

Summary

While continuously pursuing the maximization of economic benefits resulting from foreign direct investment (FDI), many host states have become more vigilant to the potential drawbacks and adverse effects induced by FDI in juxtaposition to the security-related implications that are increasingly perceived. Such implications involve the idea that foreign control of domestic industries in sectors that are considered as ‘sensitive’ or ‘strategic’ may result in particular perils to the national security of the recipient state. In order to mitigate such security-related risks, the host states have opted to seek regulatory responses that specifically address such risks. As a result, in recent years, China, the US, and some EU Member States, *inter alia*, France and Germany, have either promulgated new laws and regulations or drastically revised existing ones, aiming at exerting more rigorous government review and control over inward FDI based on security-related grounds.

This research conducts a systematic comparative study of the national security review regimes in the aforementioned four jurisdictions. The central research question this research aims to answer is how domestic law establishing a national security review regime should be formulated to adequately protect national security of the host state whilst posing minimum negative impacts on the free flow of cross-border investment (the regulatory goal). To that end, this research first provides an inventory of the national security review systems in China, the US, France, and Germany, in order to demonstrate how these national security review systems function in practice in aforementioned jurisdictions. In addition, this research compares the substantive and procedural attributes of the national security review regimes among China, the US, France, and Germany, aiming at revealing the similarities and the distinctions in these jurisdictions. Last but not the least, this research provides a legal framework regarding the optimal design of the national security review regimes in general. It also discusses the case of China in specific by identifying the ambiguities and vague provisions in China’s national security review regime, and proposes specific legislative recommendations to further clarify the law.

This research reaches the following important conclusions and recommendations. First of all, taking inventory of the regulatory regimes in China, the US, Germany and France reviewing foreign investment on the grounds of national security, a tendency is observed whereby the national security review regimes have become broader in their scope of review, indicating augmented executive autonomy endowed by legislation. Secondly, national security concerns in the foreign investment context are self-determinant by each state, due to the fact that national security is a concept that is non-exhaustive, country-specific and with little international law constraints. Thirdly, national security review regimes are legitimate regulation justified by state sovereignty. Fourthly, national security review regimes are investment-restrictive-measures and are prone to protectionism if abused by the host state. Fifthly, national security review regimes should comply with the rule of law, and specifically, be in deference to the principles of proportionality, the agency model of governance, transparency, predictability and accountability, in order to achieve the regulatory goal. Last but not the least, China’s national security review regime as proposed in its draft Foreign Investment Law may suffer from deficiencies due to the ambiguity of the law and a lack of meticulous draftsmanship. Hence,

this research makes several policy recommendations to China, in order to address the structural, institutional and regulatory concerns of the law.