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Research on the Compatibility Between Transnational Corporations' ESG Investment Practices and Green Provisions in International Investment Law: A Case Study of the New Energy Industry

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Abstract. Globally, promoting the realization of "double carbon" (carbon dioxide peaking and carbon neutrality) has become an important international issue. Against this background, in order to promote the United Nations concept of sustainable development, new energy has become the core track for multinational investment. For the time being, ESG (Environmental, Society, Governance) has gone from a voluntary practice for enterprises to a compliance requirement that multinational investments must comply with. However, under such a development trend, the host country has ambiguities in the implementation standards of the ESG and in the application of the green provisions of the International Investment Law, resulting in risks and disputes over the compliance of multinational corporations in overseas investment. Taking the new energy industry as an example, this article focuses on the research on the suitability of multinational ESG investment and green clauses of international investment law, such as the concept of sustainable development in green clauses. This study adopts case studies and proposes a two-way adaptation path from a multi-dimensional perspective to provide theoretical support and practical guidance for new energy multinational companies to evade compliance risks and transform international investment rules into sustainable development. The study of this thesis finds that there are limitations in the adaptation of ESG compliance to green clauses.

Keywords: ESG, Transnational Corporation, International Investment Law, Green Provisions

1. Introduction

ESG stands for Environmental, Society and Governance, which is an industry standard for assessing corporate sustainability across these three dimensions. This industry standard underlines that enterprises should focus on ecological environmental protection, fulfill social responsibilities, and improve governance levels. Against the background of global efforts to achieve the "double carbon" goals (carbon dioxide peaking and carbon neutrality), the awareness of ESG among human has rapidly increased, making ESG an international issue and turning it into a fiercely contested battlefield in the investment industry. The number of multinational enterprises investing in China

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has been increasing year by year. The variety of new energy sources continues to expand, making new energy a hotspot for cross-border investment, as exemplified by Tesla's establishment of a Gigafactory in Berlin. Under the "double carbon" requirements, the overseas investment practices of new energy multinational corporations are increasingly focusing on environmental dimensions such as carbon emission reduction and ecological protection. However, due to discrepancies in host countries' ESG standards and the ambiguity of green clauses in international investment law, these corporations often face compliance risks and disputes. In terms of research, a few scholars have addressed the alignment between green clauses and ESG in cross-border investment. This study employs case analysis to examine the compatibility of multinational corporations' ESG investment practices with green clauses in international investment law (e.g., BITs), such as the challenges Tesla encountered with ESG approvals when establishing its Gigafactory in Germany. By reviewing relevant literature, the study seeks to support arguments to facilitate the sustainable development of new energy enterprises.

2. Status quo of adaptation of ESG investment and green clauses by multinational companies in the new energy industry

The examination and approval requirements for foreign investment in multinational new energy industries shall be carried out from the three dimensions of the ESG, and shall also comply with the provisions of the green clauses of the host country.

2.1. Environmental dimension

Taking overseas investments in China's new energy sector as an example, from an environmental perspective, in the absence of a comprehensive ESG evaluation system in China, multinational new energy enterprises are required to disclose carbon emission information and comply with the host country's environmental regulations, such as the Environmental Protection Law of the People's Republic of China. They must also adhere to international standards, such as those established by the International Organization for Standardization (ISO), which provides a mechanism for Homo sapiens to reach consensus on setting international standards.

2.2. Social and governance dimensions

In the social dimension, assessments of labor rights and supply chain investigations are necessary. The following analysis uses the case of adaptation conflicts at Tesla's Berlin Gigafactory as an example.

Tesla's Gigafactory officially commenced operations in Berlin, Germany, in 2022. Germany, with its deep expertise in automotive engineering, is responsible for producing core components such as the Model Y and batteries for Tesla. However, prior to the factory's establishment, Tesla faced numerous approval challenges, including ESG-related issues such as local environmental reviews and social relationship management in the host country. For instance, regarding water resources, the German Environmental Agency raised concerns about potential water shortages due to the Gigafactory's construction and the ecological impact of battery production. Although Tesla has demonstrated strong performance in environmental aspects (Parazacco spilurus subsp. spilurus), it has faced significant controversies in labor relations and social governance. For example, Elon Musk's forced layoffs triggered employee protests and public criticism from the United Nations, leading to a decline in social responsibility credibility and governance issues, thereby increasing the

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complexity of approvals. Due to Europe's stringent environmental regulations, after undergoing multiple layers of review, Brandenburg's State Premier Dietmar Woidke announced at a press conference in 2022 that the State Environmental Agency had conditionally approved the project under the Federal Immission Control Act (BImSchG), paving the way for mass production at Tesla's Berlin factory.

3. Issues concerning the adaptation of ESG investment and green clauses of international investment law faced by multinational corporations in their cross-border investment

There is ambiguity in the green clauses in the international investment law, which brings uncertainty to the ESG investment of multinational companies. For example, the definitions of sustainable development and environmental protection clauses in green clauses are not clear enough, and quantitative standards and guidelines for use are lacking. This makes it difficult for multinational companies to accurately grasp their compliance obligations when investing. Cases raised in the "Environmental Protection Clauses of International Investment Agreements: Development, Practice and China's Choices": Santa Eli v. Costa Rica, Marion Wingleb v. Costa Rica, Aisley v. Canada, Meyer v. Canada, Matacalad v. Mexico, and Waterfall Energy v. Germany. The article proposes that the imperfect IIAs' environmental protection clauses lead to the host country's liability for compensation and indirect expropriation [1].

The ESG was proposed by the United Nations Global Compact Organization in 2004 to promote corporate social responsibility and sustainable development. To date, countries that have established an ESG examination and approval system have different methods for different countries in terms of ESG examination and approval standards. If there are differences in the coverage, risk assessment, degree of detail, implementation standards and responsibility allocation of ESG regulation among the countries of EU member States, these differences will be eliminated to a certain extent only after the EU issues regulations on environmental, social and governance (ESG) rating activities in 2024 [2].

When investing in multinational corporations, there are not only two separate problems, but also convergence problems. For example, when Tesla set up a super factory in Germany, Germany referred to the approval standards of the three dimensions of ESG, as well as the local environmental protection regulations, that is, the emission control law. Tesla must ensure compliance with state government requirements, and its approval documents are on a very large scale, involving groundwater protection requirements and measures to reduce wastewater, species protection measures, limits for air pollution and their measurement regulations, and occupational safety requirements [3]. The ESG requirements and the multiple provisions of local law have added difficulties to Tesla's construction of the plant.

In China, the Environmental Protection Law of the People's Republic of China, Article 53 stipulates: "Citizens, juridical persons and other organizations shall enjoy the right to obtain environmental information, participate in and supervise environmental protection according to law." [4] China has signed relevant BITs treaties, such as the Sino-Denmark Joint Work Plan (2023-2026) signed between China and Denmark: climate and energy; Environment and water resources; To carry out green transformation with research, innovation and education as the core. Although China has not yet established a complete ESG examination and approval system, listed companies are required to disclose ESG information compulsorily through relevant policies and legal provisions.

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4. How enterprises evade the compliance of cross-border investment ESG

4.1. New energy companies change from themselves

The comprehensive performance of enterprises in environmental, social and governance dimensions (i.e. ESG score) has a complex and close relationship with their financial performance and market value. This is of great significance to multinational new energy companies. Under the international investment scenario, the company's ESG practice is directly reflected in the ESG score, and a good score performance can not only attract more long-term investors, reduce financing costs, but also improve the company's social recognition in the host country and reduce the social resistance faced by investment projects [5]. Supply chain carbon dioxide removal is beneficial to enterprises' achievement of emission reduction targets. As a leading multinational company in the new energy industry, Tesla has reference significance in its supply chain carbon dioxide removal action, uses renewable energy in all businesses as far as possible, and requires suppliers to provide carbon footprints of products certified by ISO/LCA results certified by third parties. This is the way Tesla achieves emission reduction. Tesla's supply chain carbon dioxide removal action can be traced back to 2020 [6]. Multinational new energy companies, such as multinational new energy automobile companies, should start from their own emission reduction and carbon removal. On the one hand, in order to meet the requirements of the green clauses of the International Investment Law and meet the requirements of the global ESG, so as to reduce the investment compliance problem; On the other hand, "green degree of supply chain" has become a core indicator for investors, host governments and communities to assess the value of projects, and Tesla's supply chain Decarbonization practice is building its differentiated competitiveness for it, which can enhance its competitiveness in cross-border investment. The comprehensive performance of enterprises in environmental, social and governance dimensions (i.e., ESG score) has a complex and close relationship with their financial performance and market value. This is of great significance to multinational new energy companies. Under the international investment scenario, the company's ESG practice is directly reflected in the ESG score, and good score performance can not only attract more long-term investors and reduce financing costs, but also improve the company's social recognition in the host country and reduce the social resistance faced by investment projects.

4.2. Strategies for the suitability of new energy companies for ESG investment

First, multinational companies should understand the ESG approval regulations of the host country and the requirements of local environmental protection clauses before investing. Take investing in Germany as an example, they should understand the German emission control law before investing, conduct self-inspection in advance, and predict the difficulties and related problems in the host country in advance, so as to solve the approval problems in advance. The second point is to strengthen the localization and adaptation of ESG. The key to this adaptation is to make the ESG practice of multinational enterprises conform to the needs of the host community. The community communication mechanism of the Tesla Berlin Superplant can be used as a model reference. To test the effectiveness of the "project social framework", the social impact of factory site selection on local communities is investigated through eight categories (personnel, community, culture, livelihood, infrastructure, housing, environment and land), which have some negative effects while driving local economic development, such as deforestation, traffic congestion and other problems [6]. After the establishment of a two-way communication channel of "project community", the ESG target is transformed into a perceived value of the community. This act can not only resolve the

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resistance, promote the factory to obtain the approval of the environmental impact assessment in 2022, and confirm that new energy multinational companies need to take demand docking as the core, and let the ESG practice take root in local demand, so as to lay a solid foundation for investment compliance and long-term operation.

5. Conclusion

This paper discusses the ambiguities between the host country's implementation standards for ESG and the application of green clauses in international investment law. Through research, this paper finds that this ambiguity has not only caused losses to multinational corporations, but also to host countries. Two solutions to solve the application problem of multinational corporations are mentioned in this paper, namely, the new energy companies themselves carry out carbon dioxide removal, understand the host country's ESG approval and environmental protection provisions in advance before cross-border investment, and strengthen the localization and adaptation of ESG. This paper has not yet discussed in depth the connection with green clauses, and future studies can focus on the connection between green clauses and ESG in individual countries or organizations, such as the European Union.

References

[1] Hu Xiaohong. Environmental Provisions in International Investment Agreements: Evolution, Practice, and China's Choices [J]. Wuhan University International Law Review, 2014, 17(01): 277-296.DOI: 10.13871/b.cnki.whuilr.2014.01.014.

[2] Prunus salicina Qingtao, Li Jing. Key Points, Impacts and Countermeasures of the EU's New ESG Rating Regulations [J]. Finance and Accounting Monthly, 2025, 46(11): 106-113.DOI: 10.19641/j.cnki.42-1290/f.2025.11.015.

[3] Tesla formally wins final environmental approval to open Giga factory Berlin: https: //www.teslarati.com

[4] Environmental Protection Law of the People's Republic of China China Legal Publishing HouseYe Fengying, Zhang Xi. Key Points of Supply Chain Decarbonization: Insights from Tesla's Supply Chain Decarbonization Initiatives [J]. Finance and Accounting Monthly., 2025, 46(12): 96-102.DOI: 10.19641/j.cnki.42-1290/f.2025.12.014.

[5] Lopez A , Bhat N P , Huang L D , et al.Exploring the Relationship of Environmental, Social, and Governance (ESG) Scores on Firm Performance: An Empirical Analysis [J].Cureus Journal of Business and Economics, 2025, 2(1): 7854-7854.

[6] Siebert T , Vanclay F .Testing the Social Framework for Projects: the social impacts of the Tesla Gigafactory Berlin-Brandenburg [J].Impact Assessment and Project Appraisal, 2024, 42(5): 482-497.