

Research Article

EUROPEAN UNION ENVIRONMENTAL CONDITIONALITY AND INDIRECT ACCESS TO JUSTICE FOR VIETNAMESE EXPORTERS: STANDING CONSTRAINTS UNDER ARTICLE 263 TFEU AND LESSONS FROM THE IUU YELLOW CARD

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ABSTRACT

Background: *The European Union (EU) increasingly uses environmental conditionality as a market-access governance technique through border controls, traceability requirements, sustainability reporting, supply chain due diligence, and country-based risk assessment. Although many obligations are formally imposed on EU operators, compliance costs and evidentiary burdens are frequently borne upstream by third-country suppliers. For Vietnamese exporters, this creates a procedural gap: they may suffer commercial, reputational, and exclusionary harm while remaining peripheral to the decision-making and review structures that shape access to the EU market. The article examines that gap through access to justice, focusing on Article 263 TFEU and mediated safeguards.*

Method: *The article employs doctrinal legal analysis to examine standing and reviewability constraints under Article 263 TFEU and selected EU environmental market-access instruments. It uses law-in-context reasoning to assess how EU regulatory architectures operate through supply chains and affect Vietnamese exporters. The EU's yellow-card process for illegal, unreported, and unregulated (IUU) fishing against Vietnam is used as an illustrative case study because it clearly demonstrates the mismatch between the formal procedural addressee, the third-country state, and the private exporters who bear operational and economic burdens.*

Results and Conclusions: *The article finds that Vietnamese exporters operate in a structurally asymmetric procedural environment. Direct action before EU courts remains constrained by restrictive standing doctrine, while Article 267 TFEU offers only a contingent, indirect route that depends on proceedings before Member State courts. The IUU yellow card illustrates how reason-giving and participation are concentrated in Commission-state dialogue, while exporters bear intensified documentary, traceability, and reputational burdens. The article concludes that meaningful indirect access to justice depends on domestic institutional design. It proposes a single-window export spillover response mechanism, standardised evidence templates, time-bound reasoned responses, and interoperable compliance information systems linked to the EVFTA Trade and Sustainable Development dialogue and follow-up.*

1 INTRODUCTION

1.1. European Union Environmental Standards as Enforcement Tools Tied to Market Access Conditions

The EU increasingly operationalises environmental objectives as market-access conditions. Because obligations are often importer-facing while compliance evidence is generated upstream, the immediate procedural question is who can request reasons and seek review when market-access harm occurs.¹ The Carbon Border Adjustment Mechanism (CBAM) illustrates how border-facing regimes turn reporting and verification of embedded emissions into a practical gatekeeping condition for market access.² The deforestation-free regime similarly makes traceability central to access, with implementation timetables themselves shaping compliance costs.³

1 Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (OUP 2020) doi:10.1093/oso/9780190088583.001.0001.

2 Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 Establishing a Carbon Border Adjustment Mechanism [2023] OJ L 130/52.

3 Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the Making Available on the Union Market and the Export from the Union of Certain Commodities and Products Associated with Deforestation and Forest Degradation and Repealing Regulation (EU) No 995/2010 [2023] OJ L 150/206; Regulation (EU) 2024/3234 of the European Parliament and of the Council of 19 December 2024 amending Regulation (EU) 2023/1115 as Regards Provisions Relating to the Date of Application [2024] OJ L 2024/3234.

The Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD) further reinforce upstream data extraction by requiring value-chain information and due diligence across in-scope companies.⁴ A further salient development is the datafication of compliance through product passports. Regulation (EU) 2024/1781 establishes a framework for ecodesign requirements for sustainable products and provides the legal basis for the Digital Product Passport as a compliance-oriented information infrastructure, making lifecycle data and documentation central to the acceptance of goods on the EU market.⁵ In certain sectors, lifecycle-based obligations are specified in greater detail, for example, for batteries under Regulation (EU) 2023/1542.⁶

For exporters, the Digital Product Passport is not merely a technical tool. It creates a procedural problem: product-level data must be collected, verified, and corrected in formats recognised by EU operators, while non-EU suppliers may lack a channel to correct errors, contest rejections, or request reasons when documentation is treated as insufficient.⁷

These architectures convert compliance into a procedural problem: exporters may incur exclusionary effects without accessible channels to request reasons or trigger review.⁸

The procedural problem is visible in four needs: advance notice of data templates, a route to correct compliance information, explanations for inadequate documentation, and representative channels for sector-specific constraints before market exclusion becomes irreversible.

1.2. Vietnamese Enterprises as Indirectly Affected Actors under European Union Environmental Regulation

Although EU obligations are typically importer-facing, Vietnamese exporters are materially affected through value-chain transmission.

4 Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 Amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as Regards Corporate Sustainability Reporting (CSRD) [2022] OJ L 322/15.

5 Regulation (EU) 2024/1781 of the European Parliament and of the Council of 13 June 2024 Establishing a Framework for the Setting of Ecodesign Requirements for Sustainable Products, Amending Directive (EU) 2020/1828 and Regulation (EU) 2023/1542 and Repealing Directive 2009/125/EC [2024] OJ L 2024/1781.

6 Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 Concerning Batteries and Waste Batteries, Amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and Repealing Directive 2006/66/EC [2023] OJ L 191/1.

7 Regulation (EU) 2024/1781 (n 5) arts 9-12, on product passports, data carriers, access to information and product passport service providers.

8 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (adopted 25 June 1998) (Aarhus Convention) [2003] UNTS 2161/447, art 9.

First, importers translate EU duties into contracts, audits, and termination rights, making exporters de facto compliance-bearers.⁹

Second, data gaps become exclusion risks as buyers demand traceable, auditable evidence.¹⁰

Third, competition shifts toward demonstrable capacity for compliance, disadvantaging firms with fragmented sourcing and weak documentation.¹¹

Exporters are expected to meet functional equivalents of EU requirements while remaining procedurally peripheral.

For the purposes of this article, a 'Vietnamese exporter' means a Vietnam-based enterprise, producer, processor, trader or supply-chain participant whose goods, data or compliance documentation are used for placing products on the EU market, whether the enterprise exports directly to an EU buyer or supplies upstream to an intermediary exporting chain. The object of the article is not the substantive legality of each EU environmental measure, but the procedural position of such exporters when EU environment-related market measures affect their access to information, participation, reason-giving, and review.¹²

The sources used here serve distinct functions: EU instruments identify formal duties; OECD and UNGP materials explain value-chain transmission; and Brussels Effect scholarship frames EU market influence. Firm-level effects are assessed through the IUU case study and sectoral evidence in Section 5.

1.3. Research Problem and Research Questions

Building on the foregoing discussion, this article approaches the problem through the lens of access to justice in circumstances where EU environmental standards generate cross-border effects. The core inquiry is to identify the pathways through which non-EU enterprises, with particular attention to Vietnamese enterprises, may obtain timely

9 Organisation for Economic Co-operation and Development, *OECD Due Diligence Guidance for Responsible Business Conduct* (OECD Publishing 2018) doi:10.1787/15f5f4b3-en; John Gerard Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (UN Doc A/HRC/17/31, 21 March 2011) <<https://digitallibrary.un.org/record/705860?ln=en&v=pdf>> accessed 3 February 2026.

10 'Regulation on Deforestation-Free Products' (*European Commission*, 2025) <https://environment.ec.europa.eu/topics/forests/deforestation/regulation-deforestation-free-products_en> accessed 3 February 2026.

11 Bradford (n 1); Gary P Sampson, *The World Trade Organization and Global Governance: Future Directions* (UN UP 2009); Robert Howse and Joanna Langille, 'Continuity and Change in the World Trade Organization: Pluralism Past, Present, and Future' (2023) 117(1) *American Journal of International Law* 1, doi:10.1017/ajil.2022.82.

12 Distinguishing state-to-state foreign trade disputes from trader-to-trader disputes, see Law of the Socialist Republic of Vietnam No 05/2017/QH14 'On Foreign Trade Management' (adopted 12 June 2017) arts 3, 108–110 <<https://thuvienphapluat.vn/van-ban/Thuong-mai/Luat-Quan-ly-ngoai-thuong-2017-322219.aspx>> accessed 18 May 2026.

information, participate in relevant processes, lodge submissions or complaints, seek review, and request reasons when they are affected by environmental requirements that operate in practice as conditions of entry to the EU market.

The literature explains EU regulatory diffusion, access to justice values, Article 263 TFEU standing and IUU trade effects. Less developed is the institutional position of third-country exporters who are not addressees of EU acts but must generate market-access evidence. This article fills that gap by framing their position as an indirect access to justice problem and proposing an EVFTA-linked mechanism for exporter evidence.

Indirect access to justice refers to mediated routes used when exporters cannot realistically appear in EU procedures. In practice, exporters rely on intermediaries such as EU counterparties, associations, domestic agencies, and treaty-based channels. The article asks whether EU conditionality structurally limits effective judicial protection for Vietnamese exporters and what domestic designs make mediated pathways rights-protective.

For conceptual clarity, indirect access to justice is not used here as a synonym for regulatory cooperation, diplomatic protection, or ordinary trade consultation. It refers to institutional pathways through which affected exporters may have their evidence, compliance burdens and claims of disproportionate impact received, standardised, transmitted, and answered through legally or procedurally recognisable channels. Its rights-protective quality therefore depends on accessibility, transparency, reason-giving, time-bound responsiveness, and the capacity to influence regulatory or administrative outcomes.

Four questions guide the analysis. First, which EU measures function as market-entry conditions and what bottlenecks do they create for non-EU enterprises? Second, which channels allow Vietnamese exporters to seek reasons, contest implementation, or mitigate harm? Third, what institutional lessons follow from the IUU carding process?¹³ Fourth, what domestic design can lower information asymmetries and make indirect access to justice operational?¹⁴

1.4. Research Methods and Structure of the Article

This article is primarily a doctrinal legal analysis, supplemented by law-in-context reasoning and an illustrative case study. Doctrinal analysis examines Article 263 TFEU and selected EU environmental market-access instruments. Law-in-context reasoning assesses how these instruments operate through supply-chain contracts, traceability systems, audits, and Vietnamese exporters' compliance capacities.

13 European Commission Decision of 23 October 2017 Notifying the Socialist Republic of Vietnam of the Possibility of Being Identified as a Non-Cooperating Third Country in Fighting Illegal, Unreported and Unregulated Fishing [2017] OJ C 364/3.

14 Bryant G Garth and Mauro Cappelletti, 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective' (1978) 27 Buffalo Law Review 181.

The article does not conduct a full comparative analysis of EU free trade agreements. It uses a limited functional comparison of mediated protection channels under EU law, the EVFTA, Vietnamese administrative law and commercial grievance routes. The IUU yellow-card process is selected because it clearly shows the mismatch between the state as procedural addressee and exporters as compliance burden-bearers.

Section 2 sets the access to justice framework; Sections 3-4 map EU spillovers and procedural limits; Section 5 examines the IUU case; Sections 6-7 identify domestic gaps and propose EVFTA-linked reforms.

2 THEORETICAL FRAMEWORK: ACCESS TO JUSTICE BEYOND TERRITORIAL BOUNDARIES

2.1. Effective Judicial Protection as the Baseline: Reviewability, Standing, and Procedural Voice

Access to justice in this article is assessed against the baseline of effective judicial protection, understood as a procedural architecture in which affected actors can (i) obtain reasons, (ii) challenge legality, and (iii) access review capable of influencing outcomes. In the EU legal order, this baseline is closely associated with the right to an effective remedy (as articulated in Article 47 of the EU Charter of Fundamental Rights) and the general principle of effective judicial protection developed in EU jurisprudence.

However, when EU environmental conditionality produces extraterritorial spillovers for third-country exporters, the baseline becomes structurally mediated by two interlocking constraints.

First, reviewability is narrowed by design: many EU instruments allocate formal obligations to EU-based actors, while third-country exporters experience the economic effect through contracts, data systems, and border implementation.

Second, standing is restricted doctrinally. Under Article 263 TFEU, private applicants can challenge EU acts only under narrow heads, and the individual-concern threshold associated with the Plaumann line of case law makes it difficult for exporters outside the EU to contest measures of general application.

Accordingly, this article treats “direct access to justice” (through EU administrative/judicial routes available to private actors) as structurally constrained for Vietnamese exporters not only as a matter of practical cost but as a function of the EU’s standing architecture and enforcement design. This diagnosis motivates the need to conceptualise and evaluate indirect access to justice as the predominant pathway for rights protection in cross-border environmental conditionality.

2.2. Environmental Accountability as a Procedural Legal Concept

Environmental accountability is treated here as a procedural legal concept. The issue is not only what environmental standards require¹⁵ but also whether decision-makers disclose information, provide reasons, allow meaningful participation, and accept review when environmental decisions affect legally protected interests.¹⁶ Principle 10 of the 1992 Rio Declaration anchors procedural environmental governance through access to information, participation, and review. The Aarhus Convention and UNEP Bali Guidelines operationalise these pillars by emphasising practical accessibility and reducing informational, technical, and cost barriers. They provide legislative and institutional guidance on designing access-to-information, participation, and access to justice frameworks, emphasising the reduction of informational, technical, and cost barriers that commonly undermine real-world exercisability. In this article, Rio/Aarhus/Bali therefore serve as benchmarks for evaluating whether cross-border conditionality regimes preserve minimum procedural entitlements, especially where the affected actors are exporters outside the regulating authority's territorial jurisdiction.

At the EU level, the Aarhus Convention is implemented through Regulation (EC) No 1367/2006, as amended by Regulation (EU) 2021/1767. This supports the article's procedural baseline because EU environmental governance accepts review, participation, and reason-giving as legality values. Its limits are also clear: Vietnamese exporters usually suffer commercial and value-chain effects that are not easily framed as EU environmental public-interest review.¹⁷

2.3. Distinguishing Direct and Indirect Access to Justice in Cross-Border Legal Enforcement

In cross-border legal enforcement, access to justice may be analytically distinguished as direct or indirect by reference to three criteria: the actor entitled to initiate the procedure, the forum in which review is conducted, and the procedural pathway through which a remedy can realistically be pursued.

15 Aarhus Convention (n 8) arts 4–6.

16 United Nations Environment Programme, *Putting Rio Principle 10 into Action: An Implementation Guide for the UNEP Bali Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters* (UNEP 2015).

17 Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the Application of the Provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community Institutions and Bodies [2006] OJ L 264/13; Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies [2021] OJ L 356/1.

*Direct access to justice exists when the affected actor can trigger administrative review, a complaint mechanism, or judicial proceedings to contest measures that generate environmental and trade-related consequences. It depends on jurisdiction, standing, evidence, costs, and time limits.*¹⁸

Indirect access to justice captures the common situation in which the affected actor cannot realistically appear as a procedural party in the originating jurisdiction. Protection must then move through EU counterparties, industry associations, domestic agencies or treaty channels, and its quality depends on representation, openness, and responsiveness.

Third-country exporters and their representative bodies should be treated at least as structured procedural contributors where EU environmental measures create identifiable market-access burdens. They are both burden-bearers and information-holders; their input can improve factual accuracy, reveal disproportionate effects, and distinguish environmental risk from documentation or capacity failures.

To assess whether indirect access is rights-protective rather than merely consultative, this article applies five minimum criteria: accessibility (can exporters trigger the pathway?), transparency (reasons and criteria), responsiveness (time-bound duties), independence (impartial scrutiny), and effectiveness (capacity to influence outcomes or mitigate harm).¹⁹

3 EU ENVIRONMENTAL CONDITIONALITY AS MARKET-ACCESS GOVERNANCE: REGULATORY ARCHITECTURES AND SPILLOVER EFFECTS

This section is confined to the regulatory architecture of EU environmental conditionality. Its purpose is to explain how EU measures produce cross-border market-access effects through country assessment, risk tiering, due diligence, and data-based compliance infrastructures. The procedural consequences of these spillovers are addressed separately in Section 4.

3.1. EU Environmental Measures Operationalised Through Country-Level Assessment and Market Access Conditionality

A distinctive feature of contemporary EU environmental enforcement is the conversion of environmental protection objectives into market access conditions organised around country-level assessment or country-based risk tiering. This approach enables the EU to manage regulatory risk through differentiated compliance expectations and variable

18 Aarhus Convention (n 8) art 9.

19 Anne Altmayer, *Implementing the Aarhus Convention: Access to Justice in Environmental Matters* (Briefing PE 608.753, EPRS 2017) <[https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2017\)608753](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2017)608753)> accessed 3 February 2026.

intensity of border controls. In turn, it generates spillover effects that extend beyond EU territory, shaping incentives and compliance practices in exporting States and among non-EU firms operating within relevant supply chains.²⁰

The EU IUU carding system illustrates country-level enforcement. The Commission may warn a third country considered non-cooperative and, if corrective action is inadequate, move toward import restrictions. Procedurally, the dialogue is Commission-state; economically, costs are borne by exporters through inspections, documentation burdens, and reputational risk. This is the core procedural addressee-economic bearer misalignment.²¹

A comparable logic operates in the context of deforestation. Regulation (EU) 2023/1115 is implemented not only through operator-level due diligence obligations but also through an explicit country-benchmarking system that assigns risk levels to producer countries (or parts thereof). Risk classification shapes the intensity of due diligence and the probability of checks, thereby shifting the enforcement centre of gravity from individual transactions to systemic risk management organised by country and supply-chain architecture.

Country-level assessment concentrates procedural leverage at the Commission-government level while dispersing economic burdens to exporters, increasing reliance on mediated protection.

3.2. Sustainability Due Diligence Obligations and Responsibility Across Supply Chains

EU environmental spillovers are amplified by sustainability due diligence and supply-chain responsibility. Compliance increasingly turns on continuous information gathering, verification and risk management across supply relationships rather than on the single act of importation.

First, Regulation (EU) 2023/1115 operationalises supply-chain due diligence by requiring operators and traders placing covered commodities and products on the EU market to conduct due diligence and submit a due diligence statement. Within this architecture, traceability data serves as decisive evidence that goods are deforestation-free and produced in accordance with the laws of the country of production.²²

20 Council Regulation (EC) No 1005/2008 of 29 September 2008 Establishing a Community System to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and Repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 [2008] OJ L 286/1; European Commission Decision of 23 October 2017 (n 13).

21 Assia Baric and Jinhwan Oh, 'Effects of the EU's Carding System for IUU Fishing on Its Trading Partners' (2022) 27(6) *Global Business and Finance Review* 69, doi:10.17549/gbfr.2022.27.6.69.

22 Regulation (EU) 2023/1115 (n 3), including references to due diligence statements and geolocation data requirements.

Secondly, Directive (EU) 2024/1760 on corporate sustainability due diligence strengthens responsible business conduct by requiring in-scope companies to identify and address adverse human rights and environmental impacts in their operations and across their value chains.²³ The European Commission notes that the directive entered into force on 25 July 2024.²⁴

Recent EU simplification measures change, but do not remove, the procedural issue. Omnibus I postponed, and revised parts of the CSRD and CSDDD frameworks, and the CBAM simplification introduced burden-reduction measures. Third-country exporters may face fewer automatic data demands but also need clarity on whether buyer requests are legally required, voluntary or disproportionate.²⁵

Finally, the Ecodesign for Sustainable Products Regulation (ESPR) consolidates a broader trend towards datafied compliance. Regulation (EU) 2024/1781 establishes a framework for setting eco-design requirements and provides the legal basis for the Digital Product Passport, making life-cycle information and compliance data part of the practical infrastructure of EU market access.²⁶

23 Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 [2024] OJ L 2024/1760.

24 'Corporate Sustainability Due Diligence' (*European Commission*, 2026) <https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en> accessed 3 February 2026.

25 Directive (EU) 2025/794 of the European Parliament and of the Council of 14 April 2025 amending Directives (EU) 2022/2464 and (EU) 2024/1760 as Regards the Dates from which Member States are to Apply Certain Corporate Sustainability Reporting and Due Diligence Requirements [2025] OJ L 2025/794; Directive (EU) 2026/470 of the European Parliament and of the Council of 24 February 2026 amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as Regards Certain Corporate Sustainability Reporting Requirements and Certain Corporate Sustainability Due Diligence Requirements [2026] OJ L 2026/470; Regulation (EU) 2025/2083 of the European Parliament and of the Council of 8 October 2025 amending Regulation (EU) 2023/956 as Regards Simplifying and Strengthening the Carbon Border Adjustment Mechanism [2025] OJ L 2025/2083; 'Omnibus I Package - Commission Simplifies Rules on Sustainability and EU Investments, Delivering over €6 billion in Administrative Relief' (*European Commission*, 26 February 2025) <https://finance.ec.europa.eu/publications/omnibus-i-package-commission-simplifies-rules-sustainability-and-eu-investments-delivering-over-eu6_en> accessed 18 May 2026; 'Omnibus Package' (*European Commission*, 1 April 2025) <https://finance.ec.europa.eu/news/omnibus-package-2025-04-01_en> accessed 18 May 2026.

26 Regulation (EU) 2024/1781 (n 5); 'Ecodesign for Sustainable Products Regulation' (*European Commission*, 9 February 2026) <https://commission.europa.eu/energy-climate-change-environment/standards-tools-and-labels/products-labelling-rules-and-requirements/ecodesign-sustainable-products-regulation_en> accessed 18 May 2026.

4 PROCEDURAL PROTECTION GAPS AND MEDIATED ACCESS TO JUSTICE FOR VIETNAMESE EXPORTERS

Having mapped the regulatory architectures in Section 3, this section turns to the procedural question that follows from them: whether Vietnamese exporters affected by EU environmental conditionality have direct, indirect, or mediated routes for obtaining reasons, submitting evidence, requesting review, or influencing outcomes.

4.1. The State as an Indispensable Intermediary in EU Environmental Enforcement Architectures

Across several EU environmental enforcement architectures, the exporting State is not merely the territorial site of production. It operates as a procedurally decisive intermediary for maintaining market access, where the EU's compliance model is structured around country-level assessment, country-risk tiering, or public-authority assurances anchored in the exporting State's governance system. Here, 'indispensable' means the EU process is state-addressed and cannot be substituted by firm-level action.

The EU IUU framework illustrates this intermediation. The warning-and-dialogue stage focuses on the exporting state's monitoring, control, sanctioning, and catch-certification systems. Exporters may provide evidence but cannot replace official assurances; the state remains the conduit through which firm-level harm reaches the EU-facing forum.²⁷

A second form of intermediation arises under country benchmarking. Under the deforestation-free regime, risk classification shapes checks and EU operators' risk posture. Although duties fall on EU actors, upstream firms face contractual audits and documentation demands. Without state-enabled traceability and interoperable datasets, firms face higher transaction costs and the risk of exclusion.²⁸

Taken together, these patterns indicate a structural shift in cross-border access to justice. For Vietnamese exporters, the primary route to seek protection, clarification, and recalibration of externally imposed market conditions is frequently not direct engagement with EU adjudicatory mechanisms, but indirect access to justice mediated through the exporting State, understood as both (i) an interest-representation channel and (ii) a procedural infrastructure capable of reducing information and power asymmetries embedded in EU environmental conditionality.

27 Council Regulation (EC) No 1005/2008 (n 20) arts 31–34, 38 (provisions on non-cooperating third countries and related market consequences).

28 Regulation (EU) 2023/1115 (n 3) art 29 (benchmarking system and country risk classification).

4.2. The Procedural Interests of Vietnamese Enterprises Affected by EU Environmental Measures

Where the State performs an intermediary function, exporters' interests extend beyond immediate commercial outcomes to a set of procedural interests that determine whether market access conditions are predictable, contestable, and capable of being moderated through reason-giving and review.

First, exporters require access to usable information and early warning. This includes timely, accurate guidance on scope, data requirements, evidentiary thresholds, and implementation timetables, as well as notice of prospective changes in enforcement intensity (for example, shifts in country-risk profiling or inspection priorities). Procedurally, this interest translates into needs for (i) standardised dissemination of requirements, (ii) access to relevant datasets in a reusable form, and (iii) reason-giving practices that enable firms to anticipate compliance expectations rather than responding *ex post* to detentions, rejections, or buyer disengagement.²⁹

Second, exporters require participation and feedback mechanisms in the design and implementation of domestic policy. Because EU-facing compliance is often realised through domestic infrastructures (traceability systems, certification practice, data governance, inspection coordination), exporters' ability to communicate feasibility constraints, compliance costs, and sector-specific transition pathways becomes a component of access to justice.³⁰

Third, exporters require representation in international regulatory dialogue and in EU-linked commercial governance. In country-assessment settings, the State is the formal interlocutor. Exporters therefore need representative mechanisms that can (i) aggregate and validate firm-level evidence, (ii) document trade and compliance impacts, (iii) identify points where implementation appears unreasonable or disproportionate, and (iv) select an appropriate channel—technical dialogue, consultation, or other treaty-based processes—to request clarification or recalibration. In data-intensive regimes, representation also includes State-enabled standardisation and interoperability of datasets, which can lower transaction costs and reduce precautionary exclusion by EU partners based on perceived weaknesses in documentation.

29 'Commission Warns Vietnam over Insufficient Action to Fight Illegal Fishing: Press release' (*European Commission*, 23 October 2017) <https://ec.europa.eu/commission/presscorner/detail/en/ip_17_4064> accessed 3 February 2026.

30 UN Environment Programme, *Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (Bali Guidelines)* (UNEP 2010) <<https://www.unep.org/resources/publication/guidelines-development-national-legislation-access-information-public>> accessed 3 February 2026.

In short, the operative content of indirect access to justice for Vietnamese exporters focuses on being informed, able to participate, and represented through procedures that are timely, evidence-based, and responsive. These elements determine whether exporters can shape domestic compliance conditions and whether the State can credibly engage with external counterparts to reduce procedural asymmetries arising from EU market-conditional enforcement.

4.3. Limits of Direct and Preliminary Judicial Redress for Non-EU Undertakings

Direct judicial redress is structurally constrained by Article 263 TFEU admissibility, particularly the restrictive 'individual concern' threshold associated with Plaumann, and by the difficulty of identifying an exporter-addressed EU act in diffuse enforcement architectures.³¹

The restrictive character of Article 263(4) TFEU is not merely theoretical. In Plaumann, the Court of Justice established a narrow test of individual concern, requiring the applicant to be affected by reason of attributes peculiar to it or circumstances differentiating it from all other persons. This test makes it particularly difficult for exporters outside the EU to challenge applicable market-access measures, even where those measures generate serious economic effects.³²

The difficulty is reinforced by the Court's interpretation of the third limb of Article 263(4) TFEU. In *Inuit Tapiriit Kanatami*, the Court confirmed that "regulatory acts" do not include legislative acts. As a result, where EU environmental conditionality is embedded in legislative instruments, affected private applicants cannot avoid the direct and individual concern requirements merely by invoking the Lisbon amendment to Article 263(4).³³

Venezuela v Council shows that a non-EU public entity may, in principle, bring an action for annulment where the conditions of Article 263(4) are satisfied. Yet this does not solve the problem faced by private exporters. Vietnamese exporters are not the formal addressees of EU country-assessment procedures or importer-facing due diligence obligations. Their harm is usually mediated through state assessment, customs implementation, buyer risk management, or contractual exclusion. This makes identifying a directly challengeable EU act especially difficult.³⁴

31 Magdalena Kucko, 'The Status of Natural or Legal Persons According to the Annulment Procedure Post-Lisbon' (2017) 2 LSE Law Review 101, doi:10.61315/lse/lr.17.

32 Case 25/62 *Plaumann & Co v Commission of the European Economic Community* (ECJ, 15 July 1963) ECLI:EU:C:1963:17 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61962CJ0025>> accessed 3 February 2026.

33 Case C-583/11 P *Inuit Tapiriit Kanatami and Others v European Parliament and Council of the EU* (ECJ, 3 October 2013) ECLI:EU:C:2013:625 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62011CJ0583>> accessed 3 February 2026.

34 Case C-872/19 P *République bolivarienne du Venezuela v Council of the EU* (ECJ, 22 June 2021) ECLI:EU:C:2021:507 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62019CJ0872>> accessed 3 February 2026.

Article 267 TFEU offers a more indirect route to judicial protection. A question on the validity or interpretation of EU law may be referred by a Member State court to the Court of Justice. For Vietnamese exporters, however, this route is structurally contingent.³⁵ They cannot directly compel a preliminary reference; access depends on whether a dispute arises before a Member State court, usually through an EU importer, a customs proceeding, a contractual dispute, or an administrative enforcement measure. Article 267 TFEU therefore mitigates, but does not eliminate, the access to justice gap.³⁶

The problem is compounded by the institutional distance between exporters and the “reviewable act.” EU environmental conditionality often operates through (i) border implementation decisions, (ii) country-level assessments and risk categorisations, or (iii) private risk management decisions by EU operators triggered by regulatory liability concerns. In each scenario, the exporter experiences material consequences, yet may struggle to identify a directly challengeable EU act that is procedurally attributable to the exporter in a way that satisfies admissibility thresholds.³⁷

Practical barriers further intensify these structural limits: litigation costs, evidentiary asymmetries, and access-to-file constraints can render direct judicial routes unrealistic even when theoretically feasible. As a result, the practical locus of protection shifts to mediated pathways, which must be assessed against transparency, responsiveness, and effectiveness.³⁸

5 THE EU IUU “YELLOW CARD” AGAINST VIETNAM: AN ILLUSTRATIVE CASE STUDY

5.1. The legal character of the EU IUU yellow-card warning mechanism

The EU IUU yellow-card mechanism is grounded in the EU IUU Regulation, which establishes a structured process for assessing and inducing compliance by third countries through market-access conditionality for fisheries products.³⁹ Rather than operating as an immediate trade sanction imposed directly on individual exporters, the yellow card is best understood as an outward-facing administrative procedure through which the European Commission assigns responsibility at the state level for controlling, monitoring, and enforcing against IUU fishing, with regulatory consequences that cascade across the export chain.⁴⁰

35 Treaty on the Functioning of the European Union (Consolidated version) [2016] OJ C 202/164, art 267.

36 Case 314/85 *Foto-Frost v Hauptzollamt Lübeck-Ost* (ECJ, 22 October 1987) ECLI:EU:C:1987:452 <<https://eur-lex.europa.eu/legal-content/DE/ALL/?uri=CELEX:61985CJ0314>> accessed 3 February 2026.

37 Treaty on the Functioning of the European Union (n 35) art 263.

38 Aarhus Convention (n 8) art 9(4).

39 Council Regulation (EC) No 1005/2008 (n 20).

40 *ibid*, structure on third-country cooperation and state-focused compliance logic.

Procedurally, the Commission initiates and steers the non-cooperation assessment. Where a third country is considered at risk of being identified as non-cooperating, the Commission communicates the grounds underpinning its concerns and opens a structured opportunity for written representations, supplementary information, and corrective action measures. In access to justice terms, the key structural feature is that the dialogue is conducted formally between public authorities, the Commission, and the third country's competent authorities, rather than between the EU and the exporters who bear substantial compliance costs.⁴¹

If corrective action is deemed insufficient, the procedure may escalate to a formal identification of non-cooperation at Council level on the basis of a Commission proposal, thereby triggering the legal consequences attached to such a listing.⁴² Those consequences may include prohibitions on placing fisheries products caught by vessels flying the flag of the listed country on the EU market, the non-acceptance of catch certificates accompanying the relevant consignments, and related restrictive effects on EU operators.⁴³ Under the logic of the EU IUU framework, delisting is contingent upon an assessment that the third country has adopted and implemented measures capable of ensuring sustained and effective improvement.⁴⁴

In Vietnam's case, the European Commission issued a yellow card warning in October 2017, placing Vietnam under sustained monitoring and iterative assessment, with recommendations to strengthen the national anti-IUU regime.⁴⁵ Subsequent official communications in Vietnam have continued to frame the policy priority as achieving sufficient compliance to secure removal of the warning, indicating that the yellow card remains a baseline condition shaping EU–Vietnam engagement in fisheries governance and seafood trade.⁴⁶

The primary legal source for this warning is the Commission Decision of 23 October 2017, notifying the Socialist Republic of Vietnam of the possibility of being identified as a non-cooperating third country in the fight against illegal, unreported, and unregulated fishing.

41 *ibid*, procedural steps on notification, evidence, and opportunity to respond in the identification process for non-cooperating third countries.

42 *ibid*, decision-making and identification of a third country as non-cooperating.

43 *ibid*, consequences following identification, including market restrictions and catch-certificate effects.

44 *ibid*, conditions and logic for removal from the list following corrective action.

45 European Commission Decision of 23 October 2017 (n 13); 'Commission Warns Vietnam over Insufficient Action to Fight Illegal Fishing: Press Release' (*European Commission*, 23 October 2017) <https://ec.europa.eu/commission/presscorner/detail/en/IP_17_4064> accessed 18 May 2026.

46 Kim Anh, 'Gov't Chief Receives EC Inspection Delegation on IUU' (*Socialist Republic of Vietnam. Government News*, 20 March 2026) <<https://en.baochinhphu.vn/govt-chief-receives-ec-inspection-delegation-on-iuu-111260320103845622.htm>> accessed 18 May 2026; 'Vietnam Intensifies Efforts to Have EC's IUU Yellow Card Lifted' (*VietnamPlus*, 4 March 2026) <<https://en.vietnamplus.vn/vietnam-intensifies-efforts-to-have-ecs-iuu-yellow-card-lifted-post342658.vnp>> accessed 18 May 2026.

This source is preferable to relying solely on press releases because it sets out the legal basis, procedural context and reasons underpinning the warning.⁴⁷

The yellow-card mechanism concentrates formal procedural participation and reasoning in an inter-authority channel, while exporters remain indirect economic bearers without an autonomous procedural position in the EU-facing process.⁴⁸

5.2. The Effects of the EU IUU Yellow Card on Vietnamese Seafood Exporters

The EU IUU yellow card affects Vietnamese seafood exporters primarily by intensifying scrutiny of legality and traceability, leading to higher transaction costs, longer lead times, and greater contractual uncertainty for individual consignments. In practice, the compliance burden materialises less as a single formal sanction against a particular firm and more as a sustained tightening of documentary verification and risk management across the import process, with adverse spillovers across commercial relationships.

Recent documentary evidence confirms continuing commercial relevance. VASEP reported seafood export turnover of about USD 11.3 billion in 2025 and noted continuing pressure from IUU requirements, traceability, environmental standards, and social responsibility.⁴⁹ In Q1/2026, exports reached USD 2.64 billion, while tuna remained exposed to fishing, traceability, and compliance requirements. This shows that the yellow card remains a source of documentary and reputational pressure.⁵⁰

Public data does not provide a single official count of each affected enterprise. The article therefore uses sectoral exposure indicators. VASEP states that its members account for about 80 per cent of Vietnam's seafood exports, and sectoral materials indicate systematic checks of catch origin for catch-origin products during the yellow-card period. The affected class is best understood as the wild-caught seafood export chain.⁵¹

47 European Commission Decision of 23 October 2017 (n 13).

48 *ibid*

49 Lê Hằng, 'VASEP Published Report on Vietnam Seafood Exports in 2025' (*Vietnam Association of Seafood Exporters and Producers*, 10 February 2026) <<https://seafood.vasep.com.vn/total-seafood-trade/news/vasep-published-report-on-vietnam-seafood-exports-in-2025-35997.html>> accessed 18 May 2026.

50 Lê Hằng, 'What Opportunities Lie Ahead for Vietnam's Seafood Exports in 2026?' (*Vietnam Association of Seafood Exporters and Producers*, 5 May 2026) <<https://seafood.vasep.com.vn/total-seafood-trade/news/what-opportunities-lie-ahead-for-vietnam-s-seafood-exports-in-2026-36703.html>> accessed 18 May 2026.

51 'VASEP Introduction' (*Vietnam Association of Seafood Exporters and Producers*, 2026) <<https://seafood.vasep.com.vn/vasep-introduction>> accessed 18 May 2026; Vietnam Association of Seafood Exporters and Producers, *White Book: On Combating IUU Fishing in Vietnam* (VASEP 2018); Nguyen Hoai Nam, Nguyen Tien Thong and Le Hang, *A Trade-Based Analysis of the Economic Impact of Non-Compliance with Illegal, Unreported and Unregulated Fishing: The Case of Vietnam* (World Bank 2021).

At the consignment level, industry reporting indicates that controls for relevant catch-origin products have been intensified, with clearance often contingent on source verification rather than routine customs processing. Vietnam Association of Seafood Exporters and Producers (VASEP) has documented containers being held for origin checks, release delays lasting several weeks, inspection-related charges per container, and additional losses from storage costs and delayed deliveries under supply contracts.⁵²

At the market level, the yellow card operates as a reputational signal that reshapes buyer behaviour and reallocates compliance risk. Even when shipments clear, heightened uncertainty incentivises EU importers to adopt precautionary sourcing strategies, including stricter contractual conditions, greater reliance on audits, and diversion of orders to alternative suppliers perceived as lower risk.⁵³

Macro-level estimates further suggest material welfare effects. A World Bank country environmental analysis summarises trade-based findings indicating a measurable contraction in export value to the EU after the yellow card, together with sizeable aggregate losses in the period following enforcement, reflecting both direct compliance costs and indirect commercial disruptions.⁵⁴

The distributional consequences are also salient. Firms with stronger traceability and sourcing control can withstand verification more easily, while firms relying on fragmented, small-scale supply networks face a higher risk of exclusion and marginal compliance costs.⁵⁵

The yellow card primarily harms through enforcement intensity and reputational risk rather than through firm-addressed EU acts, thereby complicating reviewability and pushing exporters toward preventive adaptation rather than remedial contestation.

5.3. The Absence of Complaint and Challenge Mechanisms for Affected Vietnamese Exporters

From an access to justice perspective, the core weakness of the EU IUU yellow card mechanism lies in a structural misalignment between the procedural addressee and the economic bearer of the consequences. The procedure is formally organised around the third country in question, while compliance costs and market disruption are, in practice, borne by exporters and supply-chain actors.

52 Vietnam Association of Seafood Exporters and Producers, *Vietnam Seafood Export to EU Markets: White Book* (VASEP 2018).

53 Nguyen Khac Giang, 'Assessing Vietnam's Challenges in Fighting IUU Fishing' (2024) 18 ISEAS Perspective <<https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/2024-18-assessing-vietnams-challenges-in-fighting-iuu-fishing-by-nguyen-khac-giang>> accessed 18 May 2026.

54 World Bank, *Accelerating Clean, Green, and Climate-Resilient Growth in Vietnam: A Country Environmental Analysis* (World Bank 2022) doi:10.1596/37704.

55 Nguyen, Nguyen and Le (n 51).

By design, notification, response, and remedial steps operate through an inter-authority dialogue between the Commission and the third country. The Commission must provide reasons and allow the state to submit information and remedial measures, but exporters have no autonomous EU-level position to access the file or contest the assessment.⁵⁶

The resulting gap is institutional. Exporters may demonstrate concrete harm from intensified border controls, but the yellow-card mechanism does not give them an independent evidentiary role, a right to be heard, or a route to lodge a complaint against the assessment. They remain dependent on Vietnamese agencies or EU import partners.

The IUU yellow card illustrates a broader pattern of cross-border environmental enforcement through market-access conditionality: procedural leverage concentrates at the intergovernmental level, while economic burdens and operational disruption fall heavily on private actors. The case therefore supports the article's central implication for Vietnam: strengthening indirect access to justice requires domestic procedural infrastructure capable of standardising information flows, enabling evidence-based representation, and creating responsive, review-oriented accountability loops when EU conditionality generates market-access harm.⁵⁷

6 LEGAL GAPS IN VIETNAM AFFECTING ENTERPRISES' INDIRECT ACCESS TO JUSTICE

6.1. Absence of a Dedicated Domestic Procedural Framework for Representation and Articulation of Enterprises' Procedural Interests

Indirect access to justice depends on the exporting state's intermediary capacity to detect compliance-risk signals, receive exporter dossiers, select a suitable engagement channel, and represent affected interests in EU-facing or treaty-based processes. Vietnam's current framework still separates state-to-state disputes from trader-to-trader disputes and lacks a procedure for foreign market-conditionality spillovers.

This structural orientation is visible in the Law on Foreign Trade Management. Articles 108–110 distinguish disputes concerning the application of foreign trade management measures in the relationship between the Government of Vietnam and foreign governments (where the State participates pursuant to international treaties) from foreign trade disputes between traders, which are to be resolved by traders themselves. The same framework identifies the Government as the participant in such disputes, with the Ministry of Industry and Trade (MOIT) acting as the focal point assisting the Government.⁵⁸

56 Council Regulation (EC) No 1005/2008 (n 20) arts 31–34 (esp art 32).

57 Vietnam Association of Seafood Exporters and Producers, *White Book* (n 51).

58 Law of the Socialist Republic of Vietnam No 05/2017/QH14 (n 12) art 108.

This allocation is coherent for classic disputes but creates a gap for EU environmental conditionality. Exporters affected by CBAM-, EUDR-, or IUU-type architectures often suffer harm due to border controls and buyer risk management, even without a dispute that fits any of those categories. Their interests in petition receipt, reasoned response, escalation criteria, and traceable intervention are not yet codified.⁵⁹

6.2. Constraints in Environmental Impact Assessment and Public Disclosure of Environmental Information

Indirect access to justice in cross-border regulatory settings begins with the ability to obtain usable information and data. In terms of formal disclosure, Vietnam's Law on Environmental Protection expands publication duties that cover, inter alia,⁶⁰ the decision approving the results of appraisal of an environmental impact assessment report, the approved environmental impact assessment (EIA) report itself, and environmental permits, with implementation modalities further specified in subordinate legislation.⁶¹

First, there is a structural misalignment between domestically disclosed environmental management information and the evidence set required for supply-chain compliance. Export-related sustainability governance increasingly expects product- and shipment-specific, traceable, auditable, and standardised datasets that can be verified and reused across contracting, due diligence, and assurance cycles. This gap increases conversion costs, reduces interoperability, and weakens the functional value of disclosure for enterprises seeking to pre-empt exclusionary risk in international value chains.

Second, access to information remains narrow for legal persons. The Law on Access to Information frames the right as exercised by citizens, leaving enterprises without an equivalent statutory pathway to request and reuse state-held datasets for market-compliance purposes.⁶²

59 Free Trade Agreement between the European Union and the Socialist Republic of Vietnam (EVFTA) (signed 30 June 2019, entered into force 1 August 2020) [2020] OJ L 186/3, ch 13 arts 13.15–13.16.

60 Law of the Socialist Republic of Vietnam No 72/2020/QH14 'On Environmental Protection' (adopted 17 November 2020) arts 37(5), 38(2), 47(2)(d), 48(2), 114 <<https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Luat-so-72-2020-QH14-Bao-ve-moi-truong-2020-431147.aspx>> accessed 18 May 2026.

61 Decree Government of the Socialist Republic of Vietnam No 08/2022/ND-CP 'Detailed Regulations on a Number of Articles of the Law on Environmental Protection' (adopted 10 January 2022) <<https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Nghi-dinh-08-2022-ND-CP-huong-dan-Luat-Bao-ve-moi-truong-479457.aspx>> accessed 18 May 2026.

62 Law of the Socialist Republic of Vietnam No 104/2016/QH13 'On Access to Information' (adopted 6 April 2016) arts 2, 4(1) <<https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Luat-tiep-can-thong-tin-2016-280116.aspx>> accessed 18 May 2026.

Third, frequent changes to implementing instruments generate adaptation costs.⁶³ Enterprises must recalibrate documentation and data governance while maintaining stable evidence over long audit and assurance cycles.⁶⁴

6.3. The Absence of Enterprise-Facing Complaint Mechanisms and Compliance Differentiation Tools

Vietnamese enterprises may invoke administrative complaint and administrative litigation mechanisms to protect their lawful rights and interests when an adverse impact stems from a domestic administrative decision or an administrative act. The Law on Complaints recognises complainants as including citizens, agencies, and organisations, and explicitly treats economic organisations as entities entitled to lodge complaints.⁶⁵ Likewise, the Law on Administrative Procedures defines plaintiffs in administrative cases as agencies, organisations, and individuals who bring administrative lawsuits.

A major gap is the absence of a specialised focal point for extraterritorial spillovers. A workable procedure would require receipt and acknowledgement, dossier standardisation, materiality screening, channel selection, and a reasoned response within a defined timeframe.

Vietnam also lacks an operational mechanism to differentiate enterprise compliance levels. Transparent recognition or accreditation could help high-performing firms reduce redundant audits and challenge country- or sector-level risk assumptions. Without it, even compliant firms may be treated as bearing average market risk.

6.4. Implications for the Effectiveness of Indirect Access to Justice under the EVFTA

Under the EVFTA, the Trade and Sustainable Development Chapter provides transparency, participation, government consultations, and a panel of experts. These mechanisms create space for stakeholder views and accountability pressure, but their

63 Decree Government of the Socialist Republic of Vietnam No 05/2025/ND-CP ‘Amending and Supplementing a Number of Articles of Decree No 08/2022/ND-CP’ (adopted 6 January 2025) <<https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Nghi-dinh-05-2025-ND-CP-sua-doi-Nghi-dinh-08-2022-ND-CP-huong-dan-Luat-Bao-ve-moi-truong-583551.aspx>> accessed 18 May 2026.

64 Decree Government of the Socialist Republic of Vietnam No 48/2026/ND-CP ‘Amending and Supplementing a Number of Articles of Decree No 08/2022/ND-CP’ (adopted 29 January 2026) <<https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Nghi-dinh-48-2026-ND-CP-sua-doi-Nghi-dinh-08-2022-ND-CP-huong-dan-Luat-Bao-ve-moi-truong-692989.aspx>> accessed 18 May 2026.

65 Law of the Socialist Republic of Vietnam No 02/2011/QH13 ‘On Complaints’ (adopted 11 November 2011) arts 2(2), 2(4) <<https://thuvienphapluat.vn/van-ban/Thu-tuc-To-tung/Luat-khieu-nai-2011-132446.aspx>> accessed 18 May 2026.

usefulness depends on Vietnam's capacity to translate dispersed firm-level evidence into credible consultation dossiers.⁶⁶

EVFTA-based channels are not adjudicatory mechanisms through which exporters can claim damages or case-specific relief. Their protective value depends on domestic 'procedural plumbing': single-window intake, reusable data, time-bound responses, and clear escalation criteria.

Indirect access to justice under the EVFTA is only as effective as the domestic procedural infrastructure that feeds it. That infrastructure must reduce information asymmetries, lower evidence-assembly costs, and organise representation in a traceable manner so that exporter concerns reach the appropriate EVFTA forum with clear follow-up and accountability.

6.5. A Reciprocal Perspective:

EU Companies Affected by Vietnam's Market-Access Measures

A limited reciprocal perspective clarifies the argument without turning the article into a full comparative study. EU companies affected by Vietnamese market-access measures may, in principle,⁶⁷ use administrative complaint or litigation mechanisms where a Vietnamese administrative act directly affects their lawful interests.⁶⁸

This reciprocal route is also limited. Where harm results from general regulatory design, sectoral risk management or supply-chain implementation, foreign companies may face the same mediated-protection problem. The proposed single-window mechanism is therefore a reciprocal procedural infrastructure, not a one-sided diplomatic tool.

7 STRENGTHENING THE MECHANISM OF INDIRECT ACCESS TO JUSTICE WITHIN THE EVFTA FRAMEWORK

The reform proposal follows directly from Sections 3-6. EU conditionality operates through risk tiering, due diligence, and data systems; Articles 263 and 267 TFEU offer limited direct protection; the IUU case shows exporters bearing burdens without an EU complaint position; and Vietnamese law lacks a time-bound mechanism for receiving and escalating evidence from exporters.

66 EVFTA (n 59) ch 13, arts 13.12 (Transparency), 13.16 (Government consultations) and 13.17 (Panel of Experts).

67 Law of the Socialist Republic of Vietnam No 02/2011/QH13 (n 65) arts 2(2), 2(4).

68 Law of the Socialist Republic of Vietnam No 93/2015/QH13 'On Administrative Procedures' (adopted 25 November 2015) art 5 <<https://thuvienphapluat.vn/van-ban/Thu-tuc-To-tung/Luat-to-tung-hanh-chinh-2015-298372.aspx>> accessed 18 May 2026.

7.1. The Role of Vietnamese Domestic Law in Securing Procedural Representation for Enterprises

Domestic law is the site for converting indirect access to justice from ad hoc support into a predictable procedure. The core task is to give exporters a route to submit evidence, obtain acknowledgement, receive a reasoned answer, and know whether the matter will be escalated to technical dialogue, EVFTA follow-up or another channel.

Four elements are required: a single-window intake mechanism; standardised intervention-ready dossiers covering costs, delays, rejections, and compliance improvements; controlled access to reusable traceability and environmental datasets; and public-service legal or technical support for exporters, especially small and medium-sized enterprises. Together, these elements lower evidence-assembly costs and make stakeholder inputs usable in the EVFTA Trade and Sustainable Development processes.

This domestic design does not create a new right to challenge EU policy directly. It creates a procedural bridge: exporter evidence is recorded, standardised, filtered and transmitted through competent Vietnamese institutions so that mediated protection becomes transparent, time-bound, and review-oriented.

7.2. EVFTA Mechanisms as a Channel of Indirect Access to Justice

The EVFTA can be conceptualised as a channel of indirect access to justice in procedural and representative terms, particularly through its Trade and Sustainable Development (TSD) chapter. This architecture is not a compensation forum for businesses. Its value lies in structuring transparency, participation, expectations of reason-giving, and accountability loops, features that can partially compensate for the limited availability of direct EU judicial protection for third-country exporters.

Three EVFTA leverage points are particularly relevant:

a) Stakeholder participation and feedback loops.

Domestic Advisory Groups and the Joint Forum provide structured spaces for stakeholders to raise concerns and submit implementation recommendations. To make this channel rights-protective rather than merely consultative, Vietnam should institutionalise an “issue-tracking” and follow-up mechanism: each substantiated submission should receive a documented response, an indication of whether it is escalated to dialogue agendas, and a timeline for follow-up. Without such a loop, participation exists but lacks procedural effect.

b) Government consultations within the TSD framework.

Consultations can be used to seek clarification of implementation approaches, press for proportionate operationalisation, and request technical cooperation where external

spillovers become excessive or poorly calibrated. The feasibility of using this tool depends on the quality of the domestic dossier: consultations are most effective when supported by standardised evidence of impacts, rather than mere sectoral assertions.

c) Panel of Experts.

Although the Panel is not a damages mechanism, it can upgrade accountability by introducing independent assessment and interpretive discipline. In an access to justice lens, it functions as a review-oriented mechanism that can pressure policy adjustment. Its utility again depends on whether Vietnam can package exporter concerns into issues that fit the chapter's scope and are supported by credible evidence.

EVFTA channels become operationally relevant only when domestic procedures convert exporter impacts into timely, legible dossiers and maintain follow-up. 7.3. Lessons from the EU IUU yellow card for future EU environmental market measures

The IUU yellow card yields four lessons for future EU measures: traceability and data quality are decisive; state representation must be proceduralised; domestic compliance tiering is needed to avoid risk homogenisation; and EVFTA mechanisms should be used for cooperation and accountability rather than general messaging.

These lessons are directly transferable to CBAM, deforestation due diligence, product passports, and the implementation of sustainability due diligence. Technical cooperation should focus on data standards, traceability architecture, measurement methodologies, and verification capacity. Where implementation generates disproportionate or poorly explained burdens, Vietnam should be able to move from stakeholder submissions to government consultations and, where the EVFTA permits, independent expert assessment.

7.3. Concrete Implementation Proposals for Domestic and EU-Linked Legal Instruments

The reform proposal should be operationalised through specific legal and institutional instruments. First, Vietnam should adopt a government decree or a prime ministerial decision under the Law on Foreign Trade Management to establish a Single Window Export Spillover Response mechanism. The instrument should identify the responsible focal agency, inter-agency coordination duties, admissibility criteria for exporter submissions, standard dossier templates, confidentiality rules, timelines for acknowledgement and reasoned response, and escalation routes to EVFTA dialogue, technical consultation, or trade-remedy coordination where appropriate.⁶⁹

Second, Vietnam should create an enterprise-facing data access and traceability pathway by implementing the Law on Environmental Protection and the Law on Access to Information

69 Law of the Socialist Republic of Vietnam No 05/2017/QH14 (n 12) arts 108–110.

through sectoral data portals to support export compliance. These portals should provide reusable, auditable, and non-confidential data relevant to traceability, environmental permits, catch documentation and sustainability verification, while protecting confidential business information. This would turn public environmental information from a passive disclosure regime into a compliance-supporting infrastructure.⁷⁰

Third, the EU and Vietnam should adopt a non-binding EVFTA procedural note on exporter spillover submissions. It could explain how Domestic Advisory Groups, the Joint Forum and consultations receive aggregated evidence, publish non-confidential issue summaries, record follow-up, and identify when technical cooperation or expert assessment is justified.⁷¹

Fourth, EU implementing guidance for environmental market measures should recognise feedback from third-country suppliers in data-intensive regimes. In the context of product passports, deforestation due diligence, sustainability reporting and due diligence simplification, guidance should clarify how non-EU suppliers can correct data, document compliance improvements, and rely on proportionate information requests, especially where EU policy itself seeks to reduce excessive value chain burdens. This EU-side clarification would complement, rather than replace, the Vietnamese single-window mechanism.

8 CONCLUSION

This article reaches five conclusions. First, EU environment-related market measures increasingly operate as market-entry conditions through reporting, traceability, due diligence, risk assessment, and documentation. The exporter problem is therefore procedural as well as substantive: how to obtain reasons, correct data, participate and seek review when market access is affected.

Second, the article broadly defines Vietnamese exporters as Vietnam-based enterprises, processors, traders, and supply-chain participants whose goods or compliance data are used to place products on the EU market. This definition matters because the burden of EU environmental conditionality often falls on actors that are not formal addressees of EU law. The object of analysis is therefore the procedural position of these exporters, not the substantive validity of EU environmental policy.

Third, direct judicial redress before EU courts remains structurally limited. Article 263 TFEU, as interpreted through the Plaumann line of case law and the restricted meaning of regulatory acts, leaves most third-country private exporters without realistic direct standing. Article 267 TFEU and the EU Aarhus Regulation mitigate this gap only partially:

70 Law of the Socialist Republic of Vietnam No 72/2020/QH14 (n 60) arts 114 and 121; Law of the Socialist Republic of Vietnam No 104/2016/QH13 (n 62) arts 8 and 16.

71 EVFTA (n 59) ch 13, arts 13.12 and 13.15-13.17.

the former depends on Member State proceedings, while the latter is primarily designed for environmental public-interest review within EU institutional law.

Fourth, the IUU yellow-card case confirms the procedural addressee-economic bearer misalignment. The EU procedure addresses the third-country state, but documentary burdens, delays, reputational effects, and compliance costs fall on exporters and supply-chain actors. Public sectoral evidence supports broad exposure across the wild-caught seafood export chain, while avoiding a claim that every affected firm can be individually counted.

Fifth, the appropriate response is institutional and procedural. Vietnam should establish a single-window export spillover mechanism, standardised dossiers, time-bound responses, data-access pathways, and EVFTA follow-up practices. These reforms would not create direct EU standing, but would make mediated access to justice more transparent, evidence-based, and accountable.

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Keywords: *access to justice; EU environmental conditionality; Vietnamese exporters; exporter procedural representation; EU market access; IUU yellow card; EVFTA.*

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ЕКОЛОГІЧНА ОБУМОВЛЕНІСТЬ ЄВРОПЕЙСЬКОГО СОЮЗУ
ТА ОПОСЕРЕДКОВАНИЙ ДОСТУП ДО ПРАВОСУДДЯ ДЛЯ В'ЄТНАМСЬКИХ ЕКСПОРТЕРІВ:
ОБМЕЖЕННЯ ЩОДО ПРАВА НА ПОЗОВ ВІДПОВІДНО ДО СТАТТІ 263 ДФЄС
ТА УРОКИ «ЖОВТОЇ КАРТКИ» ННН РИБАЛЬСТВА

Нгуєн Хуу Кхань Лінь

АНОТАЦІЯ

Вступ. Європейський Союз (ЄС) усе частіше використовує екологічну обумовленість як метод управління доступом до ринку через систему прикордонного контролю, вимоги щодо контролю походження продукції, звітність у сфері сталого розвитку, належну обачність (*due diligence*) у ланцюгах постачання, а також оцінку ризиків на рівні конкретних країн. Хоча більшість цих зобов'язань формально покладаються на операторів усередині ЄС, витрати на забезпечення відповідності та тягар доказування часто перекладаються на постачальників із третіх країн вище за ланцюгом постачання.

Для в'єтнамських експортерів це створює процедурний розрив: вони можуть зазнавати комерційної, репутаційної та дискримінаційної (пов'язаних із витісненням з ринку) шкоди, залишаючись при цьому на периферії процесів ухвалення рішень та механізмів перегляду, які визначають доступ до ринку ЄС. У статті цей розрив досліджується крізь

призму доступу до правосуддя, з наголосом на Статті 263 ДФЕС та опосередкованих правових гарантіях.

Методи. У статті застосовано доктринальний правовий аналіз для дослідження обмежень щодо права на позов та можливості судового перегляду відповідно до Статті 263 ДФЕС, а також окремих інструментів ЄС щодо регулювання доступу до ринку на основі екологічних критеріїв. Використовується підхід правового аналізу в контексті (*law-in-context*), щоб оцінити, як регуляторна архітектура ЄС функціонує через ланцюги постачання та впливає на в'єтнамських експортерів. Процедура винесення ЄС «жовтої картки» В'єтнаму за незаконне, непідзвітне та нерегульоване (ННН) рибальство використовується як наочне тематичне дослідження, оскільки воно чітко демонструє невідповідність між формальним адресатом процедури — третьою країною — та приватними експортерами, які несуть основний операційний та економічний тягар.

Результати та висновки. У статті зроблено висновок, що в'єтнамські експортери функціонують у структурно асиметричному процедурному середовищі. Пряме оскарження в судах ЄС залишається обмеженим через рестриктивну доктрину щодо права на позов, тоді як Стаття 267 ДФЕС пропонує лише умовний, опосередкований шлях, який залежить від судового розгляду в судах держав-членів.

Явище «жовтої картки» ННН рибальства ілюструє, що надання обґрунтувань та участь у процедурі зосереджені тільки на діалозі між Європейською Комісією та державою, тоді як експортери несуть посилений тягар документального підтвердження, забезпечення контролю продукції та репутаційних ризиків.

Автор доходить висновку, що ефективний опосередкований доступ до правосуддя залежить від внутрішньої інституційної архітектури країни. У статті пропонується впровадження механізму реагування на експортні наслідки за принципом «єдиного вікна», стандартизовані шаблони доказів, обмежені в часі вмотивовані відповіді, а також сумісні інформаційні системи відповідності, інтегровані в діалог та подальшу взаємодію в межах Комітету з питань торгівлі та сталого розвитку Угоди про вільну торгівлю між ЄС та В'єтнамом (EVFTA).

Ключові слова. Доступ до правосуддя, екологічна обумовленість ЄС, в'єтнамські експортери, процесуальне представництво експортерів, доступ до ринку ЄС, «жовта картка» ННН рибальства, EVFTA.

TÓM TẮT BẰNG TIẾNG VIỆT*

Bài báo nghiên cứu

ĐIỀU KIỆN HÓA MÔI TRƯỜNG CỦA LIÊN MINH CHÂU ÂU VÀ TIẾP CẬN CÔNG LÝ GIÁN TIẾP ĐỐI VỚI CÁC NHÀ XUẤT KHẨU VIỆT NAM: HẠN CHẾ VỀ TƯ CÁCH KHỞI KIẾN THEO ĐIỀU 263 TFEU VÀ BÀI HỌC TỪ CƠ CHẾ “THẺ VÀNG” IUU

Nguyễn Hữu Khánh Linh

TÓM TẮT

Bối cảnh: Liên minh châu Âu (EU) ngày càng sử dụng điều kiện hóa môi trường như một kỹ thuật quản trị tiếp cận thị trường thông qua kiểm soát biên giới, nghĩa vụ truy xuất nguồn gốc, báo cáo bền vững, thẩm định chuỗi cung ứng và đánh giá rủi ro theo quốc gia. Mặc dù nhiều nghĩa vụ về mặt hình thức được đặt ra đối với các chủ thể vận hành trong EU, chi phí tuân thủ và gánh nặng chứng minh thường được chuyển ngược lên các nhà cung ứng tại nước thứ ba. Đối với các nhà xuất khẩu Việt Nam, điều này tạo ra một khoảng trống thủ tục: họ có thể chịu thiệt hại thương mại, tổn hại uy tín và nguy cơ bị loại khỏi thị trường, trong khi vẫn nằm ở vị trí ngoại vi so với các cấu trúc ra quyết định và rà soát vốn định hình khả năng tiếp cận thị trường EU. Bài viết phân tích khoảng trống này dưới góc độ tiếp cận công lý, tập trung vào Điều 263 Hiệp ước về chức năng của Liên minh châu Âu (TFEU) và các biện pháp bảo đảm mang tính trung gian.

Phương pháp: Bài viết sử dụng phương pháp phân tích giáo lý pháp luật để xem xét các giới hạn về tư cách khởi kiện và khả năng được rà soát tư pháp theo Điều 263 TFEU, cũng như một số công cụ tiếp cận thị trường gắn với môi trường của EU. Bài viết kết hợp phương pháp luật trong bối cảnh nhằm đánh giá cách thức các cấu trúc điều chỉnh của EU vận hành thông qua chuỗi cung ứng và tác động đến các nhà xuất khẩu Việt Nam. Quy trình “thẻ vàng” của EU đối với khai thác hải sản bất hợp pháp, không báo cáo và không theo quy định (IUU) áp dụng đối với Việt Nam được sử dụng như một nghiên cứu trường hợp minh họa, vì trường hợp này thể hiện rõ sự không tương thích giữa chủ thể thủ tục chính thức — quốc gia thứ ba — và các nhà xuất khẩu tư nhân là những chủ thể phải gánh chịu các chi phí vận hành và kinh tế.

Kết quả và Kết luận: Bài viết chỉ ra rằng các nhà xuất khẩu Việt Nam hoạt động trong một môi trường thủ tục có tính bất đối xứng về cấu trúc. Khởi kiện trực tiếp trước tòa án EU vẫn bị giới hạn bởi học thuyết nghiêm ngặt về tư cách khởi kiện, trong khi Điều 267 TFEU chỉ mở ra một con đường gián tiếp và phụ thuộc vào việc có thủ tục tố tụng trước tòa án của quốc gia thành viên. Trường hợp “thẻ vàng” IUU cho thấy việc đưa ra lý do và sự tham gia thủ tục chủ yếu tập trung trong đối thoại giữa Ủy ban châu Âu và quốc gia liên quan, trong khi các nhà xuất khẩu

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phải gánh chịu yêu cầu gia tăng về chứng từ, truy xuất nguồn gốc và rủi ro uy tín. Bài viết kết luận rằng tiếp cận công lý gián tiếp một cách thực chất phụ thuộc đáng kể vào thiết kế thể chế trong nước. Trên cơ sở đó, bài viết đề xuất thiết lập cơ chế một cửa để ứng phó với tác động lan tỏa đối với xuất khẩu, mẫu hóa chứng cứ tuân thủ, quy định nghĩa vụ phản hồi có lý do trong thời hạn xác định và xây dựng hệ thống thông tin tuân thủ có khả năng liên thông, gắn với đối thoại và cơ chế theo dõi trong khuôn khổ Chương Thương mại và Phát triển bền vững của Hiệp định Thương mại tự do Việt Nam – Liên minh châu Âu (EVFTA).

Từ khóa: Tiếp cận công lý; điều kiện hóa môi trường của EU; nhà xuất khẩu Việt Nam; đại diện thủ tục của nhà xuất khẩu; tiếp cận thị trường EU; thẻ vàng IUU; EVFTA.