

SUSTAINABILITY CLAUSES IN COMMERCIAL CONTRACTS: INTERNATIONAL EXPERIENCE AND LESSONS FOR VIETNAM

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Abstract

Research purpose:

This study analyses the role of sustainability clauses (SCCs) in commercial contracts, reviews international practices, and proposes legal orientations for Vietnam.

Research motivation:

While SCCs have been widely studied and applied in jurisdictions such as France, Germany, the United Kingdom, and the United State, Vietnam still lacks a unified legal framework and comprehensive academic research. This creates a gap in assessing their potential for promoting sustainable development through commercial contracts.

Research design, approach, and method:

The research employs a qualitative legal methodology, combining doctrinal legal analysis, comparative law, and gap analysis to assess the regulatory landscape of SCCs.

Main findings:

SCCs are evolving from “soft law” instruments into “hard law” obligations and are increasingly integrated into commercial contracts. International experience demonstrates multiple forms of SCCs, while Vietnam continues to lack both legal coherence and scholarship. The paper proposes orientations to address this gap.

Practical/managerial implications:

Vietnam should progressively institutionalize SCCs through both subordinate legislation and statutory law, issue model clauses to support businesses in proactively negotiating and standardizing sustainability standards in commercial contracts, and strengthen the capacity of courts and arbitral institutions in resolving related disputes.

Keywords: Sustainability clauses, commercial contracts, ESG, freedom of contract, sustainable development, corporate social responsibility

1. INTRODUCTION

In the context of globalization and international economic integration, sustainable development has become an urgent requirement, closely associated with the implementation of ESG (Environment, Social, Governance) goals. Alongside national legislation and international commitments, commercial contracts are increasingly recognized as an important legal instrument to realize sustainability values through sustainability clauses (SCCs). Globally, the European Union has adopted the Corporate Sustainability Due Diligence Directive (CSDDD), implemented the Carbon Border Adjustment Mechanism (CBAM), and inspired the emergence of numerous laws and model sustainable contracts in countries such as France, Germany, the United Kingdom, and the United States.

SCCs have been widely studied and applied in diverse forms and have already appeared in at least two international litigation and arbitral awards. However, in Vietnam, the concept of SCCs remains relatively new, has not been comprehensively addressed in legal scholarship, and is not governed by a dedicated legal framework. Vietnamese enterprises mostly approach SCCs passively, often under pressure from foreign partners in cross-border commercial contracts.

For this reason, the present study systematically explores SCCs from the perspective of legal science and comparative law. The authors not only analyze the legal foundations and experiences of selected jurisdictions but also identify common types of SCCs in cross-border commercial practice. On this basis, the paper highlights the legal gaps in Vietnam and proposes directions for legal reform to enable Vietnamese enterprises to proactively integrate SCCs into their commercial contracts, thereby enhancing their competitiveness.

This paper makes three key contributions to legal scholarship and the practice of commercial contracting:

1. Theoretical contribution. The study systematizes and clarifies the concept, characteristics, and functions of sustainability clauses (SCCs) in commercial contracts. It traces the evolution of SCCs from their origins as voluntary soft law mechanisms to their transformation into binding hard law obligations, which are now increasingly embedded directly into commercial contracts on the basis of the principle of freedom of contract. Nevertheless, the content of these clauses remains subject to limitations imposed by environmental, ethical, and human rights standards.
2. Contribution to international practice. Building on the objectives of SCCs, the study classifies and analyzes eight representative types of clauses: (i) sustainable warranty clauses; (ii) sustainable due diligence clauses; (iii) sustainable performance metrics, monitoring and reporting clauses; (iv) sustainable compliance requirements clauses; (v) sustainable contractual remedies clauses; (vi) sustainable indemnity clauses; (vii) sustainable termination clauses; and (viii) sustainable contractual clauses in litigation and international arbitration. This analysis draws on statutory provisions, case law, and international model contracts from France, Germany, the United Kingdom, and the United States. Through this framework, the paper illustrates how SCCs have been operationalized in global contractual practice.
3. Contribution to the Vietnamese context. Based on an examination of the existing legal gaps, the paper proposes policy orientations for Vietnam aimed at gradually domesticating and embedding ESG obligations. Specifically, it recommends the development of a unified legal framework, the issuance of model clauses as reference tools for businesses, the enhancement of judicial, arbitral, and professional capacities in ESG-related contract enforcement, and the establishment of financial, technical, and training support mechanisms for enterprises—particularly export-oriented firms—to proactively integrate SCCs into their commercial contracts and thereby strengthen their competitiveness in the international market.

2. LITERATURE REVIEW

In legal scholarship, the foundation of sustainability clauses (SCCs) derives from the principle of freedom of contract, which allows parties to freely determine the content of their agreements (Hoang, 2025). However, in order to ensure that contractual provisions do not violate standards relating to ethics, human rights, and the environment, each jurisdiction is required to impose certain limits on the principle of contractual freedom through legal instruments.

Numerous studies have systematized the development of sustainability clauses (SCCs) in international contract practice. (Mitkidis, 2015) and (EcoVadis & Mutandi, 2018) identify several key forms of SCCs, including warranty clauses, due diligence clauses, compliance requirements, remedies and termination clauses, indemnity clauses, as well as “cascade” mechanisms requiring subcontractors to comply.

At the case law level, two disputes illustrate how SCCs have begun to gain judicial and arbitral recognition: (MDW Holdings Limited v. Norvill, 2022) demonstrates that breaches of environmental warranties may give rise to liability for damages, while (Solvay Specialty Polymers Italy v. Edison S.p.A., 2021) shows that international arbitration is willing to uphold the binding nature of ESG-related obligations. Accordingly, SCCs have evolved from voluntary policy declarations into legally enforceable contractual provisions. In addition, the IBA (2023) report records a growing trend of contractual disputes related to ESG, reflecting a shift from policy-based standards to legal norms.

In the international context, this trend has been reinforced by specific statutes such as France’s Vigilance Law (2017), Germany’s Supply Chain Due Diligence Act – LkSG (2021), the United Kingdom’s Modern Slavery Act (2015), and California’s Supply Chain Transparency Act (2012). These instruments share a common feature: transforming CSR standards, which were previously voluntary, into obligations that are verifiable, reportable, and enforceable. In particular, the adoption of the EU Corporate Sustainability Due Diligence Directive (CSDDD) and the Carbon Border Adjustment Mechanism (CBAM) further underscores the trend of SCCs becoming binding legal tools that condition corporate access to markets.

In addition to legislative instruments, model contract clauses have also played an important role in operationalizing SCCs. For instance, the ABA Model Contract Clauses (MCCs 2.0) (ABA, 2021) provide standardized ESG provisions for supply chain agreements. In commercial practice, SCCs have been directly incorporated into numerous contracts such as the Costco Wholesale Basic Supplier Agreement (Costco Wholesale & SONDORS, 2020), the Corning Supply Agreement (Incorporated & Cesca Therapeutics Inc., 2019), and other contracts published through the U.S. Securities and Exchange Commission system, thereby demonstrating how sustainability commitments are translated into concrete obligations in commercial contracts.

In Vietnam, regulations concerning sustainable development remain dispersed across various legal instruments, including the Commercial Law 2005, the Civil Code 2015, the Environmental Protection Law 2020, the Labor Code 2019, and the Investment Law 2020. While these instruments recognize the principle of freedom of contract, they also impose restrictions in areas such as environmental protection, labor standards, and social security (Hoang, 2025). Vietnam has also expressed its orientation toward pursuing a green economic model, as reflected in the Power Development Plan VIII (Thang, 2025); however, this remains at the level of macro policy and lacks systematic analyses of SCCs from both academic and contractual practice perspectives.

Thus, the literature review indicates that: (i) internationally, a relatively clear theoretical and practical foundation for SCCs has been established, combining legal doctrine, statutory law, and case law; (ii) in Vietnam, significant gaps remain in both legislation and scholarship; and (iii) deep integration through FTAs such as the EVFTA and CPTPP is creating pressure for Vietnam to institutionalize ESG obligations through SCCs. This gap provides the basis for the present study to further explore, analyze, and propose legal orientations for Vietnam.

3. METHODOLOGY

This paper adopts a qualitative legal research methodology combined with comparative law analysis. The research approach is developed across three main pillars: (i) a doctrinal study of legal instruments and international case law concerning sustainability clauses (SCCs); (ii) a comparative analysis of selected jurisdictions' experiences with SCCs; and (iii) an examination of legal gaps within the Vietnamese context.

First, the doctrinal study focuses on key legal instruments, policies, and landmark cases, including France's *Loi de Vigilance* (2017), Germany's *Lieferkettensorgfaltspflichtengesetz* – LkSG (2021), the United Kingdom's *Modern Slavery Act* (2015), and the United States' *Dodd–Frank Act* Section 1502 (2010), as well as international arbitral and judicial decisions such as (*Solvay Specialty Polymers Italy v. Edison S.p.A.*, 2021) and (*MDW Holdings Limited v. Norvill*, 2022).

Second, the comparative analysis is conducted on the basis of synthesizing the legal frameworks and contractual practices in Europe, the United States, and several other jurisdictions, where SCCs have evolved from “soft law” mechanisms into binding “hard law” obligations. The study also draws on international instruments such as the ABA Model Contract Clauses (MCCs 2.0), the OECD Guidelines, the ILO Declarations, and the UN Guiding Principles on Business and Human Rights to illustrate the trend toward harmonizing ESG obligations in cross-border commercial contracts.

Third, with respect to Vietnam, the study applies a legal gap analysis by comparing the existing legal framework (including the Commercial Law 2005, the Civil Code 2015, the Law on Environmental Protection 2020, and the Labor Code 2019) with international experiences. The analysis reveals that Vietnam currently lacks a unified legal framework on SCCs, thereby providing the basis for proposing legal orientations aimed at institutionalizing sustainable development obligations in commercial contracts.

3.1. Research Procedure

In order to operationalize the methodological framework outlined above, the research procedure was structured into four steps, as detailed below.

3.1.1. Search strategy and databases

The study collected materials exclusively from authoritative and reputable sources, including national and international legal databases, officially published case law, as well as grey literature and reports from international organizations such as the OECD, ILO, ABA. This approach was designed to ensure coverage of both binding legal texts and practical contractual instruments.

3.1.2. Selection criteria

Statutes, cases, and model contracts were selected on the basis of three criteria: (i) a direct relevance to sustainability clauses in commercial contracts; (ii) their capacity to reflect legal trends or contractual practices that either influence or are influenced by sustainability standards; and (iii) their representativeness within the four jurisdictions under analysis, namely Germany, France, the United Kingdom, and the United States.

3.1.3. Timeframe

The research focused on the period from 2010 to 2025, a timeframe in which sustainability clauses have undergone significant regulatory and contractual development, with particular emphasis on the adoption of the *Loi de vigilance* in France (2017) and the *Lieferkettensorgfaltspflichtengesetz* in Germany (2021).

3.1.4. Coding and analysis

Legal texts, contracts, and case law were analyzed through thematic coding. The principal themes included the types of sustainability clauses (warranty, due diligence, compliance, remedies, indemnity, termination, performance metrics, and

dispute resolution), their legal foundations, and enforcement mechanisms. Comparative analysis was then employed to identify similarities and differences across jurisdictions, thereby drawing lessons and policy implications for Vietnam.

4. RESULTS AND DISCUSSION

4.1. Conceptual and Legal Foundations of Sustainability Clauses in Commercial Contracts

4.1.1. Definition of sustainability clauses in commercial contracts

Sustainability clauses (SCCs) do not constitute a uniform concept; however, in legal scholarship and international contract practice, SCCs can be characterized by several distinctive features as follows:

First, sustainability clauses are understood as contractual provisions linked to environmental, social, and governance (ESG) obligations, which are not directly related to the core economic duties of delivery or payment (Moultotos, 2024). According to contract theory, “A contract is an economic tool used by a principal to incentivize one or more agents to exert effort on her behalf” (Duetting, Feldman, & Talgam-Cohen, 2024), for instance, by establishing rights and obligations regarding the carriage of goods or the sale of goods, where the principal delegates tasks to the agent. However, once sustainability clauses are incorporated, the contract may change in nature. These clauses embed provisions that give effect to public standards. In other words, the contract is now required not only to fulfill its original economic objectives but also to realize sustainability values that would otherwise be recognized under public law or public policy. This demonstrates that SCCs operate as “supplementary obligations,” designed to integrate sustainability standards into commercial relations. For example, in an international textile supply agreement, the buyer may expressly stipulate: “The supplier undertakes not to employ underage workers.” Such a clause may stand on equal footing with core obligations such as delivery and payment, thereby becoming a central commitment within the commercial contract.

Second, SCCs may explicitly stipulate the parties’ responsibilities concerning ESG issues or be incorporated by reference to external instruments such as codes of conduct. The obligation “not to employ underage workers” mentioned above may be understood as an explicit clause. Meanwhile, the contract may also incorporate by reference a code of conduct; for instance, the buyer may include a provision stating: “The supplier shall comply with Group A’s Code of Conduct on Sustainability, which covers standards on CO₂ emissions, safe working conditions, and freedom of association.” In such case, ESG standards contained in the code of conduct are contractualized and thereby become binding obligations on the seller.

Third, SCCs serve as mechanisms for transferring public values, such as human rights, environmental protection, and labor conditions, into private contractual relations. These clauses establish minimum social and environmental standards that contracting parties are required to comply with during performance (Colucci, 2023). Survey results further indicate that the ESG aspects most frequently incorporated into corporate social responsibility (CSR) clauses include environmental protection, human rights, labor standards, and anti-corruption measures (EcoVadis & Mutandi, 2018).

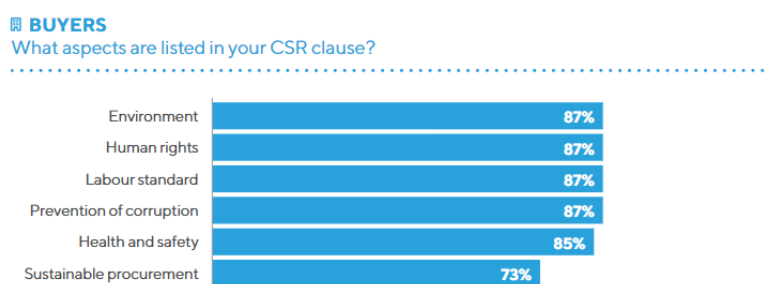


Fig. 1. Aspects commonly included in CSR clauses

(Source: (EcoVadis & Mutandi, 2018))

Fourth, SCCs may be accompanied by monitoring and sanctioning mechanisms to ensure their effective enforcement. Because the very purpose of sustainability clauses is to guarantee that sustainability objectives are implemented in practice, the parties may embed frameworks that allow one party to verify compliance during performance or to impose consequences when breaches occur. Such clauses operate with a dual function: they are preventive, by encouraging compliance before violations arise, and corrective, by providing remedies once violations have been identified.

Synthesizing these characteristics, sustainability clauses in commercial contracts may be defined as follows: SCCs are contractual provisions designed to embed ESG standards into commercial relations, thereby “contractualizing” values such as environmental protection, social responsibility, and governance, while potentially being reinforced by monitoring and sanctioning mechanisms to secure compliance.

4.1.2. Distinction from other contractual content

Fundamentally, contractual provisions are often categorized as either active or passive. Active clauses require a positive action from the parties, typically involving effort and associated costs to implement. In contrast, passive clauses usually take effect only when an active clause is not performed. Unlike ordinary contractual provisions, sustainability clauses (SCCs) cannot be neatly classified as purely active or passive. Instead, they often combine elements of both categories and may evolve over the course of the contractual lifecycle (Mitkidis, 2015).

Regarding the placement of SCCs within contracts, these clauses may appear in the section of *general provisions*, such as “Definitions,” “Governing Principles,” or “General Commitments.” In this context, the parties may directly reference a code of conduct, ESG standards, or relevant international conventions. Incorporating SCCs into the definitional or introductory provisions serves to establish an overarching normative framework for the entire contract, thereby providing a basis for interpreting specific obligations throughout its performance.

In addition, SCCs may be embedded in the section on *obligations of the parties*. In this form, they take on the nature of an “active clause,” requiring one party to undertake positive actions, such as submitting periodic ESG reports, maintaining an environmental management system in accordance with ISO 14001, or monitoring subcontractors. Positioning SCCs in this part of the contract transforms them into core contractual obligations, thereby closely linking them with traditional liability mechanisms.

Third, SCCs may also be incorporated into *remedies and termination clauses*. In international supply chain contracts, it is common to find provisions that allow the buyer to unilaterally terminate the contract if the seller breaches standards relating to human rights, environmental protection, or anti-corruption. In this form, SCCs function as “passive clauses”, since their effect is triggered only upon a breach.

Fourth, SCCs may be designed as *cascading clauses*, requiring first-tier suppliers to pass on sustainability obligations to their subcontractors.

In sum, the placement of SCCs in different parts of a contract reflects three levels of legal binding force: (i) establishing general standards (*general provisions*), (ii) stipulating specific obligations (*obligations of the parties*), and (iii) setting out legal consequences (*remedies/termination*). This also enables SCCs to perform a dual function: both preventive and normative in orientation, and coercive in the event of a breach.

4.1.3. The development of sustainability clauses in commercial contracts

The development of sustainability clauses (SCCs) in commercial contracts can be divided into three main stages:

(i) The “soft law” stage, the origin from Codes of Conduct..

During the initial period (1970s–2000), sustainability standards primarily emerged in voluntary forms, such as the OECD Guidelines, ILO Declarations, and corporate codes of conduct (EcoVadis & Mutandi, 2018). These instruments served as guiding frameworks without creating binding legal obligations. They were regarded as mechanisms of self-regulation, assisting companies in managing environmental and social risks across supply chains.

(ii) The “hardening of soft law” stage, the process of legalization.

Since the early 2000s, states and regional organizations have progressively transformed corporate social responsibility (CSR) standards from voluntary commitments into legally binding obligations. A prominent example is the *EU Non-Financial Reporting Directive 2014/95/E*, which requires large companies to disclose non-financial (ESG) information in their annual reports. Statutes such as the *California Transparency in Supply Chains Act* (2012), *UK Modern Slavery Act* (2015), *French Duty of Vigilance Law* (2017) and *Netherlands Child Labour Due Diligence Law* (2017) further illustrate the trend of “hardening” CSR obligations through contractual mechanisms.

The evolution from “soft law” to “hard law” in the field of corporate sustainability will be illustrated through the following timeline (EcoVadis & Mutandi, 2018).



Fig. 2. Development from “Soft Law” to “Hard Law” in Sustainability Clauses

(Source: (EcoVadis & Mutandi, 2018))

(iii) The stage of “contractualization” – embedding sustainability directly into commercial contracts.

In the present stage, sustainability obligations are increasingly incorporated directly into commercial contracts. Examples include clauses on reporting and auditing duties, as well as the “cascade” mechanism, under which compliance obligations are not limited to the principal contractor but are extended and transferred to subcontractors throughout the entire supply chain.

The contractualization of SCCs can be illustrated through the vigilance cycle (EcoVadis & Mutandi, 2018).



Fig. 3. Vigilance cycle in the contractualization of CSR clauses.

(Source: (EcoVadis & Mutandi, 2018))

4.2. International Practices on Sustainability Clauses in Commercial Contracts

Depending on their intended purpose, sustainability clauses in commercial contracts can be categorized into various types. The following are the most common forms of sustainability clauses: (i) Sustainable warranty clauses; (ii) Sustainable due diligence clauses; (iii) Sustainable Performance Metrics, Monitoring and Reporting Clauses; (iv) Sustainable Compliance Requirements Clauses; (v) Sustainable Contractual Remedies Clauses; (vi) Sustainable Indemnity Clauses; (vii) Sustainable Termination Clauses; (viii) Sustainable contractual clauses in litigation and international arbitration.

The authors will analyze each type of sustainability clause in commercial contracts across selected jurisdictions and, from this, draw practical lessons.

First, *sustainable warranty clauses* represent contractual commitments or assurances related to sustainability, the breach of which may give rise to claims for damages. Such clauses may cover issues relevant to the buyer, including applicable legal and regulatory requirements within a given sector or jurisdiction, risks identified during due diligence, and matters arising between the signing and completion of the transaction (IBA, 2023).

For example, in the United States, the *Costco Wholesale Basic Supplier Agreement* (2019), Article 10.1, provides that: “Supplier represents and warrants that any products delivered to Costco do not contain any Conflict Minerals... Supplier shall produce, upon request, evidence of its due diligence measures undertaken to eliminate the use of Conflict Minerals in its supply chain.”

In the United Kingdom, the *Modern Slavery Act 2015*, Section 54 on *Transparency in Supply Chains*, stipulates that: “A commercial organisation within subsection (2) must prepare a slavery and human trafficking statement... The slavery and human trafficking statement may include information about... its policies in relation to slavery and human trafficking; its due diligence processes in relation to slavery and human trafficking in its business and supply chains”. For instance, companies engaged in garment manufacturing, agriculture or construction, where the risk of forced labor is considered to be high, may require their suppliers to provide a warranty confirming that no forced labor or child labor is used in their

operations.

Second, sustainable due diligence clauses are contractual provisions that typically require assessments based on ESG criteria, workplace health and safety inspections, evaluation of climate change-related risks, and other forms of review designed in line with the Equator Principles or the UN Guiding Principles on Business and Human Rights. In addition, (IBA, 2023) reports that 28.9 percent of surveyed participants had entered into contracts containing clauses that mandate the implementation of ESG due diligence processes.

For example, the clause on “Conflict Minerals” in the Costco Wholesale Basic Supplier Agreement requires suppliers not only to provide a warranty but also to carry out due diligence on the origin of minerals and to submit evidence upon request. (SEC, 2020).

In national practice, Germany codified the obligation of sustainable due diligence through the Lieferkettensorgfaltspflichtengesetz (LkSG) of 2021. Under this law, companies are required to conduct appropriate risk analyses to identify, prevent and mitigate risks relating to human rights and the environment within their own operations as well as at the level of their direct suppliers (Lieferkettensorgfaltspflichtengesetz, 2021, art. 5). In practice, to ensure compliance with the LkSG, German companies may operationalize this obligation through due diligence clauses in international supply contracts, which compel suppliers to carry out risk assessments and provide supporting reports when requested.

In France, the *Loi de vigilance* of 2017 requires companies to establish and implement a “plan de vigilance” that includes monitoring measures designed to identify risks and prevent serious violations of human rights, fundamental freedoms, human health and safety, and the environment. These obligations extend not only to the company’s own activities and those of entities it controls but also to the operations of subcontractors and suppliers with which it maintains an established commercial relationship, whenever those activities are connected to that relationship (*Loi n° 2017-399*, 2017, art. 1).

Third, sustainable performance metrics, monitoring and reporting clauses can be understood as provisions that establish key performance indicators together with mechanisms for supervision and periodic reporting in order to track compliance with sustainability commitments under the contract, such as ESG obligations. This type of clause reflects a shift from a mere commitment to comply toward obligations that are measurable and verifiable. In practice, however, such clauses are still not widely used in commercial contracts.

Fourth, sustainable compliance requirements clauses can be understood as provisions that oblige one party to adhere to the laws, international standards, or the internal codes of conduct of the other party, particularly in relation to sustainability standards such as ESG.

For instance, the supplier code of conduct governing procurement activities of the UK Department of Health and Social Care provides a broad ESG based compliance commitment in relation to human rights and workforce matters. The supplier code requires that “[the supplier and its] sub-contractors...ensure that slavery, including forced and compulsory (bonded) labour and human trafficking are not present in [its]business and operations.” The code further calls for the supplier to: “abide by the principles of the United Nations’ Global Compact, United Nations Universal Declaration of Human Rights, 1998 International Labour Organisation Declaration on Fundamental Principles and Rights at Work.” (IBA, 2023).

Fifth, sustainable contractual remedies clauses are designed to establish remedial actions in situations where a party breaches its sustainability obligations. Unlike warranty clauses or compliance clauses, remedies clauses focus on the legal consequences and the mechanisms for addressing breaches once they have occurred. The purpose of these remedial measures is to restore, as far as possible, the situation that would have existed had the negative impacts not taken place.

According to the *Accord on Fire and Building Safety in Bangladesh*, factories are required to implement corrective action plans based on the recommendations of independent inspectors, and in cases where remediation is refused, the brand is entitled to terminate the business relationship (WSR, 2019).

Similarly, in Germany, when a violation of human rights or environmental standards is identified, companies are required to take immediate remedial measures (Abhilfemaßnahmen). These measures may include developing an action plan with a specific timeline, engaging in cooperation within industry initiatives, or temporarily suspending the business relationship. Termination of the relationship is permitted only when other measures have failed (Lieferkettensorgfaltspflichtengesetz, 2021, art. 7).

However, according to (IBA, 2023), only 18.8 percent of organizations reported that their contracts contained remediation clauses, while 36.2 percent confirmed that they did not. This indicates that although international models and national legislation have provided momentum, contractual remedies clauses in the field of ESG have not yet been widely adopted in practice.

Sixth, sustainable indemnity clauses are designed to require one party to compensate the other for damages arising from a breach of sustainability commitments such as ESG obligations. In this sense, when the parties fail to comply with

sustainability standards, these clauses allow the economic burden of the breach to be shifted to the other party, thereby serving as a mechanism for risk allocation.

In practice, this type of clause has not yet become widespread. Only 17.4 percent of organizations confirmed that they use indemnity clauses for ESG obligations, while 37.7 percent reported that their contracts do not contain such provisions (IBA, 2023).

In the United States, the Dodd–Frank Wall Street Reform and Consumer Protection Act, Section 1502 (2010), requires listed companies to disclose the origin of so-called “3TG” minerals, namely tantalum, tin, tungsten, and gold. In practice, to ensure compliance with this requirement, many businesses have incorporated indemnity clauses into their supply contracts. For example, Article 11 of the Corning Inc. Supplier Agreement provides that the supplier is liable for all fines, costs, and losses arising from a breach of obligations related to conflict minerals (Incorporated & Cesca Therapeutics Inc., 2019). In another field, Article 7 of the Costco Wholesale Basic Supplier Agreement applies a similar mechanism in supply contracts by requiring suppliers to indemnify the company for any losses or costs arising from breaches of obligations concerning data security and information protection. (Costco Wholesale & SONDORS, 2020).

In addition, the sample contracts of the ABA Model Contract Clauses (MCCs 2.0) illustrate a typical form of indemnity in supply chain agreements. Under these provisions, suppliers are obliged to “indemnify, defend, and hold harmless the buyer” against any losses, costs, or legal liabilities arising from ESG violations (ABA, 2021). This indicates that indemnity clauses go beyond the mere compensation of direct damages and function as a comprehensive risk prevention tool within the context of global supply chains.

Seventh, Sustainable Termination Clauses “offer contracting parties the opportunity to provide for termination in the event of severe ESG adverse impacts or where there is an alternative that helps develop better improve environmental, social and governance practices” (IBA, 2023). In other words, termination clauses constitute the strictest enforcement mechanism among sustainability clauses, allowing the contractual relationship to be terminated when serious violations of human rights, the environment, or governance are identified, or when a party shows no genuine willingness to remedy the breach.

In practice, (WSR, 2019) explicitly provided that: “Terminate business relations with suppliers that refused to address safety violations identified by Accord inspectors. Such economic consequences for non-compliance are critical to enforcement of the agreement at the factory level.” This provision demonstrates that termination is not merely a legal option but also an enforcement tool designed to ensure that suppliers comply with mandatory safety measures.

In Germany, the Lieferkettensorgfaltspflichtengesetz (LkSG) of 2021, Section 7 (Abhilfemaßnahmen), expressly provides that a company may terminate a business relationship if it identifies severe violations of human rights or environmental standards that cannot be remedied by other measures. In this way, termination has been codified as a measure of last resort to ensure compliance with ESG requirements across the entire supply chain.

Finally, sustainable contractual clauses in litigation and international arbitration refer to provisions in contracts that allow parties to resolve disputes concerning ESG obligations through judicial or arbitral mechanisms. These clauses create the possibility of a “judicialization” of sustainability standards, enabling courts or arbitral tribunals to examine, evaluate, and adjudicate disputes arising from ESG-related commitments (IBA, 2023).

Recent case law demonstrates that courts and arbitral tribunals are increasingly willing to recognize disputes involving ESG obligations. The case of (MDW Holdings Limited v. Norvill, 2022) illustrates the enforceability of environmental warranties in share purchase agreements (SPAs). MDW Holdings Limited entered into an SPA to acquire the entire share capital of G. D. Environmental Services Limited (GDE), a company engaged in waste management, including hazardous waste. Prior to signing, the buyer conducted a due diligence process. However, GDE failed to disclose ongoing breaches of discharge permits and affirmatively represented full compliance with environmental laws. Subsequent proceedings revealed that GDE had persistently exceeded discharge limits and even provided misleading information to regulators. The court held that both the environmental warranties and the general compliance warranties under the SPA had been breached, and awarded damages against GDE.

Similarly, in (Solvay Specialty Polymers Italy v. Edison S.p.A., 2021) before an ICC arbitral tribunal, Solvay acquired shares in Agora S.p.A., a subsidiary of Edison, through an SPA in which Edison warranted that it and its subsidiaries were in “substantial compliance” with applicable environmental laws. Solvay alleged that Edison and its subsidiaries had discharged hazardous substances at the Spinetta and Bussi sites, causing soil and groundwater contamination, while concealing audit reports evidencing such pollution. The tribunal concluded that Edison had breached its environmental warranties and reporting obligations under the SPA, and consequently ordered Edison to pay damages to Solvay.

Table 1 presents selected legal provisions on sustainability clauses in commercial contracts in Germany, France. The table highlights representative statutory provisions and enforcement mechanisms, thereby providing a comparative overview that complements the doctrinal and case law analysis in this section.

Table 1. Selected Legal Provisions on Sustainability Clauses in Commercial Contracts in Germany, France

		Germany	France
Sustainable warranty clauses	Relevant Legal Provisions	According to Section 6 (4), sentence 2, sentence 4 Act on Lieferkettensorgfaltspflichtengesetz – LkSG, 2021: "(4) The enterprise must lay down appropriate preventive measures vis-à-vis a direct supplier, in particular: 2. contractual assurances from a direct supplier that it will comply with the human rights-related and environment-related expectations required by the enterprise's senior management and appropriately address them along the supply chain," "4. agreeing on appropriate contractual control mechanisms and their risk-based implementation to verify compliance with the human rights strategy at the direct supplier."	
	Enforcement Mechanisms and Sanctions	According to Section 6 (5) of the LkSG, 2021: "5. The effectiveness of the preventive measures must be reviewed once a year and on an ad hoc basis if the enterprise must expect a significantly changed or significantly expanded risk situation in its own business area or at its direct supplier, for example due to the introduction of new products, projects or a new business field. Findings from the processing of reports according to section 8 (1) are to be taken into account. The measures must be updated without undue delay if necessary." Failure to comply with this obligation may result in sanctions, including financial penalties and administrative fines under Section 24, or exclusion from the award of public contracts under Section 22 of the LkSG.	
Sustainable due diligence clauses	Relevant Legal Provisions	According to Division 2 of the Lieferkettensorgfaltspflichtengesetz (LkSG), 2021, the due diligence obligations include: Due diligence obligations (Section 3), Risk management (Section 4), Risk analysis (Section 5), Preventive measures (Section 6), Remedial action (Section 7), Complaints procedure (Section 8), Indirect suppliers; authorisation to issue statutory instruments (Section 9), and Documentation and reporting obligation (Section 10).	According to Article 1 of the Loi de vigilance 2017, large companies employing "at least five thousand employees within the company and its direct or indirect subsidiaries with their registered office in France, or at least ten thousand employees in France or abroad" are required to establish and effectively implement a "plan de vigilance" ("vigilance plan"). This plan must include "reasonable vigilance measures to identify risks and prevent serious violations of human rights and fundamental freedoms, the health and safety of persons, and the environment". Its

			scope extends not only to the company and its subsidiaries but also to “subcontractors or suppliers with whom an established commercial relationship is maintained”. The mandatory content of the plan consists of “a risk mapping, regular evaluation procedures, mitigation and prevention actions, a whistleblowing mechanism, and a monitoring system”. Finally, the vigilance plan, together with a report on its effective implementation, must be made public and incorporated into the company’s annual management report.
	Enforcement Mechanisms and Sanctions	Under the Lieferkettensorgfaltspflichtengesetz (LkSG), 2021, the competent authority, BAFA, is entrusted with monitoring compliance. BAFA is empowered to require the submission of reports pursuant to Section 12, to conduct report audits as authorised under Section 13, and to carry out risk-based controls under Subdivision 2 and Subdivision 3. In cases of non-compliance, companies may face sanctions including exclusion from the award of public contracts under Section 22 and administrative fines pursuant to Section 24.	The enforcement mechanism of the Loi de vigilance (2017) is provided in Article L. 225-102-4 II. When a company fails to comply with its obligations, “lorsqu’une société mise en demeure de respecter les obligations prévues au I n’y satisfait pas dans un délai de trois mois à compter de la mise en demeure” (“when a company, after being formally notified, does not comply with the obligations under paragraph I within three months from the notification”), the competent court, at the request of any party with standing, may order the company to comply, “le cas échéant sous astreinte” (“if necessary, subject to a penalty payment”).
Sustainable Performance Metrics, Monitoring and Reporting Clauses	Relevant Legal Provisions	Lieferkettensorgfaltspflichtengesetz – LkSG, 2021 requires enterprises to regularly review the effectiveness of both preventive and remedial measures. According to Section 6(5) and Section 7(4), “the effectiveness of the measures must be reviewed once a year and on an ad hoc basis” if there is a “significantly changed or significantly expanded risk situation,” for example through the introduction of new products, projects, or business fields. The law also requires that “findings from the processing of reports according to Section 8(1) are to be taken into account,” and that measures “must be updated without undue delay if necessary.” In addition,	According to Article L. 225-102-4 of the Loi de vigilance 2017, the vigilance plan must include “a mechanism for monitoring the measures implemented and assessing their effectiveness”). In contractual practice, this provides the foundation for Sustainable Performance Metrics, Monitoring and Reporting Clauses, namely provisions that establish key performance indicators

		Section 10 imposes strict documentation and reporting duties. Enterprises must “continuously document the fulfilment of due diligence obligations” and “keep the documentation for at least seven years.” They must also prepare an “annual report” and publish it “no later than four months after the end of the financial year” on their website, free of charge, for a period of seven years. The report must indicate whether risks or violations were identified, describe the actions taken, explain how effectiveness was assessed, and present conclusions for future measures.	(KPIs) together with mechanisms for supervision and periodic reporting to monitor compliance with ESG commitments.
	Enforcement Mechanisms and Sanctions	According to Section 12, enterprises are required to submit an annual report, while Section 13 grants the competent authority the power to verify whether “the report pursuant to Section 10(2) sentence 1 has been provided” and whether “the requirements according to Section 10(2) and (3) have been complied with”. In cases of non-compliance, companies may face sanctions including exclusion from the award of public contracts under Section 22 and administrative fines pursuant to Section 24.	Similar to sustainable due diligence clauses, when a company, after being formally notified, does not comply with the obligations under paragraph I within three months from the notification, the competent court, at the request of any party with standing, may order the company to comply, if necessary, subject to a penalty payment”.
Sustainable Compliance Requirements Clauses	Relevant Legal Provisions	According to Section 6(2) of the Lieferkettensorgfaltspflichtengesetz (LkSG, 2021), enterprises are required to issue a “policy statement on its human rights strategy,” and this statement must be formally adopted by senior management. The statement must include, among other elements, “the definition, based on the risk analysis, of the human rights-related and environment-related expectations placed by the enterprise on its employees and suppliers in the supply chain.” The law does not limit compliance obligations to the internal structure of the enterprise but extends them to direct suppliers. As provided in Section 6(4), enterprises must ensure “the consideration of human rights-related and environment-related expectations when selecting a direct supplier,” obtain “contractual assurances from a direct supplier” that these expectations will be respected throughout the supply chain, implement “initial and further training measures” to support the contractual assurances, and agree on “appropriate contractual control mechanisms” that are risk-based and designed to verify compliance with the human rights strategy at the direct supplier level. Taken together, these provisions form the legal foundation for sustainable compliance requirements clauses in business contracts. They oblige suppliers not only to respect domestic law but also to comply with international standards and the enterprise’s own codes of conduct on sustainability. In this way, LkSG effectively transforms ESG-related expectations into	According to Article 1 of the Loi de vigilance 2017, the scope of obligations extends beyond the company itself to its subsidiaries, subcontractors, and suppliers with whom it maintains “une relation commerciale établie” (“an established commercial relationship”). Enterprises are required to ensure that these business partners comply with human rights and environmental standards through regular evaluation procedures, tailored risk-mitigation measures, and the establishment of effective alert and reporting mechanisms.

		binding compliance obligations, enforceable through contractual mechanisms across the supply chain.	
	Enforcement Mechanisms and Sanctions	In cases of non-compliance, companies may face sanctions including exclusion from the award of public contracts under Section 22 and administrative fines pursuant to Section 24.	
Sustainable Contractual Remedies Clauses	Relevant Legal Provisions	Section 7 of the Lieferkettensorgfaltspflichtengesetz (LkSG, 2021). When an enterprise identifies a human rights or environmental violation, it must “without undue delay, take appropriate remedial action to prevent, end or minimise the extent of this violation.” If the violation at a direct supplier cannot be ended in the foreseeable future, the enterprise is required to draw up a “remedial plan with a concrete timetable,” which may include cooperation with the supplier, participation in sector initiatives, or a “temporary suspension of the business relationship.”	According to Article L. 225-102-4, 3°, 5° of the Loi de vigilance 2017, the vigilance plan must include “appropriate actions to mitigate risks or to prevent serious violations.” In addition, the law requires “a mechanism for monitoring the measures implemented and assessing their effectiveness,” and provides that the results of implementation “must be made public and incorporated into the company’s annual management report.” In contractual practice, this provides the foundation for Sustainable Contractual Remedies Clauses, namely provisions that establish remedial measures in situations where a party breaches its sustainability obligations.
	Enforcement Mechanisms and Sanctions	According to Section 7(1) of the Lieferkettensorgfaltspflichtengesetz (LkSG, 2021), when a violation of human rights or environmental obligations is identified, enterprises are required to “without undue delay, take appropriate remedial action.” If an enterprise “fails to take remedial action or fails to take such action in time,” this constitutes a regulatory offence under Section 24(1) no. 6. In addition, Section 7(4) provides that “the effectiveness of the remedial action must be reviewed once a year and on an ad hoc basis” where significant new or expanded risks arise, and that such measures “must be updated without undue delay if necessary.”	
Sustainable Termination Clauses	Relevant Legal Provisions	According to Section 7(3) of the Lieferkettensorgfaltspflichtengesetz (LkSG, 2021): “termination of a business relationship” is required only if the violation is considered very serious, remedial measures have failed, and no less severe alternatives are available.	
	Enforcement Mechanisms and Sanctions	In cases of non-compliance, companies may face sanctions including exclusion from the award of public contracts under Section 22 and administrative fines pursuant to Section 24.	

(Source: Compiled by the authors based on Germany’s LkSG (2021) and France’s Loi de vigilance (2017))

4.3. Lessons Learned and Legal Orientations for Vietnam

First, in terms of the legal framework, France and Germany have codified supply chain due diligence obligations through the *Loi de vigilance* (2017) and the *Lieferkettensorgfaltspflichtengesetz* (LkSG, 2021). These statutes require companies to establish monitoring plans, conduct risk assessments, prevent and remedy sustainability violations, and they also provide the possibility of initiating legal action if companies fail to comply fully with their obligations.

In Vietnam, sustainability is not regulated under a single comprehensive statute but is instead dispersed across both general and sector-specific legislation, including the Commercial Law 2005, the Civil Code 2015, the Environmental Protection Law 2020, the Labor Code 2019, the Law on Enterprises 2020, and the Investment Law 2020. General laws recognize the principle of freedom of contract, for instance Article 11 of the Commercial Law 2005 on the parties' right to freely agree on contractual terms, and Article 385 of the Civil Code 2015 on the freedom of parties to conclude, perform, and terminate contracts. At the same time, sector-specific statutes impose restrictions on contractual freedom in areas such as labor, investment, and commercial contracts, particularly in industries with high risks of environmental harm, labor exploitation, or social inequality (Hoang, 2025). Nevertheless, the current legal system continues to face significant shortcomings. In the field of environmental protection, regulations on environmental impact assessment and emission reduction lack effective mechanisms for monitoring compliance once contracts have been concluded. In the field of labor, although provisions exist on wages, working hours, and occupational safety, companies can still evade these obligations through service contracts or subcontracting arrangements. With respect to corporate social responsibility, many labor and environmental standards are still enforced only at a formal or superficial level.

Beyond the domestic legal framework, Vietnam is also bound by its international commitments. Under the EU–Vietnam Free Trade Agreement (EVFTA), Article 13.4 establishes the obligation to implement the fundamental ILO Conventions, while Article 13.6 reaffirms the commitment to the Paris Agreement on climate change. Similarly, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) devotes Chapter 19 to Labor and Chapter 20 to Environment, thereby setting international standards on environmental protection, labor conditions, and human rights. Although these commitments are rooted in public international law, they directly influence Vietnam's private legal framework by pressuring enterprises to internalize and contractually incorporate ESG obligations into international commercial relations.

Vietnam should develop a unified legal framework on ESG due diligence and responsibility in supply chains, while also applying strict sanctions for violations. As an initial step, such a framework could be introduced at the level of decrees or ministerial circulars in order to provide enterprises with a legal basis for proactively incorporating sustainability clauses into commercial contracts. In the longer term, Vietnam may draw on the experience of Germany with its *Lieferkettensorgfaltspflichtengesetz* of 2021 to issue specialized regulations for sectors with high sustainability risks such as textiles, agriculture, and construction.

Second, in terms of contractual practice, in the United States and the United Kingdom sustainability clauses are widely used in supply agreements and subcontracting agreements, often in the form of warranty, compliance, and indemnity clauses. For example, Section 1502 of the Dodd–Frank Act has required many companies, such as Corning, to incorporate indemnity clauses into their supply contracts to allocate risks associated with conflict minerals. Surveys indicate that 73 percent of companies now include a sustainability clause in their procurement contracts (EcoVadis & Mutandi, 2018).

In Vietnam, enterprises, particularly those in export-oriented sectors such as textiles, footwear, and electronics, remain largely passive when sustainability clauses are imposed by foreign partners. This passivity stems from the fact that domestic companies are still heavily dependent on imported raw materials, external financing, technology, and market access. It is therefore essential to develop model guidelines on sustainability clauses to enable businesses to take a more proactive role in negotiating and standardizing contracts with ESG provisions. Regulatory authorities could issue model clauses, drawing on international experience such as the ABA Model Contract Clauses (MCCs 2.0), with particular attention to supporting small and medium-sized enterprises. At the same time, there is a pressing need to encourage the inclusion of key performance indicators, periodic reporting, and audit rights in contracts to meet global standards.

Third, with respect to enforcement and dispute resolution, the cases of (*MDW Holdings Limited v. Norvill*, 2022) and (*Solvay Specialty Polymers Italy v. Edison S.p.A.*, 2021) demonstrate that breaches of ESG warranties can serve as a legal basis for courts and arbitral tribunals to award damages..

At present, Vietnam has no precedent for resolving contractual disputes related to ESG before courts or arbitral tribunals. This gap creates the risk that domestic enterprises may face uncertainty and be placed at a disadvantage when international partners invoke sustainability clauses, which could result in liability for damages. It is therefore essential to establish a clear legal orientation. This should include training judges, arbitrators, and lawyers in the skills required to handle disputes involving ESG; encouraging enterprises to anticipate ESG dispute resolution mechanisms, such as commercial arbitration or alternative dispute resolution, during the contract negotiation process; and recognizing sustainability clauses in the preamble and recitals of contracts as interpretative bases rather than treating them merely as “soft law”.

Fourth, in terms of global trends, the European Union has adopted the Corporate Sustainability Due Diligence Directive (CSDDD) and introduced the Carbon Border Adjustment Mechanism (CBAM), thereby transforming ESG standards into mandatory conditions for access to international markets. This development illustrates the global trend of sustainability clauses evolving into binding legal norms, moving beyond voluntary commitments. In practice, CSR implementation varies widely: Europe and North America record high levels, whereas many countries in Asia and Africa remain at lower levels (see Fig. 4) (EcoVadis & Mutandi, 2018).

Geographical distinctions: CSR adoption over the world (index from 1 to 10)

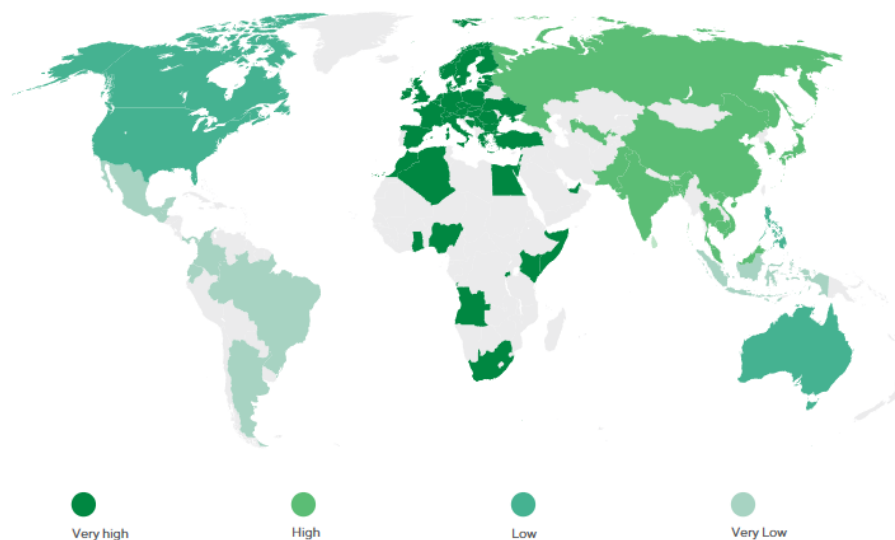


Fig. 4. Geographical distinctions in CSR adoption worldwide (index 1–10)

(Source: (EcoVadis & Mutandi, 2018))

In this context, Vietnam has also expressed its commitment to a green economic model, as seen in energy policies under Power Development Plan VIII (Thang, 2025). However, these orientations remain macro-level policies and have not yet been translated into contractual mechanisms in commerce. Without timely adaptation, Vietnamese enterprises risk exclusion from global supply chains. It is therefore necessary to improve ESG policies at the national level while simultaneously establishing mechanisms to support enterprises in terms of finance, technology, and training, so as to strengthen compliance capacity and ensure the effective implementation of sustainability clauses in commercial contracts.

While the foregoing analysis highlights Vietnam’s current shortcomings in legislation, contractual practice, enforcement, and global alignment, it is equally necessary to outline a feasible roadmap for reform. The following recommendations are therefore proposed, structured by timeframe, competent authorities, and priority sectors.

First, in the short term (0–2 years), the Ministry of Industry and Trade, in cooperation with the Ministry of Justice and other relevant agencies, could issue a set of *model sustainability clauses* in the form of a joint circular, drawing on international experience such as the ABA Model Contract Clauses (MCCs 2.0). This toolkit should initially focus on three high-risk export sectors, namely textiles and garments, electronics, and agriculture/seafood. At the same time, the Vietnam Chamber of Commerce and Industry (VCCI) could establish an online portal and digital toolkit to support small and medium-sized enterprises in negotiating and standardizing contracts with ESG provisions.

Second, in the medium term (3–5 years), the Government may adopt a decree establishing ESG due diligence obligations in supply chains, while simultaneously piloting the integration of SCCs into public procurement contracts to create broader spillover effects. In parallel, training programs should be organized for judges, arbitrators, and lawyers to enhance their capacity to resolve disputes involving ESG-related contractual obligations.

Third, in the long term (beyond five years), Vietnam should move toward adopting a unified legal framework on ESG and supply chain responsibility, drawing on comparative experience such as Germany’s *Lieferkettensorgfaltspflichtengesetz* (LkSG, 2021).

5. CONCLUSION

5.1. Findings

The study demonstrates the evolution of sustainability clauses (SCCs) from “soft law” to “hard law” and their increasing

incorporation into commercial contracts in diverse forms within the international context. By contrast, Vietnam has not yet established a unified legal framework and lacks comprehensive research on sustainability clauses in commercial contracts. This paper contributes to the literature by analyzing typical forms of SCCs in connection with the legal systems of countries such as Germany, France, the United Kingdom, and the United States, and by drawing lessons and proposing legal orientations that may be suitable for Vietnam.

5.2. Policy Implications

From the research findings, several policy implications can be drawn. First, it is important to develop a unified legal framework on ESG in commercial contracts, drawing on the experience of the *Loi de vigilance* in France and the LkSG in Germany. In the short term, this framework could be introduced through decrees or ministerial circulars to provide enterprises with a legal basis for proactively incorporating sustainability clauses into commercial agreements. Second, it is necessary to issue a set of model sustainability clauses to serve as a reference tool for enterprises in negotiating, standardizing, and concluding contracts with international partners. Third, the effectiveness of enforcement and dispute resolution mechanisms should be enhanced by training judges, arbitrators, and lawyers on ESG issues and by encouraging parties to anticipate alternative dispute resolution mechanisms during contract negotiations. Fourth, support mechanisms in finance, technology, and training should be established to strengthen compliance and improve the implementation of sustainability clauses in commercial contracts.

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