

International Trade Policies and Sustainable Environmental Governance in Nigeria: A Legal Appraisal

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Abstract

The intensification of global trade has increasingly positioned international trade law as a key instrument of environmental governance, extending its traditional commercial function to promote sustainability. This article critically examines the legal impact of international trade policies on sustainable environmental governance in Nigeria, whose economy remains heavily dependent on crude oil exports and other primary commodities. Adopting a doctrinal and comparative legal methodology, this evaluation assesses Nigeria's constitutional, statutory, and institutional frameworks in conjunction with multilateral trade agreements, regional trade instruments, and international environmental treaties, drawing comparative insights from the United Kingdom, the United States, and South Africa. The article argues that although Nigeria possesses an extensive legal and institutional framework for environmentally sustainable trade, its effectiveness is undermined by the non-justiciability of environmental obligations under Chapter II of the Constitution, weak regulatory enforcement, institutional fragmentation, and dependence on environmentally intensive exports. It further contends that legal scholarship has largely treated trade liberalisation and environmental protection as separate fields, overlooking the dual role of international trade law in both facilitating and constraining domestic environmental governance. Through doctrinal analysis of legislation, case law, and treaty provisions, supported by comparative institutional evaluation, the article demonstrates that Nigeria's principal challenge lies not in the absence of legal norms but in deficiencies in implementation and enforcement. It recommends constitutional recognition of enforceable environmental rights, integration of sustainability standards into trade and investment legislation, and strengthened regulatory institutions to align Nigeria's trade regime with evolving global environmental governance and sustainability requirements.

Keywords: African Continental Free Trade Area, Environmental Law and Governance, International Trade Law, Sustainable Development, World Trade Organization.

1. Introduction

International trade governance has undergone a discernible normative shift over the past three decades, from a regime concerned almost exclusively with tariff reduction and market access to one that increasingly internalizes environmental considerations within its regulatory architecture.¹ The preamble to the Marrakesh Agreement Establishing the World Trade Organization expressly recognizes sustainable development as an objective of the multilateral trading system,² while Article XX of the General Agreement on Tariffs and Trade permits

¹Rio Declaration on Environment and Development 1992, Principle 4, which recognises environmental protection as an integral part of the development process.

²Marrakesh Agreement Establishing the World Trade Organization 1994, preamble.

states to derogate from trade obligations for measures necessary to protect human, animal, or plant life, or relating to the conservation of exhaustible natural resources.³ The WTO Appellate Body's decision in the *Shrimp-Turtle* dispute confirmed that environmental protection constitutes a legitimate regulatory objective capable of qualifying trade measures under this exception, thereby lending juridical weight to the proposition that trade and environmental regulation are no longer conceptually antithetical.⁴ This global re-alignment carries particular significance for Nigeria, an economy whose international trade profile is dominated by crude oil, agricultural commodities, and solid minerals. Decades of oil exploration and export-oriented extraction in the Niger Delta have produced well-documented ecological harm, including pollution of surface and groundwater, gas flaring, and loss of biodiversity.⁵ Nigerian courts have, in response, begun to articulate environmental protection as cognisable within constitutional rights discourse. In *Gbemre v Shell Petroleum Development Company (SPDC) Nigeria Ltd*, the Federal High Court held that continued gas flaring violated the constitutionally guaranteed rights to life and to dignity of the human person.⁶ The Supreme Court's subsequent liberalisation of standing rules in *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* further expanded the avenues through which environmental harm arising from trade-related extractive activity may be judicially contested.⁷ Notwithstanding this jurisprudential development, the legal relationship between Nigeria's international trade policy and its environmental governance framework remains under-theorised, with the two fields typically analysed as separate silos of scholarship.

The problem this article addresses is therefore twofold. First, although international trade instruments increasingly embed environmental disciplines and Nigeria has ratified or otherwise assumed obligations under most of the relevant multilateral and regional frameworks, the domestic legal effect of these obligations on environmental outcomes has not been systematically appraised through a doctrinal lens attentive to the specific structural features of Nigerian constitutional and administrative law. Second, existing accounts of Nigerian environmental law tend to proceed without reference to the trade dimension, thereby obscuring the extent to which market access conditionality — evident, for instance, in emerging carbon border measures and environmental, social and governance (ESG) requirements imposed by major trading partners — now functions as a *de facto* regulatory mechanism operating in parallel with, and at times more forcefully than, domestic environmental law.

Against this background, the article critically appraises the extent to which international trade policies have contributed to, and can be more effectively harnessed for, sustainable environmental governance in Nigeria. It proceeds in eight further parts. Part 2 reviews the relevant legal and policy literature and identifies the gap this article addresses. Part 3 sets out the theoretical framework informing the analysis. Part 4 explains the doctrinal and comparative methodology adopted. Part 5 presents the substantive discussion, comprising a doctrinal audit of Nigeria's domestic, regional, and international legal architecture; an appraisal of the positive and negative legal effects of trade policy on environmental governance; an analysis of emerging global sustainability standards; and a comparative appraisal of the United Kingdom, the United States, and South Africa. Part 6 sets out recommendations, and Part 7 concludes.

³General Agreement on Tariffs and Trade 1994, art XX(b) and (g).

⁴*United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R (12 October 1998) paras 129–131.

⁵United Nations Environment Programme, *Environmental Assessment of Ogoniland* (UNEP 2011) 8–14.

⁶*Gbemre v Shell Petroleum Development Company (SPDC) Nigeria Ltd* (Unreported, Federal High Court, Benin Judicial Division, Suit No FHC/B/CS/53/05, 14 November 2005); (2005) AHRLR 151 (NGHC).

⁷*Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* (2019) 5 NWLR (Pt 1666) 518 (SC) 541–542.

2. Literature Review

2.1 Conceptual Foundations

The environment is conventionally understood as the totality of natural and physical surroundings comprising of land, water, air, and the ecological relationships that sustain life, within which economic activity occurs.⁸ Environmental protection denotes the corpus of legal, policy, and institutional mechanisms directed at preventing degradation of this resource base and conserving it for present and future use.⁹ Sustainable development, the broader conceptual umbrella under which environmental protection is usually situated, was authoritatively defined by the Brundtland Commission as development that meets the needs of the present without compromising the ability of future generations to meet their own needs.¹⁰ The concept rests on three interdependent pillars, economic, social, and environmental, of which this article is concerned principally with the environmental pillar, denoted here as the promotion of a *sustainable environment*: an ecological condition in which natural resources are protected, conserved, and utilised so as to remain available to future generations.¹¹

International trade, understood as the legally regulated cross-border exchange of goods, services, and capital,¹² has historically been analysed principally through the lens of comparative advantage and welfare-maximising liberalisation.¹³ The more recent scholarly category of *sustainable trade* denotes trade policy and practice that pursues economic expansion while safeguarding environmental integrity,¹⁴ and is increasingly reflected in instruments ranging from the WTO framework to preferential trade agreements containing express environmental chapters.

2.2 Existing Scholarship and Its Limits

A substantial international literature addresses the trade–environment interface, much of it emerging from Global North institutions concerned with reconciling multilateral trade disciplines with environmental exceptions.¹⁵ This literature has been instrumental in establishing that environmental measures may be accommodated within, rather than treated as inherently hostile to, the multilateral trading system, as the Appellate Body confirmed in *Shrimp-Turtle*. A parallel body of Nigerian scholarship has examined environmental degradation associated with the petroleum sector, generally sourced from the UNEP's Ogoniland assessment, and has documented the persistence of pollution notwithstanding a formally comprehensive regulatory framework.¹⁶ A further strand examines the adequacy of

⁸National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007, s 37 (interpretation section).

⁹P Sands and J Peel, *Principles of International Environmental Law* (4th edn, Cambridge University Press 2018) 15–22.

¹⁰World Commission on Environment and Development, *Our Common Future* (Oxford University Press 1987) 43.

¹¹D Hunter, J Salzman and D Zaelke, *International Environmental Law and Policy* (6th edn, Foundation Press 2022) 21–27.

¹²D Ricardo, *On the Principles of Political Economy and Taxation* (John Murray 1817) ch VII.

¹³P Krugman and M Obstfeld, *International Economics: Theory and Policy* (10th edn, Pearson 2015) ch 2–3.

¹⁴C Nwapi, 'Trade Liberalisation and Environmental Protection in Developing Countries' (2019) 8(1) *African Journal of International and Comparative Law* 67, 69–72.

¹⁵D C Esty, *Greening the GATT: Trade, Environment and the Future* (Institute for International Economics 1994) 34–56.

¹⁶MT Okorodudu-Fubara *Environmental Protection and Economic Development in Nigeria* (2015) 6(2) *University of Benin Law Journal* 89, 94–101.

Nigeria's environmental institutions, generally concluding that enforcement, rather than legislative design, constitutes the binding constraint on environmental outcomes.¹⁷

Notwithstanding the depth of these separate literatures, three interrelated gaps persist. First, the international trade–environment literature is overwhelmingly generated in and calibrated to developed-economy contexts and does not adequately theorise how environmental exceptions and market-access conditionality interact with the institutional and constitutional peculiarities of an import-dependent, extraction-reliant developing economy such as Nigeria. Second, Nigerian legal scholarship on environmental protection has tended to treat trade liberalisation as an exogenous economic backdrop rather than as a body of law bearing directly, and in specifiable ways, upon environmental governance outcomes. Third, and consequently, there exists no sustained doctrinal appraisal of how Nigeria's constitutional non-justiciability of environmental duties, considered together with its regional and multilateral trade obligations, structures the practical legal impact of trade policy upon environmental governance. This article addresses that composite gap by treating international trade law and Nigerian environmental law as a single, interacting legal field, and by subjecting that field to doctrinal and comparative scrutiny.

3. Theoretical Framework

Because the interaction between international trade and environmental governance implicates questions of legal validity, institutional design, and distributive justice, no single jurisprudential theory adequately captures its analytical demands. This article therefore adopts a pluralistic theoretical framework combining natural law, legal positivism, and ecological modernisation theory. Natural law theory, associated in its classical form with Aristotle and Aquinas and refined in its modern form by Finnis,¹⁸ supplies the normative foundation for treating environmental protection as a matter of justice rather than discretionary economic policy. On this view, intergenerational equity, the principle that present resource use must not compromise the capacity of future generations to meet their needs, is not a policy preference but a requirement of justice binding upon lawmakers irrespective of short-term economic advantage.¹⁹ This theory illuminates the moral inadequacy of trade and investment statutes, discussed below, that are silent on environmental safeguards. Legal positivism, associated with Bentham, Austin, and Hart,²⁰ supplies the analytical apparatus for this article's doctrinal method: it directs attention to the formal sources of legal obligation, constitutional provisions, statutes, ratified treaties, and judicial precedent, as the proper object of legal analysis, independent of their moral desirability. This framework is indispensable for explaining why, notwithstanding the natural-law case for justiciable environmental rights, the environmental objectives contained in Chapter II of the Constitution of the Federal Republic of Nigeria 1999 remain formally unenforceable: their status is a function of source and pedigree (placement within a non-justiciable chapter) rather than of their moral content.²¹ Ecological modernisation theory contributes a third, more sociological dimension, positing that environmental protection and economic development are not inherently antagonistic but can be reconciled through technological innovation, market-based instruments, and regulatory reform.²² This theory

¹⁷Y Osinbajo, *Improving Environmental Enforcement in Nigeria* (2011) 5 *Nigerian Journal of Environmental Law* 44, 47–52.

¹⁸J Finnis, *Natural Law and Natural Rights* (2nd edn, Oxford University Press 2011) 85–90.

¹⁹E Brown Weiss, *In Fairness to Future Generations* (Transnational Publishers 1989) 17–21.

²⁰HLA Hart, *The Concept of Law* (3rd edn, Oxford University Press 2012) 100–110.

²¹Constitution of the Federal Republic of Nigeria 1999, s 6(6)(c).

²²APJ Mol and G Spaargaren, 'Ecological Modernisation Theory in Debate' in APJ Mol and DA Sonnenfeld (eds), *Ecological Modernisation Around the World* (Frank Cass 2000) 17–34.

underpins the article's central claim that international trade policy, properly structured, can function as a vector for environmental improvement in Nigeria, through technology transfer, sustainability certification, and market-access conditionality, rather than solely as a driver of extractive over-exploitation. Read together, these three theories permit the article to evaluate simultaneously the normative desirability, the formal legal status, and the practical institutional efficacy of trade-related environmental governance in Nigeria.

4. Research Methodology

This article adopts a doctrinal legal method, involving the systematic identification, exposition, and critical analysis of the primary legal materials governing trade and environmental regulation in Nigeria.²³ Primary sources comprise the Constitution of the Federal Republic of Nigeria 1999, relevant national legislation including the Environmental Impact Assessment Act 1992, the NESREA Act 2007, the Petroleum Industry Act 2021, the Endangered Species (Control of International Trade and Traffic) Act 1985, the Nigerian Export Promotion Council Act 1976, and the Nigerian Investment Promotion Commission Act 1995; regional instruments, including the Revised Treaty of the Economic Community of West African States 1993 and the Agreement Establishing the African Continental Free Trade Area 2018; and international instruments, including the Marrakesh Agreement Establishing the WTO, the General Agreement on Tariffs and Trade 1994, the Convention on Biological Diversity 1992, CITES 1973, and the Paris Agreement 2015. Nigerian and comparative judicial decisions are analysed doctrinally to establish how courts have construed the relationship between environmental protection and economic or trade-related activity. The article supplements this doctrinal exercise with a comparative legal analysis of the United Kingdom, the United States, and South Africa. These jurisdictions were purposively selected: the United Kingdom and the United States represent mature common-law systems with long-standing environmental regulatory architecture from which Nigeria's own common-law-derived system may draw functional lessons, while South Africa offers a constitutionally proximate and, unlike Nigeria, textually justiciable, African comparator with an integrated approach to environmental and developmental governance.²⁴ The comparative method proceeds functionally, examining not merely the text of foreign statutes but the institutional and enforcement mechanisms that operationalise them, consistent with the recognised comparative-law methodology of examining law-in-context rather than law-in-text alone. Secondary sources, including treatises, peer-reviewed journal articles, and reports of international organisations such as UNCTAD, UNEP, and the WTO, are used to contextualise the doctrinal and comparative analysis, in keeping with the requirement that a rigorous doctrinal study be situated within, and tested against, the existing state of scholarly knowledge.

5. Nigeria's Domestic Legal and Institutional Architecture

Nigeria's environmental-trade nexus is anchored constitutionally, statutorily, and institutionally. The Constitution of the Federal Republic of Nigeria 1999 (as amended) is the foundational instrument: section 20 imposes upon the State a duty to protect and improve the environment and to safeguard the country's air, land, water, forest, and wildlife resources,²⁵ while legislative competence over trade and commerce is vested in the National Assembly, a division of powers judicially affirmed in *Attorney-General of Ogun State v Aberuagba*.²⁶ The

²³CC Wigwe, *Legal Research Method and Practice* (Princeton Publishing Co 2019) 44–49.

²⁴*ibid* Wigwe ; see also NEMA 1998 (South Africa) s 2.

²⁵CFRN 1999, s 20.

²⁶*Attorney-General of Ogun State v Aberuagba* (1985) 1 NWLR (Pt 3) 395 (SC).

critical doctrinal difficulty, however, is that section 20 sits within Chapter II of the Constitution, styled 'Fundamental Objectives and Directive Principles of State Policy', which section 6(6)(c) renders non-justiciable: no court may compel the executive to discharge these objectives, nor may a citizen found a cause of action directly upon them.²⁷ This constitutional architecture means that the State's environmental duty, however emphatically stated, operates as an aspiration rather than an enforceable norm, and that judicial protection of the environment in Nigeria has necessarily proceeded indirectly, principally through the vindication of justiciable rights to life and dignity of the human person, as in *Gbemre*, rather than through direct enforcement of section 20 itself. Beneath this constitutional layer sits a dense statutory framework. The Environmental Impact Assessment Act 1992 mandates prior environmental assessment of projects likely to have significant environmental effects,²⁸ and thus operates preventively upon the very trade-linked sectors - oil and gas, mining, manufacturing, most implicated in environmental harm. The NESREA Act 2007 establishes the National Environmental Standards and Regulations Enforcement Agency as Nigeria's principal environmental enforcement body, with jurisdiction extending across manufacturing, agriculture, and industry generally.²⁹ The Petroleum Industry Act 2021 is of particular significance given the centrality of petroleum to Nigeria's export economy: it imposes environmental remediation and host-community obligations directly upon operators in Nigeria's principal export sector.³⁰ The Endangered Species (Control of International Trade and Traffic) Act 1985 domesticates Nigeria's obligations under CITES by prohibiting unauthorised trade in protected species, directly regulating the trade dimension of biodiversity loss.³¹ By contrast, the two principal instruments governing Nigeria's trade and investment promotion, the Nigerian Export Promotion Council Act 1976 and the Nigerian Investment Promotion Commission Act 1995, contain no meaningful sustainability criteria,³² a legislative asymmetry that this article regards as a significant doctrinal weakness: Nigeria regulates the environmental consequences of trade largely after the fact, through pollution-control and remediation statutes, rather than at the point of trade and investment approval.

5.1 Regional and International Trade-Environment Architecture

At the regional level, the Revised Treaty of the Economic Community of West African States 1993 promotes coordination of trade, environmental, and natural-resource policy among member states,³³ complemented by the ECOWAS Trade Liberalisation Scheme 1979, the ECOWAS Framework on Environment and Trade 2008, and the ECOWAS Environmental Policy 2008. The Agreement Establishing the African Continental Free Trade Area 2018 is doctrinally more significant, as it expressly identifies sustainable development as a guiding principle of continental market integration,³⁴ thereby embedding, at least textually, an environmental discipline within Africa's most ambitious trade liberalisation project. At the multilateral level, the WTO framework through Article XX of GATT 1994 and the Appellate Body's jurisprudence in *Shrimp-Turtle*, legitimises environmentally motivated trade restrictions, while the Convention on Biological Diversity 1992 and CITES 1973 regulate the

²⁷CFRN 1999, s 6(6)(c).

²⁸Environmental Impact Assessment Act 1992, Cap E12, Laws of the Federation of Nigeria 2004, s 2.

²⁹National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007, s 1.

³⁰Petroleum Industry Act 2021, s 235.

³¹Endangered Species (Control of International Trade and Traffic) Act 1985, Cap E9, Laws of the Federation of Nigeria 2004, ss 1–3.

³²Nigerian Investment Promotion Commission Act 1995, Cap N117, Laws of the Federation of Nigeria 2004, ss 4, 17–20.

³³Revised Treaty of the Economic Community of West African States 1993, arts 3 and 29.

³⁴Agreement Establishing the African Continental Free Trade Area 2018, art 5.

trade dimension of biodiversity conservation, and the Paris Agreement 2015 increasingly conditions climate-related market access.

The doctrinal difficulty at this level is not one of textual inadequacy but of enforceability: unlike Nigeria's domestic statutes, which at least in principle admit of judicial or administrative enforcement, these regional and multilateral instruments rely substantially on state consent and voluntary compliance, with sanctions for non-compliance either weak or entirely absent. The consequence is a layered architecture in which formally robust international commitments are transmitted into domestic law with significantly reduced practical force, a phenomenon consistent with the positivist observation that the practical significance of a treaty obligation depends upon its domestication and institutional enforcement rather than upon its ratification alone.

5.4 Positive Legal Effects of Trade Policy on Environmental Governance

Notwithstanding these enforcement deficits, international trade policy has produced discernible, legally traceable, positive effects upon Nigerian environmental governance. First, market-access conditionality imposed by major trading partners like the European Union, the United Kingdom, and North America, has functioned as an extraterritorial regulatory driver, compelling Nigerian exporters in agriculture and manufacturing to adopt environmental and production standards that exceed baseline domestic requirements,³⁵ a dynamic that operationalises, without legislative amendment, the ecological modernisation thesis that trade liberalisation can transmit environmental standards horizontally between jurisdictions. Second, trade and investment liberalisation have facilitated technology transfer in renewable energy, waste management, and cleaner production methods, of direct relevance to a developing economy with underdeveloped environmental infrastructure.³⁶ Third, the CITES-driven regulation of wildlife trade, transmitted domestically through the Endangered Species Act, demonstrates how a multilateral trade-restrictive instrument can operate directly and enforceably within Nigerian law to conserve biodiversity. Fourth, the AfCFTA's explicit recognition of sustainable development as a guiding principle creates doctrinal scope, even if not yet fully realised in implementing regulations, for future harmonisation of environmental standards across the continental market,³⁷ a possibility of particular significance given the weakness of ECOWAS-level enforcement.

5.3 Legal and Institutional Constraints

These positive effects must, however, be weighed against substantial legal and institutional constraints that this article identifies as the principal explanation for the persistent gap between Nigeria's formally adequate legal framework and its comparatively weak environmental outcomes. The first and most fundamental constraint, already noted, is the non-justiciability of section 20 of the Constitution, which denies citizens a direct constitutional cause of action against environmentally harmful trade-linked activity and confines judicial intervention to derivative rights-based claims such as those in *Gbemre*.³⁸ Second, weak enforcement capacity within NESREA and the National Oil Spill Detection and Response Agency (NOSDRA), attributable to underfunding, technical understaffing, and overlapping institutional mandates, means that environmental legislation of formally high quality is inconsistently applied in practice, a difficulty starkly illustrated by the persistence of oil-related pollution notwithstanding the statutory obligations discussed above and the continuing environmental

³⁵OECD, *Trade and Environment* (OECD Publishing 2021) 22–29.

³⁶UNCTAD, *Trade and Environment Review* (UNCTAD Publications 2023) 41–48.

³⁷AfCFTA Agreement 2018, art 5.

³⁸CFRN 1999 (n 27); *Gbemre v SPDC Nigeria Ltd* (n 6)

degradation documented in *Edede v Attorney-General of the Federation*.³⁹ Third, Nigeria's structural dependence on crude oil exports generates a persistent incentive asymmetry in which environmental protection is routinely subordinated to revenue considerations, a tension inadequately addressed by legislation, such as the NIPC Act, that promotes investment without corresponding sustainability conditions. Fourth, the voluntary character of compliance under most regional and multilateral instruments - the Revised ECOWAS Treaty, the AfCFTA Agreement, and the Paris Agreement among them- means that Nigeria's international commitments exert comparatively weak coercive pressure relative to their textual ambition. Fifth, emerging trade-linked environmental measures adopted by major economies, notably the European Union's Carbon Border Adjustment Mechanism and its wider Green Deal,⁴⁰ risk operating as *de facto* non-tariff barriers against Nigerian exporters unable to meet increasingly stringent carbon and sustainability thresholds, thereby illustrating that the trade-environment relationship is not unambiguously beneficial to developing-country exporters and may, absent domestic reform, entrench rather than ameliorate environmental and economic disadvantage.

5.4 Comparative Perspectives

A comparative appraisal of the United Kingdom, the United States, and South Africa illuminates the specific reforms available to Nigeria. In the United Kingdom, the Environmental Protection Act 1990 establishes comprehensive pollution-control obligations enforced through inspection, permitting, and sanction,⁴¹ while the Climate Change Act 2008 converts climate policy from aspiration into legally binding carbon-reduction targets enforceable through statutory carbon budgets.⁴² The UK Supreme Court's decision in *R (Friends of the Earth Ltd) v Heathrow Airport Ltd*, holding that a national infrastructure decision must be assessed against the government's climate change commitments, demonstrates the practical force that a justiciable, legislatively entrenched climate obligation can exert upon economically significant, trade-linked infrastructure decisions, a judicial posture unavailable in Nigeria given the non-justiciable status of section 20. [*R (Friends of the Earth Ltd) v Heathrow Airport Ltd* [2020] UKSC 52.] In the United States, the National Environmental Policy Act 1969 mandates *ex ante* environmental review of major federal actions, and the Clean Air Act 1970 and Clean Water Act 1972 establish enforceable pollution standards administered by a well-resourced Environmental Protection Agency; the Supreme Court's decision in *Massachusetts v Environmental Protection Agency*, compelling federal regulation of greenhouse gases as pollutants under the Clean Air Act, illustrates the capacity of a justiciable statutory framework to translate international climate commitments into enforceable domestic obligations bearing directly upon trade-relevant industrial activity.⁴³ South Africa offers the most proximate comparator, sharing with Nigeria a common-law heritage, a resource-export-dependent economy, and membership of overlapping African trade regimes, yet diverging sharply on constitutional design. Section 24 of the Constitution of the Republic of South Africa 1996 entrenches a justiciable right to an environment not harmful to health or well-being, operationalised through the National Environmental Management Act 1998, which requires that development be assessed against express sustainability principles.⁴⁴ The Constitutional Court's decision in *Fuel Retailers Association of Southern Africa v Director-General, Environmental Management, Department of Agriculture, Conservation and*

³⁹*Edede v Attorney-General of the Federation* (2025) 18 NWLR (Pt 2016) 1 (SC).

⁴⁰European Commission, *The European Green Deal* COM (2019) 640 final.

⁴¹Environmental Protection Act 1990 (UK).

⁴²Climate Change Act 2008 (UK), ss 1, 4, 13–14.

⁴³*Massachusetts v Environmental Protection Agency* 549 US 497 (2007).

⁴⁴National Environmental Management Act 1998 (South Africa), s 2.

Environment, Mpumalanga Province, holding that environmental considerations must be integrated into, rather than balanced away from, decisions with economic and developmental consequence, exemplifies how a justiciable environmental right reorders the relationship between trade-linked development approval and environmental protection.⁴⁵ The cumulative comparative lesson is unambiguous: in each jurisdiction, environmental protection is rendered practically effective not merely by the existence of substantive standards, which Nigeria already possesses in comparable measure but by their justiciability and by the institutional capacity to enforce them, both of which Nigeria substantially lacks.

5.5 Emerging Global Sustainability Standards and Implications for Nigeria

The trajectory of global trade regulation increasingly converts environmental compliance from an ancillary consideration into a precondition of market access. Beyond the European Union's Carbon Border Adjustment Mechanism, the proliferation of environmental, social, and governance (ESG) disclosure requirements among multinational purchasers and investors means that Nigerian exporters and recipients of foreign direct investment are increasingly assessed against sustainability criteria that domestic law does not itself mandate.⁴⁶ This development carries a double-edged legal significance for Nigeria. On one hand, it supplies an external enforcement mechanism operating independently of, and arguably more effectively than, Nigeria's own regulatory institutions, since market exclusion is a more immediately felt sanction than domestic regulatory proceedings. On the other hand, it risks entrenching a two-tier trading relationship in which Nigerian producers unable to meet exogenously determined sustainability thresholds, a category likely to include the small and medium-scale enterprises that dominate non-oil export activity, are progressively excluded from the most lucrative export markets, absent a coordinated domestic legal response integrating sustainability criteria into export promotion and investment law.

6. Conclusion/Recommendations

Drawing on the doctrinal and comparative analysis above, this article advances five interrelated legal and institutional reforms.

First, the National Assembly should amend the Constitution to render environmental protection justiciable, whether by removing environmental duties from the non-justiciable ambit of section 6(6)(c) or by entrenching a discrete, directly enforceable right to a healthy environment along the lines of section 24 of the South African Constitution. This reform would supply the doctrinal foundation without which the remaining recommendations will continue to operate at the margins of Nigeria's constitutional order.

Second, sustainability criteria should be mainstreamed into Nigeria's principal trade and investment statutes. The Nigerian Export Promotion Council Act and the Nigerian Investment Promotion Commission Act should be amended to condition export incentives and investment approval upon compliance with environmental standards, thereby aligning domestic investment law with the sustainability disciplines already embedded, at least textually, within the AfCFTA Agreement.

Third, Nigeria should strengthen the domestic implementation of its regional and multilateral trade-environment obligations by enacting specific implementing legislation and regulations

⁴⁵*Fuel Retailers Association of Southern Africa v Director-General, Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* 2007 (6) SA 4 (CC).

⁴⁶World Bank, *Environmental, Social and Governance Standards and Investment Flows* (World Bank 2022) 6–11.

for instruments such as the AfCFTA Agreement and the Paris Agreement, rather than relying upon their status as ratified but under-domesticated treaties.

Fourth, the institutional capacity of NESREA, NOSDRA, and the Federal Ministry of Environment should be substantially strengthened through increased funding, technical training, and the rationalisation of overlapping mandates, with a view to closing the enforcement gap identified throughout this article as the principal constraint upon environmental governance outcomes.

Fifth, government should establish a coordinated sustainability-compliance support scheme — combining regulatory guidance, technical assistance, and targeted financing — to enable small and medium-scale exporters to meet the sustainability and carbon-related requirements increasingly imposed by major trading partners, thereby converting an emergent trade barrier into an opportunity for environmentally responsible export diversification.

6.1 Conclusion

This article has appraised the legal impact of international trade policies on sustainable environmental governance in Nigeria through a doctrinal and comparative lens. It has shown that Nigeria's legal architecture is not deficient in substantive ambition: constitutional environmental duties, a dense body of environmental legislation, and participation in the principal regional and multilateral trade-environment instruments together constitute a formally comprehensive framework. The article's central contribution is to demonstrate that this formal comprehensiveness is substantially undermined by a specific, identifiable constitutional design flaw, the non-justiciability of environmental duties under Chapter II, compounded by weak enforcement capacity and a structural economic dependence on environmentally intensive exports. The comparative analysis of the United Kingdom, the United States, and South Africa confirms that the decisive variable distinguishing more effective environmental governance regimes from Nigeria's own is not the substantive content of environmental standards, which are broadly comparable, but the justiciability and institutional enforceability of those standards. As global trade increasingly conditions market access upon environmental compliance, Nigeria's continued failure to close this justiciability and enforcement gap risks not only continued ecological degradation but also diminishing export competitiveness within an international trading system that is rapidly internalising sustainability as a precondition, rather than an adjunct, of market participation. Addressing this gap through constitutional reform, statutory realignment of trade and investment law, and strengthened institutional capacity is accordingly not merely an environmental imperative but a condition of Nigeria's continued effective participation in international trade.

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