



Session 5th March 14.00 – 15.30: Financial contribution (state attribution)

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SOE as public body I

'(...) there are two questions for the analysis, i.e. (a) whether the SOEs in question perform functions which are ordinarily considered part of governmental practice in China and (b) if so, whether they exercise government authority when doing so?'

SOE as public body II: Question 1 - Performance of gvt functions

- Facts available had to be used
- Articles 7 and 15 of the PRC Constitution
- 5-year plans including *Twelfth 5 Year Development Plan for the Steel Industry*
- *Order No. 35 of the NDRC – Policies for Development of Iron and Steel Industry*
- *Law of the People's Republic of China on the State-owned Assets of Enterprises*



SOE as public body III: Question 2 - SOE exercise gvt authority

SOE are meaningfully controlled by the gvt (and exercise thus gvt authority) because

- Gvt. Ownership
- Administrative regulation and involvement of SASAC
- Many members of boards of directors and board of supervisors hold or held gvt and/or party functions
- Gvt plans

Entrustment & direction I – General framework as set by AB

'Entrustment' occurs where gvt gives responsibility to private body and 'direction' refers to situations where gvt exercises its authority over private body. In both cases, gvt uses private body as proxy to effectuate the financial contribution, and 'in most cases, one would expect entrustment or direction of a private body to involve some form of threat or inducement'. Article I 1.1 (a) (1) (iv) does not allow Members to impose CVD measures to products 'whenever the government is merely exercising its general regulatory powers' or where gvt intervention 'may or may not have a particular result simply based on the given factual circumstances and the exercise of free choice by the actors in that market' Rather, entrustment and direction implies 'a more active role of the government than mere acts of encouragement'.

See AB in DS 296 – DRAMs from Korea (paras 114 – 116)

Entrustment & direction II – Where domestic private mining companies entrusted or directed to provide iron ore to domestic pipes industry?

Finding of 'entrustment and direction' of private mining companies was based on totality of evidence on file which included:

- Export taxes at varying decrees depending on the iron ore content
- Dual freight fares for iron ore to be exported and to be consumed domestically
- Various documents issued by gvt or requested by gvt showing wish to support domestic downstream users by securing iron ore supply
- Ratio of exports as percentage of domestic consumption of iron ore went down significantly (from 1.16 to 0.145). Significant change of this ratio coincided with introduction of higher export taxes.
- Domestic iron ore prices significantly lower than comparable int'l prices throughout period considered - extensive discussion of comparability

Entrustment & direction III

Analysis covered 3 steps

- (1) Was support of pipes industry by gvt effectively an 'objective of gvt policy' or merely a side effect? Conclusion: Gvt had entrusted mining companies to carry out its policy to create a compartmentalised domestic market and to provide iron ore to domestic iron & steel industry for less than adequate remuneration.
- (2) Did mining companies indeed provide iron ore of less than adequate remuneration? Yes.
- (3) Did provision of iron ore cover a function which would normally be vested in gvt and is practice, which, in no real sense, differs from practices normally followed by gvts.
 - Function normally vested in gvt: *states have sovereignty over their resources*
 - Practice in no real sense differs from practices normally followed by gvts: *cf various export taxes introduced by gvt*