

The Path to Improving the National Security Review System for Overseas Investment and International Reference

Zhai Bei

SG Micro Corp Beijing, Beijing, 100089, China

Keywords: Overseas investment; National Security review; System improvement

Abstract: With the continuous advancement of globalization, the scale of overseas investment has been expanding year by year, and the national security review system for foreign investment has gradually become an important tool for safeguarding economic interests and national security in various countries. This article takes China's national security review system for overseas investment as the object, and analyzes the problems existing in the current review mechanism in terms of legal system, review standards, and process transparency. By drawing on the relevant institutional experiences of major economies such as the United States and the European Union, this article proposes a path to improve China's national security review system for overseas investment, including establishing a unified legal framework, refining review standards, enhancing review transparency, and strengthening multi departmental cooperation mechanisms. This article aims to provide reference for China to build a more credible and effective review mechanism, in order to promote the sustainable development of overseas investment while safeguarding national security.

1. Introduction

The deepening of globalization and the continuous evolution of the international economic landscape have made the importance of overseas investment increasingly prominent in promoting national economic development. For Chinese enterprises, participating in overseas investment is not only a necessary means to expand the market and acquire resources, but also an important way to enhance their international competitiveness, accelerate technological accumulation, and achieve strategic upgrading. In the context of China actively promoting the "the Belt and Road" initiative and deepening international cooperation, more and more enterprises choose transnational investment. However, with the continuous expansion of investment scale, national security issues have increasingly become the focus of attention for governments and public opinion in various countries. Many countries establish and implement national security review systems for foreign investment to ensure that foreign investment does not pose a potential threat to the country's core interests and security.

In the context of the increasingly complex international situation, China urgently needs to further improve its current overseas investment national security review system to better respond to

external environmental challenges and ensure a balance between national security and economic openness. Improving the review mechanism can not only effectively prevent national security risks, but also provide a more stable and predictable policy environment for Chinese enterprises' international investment activities, thereby promoting high-quality economic development and the internationalization process of enterprises while safeguarding national security.

This article aims to explore how to propose targeted institutional improvement suggestions by drawing on the advanced experience of countries and regions such as the United States and the European Union, combined with China's actual situation. By establishing clearer review standards, improving laws and regulations, enhancing the transparency of review procedures, and strengthening coordination and cooperation among multiple departments, this article hopes to provide theoretical reference and practical guidance for the further improvement of China's overseas investment national security review mechanism, ultimately achieving a win-win situation for national security and economic development^[1].

2. Analysis of the Current Situation of the National Security Review System for Overseas Investment

With the increasing activity of Chinese enterprises in the global market, national security issues have gradually become an important consideration factor in overseas investment. In recent years, the Chinese government has successively introduced a series of regulations and policies aimed at preventing the risks that overseas investment may bring to national security through a sound national security review system^[2]. At present, China's national security review system for overseas investment is constantly improving, gradually forming a relatively systematic regulatory framework that covers the scope of application, legal basis, review procedures, and multi departmental coordination mechanisms.

2.1 Legal Basis of the Review System

The legal basis of China's overseas investment national security review system is mainly composed of multiple laws and regulations, including the National Security Law, the Foreign Investment Law, and the Measures for the Administration of Enterprise Overseas Investment. These laws and regulations collectively provide a legal basis for national security review and clarify the basic framework of the review. Specifically, the National Security Law clearly stipulates that the state has the right to review investment activities that affect national security, while the Foreign Investment Law regulates and supervises foreign investment from the perspective of foreign investment. The Measures for the Administration of Overseas Investment of Enterprises further refine the specific requirements for enterprises to conduct overseas investment, ensuring that the review covers all potential security risks^[3].

2.2 Scope of review application

China's national security review mainly targets investment projects involving sensitive industries or fields, especially those that may affect key national interests such as military, defense, energy, technology, infrastructure, etc. With the changing international situation, emerging industries such as information technology and big data are gradually being included in the scope of review. This expansion reflects China's emphasis on national security risks in response to the increasingly complex international investment environment. During the review process, government departments conduct a comprehensive assessment of the nature of investment projects, the background of investment entities, and the potential impacts that investment may bring, to ensure that any

investment activities that may pose a threat to national security can be effectively monitored and managed^[4].

2.3 Review Procedures and Departmental Collaboration

The current review process is jointly implemented by multiple government departments, mainly including the Ministry of Commerce, the National Development and Reform Commission, the Ministry of Industry and Information Technology, and other departments. Various departments collaborate to jointly review the nature of overseas investment projects and their potential impact on national security. The State Council, as the highest regulatory authority, makes the final ruling on the review results. In the review process, enterprises need to declare to relevant departments and undergo national security review when investing in sensitive areas. This process usually includes two stages: preliminary review and further in-depth review. Preliminary review is used to determine whether an investment project requires in-depth review, while in-depth review involves a more detailed risk assessment.

2.4 Development Trends of the Review System

In recent years, with the deepening of China's opening-up to the outside world, the national security review system has also been continuously adjusted to adapt to the new international investment environment. The review content is gradually expanding from traditional sensitive fields such as military and national defense to more strategically significant industries, including high-tech fields such as information technology, data security, and artificial intelligence. This expansion reflects China's attitude of keeping pace with the times in national security protection and also indicates a high level of concern for potential risks in emerging fields. China's censorship system has also made significant progress in transparency and compliance. By gradually standardizing and publicizing the review process, enterprises can obtain more information and guidance when making overseas investments, thereby better responding to compliance risks.

2.5 Main characteristics of the existing system

China's overseas investment national security review system has demonstrated its own characteristics in various aspects. Firstly, the scope of the review is broad, covering multiple key industries and sensitive areas, ensuring comprehensive monitoring of potential risks. Secondly, the review process reflects strictness, conducting a comprehensive evaluation of investment projects through a dual layered structure of preliminary review and in-depth review. At the same time, the collaborative model of multiple departments has improved the scientific and reliable nature of the review, ensuring that experts from various fields can participate in the evaluation together and reducing blind spots and omissions in the review.

3. Comparison and reference of national security review systems in major foreign countries and regions

In the international community, national security review has become an important tool for countries to respond to foreign investment challenges and safeguard their own security interests. Many developed countries and regions, such as the United States, the European Union, Australia, etc., have established relatively complete foreign investment security review mechanisms. These review mechanisms have accumulated rich experience in legal framework, standard clarity, and cross departmental coordination, which has important reference significance for China to further

improve its national security review system for overseas investment.

3.1 Committee on Foreign Investment in the United States (CFIUS)

The Committee on Foreign Investment in the United States (CFIUS) is currently one of the most typical and comprehensive national security review mechanisms internationally. CFIUS is a cross departmental committee led by the Department of Treasury, with members including multiple government departments such as the Department of Defense, the Department of Homeland Security, and the Department of Commerce. Its main responsibility is to examine the potential impact of foreign investment on US national security. The main characteristics of CFIUS are reflected in the following aspects:

3.1.1 Legal Framework Improvement

CFIUS's review is based on the Foreign Investment Risk Review Modernization Act (FIRRMA), which provides clear regulations on the scope, standards, and procedures for foreign investment review. This legal framework not only guarantees the systematicity and legality of reviews, but also enhances transparency and fairness.

3.1.2 Clear review criteria

CFIUS's review criteria cover multiple areas, including critical infrastructure, military technology, personal data, etc. The review process emphasizes a comprehensive assessment of national security, particularly in sensitive areas such as technology transfer and data privacy. The clarity of standards makes the review process highly operable and reduces the uncertainty of the review process for enterprises.

3.1.3 Cross departmental Cooperation

The operation of CFIUS involves collaboration among multiple departments, which ensure comprehensive evaluation of investment projects through regular meetings and information sharing. This cross departmental cooperation model effectively improves the efficiency and quality of the review, ensuring the comprehensiveness and professionalism of the review^[4].

The inspiration of the CFIUS system in the United States for China lies in establishing a cross departmental collaboration mechanism, clarifying review standards and processes, in order to improve the transparency and efficiency of reviews, safeguard national security, and provide clear compliance guidance for enterprises.

3.2 EU Foreign Investment Review Framework

The EU's foreign investment review mechanism is relatively late, but it fully considers coordination and information sharing among member states in its institutional construction to ensure the common security of countries in the region. The European Union established a Foreign Direct Investment (FDI) review framework in 2019 to strengthen member states' scrutiny of foreign investment through unified policy guidance.

3.2.1 Regional Cooperation and Coordination

The EU's review mechanism emphasizes cooperation and coordination among member states, particularly through information sharing and exchange of opinions, to ensure that foreign investment does not pose a threat to the overall security of the EU. Each member state reserves the

final decision-making power over foreign investment, but needs to collaborate with other member states and the European Commission to ensure that the investment does not pose a risk to regional security.

3.2.2 Multi level review

The EU's FDI review framework adopts a multi-level review model, which not only focuses on security issues within member states, but also comprehensively evaluates investments that may affect the security of the entire EU at the regional level. This multi-level review method ensures the comprehensiveness and scientificity of foreign investment review, effectively preventing potential threats to the common interests of the EU^[5].

The EU's experience has inspired China that national security review can not only be an act of a single country, but can also leverage the power of regional cooperation to improve the comprehensiveness and effectiveness of the review through information sharing and multi-level review.

3.3 Australia's Foreign Investment Review Board (FIRB)

The Foreign Investment Review Board (FIRB) in Australia is also a representative international review body, whose main function is to examine the potential impact of foreign investment on Australia's national interests, covering sensitive industries such as agriculture, resources, and infrastructure.

3.3.1 Review criteria linked to national interests

FIRB's review focuses on protecting national interests, and the review criteria include various factors such as national security, economic interests, and community influence. Through a clear national interest orientation, FIRB can effectively identify and prevent potential security threats posed by foreign investment.

3.3.2 Transparency and Public Participation

Australia places emphasis on procedural transparency and public participation in foreign investment reviews. Key nodes and policy information in the review process should be made public, subject to public supervision and feedback, to ensure the fairness of the review results. This mechanism enhances society's trust in foreign investment review, while also improving the transparency and compliance of the review system^[6].

The inspiration of Australia's review mechanism for China lies in strengthening the transparency of review and improving the pertinence and social recognition of review work by clarifying review standards that are linked to national interests.

3.4 Comprehensive reference of experiences from various countries

By comparing the national security review systems of countries and regions such as the United States, the European Union, and Australia, it can be seen that they have certain similarities and uniqueness in terms of the legal framework for review, clarity of standards, cross departmental cooperation, and transparency. For China, improving its national security review system can draw on the following points:

3.4.1 Establish a sound legal framework and clarify review standards

We need to learn from the experience of the United States, clarify review standards and processes through legislation, improve the predictability and legality of reviews, and reduce uncertainty for enterprises in the compliance process.

3.4.2 Strengthen cross departmental collaboration

Drawing on the multi departmental and multi-level collaboration mechanisms of CFIUS and the European Union, we need to establish an effective information sharing platform and communication mechanism to ensure the scientific and comprehensive nature of national security reviews^[7].

3.4.3 Enhancing Transparency and Social Participation

Drawing on Australia's approach, by publicly reviewing key nodes and standards of the review process, accepting public supervision, enhancing the credibility of the review system, and ensuring that the review results are widely recognized by society.

4. The Path to Improving China's National Security Review System for Overseas Investment

In order to better respond to the complex changes in the international situation and ensure the coordinated promotion of national security and economic development, China's overseas investment national security review system needs to be further improved to enhance its scientificity, transparency, and effectiveness. Based on the reference to international experience, the following paths can provide reference for China's improvement in this area.

4.1 Establish a sound legal framework and clarify review standards

To improve China's national security review system, the first step is to enhance the existing legal framework. Although there are currently relevant laws such as the National Security Law and the Foreign Investment Law, further refinement of the review criteria is needed, especially in terms of the scope of application, specific review conditions, and definition of sensitive industries. By clarifying the review criteria in legal provisions, companies can reduce uncertainty in the compliance process, enabling investors to better understand which investment behaviors may be subject to review, thereby increasing investment confidence and policy transparency. Refining the review criteria can also enhance the pertinence of national security reviews, ensure focused attention to investment activities that truly involve core national interests, avoid unnecessary restrictions and burdens, and better balance the relationship between economic openness and national security.

4.2 Improve the transparency of the review process

The enhancement of transparency is one of the key factors in improving the national security review system. Through the basic process, key milestones, and timeline of public review, enterprises can obtain clearer guidance, thereby reducing uncertainty in the review process. The government can establish a dedicated portal website to publish specific requirements, review standards, and application processes related to national security review, helping enterprises understand potential compliance risks when making overseas investments. Improving the transparency of the review process can not only reduce investors' concerns, but also help enhance the credibility of national security reviews. The government can establish a communication

mechanism during the review process to enable enterprises to understand the progress of the review and obtain timely feedback on the review. Such measures will effectively enhance the participation and recognition of policies by enterprises.

4.3 Strengthen multi departmental collaboration and information sharing

The national security review involves multiple fields, so collaborative efforts among multiple departments are crucial in the review. We should further optimize the division of labor and cooperation mechanisms among departments, clarify their responsibilities and authorities, and establish an effective information sharing platform. Through close collaboration across departments, the scientific and comprehensive nature of the review process can be ensured, effectively reducing inefficiencies or review blind spots caused by information asymmetry between departments. Drawing on the experience of CFIUS in the United States, it is possible to consider establishing a cross departmental coordination body to unify and guide the review work of relevant departments, ensuring that professional knowledge in various fields can be fully utilized. This mechanism can not only improve the efficiency of review, but also enhance the flexibility of the review process and the ability to cope with complex investment environments.

4.4 Drawing on international experience and promoting regional cooperation

Drawing on the experience of the EU, China can further promote regional cooperation with countries along the "the Belt and Road", especially on information sharing and policy coordination in foreign investment review. This cooperation can help China better understand changes in foreign investment policies in other countries and assess the national security risks that Chinese companies may face when investing in these countries. At the same time, through regional cooperation, China can also work with other countries to jointly develop and improve the foreign investment review standards within the region, and enhance the overall regulatory level of cross-border investment.

4.5 Establish an independent review and supervision mechanism

To ensure the fairness and impartiality of national security reviews, it is possible to consider establishing an independent review and supervision mechanism to oversee the entire review process. This mechanism should be independent of specific executing departments, ensuring the legality and transparency of the review process, and avoiding the impact of departmental interests on the fairness of the review results. By establishing such a supervisory body, the credibility of the review work can be further enhanced, and the legitimate rights and interests of enterprises can be protected.

5. Conclusion

In the context of globalization and complex international situations, the national security review system for overseas investment is not only an important guarantee for safeguarding national core interests, but also a necessary means to seek a balance between open economy and national security. Improving China's national security review mechanism is an important measure to respond to changes in the emerging investment environment, protect national security, and promote the internationalization of enterprises. In the future, with the rapid development of technology and the constantly changing international investment environment, China's overseas investment national security review system needs to maintain flexibility and foresight, and respond to increasingly complex challenges by continuously optimizing laws and regulations, enhancing transparency and efficiency of reviews, and strengthening international cooperation. The process of improving the

review system not only involves policy adjustments and optimizations, but also requires continuous exploration in practice and seeking balance among multiple interests. Through continuous improvement, the national security review system will undoubtedly provide more stable support for Chinese enterprises on the international stage, laying a solid foundation for achieving the win-win goal of national security and high-quality economic development.

References

- [1] Zou Shuhuan. *On the Legal Protection Principles and Measures for Overseas Direct Investment in China* [J]. *Modern Finance: Journal of Tianjin University of Finance and Economics*, 2008, 28 (4): 4. DOI: 10.3969/j.issn.1005-1007.2008.04.017
- [2] Wang Hanchen. *An Analysis of the Impact and Countermeasures of the National Security Review System on Cross border Mergers and Acquisitions of Chinese Enterprises* [J]. *Rule of Law and Society*, 2013. DOI: CNKI: SUN: FZSL.0.2013-22-023
- [3] Chen Lei. *Research on China's Overseas Investment Approval and Regulatory System* [D]. *Central University for Nationalities* [2014-11-14] DOI: CNKI: CDMD: 2.2005.066837.
- [4] Liu Yu, Mo Manwan, Yan Su. *The National Security Review Risks and Countermeasures Faced by Chinese Enterprises in Overseas Investment* [J]. *Chinese Soft Science*, 2024 (1): 36-46
- [5] Liang Yong. *Research on the National Security Review of Foreign Investment in the United States: An Analysis from the Perspective of the CNOOC Acquisition of Unocal* [C]//2008 National Doctoral Academic Forum. 2008
- [6] Xu Fang, Zhang Mengdi. *Analysis of the National Security Review System for Foreign Investment under the European Union System: A Discussion on the Impact Assessment and Response to China's Overseas Investment*. *Journal of Jilin University of Commerce*, 2015, 31 (3): 5. DOI: 10.3969/j.issn.1674-3288.2015.03.018
- [7] Quan Ruixue. *Overview of Australia's Foreign Investment Review System and Legal Framework* [J]. *International Economic Cooperation*, 2011 (7): 4. DOI: CNKI: SUN: GJJH.0.2011-07-023