

Regulatory Scope and Legal Supervision Modes of Overseas Investment between China and the United States from the Perspective of Comparative Law

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Abstract: In the context of economic globalization, the overseas investment management laws and regulations of China and the United States exhibit significant differences. This paper conducts a comparative law analysis of the United States' Outbound Investment Program and China's Administrative Measures of Overseas Investment and Administrative Measures of Overseas Investment by Enterprises. Focusing on regulatory scope and legal supervision modes, the study aims to deeply explore the legal characteristics of both countries in managing outbound investments. The analysis reveals that China's regulations emphasize broad coverage and pre-investment approvals to ensure national economic security and guide enterprise activities toward sustainable development. In contrast, the United States adopts a targeted approach, restricting investments in specific high-tech sectors and regions to protect technological advantages and national interests. By examining these differences, the paper highlights how China's framework provides stability and risk mitigation but may introduce procedural complexities, while the U.S. model offers flexibility and efficiency yet risks delayed oversight. This comparative perspective underscores the balance between safeguarding national interests and fostering international economic cooperation. The findings suggest opportunities for mutual learning, such as simplifying procedures in China to enhance enterprise competitiveness and strengthening preemptive measures in the United States for better risk management. Ultimately, understanding these regulatory divergences can inform more effective frameworks for global investment, promoting transparency, compliance, and mutual benefits in cross-border economic activities.

Keywords: Outbound Direct Investment; National Security Technologies; Investment Approval Systems; Comparative Regulatory Frameworks; Economic Risk Management; Global Investment Strategies

1. Introduction

Under the background of deepening economic globalization, the traditional state-based economic activities are gradually broken, and the production factors such as goods, personnel, capital and services are flowing around the world, and the economic exchanges between various countries are becoming more and more frequent. Therefore, the enthusiasm of enterprises to participate in international investment and cooperation is increasing. Among them, the demand for foreign investment is particularly obvious. According to the China's outward investment and economic cooperation report 2023, China's outbound non-financial direct investment reached US \$130.1 billion in 2023, ranking among the top three in the world. However, outbound investment is also faced with complex international environment and various risks, including political risk, economic risk, legal risk and so on. In order to better guide and manage these overseas investments and ensure the dual protection of national interests and corporate interests, governments of various countries have successively issued relevant laws and regulations to regulate outbound investment [1]. Although economic globalization has objectively promoted the demand of enterprises to invest abroad, the background of the promulgation of relevant laws and regulations in China and the United States is quite different. In September 2013, the "Belt and Road Initiative" was first proposed. In November 2015, the initiative was officially elevated to a national strategy. Since the "Belt and Road" was

proposed, China has actively promoted economic cooperation and investment with countries along the route, which has also provided a realistic basis for the introduction of China's two overseas investment management measures [2]. They are the Administrative Measures of Overseas Investment (AMOI) promulgated by the Ministry of Commerce in 2014 and the Administrative Measures of Overseas Investment by Enterprises (AMOIE) promulgated by the Development and Reform Commission in 2017. The two Administrative Measures aim to provide clear guidance for enterprises, reduce investment risks, and strengthen management and services for overseas investment. This not only helps to enhance the international competitiveness of Chinese enterprises, but also provides support for infrastructure construction and economic development of countries along the "Belt and Road" and promotes regional economic connectivity [3].

On August 9, 2023, the United States declared a national emergency. The order directs the Secretary of the Treasury to develop a program that prohibits or requires U.S. persons to give notice of certain types of outbound investments involving certain categories of advanced technologies and products made by certain entities located in or under the jurisdiction of a country of Concern and certain other entities owned by a person in a country of concern. In the annex to the order, the United States specifically listed the People's Republic of China, the Hong Kong Special Administrative Region and the Macao Special Administrative Region as countries of concern. On October 28, 2024, the Treasury Department issued a final rule that will go into effect on January 2, 2025. The main goal of the order is to protect the security and interests of the United States through restrictions on foreign investment, but at the same time, it also leads to changes and uncertainties in the foreign investment environment of the United States, affecting the global strategy of American enterprises.

In order to better cope with the new situation of the global economy, this paper will conduct a comparative analysis of regulations of China and the United States in the field of outbound investment, focusing on Regulatory Scope and Legal Supervision, and focusing on micro-analysis. conceptual method and

functional method are mainly used, starting from the content of the articles, and going deep into the legislative value orientation of China and the United States in outbound investment. By analyzing the balance between national security and economic interests between China and the United States, this paper aims to provide reference for future international investment frameworks.

2. Differences in Regulatory Scope between China and the United States

The regulatory scope of the law helps to understand the legal framework under different legal systems, including which acts are regulated by law and which rights and obligations are specified. This provides a basis for comparative analysis. Understanding the regulatory scope of a law helps judge the applicability of a law in a particular situation [4]. For example, there may be specific industries or behaviors that are more tightly regulated, and analyzing these differences can help develop more effective frameworks [5]. Clarifying the regulatory scope of the law helps to improve the transparency of the law, make it easier for the public to understand the application of the law, and promote the compliance and effective implementation of the law. The first step in studying the scope of regulation is to start with specific legal provisions.

2.1 Administrative Measure of Overseas Investment of China

The AMOI were promulgated by the Ministry of Commerce of the People's Republic of China in 2014. The regulations have not been revised for ten years. On the one hand, this Administrative Measures have not been modified for a long time, which shows the stability of the framework, which provides a certain expectation and confidence for overseas investors. On the other hand, with the expansion of the scale and complexity of overseas investment, the Administrative Measures that has not been modified for a long time may no longer be able to adapt to the current overseas investment needs, and it is insufficient in terms of facilitating enterprise investment and risk prevention, resulting in potential legal risks and unnecessary legislative redundancy.

Through the review of the AMOI, Article 2 of the Administrative Measures gives a detailed definition of "overseas investment", covering

the direct investment of Chinese domestic enterprises in overseas enterprises, as well as the investment through the establishment of joint ventures, sole proprietorship enterprises or the acquisition of foreign enterprises [6]. This broad definition ensures that all types of overseas investment activities are within the regulatory scope to safeguard the economic security and interests of the country.

However, the AMOI provide a general overview of the regulatory scope, but less mention of specific implementation details. To some extent, this situation has led to the uncertainty faced by enterprises in actual operation. For example, for different types of investment projects, how to conduct compliance review, information disclosure and subsequent supervision and other specific operational processes are not specified in detail. This may lead to a lack of guidance when facing the legal environment in different countries and regions, increasing compliance risks.

The broad regulatory scope has also brought challenges to the implementation of the AMOI. The AMOI not only regulate investment behavior, but also specify the purpose, industry, and region of investment, so as to better adapt to the compliance needs of different investment scenarios [7]. In addition, although the Administrative Measures on the approval procedures and information reporting requirements for investment projects provide enterprises with certain operational guidelines, in actual operation, it may lead to cumbersome approval processes and affect the efficiency of investment decisions of enterprises. Especially for small and medium-sized enterprises, overly complicated approval procedures may become an obstacle to their entry into the international market.

Although the regulatory scope of AMOI covers a wide range of overseas investment activities, it still needs to be continuously optimized and adjusted in the implementation process to enhance its guiding role for enterprises and its ability to protect national interests. This will help enhance the international competitiveness of enterprises, while reducing legal risks, and provide a stronger guarantee for the sustainable development of Chinese enterprises in the global market.

2.2 Administrative Measures of Overseas Investment by Enterprises of China

AMOIE were promulgated by Order No. 11 of the National Development and Reform Commission in 2017. Different from AMOI, AMOIE list eight specific forms of overseas investment on the basis of the explanation of the meaning of “overseas investment” in Article 2. In addition, this Administrative Measures also explain the relevant concepts in the process of overseas investment. Through the explanation of “overseas investment” and its corresponding concepts, AMOIE will undoubtedly further clarify its regulatory scope and reduce the occurrence of judicial and law-abiding problems caused by unclear interpretation.

Compared with AMOI, the Administrative Measures of Overseas Investment by Enterprises also show flexibility in responding to changes in the international economic situation. Article 13 of AMOIE states that “the catalogue of sensitive industries shall be issued by the National Development and Reform Commission”. For investment risks in specific countries and regions, AMOIE introduce a dynamic adjustment mechanism, allowing investment guidelines and frameworks to be updated in a timely manner according to changes in the international situation. This ability to respond in a timely manner enables enterprises to avoid potential risks more effectively in the face of a complex international environment.

2.3 Outbound Investment Program of the United States

Compared with AMOI and AMOIE of China, the Outbound Investment Program (OIP) of the United States is quite “young”. The United States has adopted a very different legislative mode from China. Under the Final Rule, U.S. person is defined broadly and can apply to a) U.S. entities, b) foreign branches and subsidiaries of U.S. entities, c) U.S. citizens and U.S. permanent residents wherever located, and d) individuals physically located in the United States. The first two elements have a clear nexus to U.S. businesses and operations, but the latter two have wider application. For example, the OIP can impact foreign entities that employ US persons as well as those that have employees who may conduct business activities when physically located in the United States. In addition, OIP also has a more explicit directive. At the beginning of OIP, the Biden Executive Order identified three categories of national security technologies and products:

semiconductors and microelectronics, quantum information technologies, and artificial intelligence. At the same time, the order also listed the People's Republic of China, Hong Kong and Macao Special Administrative Regions as key country or regions of concern.

Thus, the United States has adopted a fairly precise regulatory scope when restricting outbound investment. It not only stipulates three types of high-tech fields, but also has a strong indicative point to the People's Republic of China and the Hong Kong and Macao Special Administrative Regions. Using executive action in the form of presidential orders to efficiently and precisely protect U.S. technological superiority and national security, and to ensure that sensitive technologies are not acquired by potential adversaries [8]. The flexibility and pertinence of this model enable the United States to react quickly in global investment regulation and adapt to the changing international economic and political environment.

2.4 Specific Comparison

In the same way, laws are applied to control enterprises' outbound investment, so as to ensure national security, technical barriers and investment compliance. China and the United States show very different governance ideas, which are specifically reflected in the differences in the regulatory scope of overseas investment between the two countries.

First of all, there are differences in the subject of regulatory scope. OIP of the U.S. emphasizes almost all individuals and legal entities associated with the United States, and it can be said that the OIP is associated with all capital and personnel in the United States. In AMOI and AMOIE of China, these two Administrative Measures emphasize the control of enterprises, especially private enterprises. It is not difficult to explain this difference, and the core reason for this difference lies in China's foreign exchange management system. According to the relevant regulations of China's foreign exchange management, the quota is 50,000 US dollars per person per year. This makes it almost impossible for Chinese individuals to invest abroad.

Secondly, in terms of range size of regulatory scope, China's regulatory scope is much larger than OIP. Both the AMOI and AMOIE stipulate that overseas investment activities are subject to

the supervision of the measures. In particular, Article 2 of AMOIE lists almost all forms of overseas investment. It can be seen that China regulates the overseas investment behavior of enterprises. In the United States, OIP has less extensive regulations in the field of investment behavior, and only regulates three categories of national security technologies and products listed by OIP [9].

To sum up, from the perspective of the regulatory scope, China basically includes all overseas investment activities in the scope of supervision, and does not distinguish between industries. Although the United States includes all people related to foreign investment in the regulatory scope, it also stipulates three sensitive industries and the People's Republic of China and Hong Kong and Macao Special Administrative Region as the focus of attention, which has little impact on other foreign investment activities of the United States [10]. Thus, China's regulatory scope is broader than that of the United States.

3. Differences in Legal Supervision Modes between China and the United States

The comparison of legal supervision modes can reveal the effectiveness of different countries in the process of law implementation. There are great differences between China and the United States in the legal supervision methods of overseas investment by various entities. By analyzing the legal supervision modes of the two countries, we can find out their advantages and disadvantages, so as to provide reference for the legal reform of the other country. These experiences can provide new perspectives for legislators to improve existing legal frameworks.

3.1 Approval System and Register System in China

In the Administrative Measures of Overseas Investment and the Administrative Measure of Overseas Investment by Enterprises, the modes adopted by the Chinese government are clearly stipulated: the approval system and the register system.

The approval system is a stricter review of specific overseas investments, with companies required to submit detailed application materials and wait for formal approval from the National Development and Reform Commission. The approval system applies to investments

involving sensitive countries, such as countries without diplomatic relations, countries subject to sanctions, and sensitive sectors [11]. Article 13 of AMOIE provides a basis for enterprises to determine whether investment activities are sensitive projects: It lists sensitive countries, regions and industries, and stipulates that “the catalogue of sensitive industries shall be issued by the National Development and Reform Commission”. Through enumeration and industry catalog, the sensitive overseas investment behaviors are clarified, and the transparency and predictability of investment are enhanced.

The register system refers to the need for enterprises to submit necessary materials to relevant competent commercial departments before carrying out overseas investment, so as to facilitate government departments to record and supervise investment behaviors. The register system applies to investments that do not involve sensitive countries or industries, and companies that adopt the register system can obtain approval quickly through a relatively simplified process compared to the approval system.

It is worth noting that in the Administrative Measures of Overseas Investment and the Administrative Measure of Overseas Investment by Enterprises, both the approval system and the register system require certificates issued by relevant government departments. Article 32 of the AMOIE stipulates that: for projects that fall within the scope of approval and register system, the investment entity shall obtain the project approval document or register notification before the implementation of the project. It can be seen that if Chinese enterprises want to conduct overseas investment, they should adopt the approval system and the filing system to implement investment behavior [12]. This also means that the Chinese government has adopted a legal supervision mode of “administrative actions take precedence over market actions” on enterprises. Although this legal supervision method can greatly control illegal or potentially harmful investment behaviors in the first place, it also causes large institutional costs to enterprises to a certain extent. Inhibits the enthusiasm and vitality of enterprises to expand overseas markets and integrate into global economic development.

3.2 Notification in the United States

Compared with China, OIP in the United States adopts different legal supervision methods. According to the OIP, A U.S. person subject to the notification requirement is required to file a notification form with Treasury that includes information related to the transaction, such as details about the U.S. person, the covered foreign person, the covered transaction, and the relevant national security technologies and products. The requirement is intended to ensure transparency about foreign investments by U.S. persons, assist the Department of Commerce in its understanding of corporate transactions, and protect national security interests [13]. Transaction information submitted by Americans to the Commerce Department will be kept confidential to ensure the legal rights of both parties, but OIP also specifies certain circumstances that may lead to the disclosure of transaction information. Therefore, there is no clear answer to whether OIP will make unreasonable disclosures to Americans that affect business behavior and excessively interfere with Americans’ outbound investment behavior.

OIP requires enterprises to submit a notification to the U.S. Department of Commerce for a large amount of information related to investment behaviors in the industries, countries and regions involved. OIP also requires that Americans need to complete corresponding due diligence and fulfill reasonable review obligations before implementing investment behaviors. OIP defends allowing Americans to use the “duty of reasonable review” to exempt them from liability for violations of the OIP. It can be seen that OIP still provides the relevant exemption provisions for U.S. person to avoid the unnecessary negative impact on the U.S. outbound investment market after OIP takes effect on January 2 next year and destroys the original business order.

3.3 Specific Comparison

Whether it is AMOI and AMOIE of China or OIP of U.S., although it can protect national security and economic interests to a certain extent, it may also bring a series of negative effects.

The “approval system and register system” stipulated by China takes a completely different strategy from U.S.: Chinese enterprises need to obtain approval from government departments before conducting outbound investment activities, while U.S. person need to submit

notices to U.S. Department of Treasury within a certain period after completing outbound investment transactions. Both modes have their pros and cons, reflecting the two countries' different priorities in economic management and national security.

First, the Chinese mode has certain advantages. Through prior approval, the government can effectively control potential national security risks and ensure that investment projects do not harm national interests. In addition, this approach allows the government to direct enterprises to invest in areas that are in line with the national development strategy, such as high-tech industries and infrastructure construction. However, this mode also has obvious shortcomings, especially the low investment flexibility. Companies need to go through complex approval processes before making outbound investments, which can lead to missed opportunities and affect their competitiveness in the international market. At the same time, the complexity of the approval process also increases the compliance cost of enterprises, especially for small and medium-sized enterprises, the burden may be more heavy.

The U.S. mode, by contrast, is more flexible and gives companies greater autonomy. Companies are able to act quickly to seize investment opportunities, thereby enhancing their market responsiveness and international competitiveness. In addition, the late reporting mechanism reduces the compliance burden of enterprises and reduces investment costs. However, this model comes with some risks. Reporting after an investment is completed can lead to potential national security risks not being identified and addressed in a timely manner, especially when it comes to investments in sensitive technologies and areas [14]. In addition, the lack of prior approval may make it difficult for the government to effectively guide the investment direction of enterprises, resulting in inadequate resource allocation.

In summary, the U.S. model is generally seen as more friendly in terms of the friendliness of corporate outbound investment behavior. Its flexibility and lower compliance costs enable companies to adapt more quickly to market changes and enhance their competitive advantage. While China's mode has advantages in terms of national security and guidance, it has shortcomings in flexibility and efficiency, which

may affect enterprises' investment decisions. Ultimately, when making international investment, enterprises should consider the environment of each country and their own strategic needs to make the best decision.

4. Conclusion

In the comparative law analysis of overseas investment laws and regulations between China and the United States, there are significant differences in the strategies of protecting national security and promoting economic development. AMOI and AMOIE of China adopt a strict regulatory model, requiring companies to follow approval and register procedures before making overseas investments. This pre-approval mode not only enhances the transparency and predictability of investment, but also aims to effectively control potential national security risks and protect national economic interests. However, the complexity and rigor of this model may inhibit the investment flexibility of enterprises and increase the compliance cost, especially for small and medium-sized enterprises, cumbersome approval procedures and high compliance costs may become a major obstacle to their expansion into the international market. In addition, too conservative regulation may cause Chinese companies to miss opportunities in global competition, so they need to find a better balance between risk control and market vitality. In contrast, the Outbound Investment Program of the United States shows greater flexibility and adaptability. OIP gives companies greater autonomy and market responsiveness by requiring them to submit notices after an investment. This late reporting mechanism enables enterprises to quickly seize market opportunities, thereby enhancing their international competitiveness. However, the late declaration approach may also lead to delayed identification of national security risks, especially when it comes to investments in sensitive technologies and sectors, where potential risks may not be detected and dealt with in a timely manner. In addition, the lack of pre-approval mechanism makes it difficult for the government to effectively guide the investment direction of enterprises, which may lead to unreasonable allocation of resources and the lack of strategic investment. This balance of flexibility and control reflects different US considerations in promoting economic growth

and protecting national security.

On the whole, China has significantly higher control over overseas investment, especially when it involves sensitive industries and countries. Such strict supervision can effectively prevent risks and safeguard the overall interests of the country. When it comes to foreign investment friendliness for its citizens, the US model is more attractive, with its flexibility and lower compliance costs enabling companies to adapt more quickly to market changes and seize investment opportunities. In order to promote the stability and development of the international investment environment, it is recommended that China, on the premise of ensuring national security, gradually simplify the approval process and enhance the flexibility of investment, so as to enhance the global competitiveness of enterprises.[15] At the same time, while protecting national security, the United States should optimize the information disclosure mechanism and avoid excessive interference in the normal operation of enterprises, so as to maintain a good business environment.

In future framework making, China and the United States can learn from each other's successful experience in overseas investment management and find win-win solutions by strengthening dialogue and cooperation. This will not only help enhance the international competitiveness of enterprises of the two countries, but also make positive contributions to the stability and development of the global economy. By working together, the two countries can promote a more open and inclusive international investment environment while maintaining their respective national security and economic interests.

References

- [1] Taylor Veronica L. "Regulatory Rule of Law." *Regulatory Theory: Foundations and Applications*, edited by Peter Drahos, ANU Press, 2017, pp. 393-414.
- [2] Kerner A. "What We Talk About When We Talk About Foreign Direct Investment." *International Studies Quarterly*, vol. 58, no. 4, 2014, pp. 804-15.
- [3] Smith G, Paul D'Arcy. "Introduction: Global Perspectives on Chinese Investment." *Pacific Affairs*, vol. 86, no. 2, 2013, pp. 217-32.
- [4] Daniel O'Neill. "Playing Risk: Chinese Foreign Direct Investment in Cambodia." *Contemporary Southeast Asia*, vol. 36, no. 2, 2014, pp. 173-205.
- [5] Eichensehr K E, Cathy H. "National Security Creep in Corporate Transactions." *Columbia Law Review*, vol. 123, no. 2, 2023, pp. 549-614.
- [6] Meidan M, Luke P. *Business and Politics in China's Overseas Investments*. Danish Institute for International Studies, 2016.
- [7] Negara S D. "Revisiting the Belt and Road Initiative in Indonesia: Progress, Challenges, and Prospects." *Journal of Southeast Asian Economies*, vol. 41, no. 1, 2024, pp. 28-46.
- [8] Macheda F, Liu J X. "The Role of State-Owned Enterprises in Promoting High-Quality Economic Development: The Case of China." *World Review of Political Economy*, vol. 16, no. 1, 2025, p. 26, 82.
- [9] Zi Y Y. "Global Capital, Local Dynamics: Unravelling Labor Relations in Chinese Foreign Direct Investment within South Africa's Industrial Relations." *Zanj: The Journal of Critical Global South Studies*, vol. 8, no. 1/2, 2025, pp. 105-136.
- [10] Scissors D. *The Tariff Hiccup Slows China's Outbound Investment, but Construction Gains*. American Enterprise Institute, 2025.
- [11] Chase P. *The Missing Partnership: The United States, Europe, and China's Economic Challenge*. German Marshall Fund of the United States, 2020.
- [12] Chaisse J. "National Security Unbound: U.S. Investment Screening from Inbound and Outbound." *Georgetown Journal of International Law*, vol. 56, no. 2, Winter 2025, pp. 425-498.
- [13] Hu C. "Analysis of the America First Investment Policy and Outbound Investment Rules." *US-China Law Review*, vol. 22, no. 3, March 2025, pp. 139-152.
- [14] Raslan R A A. "Climbing up the Ladder: Technology Transfer-Related Policies in the Context of the Belt and Road Initiative." *Utrecht Law Review*, vol. 20, no. 1, 2024, pp. 19-43.
- [15] Sang B C, et al. "Evolution, Impact, and Responses to US Restrictions on Technological Investments in China." *Journal of WTO and China*, vol. 15, no. 1, 2025, pp. 58-83.