

# Research on the Environmental Risks of China's Overseas Investment under the Background of "Belt and Road"

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**Abstract.** The ambitious "Belt and Road" initiative has ushered in a new era of global connectivity and economic integration, presenting unprecedented opportunities for Chinese enterprises to expand their overseas investments. However, this rapid expansion has been accompanied by heightened environmental challenges, necessitating a reevaluation of environmental protection strategies to ensure sustainable development. As China's investment footprint widens across diverse ecological and regulatory landscapes, the environmental implications of these ventures have come under intense scrutiny. To achieve the sustainable development of "Belt and Road", this paper analyses the multifaceted environmental risks associated with Chinese overseas investments under the "Belt and Road" framework, identifying key areas where current practices fall short in safeguarding ecological integrity. Through a comprehensive analysis, it highlights the critical need for robust legal frameworks and enhanced corporate environmental governance to mitigate these risks effectively. The study proposes a set of targeted legal strategies and policy recommendations designed to fortify environmental protection measures in Chinese outbound investments. These include the development of specific environmental legislation, the integration of sustainable practices into investment planning, and the strengthening of international cooperation on environmental issues. By addressing the dual objectives of economic growth and environmental sustainability, this paper aims to contribute valuable insights towards achieving a greener "Belt and Road" initiative, offering a roadmap for Chinese enterprises to navigate the complexities of responsible global investment.

**Keywords:** Belt and Road, Outward Investment, Environmental Risks, Legal Countermeasures.

## 1. Introduction

During his visit to some Asian countries in September and October 2013, President Xi Jinping put forward the initiative of the Land Silk Road and the Maritime Silk Road (referred to as "Belt and Road") signaling a new era of international cooperation and development. With the further implementation of the "Belt and Road" program, China's enterprises are gradually increasing their investment projects in countries related to the "Belt and Road". But, despite the remarkable results achieved in China's foreign direct investment, the problem of unsustainable development has also begun to emerge [1]. The main manifestation is that the environmental protection problem is extremely serious, and overseas investment enterprises are facing serious environmental risks. In recent years, due to China's investment in foreign countries has repeatedly led to ecological damage and environmental pollution in the host country, this behavior is widely known as "predatory development", "China's environmental neo-colonialism", "China's environmental threat theory" and "China's ecological dumping theory" [2]. On the one hand, China's key investment areas such as oil, natural gas, minerals, iron and steel, and electric power industry are all industries that are very prone to environmental pollution; on the other hand, most of China's investments in these areas are concentrated in Africa, Latin America, and other regions, most of which are developing countries, and due to the deficiencies of these countries in the environmental protection legal system and the environmental regulatory mechanism, together with the relatively weak awareness of China's enterprises in the environmental protection, these factors together lead to these countries' weak environmental protection awareness. On the other hand, most of our enterprises' investments in these areas are concentrated in Africa, Latin America, and other regions, most of which are developing countries.

The paper on the environmental risks linked to China's overseas investments and the exploration of legal strategies for risk mitigation holds paramount significance. It not only addresses the urgent need for sustainable development practices but also aims to fortify the cooperation between China and the "Belt and Road" countries. The focus on legal countermeasures seeks to navigate through the complex interplay of environmental challenges, advocating for green investment practices. By proposing effective legal strategies, this paper contributes to achieving mutual benefits, win-win outcomes, and people-centred development, aligning with the overarching goals of the "Belt and Road" initiative. Such an inquiry not only enriches the academic dialogue on international environmental law but also provides practical insights for policymakers and stakeholders involved in cross-border investments.

Adopting an inductive and deductive analytical approach, this paper meticulously examines the environmental dynamics of China's overseas investments. The investigation begins with a detailed overview of the current investment landscape, followed by an in-depth analysis of the environmental challenges encountered. Through a multi-perspective analysis, the paper identifies the root causes of these environmental issues, laying the groundwork for proposing targeted legal measures. The discussion integrates theoretical insights and empirical evidence, drawing on a wide range of sources to ensure a comprehensive understanding of the complex issues at hand. The culmination of this research is the presentation of a set of legal strategies designed to mitigate environmental risks, thereby contributing to the sustainable development of the "Belt and Road" initiative and enhancing international cooperation in environmental governance.

## **2. Current Situation of Environmental Risks and Protection for Chinese Enterprises' Overseas Investments under the Belt and Road Initiative**

### **2.1. Facing Environmental Risks**

#### **2.1.1 Host country environmental regulation risk**

Environmental regulatory risk refers to situations in which the host country's environmental authority imposes administrative penalties on a foreign investor for enforcing environmental regulations, which can lead to investment failure [3]. In the 1990s, Shougang Peru Iron Ore Company repeatedly violated local environmental laws, including discharging wastewater into the sea. The local government even declared a state of environmental emergency at the mine site [4]. Sinopec carried out an extensive environmental assessment of the Gabon project in 2006 but did not receive official approval from the local government. This caused serious damage to the local ecosystem, and the host government ordered Sinopec to stop production at the project. In 2013, China's Chad in Africa filed a lawsuit against PetroChina, claiming that the company had violated local environmental laws and regulations by handing over the original mine to the local government. The Chadian government sued PetroChina for violating local environmental laws by illegally dumping crude oil at the mine site and demanded that PetroChina pay US\$1.2 billion in damages while ordering the local government to suspend the oil field project for which PetroChina was responsible [5].

#### **2.1.2 Corporate Behavioural Risks**

For a long time, Chinese enterprises have often neglected environmental protection and lacked social responsibility and environmental awareness in their overseas investment activities, resulting in environmental damage and pollution to the host country from time to time. China had entered into a "Belt and Road" co-operation agreement with Myanmar to jointly build the Myitsone Hydropower Station, but at that time, enterprises in Myanmar didn't need to disclose the environmental impact assessment report and China Power Investment Group launched the project without disclosing the environmental impact assessment report. This raised concerns about water pollution among residents and related organizations, and the project was eventually rejected. Chinese companies also suffered serious losses from the abandonment of the Lepitang copper mine.

## 2.2. Domestic Legal Protection

The Chinese government has made strides in addressing environmental risks associated with overseas investments through the issuance of guidelines and regulations. The "Guidelines on Environmental Protection for Outbound Investment Cooperation", jointly issued by the Ministry of Commerce (MOFCOM) and the Ministry of Environmental Protection (MEP) in 2013, represent a foundational effort to guide Chinese enterprises towards responsible environmental practices abroad. These guidelines articulate several levels of environmental responsibility, urging enterprises to integrate environmental considerations into their investment decisions. Following this, the "Measures for the Administration of Overseas Investment (2014)" was introduced, emphasizing the need for enterprises to fulfil their social responsibilities and ensure environmental protection in their overseas engagements. This regulation underscores the Chinese government's commitment to promoting sustainable investment practices among its corporations operating globally. Additionally, the "Guidelines on Social Responsibility in the Foreign Contracted Engineering Industry", the "Guidelines on Green Investment (for Trial Implementation)", and the "Guidelines on Compliance Management for Enterprises' Overseas Operations" further detail the expectations from Chinese enterprises in terms of environmental protection and resource conservation. These documents collectively encourage companies to adopt sustainable practices, such as minimizing environmental footprints and engaging in transparent and ethical business operations.

## 2.3. International Legal Protection Status

On the international front, China's engagement with Belt and Road countries through free trade agreements (FTAs) and bilateral investment treaties (BITs) has presented opportunities for embedding environmental protection within these legal frameworks. As of August 2018, China had signed or upgraded FTAs with 13 Belt and Road countries. These agreements, however, exhibit a limited focus on environmental issues, often relegating such considerations to the preamble or lacking specific provisions altogether [6]. This reflects a broader trend where environmental protection is not prioritized within the framework of international trade and investment agreements negotiated by China.

The situation is similar concerning China's BITs with Belt and Road countries. Out of 57 bilateral investment agreements signed with 64 countries, only a minority include language pertaining to environmental protection, and those that do often lack specificity and enforceable commitments. Notably, agreements with key partners such as Uzbekistan, Russia, Cambodia, Myanmar, India, and Sri Lanka omit provisions on environmental safeguards entirely. This omission underscores a significant gap in the legal infrastructure needed to address environmental risks associated with overseas investments.

## 3. Multidimensional Causes of Environmental Risks for Chinese Enterprises' Overseas Investments under the Belt and Road Initiative

### 3.1. Gaps in Legal Guidance and Implementation of Environmental Protection in China's Foreign Investments

The landscape of China's environmental legislation for outbound investments reveals significant voids, particularly in the incorporation of environmental considerations into the approval processes and in the ongoing oversight of international ventures. This deficiency becomes more pronounced when contrasted with the regulatory practices of many developing nations, where the sanctioning of foreign investments often serves as the primary mechanism for environmental governance. In contrast, China's approach to the legal structuring of overseas investments has historically emphasized procedural approvals, with a fragmented regulatory environment that frequently overlooks the imperative of environmental sustainability.

Although China has realized the importance of environmental protection for overseas investment, it has not yet formed a complete and effective regulatory system. In terms of legislation, there is a lack of detailed provisions on the supervision of environmental protection for overseas investment, and the requirements for environmental protection for enterprises investing abroad are only in principle, requiring that the investment activities of enterprises comply with the concept of sustainable development. In operational terms, the Ministry of Commerce and the State Administration of Foreign Exchange focus mainly on the investment and operation status of overseas enterprises, and there is a lack of sustained and effective supervision on whether the enterprises have adopted environmental protection measures and what consequences will be borne by the enterprises if they do not fulfill their obligations.

### **3.2. Multiple Deficiencies in the Legal, Enforcement, and Supervision System of Host Countries' Environmental Regulations**

Most of the countries along the Belt and Road are developing countries with a low level of economic development, and environmental laws are lacking and non-transparent. At the same time, host countries pay more attention to short-term economic benefits, and do not pay much attention to the environmental problems caused by overseas investment. To attract foreign investment, some countries may even lower the investment access standards in terms of environmental protection, sacrificing the environment in exchange for foreign investment [7]. Such practices not only provide leeway for varied interpretations by foreign investors but also pose risks of environmental liabilities.

The lack of environmental legislation and regulations in host countries and the relaxation of entry standards have left overseas investors with room for arbitrary interpretation on the one hand and brought environmental liability risks to investors on the other [8]. In addition, the host country's foreign investment regulatory system is not sound enough, the government's enforcement lacks transparency and openness, and local environmental management departments face problems such as arbitrarily expanding the scope of enforcement and lack of basis for the enforcement process. Deficiencies in the host country's environmental regulation in terms of legislation, enforcement, and supervision can lead the host country to adopt unstable and unreasonable environmental regulatory measures, which undoubtedly increases the risk of overseas investment by Chinese enterprises.

### **3.3. Ambiguity in the International Legal System's Definition of Transnational Investment Environmental Responsibilities**

Existing legal provisions on environmental protection in international investment begin with the rules of the Multilateral Investment Guarantee Agency (MIGA), which mainly provides guarantees for investments in member countries, and its Environmental and Social Review Procedures, which stipulate that: the projects for which guarantees are provided must be subject to the Agency's environmental guidelines; and that the behaviour of investors in carrying out the investment process, including environmental assessment and management, pollution prevention and control, etc., will be subject to strict regulation. The second is the UN agencies and related rules.

Secondly, the United Nations Environment Programme (UNEP) is a subsidiary body of the United Nations and is subject to the relevant rules and regulations, and it has established in-depth international environmental protection cooperation with other United Nations-affiliated agencies, international organisations, national governments, and NGOs. It has committed itself to strengthening environmental management, adopting best industry practices for credit risk management, energy efficiency, environmental impact assessment, and other core areas, and actively implementing the precautionary principle in the Statement on Environment and Sustainable Development, which has now been signed by banks and insurance companies in many countries. In addition, several United Nations agencies are involved in the implementation of the United Nations Global Compact, which requires signatories to fully support precautionary measures to address environmental challenges, actively take responsibility for environmental protection, and encourage the development and dissemination of environmentally friendly new technologies.

Despite the establishment of these comprehensive legal and normative instruments aimed at safeguarding the environment in the context of global investments, a critical gap persists in the form of monitoring and enforcement mechanisms. The predominance of principle-based narratives within these international legal documents, while instrumental in fostering a general awareness and commitment towards environmental protection, often falls short in compelling enterprises to fully actualize their environmental responsibilities. This shortfall is further exacerbated by the descriptive nature of the frameworks, which, despite their intention to evolve into universally applicable practices, currently lack the specificity and enforceability required to hold entities accountable for environmental transgressions conclusively.

### **3.4. Insufficient Environmental Awareness and Risk Management Capabilities of Overseas Investment Enterprises**

In recent years, China's enterprises investing overseas have paid insufficient attention to the goal of ecological environmental protection as well as ecological and environmental risks, which has become a significant shortcoming of Chinese enterprises' previous foreign direct investment, and the maladaptive nature has become increasingly prominent [9]. The root cause is the weak environmental awareness of China's overseas investment enterprises, compared with the developed countries, China's enterprises in the knowledge and practice of environmental issues there is an obvious disadvantage [10].

A concerning aspect of this trend is the perception among some Chinese enterprises that their investment endeavors are primarily geared towards fostering economic development in the host countries, relegating environmental considerations to a secondary or even optional status. The underlying issue is twofold: on one hand, there is a pervasive underestimation of the importance of environmental sustainability in the realm of international business operations; on the other hand, there is an evident deficiency in risk management capabilities tailored to address environmental challenges. This dual shortfall contributes to a situation where, in the face of environmental disputes or crises, Chinese enterprises find themselves inadequately equipped to respond, thereby amplifying the potential for adverse outcomes.

## **4. Legal Pathways for Chinese Enterprises to Prevent Environmental Risks in Overseas Investments**

### **4.1. Strengthening Environmental Legislation for Domestic and Foreign Investments**

In light of the diverse environmental landscapes across the "Belt and Road" initiative countries and China's ambition for green and sustainable growth, it becomes imperative to harmonize environmental protection measures in overseas investments with both domestic and international regulatory frameworks.

#### **4.1.1 Specialised legislation to address issues of the overseas investment environment**

Within the expansive vision of the "Belt and Road" initiative, the role of outward investment is undeniably significant, necessitating the introduction of tailored legal measures to govern the environmental impact of such investments. The thesis suggests amending the Law on Foreign Investment to make general provisions on environmental protection for overseas investment. The existing "Environmental Protection Guidelines for Foreign Investment Cooperation" should be upgraded to "Environmental Protection Law for Foreign Investment Cooperation", which on the one hand will enable the supervisory and management departments to have a legal basis for law enforcement activities, and on the other hand, will prompt enterprises to consciously regulate their behaviors when investing abroad.

As for special legislation, it is also necessary to improve the standard of environmental protection for overseas investment [11]. To enable our enterprises to be in line with international standards, China should formulate a more rigorous, all-round, and practical standard. Given the obvious

imbalance in environmental protection among the countries along the Belt and Road, and the difficulty of unifying environmental standards, the thesis suggests that the environmental regulation of overseas investment should be based on both the investor's "home country standard" and the "host country standard", i.e., the two standards should be adopted as the "home country standard" and the "host country standard". The thesis suggests that environmental regulations for overseas investment should adopt both the investor's "home country standard" and the "host country standard", i.e., the higher of the two standards should be taken as the environmental protection standard that investors should follow. The implementation of higher environmental protection standards will enable investors to minimize environmental risks and avoid legal risks.

#### **4.1.2 Protection at the level of international law**

The protection of overseas investment against environmental risks at the international law level mainly involves the inclusion of specific environmental clauses in international investment treaties signed with countries along the "Belt and Road".

Firstly, to clarify the provisions on environmental protection in the preamble. The expression of environmental protection clauses in the preamble of the United States 2012 BIT model links the protection of the environment with the investment objectives, which better reflects the relationship between the rights and obligations of the contracting parties compared with the general and general expression of sustainable development.

Secondly, specific environmental provisions should be stipulated. Initially, increase the content of the host country's right to environmental regulation to ensure the legality and reasonableness of environmental regulatory measures. When signing investment agreements, China can refer to the environmental measures in the international investment agreements and stipulate to what extent the country can enact environmental measures, and the host country should also organically combine its environmental responsibility and standards to achieve the goal of environmental protection. Furthermore, there is a need to explicitly define environmental responsibilities. China's investors have the obligation of environmental protection but also need to refer to the appropriate environmental standards, which has been described above. But for the choice of specific environmental standards needs to be agreed upon by both parties. As for the principle of attribution of liability, the author suggests the principle of no-fault liability, which is one of the most widely used principles in the field of environmental civil liability today, judging from the trend of evolution. Ultimately, the articles should also provide for multiple dispute resolution mechanisms, distinguishing the nature of disputes and taking into account the ease and cost of implementation, to ensure the resolution of disputes and the fulfillment of multiple objectives and benefits.

Thirdly, the "exception clause" provision in signed agreements essentially strengthens the host country's right to regulate foreign investors, and the host country can rely on the "general exception" clause to impose various regulatory measures on foreign investors without being regarded as an "expropriation". The host country can rely on the "general exception" clause to implement various control measures on foreign investors without being regarded as "expropriation", which creates a great crisis for Chinese investors. The author believes that the "general exception" clause should be limited to the fundamental interests of the State and that it is not appropriate to expand the understanding of the correlation between the protection objectives of the clause and environmental protection [12].

#### **4.2. Promoting International Cooperation on Environmental Protection in Investments**

The promotion of international investment and environmental cooperation is mainly carried out by giving full play to the role of the Asian Investment Bank (AIIB) and establishing a clearing-house mechanism [13]. The AIIB stands as a foundational component of the "Belt and Road" initiative, with its mission to foster sustainable economic growth across Asia, thereby serving as a critical conduit for fostering partnerships focused on environmental preservation alongside investment activities. When the AIIB lends money to member countries, it can require applicants to consider whether the project can promote the sustainable development of the local economy and is conducive to

environmental protection as an important consideration indicator. Specific practices include requiring member countries to fulfil the duty of "due diligence", take preventive measures to reduce the occurrence of environmental damage, pay attention to the role of environmental assessment, and classify and manage different types of projects. In addition, the AIIB can follow the World Bank's environmental measures. For example, it can formulate and promulgate a series of policies to protect the environment, pay attention to the conservation of natural resources in member countries, and pay attention to the poverty problem in developing countries. In its future business operations, the AIIB should also promote the sustainable development of lending countries as the goal of its efforts.

The critical role of information in informed decision-making cannot be overstressed, especially in the context of addressing environmental challenges in overseas investments. There is a pressing need for enhanced dialogue and exchange of information regarding environmental policies and regulations with host countries. Such interactions are instrumental in bridging the gap between China and the countries along the "Belt and Road" corridor concerning environmental governance practices. By gaining a deep understanding of the host countries' legal frameworks and policy trends regarding environmental protection, Chinese investing entities can more effectively align their operations with local requirements, thereby minimizing legal and operational risks while fostering a more harmonious integration into the host countries' economic and ecological landscapes.

#### **4.3. Enhancing Enterprises' Own Environmental Awareness and Capabilities**

For the "Belt and Road" initiative to truly embrace green development, the principles of sustainable development must be thoroughly integrated into its operations. In the past, China's overseas investment has often been unsustainable, in large part because of the weak environmental awareness of enterprises themselves, which have not paid attention to the fulfillment of their environmental social responsibility [14]. The social responsibility of enterprises' overseas investment is very important for the safety and stability of investment and the long-term development of enterprises, and the realization of corporate social responsibility not only needs the regulation of external promoters but also the motivation of enterprises themselves. That is to say, enterprises should enhance their awareness of environmental protection, consciously undertake environmental responsibility, and take the implementation of environmental responsibility as the long-term development goal and core competitive means of enterprises. This will not only enhance the competitiveness of enterprises but also reduce the environmental risks faced in overseas investment.

In addition, enterprises investing overseas must further strengthen the construction of environmental governance capacity. Enterprises should strictly abide by China's relevant laws and regulations, actively change their production methods, adopt cleaner production modes, and truly control pollution at the source, while improving the efficiency of resource utilization and reducing the generation and discharge of pollutants, to mitigate or eliminate the hazards of their business activities on public health and the environment of the investing localities [15].

#### **4.4. Establishing Effective Corporate Risk Assessment and Response Mechanisms**

To establish an effective risk assessment and response mechanism for enterprises, it is necessary to pay attention to the role of environmental impact assessment in the environmental protection of overseas investment in the "Belt and Road", which is equivalent to the "early warning" system before the construction of investment projects. For overseas investment enterprises, Environmental Impact Assessment (EIA) is equivalent to an "early warning" system before the construction of investment projects. The prevention, mitigation, compensation, alternatives, and other environmental protection measures proposed by the EIA can assist enterprises in building a reasonable and effective environmental management system, selecting production equipment that meets clean production standards, and continuously optimizing and improving their production technologies. Comprehensively improve the level of enterprise environmental management, to achieve at the source to reduce pollutant emissions, and reduce the waste of resources.

Additionally, strengthening the obligation for environmental transparency is crucial. In the early stage of project investment, enterprises should report environmental information, and in the mid-term construction of the project to the completion of the operation period should be regularly released environmental information, environmental damage should be announced promptly the measures to be taken. Such transparency not only holds enterprises accountable but also fosters a culture of environmental responsibility, ensuring the alignment of overseas investment activities with global sustainability objectives.

## 5. Conclusion

This study elucidates that the environmental risks faced by Chinese enterprises investing abroad in the context of the "Belt and Road" are mainly host country regulatory risks and enterprise behavioural risks. At present, most of the relevant provisions in China's existing legal documents on environmental protection for enterprises investing overseas are guiding provisions, making it difficult to implement the environmental responsibility of enterprises investing abroad. The provisions on environmental protection in the international treaties signed between China and the countries along the routes are also ambiguous and the responsibilities are difficult to determine. The article examines the multidimensional causes of environmental risks and concludes that there are gaps in the guidance and implementation of China's outward investment environmental protection laws, as well as multiple deficiencies in the provisions, implementation, and supervision of the relevant laws of the host countries. In addition, the ambiguous definition of environmental responsibility in the international legal system for cross-border investment, and the insufficient environmental awareness and coping ability of Chinese enterprises are also important causes of environmental risks.

Consequently, this analysis proposes a suite of legal strategies tailored for Chinese corporations to navigate and mitigate the environmental challenges associated with foreign investments. These strategies advocate for the reinforcement of environmental legislative measures applicable to both domestic and international investments, the enhancement of global cooperation in investment and environmental stewardship, and the cultivation of a robust environmental ethic and adaptive capacity within Chinese enterprises. Furthermore, the establishment of a comprehensive risk assessment and response framework is emphasized as an essential component for enterprises to proactively address and manage environmental risks in their overseas operations.

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