

# Legal Research on Environmental Protection Responsibilities of Multinational Enterprises From the Perspective of Comparative Law

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## ABSTRACT

Driven by the wave of economic globalization, some multinational corporations are transferring their industries to China to expand their global market and increase profits, which brings economic benefit growth to themselves and gives rise to huge and irreversible pollution to China's environment. Although China has established a preliminary environmental protection legal system, there are still some loopholes in these systems, which provide an opportunity for multinational enterprises to evade environmental protection, thus urgently needing to be repaired by the Chinese government. As one of the most developed countries in terms of environmental protection legal system, Britain's various environmental protection measures are well worth learning for China. Therefore, taking the environmental protection responsibility of MNEs as the research object, this paper will compare China's standards of environmental protection, management systems, and adjustment methods for multinational enterprises with Britain, thus analyzing the existing problems in China's environmental protection supervision system. Combined with relevant environmental pollution cases that MNEs cause, this paper also puts forward some suggestions on how to better supervise the environmental pollution behaviors of multinational corporations from three aspects: legal system, legislative techniques, publicity, and education.

**Keywords:** *environmental protection responsibilities, multinational enterprises, British legislations.*

## 1. INTRODUCTION

With the increase of multinational enterprises' investment projects in China and the continuous expansion of their business scope, more and more multinational enterprises are transferring their core business and functions to China. However, under the influence of the market economy system, most multinational corporations are driven by interests. While developing their own economic strength, they ignore their responsibility of environmental protection and transfer environmental pollution to the host states. Although the Chinese government has curbed the environmental pollution behavior of multinational corporations to a certain extent through a large number of laws and regulations such as environmental taxes and environmental subsidies, under the policy of attracting foreign investment, the environmental restrictions on multinational corporations in China are still significantly less than those in their home states. For example, the UK formulates the Control Pollution Act, Environmental

Protection Act, The Duty of Care: A Code of Practice, etc. In UK's Pollution prevention and control act, corporations must obey extremely strict technical standards to apply for a permit from Environment Agency. While in China, there are fewer standards in the application of a discharge permit. The British government also requires enterprises to follow the sustainable development strategy, actively develop a low-carbon economy, etc., which the Chinese government is just proposing. From the perspective of comparative law, this paper takes Britain, which has the perfect environmental protection management system, as the comparative object to reveal the deficiencies of China in regulating the environmental protection responsibility of multinational enterprises.

## 2. EXISTING PROBLEMS IN MNEs' ENVIRONMENTAL BEHAVIORS

In GATT(General Agreement on Tariffs and Trade), the general exception clause regulates that WTO

members are allowed to adopt and enforce measures if there are either necessary to protect human, animal, or plant life or health, or if the measures relate to the conservation of exhaustible natural resources. As a member of WTO, China still has some deficiency in governing MNEs' environmental behaviors, which will be discussed in this section.

### **2.1. Standards of environmental protection**

UK environmental taxes mainly include Climate Change Levy (CCL), Airport Passenger Duty (APD), Environmental Tax on Motor Vehicles, House Purchase and Rental Environmental Tax, Landfill Tax (LFT), Garbage Can Tax, Aggregates Levy (AL), etc. [1]. Britain has a large amount of taxes. For example, the environmental tax on motor vehicles is £ 200 per vehicle, and the landfill tax is £ 2.50 per ton [2].

Chinese environmental protection tax started late. The environmental protection tax law, which came into force in 2018, stipulates the tax object and value of environmental protection tax. Suppose the concentration of taxable air pollutants or water pollutants discharged by taxpayers is lower than 30% of the national and local pollutant emission standards. In that case, the environmental protection tax shall be levied at a reduced rate of 75%. The concentration of taxable air pollutants or water pollutants discharged by a taxpayer is lower than 50% of the pollutant discharge standards set by the state and local governments. The environmental protection tax shall be levied at a reduced rate of 50%. In addition to air pollutants and water pollutants, solid waste and noise are also included in the scope of taxation. The Chinese environmental protection tax has fewer tax objects, smaller tax amounts, and insufficient punishment compared with the UK environmental protection tax.

After Brexit, the UK abandoned the EU's direct subsidy policy. It launched an "environmentally friendly land management plan" for agriculture, including sustainable agricultural incentives, local natural restoration, and landscape restoration [3]. The plan has not changed the aim of subsidizing agriculture.

China's agricultural, environmental protection subsidies mainly focus on basic subsidies. Different regions have different subsidy policies, such as setting aside subsidies for ecologically fragile areas and heavy metal pollution control subsidies in Hunan Province, China. Due to most of the British agriculture being animal husbandry and the agricultural environmental protection subsidies starting earlier, Britain is from a more macro perspective. It concentrates on landscape restoration, while China is still in the primary stage and lacks environmental protection subsidies for landscape restoration.

### **2.2. Management systems**

Britain is the first country in the world to formulate a sustainable development strategy [4]. In 1990, the UK launched the GGI (Greening government Initiative), aiming to build a comprehensive decision-making mechanism for the environment and development. The decision-making tools include GM (Green Minister), EAC (Environmental Audit Committee) [5], PAE (Policy Appraisal and Environment) [6]. After over 30 years of development, these three tools have played an important role in implementing the sustainable development strategy. To prevent corruption, the UK's environmental protection decision-making body and executive body are separated. The Department for Environment, Food and Rural Affairs is the decision-making body, and the Environmental Protection Agency is the executive body. The management of land, air, and water resources all fall within the responsibility of the environmental protection administration. The federal government manages national organizations and enterprises, while the local government manages localized organizations and enterprises. The interests of the two are unified, and the whole environmental protection system is coherent.

Aside from the Ministry of Ecological Environment exercising environmental protection functions, China's Ministry of Water Resources, the Ministry of Natural Resources, the Ministry of Agriculture and Rural Affairs, and other departments also have environmental protection functions, which leads to the intersection of institutional functions and low office efficiency. Unlike the UK, China's environmental protection decision-making body and executive body are not separated. China's Ministry of Ecological Environment has established six regional inspection centers to manage cross-region pollution incidents, and local governments are responsible for territorial environmental protection. It is hard for local governments to change the economic development mindset at the cost of the environment to attract MNEs, which adds to the difficulty for the central environmental protection policy to be implemented under the repression of local protectionism.

There are many kinds of laws and regulations on environmental protection in Britain, with high requirements, much public participation, detailed and strict procedural norms such as an accountability system. Chinese environmental protection legal system has only begun to be constructed in recent years, paying more attention to afterward punishment and governance. Society despises the importance of environmental protection. Britain has attached importance to prevention in advance since Clean Air Acts. Therefore, it has achieved remarkable results at the beginning of the implementation of the law.

### **2.3. Adjustment methods**

The UK regulates the obligation of enterprise environmental information disclosure through the Environmental Information Ordinance, which includes five parts: professional terminology, the scope of application, obligation, form, response time, charge, and reconsideration [5]. Environmental information includes the State of the Elements of the Environment, Environmental Factors, Environmental Measures, the State of Human Health and Safety, etc. British enterprises voluntarily disclose their environmental information, and the government does not make mandatory requirements. However, enterprises that actively disclose their environmental information will be awarded yearly by the government. Any person, enterprise, or institution can disclose their environmental information. The environmental information is disclosed mainly on UK-PRTR (UK Pollution Release and Transfer Register) website and database, which the Environmental Protection Agency sets up. The public only needs to log in to the website to view environmental information. The government also has relief measures such as the information commissioner system and information tribunal system.

Chinese Environmental Protection Law stipulates that key pollutant discharge units should truthfully disclose to the public the name, discharge mode, discharge concentration and the total amount of their main pollutants, excessive discharge, as well as the construction and operation of pollution prevention and control facilities, and should accept social supervision. If they violate the obligation of information disclosure, they will be fined and announced by local governments and relevant departments.

The regulations of environmental information disclosure stipulate that enterprises can voluntarily disclose their environmental information. It can be seen that Chinese environmental information disclosure methods are a combination of mandatory and voluntary measures. China's environmental information disclosure system lacks an incentive mechanism, and enterprises often do not voluntarily disclose environmental information when they have no access to benefits. At the same time, the scope of environmental information disclosure subject is also relatively narrow. The subject of mandatory environmental information disclosure only includes the pollutant discharge units in the list, which is easy for enterprises not in the list to exploit loopholes to discharge excessive pollutants. The content of environmental information disclosure is not detailed and comprehensive. At present, China adopts the way of listing the public content, but this way is likely to lag behind social development. The accountability mechanism of environmental information disclosure is not perfect, and the public's participation in regulating environmental information disclosure is low.

## **3. REASONS FOR IMPROPER ENVIRONMENTAL BEHAVIORS OF MNES**

In view of the problems in MNEs' environmental behaviors mentioned above, three main reasons are accounting for them, which are short development time, the deficiency of legislation, and the lack of social responsibility of MNEs.

### **3.1. Short development time**

China's environmental protection undertaking and environmental protection legislation started relatively late. After the founding of the People's Republic of China in 1949, as a developing country, China has always focused on economic development, and environmental protection has made way for economic construction. Until 2014, the Environmental Protection Law of the People's Republic of China was promulgated. The institutional construction of environmental protection lasted less than ten years. In contrast, as the origin of industrial revolutions, Britain has started industrialization earlier. Therefore, the pollution problem in Britain was exposed and solved very early. In 1956, the British government issued Air Pollution Prevention and Control Policy and Clean Air Acts. After more than half a century of exploration and regulation, the British environmental protection system is comprehensible and peerless in the world.

Although the concept of environmental protection is no longer strange and novel in China, environmental protection is more moral than mandatory legal norms for most Chinese people. Almost all the Environmental Protection Law provisions are established to regulate enterprises and the government, which has no high requirements for citizens and only encourages citizens to use environmental protection products, avoid non-renewable fuels, etc. For enterprises, the public pays more attention to the product quality and goodwill of multinational enterprises. Unlike the British public, they will examine whether products are green and enterprises are in favor of environmental protection. As a result, multinational enterprises in China gradually reduce their environmental protection requirements. In addition, local government officials have been neglecting environmental protection for a long time. To achieve political merits, they attract foreign investment and develop the economy at the expense of environmental pollution. The concept of environmental protection is still difficult to get deep into the people's hearts and eventually becomes empty talk.

### **3.2. The deficiency of legislation**

As mentioned in the first part of this paper, the relevant provisions on the environmental protection

obligations of multinational enterprises in China's domestic law are insufficient or missing, and the legislative technology needs to be improved. For example, the object and scope of the environmental protection tax are narrow and not well-considered. In contrast, the British environmental protection tax includes most of the objects that may pollute the environment. In terms of environmental protection standards, China also lacks professionalism and adopts single standards. Britain has issued REACH and POPs according to different industries. China has no specific provisions on the details of pollution prevention and control, which triggers that many environmental protection measures are difficult to implement in practice. The illegal cost of enterprises is low, and the number of fines cannot deter and prevent pollution. For example, in the Law of the People's Republic of China on the Prevention and Control of Atmospheric Pollution, individuals who burn asphalt, linoleum, rubber, plastics, leather, garbage. And other substances that produce toxic and harmful smoke and odor in densely populated areas and other areas that need special protection according to law, shall be fined at least 500 yuan but not more than 2,000 yuan. At the same time, the British Green Homes Grant imposed a fine of 30,000 pounds on the landlords of houses that did not comply with EPC, and the punishment on individual citizens was much severer than that in China.

What's more, the environmental protection supervision system can also be improved. First, the mixed functions of supervision subjects are also one of the incentives to reduce the efficiency of environmental protection supervision. The prevarication between bureaucrats leads to ineffective supervision, which needs a unified superior law to clarify labor division between departments and special environmental protection management organizations. Second, the environmental information disclosure system has not been fully established. Most of the regulations on the content and format of environmental information disclosure are guiding opinions or guidelines, lack unified standards, and have not formed a systematic and normative system. Third, the quality of environmental information disclosure is not high, there is little quantitative information, and the content is not comprehensive. The environmental information disclosure system has not played its due role [6]. Finally, law enforcement is not strict enough. The legislation is basically concentrated on post-supervision, lenient in and strict out, which also provides opportunities for multinational enterprises to discharge pollutants to a certain extent.

### ***3.3. The lack of social responsibility of MNEs***

Although China's environmental protection legal system is not mature enough, some MNEs should also be responsible for environmental pollution in the host

countries. As an important carrier of economic globalization, multinational enterprises are often defaulting a sense of social responsibility. It is not uncommon to see that myriads of multinational enterprises are only profit-oriented, transferring the part of the production chain that pollutes the environment to developing countries, including China, and making use of the loose environmental protection supervision system of developing countries to avoid or reduce their environmental protection obligations and maximize interests. Multinational enterprises such as Johnson & Johnson, Coca-Cola, and AT&S are listed in the list of key pollutant discharge units of the water environment in Shanghai in 2020.

Admittedly, in the absence of mandatory policies and tax incentives, quite a few multinational enterprises no longer demand themselves with high ethics, giving up their consistent high investment in environmental protection in their home states, refusing to spend a high price and develop new technologies to maintain green production processes, instead of investing the funds which should have been applied to the internal environmental protection construction of enterprises in other profitable activities. Additionally, for the sake of keeping their advanced cleaner production technologies secret, multinational enterprises often choose not to use such technologies in the host state to reduce pollution to prevent these technologies from being stolen by enterprises in the host country and losing their competitive advantage.

## **4. CONSTRUCTIONS OF A COMPLETED LEGAL SYSTEM REGULATING MNE'S ENVIRONMENTAL PROTECTION RESPONSIBILITIES**

According to the three reasons summarized above, this part will suggest how the Chinese government can better regulate the environmental pollution behavior of multinational enterprises from the perspectives of the legal system, legislative technologies, publicity, and education.

### ***4.1. Paying attention to systematic cooperation when formulating relevant specifications***

To begin with, the Chinese government should focus more on the coordination among various laws within the environmental protection legal system, formulate corresponding laws and regulations for different pollution, and clarify the boundaries between these laws and regulations and the division of environmental protection among administrative organs, to avoid reducing efficiency due to confusion. At the same time, the specific measures in the environmental protection law should be more detailed. The principled provisions in the law should be implemented by relying on the detailed

measures in the local government regulations. For multinational enterprises with abundant funds, the number of fines should be greatly increased so that the amount of fines is much higher than its pollution cost. In this way, profit-oriented enterprises will not risk tremendous fines to pollute the environment. The environmental information disclosure system also needs to be further improved. Incentive measures, such as tax relief, can be taken to encourage enterprises to voluntarily disclose their environmental information. Environmental protection legislation should be confined to afterward fines and remediation and enhance the industrial barriers to entry from the perspective of prevention to avoid the environmental pollution behavior of multinational enterprises from the root.

What's more, the Chinese government should attach importance to the external coordination of environmental protection legislation and spare no effort to achieve a cohesive and harmonious relationship between environmental protection legislation and other laws. China's Foreign Investment Law implemented in 2020 does not touch on the environmental protection obligations of multinational enterprises, but more obligations in the economic aspect, and there are no environmental provisions. Although China has signed bilateral investment agreements [7] with most countries, these bilateral investment agreements have almost no environmental provisions, and most agreements involving environmental issues are simply mentioned. Some agreements specify the rights and obligations of the host country in environmental protection and do not continue to specify the effectiveness, application, and detailed measures of environmental provisions [8]. It is suggested that the establishment of environmental protection provisions in foreign investment law and bilateral investment agreements should be put on the legislative agenda, such as the prior review of environmental information of multinational enterprises, which will also help to prevent pollution in advance.

#### ***4.2. Clarifying the necessary contents of environmental protection responsibility clauses by means of the list***

Based on clarifying the division of environmental protection work of administrative organs, the use of an environmental protection list can further implement environmental protection clauses. The environmental protection list should be employed to specify the environmental protection supervision responsibilities of administrative organs and make the environmental protection obligations clear to multinational enterprises. Due to the bureaucratic nature of administrative organs, if the clauses only stipulate the environmental protection responsibilities of each administrative organ in principle, it will promote mutual prevarication among the administrative organs. Some departments even take the

opportunity to bring in illegal power, greatly reducing the administrative efficiency, and the environmental protection list will improve this situation to a great extent. It is conducive to tracing the responsibility for weak supervision to specific administrative organs and enhancing transparency. When refining the list's contents, it should be specific to the person in charge of a certain environmental protection responsibility. Disclosing the maximum time limit and contact information of each responsibility to society is ideal for accepting social supervision [9]. The list should also be applied to the environmental protection provisions of multinational enterprises. Some multinational enterprises may be unfamiliar with the host country's laws, while others take advantage of the unclear provisions of the environmental protection law. Listing the environmental protection responsibilities of multinational enterprises one by one can prevent the occurrence of the above situation and offers easy access for administrative organs and judicial authorities to refer to the list when punishing multinational enterprises.

#### ***4.3. Strengthening publicity and education***

Strengthening the publicity and education of environmental protection is an auxiliary means in addition to the above two legislative measures, which help improve the awareness of environmental responsibility of various social subjects. First of all, it is necessary to educate and train government officials on the concept of environmental protection so that government officials can wake up to the value of environmental protection and strictly implement environmental protection supervision measures, thus changing the concept of economic development at the cost of the environment from top to bottom. Moreover, enterprises led by multinational corporations need to be involved in the scope of environmental protection publicity. Before multinational corporations enter China, relevant principals should be trained on environmental protection knowledge to make them aware that multinational enterprises should bear due social responsibilities. They should not abandon the high environmental protection standards they adhere to in their home countries or decrease investment in environmental protection just because the host country lacks a perfect environmental protection legal system. Instead, they ought to consider the good social image of the enterprises while making profits and take the lead in fulfilling the obligation of environmental protection. In addition, the public should also popularize the concept of environmental protection. As the most indispensable part of the environmental protection supervision system, the public with a good command of the concept of environmental protection will be more conducive to the formation of a public supervision system and reporting environmental pollution caused by multinational enterprises, which not only protects their own legitimate

rights and interests but also contributes to environmental protection. The media are also supposed to learn environmental protection knowledge to better participate in the public supervision system and make multinational corporations dare not pollute the environment through exposure and public opinion. The publicity of the environmental protection concept can also be more widely spread through these social platforms.

## 5. CONCLUSION

The high-standard environmental protection concept adhered to by many multinational corporations has always been praised by countries worldwide. However, under the temptation of huge profits, some multinational corporations want only discharge pollutants in the host country through pollution transfer, abandoning the high environmental protection standards they abide by in their home countries. As one of the victims of this pollution, China still has a long way to improve the legal system of environmental protection. Taking Britain as the comparative object, this paper believes that we should start by standardizing environmental protection legislation, paying attention to the construction of the internal system of environmental protection legal system, and taking into account the addition of relevant environmental responsibility provisions in foreign investment law to reflect its cooperation with environmental protection law. Then, listing the environmental protection obligations of multinational enterprises is critical. Finally, the Chinese government should strengthen the publicity of environmental protection awareness and make all kinds of subjects in society realize the importance of environmental protection. Just as China's Foreign Investment Law has been implemented for more than one year, the research content of this paper will put forward some ideas on how to better regulate the environmental protection responsibilities of multinational enterprises in China to reduce the possibility of pollution caused by MNEs in China.

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