustainable Development Goals*. Alma Mater Studiorum – Università di Bologna. <https://doi.org/10.6092/unibo/amsacta/8297>

in which conditionality is assumed to be neocolonial or economically coercive. On the law, extraterritorial actions must contend with WTO regulations and guidelines on global courtesy.

2.4.3. Environment Trade Nexus (compatibility and conflict). The literature on trade-environment has proposed three dynamics: (i) trade can contribute to environmental protection by diffusion of cleaner technologies and standards; (ii) trade can harm the environment by extracting and polluting more resources; (iii) trade regulations can limit the sphere of environmental policy. Conditionality is an institutional effort to skew the trade-environment nexus towards sustainability; however, it should be structured in a way that it does not create perverse incentives (i.e., moving harmful activity to unregulated jurisdictions).

Environmental conditionality, as a concept, is a powerful tool towards ensuring a balance between trade and ocean sustainability. Its promise is legally limited, however, by the doctrinal (WTO non-discrimination and necessity tests) and normative (whatever is just adequate environmental performance), and political economy (capacity gaps, sovereignty issues) aspects. The theoretical prisms stress the point that conditionality success is not so much dependent on rhetorical ambition as on institutional design: coherent, quantifiable principles; viable, proportional implementation; capacity-building and technical assistance; and multi-actor surveillance involving states, industry, and civil society. In the case of the EU, pragmatic leadership will entail balancing internal Green Deal ambitions with justifiable external interventions which may be supported by normative justification of the UNCLOS and SDG14, and at the same time WTO-compatible and respectful of the development paths of recipient states. It is only then that conditionality can shift from symbolic diplomacy to an effective, legitimate approach to protecting the blue economy.

3. Environmental Conditionality in EU FTAs

3.1. Formulation of sustainability chapters and fisheries stipulations.

The environmental conditionality of EU FTAs has shifted out of the peripheral matters of hortatory language into increasingly sophisticated, hybrid tools with normative commitments, cooperation

mechanisms, and, in some cases, enforceable procedures.²² This is because, in accordance with early generation agreements (before 2010), environmental goals were usually lodged in non-binding chapters that promoted cooperation, capacity building, and dialogue.²³ Sustainability chapters have been more elaborated since the 2010s and sped up by the European Green Deal and high-profile environmental crisis, contain environmental ambitions (climate, biodiversity, IUU fishing), and can have a procedural cycle of monitoring and review.

The fisheries supplies have been on the same path but in a different direction. In cases where sustainability chapters cover their general environmental objectives, fisheries provisions tend to be industry-focused and functional. They provide a standard of access, surveillance, catch reporting, and the need to avoid IUU fishing. Technical obligations vessel monitoring systems (VMS); catch certificates; observer schemes) are becoming increasingly the subject of fisheries Partnership Agreements (FPAs) and fisheries annexes of FTAs, which represent the high potential of the sector to cause ecological damage and the technical possibility of such surveillance and compliance.²⁴ In brief, sustainability provisions have expanded in both scope and aspiration, and fisheries provisions have become more operationalized, generating both opportunities and tensions in implementation.

3.2. Comparative case studies of EU- Mercosur, EU-Japan, EU-UK TCA, and FPAs.

Such agreements portray various design options and political concessions.

3.2.1. EU-Japan (EPA): The EU-Japan Economic Partnership Agreement has a strong sustainability text, and the references to the multilateral environmental agreements are clear.²⁵ It demonstrates the EU policy to combine powerful normative commitments with institutionalized dialogue (joint committee, working groups). This enforcement is mostly based on state-to-state

²² Georgieva, V. P. (2025). The reaffirmation of developing states' sovereignty under international law in the new (new) international economic order. *Journal of International Trade Law and Policy*. Advance online publication. <https://doi.org/10.2139/ssrn.3876543>

²³ Singhal, T., Jain, P., & Sidana, N. (2025). *Global Guardians: The Framework of Environmental Treaties*. In *Social System Reforms to Achieve Global Sustainability* (pp. 127-166). IGI Global Scientific Publishing.

²⁴ Thorpe, A., Hermansen, O., Pollard, I., Isaksen, J., Failler, P., & Touron-Gardic, G. (2022). Unpacking the tuna traceability mosaic—EU SFPAs and the tuna value chain. *Marine Policy*, 139, 105037. <https://doi.org/10.1016/j.marpol.2022.105037>

²⁵ Gilson, J. (2023). Sustainable development and the environment in EU and Japanese free trade agreements: embedding anthropocentric narratives. *Environmental Politics*, 33(4), 727–748. <https://doi.org/10.1080/09644016.2023.2274750>

consultations, which are supported by reputational pressure as well as political pressure, and not automatic sanctions like those of a governance-heavy and enforcement-light strategy.

3.2.2. EU-UK (Trade and Cooperation Agreement - TCA): After Brexit, the TCA is also characterized by a comprehensive level-playing-field chapter, which connects the divergence of regulation to the possibility of trade remedies.²⁶ It possesses procedural mechanisms, which, in theory, might give rise to remedial action in case of regulatory divergence that would have material impacts on trade or investment. The TCA can therefore be seen as a compromise wherein environmental obligations are more directly related to the impact of trade, though with very high levels of threshold and political discretion.

3.2.3. EU-Mercosur (Negotiated text / political agreement): The negotiation of Mercosur deal (as negotiated) is an acute political trade-off. There is environmental conditionality, which is contentious.²⁷ Mercosur partners and EU member states differed on the issues of agriculture, deforestation, and binding.²⁸ The sustainability measures of the agreement focus on collaboration and the establishment of a common platform to oversee practices on the ground in deforestation and land use, but critics claim that the package does not have the legal force to affect the ground-based deforestation and land use activities- an example of how conditionality can be watered down by political economy and domestic sensibilities.

3.2.4. Fisheries Partnership Agreements (FPAs): FPAs (and fisheries annexes in FTAs) are viewed as the most functioning side of conditionality. They usually contain catch limits, monitoring, IUU penalties, and direct provisions of halting access in case of violation of obligations.²⁹ In a situation where technical monitoring (VMS, catch certification) is possible and capacity building goes hand

²⁶ David Collins, Standing the Test of Time: The Level Playing Field and Rebalancing Mechanism in the UK–EU Trade and Cooperation Agreement (TCA), *Journal of International Dispute Settlement*, Volume 12, Issue 4, December 2021, Pages 617–636, <https://doi.org/10.1093/jnlids/idab023>

²⁷ Pose-Ferraro, N. (2025). Between geopolitics and political economy: The European Union–Mercosur negotiation to form a trade agreement. *Journal of Common Market Studies*. Advance online publication. <https://doi.org/10.1111/jcms.13743>

²⁸ Krzyzanowski, J. T. (2025). The EU-Mercosur Agreement in agriculture, opportunities and threats for European producers. *European Research Studies Journal*, 28(2), 272-294. <https://doi.org/10.35808/ersj/3978>

²⁹ Oloruntuyi, O., Barendse, J., Marriott, M., Gordon, A. K., & Montero-Castaño, C. (2023). Pathway to sustainability: The Marine Stewardship Council certification standard as an improvement framework for African fisheries. *Frontiers in Marine Science*, 10, 1042736. <https://doi.org/10.3389/fmars.2023.1042736>

in hand with obligation, compliance is more likely to be robust.³⁰ FPAs thus reveal the effectiveness of conditionality in the event of technical obligations, which are measured and accompanied by capacity support.

3.3. Design Analysis: soft law/hard law provisions, dispute settlement provisions, and monitoring provisions.

The effectiveness of conditionality depends on whether it is designed legally or not. The conditionality is substantive or symbolic based on three factors related to it, namely: (a) normative nature of clauses (soft vs hard); (b) availability and structure of dispute settlement and remedial instruments; and (c) monitoring, verification, and capacity-building architecture.

3.3.1. Soft law vs Hard law.

Soft law (cooperation, dialogue, non-binding commitments) is flexible and palatable politically, it is easy to build capacity, and it decreases the issue of sovereignty among partners. However, it is frequently not implemented with any credibility; the encouragement of doing so is diplomatic as opposed to juridical.

Hard law (obligations that are binding and set standards and breaches that can be sanctioned) offers more predictability and makes it more difficult to negotiate, but is more prone to overreach, besides WTO review. Hard clauses, too, must have effective mechanisms of monitoring and dispute in place so that they are credible.

Good conditionality usually combines both binding on little as well as cooperation in strands on capacity building. The trick is how to design minimum binding principles that are defensible by the WTO and at the same time keep it sensitive to the abilities of the partners.

3.3.2. Conflict resolution techniques.

Weaker dispute settlement is usually applied in sustainability chapters compared to market chapters. They can be (i) consultations between states and joint committees; (ii) arbitration and potential penalties; and (iii) non-trade penalties (satisfaction of cooperation). The existing practice

³⁰ Garren, M., Lewis, F., Sanchez, L., Spina, D., & Brett, A. (2021). How performance standards could support innovation and technology-compatible fisheries management frameworks in the U.S. *Marine Policy*, 131, 104631. <https://doi.org/10.1016/j.marpol.2021.104631>

of the EU is more inclined towards dialogic and political remedies, restricting the enforceability of the law. The TCA indicates a conditionality trend associated with enforceable trade remedies but depicts political and legal barriers that render its implementation uncommon. Strong arbitration associated with balanced remedies would enhance enforceability though this brings political opposition and legal risk regarding WTO standards.

3.3.3. Monitoring and Verification.

The focus is on monitoring: conditionality should be backed by quantifiable standards, an independent audit, and publicity. In situations where obligations are matched by technical monitoring (e.g., compulsory VMS and catch certificates in fisheries), enforcement is more feasible. On the other hand, general statements on sustainability that lack quantifiable targets introduce adjudicative ambiguity and allow different interpretations. Besides, capacity building is needed in surveillance. When the EU achieves compliance, it is also often associated with the combination of conditionality and funding, technical aid, and involvement of civil societies.

The experiments of conditionality by the EU occupy an interesting truth: form is more important than rhetoric. Where conditionality is technical and quantifiable and comes with capacity building (such as most FPAs), it has a tangible compliance. Conditionality is inclined to symbolic diplomacy in cases where the clauses are general, aspirational, and lack verification or means of enforcement. Besides, the legal environment, such as WTO discipline, UNCLOS requirements, and home politics of partner states, restricts the scope of coercive conditionality.

EU policy proposals demand gradual conditionality - combine low standards and cooperative aid, establish monitoring and independent verifiability in contracts, establish dispute settlement proportionate, transparent, and legally justifiable, and supplement trade action with carrots (funding, incentives to seek market access) and with sticks. Finally, enhance multilateral congruence (WTO, UNCLOS, RFMOs) in a manner that avoids clashing with but augers global legal regimes- to enhance the legitimacy and curb criticism of protectionist abuse.

4. Blue Economy and Marine Protection Dimensions

4.1. Applicability of conditionality in fisheries, marine biodiversity, and IUU fishing.

The blue economy will be based on the sustainability of the use of marine resources: fisheries, aquaculture, marine energy, bioprospecting, and maritime transport. Marine biodiversity and fisheries can be uniquely subject to trade-related conditionality in three ways. First, fisheries are economically important and ecologically vulnerable: overuse leads to rapid and frequently irreversible stock depletion; second, most fisheries value chains are cross-border, and, thus, market-based incentives (or regulations) of fishing activity, processing and trade; third, technical monitoring (vessel monitoring systems, electronic catch documentation, satellite tracking) is observable, and, therefore, can be a part of conditionality frameworks.

The types of conditionality used in fisheries are usually of (a) discouragement and penalties against IUU fishing; (b) sustainable management of fisheries (reference points, quotas, seasonal closures); (c) habitat and biodiversity protection (reduction of bycatch, gearing restrictions, MPAs). Mandatory catch-certification systems, the aspect of implementing vessel monitoring and observer schemes, and the aspect of conditioning market entry to ratification and active implementation of regional fisheries management organization (RFMO) decisions and multilateral instruments (e.g., Port State Measures) are examples of practical instruments.

Conditionality is best achieved empirically and institutionally using obligations that are specific and verifiable. As an illustration, the demand to have traceability/catch certificates results in an observable chain that the customs authorities and the buyers can use to filter out products that are illegally sourced. In comparison, generalized calls to encourage sustainable fisheries with no monitoring indicators are hard to oversee and comply with. Therefore, the salience of conditionality is high when the behaviour of interest is measurable, and the importers/markets have power over suppliers.

Nevertheless, conditionality is not enough: the lack of capacity in the states of the coast (lack of monitoring systems, low patrol forces, deficiencies in legal frameworks) requires that obligations be supplemented by technical support, funding, and institutional collaboration. Otherwise, conditionality will punish states that are poor instead of deliberate, which is legitimizing and will lead to political counteractions.

4.2. The conflict between economic liberalization and environmental sustainability of the law.

liberalization of the economy (access to markets, lowering of tariffs, guarantee of investments) and environmental sustainability can be mutually reinforcing but antagonistic to each other. Trade growth would boost the demand for fisheries products and generate scale effects of industrial fleets; without regulation, liberalization would hasten overfishing, habitat destruction, and biodiversity. This tension is realized in the law in three fundamental fault lines:

4.2.1. Equal treatment vs. affirmative action. The principles of the WTO (MFN, National Treatment) limit discriminatory trade practices, making entry to the market conditional upon environmental performance jeopardizes disparate treatment of trading partners. Conditionality to survive WTO inspection must be non-arbitrary, proportionate, and supported by environmental exceptions (Article XX), must have transparent criteria, and objective scientific grounds.³¹

4.2.2. Sovereignty and extra-territoriality. Conditionality containing the anticipation of partner states to implement certain standards of domestic regulation provokes sovereignty issues. The insistence of the EU to have equivalence or mirror rules (e.g., on fishing control systems) can be construed to mean extraterritorial regulation unless it is well designed as mutual obligations in negotiated treaties.³²

4.2.3. Regulatory chill and protection of investments. FTAs have the potential of causing tensions between environmental measures and the expectations of investors through investment chapters and ISDS mechanisms.³³ The threat of investor claims may create a regulatory chill so that states are reluctant to implement strict conservation policies.³⁴ Conditionality needs to be tailored in a manner that would not create perverse incentives that would entrap poor environmental protection.

These tensions should be resolved by using three principles of legal design, namely clarity (accurate standards, measurable benchmarks), proportionality (remedies in proportion to harm, capacities), and procedural fairness (transparent monitoring, remediation possibilities, technical support). Aligning trade liberalization with precautionary conservation goals can be achieved

³¹ Carmody, C. (2023). The WTO Agreement as a law of rights. In *A communitarian theory of WTO law* (pp. 256–325). Cambridge University Press. <https://doi.org/10.1017/9781009208227.006>

³² Joanne Scott, Extraterritoriality and Territorial Extension in EU Law, *The American Journal of Comparative Law*, Volume 62, Issue 1, Winter 2014, Pages 87–126, <https://doi.org/10.5131/AJCL.2013.0009>

³³ Reiss, P. N. (2024). The good, the bad and the not necessarily ugly future of investor-state arbitration: What will become of the investor-state dispute settlement system? *Iurgium*, (49), 9-25.

³⁴ Tarald Laudal Berge, Axel Berger, Do Investor-State Dispute Settlement Cases Influence Domestic Environmental Regulation? The Role of Respondent State Bureaucratic Capacity, *Journal of International Dispute Settlement*, Volume 12, Issue 1, March 2021, Pages 1–41, <https://doi.org/10.1093/jnlids/idaa027>

through the establishment of scientific panels, independent verification, and gradual compliance routes.³⁵ It is important to note that conditionality, in the context of an international scientific assessment (stock assessment, IUCN lists, RFMO recommendations) may even be more justified and acceptable.

4.3. Relevance of CSDD and ESG disclosure requirements in strengthening FTA conditionality.

Directives of corporate sustainability due diligence and compulsory ESG disclosure regimes turn firms into passive consumers of trade into active partners of compliance, which has dramatic consequences for FTA conditionality.³⁶

4.3.1. Outsourcing to non-governmental bodies. The model of Corporate Sustainability Due Diligence Directive (CSDDD) requires companies to identify, prevent, and correct the negative effects in their value chains.³⁷ When the seafood exporters or processors of the trade partners have links with the EU importers, who must meet their CSDDD requirements, the downstream purchasers will insist on verifiable compliance (traceability, no-IUU certification, habitat-friendly sourcing). Such a factor of private enforcement could be multiplied by conditionality: the state-to-state actions can be supported by the buyer-induced lockout of EU markets.

4.3.2. Increasing transparency and traceability. Mandatory ESG reporting (supply-chain traceability, provenance, environmental impact measures) is a source of information that can be used in tracking within FTAs.³⁸ Details of supply-chain supply and demand published publicly may be compared to catch certificates, satellite AIS/VMS records, and RFMO.³⁹ Transparency minimizes information asymmetry that frequently hampers the conditionality enforcement.

³⁵ de Oliveira, S. E. C., Visentin, J. C., Pavani, B. F., Branco, P. D., de Maria, M., & Loyola, R. (2024). The European Union-Mercosur Free Trade Agreement as a tool for environmentally sustainable land use governance. *Environmental Science & Policy*, 161, 103875. <https://doi.org/10.1016/j.envsci.2024.103875>

³⁶ Velluti, S. (2024). Labour standards in global garment supply chains and the proposed EU corporate sustainability due diligence directive. *European Labour Law Journal*, 15(4), 822–850. <https://doi.org/10.1177/20319525241239283>

³⁷ Lafarre, A. (2023). The proposed corporate sustainability due diligence directive: Corporate liability design for social harms. *European Business Law Review*, 34(2), 213–237. <https://kluwerlawonline.com/journalarticle/European%2BBusiness%2BLaw%2BReview/34.2/EULR2023017>

³⁸ Gurung, M., Taneja, S., Singh, G., Kaur, M., & Kalra, D. (2025). Bridging the gap: Aligning ESG with financial disclosures for a sustainable global trade system. In L. Vardari & I. Qabrati (Eds.), *Aligning financial reporting standards with global trade needs* (pp. 1–28). IGI Global. <https://doi.org/10.4018/979-8-3373-0887-6.ch001>

³⁹ Sara Orofino, Gavin McDonald, Juan Mayorga, Christopher Costello, Darcy Bradley, Opportunities and challenges for improving fisheries management through greater transparency in vessel tracking, *ICES Journal of Marine Science*, Volume 80, Issue 4, May 2023, Pages 675–689, <https://doi.org/10.1093/icesjms/fsad008>

4.3.3. Rewarding corporate governance and due diligence investment. Companies with a legal liability and reputational risk would invest in compliance systems to establish the technical infrastructure (data, monitoring) to implement credible conditionality. Blockchain traceability, third-party audits, supplier codes of conduct, and, in this manner, they would create the technical infrastructure (data, monitoring) to enforce credible conditionality. Besides, the personal standards of buyers (eco-labels, sustainability certifications) may be aligned with the FTA standards to decrease fragmentation.

Over-dependence on corporate instruments may move the burden off the shoulders of the states and give rise to unequal compliance, in which small producers may not be able to match the needs of individual buyers. It may also entrench varying standards of rigour privately. Therefore, CSDDD and ESG models do not exclude each other and should be integrated along with state requirements, which include supported capacity, standard reporting taxonomies, and market access incentives in accordance with compliant producers.

Conditionality is a concept that provides a strategically potent, yet legally and politically sensitive, means of unifying trade and the sustainable blue economy. Its performance will be based on certain justifiable undertakings, complementary corporate due diligence and disclosure policies, and built-in support of capacity and governance. Conditionality may serve to conserve the marine ecosystems and allow them to be used sustainably as the FTAs can be structured with scientific premises and fair treatment of the decisions and actions to address the problems of marine ecosystems, instead of being trade tools.

5. International Trade Law Constraints

5.1. WTO jurisprudence about trade-related environmental measures.

The WTO offers the main legal frameworks to understand how the trade-related environmental measures (TREM) can be pursued without necessarily breaching the fundamental trade

commitments.⁴⁰ Within the three decades, jurisprudence under the General Agreement on Tariffs and Trade (GATT), Agreement on Technical Barriers to Trade (TBT), and Agreement on Subsidies and Countervailing Measures (SCM) has made it clear that states are allowed to take environmentally related measures, such as trade restrictions based on sustainability, if they satisfy several requirements.⁴¹ The US-Gasoline (1996), US-Shrimp (1998), and Brazil-Tyres (2007) cases are some of the major cases in the WTO where environmental goals are seen to be legitimate and may not be arbitrary and unjustifiable discrimination as well and should not be in the form of disguised protectionism.⁴² The Appellate Body highlighted that environmental measures ought to be implemented in a way that complies with the rules of necessity, proportionality, and transparency. Importantly, any action against fisheries, marine biodiversity, or IUU fishing should have a valid environmental basis supported by scientific fact to be able to pass WTO scrutiny.⁴³

5.2. Arguments with MFN and National Treatment requirements.

Conditionality based on the access to the market to environmental performance overlays with the MFN and NT requirements. The problem of conditioning access to the trade based on the compliance of partners with sustainability or fisheries conditions is that it will result in the creation of different treatment, especially when it is not enforced or the benefits are not equally shared.⁴⁴ As an example, when the EU is seen as placing a heavier reporting requirement on the exporters of fish in the developing countries, whilst waiving similar requirements on domestic or OECD partners, it would become an issue of MFN. Similarly, it is possible to oppose such unequal treatment of NT provisions by local manufacturers with favourable regulatory frameworks. Therefore, the conditionality should be designed in a careful manner to avoid arbitrariness, subjective considerations, and non-uniformity in all trading partners to reduce legal weak points.

⁴⁰ Bellmann, C., & Bulatnikova, A. (2022). Incorporating environmental provisions in regional trade agreements in chapters and articles dealing with trade in services. *OECD Trade and Environment Working Papers*, No. 2022/01. OECD Publishing. <https://doi.org/10.1787/6e976798-en>

⁴¹ Qureshi, A. H. (1996). *The World Trade Organization: Implementing international trade norms*. Manchester University Press. <https://doi.org/10.7765/9781526170514>

⁴² Trachtman, J. P. (2017). WTO trade and environment jurisprudence: Avoiding environmental catastrophe. *Harvard International Law Journal*, 58(2), 273–309. https://harvardilj.org/wp-content/uploads/sites/15/HLI202_crop.pdf

⁴³ Bhatnagar, M. (2021). Emerging disciplines on fisheries subsidies negotiations in the WTO and the relationship with other international instruments on fisheries—a tightrope walk. *Trade, Law and Development*, 13(2), 369–396. <https://www.researchgate.net/publication/360140617>

⁴⁴ Marco Bronckers, Giovanni Gruni, Retooling the Sustainability Standards in EU Free Trade Agreements, *Journal of International Economic Law*, Volume 24, Issue 1, March 2021, Pages 25–51

5.3. Danger of covered protectionism and extraterritoriality struggles.

The two risks associated with environmental conditionality are disguised protectionism and extraterritorial overreach.⁴⁵ Disguised protectionism comes because of environmental goals, where the main aim is to protect domestic industries against foreign competition.⁴⁶ The jurisprudence of the WTO demands that actions must be taken with a genuine intention to protect the environment, which must be scientifically justified and proportionate. Another relevant issue is extraterritoriality: in cases where the EU rules practically impose binding rules on foreign countries to comply or enforce national regulatory measures or mandates, e.g., a compulsory traceability system, compliance with ESGs, or fisheries management systems, may be perceived as an extraterritorial imposition, increasing the resistance of politics and legal challenge. The dilemma here is how to reconcile the regulatory ambitions of the EU with the international laws of trade without taking actions that may be perceived as being unilateral or even veiled trade barriers.

5.4. The potential of WTO-compatible sustainability provisions.

Irrespective of these limitations, there are several opportunities to incorporate sustainability proposals in FTAs without contradiction to the WTO law:

5.4.1. Scientific rationale: It is possible to attach trade restrictions or preferential access to the market to the internationally accepted environmental standards (FAO, RFMO, IUCN Red List), which make them legally bonded.⁴⁷ As exceptions under Article XX GATT, necessity and proportionality can be proved scientifically.

⁴⁵ Dobson, N. (2024). Extraterritorial jurisdiction, biodiversity loss and climate change. In *Research Handbook on Climate Change and Biodiversity Law* (pp. 241-262). Edward Elgar Publishing.

⁴⁶ Mariotti, S. (2023). Competition policy in the new wave of global protectionism: Prospects for preserving a FDI-friendly institutional environment. *Journal of Industrial and Business Economics*, 50(2), 227–241. <https://doi.org/10.1007/s40812-023-00263-3>

⁴⁷ Widjaja, S. *et al.* (2023). Illegal, Unreported and Unregulated Fishing and Associated Drivers. In: Lubchenco, J., Haugan, P.M. (eds) *The Blue Compendium*. Springer, Cham. https://doi.org/10.1007/978-3-031-16277-0_15

5.4.2. Use of transparent, objective standards: Standardization of compliance measures (catch certificates, traceability, ESG disclosure measures) reduces the element of arbitrariness and enables them to be more similar among the trading partners.

5.4.3. Non-discriminatory schemes: Conditionality may take the shape of market-wide incentives, which do not punish national states. As an example, MFN compatibility is reinforced by trade preferences or lower tariffs on all compliant exporters.

5.4.4. Complementary capacity building: By providing technical support, training, and funding to partner states, there are sustainability commitments that can be realized, and there is a reduction in de facto inequities that may be interpreted as protectionist.

5.4.5. Linking the enforcement with the cooperation: Whereas automatic sanctions impose penalties, the extraterritoriality problem is overcome by consultative and gradual compliance procedures (joint committees, dispute prevention panels) and, accordingly, provides a forum for the settlement of disputes in line with WTO commitments.

5.5. Corporate Due Diligence and Frameworks of Sustainability.

Although the WTO law mainly limits the state actions of the state to state actions, the private actors, that is corporations are instrumental in making the said environmental conditionality operational.⁴⁸ Corporate Sustainability Due Diligence Directive (CSDDD) is a requirement by the EU, which demands companies to discriminate, forestall, reduce, and report unfavourable environmental and human rights in their value chains.⁴⁹ CSDDD requirements, when transferred to industries that are related to the blue economy, such as fisheries, aquaculture, shipping, and marine biotechnology, can make corporate conduct consistent with trade-related sustainability goals.⁵⁰ Equally, the frameworks of mandatory ESG disclosure would bring transparency in

⁴⁸ Gailhofer, P., Scherf, CS. (2023). Liability of Private Actors in International Law. In: Gailhofer, P., Krebs, D., Proelss, A., Schmalenbach, K., Verheyen, R. (eds) *Corporate Liability for Transboundary Environmental Harm*. Springer, Cham. https://doi.org/10.1007/978-3-031-13264-3_4

⁴⁹ Lois Elshof, Corporate Sustainability Due Diligence and EU Competition Law, *Journal of European Competition Law & Practice*, Volume 15, Issue 3, April 2024, Pages 168–177

⁵⁰ Ferrarini, G. (2024). Corporate Purpose and Sustainability Due Diligence. In: Busch, D., Ferrarini, G., Grünewald, S. (eds) *Sustainable Finance in Europe*. EBI Studies in Banking and Capital Markets Law. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-031-53696-0_4

environmental performance that would allow monitoring and validating, and enforcing conditionality in a complementary manner to state requirements.⁵¹ The EU manages to involve the compliance requirements in corporate governance structures, thus effectively using the private actors to ensure a better enforcement of conditionality without provoking WTO challenges.⁵²

5.5.1. Supply chain traceability and monitoring: CSDDD makes companies trace supply chains and map them, and hotspots of environmental risks. In the case of fisheries, this is implemented in the form of obligatory certification of the provenance of the catch, observation of quotas, and the IUU regulations.⁵³ ESG reporting is transparent and accountable since it makes this information publicly available.

5.5.2. Risk-based due diligence: Firms are motivated to reduce environmental risks in advance to evade liability. In such a way that trade entry is conditional on sustainable practices, corporate due diligence is an automatic compliance multiplier, which makes the individual incentives congruent with the FTA goals.

5.5.3. Partnering with third-party standards: ESG models tend to be based on established standards (e.g., GRI, SASB, or MSC certification). The alignment of FTA conditionality with these standards will offer objective, measurable standards, which improve the defensibility of the WTO as well as its functionality.⁵⁴

Critical synthesis and implications.

The weaknesses of the international trade laws highlight the precarious relationship between environmental ambition and the legality of trade. The legal risks, including MFN/NT breaches,

⁵¹ Singhania, M., & Saini, N. (2021). Institutional framework of ESG disclosures: comparative analysis of developed and developing countries. *Journal of Sustainable Finance & Investment*, 13(1), 516–559. <https://doi.org/10.1080/20430795.2021.1964810>

⁵² Petersmann, E.-U. (2024). Constitutional pluralism, regulatory competition and transnational governance failures. In E.-U. Petersmann & A. Steinbach (Eds.), *Constitutionalism and Transnational Governance Failures* (pp. 31–74). Brill Nijhoff. https://doi.org/10.1163/9789004693722_003

⁵³ Patz C. The EU's Draft Corporate Sustainability Due Diligence Directive: A First Assessment. *Business and Human Rights Journal*. 2022;7(2):291-297.

⁵⁴ Yau, S.S.M. (2025). The 21st Century's Trade Protectionism as Coercive Exceptionalism?. In: Bjorklund, A.K., Bungenberg, M., Chi, M., Jusoh, S., Ranjan, P., Rustambekov, I. (eds) Asian Yearbook of International Economic Law 2024. Asian Yearbook of International Economic Law, vol 2024. Springer, Cham. https://doi.org/10.1007/16517_2025_36

camouflaged protectionism, and extraterritoriality, require sustainability conditionality to be designed in a careful manner. The EU strategy must focus on: (a) objective, scientific standards; (b) non-discriminatory use; (c) the capacity-building measures; and (d) sharing enforcing mechanisms. The WTO jurisprudence will not have to be a strategic obstacle: it may be used to base conditionality on defensible exceptions, associating market access to plausible, quantifiable, and internationally accepted environmental quality. Through conditionality alignment with the WTO standards and the integration of monitoring and support, the EU will be able to pursue sustainable blue economy agendas without negatively affecting the predictability of the law or the legitimacy of trade.⁵⁵

6. Towards a Coherent Enforcement Model

6.1. FTA's current sustainability dispute settlement weaknesses.

Although sustainability chapters have been introduced to the majority of EU FTAs, enforcement is still disjointed, feeble, and mostly non-binding.⁵⁶ Settlement of disputes is usually of a voluntary or political kind and is based on consultations, joint committees, or reporting requirements without an implicit penalty against default. As an illustration, under the EU-Mercosur agreement, environmental obligation monitoring mechanisms are not adjudicatory but advisory and do not provide much deterrence to non-compliance.⁵⁷ Also, numerous sustainability provisions follow soft-law formulations ("shall strive to," endeavour to), which makes the breach or provocation of remedies hard to quantify.⁵⁸ The use of state-to-state enforcement also makes the situation more difficult in the situation when capacity differences, political sensitivities, or economic interdependencies cause the states to be less willing to begin a dispute.⁵⁹ This means that

⁵⁵ Li F, Zhu H. Embedding Conditionality in the Special and Differential Treatment in WTO Disciplines on Fisheries Subsidies to Achieve Fishery Sustainability. *World Trade Review*. Published online 2025:1-27

⁵⁶ Ajmera, T., & Arya, S. (2023). CPTPP and WTO DSMs: Scope for Institutional and Procedural Reforms. *The International Trade Journal*, 38(5), 445–468. <https://doi.org/10.1080/08853908.2023.2240896>

⁵⁷ Lehmen, A., & Vidigal, G. (2025). Trade and Environment in EU-Mercosur Relations: Negotiating in the Shadow of Unilateralism. *European Foreign Affairs Review*, 30(SI), 87-114. <https://doi.org/10.54648/EERR2025004>

⁵⁸ Schacherer, S. (2024). Building responsible and sustainable supply chain frameworks: limits of international investment law and the CSR initiatives taken by the EU and China. *Asia Pacific Law Review*, 32(2), 347–369. <https://doi.org/10.1080/10192557.2024.2349825>

⁵⁹ Peterson, T. M. (2020). Reconsidering economic leverage and vulnerability: Trade ties, sanction threats, and the success of economic coercion. *Conflict Management and Peace Science*, 37(4), 409–429. <https://doi.org/10.1177/0738894218797024>

sustainability commitments are usually symbolic instead of operational, which diminishes the level of credibility of conditionality as a tool of safeguarding the blue economy.

6.2. Monitoring and enforcement mechanisms have to be harmonized.

Proper enforcement needs unified standards, indicators, and protocols of procedures among FTAs.⁶⁰ The existing practices are diverse with respect to reporting requirements, checking procedures, and remedial procedures, which pose legal and practical ambiguities. In the absence of standardization, catch certification and ESG disclosure, and traceability metrics can be used unevenly, diminishing their effectiveness and creating opportunities to violate standards.⁶¹ Harmonization should aim to:

6.2.1. The scientific measurements used to monitor indicators must be the norm.

6.2.2. Corporate due diligence and reporting disclosures that are separated and controlled separately and monitored at the state level.

6.2.3. Include the participation of the stakeholders to be transparent and legitimate.

Harmonized framework improves predictability among firms and states, minimizes conflicts relating to interpretation, and boosts compatibility of the WTO by guaranteeing non-discrimination and objective enforcement.

6.3. Alternatives: hybrid enforcement (state to state, corporate, and civil society roles).

A hybrid model of enforcement using more than one actor can be made to be effectively conditioned:

6.3.1. State-to-state enforcement:

Classical means of FTA are still necessary in terms of high-level compliance controls and remedial power.

⁶⁰ Nagu, Y. (2023). *Implementing the African Continental Free Trade Agreement (AfCFTA): Policies, regulations, laws and institutions required for development* (Doctoral thesis, University of Cape Town, Department of Commercial Law). <http://hdl.handle.net/11427/39716>

⁶¹ Zervoudi, E. K., Moschos, N., & Christopoulos, A. G. (2025). From the Corporate Social Responsibility (CSR) and the Environmental, Social and Governance (ESG) Criteria to the Greenwashing Phenomenon: A Comprehensive Literature Review About the Causes, Consequences and Solutions of the Phenomenon with Specific Case Studies. *Sustainability*, 17(5), 2222. <https://doi.org/10.3390/su17052222>

More independent scientific reviews to establish violations, and less political influence.

6.3.2. Corporate enforcement:

CSDDD and mandatory ESG reporting transform the private actors into compliance enforcers to encourage the upstream suppliers to comply with the environmental standards.⁶²

The reputational and legal liability of firms can be considered as an excellent deterrent to state-level enforcement.

6.3.3. Civil society:

It can be made more transparent and accountable through third-party verification, auditing, and reporting by NGOs, educational bodies, and industry watchdogs.

Civil society involvement enhances legitimacy, especially in the case of developing countries, as it gives local wisdom and validates claims of compliance.

The hybrid model guarantees redundancy and cross-checking, minimizing the risks of non-compliance making their way through because of the weak state capacity or political reluctance.

6.4. Combining compliance-based and forensic environmental governance.

Technical combinations of compliance structures and forensic tools can significantly improve the enforcement.

6.4.1. Forensic environmental monitoring Traceability Remote sensing, satellite AIS/VMS tracking, and blockchain-based traceability can track the activities of the fisheries, habitat encroachment, and integrity of the supply chain.

6.4.2. Corporate governance based on compliance: Companies introduce risk-based due diligence, internal audit, and ESG reporting requirements to control compliance with FTA sustainability requirements upstream.

⁶² Dirk A Zetsche, Marco Bodellini, Roberta Consiglio, The EU Sustainable Finance Framework in Light of International Standards, *Journal of International Economic Law*, Volume 25, Issue 4, December 2022, Pages 659–679

6.4.3. Integration and verification of data: Integrating forensic evidence and corporate reporting is an evidence-based compliance matrix that allows specific and timely detection of violations.

This combined solution will change environmental governance to become proactive and evidence-driven enforcement, and align the incentives of trade, corporate, and civil society to achieve sustainable results in the blue economy.

A good enforcement model is central to transforming environmental conditionality in EU FTAs into a blue economy reality.⁶³ The EU can achieve balance in the monitoring systems, instill hybrid enforcement systems, and combine the forensic and corporate compliance strategies, which would, in turn, make trade liberalization promote environmental sustainability rather than compromise it.⁶⁴ This kind of model increases the defensibility and capacity as well as avenues to an actionable, sustainable ocean governance, and this is how trade, law, and corporate responsibility can be used in a transnational environment in a synergetic manner.

7. Policy and Reform Proposals

7.1. Better environmental standards and reference points in FTA conditionality.

Lack of specific, measurable, and enforceable environmental standards is one of the most urgent constraints in the existing EU FTAs. Formulations that are soft-law or obscure goals and non-specific commitments impede monitoring as well as legal enforceability. Reform should also focus on the formulation of quantifiable measures that align with scientific and international standards, particularly in fisheries and marine biodiversity. Examples include:

7.1.1. Documentation and traceability requirements.

7.1.2. Marine ecosystem and habitat protection standardized measurements.

⁶³ Ekpemuaka, E., Odunlade, O. R., & Maiyaki, S. F. (2025). Resilience in Africa's transition to a sustainable digital and blue economy: Policy and regulatory framework in Nigeria. In *Securing Sustainable Futures Through Blue and Green Economies* (pp. 149–172). IGI Global. <https://doi.org/10.4018/978-1-7998-3789-3.ch009>

⁶⁴ Happersberger, S., & Bertram, C. (2025). Reversing the Gaze in EU Trade Policy: Communities, Hierarchies and Agency under Trade and Sustainable Development Chapters. *Geopolitics*, 1–49. <https://doi.org/10.1080/14650045.2025.2468767>

7.1.3. EM disclosure thresholds of the companies that work within the sphere of the blue economy.

By showing that conditionality is necessary, proportional, and objective, clear benchmarks not only provide transparency and accountability but also increase the legal defensibility of the conditionality according to the WTO norms.

7.2. Better connections to UNCLOS, Paris Agreement, and internal legislation of the EU.

FTA conditionality must be clearly pegged on existing international and regional legal frameworks to increase its legitimacy and coherence.⁶⁵

2. 1. UNCLOS will establish a binding system on sustainable marine resource use, exclusive economic zones, and conservation of biodiversity. By aligning FTA provisions with the obligation under UNCLOS, there is the assurance that this would be in line with the international law of the sea.

7.2.2. Paris Agreement: The inclusion of climate-related goals, carbon reduction requirements, and adaptation plans in the sustainability chapters gives the world an added commitment towards global climate.

7.2.3. EU internal legislation: Directives including the Corporate Sustainability Due Diligence Directive (CSDDD), EU Green Deal goals, and the EU Biodiversity Strategy can enhance policy congruency as well as exploit the compliance mechanisms that already exist.

Such alignment makes sure that environmental requirements in trade are not divided into separable parts, but instead form a part of a larger legal ecosystem, and makes them more enforceable and credible.

7.3. Integrating the scope of corporate governance and due diligence within the trade conditionality.

The instruments of corporate governance, especially the CSDDD and mandatory ESG reporting, are important tools of operation in the conditionality enforcement. These obligations need to be

⁶⁵ Banerjee, P. (2025). Sustainability-Oriented Trade Policies and Measures: An Emerging Challenge for Global Trade. *Global Trade and Customs Journal*, 20(6), 395–398.

encompassed in FTAs, and a direct connection between corporate compliance and access to the market has to be established.

Specific measures include:

7.3.1. Directing upstream suppliers of fisheries, aquaculture, and marine biotechnology to pay due diligence.

7.3.2. Requiring ESG reporting of environmental effects, resource mining, and marine protection compliance.

7.3.3. Putting in place liability and accountability structures in non-compliant corporations, making trade privileges only conferable upon verifiable, sustainable performance.

The integration of corporate governance frameworks will change FTA conditionality as a state-based requirement into a multi-actor compliance ecosystem by using private incentives to support the public policy agendas.

7.4. Increasing the work of civil societies and partnerships with governments.

State actors cannot do it effectively. The measures of monitoring, verification, and capacity-building require the involvement of civil society and collaboration with the government.

7.4.1 Public-private partnerships (PPPs) can be utilized to provide technical support, training, and technological access to sustainable fisheries and blue economy businesses.

7.4.2. The independent monitoring, audits, and verification by the civil society organizations (CSOs) are important to enhance transparency and accountability.

7.4.5. Multi-stakeholder platforms, such as NGOs, industry players, and governmental agencies, can develop common monitoring systems, address conflicts at an early stage, and share best practices.

This will make enforcement inclusive, participatory, and adaptive, using different expertise and reducing the political tension and capacity gaps of countries as partners.

7. Conclusion

This study proves that environmental conditionality in Free Trade Agreements by the EU is a strategic intersection of trade liberalization, sustainability, and blue ecosystem management. Legal architecture comprises sustainability chapters, fisheries provisions, and corporate governance obligations, and is aimed at reconciling the interests of the economy with the ecological requirements. The weakness of enforcement, uneven monitoring, and the soft-law character of most obligations, however, inhibit existing mechanisms. The paper notes that CSDDD and ESG disclosure frameworks are capable of being enforcement multipliers that offer credible, data-driven, and verifiable ways of operationalizing FTA conditionality. Moreover, the structural weaknesses can be mitigated with the help of hybrid enforcement models combining state supervision, corporate responsibility, and involvement of civil society, which will make the framework leaner and more legally viable.

As demonstrated in the analysis, there is a requirement for clear, measurable, and internationally harmonized benchmarks, which are consistent with UNCLOS, the Paris Agreement, and the internal law of the EU. By integrating corporate governance and due diligence responsibility in FTA architecture, it will be possible to make sustainability compliance aspirational and make it monitored and enforced. Additionally, it is observed that transparency, legitimacy, and capacity-building are enhanced with the involvement of civil society and a partnership between the government and the non-governmental organizations, which reduces the loopholes in monitoring and implementation, particularly in developing countries. Lastly, the incorporation of both forensic and technological solutions, including blockchain traceability and satellite monitoring, ensures that the evidence supporting the compliance and dispute resolution is based.

This paper makes contributions to the scholarly publications, as it: (a) presents a holistic, policy-focused framework, bridging EU trade law, environmental law and approaches to corporate governance; (b) illustrates the practical possibility of hybrid enforcement mechanisms, using both state and non-state actors; and (c) makes practical recommendations of WTO-compatible, science based and measurable conditionality, which contributes to sustainable development in the blue economy.

Environmental conditionality of EU FTAs has a potential but under-exploited tool with which to balance trade liberalization and the sustainable use of marine resources. The EU may successfully

implement sustainability goals by integrating clear benchmarks, aligning international legal requirements, using a corporate governance structure, and adopting multi-actor enforcement plans. These reforms make the conditionality more credible and enforceable, and even pursue wider objectives of the blue economy, which are ecological sustainability, legal coherence, and fair contribution to global trade.