

## Academic Paper - CETA Environmental Protection Not Enforceable

Key quote: ***“Why standards protecting investors should be enforceable, contrary to standards protecting the environment, remains difficult to grasp.”***

In this chapter on CETA from the academic law text book *The Evolving Nature of EU External Relations Law*, W. Th. Douma of the Centre for European and International Law in The Hague, goes through CETA’s Sustainable Development (Chapter 22), Trade and Labour (Chapter 23) and Trade and Environment (Chapter 24). (See: [here - the relevant chapter starts on page 73 of the PDF](#))

Here’s an extract where he explains that the environmental protections in the EU-Canada free trade and investment agreement, CETA, are in fact aspirational and are not legally enforceable.

Of the provision in CETA’s **Chapter 22 on Sustainable Development**, he says:

⇒ “they do not actually create concrete legal obligations”.

On the provisions in CETA’s Chapter 23 (Trade and Labour) and Chapter 24 (Trade and Environment) he says that:

⇒ “They recognise that it is “not appropriate to weaken or reduce the levels of protection” provided for by their labour laws and environmental legislation in order to “encourage trade or investment”. Such behaviour is thus labelled ‘inappropriate’, but apparently **not so inappropriate that it is actually prohibited under CETA.**

Key quote: ***“CETA does not prohibit non-enforcement of environmental legislation per se: it is only contrary to the agreement if this is done to encourage trade and investment” [page 83].***

He goes on to say:

“Under Chapters 23 and 24 of CETA, the Parties may only invoke the rules and procedures provided for in these chapters. CETA’s general dispute resolution procedures do not apply. Both chapters contain the possibility of consultations in the case of differences of opinion. If the dispute is not resolved, a Panel of Experts may be asked to draw up recommendations. Although article 23.11(3) CETA suggests otherwise by underlining that “the obligations included under this Chapter are binding and enforceable through the procedures for the resolution of disputes provided in Article 23.10”, ***the dispute resolution on labour and environmental issues lacks a ‘stick’ in the form of sanctions. It is also in stark contrast to the possibility for investors that can bring their claims against states or the EU through ICS.*** Why standards protecting investors should be enforceable, contrary to standards protecting the environment, remains difficult to grasp.” [page 89-90].

### **Reference:**

Douma, W. T. (2021) [‘CETA: Gold Standard or Greenwashing?’](#), in Douma, W. T., Eckes, C., Van Elsuwege, P., Kassoti, E., Ott, A. & Wessel, R. A. (eds), *The Evolving Nature of EU External Relations Law*. The Hague: Asser Press. Available at: