Supplier Code of Conduct in International Commercial Contracts in an Era of Uncertainty:

Perspective from China

Xia Li*

Contents

* Li Xia is a PhD candidate at the University of Basel (xia.li@unibas.ch). The author thanks Prof. Dr. iur. Ulrich G. Schroeter for his comments as first reader, together with the anonymous reviewers and the editorial team. All remaining errors are the author's own.

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

I. Introduction

In recent years, the performance of international commercial contracts has become increasingly vulnerable to a range of legal, economic, and geopolitical risks. Germany's Supply Chain Due Diligence Act (Lieferkettensorgfaltspflichtengesetz, LkSG), the EU's Corporate Sustainability Due Diligence Directive (CSDDD), and related instruments such as the Corporate Sustainability Reporting Directive (CSRD) represent a shift from predominantly voluntary corporate social responsibility measures toward a binding regulatory framework, at the core of which lies the obligation for companies to integrate human rights and environmental risk assessments into their due diligence processes.[1] Within this evolving landscape, codes of conduct have become the principal contractual mechanism through which downstream companies[2] discharge these obligations: nearly 80 percent of European multinationals have reportedly adopted such codes,[3] and their use continues to expand as legislation imposes increasingly specific due diligence duties.

This phenomenon is especially visible in supply chain contracts linking upstream suppliers in developing countries with downstream buyers headquartered in more tightly regulated jurisdictions. Under pressure from recent legislation, downstream companies, such as BMW in the European Union, have incorporated clauses into their supplier codes of conduct that require suppliers to comply with environmental and social standards and that grant the downstream company the right to terminate the business relationship in cases of non-compliance. Compared with earlier scholarly discussions of supplier codes of conduct, which largely focused on the protection of labour rights within multinational corporations and often used Walmart's Code of Conduct as a reference point[4], today's codes of conduct reflect a far more complex character. Depending on the industry they are being used in, they now address a broader range of sustainability concerns, including environmental and

[1] Bueno and others, 'The EU Directive on Corporate Sustainability Due Diligence (CSDDD): The Final Political Compromise' (2024) *BHRJ* 294 (296); Vandenbroucke, 'The Evolution of Codes of Conduct to Ensure Labor Rights in Global Supply Chains' (2024) *AJIL* 297.

[2] In this paper, the terms 'downstream' and 'upstream' refer to a party's position in relation to the flow of goods within the supply chain. 'Downstream' refers to companies at the demand end of the chain, such as buyers, brands or chain leaders. These companies are typically headquartered in their home jurisdictions, which are subject to regulation. 'Upstream' refers to companies at the supply end of the chain. These are suppliers and sub-suppliers of raw materials, components or finished goods. In this paper, suppliers operating under Chinese law are an example of this category.

[3] Vandenbroucke, (2024) *AJIL* 297.

[4] Yu, 'Corporate Social Responsibility in Global Toy Supply Chains: A Story of Walmart's Toy Factories in Southern China (2008)' *OT* 77ff.

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

human rights protection, the responsible sourcing of critical raw materials, and corporate due diligence obligations derived directly from statutory requirements.[5] Moreover, the increasing politicisation of international economic relations, as manifested in economic sanctions imposed by major economies on global supply chains and the legislative counter-measures enacted by upstream countries such as China, adds uncertainty to the enforcement of such codes. Where a code operationalises one jurisdiction's due diligence legislation, the exercise of the rights it confers may simultaneously fall foul of countermeasures enacted by the supplier's home state. The enforceability of such codes therefore depends not on contract law alone, but on the interaction of two conflicting regulatory regimes. [6]

This paper examines the legal effects of unilateral termination clauses in supplier codes of conduct when exercised against suppliers operating under Chinese law, an inquiry that approaches the SCoC from the perspective of the upstream supplier rather than the downstream buyer. While existing scholarship has largely analysed codes of conduct as instruments of corporate governance designed and enforced by multinational enterprises, comparatively little attention has been paid to how these instruments interact with the domestic legal frameworks of supplier-concentrated jurisdictions. China provides a particularly instructive case: Chinese suppliers face not only the contractual obligations imposed by incorporated codes, but also domestic legal constraints, including foreign relations legislation that may qualify or override the exercise of rights those codes purport to confer.[7]

The discussion proceeds in two substantive parts. Section II situates supplier codes of conduct within their contractual context, examining the conditions under which such codes and their constituent provisions, particularly unilateral termination clauses, acquire binding force. Section II illustrates this framework through the BMW Group Supplier Code of Conduct as a case study, with particular attention to

[5] Beckers, *Enforcing Corporate Social Responsibility Codes: On Global Self-Regulation and National Private Law* (Hart Publishing, 2018) 22f.

[6] See Section III.C below, which examines the *Anti-Foreign Sanctions Law of the People's Republic of China* as the principal instance of such counter-measures, and Section IV on the resulting 'dual compliance' tension.

[7] Such as *Anti-Foreign Sanctions Law of the People's Republic of China* (adopted 10 June 2021); *Rules on Counteracting Unjustified Extra-Territorial Application of Foreign Laws and Other Measures* (Ministry of Commerce of the PRC, 9 January 2021, available at https://www.gov.cn/zhengce/2021-01/09/content_5712399.htm); *Regulations on the Implementation of the Anti-Foreign Sanctions Law of the People's Republic of China* (promulgated by the State Council, 23 March 2025, official text available at https://www.gov.cn/gongbao/2025/issue_11966/202504/content_7017464.html).

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

its incorporation mechanism, social responsibility provisions, and the structured escalation process that governs the exercise of the termination right. Section III offers a typological analysis of the legal effects of SCoC termination clauses under Chinese law, examining in turn the Civil Code of the People's Republic of China (CCC), the United Nations Convention on Contracts for the International Sale of Goods (CISG), and China's foreign relations legislation as potentially applicable frameworks. Section IV concludes the article.

II. Supplier Codes of Conduct as Contractual Instruments: Framework and Case Study

A. Definition

Supplier codes of conduct are instruments through which enterprises specify expected standards of conduct for their suppliers in areas such as labour rights, environmental practices, and business ethics.[8] In their initial form, these codes constituted corporate policy statements through which multinational enterprises articulated ethical commitments in areas such as labour standards, environmental protection, and business integrity.[9] Over time, a gradual process of contractualization emerged. Multinational companies began incorporating codes into commercial agreements with suppliers, thereby shifting their status from unilateral declarations toward bilateral obligations under private law.[10] This development allowed enterprises to extend expectations derived from international soft law norms, such as the UN Guiding Principles on Business and Human Rights, into binding contractual relationships, particularly with suppliers in developing jurisdictions.[11] Multinational companies increasingly 'translate international law and their own national laws into specific legal obligations by entering into contracts with enterprises in developing

[8] The term 'codes of conduct' as used in this article refers exclusively to codes developed by private actors. It does not encompass codes of conduct created by, or with the participation of, states as members of international organisations. For the distinction, see Beckers, *Enforcing corporate social responsibility codes: on global self-regulation and national private law* (n 5), 17ff.

[9] Beckers, *Enforcing corporate social responsibility codes: on global self-regulation and national private law* (n 5) section 1.2.3.2, 23.

[10] Beckers, *Enforcing corporate social responsibility codes: on global self-regulation and national private law* (n 5) 48.

[11] Lin, 'Legal Transplants through Private Contracting: Codes of Vendor Conduct in Global Supply Chains as an Example' (2009) AJCL 711; Beckers, *Enforcing corporate social responsibility codes: on global self-regulation and national private law* (n 5) p.11, 14.

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

countries.'[12] Early scholarship described such codes as private co-regulatory instruments that complement, and in some cases substitute for, public regulation in transnational supply chains.[13]

The existing literature on SCoC has developed mainly from a downstream perspective, which is, from the point of the chain leader and its regulatory environment. Scholarly attention has largely focused on how downstream enterprises design, draft, and enforce codes of conduct as instruments of supply chain governance, and on how EU and national legislation shapes those instruments.[14] The perspective of the upstream supplier, and in particular of suppliers operating in jurisdictions with their own mandatory legal frameworks, has received comparatively little systematic treatment. This paper addresses that gap by examining SCoC enforcement from the perspective of supplier-concentrated countries (e.g. China) where the domestic legal and regulatory environment may qualify, limit, or directly conflict with the exercise of rights conferred by an incorporated code.

B. The Enforceability of Incorporated Supplier Codes of Conduct

The contractualisation of supplier codes of conduct raises a prior question: under what conditions do the provisions contained in such codes acquire binding legal force? The answer depends on the relationship between the SCoC and the underlying contract. Three constellations must be distinguished: codes incorporated into a bilateral contract; codes appearing in the ancillary documents of the contract; and codes that are detached from any bilateral relationship and represent merely unilateral declarations to the public.[15] This paper is concerned exclusively with the first, bilateral incorporation, as this is the mechanism through which the BMW Supplier Code of Conduct acquires legal effect.[16] As Smits's doctrinal analysis confirms, this is also the constellation in which enforceability is least problematic: where two companies agree in their contract that one will comply with a Corporate

[12] Lin, (2009) *AJCL* 711 (721).

[13] Eijsbouts, 'Corporate Codes as Private Co-Regulatory Instruments in Corporate Governance and Responsibility and Their Enforcement' (2017) *IJGLS* 181.

[14] See generally Beckers, *Enforcing Corporate Social Responsibility Codes* (n 5); Mitkidis, 'Sustainability Clauses in International Supply Chain Contracts: Regulation, Enforceability and Effects of Ethical Requirements' (2014) *NJCL* 1; Vandenbroucke, (2024) *AJIL* 297. On how EU regulatory frameworks shape these instruments, see Bradford, *The Brussels Effect: How the European Union Rules the World* (Oxford University Press 2020).

[15] Beckers, *Enforcing Corporate Social Responsibility Codes* (n 5) 47.

[16] Ibid, 48.

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

Social Responsibility (CSR) code, the code is likely to have become part of the contents of the contract, giving rise to contractual remedies in the event of non-compliance.[17]

Even within this most favourable constellation, however, valid incorporation alone does not render every provision of a code legally enforceable. The literature identifies three factors that bear directly on enforceability. First, provisions must be sufficiently determinate to give rise to identifiable contractual obligations; vague or aspirational language, such as a general commitment to 'support and respect' sustainability standards, may lack the precision necessary to constitute enforceable terms.[18] The Doe v. Wal-Mart Stores, Inc. litigation illustrates this concretely: the Ninth Circuit found that Wal-Mart's Standards for Suppliers were not a promise clear enough to constitute an offer, as they merely listed the types of conduct that could result in disciplinary action without defining terms or specifying consequences.[19] Second, sustainability clauses bear only loose connection to the subject matter of the contract: they do not specify the physical quality of the delivered goods but rather prescribe the conditions under which those goods are produced.[20] This loose connection, as discussed in Section III.B, complicates the assessment of breach and the application of traditional remedies. Third, the provisions must be supported by enforcement mechanisms, such as monitoring, graduated remediation, and clearly specified consequences, that render them operative.[21]

A further consideration is that codes of conduct are typically incorporated through standard-form terms and conditions presented on a take-it-or-leave-it basis. The CISG Advisory Council Opinion No. 13 (AC Opinion 13) provides that surprising

---

[17] Smits, 'Enforcing Corporate Social Responsibility Codes Under Private Law: On the Disciplining Power of Legal Doctrine' (2017) *IJGLS* 99 (110 f). Smits distinguishes this situation from two others of decreasing enforceability: a consumer's claim against a retailer that declares compliance with CSR codes (where societal standards have not yet reached the stage of legal enforceability), and a claim by employees of a foreign supplier (which fails for a lack of a contractually relevant relationship). See also *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677 (9th Cir. 2009).

[18] Mitkidis, (2014) *NJCL* 1 (15 f); Smits, (2017) *IJGLS* 99 (103).

[19] Revak, 'Corporate Codes of Conduct: Binding Contract or Ideal Publicity?' (2012 *HLJ* 1645 (1655 f); *Doe v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 682 (9th Cir. 2009).

[20] Mitkidis, (2014) *NJCL* 1 (6). See also Leisinger and Schwenzer, 'Ethical Values and International Sales Contracts', in Cranston, Ramberg and Ziegel (eds.), *Commercial Law Challenges in the 21st Century: Jan Hellner in Memoriam* (Uppsala, 2007) 249 (265).

[21] Mitkidis, (2014) *NJCL* 1 (20).

or unusual standard terms may require specific notice to the other party.[22] Under Chinese domestic law, Articles 496 and 497 of the CCC impose controls on standard-form provisions (格式条款). These controls include a requirement that the providing party draw attention to clauses that exclude or restrict liability, and a rule that provisions unreasonably increasing the other party's obligations may be held invalid.[23] Whether a unilateral termination right exercisable upon the buyer's determination of ESG non-compliance constitutes an 'unreasonable' allocation of risk under these provisions remains an open question in the existing literature. This paper does not pursue the standard-form inquiry further, but notes that the BMW SCoC's graduated escalation structure, which reserves termination for cases where remediation has been exhausted, may mitigate the risk of invalidity under such controls.

These conditions mentioned above address the threshold question of whether a termination clause constitutes a binding contractual term; the separate question of what legal effects such a clause produces when enforced, and whether those effects are consistent across different governing law regimes, is addressed in Section III. For present purposes, a SCoC termination clause is treated as a formally enforceable contractual term where three conditions are met: (1) the SCoC has been validly incorporated into a bilateral supply contract, with the supplier having adequate access to its content; (2) the relevant provisions are sufficiently determinate, identifying specific triggering conditions rather than relying on aspirational language; and (3) the provisions are supported by contractual mechanisms that render them operative. The BMW Group Supplier Code of Conduct, examined in the following sub-section, satisfies these conditions.

---

[22] CISG Advisory Council, 'Opinion No. 13: Inclusion of Standard Terms under the CISG', Rapporteur: Eiselen (adopted 20 January 2013).

[23] Civil Code of the People's Republic of China (promulgated 28 May 2020, effective 1 January 2021); official text available at https://www.moj.gov.cn/pub/sfbgw/zwgkztzl/2025nianzhuanti/2025mfdxcy/2025mfdxcy_mfdql/202505/t20250507_518708.html; an English translation for reference is available at: China and others (eds), *The Civil Code of the People's Republic of China: English Translation* (Brill 2022). Article 496 defines standard terms as 'clauses that are prepared in advance by one party for repeated use and are not negotiated with the other party when the contract is concluded,' and requires the providing party to 'bring in a reasonable way to the other party's attention terms that exempt or mitigate its liabilities and other terms that will have a significant interest in the other party.' If the providing party fails to perform this obligation, the other party may claim that such clauses be excluded from the contract. Article 497 provides that standard terms are invalid where 'the party providing the standard terms exempts itself from or mitigates its liabilities unreasonably, or increases the liabilities or limits the material rights of the other party' (Art. 497(2)).

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

C. The BMW Supplier Code of Conduct: Incorporation, Substantive Obligations, and the Unilateral Termination Right

The BMW Group Supplier Code of Conduct (Version 3.0, December 2022) is selected as the case study for this paper because it is publicly available in full, enabling detailed doctrinal analysis.[24] The BMW SCoC's incorporation into supply contracts is achieved through two standard-form contractual instruments: for suppliers of production materials and vehicle components, compliance with the BMW SCoC's minimum requirements constitutes a binding part of the BMW Group International Terms and Conditions for the Purchase of Production Materials and Automotive Components; for suppliers of non-production-related material, the equivalent instrument is the General Contractual Terms for Indirect Purchasing.[25] The BMW SCoC's requirements are addressed in invitations to tender and become binding upon contract signature. By entering into a contract with BMW Group, direct suppliers confirm compliance with the specified standards and undertake to cascade equivalent requirements to their own sub-suppliers, thereby extending BMW's due diligence framework throughout the supply chain.[26]

The BMW SCoC's substantive obligations are organised around five thematic pillars: responsible business practices, environmental responsibility, social responsibility, use of critical raw materials, and implementation of corporate due diligence. The BMW SCoC distinguishes between mandatory requirements, which apply to all suppliers

---

[24] BMW Group, *Supplier Code of Conduct* (BMW Group Supplier Sustainability Policy) Version 3.0, valid as of 6 December 2022 ('BMW SCoC'), Foreword, <https://www.bmwgroup.com/content/dam/grpw/websites/bmwgroup_com/responsibility/downloads/en/2022/BMW-Group-Supplier-Code-of-Conduct-V.3.0_englisch_20221206.pdf> accessed 18 March 2026. In this paper, BMW Group refers to BMW Bayerische Motoren Werke Aktiengesellschaft, Munich, Germany and its Affiliated Companies, see BMW Group International Terms and Conditions for the Purchase of Production Materials and Automotive Components (IPC) Version December 01, 2022, available at <https://b2b.bmw.com/documents/14402/7501963/20221201_IPC+2022_EN_aktuell.pdf/ad8162cd-f712-597f-5884-afcb7615a052?t=1714403319040>.

[25] BMW SCoC (n 24), Foreword: 'Compliance with the minimum requirements outlined in these standards is a binding part of the BMW Group terms and conditions of purchase—for suppliers of production materials and vehicle components, these are the "BMW Group International Terms and Conditions for the Purchase of Production Materials and Automotive Components" (IPC, n 23), and for suppliers of non-production-related material, they are the "General Contractual Terms for Indirect Purchasing" (AVB), Version 11/2022, available at <https://www.bmwgroup.com/content/dam/grpw/websites/bmwgroup_com/responsibility/downloads/en/2025/General_Terms_and_Conditions_for_Indirect_Purchasing.pdf>.'

[26] 'Supplier Code of Conduct' <https://www.bmwgroup.com/en/sustainability/supply-chain/popup/supplier-code-of-conduct.html> accessed 18 March 2026.

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

without qualification, and requirements marked with an asterisk (*), which are BMW-specific and may be subject to exemption based on country-specific risks, goods category, or company size.[27] This distinction is important: it is noncompliance with the mandatory requirements that triggers the termination right. The non-asterisked provisions therefore define the outer boundary of the BMW SCoC's enforcement regime.

The social responsibility provisions (Part I, Section 3) are of particular relevance to the present analysis and are predominantly mandatory. They include the prohibition of child labour (s. 3.1), the prohibition of forced labour and all forms of modern slavery (s. 3.2), freedom of association and the right to collective bargaining (s. 3.3), protection against discrimination (s. 3.4), the right to health and safety in the workplace (s. 3.5), the right to adequate remuneration including a living wage (s. 3.6), and the rights of local communities (s. 3.7). The prohibition of forced labour (s. 3.2) is of particular practical significance in the Chinese context: it encompasses not only labour performed under direct threat or coercion but also debt bondage, withholding of documents, and other forms of domination or oppression, a definition broad enough to cover practices that are the subject of active political and regulatory contestation between European and Chinese authorities.[28]

The enforcement mechanism that gives these obligations practical bite is the unilateral termination right set out in Section 3 of Part II of the BMW SCoC ('Handling of Violations').[29] Crucially, this right is not freestanding: it is the final stage in a structured escalation process. Prior to termination, the BMW SCoC contemplates a graduated sequence of measures including risk analyses, self-assessment questionnaires, third-party audits, on-site inspections by BMW sustainability experts, and ultimately a 'New Business Hold', or the suspension of the supplier location from new nominations.[30] Termination is reserved for cases where noncompliance with mandatory requirements has been established, no other effective means remain available and BMW cannot further increase its influence over the supplier.[31] From a compliance governance perspective, this graduated structure

---

[27] BMW SCoC (n 24), Foreword, 3 f.

[28] BMW SCoC (n 24), Part I, s. 3.2, 9 f; see analysis in Section III.C.

[29] BMW SCoC (n 24), Part II, s. 3, 16 f.

[30] BMW SCoC (n 24), Part II, s. 1, 16 f.

[31] BMW SCoC (n 24), Part II, s. 3, 17 ('Handling of Violations'): 'In the event of noncompliance with the mandatory requirements described in this Supplier Code of Conduct, the BMW Group reserves

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

ensures that termination functions as a remedy of last resort, triggered only after remediation efforts have been exhausted.

When assessed against the enforceability criteria outlined above, this termination clause satisfies the conditions for enforceability identified in the literature. It identifies a specific triggering condition (noncompliance with mandatory requirements), situates the right within a broader graduated remediation process, and operates within a contractual framework that includes audit rights, grievance procedures, and reporting obligations; these are precisely the supporting mechanisms that are identified as conditions for legal effectiveness.[32] It is accordingly treated in this paper as a valid and incorporated contractual term. The question is not whether the clause is enforceable in the abstract, but what legal effects it produces when exercised against a Chinese supplier, and whether those effects are consistent across the different legal frameworks that may govern the dispute. That question is the subject of Section III.

III. Legal Effects of Unilateral Termination Right of SCoC in China: A Typological Analysis

Having established that the BMW SCoC termination clause satisfies the conditions for valid incorporation and formal enforceability, the analysis now turns to the legal effects of such a clause when exercised against a Chinese supplier. The inquiry proceeds on the assumption that the dispute is heard before a Chinese court or arbitral tribunal seated in China, as proceedings seated outside China would require a jurisdiction-by-jurisdiction examination that exceeds the scope of this paper.[33]

Within this setting, three legal frameworks bear on the enforceability and legal consequences of a SCoC termination right. Where Chinese domestic contract law governs the supply contract, the termination must be assessed within the framework established by the CCC (Section III.A). Where the contract falls within the scope of the CISG, as will ordinarily be the case for international sales contracts between parties in Contracting States, unless the Convention has been excluded under Article 6, the Convention's own rules define the applicable threshold (Section III.B). Under either governing law regime, China's foreign relations legislation, in particular the

the right to terminate business relationships, provided that we have no other effective means available, and we cannot further increase our influence.'

[32] Mitkidis, (2014) *NJCL* 1 (12ff).

[33] This paper limits its analysis to disputes in which the seat of the court or arbitral tribunal is located in China. Situations in which proceedings are seated outside China raise issues of applicable law and judicial practice, which fall beyond the scope of the present study.

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

Anti-Foreign Sanctions Law (AFSL), introduces a public law dimension that may qualify or override the ordinary contractual analysis (Section III.C).[34] This section examines each framework in turn.

A. Chinese Law as the Governing Law of the Contract

Where the SCoC has been validly incorporated, the enforceability of any unilateral termination right it confers must be assessed within the termination framework established by the CCC[35]. That framework distinguishes three principal categories: termination by mutual agreement (协商解除) under Article 562(1), contractual termination (约定解除) under Article 562(2), and statutory termination (法定解除) under Article 563.[36] Of these, the directly relevant to SCoC unilateral termination clause is contractual termination.

Article 562(2) of CCC stipulates: 'The parties may also agree on the circumstances under which one party may unilaterally terminate the contract. When such circumstances occur, the party holding the right of termination may exercise that right.' Where an SCoC has been validly incorporated, this provision in principle gives legal effect to any termination clause contained therein. However, the scope of contractual termination is subject to judicial limitation. Article 47 of the Minutes of the National Conference on Civil and Commercial Adjudication by the People's Courts (the Minutes 2019)[37] establishes that even where the agreed termination

[34] A fourth scenario, in which the parties choose a third country's law (typically the buyer's home law), is not treated separately here. Although such a choice would displace the analysis in Section III.A and Section III.B, it does not escape the constraints discussed in Section III.C, since the AFSL applies as an overriding mandatory provision regardless of the chosen law. The choice of foreign law therefore alters the framework governing the termination right, but not the regulatory constraint that is this paper's focus.

[35] *Civil Code of the People's Republic of China* (n 23).

[36] Liu C, '民法典约定解除权制度的构造与适用 [The Structure and Application of the System of Contractual Termination Rights under the Civil Code]' (2025) *CLS* 45; see *Civil Code of the People's Republic of China* (n 23), Article 562-563.

[37] *Minutes of the National Conference on Civil and Commercial Adjudication by the People's Courts* (全国法院民商事审判工作会议纪要) (Supreme People's Court of the PRC, November 2019); official text available at <https://www.court.gov.cn/zixun/xiangqing/199691.html>; English translation for reference available at <https://baike.baidu.com/en/item/The%20Summaries%20of%20the%20National%20Conference%20for%20Work%20of%20Courts%20on%20the%20Trial%20of%20Civil%20and%20Commercial%20Cases/1484915>. Although the Minutes do not constitute a formal source of law or a judicial interpretation, they function as an authoritative judicial guidance document with quasi-binding effect in practice. See also Bu (ed), 'Termination of Contracts', in Bu (ed), *Chinese Civil Code – the Specific Parts: A Handbook* (CHBeck 2023).

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

conditions are formally satisfied, courts retain the power to deny the termination request where the breach is found to be significantly minor and does not affect the non-breaching party's ability to achieve the contractual purpose.[38]

'Minor breach' refers to a breach that does not constitute a fundamental breach.[39] In judicial practice, the determination of whether a breach qualifies as 'minor' is guided by a multi-factor test. Relevant considerations typically include: (1) whether the breach affects the achievement of the contract's purpose; (2) the nature and degree of the breaching party's fault; (3) whether the non-breaching party is exercising the termination right in bad faith to harm the breaching party; (4) the actual damage caused to the non-breaching party and whether such damage can be adequately remedied by other means; (5) the loss that termination would impose on the breaching party and any resulting waste of social resources; (6) the benefit the breaching party has derived from performance; and (7) the parties' course of dealing and relevant trade usages.[40] Empirical scholarship has further identified whether the breaching party has subsequently remedied or cured the breach as an additional relevant criterion in judicial practice.[41] Among these factors, whether the breach substantially impairs the contract's purpose and whether the purpose can still be achieved through alternative remedies are regarded as the most decisive.[42]

Although Article 47 of the Minutes 2019 has become the prevailing approach in judicial practice by restricting agreed termination in cases of a minor breach even

[38] Minutes 2019 (n 33), Article 47: Where the conditions for termination specified in the contract are met and the non-breaching party seeks to terminate the contract on that ground, the People's Court shall examine whether the breach by the breaching party is of a significantly minor nature and whether it affects the non-breaching party's ability to achieve the purpose of the contract; it shall then determine, in accordance with the principle of good faith, whether the contract should be terminated. If the breach by the breaching party is of a significantly minor nature and does not affect the non-breaching party's ability to achieve the purpose of the contract, the People's Court shall not uphold the non-breaching party's request for termination; conversely, it shall uphold such a request in accordance with the law.

[39] Chen, '合同解除规则的细化完善与司法适用 [Refining and Improving the Rules on Contract Termination and Their Judicial Application]' (2024) *L&E* 15 (11). Chen is the Director of the Civil Law Division at the Research Office of the Supreme People's Court, his views are of considerable practical value.

[40] Ibid, 15 (12).

[41] Liu N, '轻微违约下限制约定解除权之质疑 [Challenges to the Right to Terminate Agreements in Cases of Minor Breaches]' (2023) *LS* 74 (75)

[42] Chen, (2024) *LE* 15 (26).

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

before 2019[43], it still remains contested in legal scholarship. It is argued that this rule lacks sufficient theoretical justification, as it cannot be convincingly grounded in party autonomy, systemic coherence, or the principle of good faith, and may even undermine the institutional function of contractual termination clauses; it should therefore be questioned, if not rejected.[44] Others adopt a more moderate position, maintaining that a minor breach may justify restricting termination only as an exceptional measure, subject to a framework of 'autonomy as the rule and restriction as the exception,' with strict assessment centered on the consequences of the breach[45]. This divergence is also reflected in the drafting process of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the General Provisions of the Contract Section of the Civil Code of the People's Republic of China: although there was initial consideration of incorporating Article 47 of the Minutes 2019, the final decision refrained from doing so. This occurred out of concern that treating 'no impact on the contractual purpose' as a general standard would unduly constrain the exercise of agreed termination rights, thereby demonstrating a cautious stance toward the rule's normative legitimacy.[46]

Despite of the above discussion, the practical significance of Article 47 of the Minutes 2019 limitation is substantial. An empirical survey of Chinese court decisions applying the minor breach doctrine was conducted using Article 47's key phrase 'whether the degree of breach is significantly minor' and four sets of equivalent search terms and it identified 222 relevant cases.[47] The results show that support for restricting contractual termination rights in cases of minor breach represents the dominant judicial position; only 3 decisions expressly rejected this approach. Of all 222 cases, 200 directly cited Article 47 or expressed an equivalent view; of these, only 22 ultimately found that the degree of breach failed to satisfy the Article 47 threshold and accordingly confirmed that the contractual termination right had validly arisen.[48] This empirical picture reveals that Chinese courts apply the minor breach limitation

[43] Bu (ed), 'Termination of Contracts', in Bu (ed), *Chinese Civil Code – the Specific Parts: A Handbook* (CHBeck 2023) 77f.

[44] Liu N, (2023) *LS* 74 (76ff).

[45] Liu C, (2025) *CLS* 45 (63ff).

[46] Wu, '合同解除制度的新发展及其适用 [Recent Developments in the System of Contract Termination and Its Application]' (2025) *JLA* 85 (94).

[47] Liu N, (2023) *LS* 74 (75). The figure represents the number of decisions retained as relevant after screening the search results; the paper does not report the total number of unscreened search results.

[48] Ibid. The empirical survey was completed with a final search deadline of 31 January 2023.

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

with considerable frequency and that the threshold for confirming a valid contractual termination, even when the contractual conditions are formally met, is high in practice.

Given that the Minutes 2019 remain in force, Article 47 may still serve as a reference in judicial practice.[49] It is suggested that judicial reasoning continue to engage with the framework embodied in Article 47, while being guided by the principles of good faith, fairness, and the overarching goal of promoting transactions.[50]

1. Interim Conclusion

When the foregoing framework is applied to SCoC termination clauses, this section finds that the practical enforceability of such clauses under CCC may be more limited than their textual scope implies. Where a buyer seeks to terminate a supply contract on the basis of a supplier's violation of an incorporated SCoC, a court applying Article 47 of the Minutes 2019 would not treat the formal satisfaction of the contractual trigger as conclusive. Instead, it would examine the nature and severity of the specific violation through the multi-factor test outlined above. In the absence of directly applicable precedents, the following analysis proceeds on a theoretical basis.

Applying the two most decisive factors identified above (the impact on the contract's purpose and the availability of alternative remedies[51]) to the supply chain context yields a cautious conclusion. Violations such as the use of child labour, forced labour, or environmental misconduct, even where they attract regulatory scrutiny or public exposure, primarily affect the buyer's reputational and compliance interests rather than the physical quality, usability, or deliverability of the goods themselves. A buyer may argue that its contractual purpose extends beyond physical conformity to encompass supply chain integrity and regulatory standing. However, a Chinese court applying Article 47 of the Minutes 2019 is likely to assess the contract's purpose by reference to its core commercial object, the delivery of conforming goods, rather than the buyer's broader due diligence objectives. Against that standard, the impairment caused by a compliance violation may fall short of the threshold required to defeat the contract's purpose.

Furthermore, the availability of alternative remedies reinforces this conclusion. Where the supplier has subsequently remedied the violation, or where the buyer's

[49] Wu, (2025) *JLA* 85 (94).

[50] Chen, (2024) *LE* 15 (25ff).

[51] Ibid, 15 (12). See also Liu N, (2023) LS 74 (75f).

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

interests can be adequately protected through damages or contractual penalties short of termination, a court is likely to find that the contractual purpose remains achievable without resort to the drastic remedy of termination. Under these circumstances, the violation is more susceptible to characterisation as a significantly minor breach within the meaning of Article 47 of the Minutes 2019. Accordingly, even where the SCoC termination clause has been formally triggered, a court may decline to support the buyer's termination request, leaving the buyer's unilateral termination right unenforceable in practice.

B. CISG as the Governing Law of the Contract

Where the CISG governs the supply contract, the legal effects of a unilateral termination right conferred by a SCoC are assessed under the Convention's uniform rules.[52] Concerning termination clauses, the CISG does not employ the terminology of 'termination' familiar from CCC. Instead, it regulates the avoidance of the contract in cases of serious non-performance.[53] Conceptually, avoidance under the CISG performs a function broadly equivalent to termination under the CCC.[54] However, the two regimes differ in their structure and threshold: the CCC distinguishes mutual agreement, contractual termination and statutory termination, and permits parties to agree in advance on any trigger for unilateral termination. The CISG, by contrast, recognises two circumstances under which a contract may be avoided, namely a fundamental breach and failure to perform within an additional period, as well as modification or termination by mutual agreement (Article 29).[55] Critically, the CISG ties the right of avoidance to the existence of a fundamental breach as defined in

[52] *United Nations Convention on Contracts for the International Sale of Goods* (adopted 11 April 1980, entered into force 1 January 1988) 1489 UNTS 3 ('CISG'). Official documentation available via UNCITRAL at <https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg>.

[53] In this section, the term 'avoidance' is employed in accordance with the terminology of the CISG. In other sections of this paper, the term 'termination' is utilized.

[54] Han, '中国合同法与 CISG [Chinese Contract Law and the CISG]' (2011) *JJPSS* 7 (8f); Xu, 'Study on the Exercise of Rescission Right of Contract for International Sale of Goods under the Adjustment of CISG' (2023) *DS* 2244 (2247ff).

[55] CISG (n 53), Explanatory Note by the UNCITRAL Secretariat on the United Nations Convention on Contracts for the International Sale of Goods, art 29, 45: 'One of the two circumstances in which the aggrieved party is entitled to declare the contract void is the existence of a fundamental breach; the other is where the seller has failed to deliver the goods, or the buyer has failed to pay the price or take delivery of the goods, and the party in breach has failed to perform its obligations within a reasonable period specified by the aggrieved party.' Art 29(1) provides that: 'A contract may be modified or terminated by the mere agreement of the parties.'

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

Article 25.[56] Absent a valid contractual derogation under Article 6, avoidance is available only where the seller's non-performance rises to the threshold of 'fundamental breach'; there is no equivalent mechanism for purely contractual (i.e., pre-agreed, non-fundamental) avoidance unless the parties have expressly varied the Convention's rules.

1. Termination in the Event of a Fundamental Breach

Compared with the CCC, the CISG applies stricter criteria for determining fundamental breach.[57] Article 49 of CISG provides that the buyer may declare the contract avoided if the seller's failure to perform amounts to a fundamental breach within the meaning of Article 25. Article 25 defines such a breach as one that 'results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract,' subject to a foreseeability qualification. The provision thus establishes two requirements: substantiality of detriment and foreseeability of that detriment to the breaching party.[58]

The legal definition of 'fundamental breach' established in Article 25 remains a relatively abstract and open-ended formulation.[59] In determining fundamental breach

[56] CISG (n 53), art 25: 'A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.'

[57] Han, (2011) *JJPSS* 7 (8f).

[58] Under Article 49(1), avoidance is available on two grounds: first, where the seller's failure to perform any contractual or Convention obligation amounts to a fundamental breach within the meaning of Article 25 (art 49(1)(a)); and second, in cases of non-delivery, where the seller fails to deliver within an additional period fixed by the buyer under Article 47(1), or declares that it will not do so (art 49(1)(b)). Article 49(2) imposes a time limitation on the exercise of this right once the goods have been delivered: the buyer must declare avoidance within a reasonable time after it became aware—or ought to have become aware—of the breach, failing which the right is lost. Cai and Tang, 'Determination of the Fundamental Breach of Contract in International Goods Sales Contract Disputes—Comment on the Dispute Over the International Goods Sales Contract between ThyssenKrupp Metallurgical Products GmbH and Sinochem International (Overseas) Pte Ltd [国际货物买卖合同根本违约的认定——蒂森克虏伯冶金产品有限责任公司与中化国际(新加坡)公司国际货物买卖合同纠纷案评述]' (2019) *JLA* 41 (46f).

[59] Schwenzer and Schroeter, 'Article 25 CISG', in Schwenzer and Schroeter (eds), *Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG)*, 5th edn (Oxford University Press 2022); He, 'Determination and Compensation for Fundamental Breach of Contract of Non-Conforming Goods Delivered Under CISG — Review of Guiding Case No. 107 of the Supreme People's Court and Other Similar Cases [CISG 下交付不符货物根本违约的认定与违约赔偿——对最高人民法院 107 号指导性案例及其类案的再审视]' (2024) *JSCNU* 136.

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

under the CISG, Chinese academia and judicial practice have gradually developed an approach centered on the question of 'whether the purpose of the contract has been frustrated', using 'the possibility of remedy' as a key operational tool, supplemented by a comprehensive assessment of the foreseeability requirement.[60] In practice, the nature of the breach is typically assessed by examining whether its consequences can be reasonably remedied through measures such as repair, price reduction or resale; in principle, as long as the consequences of the breach can still be reasonably remedied, it should not be deemed a fundamental breach. Consequently, a further assessment is made as to whether the breach has substantially deprived the parties of the benefits they expected under the contract. Overall, this approach reflects a clear tendency towards restrictive interpretation, aimed at controlling the scope of application of the right to terminate the contract and maintaining the stability of international transactions.[61]

In 2008, the buyer entered a contract for the purchase of petroleum coke, specifying an HGI (hardness) index of 36–46. The seller delivered goods with an HGI index of 32, falling below the contractual minimum. The buyer argued that this non-conformity constituted a fundamental breach under Article 25 CISG and sought avoidance of the contract and a full refund of the purchase price. The issue on appeal was whether the quality deficiency rose to the level of a fundamental breach.[62] The Supreme People's Court reversed the first instance finding of fundamental breach. It held that, although the delivered goods were non-conforming, the breach did not substantially deprive the buyer of what it was entitled to expect under the contract, for three reasons: (1) the goods retained use value despite their lower hardness index; (2) the buyer had in fact resold the goods at a price it acknowledged was not below market value; and (3) international case law under the CISG consistently holds that where the buyer can, with reasonable effort, use or resell the goods, even at a discount, a quality deficiency does not constitute a fundamental breach. The court accordingly denied avoidance and limited the seller's liability to damages.

[60] Chen, (2024) *LE* 15 (25ff).

[61] He, (2024) *JSCNU* 136 (142ff).

[62] Guiding Case No. 107: *Sinochem International (Singapore) Co Ltd v ThyssenKrupp Metallurgical Products GmbH* (dispute over a contract for the international sale of goods) (指导案例 107 号：中化国际（新加坡）有限公司诉蒂森克虏伯冶金产品有限责任公司国际货物买卖合同纠纷案), Supreme People's Court, (2013) Min Si Zhong Zi No. 35 (民四终字第 35 号) (30 June 2014); available at <https://www.court.gov.cn/shenpan/xiangqing/143372.html> accessed 22 March 2026; English version available at <https://english.court.gov.cn/pdf/GuidingCases.docx>.

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

The decision, published as a Guiding Case by the Supreme People's Court, carries persuasive authority across all levels of the Chinese judiciary and is expected to guide courts in the consistent application of the fundamental breach standard in future CISG related disputes.[63] It reflects a clear judicial policy preference: so long as the buyer can, with reasonable effort, use or resell the goods, even at a discount, a quality non-conformity will not constitute a fundamental breach. This is due to the fact that the loss can be compensated by other means. This approach reveals a broader tendency in Chinese judicial practice to apply an exceptionally cautious and stringent standard in identifying fundamental breach, guided by the principles of sanctity of contract (合同严守) and promoting transactions (鼓励交易).[64]

The case has direct implications for the SCoC context. Crucially, in supply chain contracts involving ESG-related violations such as forced labour or child labour, the goods themselves are typically physically conforming; the misconduct concerns the conditions of production rather than the quality or usability of the delivered product. If even a significant and objectively measurable quality deficiency, such as an HGI index falling below the contractual minimum, does not suffice for fundamental breach where the goods retain commercial utility, then supplier misconduct that leaves the physical characteristics of the goods entirely unaffected has an even weaker case against satisfying the Article 25 threshold. A Chinese court applying the same reasoning would assess whether the compliance violation deprives the buyer of the commercial utility of the goods themselves, rather than whether it impairs the buyer's broader reputational or regulatory standing. Where the goods remain physically conforming and deliverable, a court is unlikely to treat an SCoC violation, however ethically significant, as constituting a fundamental breach in the absence of concrete,

[63] *Provisions of the Supreme People's Court on Case Guidance Work* (关于案例指导工作的规定) (Supreme People's Court of the PRC, 26 November 2010), art 7; English translation available at <https://www.chinajusticeobserver.com/law/x/provisions-on-case-guidance-20101116>. For further discussion of the Chinese guiding-case system, see Ahl, 'Retaining Judicial Professionalism: The New Guiding Cases Mechanism of the Supreme People's Court' [2014] *CQ* 121; Jia, 'Chinese Common Law? Guiding Cases and Judicial Reform' (2016) *HLR* 2213.

[64] The principle of sanctity of contract finds its normative basis in Article 465 of the CCC: 'A contract formed in accordance with law is protected by law.' The principle of promoting transactions is not codified in a single provision but is reflected in the overall structure of the CCC, including the rule that where a contractual term is susceptible to two or more interpretations, courts shall adopt the interpretation that favours the term's validity: see *Interpretations of the Supreme People's Court on Several Issues concerning the Application of the General Provisions of the Civil Code of the People's Republic of China* (SPC Interpretation 6/2022), art 1(3), available at <http://gongbao.court.gov.cn/Details/2dfca1b19663c57f990410a8a60795.html>.

quantifiable economic detriment directly and causally attributable to the supplier's misconduct.

So far, no widely cited Chinese court decision or arbitral award has directly held that breach of a human rights, labour, or ESG clause in an incorporated SCoC automatically constitutes fundamental breach under Article 25. Courts tend to focus on actual economic and commercial impact rather than abstract or speculative reputational harm. As a result, the buyer seeking to establish fundamentality must therefore demonstrate concrete detriment, such as loss of downstream contracts, regulatory fines, or demonstrable and quantifiable reputational injury. Yet the more concrete and quantifiable that detriment is, the more readily it can be compensated by damages, and the less it supports avoidance under the last-resort logic described above. Substantial deprivation will accordingly be established only where the consequences of the violation cannot be adequately addressed by monetary remedies.

2. <u>Termination in the Event of a Valid Contractual Derogation Under Article 6</u>

The restrictive conclusion reached above applies where the CISG's default avoidance regime governs unmodified. However, Article 6 of the CISG provides that the parties may 'derogate from or vary the effect of any of its provisions.'[65] This raises the question of whether a SCoC termination clause such as that contained in the BMW Code can function as a valid contractual derogation from the fundamental breach requirement of Article 25. Should this be the case, it would enable the buyer to avoid the contract upon the occurrence of a social responsibility provisions related violation that would not otherwise satisfy the Article 25 threshold.

In principle, the scope of Article 6 is broad: parties may exclude the Convention in whole or in part, or modify the effect of individual provisions, including the standard for avoidance under Articles 25 and 49.[66] A clause stipulating that non-compliance with specified social responsibility provisions requirements constitutes a ground for avoidance could, on its face, be interpreted as an agreement to lower the avoidance threshold. Under such an interpretation, the designated social responsibility provisions violations would be treated as contractual equivalents of fundamental breach, regardless of whether they produce the 'substantial deprivation' ordinarily required by Article 25.

---

[65] CISG (n 52), art 6.

[66] See Schwenzer and Schroeter, 'Article 6 CISG', in Schwenzer and Schroeter (eds), *Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG)*, 5th edn (Oxford University Press 2022) paras 28 f.

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

Whether such a derogation is valid depends on whether the parties have effectively agreed to it. Clauses derogating from the Convention's provisions are governed by the CISG's own rules on contract formation (Articles 14–24)[67] and, where the derogation is contained in standard terms incorporated by reference, by the applicable rules on the inclusion of standard terms. As previously discussed in Section II.B, the BMW SCoC is incorporated through BMW's standard-form terms and conditions of purchase, which the supplier accepts upon contract signature. Under CISG AC Opinion 13, standard terms are generally considered included where the parties have agreed to their applicability and the terms were made available; however, terms that are 'surprising' and that the other party could not reasonably have expected may require specific notice.[68] A provision that permits one party to terminate the entire commercial relationship upon its own determination that the other party has violated broadly defined social responsibility provisions standards, standards that are loosely connected to the physical quality of the goods, could be regarded as sufficiently unusual to require heightened notice. This is particularly the case where the supplier operates in a jurisdiction whose legal system does not recognise such provisions as ordinary incidents of a contract for the sale of goods.[69]

Even with a valid inclusion, a further difficulty arises from the interpretation of the derogation clause itself. The BMW SCoC's termination provision states that 'the BMW Group reserves the right to terminate business relationships, provided that we have no other effective means available, and we cannot further increase our influence.'[70] As this formulation reserves a right rather than creating an automatic consequence, it may not constitute the clear and unambiguous derogation from Article 25 that a court would require to displace the CISG's default regime. A Chinese court, applying the same restrictive interpretive approach identified in sub-section 1 above, would be likely to construe such a clause narrowly, treating it as a contractual remediation and escalation framework rather than as an agreement to substitute the fundamental breach standard with a lower threshold of avoidance.

This analysis suggests that even the party-autonomy route does not readily provide a basis for avoiding a contract upon breach of an SCoC provision under the CISG. For derogation to be effective, the termination clause would need to state expressly and

[67] Ibid.

[68] CISG-AC, 'Opinion No. 13' (n 22) 17 f. See also Section II.B above.

[69] Whether such a clause remains sufficiently unusual to require heightened notice is time-sensitive: as supplier codes become routine, the argument from unusualness weakens.

[70] See BMW SCoC (n 24), Part II, s. 3, 17.

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

unambiguously that non-compliance with specified mandatory requirements constitutes a ground for avoidance of the contract, irrespective of whether the breach amounts to a fundamental breach within the meaning of Article 25. In the absence of such language, which the BMW SCoC does not contain, a Chinese court is unlikely to treat the termination clause as displacing the CISG's default avoidance regime. The practical result is the same as under the default analysis: the buyer faces a high threshold for avoidance, and social responsibility provisions violations that leave the goods physically conforming are unlikely to satisfy it.

C. Chinese Foreign Relations Law and Practice

The analysis in Sections III.A and III.B has shown that Chinese courts adopt a cautious approach to the enforceability of SCoC termination clauses, whether the governing law is CCC or the CISG. Under both frameworks, a buyer seeking to terminate on the basis of a supplier's non-compliance with social responsibility obligations faces a meaningfully high threshold: the minor breach limitation under Article 47 of the Minutes 2019 and the fundamental breach requirement under Article 25 CISG each operate to constrain termination where the goods remain physically conforming and commercially usable.

However, international commercial contracts do not exist in a purely private-law space.[71] In recent years, China has enacted a series of foreign relations statutes that introduce a public law dimension into private contractual disputes. For the exercise of SCoC termination clauses, one of these instruments is the AFSL, enacted on 10 June 2021. The AFSL does not merely regulate state-to-state relations; through its Article 12, it creates a statutory basis for civil proceedings, framed in judicial practice as a tortious claim[72], that enables Chinese citizens and organisations to sue any party

[71] In the Chinese context, Article 4 of the *Law of the People's Republic of China on the Application of Laws to Foreign-Related Civil Relationships* (中华人民共和国涉外民事关系法律适用法) (adopted 28 October 2010, effective 1 April 2011) provides that where Chinese law contains mandatory provisions applicable to a foreign-related civil relationship, those provisions shall apply directly, regardless of the parties' choice of law; official text available at <http://gongbao.court.gov.cn/Details/5556b6c60575c047bb77100af04a09.html>. See also *Supreme People's Court Interpretation (I) on the Application of the Law on Application of Laws to Foreign-Related Civil Relations* (2012), art 10, available at <https://www.court.gov.cn/shenpan/xiangqing/5273.html>.

[72] Liu M, 'The Anti-Foreign Sanctions Law: Content, Features, and Legitimacy under International Law' (2021) *TCLR* 149 (155); see also *Certain Marine Engineering Company v S Equipment Company*, Tort Liability Dispute, Nanjing Maritime Court (2024) Su 72 Min Chu 2157 (苏 72 民初 2157 号) Civil Mediation Decision (19 November 2024); the case can be accessed via the People's

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

that executes or assists in executing discriminatory restrictive measures. This thereby affects the validity of contractual termination in supply chain disputes. This sub-section examines the AFSL's relevance to SCoC termination rights in three steps: first, the legislative framework, focusing on the provisions most directly applicable to supply chain disputes; second, the emerging judicial practice; and third, the intersection between the AFSL and the contractual analysis developed in Sections III.A and III.B.

1. Legislative Framework

The AFSL is the centrepiece of China's counter-sanctions legal system, which also comprises the Rules on Counteracting Unjustified Extraterritorial Application of Foreign Laws and Other Measures (issued by China's Ministry of Commerce on 9 January 2021) and the Provisions on the Unreliable Entity List.[73] In March 2025, implementing regulations were promulgated to operationalise the AFSL's provisions.[74] Together, these instruments form what legal practitioners describe as a 'trinity' of anti-sanctions legislation.[75]

The AFSL is structured around a reactive, counter-sanctions logic: it does not seek to project Chinese regulatory authority extraterritorially, but rather to neutralise the domestic legal effects of foreign sanctions that target Chinese entities.[76] Article 12 of the AFSL confers Chinese citizens and organisations the right to bring civil proceedings before Chinese courts against any organisation or individual that executes, or assists in executing, such discriminatory restrictive measures, thereby causing loss to the Chinese party.[77] This provision transforms the AFSL into a basis

Courts of China Case Database at <https://rmfyalk.court.gov.cn> with case number 2025-10-6-504-001.

[73] Shen and Zhang, 'China's Anti-Sanctions Regime', in Morris (ed.), *Economic Sanctions under International Law*, 1st edn (Routledge 2024) 191; Du, 'China's Legal System of Anti-Foreign Sanctions and the Improvements of Its Implementation Mechanisms' (2025) *CLS* 86 (88).

[74] *Regulations on the Implementation of the Anti-Foreign Sanctions Law of the People's Republic of China* (promulgated by the State Council, 23 March 2025) <https://www.gov.cn/zhengce/zhengceku/202503/content_7015404.htm> accessed 10 July 2025.

[75] Zeng and Chen, '《反外国制裁法》：从"防守"到"反手"的立法逻辑与企业韧性的合规构建 [The Anti-Foreign Sanctions Law: Legislative Logic from "Defence" to "Counterattack" and the Construction of Enterprise Resilience Compliance]' (*CTILS*, 18 November 2025) <https://www.ctils.com/articles/23176> accessed 20 March 2026.

[76] Liu M, (2021) *TCLR* 149 (159).

[77] *Anti-Foreign Sanctions Law of the People's Republic of China* (adopted by the Standing Committee of the National People's Congress, 10 June 2021) <http://www.npc.gov.cn/npc/c2/c30834/202106/t20210610_311892.html>; English translation for

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

for private litigation and, critically, for challenging the validity of contractual conduct that gives effect to foreign sanctions. For the purposes of this paper, two elements of Article 12 are of central importance.

First, the trigger for initiating litigation under Article 12 of the AFSL is the concept of 'execute or assist in execution'[78], which is indirectly relevant to the SCoC context. The standard for 'execute or assist in execution' under Article 12 adopts an objective behavioural criterion: the statutory language does not expressly require proof of subjective intent to comply with foreign sanctions.[79] However, it is argued that the actor's subjective intent should nonetheless be taken into account in applying this provision, with particular focus on whether the actor had legitimate commercial reasons for the conduct in question.[80] Even so, the textual starting point remains important: a buyer's formal characterisation of its conduct, as an exercise of a contractual termination right under an SCoC, does not insulate it from AFSL liability if the substantive effect of that conduct is to give force to a foreign sanctions order. Whether or not a court adopts Liu's modified approach, the functional consequence of the termination, rather than its contractual label, remains a central consideration.

The scope of the AFSL's application turns on a second element: the concept of 'discriminatory restrictive measures'. However, neither the AFSL itself nor the relevant laws and regulations have ever clearly defined the scope of discriminatory restrictive measures.[81] China replaced 'unilateral sanctions' with 'discriminatory restrictive measures' possibly because there is no widely accepted definition of the latter in international law.[82] In reality, this has led to further uncertainty. If discriminatory restrictive measures are interpreted broadly, they could encompass a

reference available at <https://www.chinalawtranslate.com/en/counteringforeignsanctions/>. Art 12 provides that 'Organizations and individuals must not enforce or assist in enforcing the discriminatory restrictive measures employed by foreign nations against our nation's citizens or organizations. Where organizations and individuals violate the provisions of the preceding paragraph and infringe upon the lawful rights and interests of our nation's citizens or organizations, our nation's citizens and organizations may initiate litigation in the people's courts, requesting that they stop the infringement and compensate losses.'

[78] Liu J, '《反外国制裁法》第十二条适用要件的情境分析 [Situational Analysis of the Application Requirements of Article 12 of China's Anti-Foreign Sanctions Law]' (2024) *JHUEL* 69 (80).

[79] Ibid, 69 (80).

[80] Ibid.

[81] Wang, 'Study on the Implementation Mechanism and Improvement of the Anti-Foreign Sanctions Act' (2023) *IJFS* 108 (114).

[82] Liu M, (2021) *TCLR* 149 (153).

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

wide range of foreign laws, sanctions and sanctions lists. If interpreted narrowly, however, they would cover only certain unilateral sanctions imposed by foreign states.[83] Zhou Yanyun argues that the 'discriminatory' element requires one demonstrate that the foreign measure singles out Chinese subjects in a manner that treats them less favourably than similarly situated non-Chinese counterparts, whether directly or indirectly. In contrast, the 'restrictive' element encompasses measures that limit the rights or freedoms of Chinese entities, including prohibitions on commercial transactions and analogous coercive actions.[84] Specific forms of such measures include legislation enacted by foreign states imposing discriminatory restrictions on China, as well as the specific acts of applying such legislation.[85] A critical unresolved question is whether the identification of a measure as 'discriminatory and restrictive' requires a prior administrative determination by a competent governmental authority. Liu argues that no such administrative precondition is required: courts may determine the character of a foreign measure independently.[86] Yet the absence of any formal designation to date, despite repeated governmental expressions of opposition to specific foreign sanctions regimes, leaves private actors in a state of considerable legal uncertainty as to which foreign measures trigger the AFSL's obligations. In practice, Chinese governmental authorities have exercised considerable restraint in formally invoking these instruments.[87] Although MOFCOM and the Ministry of Foreign Affairs have repeatedly expressed opposition to specific foreign sanctions regimes, including those imposed by the United States, the European Union, and the United Kingdom in connection with Xinjiang-related supply chain legislation, no foreign measure has, to date, been formally designated as a 'discriminatory restrictive measure' through official administrative action.[88] This restraint suggests a deliberate governmental strategy of maintaining legislative deterrence while avoiding the disruption to multinational business operations that aggressive enforcement would entail.

---

[83] Wang, (2023) *IJFS* 108 (114).

[84] Zhou, '中国《反外国制裁法》中"歧视性限制措施"的识别 [Identification of "Discriminatory Restrictive Measures"in China's Anti-Foreign Sanctions Law]' (2022) *GLR* 162 (170).

[85] Ibid.

[86] Liu J, (2024) *JHUEL* 69 (80).

[87] Du, (2025) CLS 86 (100); see also Liu M, (2021) TCLR 149 (155).

[88] To the author's knowledge, as of 22 March 2026, no legislative, administrative, or judicial document has provided explicit criteria or an official list identifying such 'discriminatory restrictive measures'.

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

These two interpretive questions are compounded by a third source of uncertainty: the institutional framework for the AFSL's enforcement. The AFSL does not designate a specialised authority for anti-sanctions enforcement, instead stipulating that 'relevant departments of the State Council' are responsible for implementation.[89] Du and Wang have both observed that this arrangement, which involves multiple departments without a clear division of competences, creates risks of inconsistent enforcement and institutional inertia.[90] The result, for private actors, is a legal environment characterised by broad statutory prohibitions, limited administrative guidance, and nascent but increasingly significant judicial practice. It is to this emerging judicial practice that the analysis now turns.

2. Judicial Practice of Chinese Foreign Relations Law

The operational significance of the AFSL was confirmed in 2024 by the first publicly reported case invoking Article 12.[91] Since the AFSL's enactment, Chinese courts have, for the first time, accepted a lawsuit invoking its Article 12. Under Chinese civil procedure law, the formal acceptance of a case by a court constitutes a threshold determination that the claim satisfies the prescribed conditions for filing, including jurisdictional and substantive admissibility requirements. A court may refuse to accept a case that fails to meet these conditions.[92] The fact that the Nanjing Maritime Court accepted an Article 12 AFSL claim is therefore procedurally significant: it confirms that such claims are justiciable and satisfy the statutory conditions for filing. Although the case was ultimately concluded through mediation, the acceptance itself

[89] AFSL (n 77), arts 4–9 (conferring implementation authority on 'relevant departments of the State Council' without specifying which departments); art 10 (establishing a 'coordination mechanism for anti-foreign sanctions work' but without designating a lead agency).

[90] Du, (2025) *CLS* 86 (103 f) (noting that different administrative authorities are specified in different laws and regulations, which 'may lead to a situation in which countermeasures are taken by a variety of authorities and may conflict with each other', and arguing for the establishment of 'a specialised anti-sanctions agency to coordinate and implement anti-sanctions measures'); Wang, (2023) *IJFS* 108 (113, 116) (identifying both positive enforcement disputes, in which multiple organs compete for jurisdiction over the same matter, and negative enforcement disputes, in which organs disclaim responsibility, and proposing the creation of a specialised anti-sanctions agency to lead countermeasures work). There is as yet no judicial practice on this point; the only reported application of Article 12, the Nanjing Maritime Court case discussed below, was resolved through mediation without a reasoned judgment on the merits.

[91] *Certain Marine Engineering Company v S Equipment Company* (n 73).

[92] See *Provisions of the Supreme People's Court on the Registration of Case Filing by the People's Courts* (关于人民法院登记立案若干问题的规定) (Supreme People's Court of the PRC, 15 April 2015), art 2; official text available at <http://gongbao.court.gov.cn/Details/afc1fd6a2b622b4001326039961d82.html>.

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

signals the AFSL's operative potential as a basis for private litigation. The Supreme People's Court of the People's Republic of China referred to the case in its annual work report.[93]

According to the database of the People's Courts of China, in 2023, a Chinese marine engineering company entered into a subcontract with a foreign company ('S'), under which it was to construct equipment modules for a vessel owned by S. The value of the contract was approximately USD 19.45 million. On 7 June 2024, the Chinese company completed construction and final assembly in accordance with the contract. However, on 12 June 2024, the Chinese company was placed on a sanctions list by a third country. Relying on the enforcement of that administrative order, S Equipment Co. suspended payment of the remaining USD 11.86 million and terminated further communication. To safeguard its rights, the Chinese company applied to the Nanjing Maritime Court for the pre-litigation preservation of vessel A. On 18 September 2024, the court issued an order granting the arrest. On 11 October 2024, the Chinese company filed a lawsuit with the Nanjing Maritime Court under Article 12 of the AFSL of the People's Republic of China, seeking over RMB 86 million in compensation for unpaid construction fees and related losses. The Nanjing Maritime Court accepted the case in accordance with the law. Subsequently, S applied to the third country for payment authorisation and deposited RMB 99.74 million with the court as counter-security to lift the vessel's arrest. During the statutory defence period, the court informed S of the legal consequences under Chinese law of assisting in the enforcement of unilateral foreign sanctions. Following multiple rounds of court-facilitated mediation, the parties reached a settlement within 39 days. The mediation agreement provided that any subsequent disputes arising from the settlement would be subject to the jurisdiction of the Nanjing Maritime Court and governed by Chinese law.

From this first publicly reported case applying the Anti-Foreign Sanctions Law, both its symbolic and practical implications are noteworthy. The case demonstrates that Chinese courts are prepared to exercise jurisdiction over disputes arising from foreign sanctions compliance, even where the defendant is a foreign entity and the sanctioning state is a third country. Its inclusion in the official database of the People's Courts of China further signals that the AFSL may serve as a reference for courts

[93] Supreme People's Court of the PRC, *Work Report of the Supreme People's Court of the PRC*, 8 March 2025, Third Session of the 14th National People's Congress, <http://gongbao.court.gov.cn/Details/560aa703efbd2617c67f4ec07a827e.html?sw= 工 作 报 告 > accessed 20 May 2025.

nationwide when addressing disputes arising from the extraterritorial application of foreign sanctions.[94]

At the same time, the Nanjing case is distinguishable from the SCoC scenario that is the focus of this paper. In the Nanjing case, the connection between the foreign sanctions and the defendant's conduct was direct and undisputed: the Chinese company was explicitly placed on a sanctions list, and the foreign counterparty openly suspended payment in response. This directness reflects the nature of the measure itself: a sanctions listing is individual and concrete, naming and singling out a specific target. A supplier code operationalizing abstract-general due diligence legislation which applies to an indefinite class of suppliers irrespective of nationality lacks that target-specific character. As such, the connection between foreign measures and termination is more attenuated. In the Nanjing Case, moreover, there wasn't an intervening contractual mechanism, code of conduct, or compliance-based termination clause that could provide an alternative legal characterisation of the defendant's conduct. The harder question that arises in the SCoC context is what happens when a buyer terminates citing contractual grounds that have a plausible basis independent of any foreign sanctions regime.

3. The Intersection with SCoCs

The analysis in Sections III.A and III.B established that a buyer's exercise of a unilateral termination right is, in principle, enforceable under both Chinese law and the CISG, where a SCoC has been validly incorporated into a commercial contract. The buyer's exercise of this right is subject to the constraints imposed by the minor

[94] The People's Courts Case Database (人民法院案例库), launched in February 2024, is a curated repository of selected cases maintained by the Supreme People's Court. Unlike China Judgements Online (中国裁判文书网), which publishes original judicial documents in bulk without editorial selection, the Case Database collects only cases that have been reviewed and approved for their referential and exemplary value in the adjudication of similar disputes. This selection process is governed by the Work Procedures for the Construction and Operation of the People's Courts Case Database (人民法院案例库建设运行工作规程, issued May 2024), official text available at <https://www.court.gov.cn/zixun/xiangqing/431662.html>. No English translation is currently available; for an English-language analysis of the Work Procedures, see Finder, 'Update on the People's Court Case Database' (*Supreme People's Court Monitor*, 24 December 2024) <https://supremepeoplescourtmonitor.com/2024/12/24/update-on-the-peoples-court-case-database/> accessed 20 March 2026. The Work Procedures provide that the database incorporates two categories of cases: guiding cases (指导性案例), which carry binding persuasive authority under the SPC's guiding case system, and reference cases (参考案例), a newly established category whose authority is described by the principal drafters of the Work Procedures as higher than that of ordinary cases but lower than that of guiding cases. Judges are required under the Work Procedures to search the database when adjudicating similar cases; while reference cases may not serve as the direct basis of a judgment, they may be cited in judicial reasoning.

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

breach limitation and the requirement of fundamental breach, respectively. This sub-section introduces a further layer of analysis: the possibility that the AFSL may operate to override or qualify the ordinary contractual analysis, even where a termination would otherwise be valid under the governing contract law.

The central scenario is as follows: A foreign buyer terminates a supply contract with a Chinese supplier, citing the supplier's alleged breach of an SCoC provision, for example, a clause prohibiting forced labour. On its face, such a termination appears to be a straightforward exercise of a contractual right. However, if the underlying reason for the termination is the buyer's compliance with a foreign government's sanctions or restrictive trade measures, the legal characterisation of the termination changes fundamentally under Chinese law.

This scenario is not hypothetical. As discussed in Section II, the BMW SCoC explicitly references LkSG as part of its normative framework. The BMW SCoC's mandatory requirements on forced labour, child labour, and environmental standards are designed, in significant part, to discharge BMW's statutory obligations under the LkSG. The LkSG has attracted attention from Chinese governmental authorities. Chinese diplomatic authorities responded to the legislation by characterising the underlying allegations concerning Xinjiang as unfounded and by framing such supply chain due diligence requirements as an interference in China's domestic affairs.[95] Analogous positions have been expressed in connection with the United States' Uyghur Forced Labor Prevention Act: the Chinese Ministry of Foreign Affairs has publicly characterised measures of this kind as instruments that, in its view, result in 'forced unemployment' and 'forced return to poverty' in Xinjiang.[96] These

[95] 'Botschafter WU Ken im Interview mit Handelsblatt [Ambassador Wu Ken in Interview with Handelsblatt]' (Embassy of the People's Republic of China in Germany, 9 January 2023) <https://de.china-embassy.gov.cn/dszl/dsjscf/202301/t20230109_11004495.htm> accessed 20 March 2026. In the interview, Ambassador Wu Ken stated: 'In Xinjiang geht es um den Kampf gegen Terrorismus, Separatismus sowie Radikalisierung. Menschenrechtsvorwürfe entbehren jeder faktischen Grundlage [In Xinjiang, it is about the fight against terrorism, separatism and radicalisation. Human rights allegations lack any factual basis],' and 'China lehnt die Instrumentalisierung der Menschenrechtsfragen zum Zwecke der Einmischung in Chinas innere Angelegenheiten ab [China rejects the instrumentalisation of human rights issues for the purpose of interference in China's internal affairs].' The interview is also available via the Chinese Consulate General in Munich at <http://munich.china-consulate.gov.cn/ger/zlgxw/202301/t20230110_11005148.htm> accessed 20 March 2026.

[96] Ministry of Foreign Affairs of the PRC, 'Foreign Ministry Spokesperson Wang Wenbin's Regular Press Conference on 15 March 2024', available at <https://www.fmprc.gov.cn/eng/xw/fyrbt/lxjzh/202405/t20240530_11347716.html> accessed 2 March 2026 (stating that the United States 'put the Uyghur Forced Labor Prevention Act into effect ... in an attempt to engender forced unemployment and return to poverty in Xinjiang').

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

official statements, though not formal AFSL designations, indicate the Chinese government's view that Western supply chain due diligence legislation, including Germany's LkSG, may constitute the type of 'discriminatory restrictive measure' to which the AFSL is directed.[97] This has direct implications for the enforceability of SCoC termination clauses modelled on or driven by such legislation.

In such a case, a Chinese court may find that the buyer's termination constituted 'execution' or 'assistance in execution' of a 'discriminatory restrictive measure' within the meaning of Article 12 of the AFSL. Under the objective interpretation, the buyer's formal contractual framing, its invocation of an SCoC termination right, does not shield it from liability if the substantive effect of its conduct is to give force to foreign discriminatory restrictive measures. The court may, accordingly, hold the termination wrongful under the AFSL.

The central difficulty in applying the AFSL to SCoC termination disputes lies in distinguishing a genuine exercise of a contractual termination right from a termination motivated by discriminatory and restrictive measures dressed in contractual language. In the Nanjing case, this distinction did not arise: the foreign company's conduct was transparently responsive to a sanctions designation. In the SCoC context, however, the buyer's termination is formally grounded in contractual provisions that have their own independent legal basis in supply chain due diligence obligations. A Chinese court would therefore need to engage in a factual inquiry into the buyer's motivations, examining whether the termination was genuinely driven by the supplier's non-compliance with the SCoC or whether the SCoC was invoked as a pretext for discriminatory restrictive measures compliance. Relevant considerations might include the temporal proximity between the foreign discriminatory restrictive measures measure and the termination, whether the buyer applied the same SCoC standards to non-Chinese suppliers, whether the buyer had previously tolerated comparable non-compliance without terminating, and whether the specific SCoC provision invoked corresponds to the subject matter of the foreign discriminatory restrictive measures regime. An example of the final point could be, for instance, a forced-labour clause invoked shortly after the enactment of foreign legislation restricting imports linked to forced labour, as would be the case if a termination under the BMW SCoC's forced-labour provision coincided with the entry into force of obligations under the LkSG. The objective standard of Article 12 of AFSL does not eliminate this evidentiary burden; rather, it shifts the inquiry from the buyer's

[97] Zhang, 'Menschenrechtliche Sorgfaltspflichten in den Lieferketten im deutschen LkSG: Konzeptionen und Instrumente' (2022) *D-S* 59 (81f).

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

subjective intent to the objective circumstances surrounding the termination. A court would assess this on a case-by-case basis.

At the same time, the practical reach of AFSL remains uncertain and should not be overstated. As noted above, no foreign measure has been formally designated as a 'discriminatory restrictive measure' under the AFSL. Although the Chinese government's diplomatic statements regarding Germany's LkSG and the US Uyghur Forced Labor Prevention Act strongly suggest that such legislation falls within the AFSL's conceptual scope, the absence of a formal designation mechanism means that the applicability of the AFSL to any given foreign law depends on a case-by-case judicial determination. Furthermore, the Nanjing Maritime Court case, while significant as a precedent for the AFSL's justiciability, was resolved through mediation rather than a reasoned judgment. Chinese courts have therefore not yet had occasion to develop the doctrinal framework for applying Article 12 in a contested proceeding, let alone in the more complex scenario where the buyer's conduct has a plausible contractual basis. Lastly, the Chinese government's restraint in formally invoking the AFSL suggests an awareness that aggressive enforcement could deter foreign investment and disrupt the multinational supply chain relationships on which Chinese manufacturers depend, a consideration that may informally temper judicial willingness to apply the AFSL expansively.

These uncertainties notwithstanding, the AFSL introduces a dimension of legal risk that foreign buyers cannot afford to ignore. For foreign buyers exercising SCoC termination rights against Chinese suppliers, the AFSL thus creates a background legal risk that does not prevent termination as such, but that raises the cost and uncertainty of doing so, particularly where the termination coincides temporally or substantively with foreign discriminatory restrictive measures. For cross-border enterprises, compliance with one jurisdiction's requirements may expose the enterprise to liability in another, which is a structural tension that the current legislative framework does little to resolve.

IV. Conclusion

Unlike economic sanctions, which attract immediate public attention, the incorporation of sustainability and human rights requirements into supplier codes of conduct operates through a subtler mechanism: the contractual relationship itself. Yet as European supply chain due diligence legislation accelerates the contractualisation of these obligations, the legal effects of the resulting termination clauses become a question of growing practical significance, particularly in jurisdictions where the domestic legal framework may qualify or override their exercise.

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

This paper has examined that question from the perspective of the upstream supplier, a perspective largely neglected by an existing literature predominantly oriented toward the downstream buyer's regulatory environment. Using the BMW Group Supplier Code of Conduct as a case study, the paper has conducted a typological analysis across three potentially applicable legal frameworks, yielding the following findings.

Under the CCC, the practical enforceability of SCoC termination clauses is more limited than their textual scope implies. The minor breach limitation established by Article 47 of the Minutes 2019 empowers courts to deny termination even where the agreed contractual conditions are formally satisfied. In the supply chain context, ESG-related violations that leave the goods physically conforming and commercially usable are unlikely to be characterised as significantly minor breaches that do not defeat the contract's core commercial purpose.

Under the CISG, the conclusion is reinforced through a different doctrinal path. The fundamental breach requirement of Article 25, as interpreted by the Supreme People's Court in Guiding Case No. 107, sets a restrictive standard: where the buyer can, with reasonable effort, use or resell the goods, even a significant quality deficiency does not suffice for avoidance. The implication for social responsibility violations, which leave the physical characteristics of the goods entirely unaffected, is that they face an even weaker case against satisfying the Article 25 threshold. Nor does the party-autonomy route under Article 6 readily resolve this difficulty: the BMW SCoC's termination clause is unlikely to be construed by a Chinese court as an unambiguous derogation from the Convention's default avoidance regime.

Beyond private law, the AFSL introduces a further layer of legal constraint. The AFSL creates a statutory basis for civil proceedings that may defeat a contractual termination, not by invalidating the clause itself, but by rendering its exercise in the specific circumstances unlawful where a court determines that the termination functionally implements a foreign discriminatory restrictive measure. As discussed in Section III.C.3 above, diplomatic statements by the Chinese Embassy in Germany and the Ministry of Foreign Affairs have characterised specific instances of supply chain due diligence legislation (including the German LkSG, which the BMW SCoC explicitly references) as using human rights as a pretext to restrict Chinese enterprises. While these statements fall short of formal AFSL designations and do not bind the courts, they signal the Chinese government's view that legislation of this kind may constitute the type of 'discriminatory restrictive measure' to which the AFSL is directed and may inform the interpretive disposition of Chinese courts when adjudicating future disputes. The first publicly reported AFSL case (Nanjing

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

Maritime Court, 2024) confirms that Chinese courts possess both the legal basis and the institutional willingness to accept such claims.

For foreign buyers exercising SCoC termination rights against Chinese suppliers, the AFSL raises both the cost and legal uncertainty of termination, particularly where the exercise of the contractual right coincides substantively with a discriminatory restrictive measure. This structural tension is a predictable consequence of the collision between two regulatory logics: the European drive toward mandatory supply chain due diligence and the Chinese counter-sanctions framework designed to neutralize the domestic effects of foreign regulatory pressure.

Looking ahead, the significance of these sustainability issues is likely to grow. Recent empirical evidence from the 2025 International Arbitration Survey indicates that over the past five years, 30% of respondents have been involved in arbitrations raising environmental concerns, 15% have encountered disputes involving human rights issues, and 26% have faced matters relating to corporate social responsibility.[98] As sustainability-related disputes become more prevalent, the enforceability of the contractual instruments through which due diligence obligations are transmitted across borders, together with their interaction with the domestic legal frameworks of supplier-concentrated jurisdictions, will demand sustained scholarly and practical attention.

V. Bibliography

A. Primary Sources

Anti-Foreign Sanctions Law of the People's Republic of China (adopted 10 June 2021, effective 10 June 2021)

BMW Group, *Supplier Code of Conduct* (BMW Group Supplier Sustainability Policy) Version 3.0, valid as of 6 December 2022

Certain Marine Engineering Company v S Equipment Company, Tort Liability Dispute, Nanjing Maritime Court (2024) Su 72 Min Chu 2157 (苏 72 民初 2157 号) Civil Mediation Decision (19 November 2024)

[98] School of International Arbitration, Queen Mary University of London and White & Case LLP, *2025 International Arbitration Survey: The Path Forward – Realities and Opportunities in Arbitration* (Queen Mary University of London 2025) <https://www.qmul.ac.uk/arbitration/media/arbitration/docs/White-Case-QMUL-2025-International-Arbitration-Survey-report.pdf> accessed 20 July 2025.

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

Civil Code of the People's Republic of China (promulgated 28 May 2020, effective 1 January 2021)

Doe I v Wal-Mart Stores, Inc., 572 F.3d 677 (9th Cir. 2009)

Guiding Case No. 107: *Sinochem International (Singapore) Co Ltd v ThyssenKrupp Metallurgical Products GmbH* (dispute over a contract for the international sale of goods) (指导案例 107 号：中化国际（新加坡）有限公司诉蒂森克虏伯冶金产品有限责任公司国际货物买卖合同纠纷案), Supreme People's Court, (2013) Min Si Zhong Zi No. 35 (民四终字第 35 号) (30 June 2014)

Law of the People's Republic of China on the Application of Laws to Foreign-Related Civil Relations (中华人民共和国涉外民事关系法律适用法) (adopted 28 October 2010, effective 1 April 2011)

Minutes of the National Conference on Civil and Commercial Adjudication by the People's Courts (全国法院民商事审判工作会议纪要) (Supreme People's Court of the PRC, November 2019)

Provisions of the Supreme People's Court on Case Guidance Work (关于案例指导工作的规定) (Supreme People's Court of the PRC, 26 November 2010)

Provisions of the Supreme People's Court on the Registration of Case Filing by the People's Courts (关于人民法院登记立案若干问题的规定) (Supreme People's Court of the PRC, 15 April 2015)

Regulations on the Implementation of the Anti-Foreign Sanctions Law of the People's Republic of China, issued 23 March 2025 (PRC State Council)

Rules on Counteracting Unjustified Extra-Territorial Application of Foreign Laws and Other Measures (Ministry of Commerce of the PRC), 9 January 2021

Supreme People's Court of the PRC, *Interpretations of the Supreme People's Court on Several Issues concerning the Application of the General Provisions of the Civil Code of the People's Republic of China* (adopted at the 1,889th Session of the Adjudication Committee of the Supreme People's Court on 23 May 2023, effective 5 December 2023)

Supreme People's Court of the PRC, *'Work Report of the Supreme People's Court of the PRC'* (2025) Gazette of the Supreme People's Court of the PRC, 8 March 2025, Third Session of the 14th National People's Congress

United Nations Convention on Contracts for the International Sale of Goods (adopted 11 April 1980, entered into force 1 January 1988) 1489 UNTS 3

B. Secondary Sources

Ahl, Björn, 'Retaining Judicial Professionalism: The New Guiding Cases Mechanism of the Supreme People's Court' (2014) *The China Quarterly (CC)* 121

Beckers, Anna, *Enforcing Corporate Social Responsibility Codes: On Global Self-Regulation and National Private Law* (Oxford, 2015)

Bradford, Anu, *The Brussels Effect: How the European Union Rules the World* (Oxford, Oxford University Press, 2020)

Bu, Yuanshi (ed), *Chinese Civil Code - the Specific Parts: A Handbook* (CHBeck 2023)

Bueno, Nicolás, Bernaz, Nadia, Holly, Gabriela and Martin-Ortega, Olga, 'The EU Directive on Corporate Sustainability Due Diligence (CSDDD): The Final Political Compromise' (2024) *Business and Human Rights Journal (BHRJ)* 294

Cai, Gaoqiang, and Tang, Manting, 'Determination of the Fundamental Breach of Contract in International Goods Sales Contract Disputes——Comment on the Dispute Over the International Goods Sales Contract between Thyssen Krupp Mentallurgical Products Gmbh and Sinochem International (Overseas) Pte Ltd' (2019) *Journal of Law Application (JLA)* 41

Chen, Longye, 'Refining and Improving the Rules on Contract Termination and Their Judicial Application' (2024) *Law and Economy (L&E)* 15

CISG-AC Opinion No. 13 Inclusion of Standard Terms under the CISG, Rapporteur: Professor Sieg Eiselen, College of Law, University of South Africa, Pretoria, South Africa. Adopted by the CISG Advisory Council following its 17th meeting, in Villanova, Pennsylvania, USA, on 20 January 2013

Du, Juan, 'China's Legal System of Anti-Foreign Sanctions and the Improvements of Its Implementation Mechanisms' (2025) *China Legal Science (CLS)* 86

Eijsbouts, Jan, 'Corporate Codes as Private Co-Regulatory Instruments in Corporate Governance and Responsibility and Their Enforcement' (2017) *Indiana Journal of Global Legal Studies (IJGLS)* 181

Finder, Susan, 'Update on the People's Court Case Database' (Supreme People's Court Monitor, 24 December 2024) https://supremepeoplescourtmonitor.com/2024/12/24/update-on-the-peoples-court-case-database/ accessed 20 March 2026

Han, Shiyuan, 'Chinese Contract Law and the CISG' (2011) *Jinan Journal (Philosophy & Social Sciences) (JJPSS)* 7

He, Ying, 'Determination and Compensation for Fundamental Breach of Contract of Non-Conforming Goods Delivered Under CISG—Review of Guiding Case No.107of the Supreme People's Court and Other Similar Cases' (2024) *Journal of South China Normal University (Social Science Edition) (J South China Normal Univ (Soc Sci)*136

Jia, Mark, 'Chinese Common Law? Guiding Cases and Judicial Reform' (2016) *Harvard Law Review (HLR)* 2213

Lin, Liwen, 'Legal Transplants through Private Contracting: Codes of Vendor Conduct in Global Supply Chains as an Example' (2009) The *American Journal of Comparative Law (AJCL)* 711

Liu, Chengwei, 'The Structure and Application of the System of Contractual Termination Rights under the Civil Code' (2025) *China Legal Science* 45

Liu, Jiachen, 'A Contextual Analysis of the Applicability Requirements of Article 12 of the Anti-Foreign Sanctions Law' (2024) *Journal of Henan University of Economics and Law (JHUEL)* 69

Liu, Mingxin, 'The Anti-Foreign Sanctions Law: Content, Features, and Legitimacy under International Law' (2021) *Tsinghua China Law Review (TCLR)* 149

Liu, Ning, 'Challenges to the Right to Terminate Agreements in Cases of Minor Breaches' (2023) *Law Science (LS)* 74

Locke, Richard M., Qin, Fei and Brause, Alberto, 'Does monitoring improve labor standards? Lessons from Nike' (2007) *Industrial and Labor Relations Review (ILRL)* 61

Mitkidis, Katerina, 'Sustainability Clauses in International Supply Chain Contracts: Regulation, Enforceability and Effects of Ethical Requirements' (2014) *Nordic Journal of Commercial Law (Nordic J Com L)* 1

Parella, Kish, 'Enforcing International Law Against Corporations: A Stakeholder Management Approach' (2024) *Harvard International Law Journal (Harv. Int'l L.J.)* 65

Revak, Haley, 'Corporate Codes of Conduct: Binding Contract or Ideal Publicity?' (2012) *Hastings Law Journal (Hastings LJ)* 1645

School of International Arbitration, Queen Mary University of London and White & Case LLP, 2025 International Arbitration Survey: The Path Forward – Realities and Opportunities in Arbitration (Queen Mary University of London, 2025) https://www.qmul.ac.uk/arbitration/media/arbitration/docs/White-Case-QMUL-2025-International-Arbitration-Survey-report.pdf, accessed 20 July 2025

Smits, Jan M., 'Enforcing Corporate Social Responsibility Codes Under Private Law: On the Disciplining Power of Legal Doctrine' (2017) *Indiana Journal of Global Legal Studies (IJGLS)* 99

Schwenzer, Ingeborg and Leisinger, Benjamin, 'Ethical Values and International Sales Contracts' (2007) in Ross Cranston, Jan Ramberg, Jacob Ziegel (eds.), Commercial law challenges in the 21st century: Jan Hellner in memoriam (Uppsala, 2007) 249

Schwenzer, Ingeborg and Schroeter, Ulrich G (eds), *Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG)*, 5th edn (Oxford, 2022)

Shen, Wei, and Zhang, Beibei, 'China's Anti-Sanctions Regime' in P Sean Morris, *Economic Sanctions under International Law,* 1st edn. (Routledge 2024) 191

Vandenbroucke, Sarah, 'The Evolution of Codes of Conduct to Ensure Labor Rights in Global Supply Chains' (2024) *American Journal of International Law (AJIL)* 118

Wang, Huiru, 'A Comparative Analysis and Legal Reflection on the Boundaries of Human Rights Due Diligence of Supply Chain' (2024) *Human Rights (HR)* 02

Wu, Guangrong, 'Recent Developments in the System of Contract Termination and Its Application' (2025) *Journal of Law Application (JLA)* 85

Xu, Chengcheng, 'Study on the Exercise of Rescission Right of Contract for International Sale of Goods under the Adjustment of CISG' (2023) *Dispute Settlement (DS)* 2244

Yu, Xiaomin, 'Corporate Social Responsibility in Global Toy Supply Chains: A Story of Walmart's Toy Factories in Southern China' (2008) *Open Times (OT)* 05

Zeng, Zheng and Chen, Yitao, '《反外国制裁法》：从"防守"到"反手"的立法逻辑与企业韧性的合规构建 [The Anti-Foreign Sanctions Law: Legislative Logic from "Defence" to "Counterattack" and the Construction of Enterprise Resilience Compliance]' (CTILS, 18 November 2025) https://www.ctils.com/articles/23176 accessed 20 March 2026

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.

Zhang, Huailing, 'Menschenrechtliche Sorgfaltspflichten in den Lieferketten im deutschen LkSG: Konzeptionen und Instrumente' (2022) *Deutschland-Studien (D-S)* 59

Zhang, Huirong, Liu, Mingwei, and Kuruvilla, Sarosh, 'Implementation and Effects of the Private Regulation of Labor Standards in Global Supply Chains' (2022) *Social Science Journal (SSJ)* 02

Zhang, Huiying, 'The Extraterritorial Application of Human Rights Due Diligence Laws in Supply Chains and China's Response' (2024) *Western Law Review (WLR)* 06

Zhou, Yanyun, 'Identification of "Discriminatory Restrictive Measures" in China's Anti-Foreign Sanctions Law' (2022) *Global Law Review (GLR)* 162

University of Vienna Law Review, Vol. 10 No 2 (2026), pp. 123-159, https://doi.org/10.25365/vlr-2026-10-2-123.