The Evolution of Global Social and Environmental Responsibility in Supply Chains and Its Implications for Brazilian Businesses

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A study published in the Harvard Business Review in 2020[1] presents alternatives for developing ESG practices in supply chains, pointing out that organizations' main mistake is focusing on "top-tier" suppliers when, in reality, the highest risk comes from the lower tiers of the chain. The idea, then, is for each company to demand that its direct suppliers adhere to ESG practices, while those suppliers do the same, creating a cascading effect of supply chain diligence.

In the European community, this issue gained significant attention in 2017 with the enactment of a law in France that requires certain companies – both national companies and foreign companies operating in the country – to conduct environmental and human rights due diligence (human rights and environmental Due Diligence – hreDD) in their supply chains and publish an annual "Vigilance Plan".

Another important legislative milestone occurred in Germany earlier this year with the coming into effect of the "Due Diligence in the Supply Chain Act," which requires companies to establish a compliance and risk management system for social and environmental impacts throughout their production chains.

The effects of this law extend to companies in other countries that do business with German companies subject to the new regulations, because the requirements are passed on through value chains. The issue is therefore an important one for Brazilian companies that have any connection to German companies, even if indirect.

To ensure the system is effective, the legislation provides for contractual guarantees, under which direct suppliers not only commit to their own compliance, but undertake to impose the same guarantees on their own suppliers, down through the supply chain. As a result, compliance clauses dealing with control mechanisms, social and environmental performance, and materiality criteria for measurement and reporting, along with incentives, bonuses and penalties now have an even greater importance.

Recently, the European Parliament approved a significant regulation to prohibit imports to the economic bloc of commodities and agricultural products originating from deforested areas. The regulated products include beef, palm oil, soy, timber, cocoa, coffee, rubber, chocolate, wooden furniture, printed paper, and other products made with the listed commodities. The regulation will come into effect on December 30, 2024, and requires the fulfillment of due diligence duty for exporting the specified products, ensuring: (i) compliance with the country of origin's standards; (ii) no deforestation or forest degradation since 2021 in the production chain; and (iii) respect for human rights and indigenous communities.

Given the movement towards imposing socioenvironmental responsibility in the supply chain, an increasing number of multinational companies must now commit to having only partners in their supply chains who demonstrably adhere to the standards they have established. These measures directly impact commodity-exporting countries like Brazil, with exporting companies already mobilizing through sectoral associations to establish common governance for monitoring the regularity of activities, while ensuring due consideration for competition law and transparency.

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NOTE

[1] VILLENA, Verónica H.; GIOIA, Dennis A. "A More Sustainable Supply Chain". Harvard Business Review, v. 98, n. 2, pp. 84-93, 2020.

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