# BALANCING TRADE, JUSTICE, AND ENVIRONMENTAL SOVEREIGNTY: WTO AND AFCFTA CONSTRAINTS ON NIGERIA'S PURSUIT OF COMPLIANCE

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## Abstract

*Nigeria's engagement with global trade and environmental governance reveals a persistent tension between international economic integration and the pursuit of environmental justice. The World Trade Organization's framework, particularly Article XX of the General Agreement on Tariffs and Trade, provides environmental exceptions designed to preserve national policy space. However, these provisions often privilege states with stronger legal capacity, scientific infrastructure, and institutional coherence, leaving developing countries such as Nigeria struggling to meet evolving sustainability standards. This paper examines how the structural design and jurisprudence of WTO environmental rules constrain Nigeria's environmental trade sovereignty and explores how regional mechanisms under the African Continental Free Trade Area (AfCFTA) could mitigate these constraints. Using a doctrinal and comparative legal methodology supported by institutional analysis, the study identifies limited participation in WTO environmental litigation, weak inter-ministerial coordination, and inadequate digital trade infrastructure as key barriers to Nigeria's effective engagement. It argues that the AfCFTA provides a more inclusive platform for collaborative standard-setting, capacity building, and equitable rule-making. The paper concludes that Nigeria must transition from reactive compliance to proactive participation by enacting a comprehensive Trade–Environment Act, strengthening coordination among ministries, investing in data and digital systems, and asserting leadership within the AfCFTA to advance a fairer and more sustainable model of environmental trade governance.*

**Keywords:** WTO, AfCFTA, environmental sovereignty, environmental justice, dispute settlement, sustainable development

## 1. Introduction

Nigeria's engagement with global trade and environmental governance reveals a persistent tension between international economic integration and the pursuit of environmental justice. The World Trade Organization's framework, particularly Article XX of the General Agreement on Tariffs and Trade, provides environmental exceptions intended to preserve national policy space.

[1]However, in practice, these provisions often privilege states with stronger legal capacity, scientific infrastructure, and institutional coherence, leaving developing countries such as Nigeria struggling to meet evolving sustainability and compliance standards. This paper examines how the structural design and jurisprudence of WTO environmental rules constrain Nigeria's environmental trade sovereignty and explores how regional mechanisms under the African Continental Free Trade Area (AfCFTA) could mitigate these constraints.

This paper examines how the structural design and jurisprudence of WTO environmental rules constrain Nigeria's environmental trade sovereignty and explores how regional mechanisms under the African Continental Free Trade Area (AfCFTA) could mitigate these constraints. It employs a doctrinal and comparative legal methodology combined with institutional analysis to assess Nigeria's participation in global environmental trade governance. For clarity, this paper adopts the term trade–environment nexus to denote the interdependence between trade liberalisation and environmental regulation; where trade law both constrains and enables environmental policy space. Findings indicate that limited engagement in WTO environmental litigation, fragmented domestic institutions, and weak digital trade infrastructure have deepened Nigeria's marginalisation in global

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[1] World Trade Organization, 'Repertory of Appellate Body Reports, General Exceptions: Article XX of the GATT 1994', <https://www.wto.org/english/tratop_e/dispu_e/repertory_e/g3_e.htm,> accessed 13 October 2025

trade governance. The AfCFTA, by contrast, presents a viable platform for collaborative standard-setting, technology transfer, and inclusive policy reform.

The relationship between international trade and environmental governance has become central to contemporary debates on global justice. Over the past three decades, the liberalisation of trade has deepened the interdependence between markets and ecosystems, revealing how the design of trade rules can either reinforce or reduce inequality among states. For developing countries, and particularly for Nigeria, this intersection determines the extent to which sovereignty can be exercised within an increasingly rules-driven global economy. Studies across Sub-Saharan Africa show that trade facilitation and institutional quality jointly shape environmental outcomes, indicating that weak governance structures often erode regulatory autonomy.[2] Nigeria's trajectory illustrates this pattern. The country's economic structure remains anchored in resource extraction and primary commodity exports, while its environmental vulnerability and fragmented regulatory systems have limited its capacity to meet evolving sustainability standards.[3]

The World Trade Organization (WTO) was established to promote fairness and predictability in the global trading system. In practice, its dispute-settlement structure and interpretive culture have tended to favour states with sophisticated administrative systems, advanced scientific capacity, and sustained access to expert litigation teams.[4] The environmental exceptions in Article XX of the General Agreement on Tariffs and Trade (GATT) were intended to preserve national policy space, yet they have evolved into complex legal tests that few developing countries can easily satisfy. Through landmark cases such as *United States – Gasoline* and *United States – Shrimp*, the WTO

[2] RL Ibrahim, 'Trade Facilitation, Institutional Quality, and Sustainable Environment: Renewed Evidence from Sub-Saharan African Countries' *Journal of African Business* (2022) 23(2) 281–303, <https://library.au.int/trade-facilitation-institutional-quality-and-sustainable-environment-renewed-evidence-sub-saharan,> accessed 13 October 2025

[3] S Egbetokun, ESC Osabuohien, T Akinbobola, O Onanuga & G Obindah, 'Environmental pollution, economic growth and institutional quality: exploring the nexus in Nigeria' *Management of Environmental Quality* (2019) 31(1) 18–31

[4] G Marceau, 'Conflicts of Norms and Conflicts of Jurisdictions: The Relationship between the WTO Agreement and MEAs and Other Treaties' *Journal of World Trade* (2001) 35(6) 1081–1131,

Appellate Body developed standards of necessity, non-discrimination, and legitimate purpose that are procedurally demanding and structurally advantageous to developed economies.[5]

Nigeria's experience exemplifies these systemic challenges. Since joining the WTO in 1995, it has participated in fewer than five disputes, none involving environmental claims. This absence reflects not a lack of substantive grounds but a deficiency in institutional coordination. The mandates of the Ministries of Trade, Environment, and Justice remain poorly integrated, limiting Nigeria's capacity to engage with international litigation or compliance processes. The increasing digitisation of global trade has further complicated this landscape. Exporting to major markets such as the European Union now requires electronic traceability and blockchain-based verification. Without adequate digital infrastructure, environmental compliance becomes a technological and institutional constraint rather than a matter of legal interpretation.[6]

Within this context, environmental sovereignty denotes the authority of a state to regulate, protect, and utilise its environmental resources in alignment with national development priorities, while maintaining autonomy in environmental policymaking.[7] It captures how states engage with global norms without ceding their core ecological decision-making to external regimes. Building on this, the paper uses environmental trade sovereignty to describe a state's capacity to assert environmental priorities specifically within the formation and interpretation of trade rules. For Nigeria, environmental sovereignty describes a point of tension: pursuing economic integration through trade while retaining control over ecological governance. Justice, as employed in this study, combines distributive and procedural dimensions. Procedural justice concerns inclusive

[5] World Trade Organization, 'Repertory of Appellate Body Reports, General Exceptions: Article XX of the GATT 1994' (WTO, n.d.), <https://www.wto.org/english/tratop_e/dispu_e/repertory_e/g3_e.htm,> accessed 13 October 2025

[6] S Charlebois, N Latif, I Ilahi, B Sarker, J Music & J Vezeau, 'Digital Traceability in Agri-Food Supply Chains: A Comparative Analysis of OECD Member Countries' *Foods* (2024) 13(7) 1075, <https://doi.org/10.3390/foods13071075,> accessed 13 October 2025.

[7] JY Hwang. 'Environmental Sovereignty and Climate Justice: A Legal and Normative Perspective', *International Journal of Science and Research Archive*, (2025) 15(01), 1273-1284. Article DOI: https://doi.org/10.30574/ijsra.2025.15.1.1178.

participation, transparency, and fairness in rule-making processes, whereas substantive justice addresses the equitable distribution of environmental benefits and burdens across states and communities.[8] Together, these definitions support the paper's normative claim that Nigeria's exclusion from environmental trade governance reflects not just institutional weakness, but deeper ethical and structural imbalances.

This paper addresses three interrelated questions. First, how have WTO interpretations of environmental measures evolved, and what implications do these hold for developing economies such as Nigeria? Second, what legal and institutional constraints limit Nigeria's participation in environmental trade compliance and dispute settlement? Third, how might domestic reforms and regional frameworks under the African Continental Free Trade Area (AfCFTA) foster a more balanced model of environmental trade governance? To explore these questions, the paper employs doctrinal and comparative legal analysis, institutional critique, and a case-based approach. The doctrinal analysis examines WTO and AfCFTA legal texts, decisions, and commentaries published between 1995 and 2025.

The comparative component evaluates how institutional capacity affects compliance across developing and developed contexts. The institutional critique analyses Nigeria's governance architecture, while the case study of the cocoa export sector provides empirical evidence of systemic exclusion. This methodological triangulation offers both normative insight and practical evaluation. Drawing from WTO jurisprudence, AfCFTA protocols, Nigerian regulatory instruments, and peer-reviewed literature, the paper shows how law, technology, and power converge in shaping environmental trade outcomes. The study aims to demonstrate how Nigeria can transition from reactive compliance to proactive rule-shaping, asserting environmental sovereignty within the evolving architecture of global trade.

[8] EO Ekhator, 'Environmental Justice in Developing Countries: Perspectives from Nigeria' *International Journal of Law in the Built Environment* (2020) 12(3) 369–387

## 2. GATT Article XX and the Jurisprudence of Environmental Exceptions

Article XX of the General Agreement on Tariffs and Trade (GATT)[9] was designed as a balancing clause, permitting member states to deviate from trade obligations in order to pursue certain public interest objectives. Among its most litigated provisions are paragraphs (b) and (g), which allow members to take measures necessary to protect human, animal, or plant life or health, and those relating to the conservation of exhaustible natural resources. However, these exceptions do not operate in isolation. Measures must also satisfy the chapeau of Article XX, which requires that they are not applied in a manner constituting arbitrary or unjustifiable discrimination or a disguised restriction on international trade.[10]

The interpretive rigor surrounding Article XX began to crystallise in the landmark *United States – Gasoline* case. The dispute centred on a U.S. regulation that imposed more stringent environmental requirements on imported gasoline than on domestic products. The Appellate Body accepted that the measure related to the conservation of exhaustible natural resources under Article XX(g). However, it held that the regulation failed under the chapeau due to its discriminatory structure and lack of cooperative engagement with the affected countries. This case introduced the now-fundamental two-tiered analysis under Article XX, where panels first assess whether a measure fits within a listed exception, and then determine whether it passes the chapeau's threshold.[11]

The evolution of this jurisprudence continued in *United States – Shrimp*, where the U.S. banned imports of shrimp harvested without turtle excluder devices. Though the objective was recognised as a valid environmental concern under Article XX(g), the measure was initially struck down for failing to provide adequate flexibility or engage in serious negotiations with affected nations. The Appellate Body found the measure discriminatory and unjustifiable, not because of its objective, but due to the coercive and unilateral

[9] WTO, Supra note 1
[10] DB Leif, 'Environmental Related Disputes on Trade Issues in GATT and WTO from 1982–2002' *International Journal of Advanced Engineering Research and Science* (2022) 9(2) 124–135, <https://dx.doi.org/10.22161/ijaers.92.17,> accessed 15 October 2025.
[11] D Ahn, 'Environmental Disputes in the GATT/WTO: Before and After US–Shrimp Case' (1998) *Michigan Journal of International Law*

manner in which it was implemented.[12] This reinforced the idea that even well-intentioned environmental policies must align with procedural fairness and multilateralism.

The evolution of WTO jurisprudence reflects a cautious acceptance of environmental objectives, but only when such measures are implemented transparently and without discrimination. For many developing countries, these procedural expectations remain difficult to meet. The chapeau of Article XX requires members to engage in consultations, maintain transparency, and ensure that environmental measures are the least restrictive to trade.[13] Meeting these obligations presupposes institutional coordination, technical expertise, and steady participation in the WTO's review processes; conditions that are not easily met in developing economies. Studies of WTO transparency reforms show that reporting and notification duties have been particularly demanding for states with limited administrative capacity.[14] In Nigeria, these challenges are magnified. The absence of an integrated trade-environment litigation framework and weak inter-ministerial cooperation have restricted its ability to comply with the procedural standards required under WTO environmental rules.[15]

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[12] S Charnovitz, 'The WTO's Environmental Progress' *Journal of International Economic Law* (2007) 10(3) 685-706, <https://doi.org/10.1093/jiel/jgm027,> accessed 15 October 2025

[13] World Trade Organization, *General Agreement on Tariffs and Trade 1994 (GATT 1994), Article XX: General Exceptions* (Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1994), <https://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm,> accessed 15 October 2025; World Trade Organization, *Appellate Body Report, United States – Standards for Reformulated and Conventional Gasoline* (US – Gasoline), WT/DS2/AB/R, adopted 20 May 1996; World Trade Organization, *Appellate Body Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products* (US – Shrimp), WT/DS58/AB/R, adopted 12 October 1998, <https://www.wto.org/english/tratop_e/dispu_e/58abr.pdf,> accessed 15 October 2025

[14] T Han, R Sachdeva and Y Yarina, *Improving Transparency, Information Flow and Monitoring in the WTO: Analysing Current Proposals and Thinking Outside the Box* (Tradelab, 2019) 1–38, <https://tradelab.org/wp-content/uploads/2023/07/Improving-transparency-Information-Flow-and-Monitoring-in-the-WTO.pdf,> accessed 15 October 2025; DR Kanth, 'Developing Countries Propose an Inclusive Approach to Transparency' *Third World Network Bulletin* (2019) 684–685, <https://twn.my/title2/twe/2019/684-685/3.htm,> accessed 15 October 2025.

[15] EI Otor, 'The World Trade Organisation (WTO) Dispute Settlement Mechanism in Developing Countries' *International Journal of Advanced Legal Studies and Governance* (2024) 11(3) 45–59,<https://icidr.org.ng/index.php/Ijalsg/article/view/383,> accessed 15 October 2025; O Fasan, *Compliance with WTO Law in Developing Countries: A Study of South Africa and Nigeria* (PhD thesis, London School of Economics, 2007), <http://etheses.lse.ac.uk/2709/,> accessed 15 October 2025

Moreover, while Article XX is ostensibly neutral, its application has not led to a single successful invocation by an African state. The WTO's environmental case law remains dominated by disputes between high-capacity states, and the precedents established reflect their legal culture and access to evidence. This disparity underscores the systemic challenge facing states like Nigeria, which may have legitimate environmental concerns but lack the legal and institutional tools to frame and argue these concerns effectively under WTO rules.[16]

The practical result is a jurisprudence that remains largely inaccessible to much of the Global South. Nigeria, like many similarly situated countries, finds itself navigating a legal regime in which the formal availability of exceptions does not equate to substantive accessibility. The combination of doctrinal strictness and procedural expectations embedded in Article XX creates what might be termed a "compliance trap," where environmental justice is theoretically available but institutionally foreclosed. In this context, the 'compliance trap' refers to a situation in which formal equality under WTO rules masks the structural incapacity of developing countries to comply due to asymmetries in legal, financial, and scientific capacity

**3. The WTO Dispute Settlement Mechanism: Juridical Access or Legal Hegemony?**

The Dispute Settlement Mechanism (DSM) of the World Trade Organization is frequently described by scholars as an exemplary system of impartiality, predictability, and legal professionalism.[17] However, for many developing states such as Nigeria, this procedural framework often functions less as a gateway to justice and more as a structure that perpetuates exclusion. Participation within the DSM demands considerable legal expertise, rigorous evidentiary precision, and a deep understanding of procedural rules; expectations that are difficult to meet without adequate institutional and technical support. Consequently, the apparent equality of all members under WTO law conceals an

[16] AA Ojo and TE Ayo, 'Examining the Overlap Between Environmental Protection and International Trade Instruments' (2021) *Journal of African World Politics*

[17] WJ Davey, 'The WTO Dispute Settlement System: The First Ten Years' *Journal of International Economic Law* (2005) 8(1) 17–50 <https://academic.oup.com/jiel/article/8/1/17/840363> accessed 13 October 2025

uneven reality in which resource-rich states are better positioned to assert their rights, while weaker economies face significant barriers to effective engagement.[18]

At the heart of this imbalance is the procedural and evidentiary threshold that defines success in WTO litigation. A party initiating or defending a case must provide extensive legal argumentation, often supported by scientific, economic, and environmental evidence.[19] In environmental disputes especially, WTO panels and the Appellate Body expect a level of specificity in regulatory justification that demands access to empirical data, modelling, and technical consultations.[20] Developing countries struggle with this evidentiary standard because they often lack institutionalised systems for data gathering, policy coherence, and scientific reporting.[21] These weaknesses are not random but stem from broader deficits in administrative and legal capacity.

The role of expert evidence in DSM proceedings further exacerbates inequality. While the WTO allows panels to consult with independent experts, the process of securing such input remains opaque and expensive. Experts are typically sourced from a narrow pool of institutions and disciplines, and the epistemic framing they provide tends to favour regulatory approaches common in developed jurisdictions. This means that countries like Nigeria face the double disadvantage of limited access to technical expertise and a panel culture that often excludes indigenous or alternative environmental knowledge systems.[22]

Beyond technical evidence, the availability of competent legal counsel remains a critical barrier. Legal representation before the WTO requires not only knowledge of WTO law

[18] Gr, Shaffer. 'Developing country use of the WTO dispute settlement system: Why it matters, the barriers posed.' *Trade Disputes and the dispute assessment understanding of the WTO: An interdisciplinary assessment* (2015): 167-190

[19] A Bahri, 'Public–Private Partnership for WTO Dispute Settlement: Enabling Developing Countries' *Journal of World Trade* (2016) 50(4) 861–890 <https://eprints.lse.ac.uk/68276/1/Bahri_Handling%20WTO%20disputes_2016.pdf> accessed 13 October 2025.

[20] BM Hoekman, 'Enforcing Multilateral Commitments: Dispute Settlement and Developing Countries' *Institute for Agriculture and Trade Policy (IATP)* (2003) <https://www.iatp.org/sites/default/files/Enforcing_Multilateral_Commitments_Dispute_Set.htm> accessed 13 October 2025.

[21] A Bahri, 'Public–Private Partnership for WTO Dispute Settlement: Enabling Developing Countries' *Journal of World Trade* (2016) 50(4) 861–890

[22] J. Pauwelyn, 'The Use of Experts in WTO Dispute Settlement' *International and Comparative Law Quarterly* (2002) 51(2) 325–364 <https://doi.org/10.1093/iclq/51.2.325> accessed 13 October 2025.

but also litigation strategy, familiarity with procedural deadlines, and experience navigating the informal power dynamics of Geneva's legal community. While some developing countries benefit from assistance by institutions such as the Advisory Centre on WTO Law (ACWL), the availability of such support is constrained and sometimes insufficient for protracted or highly technical disputes.[23] Nigeria has yet to develop a permanent trade law unit that specialises in WTO disputes, relying instead on ad-hoc coordination between the Ministry of Trade, legal advisers, and diplomats.

Statistical analyses of WTO Dispute Settlement Mechanism participation show developing countries initiated about one-third of disputes in the period 1995-2005.[24] Within that group, most of the activity is concentrated in a few middle-income economies such as Brazil, India, and China.[25] African states, by contrast, have played only a marginal role: they account for less than 5 % of third-party participations, and very few African countries have ever acted as complainants.[26] Data for Nigeria specifically is sparse; records indicate very limited participation and no well-documented case involving environmental claims to date. The evidence suggests that legal, institutional, and technical capacity constraints act as structural deterrents to litigation by less-resourced actors.

## 4. Nigeria's Institutional Ecology: Policy Disjoints and Structural Silos

For a country of Nigeria's scale and complexity, engaging effectively with multilateral trade governance requires a cohesive national strategy that integrates environmental priorities into its trade architecture. Yet, Nigeria lacks a structured, cross-sectoral framework that harmonises trade, environmental, and legal governance. There is no

[23] ME Footer, 'Developing Country Practice in the Matter of WTO Dispute Settlement' *Journal of World Trade* (2001) 35(1) 55–98

[24] R Abott, 'Are Developing Countries Deterred from Using the WTO Dispute Settlement System?' *ECIPE Working Paper* (2007) <https://ecipe.org/publications/are-developing-countries-deterred-from-using-the-wto-dispute-settlement-system/>

[25] CP Bown & B.M. Hoekman, 'WTO Dispute Settlement and the Missing Developing Country Cases: Engaging the Private Sector' Journal of International Economic Law (2005) 8.4, 861-890.

[26] C Van der Ven and D Luke, 'Why African Countries Struggle to Exercise Their Agency in the World Trade Organization' *LSE Business Review* (2023) <https://blogs.lse.ac.uk/businessreview/2023/05/18/why-african-countries-struggle-to-exercise-their-agency-in-the-world-trade-organization/> accessed 13 October 2025.

standing national mechanism that convenes stakeholders from the Federal Ministry of Industry, Trade and Investment, the Ministry of Environment, the Federal Ministry of Justice, and the Ministry of Foreign Affairs to jointly articulate trade-environment positions. This institutional gap has made it difficult for Nigeria to frame its interests in WTO negotiations or defend against foreign environmental trade measures.[27]

The absence of an integrated trade-environment strategy is compounded by weak inter-ministerial coordination. In practice, ministries operate in parallel silos. Trade negotiations are often the domain of the Ministry of Trade, while the Ministry of Environment remains peripheral. The Ministry of Justice is rarely engaged until disputes arise, and the Foreign Ministry's diplomats in Geneva often lack detailed technical input. Attempts to foster multisectoral coordination, such as during Nigeria's engagement with the African Continental Free Trade Area (AfCFTA), have revealed how poorly integrated institutional responses are when trade intersects with environmental or health regulations.[28]

These governance deficiencies are exacerbated by Nigeria's underdeveloped science-policy interface. Although the country has committed to various climate and sustainability frameworks, including the Paris Agreement, it lacks institutionalised mechanisms for translating scientific evidence into enforceable domestic regulation or trade policy positions. Research institutions are poorly funded and disconnected from national decision-making. This structural barrier undermines Nigeria's capacity to produce data, risk assessments, and modelling that are increasingly demanded in WTO environmental litigation.[29]

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[27] EN Ogundari, & IO Ogundari, 'Technology, Technology Transfer and the WTO-TRIPS Agreement: A Science Policy and Law Analysis for Nigeria' (2024) <https://www.researchgate.net/publication/385507460_Technology_Technology_Transfer_and_the_WTO_-_TRIPS_Agreement_A_science_policy_and_law_analysis_for_Nigeria> accessed 13 October 2025.

[28] W Onzivu, 'Rethinking Transnational Environmental Health Governance in Africa: Can Adaptive Governance Help?' *Review of European, Comparative and International Environmental Law (2016)* <https://doi.org/10.1111/reel.12147> accessed 13 October 2025.

[29] S Pardeshi, R Dhodapkar, SK Namdeo and M Koley,' Education as a Tool for International Cooperation and Diplomacy: An Indian Perspective' *Science Diplomacy Review* (2024) Vol. 6, No. 1 <https://www.ris.org.in/sites/default/files/2024-08/SDR_April%20%202024.pdf> accessed 13 October 2025.

The problem is not only the absence of technical information but also the lack of enforcement capacity. Regulatory frameworks within the environmental sector are often toothless, characterised by outdated laws and weak sanction mechanisms. Agencies like the National Environmental Standards and Regulations Enforcement Agency (NESREA) struggle with logistical and financial limitations. These challenges are mirrored in Nigeria's inability to respond to international measures with clear and verifiable domestic standards. This misalignment makes the country vulnerable to border measures by trading partners who impose environmental standards under the guise of health or conservation.[30]

There are lessons to be drawn from Nigeria's prior engagements where trade and environmental concerns overlapped. For instance, in responding to EU restrictions on certain agricultural exports due to pesticide residue levels, Nigeria's institutional response was reactive and uncoordinated. The Ministry of Agriculture led the defence without involvement from trade negotiators or legal experts, resulting in regulatory adjustments that did not address the trade implications or challenge the measure multilaterally.[31] This episode illustrates the consequence of siloed policymaking in a world where environmental compliance has become a critical aspect of market access.

## 5. Postcolonial Trade Politics and Environmental Sovereignty

In the evolving structure of international trade governance, the environment has increasingly become a contested battleground. For countries like Nigeria, which confront severe ecological degradation while navigating trade liberalisation, this battle is shaped by deeply embedded inequalities.[32] The notion of *eco-protectionism*, where environmental standards are used as covert trade barriers, has emerged as a subtle yet potent tool by which wealthier nations regulate market access while insulating their own

[30] I Scoones and P Forster, '*The International Response to Highly Pathogenic Avian Influenza: Science, Policy and Politics',* STEPS Working Paper 10 (2008) <https://steps-centre.org/wp-content/uploads/STEPS-_Working-Paper_Avian-Flu.pdf> accessed 13 October 2025

[31] EN Ogundari, & IO Ogundari, 'Technology, Technology Transfer and the WTO-TRIPS Agreement: A Science Policy and Law Analysis for Nigeria' (2024) <https://www.researchgate.net/publication/385507460_Technology_Technology_Transfer_and_the_WTO_-_TRIPS_Agreement_A_science_policy_and_law_analysis_for_Nigeria> accessed 13 October 2025.

[32] M. Feridun, F.S. Ayadi & J. Balouga, '*Impact of Trade Liberalization on the Environment in Developing Countries: The Case of Nigeria',* Developing Societies 39 (2006) Vol 22 issue 1 <https://doi.org/10.1177/0169796X06062965> accessed 13 October 2025.

industries.[33] While these measures are often cloaked in the language of sustainability, they impose compliance costs and regulatory burdens that many developing states are institutionally unprepared to meet.[34]

Eco-protectionist practices frequently manifest through unilateral climate-related trade policies or through regional frameworks like the European Green Deal. The EU Carbon Border Adjustment Mechanism (CBAM) provides a stark example. Although justified as a climate mitigation strategy, CBAM effectively introduces a tariff-like penalty on imports from carbon-intensive production systems, disproportionately affecting exporters from the Global South. Nigeria, whose economy remains carbon-intensive and export-dependent, lacks both the technological base and fiscal support to adjust to these trade barriers, yet has no meaningful voice in how such measures are formulated.[35]

Closely related is the rise of *WTO-plus* environmental provisions and soft law obligations. These extend beyond the formal commitments of WTO law and are increasingly embedded in bilateral and regional trade agreements. They include deforestation clauses, fisheries subsidy disciplines, and sustainability certification standards, many of which are designed in policy spaces inaccessible to developing countries.[36] For Nigeria, which has not concluded a comprehensive trade agreement with any major economy incorporating environmental chapters, the risks are twofold: exclusion from green markets and inability to shape the regulatory contours of future trade.[37]

Compounding this challenge is Nigeria's persistent marginalisation in global trade-environment negotiations. Despite being Africa's largest economy, Nigeria lacks a

[33] O. Okere & I. Iheanacho, *Trade Protectionism and Economic Growth: The Nigerian Experience*, IOSR Journal of Economics and Finance, Vol. 16, Issue 1, Ser. 5, pp. 42–49 (2025), <https://www.iosrjournals.org/iosr-jef/papers/Vol16-Issue1/Ser-5/F1601054249.pdf> accessed 13 October 2025

[34] CP Bown & B.M. Hoekman, 'WTO Dispute Settlement and the Missing Developing Country Cases: Engaging the Private Sector' Journal of International Economic Law (2005) 8.4, 861-890.

[35] African Climate Foundation & LSE Firoz Lalji Institute for Africa, *Implications for Africa of a CBAM in the EU* (2023), <https://africanclimatefoundation.org/wp-content/uploads/2023/05/800756-AFC-Implications-for-Africa-of-a-CBAM-in-the-EU-06A-FINAL.pdf> accessed 13 October 2025.

[36] J Morin, A Dür and L Brando, 'Trade Agreements as Vectors for Environmental Norms' (2019) *International Environmental Agreements: Politics, Law and Economics*

sustained diplomatic and technical presence in Geneva on environment-related WTO matters. It has not consistently contributed to the WTO's Trade and Environmental Sustainability Structured Discussions (TESSD) or led in African Group negotiations concerning environmental carve-outs. As a result, Nigeria's interests are often absorbed into generic developing country positions without nuance or country-specific concerns.[38] This diplomatic silence has long-term strategic costs. It weakens the state's ability to contest trade restrictions framed as environmental policy, while also reducing its ability to shape cooperative mechanisms like green technology transfer or climate-linked trade finance.

The human rights implications of this marginalisation are profound. Trade-induced environmental degradation in Nigeria, whether through unregulated oil extraction in the Niger Delta or deforestation linked to unsustainable agricultural expansion, has direct consequences for the rights to life, health, and livelihood. These harms are rarely remediated through trade law. Yet, Nigeria also lacks sufficient leverage in human rights forums to link environmental justice to international trade governance.[39] This disconnect reinforces the vulnerability of local communities, who bear the environmental costs of an extractive economy while being excluded from global rule-making that could safeguard their interests.

## 6 Structural Barriers and Procedural Asymmetries

While all WTO members have formal, identical procedural rights, in practice, access to the dispute settlement system is highly uneven. Developing countries, including Nigeria, often lack the financial resources, legal expertise, and institutional capacity required to initiate and sustain complex trade litigation. This results in a "dual order" where wealthier, institutionally mature states dominate active participation, while many

[38] EO Ekhator, 'Globalisation and Environmental Justice: A Critical Analysis of Nigerian Environmental Law and Policy in the Era of the African Continental Free Trade Area (AfCFTA)' (2020) *African Journal of International and Comparative Law*

[39] H Ogwu, 'Environmental Rights, Economic Justice and International Trade: The Case of Nigeria' (2022) *African Human Rights Law Journal*

developing countries remain largely observers or are underrepresented in disputes.[40] The WTO has introduced legal assistance and preferential panel composition to support developing countries, but evidence suggests these measures have only modestly increased participation and may not significantly improve success rates.[41] Experience and prior participation are strong predictors of future engagement, highlighting the importance of institutional learning.[42]

The record shows that Nigeria has never served as complainant or respondent in any WTO dispute and appeared only once as a third party under the former GATT system.[43] The absence of subsequent engagement is not a mere statistical curiosity but an indicator of structural exclusion. To initiate a WTO case requires sustained financial investment, advanced technical expertise, and bureaucratic continuity. These prerequisites, while procedurally neutral in text, are materially exclusionary in practice because they presuppose institutional endowments that many developing economies do not possess. The result is a system whose procedural uniformity masks asymmetrical accessibility.[44]

Across Africa, the imbalance is even more striking. Studies confirm that the continent accounts for less than five per cent of third-party participations in WTO proceedings.[45]

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[40] A Juraeva et al. 'WTO DISPUTE SETTLEMENT AND THE CHALLENGES AROUND IT.' Review of Law Sciences (2022). <https://doi.org/10.51788/tsul.rols.2022.6.2./vqwl9830>; SAl Shraideh and others. 'Reflections on Developing Countries' Initiation of Disputes in the WTO Dispute Settlement System.' Global Trade and Customs Journal (2021). https://doi.org/10.54648/gtcj2021012.

[41] L Johannesson and others. 'Supporting Developing Countries in WTO Dispute Settlement.' *Law* (2016). <https://doi.org/10.2139/ssrn.3172934.> accessed 14 October 2025

[42] J Wood and others. "The Sustainability of the WTO Dispute Settlement System: Does It Work for Developing Countries?." *Journal of World Trade* (2020). <https://doi.org/10.54648/trad2020024.> accessed 14 October 2025

[43] P Vu Thuy Dung and others. 'Challenges Faced by Vietnam and Other Developing Countries in Participating in the WTO Dispute Settlement System (DSS).' International Journal of Religion (2024). <https://doi.org/10.61707/hp0y3w04.>

[44] K Kugler, 'Africa and the Great Power Competition at the World Trade Organization' (2025) <https://carnegieendowment.org/research/2025/03/africa-and-the-great-power-competition-at-the-world-trade-organization> accessed 14 October 2025

[45] C Van der Ven and D Luke, 'Why African Countries Struggle to Exercise Their Agency in the World Trade Organization' *LSE Business Review* (2023) <https://blogs.lse.ac.uk/businessreview/2023/05/18/why-african-countries-struggle-to-exercise-their-agency-in-the-world-trade-organization/> accessed 14 October 2025.