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# Coordinating Environmental Standards and Trade Competition: European Union Legal Approaches and Implications for Vietnam

## Abstract

The increasing integration of environmental protection into global trade governance has resulted in structural tensions between sustainability standards and competitive market conditions. While environmental regulations aim to address climate, biodiversity, and pollution challenges, they may simultaneously raise production costs, restrict market access, and generate perceptions of green protectionism. The European Union (EU) has developed an advanced legal framework to reconcile these tensions by integrating environmental considerations into competition law, trade policy, and regulatory governance. This paper examines the main sources of conflict between environmental standards and trade competition and analyses the EU's mechanisms for regulatory coherence, proportionality, and differentiated obligations. On this basis, it explores implications for Vietnam as the country implements new-generation free trade agreements and strengthens its domestic environmental governance. The study argues that coordinated legal frameworks, transparent procedures, impact assessments, and institutional cooperation are essential tools for balancing environmental ambition with economic competitiveness. The findings contribute to the broader discussion on how developing economies can navigate sustainability transitions without undermining their strategic trade interests.

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## 1 | Introduction

Growing global concern over climate change, biodiversity loss, and pollution has pushed states to incorporate environmental considerations into economic and trade policy. This development, while necessary, has generated persistent tensions. Environmental standards may impose significant compliance costs, affect production methods, and shape market access conditions, leading firms and governments to view them as constraints on competitiveness.

The European Union (EU) represents one of the most sophisticated legal systems addressing these tensions through integrated environmental, competition, and trade rules. Vietnam currently implementing the EVFTA, CPTPP, and other new-generation agreements, faces similar challenges in balancing environmental protection with economic growth.

This paper adopts a comparative socio-legal approach to identify sources of conflict between environmental and trade objectives and to examine how legal mechanisms can coordinate them. Insights derived from the EU experience provide valuable guidance for Vietnam's ongoing regulatory transformation.

## 2 | Theoretical Framework for Coordinating Conflicts between Environmental Standards and Trade Competition through Legal Mechanisms

### 2.1. The Regulatory Basis of Conflicts Between Environmental and Trade Objectives

Environmental protection and trade liberalisation are widely recognised as essential elements of sustainable development. Environmental standards pursue the objective of safeguarding ecological integrity and human welfare, whereas trade rules aim to facilitate market access, competitiveness, and economic efficiency. Although the two objectives can be mutually reinforcing when incorporated into coherent regulatory frameworks, differences in policy priorities and implementation capacities frequently give rise to structural tensions between environmental regulation and trade competition.<sup>[1]</sup>

These tensions are increasingly visible in next generation free trade agreements where environmental and sustainable development obligations, even when formulated in soft law language, exert significant normative influence on domestic regulatory systems.<sup>[2]</sup> The EU Viet Nam Free Trade Agreement, for example, contains a commitment not to weaken or reduce domestic environmental protection in order to promote trade or attract investment.<sup>[3]</sup> This obligation seeks to prevent a race to the bottom but may intersect with domestic industrial policies that aim to support local enterprises, thereby creating a complex regulatory dilemma for developing economies.<sup>[4]</sup>

Conflicts also arise from the difficulty of distinguishing between measures that genuinely pursue environmental objectives and those that

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<sup>1</sup> Andrew Jordan, Andrea Lenschow, “Environmental Policy Integration: A State of the Art Review” *Environmental Policy and Governance*, No. 3 (2010): 147-158.

<sup>2</sup> Thomas Cottier, Panagiotis Delimatsis et al., *The Prospects of International Trade Regulation in the Era of Sustainable Development* (Cambridge: Cambridge University Press 2011), especially chapter 4.

<sup>3</sup> EU Viet Nam Free Trade Agreement, Chapter 13, Article 13.4 (Non regression in environmental levels of protection), text available at the official EU law portal.

<sup>4</sup> UNCTAD, *Trade and Environment Review 2023* (United Nations Conference on Trade and Development 2023), chapter on developing countries and green transitions.

operate in practice as disguised restrictions on trade. The jurisprudence of the World Trade Organization has clarified that environmental measures must comply with the conditions set out in the chapeau of Article XX of the General Agreement on Tariffs and Trade. In the United States Import Prohibition of Certain Shrimp and Shrimp Products dispute, the Appellate Body held that environmental measures must not result in arbitrary or unjustifiable discrimination.<sup>[5]</sup> In the European Communities Measures Affecting Asbestos and Asbestos Containing Products dispute, the Appellate Body confirmed that measures intended to protect human health and the environment may restrict trade when they are grounded in scientific evidence and applied in a non discriminatory manner.<sup>[6]</sup>

Recent regulatory developments further illustrate the growing interaction between environmental protection and trade competition. The European Union has introduced the Carbon Border Adjustment Mechanism with the objective of addressing carbon leakage and ensuring that imported products reflect similar climate ambition to that of goods produced within the European Union.<sup>[7]</sup> Although the mechanism is presented as consistent with international trading rules,<sup>[8]</sup> developing countries have expressed concerns that it may alter competitive conditions in global value chains and impose substantial compliance burdens on exporters.<sup>[9]</sup> These concerns highlight the broader challenge of achieving ambitious environmental objectives without creating new barriers to trade or deepening global economic inequalities.<sup>[10]</sup>

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<sup>5</sup> Appellate Body Report, United States Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R, adopted 6 November 1998, paragraphs 150 to 186.

<sup>6</sup> Appellate Body Report, European Communities Measures Affecting Asbestos and Asbestos Containing Products, WT/DS135/AB/R, adopted 12 March 2001, paragraphs 168 to 189.

<sup>7</sup> Regulation (EU) 2023/956 of the European Parliament and of the Council establishing a Carbon Border Adjustment Mechanism, Official Journal of the European Union, 16 May 2023.

<sup>8</sup> European Commission, CBAM Transitional Period Guidance Document, Brussels, 2023, available at the Directorate General for Taxation and Customs Union.

<sup>9</sup> OECD, *Climate Policy and International Trade: The Role of Border Carbon Adjustments* (OECD Publishing 2022).

<sup>10</sup> World Bank, *Diversification and Adjustment in Global Value Chains under Environmental Regulation* (World Bank Report 2020), sections on developing country competitiveness.

## 2.2. Conceptual Foundations of Coordinating Conflicts between Environmental and Trade Regulations

In an increasingly interconnected global economy, states must simultaneously pursue economic growth and respond to rising expectations for environmental protection. Although both objectives contribute to the broader ideal of sustainable development, they frequently generate conflicts at the level of legislation, policy design, and enforcement. These conflicts emerge not only within domestic legal systems, but also between national laws and international commitments, especially in next generation free trade agreements that contain extensive provisions on sustainable development, climate change, and responsible business conduct.<sup>[11]</sup>

This paper adopts the perspective of conflict coordination rather than mere conflict management. Coordination refers to the design of institutional and legal mechanisms that can prevent, mitigate, or reconcile policy inconsistencies across different regulatory domains.<sup>[12]</sup> In this context, comparative law plays a central role by allowing policymakers to identify functional similarities and differences between legal systems, and to formulate context appropriate recommendations for harmonisation.<sup>[13]</sup>

A key methodological approach within comparative law is the functional method, which assesses foreign legal models based on the functions they perform rather than their formal structure or linguistic formulation.<sup>[14]</sup> This perspective is particularly useful in the field of environmental and trade regulation, where legal transplantation must account for differences in administrative capacity, institutional design, and economic conditions. Alan Watson emphasises that the transfer of law can be effective only when the receiving system possesses adequate institutional capacity to absorb, internalise and adapt the transplanted rules.<sup>[15]</sup>

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<sup>11</sup> UNCTAD, *Trade and Environment Review 2023* (Geneva, United Nations Conference on Trade and Development 2023).

<sup>12</sup> Harro van Asselt, Thomas Brewer, "Addressing Competitiveness and Leakage Concerns in Climate Policy" *Energy Policy*, 38 (2010): 479-486.

<sup>13</sup> Konrad Zweigert, Hein Kötz, *An Introduction to Comparative Law*, 3<sup>rd</sup> ed. (Oxford: Oxford University Press, 1998), chapters 1 and 3.

<sup>14</sup> Ralf Michaels, "The Functional Method of Comparative Law," [in:] *The Oxford Handbook of Comparative Law*, ed. Mathias Reimann, Reinhard Zimmermann (Oxford: Oxford University Press, 2006), 339-382.

<sup>15</sup> Alan Watson, *Legal Transplants: An Approach to Comparative Law*, 2<sup>nd</sup> edition (Athens: University of Georgia Press 2000).

The systematic comparison of legal systems therefore serves as an essential basis for constructing coherent frameworks that can reduce conflict between environmental objectives and trade competitiveness. Comparative analysis also reveals the strengths and limitations of foreign regulatory models, enabling countries to identify solutions that are both legally feasible and economically sustainable.<sup>[16]</sup>

Coordinating conflicts between environmental standards and trade competition through legal mechanisms thus requires not only technical legislative expertise, but also a comprehensive and systematic legal mindset. By combining selective legal adoption, the development of flexible regulatory instruments, and the establishment of effective coordination mechanisms among responsible agencies, Viet Nam can transform potential conflicts into opportunities for regulatory improvement and long term competitiveness.

Higher environmental requirements also influence the structure of global value chains by favouring producers with advanced technologies, greater financial resources and more established certification systems. This dynamic may generate trade diversion effects, in which exporters from developing countries lose market share despite competitive pricing. Compliance costs tend to be regressive because small and medium sized enterprises and agricultural producers often face greater obstacles due to limited capital, insufficient technical expertise and weak institutional support.<sup>[17]</sup>

### 2.3. Legal Foundations of Environmental Standards and Trade Competition

Environmental standards are legal or technical requirements that aim to prevent or reduce the negative impacts of production and consumption on the natural environment. They function as legally defined thresholds or specifications that apply to the activities of states, enterprises, and individuals in order to protect public health, ecological systems, and the

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<sup>16</sup> John H. Knox, “The Judicial Resolution of Conflicts between Trade and the Environment” *Harvard Environmental Law Review*, 28 (2004): 1-43.

<sup>17</sup> OECD, *Greening Global Value Chains: Opportunities and Challenges for Developing Countries* (OECD Publishing 2020).

wider community.<sup>[18]</sup> According to studies by the Organisation for Economic Cooperation and Development, environmental standards can take multiple forms, including emission limits, requirements for the adoption of cleaner technologies, product related criteria such as carbon traceability or environmental labelling, and obligations relating to environmental reporting and monitoring across supply chains.<sup>[19]</sup>

Within the multilateral trading system, these standards may fall under the category of technical regulations or conformity assessment procedures. The World Trade Organization addresses such measures through the Agreement on Technical Barriers to Trade.<sup>[20]</sup> Under this agreement, environmental standards are considered legitimate when they are based on scientific evidence, are applied in a non discriminatory manner and do not create unnecessary obstacles to international trade.<sup>[21]</sup> This framework seeks to strike a balance between the sovereign right of states to regulate for environmental protection and the broader objective of maintaining predictable and open trading conditions.

Environmental standards are typically grounded in scientific research, empirical data, and technical expertise to ensure both effectiveness and feasibility.<sup>[22]</sup> In the context of regional and bilateral trade agreements, such as the EU Viet Nam Free Trade Agreement, environmental and sustainable development provisions have become binding elements that shape domestic regulatory frameworks and influence market access conditions.<sup>[23]</sup>

Trade competitiveness refers to the ability of a country or enterprise to produce and supply goods and services that meet international market requirements in terms of quality, price and regulatory compliance. It involves the capacity to maintain or expand market share in an increasingly

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<sup>18</sup> Philippe Sands, Jacqueline Peel, *Principles of International Environmental Law*, 4<sup>th</sup> ed. (Cambridge: Cambridge University Press 2018), chapters 4 and 6.

<sup>19</sup> OECD, *Environmental Policy Instruments for Green Growth* (OECD Publishing 2020), chapter on regulatory instruments.

<sup>20</sup> World Trade Organization, *Agreement on Technical Barriers to Trade*, 1995, available at the official WTO legal texts portal.

<sup>21</sup> Mitsuo Matsushita, Thomas Schoenbaum, Petros Mavroidis, Michael Hahn, *The World Trade Organization: Law, Practice and Policy*, 3<sup>rd</sup> ed. (Oxford: Oxford University Press 2015), chapter on technical regulations.

<sup>22</sup> United Nations Environment Programme, *Environmental Standards: Scientific Basis and Policy Applications* (UNEP Report 2019).

<sup>23</sup> European Commission, *Trade and Sustainable Development Chapters in EU Free Trade Agreements* (Brussels 2020).

integrated global economy.<sup>[24]</sup> While competitiveness is influenced by domestic laws on competition, subsidies and market conduct, it is also shaped by core principles of the World Trade Organization, such as trade liberalisation, non discrimination, control of adverse trade practices and transparency. As global economic integration deepens, trade competition law increasingly interacts with policy areas that were traditionally considered non economic, including environmental protection, labour standards and sustainable development.<sup>[25]</sup>

The relationship between environmental standards and trade competition can be both complementary and conflictual. On the one hand, well designed environmental standards can promote long term competitiveness by encouraging innovation, improving resource efficiency and enabling producers to meet consumer demand for sustainable products. On the other hand, when these standards require imported products to comply with certification schemes, such as carbon measurement or environmental labelling, without adequate technical assistance for developing country exporters, they may result in de facto discriminatory effects and trigger trade disputes.<sup>[26]</sup> For this reason, legal frameworks play a vital role in designing standard setting mechanisms that uphold environmental protection objectives while ensuring fairness, predictability and transparency in international trade.

### 3 | The European Union Approach to Coordinating Environmental and Trade Objectives

Under Article 11 TFEU, environmental protection requirements must be integrated into all EU policies, including trade and competition, thereby establishing the constitutional foundation of the EU's conflict-coordination model.

<sup>24</sup> World Bank, *Competitiveness and Global Value Chains* (World Bank Report 2020).

<sup>25</sup> UNCTAD, *Trade and Environment Review 2023* (United Nations Conference on Trade and Development 2023).

<sup>26</sup> OECD, *Environmental Requirements and Market Access* (OECD Trade Policy Studies, 2011).

### 3.1. Environmental Policy Integration within European Union law

The European Union has developed a distinctive regulatory and institutional coordination model that seeks to harmonise environmental objectives with the requirements of international trade. Through a sustained commitment to sustainable development and fair competition, the European Union has constructed an integrated legal framework supported by multi level coordination mechanisms. These mechanisms are designed to anticipate and mitigate conflicts that may arise between increasingly stringent environmental standards and the principles that govern free trade. The model is grounded in the rule of law and informed by the principles of proportionality and transparency in decision making. The integration of environmental considerations into all areas of European Union law is expressly recognised and made legally binding by Article 11 of the Treaty on the Functioning of the European Union. The provision states that environmental protection requirements must be incorporated into the definition and implementation of the policies and activities of the Union with a particular view to promoting sustainable development. This mandate is further reinforced by the Charter of Fundamental Rights of the European Union and by cross sectoral policies, including the European Green Deal. Together, these instruments reflect the mainstreaming approach that has become central to European Union environmental law, in which environmental protection is regarded not as a subsidiary concern, but as an intrinsic requirement for the legitimacy and effectiveness of trade and competition policy.<sup>[27]</sup>

To give effect to the requirement that environmental protection be integrated into all areas of European Union policy, the Union has developed a comprehensive set of legal instruments that operate across the domains of trade, investment, and market regulation. These instruments include market based mechanisms, border adjustment measures, and financial support schemes that promote environmentally responsible economic behaviour. Together, they illustrate the multi level regulatory strategy through which the European Union coordinates potential conflicts between environmental objectives and the requirements of free trade.<sup>[28]</sup>

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<sup>27</sup> Joost Pauwelyn, *International Trade and Environmental Regulation* (Cambridge: Cambridge University Press, 2006), 143.

<sup>28</sup> OECD, *Aligning Policies for a Low Carbon Economy* (OECD Publishing, 2021), 94-95.

The first and most developed mechanism is the European Union Emissions Trading System. It is the largest greenhouse gas emissions trading scheme in the world and is based on the cap and trade principle, a legal and economic method that transforms environmental obligations into market incentives.<sup>[29]</sup> The system establishes a maximum quantity of greenhouse gases that may be emitted within the Union during a specific trading period and allocates or auctions emission allowances to firms.<sup>[30]</sup> Each allowance represents the right to emit a fixed amount of greenhouse gases that is measured in tonnes of carbon dioxide equivalent.<sup>[31]</sup> Firms may purchase or sell allowances depending on their compliance needs, which encourages cost effective emission reductions and generates a carbon price signal that influences investment and production decisions.<sup>[32]</sup> The current phase of the system covers the period from 2021 to 2030 and aims to reduce emissions by at least sixty two per cent compared with 2005 levels.<sup>[33]</sup>

A second instrument is the Carbon Border Adjustment Mechanism. It has been introduced to address the problem of carbon leakage and to ensure that goods imported into the European Union reflect levels of climate ambition that are broadly comparable to those required within the internal market.<sup>[34]</sup> Under this mechanism, importers of products such as steel, cement, aluminium, fertilisers and electricity must declare the embedded carbon emissions of their goods and make a corresponding financial adjustment when these emissions exceed the reference level established by the European Union.<sup>[35]</sup> The mechanism seeks to protect both environmental integrity and fair competition by ensuring that firms inside and outside the Union operate under conditions that reflect

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<sup>29</sup> “Cap and trade” is a combined legal and economic mechanism that has been recognised in Directive 2003/87/EC, Article seventeen of the Kyoto Protocol, and national systems including those of the United States and China.

<sup>30</sup> European Union, Directive (EU) 2018/410 amending Directive 2003/87/EC, Official Journal of the European Union, L 76, 19 March 2018, 3 to 27.

<sup>31</sup> Total greenhouse gas emissions represent the total mass of greenhouse gases released into the atmosphere in a given period and are measured in tonnes of carbon dioxide equivalent.

<sup>32</sup> Denny Ellerman, *Pricing Carbon: The European Union Emissions Trading Scheme* (Cambridge: Cambridge University Press 2010), chapter 2.

<sup>33</sup> European Commission, EU Emissions Trading System. [accessed: 2.8.2025].

<sup>34</sup> European Parliament and Council, Regulation (EU) 2023/956 establishing a Carbon Border Adjustment Mechanism, Official Journal of the European Union, L 130, 16 May 2023, 52 to 103.

<sup>35</sup> *Ibidem*, Articles six to nine.

the principle of a level playing field.<sup>[36]</sup> Recital twelve of the Carbon Border Adjustment Mechanism regulation states that equal competitive conditions are necessary to prevent market distortions and to uphold climate commitments within the framework of international trade.<sup>[37]</sup> The European Commission has also issued detailed guidance during the transitional period, emphasising transparency, predictability and consistency with the rules of the World Trade Organization.<sup>[38]</sup> Scholarly analysis supports the view that well designed border adjustment measures may be compatible with international trade law, provided that they respect the principles of non discrimination and environmental necessity.<sup>[39]</sup>

A third component of the European Union's coordination model is the Green State Aid framework. To support the transition to clean energy and environmentally responsible production, the Commission has adopted the Guidelines on State Aid for Climate, Environmental Protection and Energy. These guidelines permit Member States to provide financial support to firms that adopt cleaner technologies or invest in energy efficiency, on the condition that such support is transparent, necessary, and proportionate.<sup>[40]</sup> The framework strikes a balance between the need to promote environmental objectives and the prohibition of aid that may distort competition within the internal market under Article one hundred and seven of the Treaty on the Functioning of the European Union. Under this approach, environmental protection and fair competition are treated as mutually reinforcing objectives rather than conflicting mandates.

Through these instruments, the European Union demonstrates how law can be used to align environmental ambition with economic competitiveness. The cap and trade system provides market incentives, the Carbon Border Adjustment Mechanism ensures fair competitive conditions and the Green State Aid rules allow targeted public support for environmentally beneficial innovation. Together, they form a coherent regulatory strategy

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<sup>36</sup> OECD, *Aligning Policies for a Low Carbon Economy* (OECD Publishing, 2021), 94-95.

<sup>37</sup> European Union, Regulation (EU) 2023/956, Recital twelve.

<sup>38</sup> European Commission, *CBAM Transitional Period Guidance Document* (Brussels 2023). [accessed: 1.8.2025].

<sup>39</sup> Harro van Asselt, Michael Mehling, "Trade and Climate Change: Towards a Legal Framework for Border Carbon Adjustments" *European Journal of International Law*, No. 2 (2018): 411-436.

<sup>40</sup> European Commission, *Guidelines on State Aid for Climate, Environmental Protection and Energy* (CEEAG 2022).

for coordinating potential conflicts between environmental and trade objectives within a highly integrated market.

### 3.2. Institutional and Governance Mechanisms for Coordinating Environmental and Trade Policies in the European Union

The European Union approach to coordinating environmental objectives with trade and competition policy is supported by a sophisticated system of governance and inter institutional coordination. This system has been designed to ensure coherence across different policy domains and to enable the Union to address complex regulatory interactions in a consistent and transparent manner. A defining feature of this model is the emphasis on both horizontal and vertical coordination among the institutions of the Union and the Member States. The European Green Deal explicitly recognises that effective governance requires cooperation across all levels of decision making within the Union.<sup>[41]</sup> This principle is reflected in the broader environmental governance structure of the European Union, which relies on multi level and cross sectoral coordination to support climate policies such as the European Green Deal, the Carbon Border Adjustment Mechanism and the Fit for fifty five package.<sup>[42]</sup>

Within the institutional framework of the European Union, two bodies play a particularly central role in ensuring coordination between environmental and trade objectives. The Directorate General for the Environment and the Directorate General for Trade cooperate closely in the development of new environmental standards and during the negotiation and implementation of free trade agreements. All significant policy decisions in these areas are subject to mandatory inter departmental consultation, as required by the Rules of Procedure of the Commission.<sup>[43]</sup> This process serves to reduce policy fragmentation, to resolve potential conflicts at an early stage and to ensure that environmental protection and sustainable development objectives are incorporated into the making of trade policy.

<sup>41</sup> European Commission, The European Green Deal, COM (2019) 640 final.

<sup>42</sup> The “Fit for fifty five” package was announced by the European Commission on fourteen July 2021 to achieve a reduction of at least fifty five per cent in emissions by 2030 and carbon neutrality by 2050 under the European Climate Law.

<sup>43</sup> European Commission, Commission Decision 2021/2121, C(2021) 8759 Final, Rules of Procedure of the Commission. [accessed: 2.8.2025].

Scholarly analysis has highlighted this mechanism as a defining element of the European Union's co regulatory governance in trade and sustainable development chapters.<sup>[44]</sup>

In addition to internal consultation procedures, the European Union uses a set of soft co regulation mechanisms that facilitate coordination between the Union institutions, Member States and stakeholders. These mechanisms include the Trade and Sustainable Development Committees established under Union free trade agreements. The committees operate as platforms for regular dialogue between governments and also provide structured opportunities for consultation with civil society organisations, business associations, and international environmental bodies.<sup>[45]</sup> This system strengthens transparency, enhances accountability and promotes legitimacy in the development, and implementation of environmental standards in the trade context.

These practices are rooted in foundational documents such as the White Paper on European Governance, which calls for greater openness, participation, effectiveness and coherence in Union policymaking,<sup>[46]</sup> and the Better Regulation Guidelines, which set out principles for transparent, evidence based and inclusive legislative and regulatory processes. The same governance principles also extend to Union external agreements, including the EU Viet Nam Free Trade Agreement, which incorporates institutions such as the Trade and Sustainable Development Committee and the Domestic Advisory Groups.

Taken together, Article eleven of the Treaty on the Functioning of the European Union, the European Union Emissions Trading System, the Carbon Border Adjustment Mechanism and the Green State Aid Framework demonstrate the multi layer approach through which the European Union integrates environmental objectives into economic governance. This approach provides a structured and adaptable model for reconciling potential conflicts between environmental regulation and the requirements of international trade.

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<sup>44</sup> Lorand Bartels, "The EU's Trade and Sustainable Development Chapters: Towards Co regulatory Governance" *Journal of International Economic Law*, No. 3 (2021): 465-491.

<sup>45</sup> Oran R. Young, "The Coordination of Environmental and Trade Policies in the EU" *European Law Journal* (2020): 76.

<sup>46</sup> European Commission, White Paper on European Governance (25 July 2001).

## 4 | Implications for Vietnam under the EVFTA

### 4.1. Coordinating Environmental and Trade Objectives within the EVFTA Framework

In the context of deepening international economic integration and increasing pressure from global environmental requirements, Viet Nam faces significant challenges in reconciling environmental protection with trade and economic development. International agreements, including new generation free trade agreements, require Viet Nam to pursue sustainable growth, while also meeting demanding environmental standards. Drawing on the experience of the European Union provides valuable insights into legal and institutional strategies that Viet Nam may adopt in order to coordinate environmental and trade policies within a coherent regulatory framework.<sup>[47]</sup>

The European Union has developed an advanced model for aligning environmental objectives with trade liberalisation through instruments such as the Emissions Trading System and the Carbon Border Adjustment Mechanism.<sup>[48]</sup> These tools demonstrate a mature degree of policy coherence between environmental regulation and trade competitiveness, a condition that Viet Nam has not yet fully attained. Domestic regulations in Viet Nam remain fragmented, and environmental obligations are not consistently integrated across the laws governing investment, commerce, and enterprise management.<sup>[49]</sup> This legal fragmentation creates obstacles for the effective implementation of international commitments under the EVFTA.

A further lesson from the European Union model lies in its use of transitional arrangements and technical assistance, which reflect the principle of common but differentiated responsibilities.<sup>[50]</sup> Under EVFTA implementation, the European Union has supported Viet Nam through programmes

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<sup>47</sup> Ari Van Assche, Minna Sorsa, *European Union Law and Policy on Trade and Environment* (Oxford: Oxford University Press 2018), 74.

<sup>48</sup> Alice Smith, *The EU and Developing Countries: Environmental Trade Policy* (London: Routledge, 2017), 89.

<sup>49</sup> Vietnam Chamber of Commerce and Industry, *Survey on the Readiness of Vietnamese Enterprises to Meet the Requirements of Greening the Supply Chain*, Internal Report, Project supporting EVFTA and ESG implementation (Hanoi 2023), 18-22.

<sup>50</sup> UNDP Vietnam, *Policy Brief: Governance for Green Trade and Carbon Border Adjustment Mechanism* (Hanoi: UNDP Vietnam, 2022), 6-8.

designed to strengthen the capacity of local enterprises to comply with green standards, including those relating to carbon reporting and sustainable production.<sup>[51]</sup> Such support has increased the acceptability of new regulatory requirements for developing country partners and has helped reduce concerns that environmental measures may function as disguised barriers to trade.

The EVFTA is therefore more than a trade liberalisation instrument. It also serves as a platform for Viet Nam to adjust and reform its domestic regulatory framework in order to address potential conflicts between environmental and trade objectives. Its environmental provisions require that measures adopted for environmental purposes do not unnecessarily restrict trade, while encouraging the improvement of environmental standards in areas such as carbon emissions, environmentally responsible public procurement, and certification schemes.

Effective implementation of these commitments requires institutional reform and strengthened coordination across the ministries responsible for environmental protection, industrial policy, and trade. At present, Viet Nam does not have a binding interministerial coordination mechanism capable of addressing issues such as carbon traceability, green supply chain requirements or the implications of the Carbon Border Adjustment Mechanism for export sectors.<sup>[52]</sup> This lack of horizontal coordination creates gaps in enforcement and may allow conflicts between environmental and trade rules to remain unresolved.

The challenge posed by the Carbon Border Adjustment Mechanism is a clear example. The transitional phase, launched in late 2023, requires exporters of steel, cement, aluminium and fertilisers to report embedded carbon emissions.<sup>[53]</sup> Viet Nam has not yet established a national system capable of verifying and standardising product level emissions data, which is necessary for compliance with European Union requirements. As a result, many enterprises must rely on foreign certification bodies, which increases costs, reduces competitiveness and limits Viet Nam's regulatory

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<sup>51</sup> European Commission, CBAM: Implementing Regulation – Transitional Period, Official Journal of the European Union, L 230, 16 June 2023, Annex IV; see also EuroCham Vietnam, CBAM Position Paper and Green Compliance in Vietnam (Hanoi 2023), 5-7.

<sup>52</sup> Ibidem; see also VCCI, Survey on the readiness of Vietnamese enterprises, above note 3.

<sup>53</sup> European Parliament and Council, Regulation (EU) 2023/956 establishing a Carbon Border Adjustment Mechanism, OJ L 130, 16 May 2023.

autonomy in developing its own carbon market as envisaged in the Law on Environmental Protection and in the national commitment to achieve carbon neutrality by 2050.<sup>[54]</sup>

Despite these challenges, the EVFTA provides a significant opportunity for Viet Nam to build a more coherent legal environment that integrates national and international standards. The agreement encourages Viet Nam to improve its regulatory capacity in areas such as sustainable procurement and carbon reporting, not for the purpose of introducing new trade obstacles, but to ensure that environmental protection enhances rather than restricts long term trade development.<sup>[55]</sup> With appropriate institutional reforms, selective adaptation of European Union practices and improved domestic coordination, Viet Nam can harmonise environmental and trade policies in a manner consistent with its international obligations and long term development strategy.

## 4.2. Implications for Vietnam

First, legal harmonization. Vietnam's legal provisions on environment, investment, and trade remain fragmented, creating overlaps and inconsistencies in implementing EVFTA commitments. Harmonization is therefore essential to ensure that environmental regulations are coherent with trade rules while avoiding unnecessary barriers. An intersectoral legal review mechanism should be established to align these laws and create a unified framework for green trade governance.<sup>[56]</sup>

Second, institutional coordination. The absence of a binding coordination mechanism among ministries (MONRE, MOIT, MPI) hampers the integration of environmental and trade objectives. Vietnam could draw from the EU by establishing a National Council on Green Trade Governance to provide intersectoral policy advice and oversee implementation of EVFTA commitments.<sup>[57]</sup> Digital platforms should complement this effort,

<sup>54</sup> UNDP Vietnam, *Policy Brief: Governance for Green Trade and CBAM*, 7.

<sup>55</sup> Smith, *The EU and Developing Countries: Environmental Trade Policy*, 89.

<sup>56</sup> UNDP Vietnam & CIEM, *Báo cáo đánh giá khung pháp lý về liên kết thương mại - môi trường trong bối cảnh thực thi EVFTA* (Hà Nội: UNDP, 2023), 15-18.

<sup>57</sup> European Commission, *Working Better Together: Inter-service Cooperation in Trade and Environment Policies* (Brussels: EC, 2021), 6-9.

enabling businesses to track green requirements and enhance compliance capacity.<sup>[58]</sup>

Third, domesticating green standards. Vietnam should gradually embed international green standards into binding legal instruments. This includes introducing carbon traceability requirements to comply with CBAM, applying green procurement in public investment, and developing eco-label and certification schemes.<sup>[59]</sup> The EU's Environmental Policy Integration principle offers a useful reference: environmental concerns must be mainstreamed across trade and investment policies.<sup>[60]</sup> Selective adaptation, rather than wholesale transplantation, will allow Vietnam to ensure both trade competitiveness and sustainable development.<sup>[61]</sup>

These implications highlight that the EVFTA serves as both a challenge and an opportunity for Vietnam to reform its legal system and strengthen institutional capacity in balancing trade and environmental objectives.

## 5 | Conclusion

The EU model demonstrates how conflicts between environmental standards and trade competition can be reconciled through integrated legal mechanisms, offering valuable lessons for Vietnam. The EU model demonstrates that such conflicts can be addressed through integrated legal mechanisms that combine environmental policy integration, market-based tools, and intersectoral coordination. For Vietnam, the EVFTA provides both pressure and opportunity to reform its legal system. By aligning domestic laws, strengthening institutional coordination, and selectively adapting EU practices, Vietnam can build a coherent framework that safeguards trade competitiveness while advancing sustainable development. Rather than wholesale transplantation, Vietnam should selectively adapt EU practices, ensuring coherence with its domestic conditions and international commitments.

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<sup>58</sup> VCCI, Khảo sát mức độ sẵn sàng của doanh nghiệp Việt Nam trước các yêu cầu xanh hóa chuỗi cung ứng (Hà Nội: VCCI, 2023), 22-23.

<sup>59</sup> European Parliament and Council, Regulation (EU) 2023/956 Establishing a Carbon Border Adjustment Mechanism (OJ L 130, 16 May 2023).

<sup>60</sup> Article 11 TFEU.

<sup>61</sup> Sands, Peel, *Principles of International Environmental Law*, 329-331.

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