

Chapter 5 Analyzing the Introduction of Environmental and Social Guidelines in China's Foreign Investments with Regard to Issue Attention in the Myitsone Dam Controversy

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ABSTRACT

This chapter attempted to explain the link between the publication of the “Guidelines for Environmental Protection in Foreign Investment and Cooperation” and the first two stages of the issue attention cycle with regard to the stalled Myitsone hydropower project in Myanmar. As Downs’ (1972) theory suggests, the Guideline was published in 2013, immediately after attention on the issue and anti-Chinese sentiment in Myanmar peaked. The relevant stage in this case, as per Down’s Issue Attention Cycle model, is “Alarmed discovery and euphoric enthusiasm.” Therefore, it might be implied that the Issue Attention Cycle model, which was originally applicable to democratic institutions, could also apply to the decision-making process in China, a country characterized by a socialist market economy. The study recommends that international society should support to secure communication channels between foreign investors and local communities in an earlier pre-project phase of large-scale hydropower developments.

INTRODUCTION

On February 28, 2013, China’s Ministry of Commerce and Ministry of Environmental Protection unveiled the Guidelines for Environmental Protection in Foreign Investment and Cooperation (“the Guideline”) to safeguard the interests of local environmental and social aspects with regard to foreign investment by Chinese companies. The international society has long called for such a move as the serious adverse impacts of China’s foreign direct investment have been recognized in many countries around the world, and they fear that the extent of this damage is likely to worsen in the near future.

The Guideline comprises 22 articles, which refer to compliance with local laws and regulations of the host country, the need to safeguard local culture and society, the importance of creating environmental and disaster management plans as well as mitigating adverse impacts, caring for the local community, disposal of industrial wastewater, international environmental standards, and so on. According to International Rivers, the US-based international NGO, the Guideline contains two important aspects: “dialogue with the local community” and “mitigation of environmental impacts”.

Dialogue with the local community touches upon 5 articles, which are as follows. 1) The enterprise must respect the local religion, culture, and custom to facilitate harmonious development with the local economy, environment, and society (Article 3). 2) In line with local laws and regulations, the enterprise must establish and maintain a communication channel with local communities as part of the project’s environmental and social responsibility, and must also consider the opinions and suggestions (pertaining to projects) of the community’s residents through public hearings and consultations (Article 20). 3) The enterprise must prepare and publish a project plan that complies the local laws and regulations, and disclose information regarding the environment affected by the project (Article 18). 4) The enterprise must develop and utilize a secured communication channel with stakeholders to deal with urgent incidents and accidents (Article 14). 5) The enterprise must implement a sustainable development strategy to balance corporate benefits and environmental conservation (Article 4).

The following 4 articles relate to the mitigation of environmental impact caused by the project. 1) The enterprise must identify the manner of storage, transfer, reduction,

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recycling, and disposal of hazardous wastes in the project management plan, and ensure that the level of pollution generated by the project complies with the local environmental standards through a pollution prevention plan (Articles 10, 13, and 16). 2) With regard to local ecosystems, in line with local laws and industrial practices, the enterprise must prepare and implement mitigation and restoration plans in case the project's activities/systems create adverse impacts (Article 15). 3) The enterprise must monitor and evaluate the project's impact before implementation, collect and record relevant local information, and monitor and record disposal of wastes (Article 11). 4) The enterprise must prepare and implement a mitigation plan with regard to project-related impacts on historical and cultural monuments and tourist attractions (Article 9).

One may criticize this Guideline because 1) it does not mention the rights of local communities and individuals; 2) it does not prohibit locating a project within a protected/conserved area (such as those containing world heritage structures, or environmentally valuable areas such as national parks); and 3) it cannot possibly lead to project cancellation even if impact mitigation is impossible, although it emphasizes this point as a requirement. While these criticisms are reasonable, the recent publication of this Guideline could be positively evaluated as a first step to ensuring that foreign direct investment to China is a step in the right direction as it attempts to safeguard project-affected local communities and their environment. This Chapter discusses these aspects. The second section provides the analytical framework used for the discussion, namely, the issue attention cycle. The third section presents a case study, namely, the cancellation of the Myitsone Dam project in Myanmar, and analyzes it with respect to this framework. The fourth section expands on this analysis with regard to endogenous and exogenous factors that affected this case. The fifth section concludes this chapter and offers recommendations.

Analytical Methodology

Issue Attention Cycle Framework

The relationship between issue-attention and decision-making can be defined via a popular concept known as Downs' issue attention cycle (Downs 1972). In this concept, he argued that public concerns on environmental problems is often cyclic, which forces critical decision-making at a certain point. He noted that a problem "leaps into prominence, remains there for a short time, and then, though still largely unresolved, gradually fades from the center of public attention" (Downs 1972). In its original form, environmental problems in the 1960s was analyzed. Also, It has since been found to be applicable in understanding the relationship between policy decisions and public interests in certain issues (Cohen 1963; Iyengar & Kinder 1987; Walker 1977). The cycle is divided into five stages, which occur in the following procedure (Figure 5-1):

According to Downs, each stage is summarized as follows:

Stage 1: The pre-problem: In this stage, public attention does not capture undesirable social conditions. Meanwhile, experts and interest groups has already cautioned the situation.

Stage 2: Alarmed discovery and euphoric enthusiasm: A series of certain events (or other reasons) makes public both aware of and alarmed about the negative side of a particular issue. This alarmed discovery is invariably followed by euphoric enthusiasm about society's competence to solve the problem effectively rather in a shorter period.

Stage 3: Realizing the cost of significant progress: In the third stage, the public gradually realize the high cost of "solving the problem". Eventually, not only a considerable amount of money but also significant sacrifices by a certain interest group are required to solve the problem.

Stage 4: Gradual decline of intense public interest: The realization of the cost in the previous stage makes public attention gradually declined. As an increasing number of people realize how difficult and costly it would be to resolve the issue themselves, public desire to keep attention focused on the issue consequently wanes.

Stage 5: Post-problem stage: In the final stage, the issue that was at the center of public concern is now replaced by some other concern, and the former moves into a prolonged limbo; it receives lesser attention than it did at the beginning (stage 1) or there are short-lived recurrences of interest.

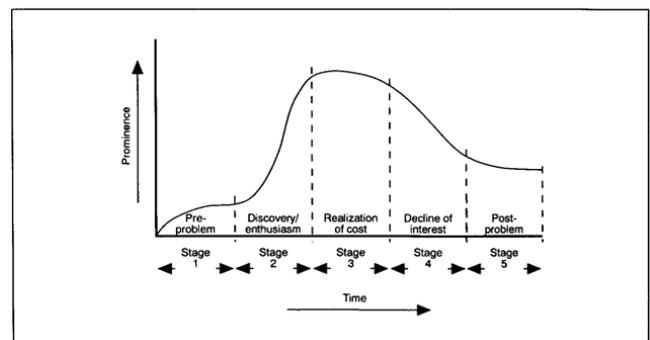


Figure 51: Public Interest in the Issue Attention Cycle Source: Staggenborg (2008).

Application of the Framework

While the framework mentions the cyclical character of public attention on a certain issue, it also assumes that important decision-making is driven by the increasing public interest in that issue, particularly in Stage 2. Following this assumption, the publication of the Guideline in 2013 may be perceived as being related to Stage 2 in the cycle.

As long as decision-maker is accountable to a certain group, that group could be said to comprise the public domain influencing decision-making. In this regard, the Guideline's publication may be assumed to have been influenced by relevant public interests in China. Yet, this study does not examine this aspect for the following two reasons. First, the Chinese government is less accountable toward its own people compared to a democratic government. Second, it is not likely that the Chinese public's interest has risen significantly with regard to environmental and social safeguards in foreign direct investment. Instead, this chapter sheds light on public interest around projects outside

China, and addresses its linkage with the publication of the Guideline in China.

This linkage is addressed through a comparative study of Chinese-led dam projects in Myanmar, Laos, and Cambodia (Kirchherr et al. 2017). While the study mentions the Myitsone controversy as a game changer, it does not delve into the details of the associated mechanism. Rather, it analyzes public interest in the controversy through in-depth personal interviews and primary data collection. First, it focuses on the role of the Global Environmental Institute (GEI), which initially drafted the Guideline. Then, it narrows down the interview scope to linkages with the recent halt in the Myitsone hydropower project in Myanmar. The next section describes how this process unfolded from Stage 1 to Stage 2 with regard to Down's framework.

Cancellation of the Myitsone Dam project: from Stage 1 to Stage 2

Pre-problem stage

China has invested heavily in hydropower dams all over the world (Figure 5-2). In terms of the number of the projects, Southeast Asia is its biggest market, followed by Africa and South Asia. In South East Asia, Myanmar, Lao PDR, and Cambodia are some of China's biggest markets, together with Vietnam and Malaysia. These three countries recently attracted considerable foreign direct investment from China (Figure 5-3). While Cambodia recorded increased presence of Chinese-invested dams since 2010, the number in Lao PDR has surged since 2011. On the other hand, Myanmar, which was gradually democratized under the former President U Thein Sein, has witnessed serious public acceptance barriers against hydropower development since 2011.

International society has long criticized Chinese investment in dams abroad for their lack of environmental and social safeguards. While this problem was not recognized by China's public, NGOs assumed an emerging role in highlighting this criticism since the mid-2000s. In 2008, GEI eventually drafted the Guideline in collaboration with the Ministry of Environmental Protection.

Nevertheless, the draft was not approved for publication by the government at the time as the Ministry of Commerce was hesitant. Despite the fact that environmental controversies occurred around this period, the Ministry of Commerce did not relent. As the draft was not open to the public, it never stirred any public discussion.

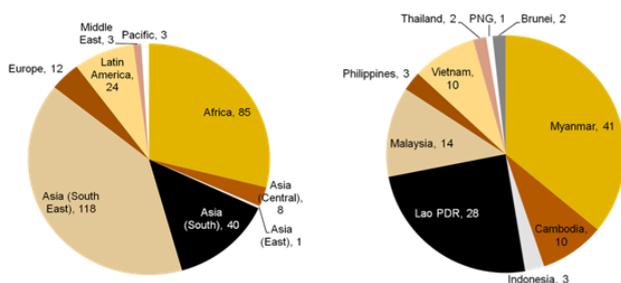


Figure 52. The Number of Chinese Hydropower Development

Source: International Rivers, 2012.

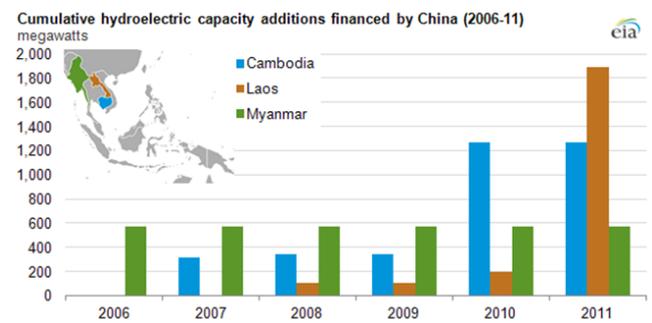


Figure 5-3. Chinese Hydropower Development in Cambodia, Lao PDR, and Myanmar

Source: Association of Southeast Asian Nations, 2013

Myitsone Development: Deepening ties between China and Myanmar

The tentative cancellation of Myitsone Dam took place in 2011, that is, before the Guideline's publication (in 2013). Myitsone Dam is located in Kachin State in northern Myanmar, and is home to one of the country's minorities, the Kachin people (Figure 5-4). The project consortium consisted of the China Power Investment Corporation (CPI), Ministry of Power No. 1 of Myanmar, and Myanmar's Asia World Company. Its total investment amount was 3.6 billion US dollars. If the project had been completed in 2017 as planned, with its total capacity of 6000 MW, it would have been one of the largest hydropower projects in Myanmar and even South East Asia. Yet, the former President U Thein Sein suddenly announced a halt to the dam's development during his tenure in 2011. Some key events that followed thereafter are discussed below.

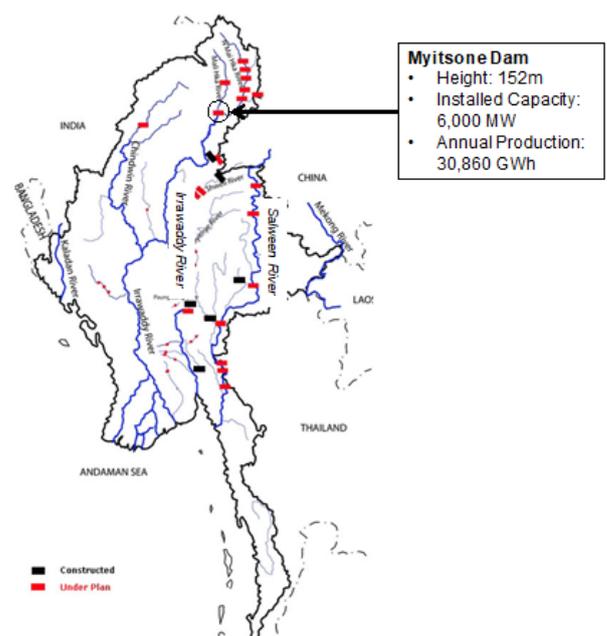


Figure 54. Location of the Myitsone Hydropower Development Project **Source:** Burma Rivers Network

This halt was called because although Myanmar was becoming friendlier with China, it was confronted with severe sanctions imposed by western countries in the 2000s. In June 2000, General Maung Aye, Vice Chairman of the State Peace and Development Council (SPDC), announced a joint statement unveiling a cooperative framework between China and Myanmar. In July 2000, Vice President Hu Jintao visited Myanmar and discussed a cooperative agreement on science and technology between the two countries. One year later, in July, China and Myanmar signed a cooperative agreement on geology and mining between the both relevant ministries. In December 2001, President Jiang Zemin visited Myanmar and signed the agreement pertaining to the promotion of trade and investment. In March 2004, Wu Yi, Vice Premier of the State Council, visited Myanmar and signed the MoU for the promotion of investment and trade.

After the replacement of Prime Minister Khin Nyunt by Soe Win in October 2004 (an event brought about by pressure from the Bush/US administration), the cooperation between China and Myanmar became even stronger. In April 2005, the Chinese President Hu Jintao met with Myanmar's President Than Shwe in Jakarta to agree to new bilateral relationships. In February 2006, Chinese Premier Wen Jiabao met with the group led by Myanmar Prime Minister Soe Win and agreed on the early initiation of some prioritized projects. Under this agreement, Myanmar expressed its expectation for heightened cooperation from and higher investment by Chinese corporations in the energy sector. In December of the same year, high-ranked officers from the Ministry of Power No. 1 of Myanmar visited Kunming to request additional energy investments from Chinese corporations.

Accordingly, in December 2006, the China Power Investment Corporation (CPI) eventually agreed upon the MoU with the Ministry of Power No. 1 of Myanmar, for new project development in Irrawaddy Basin. Examples included the 6,000 MW dam at Myitsone and the 3,400 MW dam at Chibwe. In 2007, the Changjiang Design Institute of China delegated designers to the dam sites to conduct geological drilling, reservoir inspection, and hydrological measurements. In 2009, Myanmar Ambassador Thein Lwin and CPI President Lu Qizhou signed a build-operate-transfer (BOT) MoU for hydropower projects such as the Myitsone. In December 2009, CPI started construction of the hydropower project in the upper Irrawaddy Basin. In June 2010, the Ministry of Power No. 1 of Myanmar and CPI signed the construction agreement in the presence of both Chinese Premier Wen Jiabao and Myanmar President U Thein Sein.

Cancellation of Myitsone: Alarming discovery and euphoric enthusiasm (Stage 2)

After early 2011, the relationship between Myanmar and China reversed completely. Two political events were responsible for this reverse. First, the Obama Administration reversed its diplomatic policy on Myanmar compared to that of the previous Bush Administration, for the following three reasons (謝 2010): 1) US diplomacy changed its focus from hard power to soft power after the economic crisis in 2009, 2) the US began to view

ASEAN countries as a platform for its Asian diplomacy, and 3) China has always exerted a strong influence in the ASEAN region. As a consequence, the Obama administration took a friendlier stance toward ASEAN countries including Myanmar (謝・梁 2011).

Second, from the viewpoint of the Thein Sein administration, the changing diplomatic attitude of the US was favorable as it could give Myanmar the opportunity to request the US to lift the sanctions it had imposed on the country. This was necessary to achieve tangible economic development under Thein Sein's leadership after democratization. In this regard, in March 2011, Thein Sein eventually released one of the world's most important political figures, Aung San Suu Kyi. Swiftly, in August of that year, Suu Kyi started "Save the Irrawaddy" campaign with an open letter to the public, mentioning the following 4 points: 1) Irrawaddy is the most important river in the country, 2) dam development is problematic since it threatens the river, 3) problems resulting from the Myitsone dam development include security, livelihood, nationality, and diplomatic aspects, and 4) people are called upon to participate in "Save the Irrawaddy" campaign. In this way, the National League for Democracy (NLD), the party led by Aung San Suu Kyi, strategically positioned the controversial Myitsone project as an issue for the 2012 elections. The Thein Sein administration could not ignore this growing campaign, which was also backed by the international community, and eventually announced a halt to the project in September 2011.

While the campaign never specifically blamed China for the project, it created considerable anti-Chinese sentiment in the country. For example, local groups listed the following as reasons to stop the Myitsone hydropower project. 1) Construction of the dam caused social issues because of the forced relocations of more than 60 villages and 10,000 residents. 2) The electricity so produced would be primarily exported to China, with the remaining being distributed between Myanmar's military and its corporations. Therefore, the project will not benefit local communities. 3) Power export from Myitsone would provide annual benefits totaling 500 million US dollars to the military government and 3,600 million US dollars to China. 4) No relevant social and environmental impact assessments have been prepared. 5) Stakeholder meetings with concerned local communities have not been held. 6) The project has no monitoring system-in charge. 7) The dam site holds enormous cultural meaning for the Kachin people. 8) The dam will change the river's flow, damaging fisheries downstream. 9) As the location is a conflict-prone zone, the dam is very likely to suffer damage due to possible conflicts in the future. 10) Dam construction will lead to forced labor and human rights violations by the Burmese military. 11) The dam is located in an earthquake-prone area. 12) Drainage containing methyl alcohol could pollute the waters used by communities living downstream. Lastly, 13) the Chinese company absolves itself of full accountability toward the local community with regard to sustaining local livelihoods. Thus, China was an implicit accused party in the Myitsone project. This growing anti-Chinese sentiment could pose a serious barrier for China's expansion policy toward ASEAN countries. Thus, the country needed to prove its willingness to be flexible in line with the

locals' demands. As one such response, China breathed new life into publishing the Guideline, a process that had previously been stalled by its Ministry of Commerce. Thereafter, in 2013, the Guideline was finally published, as if in response to the campaign in Myanmar.

Other Endogenous and Exogenous Factors

While the explanation in the previous section is plausible, one might argue that other aspects could have led to the tipping point. The first such category may focus on endogenous factors in Chinese policy. The year 2013—when the Guideline was finally published—marked the transition phase from the 11th Five-Year Plan (2006-2010) to the 12th Five-Year Plan (2011-2015). This policy change could have affected the attitude of the Ministry of Commerce, changing it to favor the Guideline. Critics may note that external pressures other than the Myitsone hydropower project could have brought about this change. As a number of other projects were considered controversial at the time, it is possible that they could have influenced the Chinese government's policy in this regard.

Environmental Concerns in the 12th Five-Year Plan

The 12th Five-Year Plan consisted of 16 comprehensive chapters. It posits more stringent environmental targets compared to the previous plan. First, the energy consumption rate was targeted to reach 16%, which is more ambitious than the previous target of 20%. Second, the target for non-fossil fuel use was set to 11.4%, whereas the corresponding target was only 7.5% in 2011. Third, CO₂ emissions intensities were to be reduced by 17% compared to the 2010 level. Fourth, the annual reduction rates of SO₂ and NO_x were targeted at 8% and 10%, respectively, compared to 2010 levels. Moreover, China has arguably been trying to move beyond coal (堀井 2011).

However, this environmentally friendly stance applies to the country's domestic investment policy and not its external investment policy. On the one hand, for domestic investments, energy efficiency, and environmentally friendly technology enjoy government support in the form of assistance with R&D and an advanced industry. On the other hand, environmental and social safeguards were never considered for external investments. Instead, in order to highlight internal and external investments together as one of the 4 pillars in its Five-Year Plan, the Chinese government has made a strong push for external investment without paying heed to environmental and social safeguards.

Environmental Controversies in 2008-2013

The period 2008-2013 was marked by environmental controversies in countries other than Myanmar. For instance, consider Kamchay Dam in Cambodia. The design capacity of the dam is about 200 MW. A BOT contract was agreed upon between Sinohydro and the Ministry of Mines and Resources of Cambodia in 2008. Although NGOs highlighted the environmental and social concerns associated with the dam and complained about insufficient information disclosure, the developer proceeded with the construction so that the dam could commence operation in December 2011. The second case is that of the Lower Sesan 2 Dam, which has a total capacity of

400 MW. In 2012, Hydrolancang International signed the contract to construct the dam. The dam did not satisfy the international EIA standard, leading to controversy. However, the company started the construction in February 2014 and completed the structure in September 2017. While both cases are marred by environmental and social problems and stirred local controversies, they never gained public attention to the extent that the developers needed to suspend the projects.

As of 2014, International Rivers reports that Myanmar has the distinction of being the country with the highest number of suspended dam projects. Besides Myitsone dam, Myanmar has suspended 5 other dam projects, namely, Chibwe (2,800 MW), Khaunlanphu (2,700 MW), and Lakin (1,400 MW) Dams located in the N'Mai River Basin, and the Dagwin (800 MW) and Weigyi (4,540 MW) Dams located in the Salween Watershed (see Figure 5-4). All these projects were invested in and to be constructed by Chinese companies. Yet, as seen in the previous section, "Save the Irrawaddy" was highlighted as an issue before the 2012 election by NLD, and only the Myitsone controversy led to the rise of anti-Chinese sentiment; eventually, the Chinese government could not ignore this turn of events.

CONCLUSION: SUMMARY AND IMPLICATIONS

This chapter attempted to explain the link between the publication of the "Guidelines for Environmental Protection in Foreign Investment and Cooperation" and the first two stages of the issue attention cycle with regard to the stalled Myitsone hydropower project in Myanmar. As Downs' (1972) theory suggests, the Guideline was published in 2013, immediately after attention on the issue and anti-Chinese sentiment in Myanmar peaked. The relevant stage in this case, as per Down's Issue Attention Cycle model, is "Alarmed discovery and euphoric enthusiasm." Therefore, it might be implied that the Issue Attention Cycle model, which was originally applicable to democratic institutions, could also apply to the decision-making process in China, a country characterized by a socialist market economy.

Notably, the environmental NGO GEI played the indirect role of bridging between the issue-attention stage in Myanmar and the eventual decision-making in China. One may argue that regardless of GEI's activity, the Chinese government would have had to respond to the growing anti-Chinese sentiment in Myanmar as it was triggered by the Myitsone controversy. Nevertheless, without GEI's draft preparation in 2008, the guideline might not have been published in its current form in 2013. GEI therefore performed the critical function of expediting the timing and manner of the Chinese response to this issue, which is essential in ensuring effective responses.

Thus, the following policy implications can be drawn with regard to the environmental safeguard policies on China's external investments. First, even in the "pre-problem" stage, specific policy design and recommendations are a must for tackling latent problems at the outset. In this stage, such policy advocacy may not have an effective outcome, considering the low accountability of Chinese policy-making. Yet, as shown by the experience pertaining to GEI's draft, the advocacy might be effective in the long run. As for addressing environmental and

social issues, collaboration with the Ministry of Environmental Protection can be a strategy worth following as part of this advocacy.

Second, in the “alarmed discovery and euphoric enthusiasm” stage, the Chinese government should ensure that the policy-based strategy developed in the “pre-problem” stage, should effectively respond to the public’s concerns. So far, the Chinese government and companies have not effectively dealt with the anti-Chinese sentiment. It is often said that they lack competence in public diplomacy, which unfortunately lowers their image (Kittner & Yamaguchi 2017; 山口他 2018). In this context, the Chinese government also needs an effective policy to deal with anti-Chinese sentiment in the countries it invests in. Thus, at this stage, they should be assured that their policy-based strategy can address these issues successfully.

Finally, as for further developments of this study, it is crucial to monitor the effective implementation of the policy in the later stages, that is, when the public’s attention has faded from the issue. As shown in the other cases, effective policy implementation without public attention on an issue could be problematic. It is quite difficult, however, to ensure effective implementation in cases pertaining to Chinese policy regarding external investment, as China is not accountable for policy implementation outside its borders. This proposition seems to be plausible with regard to the Guideline. Thus, in future research, we will address the effectiveness of policy implementation with regard to the “Guidelines for Environmental Protection in Foreign Investment and Cooperation.”

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