

Xie, Jiaqi (2016) The reform of China's state-owned enterprise legal system. PhD Thesis. SOAS, University of London.

<http://eprints.soas.ac.uk/id/eprint/23585>

Copyright © and Moral Rights for this PhD Thesis are retained by the author and/or other copyright owners.

A copy can be downloaded for personal non-commercial research or study, without prior permission or charge.

This PhD Thesis cannot be reproduced or quoted extensively from without first obtaining permission in writing from the copyright holder/s.

The content must not be changed in any way or sold commercially in any format or medium without the formal permission of the copyright holders.

When referring to this PhD Thesis, full bibliographic details including the author, title, awarding institution and date of the PhD Thesis must be given e.g. AUTHOR (year of submission) "Full PhD Thesis title", name of the School or Department, PhD Thesis, pagination.

**THE REFORM OF CHINA'S STATE-OWNED
ENTERPRISE LEGAL SYSTEM**

JIAQI XIE

Thesis submitted for the degree of PhD

2016

Faculty of Law and Social Science
School of Oriental and African Studies
University of London

Declaration for SOAS PhD thesis

I have read and understood regulation 17.9 of the Regulation for student of the SOAS, University of London concerning plagiarism. I undertake that all the material presented for examination is my own work and has not been written for me, in whole or in part, by any other person. I also undertake that any quotation or paraphrase from the published or unpublished work of another person has been duly acknowledged in the work which I present for examination.

Signed: 谢承祺

Date: 2016/7/30

Acknowledgment

I would like to express my sincere gratitude to my supervisor, Dr. Sanzhu Zhu for his continuous understanding, support and guidance on my research and thesis.

I would like to thank Mr. Nicolas H. D. Foster, Professor Peter Muchlinski and Professor Carol G. S. Tan for their supervision and helpful suggestions for the thesis during my research and studies.

This acknowledgment should also be extended to friends, who never fail to cheer me up whenever I needed some encouragement. Especially my doctoral fellow students, Song Xiaolei and Zhang Lei, for their support, more importantly, those challenging but constructive conversations we had.

A special thanks to my wife, Qin Yi and my daughter, I would not have completed the thesis without her endless help encouragement, support and love. And my Daughter, Xie Zhengxin, her presence made everything better than it was.

Last but not least, my deepest gratitude to my parents, Xie Zengfu and Tian Junfang, who have always believed in me, supported every decision that I have made, and offered financial, moral and emotional support through the whole period of my study. Their support and patient encouragement have tremendously helped in accomplishing this study.

Abstract

After 30 years of development since the late 1970s, China's State-owned Enterprise reform has performed very well. However, it has also faced many problems, such as administrative monopoly, the inappropriate income distribution system, and inappropriate property structure. The problems of administrative monopoly and income distribution were caused by inappropriate property structure of China's State-owned enterprise, which not only affect China's State-owned enterprise reform, but also affect the development of private sectors. Therefore, State-owned enterprises should have a rather clear boundary that they are suitable for production of public goods and quasi public goods in which market mechanism could not be brought into full play. The overall purpose of this thesis is to provide a systematic reform manner for China's State-owned enterprises.

By reviewing and studying the history and process of China's State-owned enterprise legal system reform, and evaluating the its current situation, this thesis concludes that the current reform approach no longer benefit to China's economy, even became to the block of the further and healthier development to some degree, and the most serious problems are property structure, administrative monopoly, and income distribution.

Due to the misunderstanding about China's State-owned enterprise status, the government and state-owned assets supervision and management departments have motivations and excuses to give preferential policies and privileges to State-owned enterprise. Which lead to the administrative monopoly issues and income distribution issues, and seriously impedes economic development. These three issues must be dealt with at the same time because they complement each other. Neglecting any issue of these three would cause the failure of other two reforms inevitably. This thesis will provide a new reform manner that deal with these three issues systematically, to improve State-owned enterprise system.

Table of Content

DECLARATION	2
ACKNOWLEDGMENT	3
ABSTRACT	4
TABLE OF CONTENTS	5
TABLE OF ABBREVIATIONS	11
TABLE OF LEGISLATIONS AND NORMATIVE DOCUMENTS	12
CHAPTER ONE: INTRODUCTION	30
1. The Reasons for Conducting this Research	30
2. Research Aims	35
3. Research Questions	36
4. Methodology	37
<i>4.1 Doctrinal Research</i>	<i>37</i>
<i>4.2 Law and History Approach</i>	<i>37</i>
<i>4.3 Law and Economic Approach</i>	<i>38</i>
<i>4.4 Conducted fieldwork</i>	<i>38</i>
<i>4.5 Limitations</i>	<i>39</i>
5. Contribution of this Thesis	39
6. Outline of this Thesis	42
CHAPTER TWO: HISTORY AND DEVELOPMENT OF CHINA'S SOE REFORM	45

1. The Tasks of China's SOE Reform	46
1.1 <i>The Reform which Aiming at Enhancing SOE's Vitality</i>	46
1.2 <i>The Reform which Aiming at Changing SOE's Operation Mechaism</i>	49
1.3 <i>The Reform which Aiming at Establishing Modern Enterprise System</i>	52
2. The Period of "Fang Quan Rang Li" (1978 – 1986)	56
2.1 <i>History</i>	56
2.2 <i>Theories</i>	62
2.3 <i>Assessments</i>	64
3. The Period of "Liang Quan Fen Li" (1987 – 1992)	65
3.1 <i>The Contract Responsibility System</i>	66
3.2 <i>The Asset Management Responsibility System</i>	69
3.3 <i>Changing Management System</i>	70
3.4 <i>Theories</i>	71
3.5 <i>Comments</i>	72
4. The Period of Establishing Modern Enterprise System (1993 – Present)	73
4.1 <i>The Process</i>	73
4.2 <i>Theories and Arguments</i>	78
4.3 <i>Comments</i>	79
5. Policies that Drove the Reform of State-owned Enterprise	81
5.1 <i>Establishment of the Basic State Policy on Reform and Opening Up at the Third Plenary Session of Eleventh Central Committee of the CPC</i>	81
5.2 <i>Recognition of the Socialist Market Economy System at the Sixteenth Party Congress (1992)</i>	85
5.3 <i>Decision of the Fourth Plenary Session of the Fifteenth Central Committee of the CPC on the Strategic Adjustment in State-owned Economy (1999)</i>	87
5.4 <i>Provisions of the Sixteenth Party Congress on the Reform of the State-owned Assets Management System (2002)</i>	89

CHAPTER THREE: THE THEORIES AND ARGUMENTS ABOUT CHINA'S SOE REFORM

1. The First Stage	92
2. The Second Stage	93

3. The Third Stage	97
3.1 <i>The Debate between Lin and Zhang</i>	98
3.2 <i>The Debate between Lang and Gu</i>	103
3.3 <i>Some other Discussions in this Stage</i>	112
4. The Fourth Stage	114
4.1 <i>Arguments about China's SOE Monopoly Issues</i>	114
4.2 <i>Arguments about China's SOE Efficiency Issues</i>	119
4.3 <i>Discussions about China's SOE Income distribution</i>	122
5. Assessment of China's SOE Reform Approaches and Theories	124
CHAPTER FOUR: THE PROPERTY STRUCTURE OF CHINA'S STATE-OWNED ENTERPRISES	131
1. The History, Functions and Role of State-owned Enterprises	131
2. Debates on the Nature of State-owned Enterprises	135
2.1 <i>The State-owned Enterprises as Special Public Organizations</i>	135
2.2 <i>The Normative Significance of the State-owned Enterprises as Special Public Organizations</i>	139
2.3 <i>The Strategic Significance of Reaffirming the Public Nature of State-owned Enterprises for China's State-owned Enterprise Reform</i>	142
2.4 <i>Epilogue</i>	146
3. Guo Jin Min Tui – Is it a Trend?	146
3.1 <i>The Structural Guo Jin Min Tui</i>	148
3.2 <i>Relevant Cases</i>	152
3.3 <i>Conclusion</i>	161
4. Deepening the Reform of China's State-owned Enterprise	162
4.1 <i>Review and rethink China's State-owned Enterprise Reforms</i>	162
4.2 <i>Reform in Transitional Period</i>	165
4.3 <i>The Ultimate Task of Reform</i>	170
CHAPTER FIVE: ADMINISTRATIVE MONOPOLY IN CHINA	175
1. Basic Theories of Administrative Monopoly	175
1.1 <i>Administrative Monopoly</i>	175

1.2 <i>The Nature and Origin of Administrative Monopoly</i>	179
2. The Administrative Monopoly in China	183
2.1 <i>The Forms of China's Administrative Monopoly</i>	183
2.2 <i>The Causes of China's Administrative Monopoly</i>	184
3. The Anti Administrative Monopoly Legal System in China	185
3.1 <i>Arguments about the legislation of Anti Administrative Monopoly</i>	192
3.2 <i>The Legislation about Administrative Monopoly in China</i>	195
4. The Improvement Approaches of Constitutional Level	208
4.1 <i>Restricting and Forbidding Departmental Legislation</i>	208
4.2 <i>Effective Control of State Economy and SOEs</i>	211
5. The Improvement Approaches of China's Anti-monopoly Law regarding Administrative monopoly	213
5.1 <i>Enacting Detailed and Specific Rules and Regulations for Implementation of the Anti-monopoly Law</i>	213
5.2 <i>Improve the Deficiencies of the Provisions on Administrative Monopoly of the Anti-monopoly Law</i>	214
5.3 <i>Improve the Regulations on the Anti-monopoly Committee</i>	215
5.4 <i>Improve the Regulations on the Anti-monopoly Enforcement Agency</i>	216
5.5 <i>Improvements for the Legal Liabilities of State Anticompetitive Activities</i>	217
5.6 <i>Improve the Judicial Remedy System for State Anticompetitive Activities</i>	221

CHAPTER SIX: CHINA'S STATE-OWNED ENTERPRISE INCOME

DISTRIBUTION LEGAL SYSTEM REFORM 224

1. The Development of China's State-owned Enterprise Income Distribution Legal System	224
1.1 <i>Breaking Equalitarianism Period (1978 – 1992)</i>	224
1.2 <i>The Period that Multiple Distribution System Coexist while Distribution According to Work as the Fundamental Means (1992 – 2002)</i>	229
1.3 <i>The Period Paying Equal Attentions to Efficiency and Fairness Breaking Equalitarianism Period (2003 – present)</i>	231
1.4 <i>Conclusion</i>	237

2. The Current Condition of China's SOE Income Distribution System	237
2.1 <i>The Monetary and Non-monetary Income of the Employees of SOEs</i>	237
2.2 <i>Comparison of Income of Senior Managers between SOEs and Other Types of Enterprises</i>	242
2.3 <i>Comparison of the Tax Payment between SOEs and Other Types of Enterprises</i>	243
2.4 <i>The Profit Payment and Dividend Distribution of SOEs</i>	246
3. The Basic Characteristics of China's SOE Income Distribution Legal System	248
3.1 <i>The Income Distribution System is Regulated Mainly by Policies rather than Rules and Regulations</i>	249
3.2 <i>The Income Distribution Legal System Pays More Attentions to Primary Distribution</i>	250
3.3 <i>The Income Distribution Legal System Pays More Attentions to Protect the Interests of the State than that of Individuals</i>	250
3.4 <i>The Great Income Disparity among Different Industries</i>	251
3.5 <i>The imbalanced National Income Distribution</i>	252
4. The Factors Contribute to Current Situation of China's SOE Income Distribution Legal System	255
4.1 <i>The Inequity Resource Allocation Mechanism and Imbalanced Distribution of Factors of Production</i>	255
4.2 <i>Market and the State Regulation Failure</i>	256
4.3 <i>The Shortages of Current Income Distribution Legal System</i>	258
5. Regulating SOE Income Distribution by Anti-monopoly Law	261
5.1 <i>General Theory</i>	262
5.2 <i>Shortcomings of China's Current Anti-monopoly Legal System</i>	265
5.3 <i>Improving the Income Distribution Function of China's Anti-monopoly Legal System</i>	273
CHAPTER SEVEN: CONCLUSION	277
1. The Nature of SOE: An Economic Perspective	277
1.1 <i>The Nature of Enterprise</i>	277
1.2 <i>The Nature of the State</i>	278

1.3 <i>The Nature of SOE</i>	278
1.4 <i>The Relationship between Enterprise and the State</i>	280
2. <i>The Nature of SOE: A Legal Perspective</i>	281
2.1 <i>SOE is Special Public Organization</i>	281
2.2 <i>The Normative Significance of SOE as Special Public Organization</i>	281
2.3 <i>The Strategic Significance to China's SOE Reform of Reaffirming the Public Nature of SOEs</i>	284
3. <i>Continued SOE Reform</i>	286
3.1 <i>Reflection and Comments on SOE Reform</i>	286
3.2 <i>Short-term Plan</i>	289
3.3 <i>Ultimate Goals of China's SOE Reform</i>	294
BIBLIOGRAPHY	296
Chinese Material	296
<i>Books and Other Monographs</i>	296
<i>Journal Articles and Chapters in Edited Volumes</i>	302
English Material	306
<i>Books and other Monographs</i>	306
<i>Journal Articles and Chapters in Edited Volumes</i>	310
<i>Cases</i>	313

Table of Abbreviation

CPC	Communist Part of China
GDP	Gross Domestic Product
GPCL	General Principle of Civil Law
NPC	National People's Congress
PRC	People's Republic of China
RMB	Ren Min Bi
SOEs	State-owned Enterprises
TVEs	Township and Village Enterprises
WTO	World Trade Organization

Table of Legislations and Normative Documents

Laws of Republic of China

天坛宪法。Tiantan Constitution. 1912.

通飭保护人民财产令。The Announcement of Protecting People's Property. 1912.

慎重农事令。The Order to Deal with Agriculture Cautiously. 1912.

袁世凯宪法。Yuan Shikai's Constitution. 1913.

公司条例。Company Regulations. 1914.

商人条例。Merchant Regulations. 1914.

证券交易所法。Stock Market Act. 1914.

矿业法。Mining Act. 1914.

商业注册规则。Business Registration Regulations. 1914.

森立法。Forest Act. 1914.

商标法。Trademark Act. 1921.

商品交易法。Goods Exchange Act. 1921.

中华民国宪法。The Constitution of the Republic of China. 1923.

中华民国训政时期约法。Provisional Constitution of the Titular Period of the

Republic of China.1923.

税法。Tax Act. 1928.

公司法。Company Act. 1929.

票据法。Bill Act. 1929.

海商法。Maritime Act. 1929.

保险法。Insurance Act. 1929.

证券交易所法。Stock Market Act. 1929.

工厂法。Factory Act. 1929.

土地法。Land Act. 1930.

银行法。Bank Act. 1931.

预算法。Budget Act. 1932.

商标法。Trademark Act. 1933.

货币改革令。Order of Currency Reform. 1935.

会计法。Accounting Act. 1935.

破产法。Bankruptcy Act. 1935.

中华民国宪法。The Constitution of the Republic of China. 1936.

专利法。Patent Act. 1936.

建设法。Construction Act. 1938.

商业登记法。Business Registration Act. 1938.

都市规划法。Metropolitan Plan Act. 1939.

审计法。Auditing Act. 1939.

公库法。Treasury Act. 1938.

合同条例。Contract Regulations. 1940.

所得税法。Income Tax Act. 1943.

许可使用税法。License Usage Tax Act. 1945.

证券交易所法。Stock Exchange Act. 1946.

商品交易条例。Goods Exchange Regulations. 1946.

土地登记法。Land Registration Act. 1946.

中华民国宪法。The Constitution of the Republic of China. 1947.

财政经济紧急处分令。Urgent Financial Management Act. 1948.

金圆券发行办法。Issuing Measures of Gold Yuan Notes. 1948.

人民存放国外外汇资产登记管理办法。Management Measures of the Registration of Citizen's Foreign Exchange Properties. 1948.

人民金银财产管理办法。Management Measures of Citizen's Gold and Silver

Properties. 1948.

整顿财政及加强管制经济办法。Measures of Managing Finance and Controlling Economy. 1948.

Laws Adopted by the National People's Congress and Standing Committee of People's Republic of China

土地改革法。Agrarian Reform Law. 1950.

中华人民共和国宪法。The Constitution of PRC. 1954.

中华人民共和国宪法。The Constitution of PRC. 1975.

中华人民共和国宪法。The Constitution of PRC. 1978.

中外合资企业法。Law on Chinese-Foreign Equity Joint Ventures. 1979.

环境保护法。Environmental Protection Law . 1979.

中外合资企业所得税法。Law on Income Tax on Chinese-Foreign Equity Joint Ventures . 1981.

外资企业所得税法。Law on Income Tax on Foreign Enterprises. 1981.

经济合同法。Economic Contract Law. 1981.

中华人民共和国宪法 The Constitution of PRC. 1982.

中华人民共和国宪法修正案 The Amendment to the Constitution of PRC 1982.

海洋环境保护法。Marine Environmental Protection Law. 1982.

商标法。 Trademark law. 1982.

专利法。 Patent Law. 1984.

会计法。 The Accounting Law. 1984.

对外经济合同法。 Foreign Economic Contract Law. 1985.

会计法。 Accountancy Law. 1985.

企业破产法。 Enterprises Bankruptcy Law. 1986.

外商投资企业法。 Foreign –Invested Enterprise Law . 1986.

民法通则 General Principle of the Civil Law. 1986.

技术合同法。 Technology Contract Law. 1987.

中华人民共和国宪法修正案 The Constitution Amendment of PRC. 1988.

全民所有制工业企业法。 Law on Industrial Enterprises Owned by the Whole People. 1988.

中外合作经营企业法。 Law on Chinese-Foreign Cooperative Joint Ventures. 1988.

行政诉讼法。 Administrative Litigation Law. 1989.

著作权法。 Copyright Law . 1990.

行政诉讼法。 Administrative Procedural Law. 1990.

中华人民共和国宪法修正案 The Constitution Amendment of PRC. 1993.

公司法。 Company Law. 1993.

反不正当竞争法。Anti-Unfair Competition Law . 1993.

合同法。Contract Law . 1993.

城镇地区不动产管理法。Urban Real Estate Administrative Law . 1994.

消费者权益保护法。Consumer Protection Law. 1994.

审计法。Audit Law. 1994.

预算法。Budget Law. 1994.

中国人民银行法。People's Bank of China's Law . 1995.

商业银行法。Commercial Bank Law . 1995.

保险法。Insurance Law . 1995.

合伙企业法。Partnership Enterprises Law . 1997.

价格法。Price Law. 1997.

证券法。Securities Law . 1998.

中华人民共和国宪法修正案 The Constitution Amendment of PRC. 1999.

招标法。Bidding Law . 1999.

合同法。Contact Law. 1999.

个人独资企业法。Individual-owned Enterprise Law. 1999.

立法法。Legislation Law. 2000.

信托法。Tort Law. 2001.

招投标法。Biding Law. 2001.

药品管理法。Pharmaceutical Administration Law. 2001.

农村土地承包法。Rural Land Contracting Law . 2002.

政府采购法。Government Procurement Law. 2003.

农村土地承包法。The Decisions on Several Major Issues on Building Socialist Harmonious Society. 2003.

土地管理法。Land Management Law. 2004.

中华人民共和国宪法修正案 The Amendment to the Constitution of PRC. 2004.

公司法。Company Law. 2005.

农业合作社法。Farmers Professional Cooperative Law. 2006.

公务员法。Civil Servant Law. 2006.

劳动合同法。Labour Contract Law. 2007.

反垄断法。Anti-Monopoly Law . 2008.

国有资产法。State-owned Asset Law. 2008.

物权法。Property Law. 2008.

信托法。Tort Law. 2009.

邮政法。Postal Law. 2009.

国有资产法。State-owned Assets Law. 2009.

烟草专卖法。Tobacco Monopoly Law. 2013.

Regulations Issued by China's State Council and Its Departments

中国人民政治协商会议共同纲领。Common Program of the Chinese People's Political Consultative Conference. 1949.

机关，国营企业，合作社签订合同契约的暂行办法。Provisional Regulations on Concluding Contracts between Government Agencies, State-owned Enterprises and Cooperatives. 1950.

关于发行人民胜利折实公债的决定 Decision on Issuing People's Victory Parity Bonds in Kind. 1950.

关于统一财政经济工作的决定。Decision on Unifying the State's Financial and Economic Work. 1950.

全国税政实施要则。Key Principles of the National Tax Administration. 1950.

预算决算暂行条例。Provisional Regulation on Budget and Final Accounts. 1950.

基本建设工作暂行条例。Provisional Rules on Infrastructural Work. 1951.

劳动保险条例。Regulations on Labour Insurance. 1951.

城市户口管理暂行条例。Regulations on Urban Household Register Management. 1951.

临时预算条例。Temporary Regulations on Budget. 1954.

公私合营工业企业暂行条例。Provisional Regulations on Industrial Enterprises of Joint Public and Private Ownership. 1954.

高级农业生产合作社示范章程。Model Article for High-Stage Agricultural Producer's Cooperatives. 1956.

金融管理系统改革条例。Regulations on the Reform of the financial Administration System. 1957.

关于制止农村人口盲目外流的指示。Instructions of Stopping Aimless Movement of Population of Rural Area. 1957.

户口登记条例。Regulations on Household Registration. 1958.

农业税条例。Regulations on the Agricultural Tax. 1958.

工商统一税条例。Regulations on the Consolidated Industrial and Commercial Tax. 1958.

关于加强财政计划工作的决定。Decisions on Enhancing Planning of Financial Works. 1960.

农村人民公社工作条例。Regulations on People's Commune of Rural Area. 1962.

扩大国有企业自主经营权的规定。Rules on the Expansion of the State-Owned Enterprises' Autonomy of Operation and Management. 1979.

国有企业利润上缴条例。The Provisions on the Profit Retention of SOEs. 1980.

关于征收国有企业固定资产税的暂行条例。The Interim Provisions on the

Imposition of Fixed Assets Tax of SOEs. 1980.

国有企业评估固定资产折旧率暂行条例。The Interim Provisions on Elevating the Fixed Assets Depreciation Rates and Improving the Practices in the Use of Depreciation Costs of SOEs. 1981.

国有工业企业通过信贷获得流动资金暂行条例。The Interim Provisions on Acquisition of All Circulating Funds through Credits among State-owned Industrial Enterprise. 1981.

国有工业企业利润留成暂行办法。The Tentative Measures on the Profit Retention of State-owned Industrial Enterprises. 1981.

国营企业职工代表大会暂行条例。Provisional Regulation on Worker Representative Congress in State-owned Industrial Enterprises. 1981.

国务院关于财政管理系统实施中央与地方收支分离的通知。The Notice of the State Council on Implementing the Fiscal Management system of "Dividing Revenue and Expenditure between the Central and Local Governments and Holding Each Responsibility for Balancing Their Budget", 1982.

国营工厂厂长工作暂行条例。Provisional Regulation Factory Managers of State-Owned Enterprises. 1982.

关于实施国务院关于扩大国有工业企业经营自主权若干文件的暂行办法。The Interim Measures on Implementing Relevant Documents of the State Council on Expanding the Management Authority of State-owned Industrial Enterprises and Consolidating and Improving the Specific Practices in Expanding the Management Authority of State-owned Industrial Enterprises. 1982.

工业生产实施经济责任制若干问题的意见。The Opinions on Several Issues concerning the Implementation of the Economic Responsibility System in Industrial Production. 1982.

财政部关于国营企业利改税试行办法。Proposed Methods of Replacement of

Profit-Delivery by Tax of the Treasury Department. 1983.

工业生产实施经济责任制暂行条例。The Interim Provisions on the Implementation of the Economic Responsibility System in Industrial Production. 1983.

关于国有运输企业实施利润留成自负盈亏办法的若干规定。The Several Provisions on the Measures for State-owned Public Transport Enterprises in Implementing Profit Retention and Complete Responsibility for Profits and Losses. 1983.

国营工业企业工作暂行条例。Provisional Regulation on State-owned Industrial Enterprises. 1983.

国有企业第二阶段利改税暂行办法。The Tentative Measures on the Second Stage of Replacing Profits with Taxes among SOEs 1984.

中共中央关于改革与发展国有企业若干重大问题的决定。The Decision of the Central Committee of the CPC concerning Several Major Issues in the Reform and Development of SOEs. 1999.

国务院关于国有企业工资改革问题的通知。Notice on the Reform of Wage Scheme of State-owned enterprises. 1985.

私营企业暂行条例。Provisional Regulations on Private Enterprises. 1988.

全民所有制工业企业承包经营责任制暂行条例。Interim Regulations on Contract Responsibility System of Public-owned Industrial Enterprises. 1988.

城镇国有土地使用权出让和转让暂行条例。Provisional Regulations on the Grant and Transfer of Use Rights in Urban land. 1990.

乡村集体所有制企业条例。Rural Collective Enterprises Regulation. 1990.

城镇集体所有制企业条例。Urban Collective Enterprises Regulation. 1991.

集体所有制企业条例。regulations on Collective Ownership Enterprises . 1992.

关于建立社会主义市场经济若干问题的决定。Decision on Issues Concerning the Establishment of a Socialist Market Economic System. 1993.

全民所有制工业企业管理机制转型条例。The Regulation on the Transformation of the Management Mechanism of Industrial Enterprises Owned by the Whole People. 1993.

关于国有企业管理机制转型建立现代企业制度若干意见的通知。The Notice on Several Opinions concerning the Transformation of Management System of SOEs and the Establishment of a Modern Enterprise System. 1994.

个人所得税法实施条例。Implementation Methods of Individual Income Tax Law. 1994.

国有资产监督与管理条例。The Regulations on Supervision and Management of the Properties of SOEs. 1994.

国务院机构改革方案。Plan of Institutional Reform of the State Council. 1998.

关于出售小型国有企业的意见。The Opinion concerning Several Issues on the Selling of Small SOEs. 1999.

关于债券转股权若干若题的意见。The Opinions concerning Several Issues on Debt-for-equity Swap. 1999.

国务院关于清理整顿小炼油厂和规范原油成品油流通秩序的意见。Decisions on Clean-up and Rectification Small-sized Oil Refinery and Standardized the Circulation Process of Crude Oil and Petroleum Product of State Council. 1999.

电信条例。Telecommunication Regulation. 2001.

国务院关于禁止在市场经济活动中实行地区封锁的规定。State Council Regulations on Prohibition of Regional Blockade in Marketing Economic Activities. 2001.

税收征收管理办法。Law Concerning the Administration of Tax Collection. 2002.

国有资产监督与管理暂行条例。The Interim Regulations on the Supervision and Management of State-owned Assets. 2002.

铁道部关于加强石油运输管理的通知。Notice on Strengthening Management of Petroleum Transportation of the Railway Department of China. 2003.

最低工资规定。Regulations of Minimum Wage. 2003.

关于外国投资者并购境内企业的暂行规定。Interim Regulations on Merger with and Acquisition Domestic Enterprises by Foreign Investors. 2003. It was amended as the Regulations on Merger with and Acquisition of Domestic Enterprises by Foreign Investors in 2006.

劳动保障监察条例。Regulations of Labour Security Supervision. 2004.

国务院关于打破地区间市场封锁进一步搞活商品流通的通知。Notice on Breaking Regional Trade Barriers and Promoting Commodity Circulation of the State Council. 2005.

国资委关于推进国有资本调整和国有企业重组指导意见。The Guiding Opinions on Promoting State-owned Assets Adjustment and State-owned Enterprises Restructuring of the State-owned Assets Management and Supervision Commission. 2006.

关于推进国有资本调整和国有企业重组的指导意见。Guiding Opinions about Promoting Adjustment of State-owned Capital and Reorganization of

State-owned Enterprises. 2006.

中央企业国有资本收益收取管理办法。Managing Methods of Collection Capital Dividend of Central State-owned Enterprises. 2007.

发改委车用乙醇汽油扩大试点方案。Plan of Expanding Ethanol Gasoline for Motor Vehicles Pilot. 2008.

国务院关于经营者集中申报标准的规定。Regulations on the Standard of Concentration Declaration of the State Council. 2008.

劳动合同法实施条例。Enforcement Regulations of the Labour Contract Law. 2008.

关于深化电信体制改革的通告。Announcement of Deeping Communication Structure Reform. 2008.

工商行政管理机关制止滥用行政权力排除、限制竞争行为程序规定。Procedure Provisions for Industry and Commerce Preventing from Excluding or Restricting Competition by Abusing Administrative Power. 2009.

国务院关于禁止在市场经济活动中实行地区封锁的规定。Regulations on Prohibiting Regional Trade Barriers in Economic Activities. 2010.

国务院关于加强法治政府建设的意见 Outline for Promoting Law-based Administration in an All-round Way of the State Council of China. 2010.

国务院关于鼓励和引导民间投资健康发展的若干意见。Several Opinions on Encouraging and Guiding the Healthy Development of Private Investment of the State Council. 2011.

国务院关于深化收入分配制度改革的若干意见。Several Opinions on Deepening the Reform of the Income Distribution System of the State Council. 2013.

Regulations Issued by China's Local Authorities

黑龙江省推广和使用车用乙醇汽油管理办法。Regulations on Popularizing and Using Ethanol Gasoline for Motor Vehicles of Heilongjiang Provincial Government. 2004.

山西省煤炭产业调整和振兴规划。Plan of Adjusting and Promoting Coal Mining Industry of Shanxi Provincial Government. 2009.

山东省政府钢铁工业调整振兴规划（2009-2011）。Plan of Adjustment and Promotion of Shandong Iron and Steel Industry (2009-2011) of Shandong Provincial Government. 2009.

山东省政府关于进一步加快钢铁工业结构调整的意见。Decisions on Speeding Up the Structure Adjustment of Iron and Steel Industry of Shandong Provincial Government. 2007.

北京市城市轨道交通安全管理办法。Management Measures of Beijing Subway Safety. 2006.

轨道交通站内报刊发售问题会商会会议纪要。Meeting Note about Newsagent Issues in Beijing Subway. 2009.

Normative Documents Issued by Communist Party of China

中国共产党十一届三中全会公报 The Report of the Third Session of the Eleventh Committee of CPC. 1978.

中国共产党十一届四中全会报告。The Report of the Four Plenary Session of the 11th CPC Congress. 1979.

中共中央关于经济体制改革的决定。The Decision on Economic Reform of the CPC. 1984.

中国共产党十三届一中全会报告 The Report of the First Session of the Eleventh Committee of CPC. 1987.

中国共产党十四大报告。The Report of the 14th National Congress of CPC. 1992.

中国共产党十四届三中全会报告。The Report of the Third Session of the Fourteenth Committee of CPC. 1993.

中共中央关于建立社会主义市场经济体制若干问题的决定。Decisions on Establishing Socialist Market Economic System. 1993.

中国共产党十四届五中全会报告。The Report of the Fifth Plenary Session of 14th CPC Congress. 1995.

中国共产党十五届一中全会报告。The Report of the First Session of the Fifteenth Committee of CPC. 1997.

中国共产党十五届四中全会报告。The Report of the Fourth Plenary Session of 15th CPC Congress. 1999.

中共中央关于国有企业改革和发展若干重大问题的决定。Decisions on Major Issues Concerning the Reform and Development of State-owned Enterprises of the CPC. 1999.

中共中央关于国有企业改革和发展若干重大问题的决定。Decisions on Major Issues Concerning the Reform and Development of State-owned Enterprises of the CPC. 1999.

中国共产党十五届六中全会报告。The Report of the Sixth Session of the Fifteenth Committee of CPC. 2001.

中国共产党十六大报告 The report of the 16th CPC National Congress. 2002.

中共中央关于完善社会主义市场经济体制若干问题的决定。Decisions on Issues concerning about Improving Socialist Market Economic System. 2003.

中共中央关于构建社会主义和谐社会若干重大问题的决定。The Decisions on Several Major Issues on Building Socialist Harmonious Society. 2006.

中国共产党十七大报告。The Report of the 17th National Congress of the CPC. 2007.

中共中央关于进一步深化改革的若干决定。The Decision on Major Issues Concerning Comprehensively Deepening Reforms. 2013.

Legislations Issued by Other Countries

Germany. 1915. The Announcement about the Restriction on Maximum Price of Contract.

Germany. 1918. The Order of Wartime Economic Recovery.

Germany. 1919. The Coal Economic Law.

Germany. 1919. The Potassium Carbonate Economic Law.

Germany. 2013. Act against Restrains on Competition of German.

United States of American. 1890. The Sherman Act.

United States. 1945. Government Corporation Control Act.

Russia. 2009. Federal Law on Protection of Competition.

Ukraine. 2001. Law on Limitation of Monopolism and Prevention of Unfair Competition in Entrepreneurial Activities.

CHAPTER ONE: INTRODUCTION

1. The Reasons for Conducting this Research

After 30 years of development since the late 1970s, China's State-owned Enterprise reform has performed very well. The statistics showed that from 2001 to 2009, the State-owned and State-holding industrial enterprises made a total profit of 5,846 billion Yuan, with the total book profit of 2009 increased by about four times over that of 2001; the total net profit amounted to 4,051 billion Yuan, with the total book net profit of 2009 increased by 4.37 times over that of 2001¹.

However, it has also faced many problems, such as administrative monopoly, the inappropriate income distribution system, and inappropriate property structure. How to solve these problems? Where should China's State-owned enterprise reform go further? In order to solve these problems, the current State-owned enterprise reform approach, which actually is capitalization of State-owned assets, should be abandoned, and a new systematic manner that focuses on solving the problems of property structure, administrative monopoly and income distribution system should be introduced.

In terms of administrative monopoly, the total profit of central enterprises reached 1341.5 billion Yuan in 2010, accounting for 67.5% of the total profit of state-owned enterprises. The profits of ten enterprises occupied 70% of all net profits made by central enterprises in 2009, namely, China National Petroleum Corporation, China Mobile Limited, China Telecommunications Corporation, China United Network Communications Group Co., Ltd., China Petroleum & Chemical Corporation. Hereinto, China National Petroleum Corporation and China Mobile Limited made a profit of 128.56 billion Yuan and 148.47 billion Yuan respectively, the total of which exceeds one third of the total profit made by central enterprises². It can be seen that profits of central enterprises were

¹ See China Statistic Yearbook 2001 to 2009.

² See the Report of State-owned Assets Supervision and Administration Commission of China.

mainly realized by monopoly enterprises.

In terms of China's State-owned enterprise efficiency, from 2001 to 2009, the average return on equity of State-owned and State-holding industrial enterprises was 8.16%, while that of industrial enterprises above designated size was 12.9%. 2009, that of the former is 8.18%, while that of the latter is 15.59%³. Therefore, the nominal performance of state-owned and state-holding enterprises was not high enough. Even the performance of state-owned enterprises is not their real performance, but one after enjoying various preferential policies and under such a management environment that is unfair to non-stated-owned enterprises. The unfairness is mainly embodied in fiscal subsidy by the government, financing cost, and land and resource rent, and so on. The real interest rate for State-owned and State-holding enterprises is 1.6%, while that market interest rate is 4.68%⁴. If we recount the interests which should be paid by State-owned and State-holding industrial enterprises with the market interest rate, the total interest difference will be 2296.7 billion Yuan from 2001 to 2008, accounting for 47% of the total nominal profits made by state-owned and state-holding enterprises⁵. The resource tax of oil is average only 26 Yuan per ton. The resource compensation fee is merely 1% of sales revenue. Therefore, the real royalty of oil in China is less than 2% of its price, far below the ratio of 12.5% that is imposed on the capital venture in China⁶. Even collection proportion for special oil gain levy below 40 US Dollars is too low to fully realize interests of resource owners. From 2001 to 2009, the state-owned and state-holding industrial enterprises lack to pay 243.7 billion Yuan of the oil royalty. Together with those of coal and natural gas, the state-owned and state-holding industrial enterprises lack to pay 497.7 billion Yuan of royalty of resources⁷.

In terms of income distribution, from 1994 to 2006, the state fiscal subsidy for

³ See China Statistic Yearbook 2001 to 2009.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

the losses of state-owned enterprises accumulated to 365.3 billion Yuan⁸. According to incomplete data, from 2007 to 2009, the State-owned and State-holding industrial enterprises received fiscal subsidy is about 194.3 billion Yuan⁹. The real performance of state-owned enterprises can be estimated through deducting those costs without paid but should be paid and governmental subsidies, together achieving about 7491.4 billion Yuan, from nominal profit of the State-owned enterprises. According to estimation, the average real return on equity of state-owned and state-holding enterprises from 2001 to 2009 is -6.29%. In 2008, the average staff wage of state-owned enterprises was 17 % higher than that of other organizations, their average labour income is 63% higher than that of private enterprises and 36% higher than that of non-state-owned enterprises¹⁰. There is a big difference between the industries. 2008, the average income per year of employees in monopolistic industries reached 128.5 thousand Yuan, which is about 7 times as that of the employees in the whole country¹¹. The ratio of the state-owned enterprises in 5 industries with highest income is highest, while that in 5 industries with lowest income is lowest¹². According to regulations of existing housing provident fund system, the housing provident fund deposit ratio paid and deposited by staff themselves as well as that paid and deposited by units should be no less than 5% of the staff's average monthly salary of the previous year, and no more than 12% in principle¹³. A large number of State-owned enterprises and institutions of monopoly industries, however, raise this ratio to 20%¹⁴. China Netcom Operations Limited once accrued 4.142 billion Yuan at total amount as lump-sum cash housing allowance¹⁵. State-owned enterprises also conduct residential building construction with raised funds on gratis land from free allocation by the state. In addition, some enterprises purchase commercial residential buildings

⁸ Hong Sheng. 2012. *China's State-owned Enterprises: Nature, Performance and Reform*, World Science Publishing Company. pp. 50.

⁹ Ibid.

¹⁰ See China Statistic Yearbook 2001 to 2009.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Hong Sheng. 2012. *China's State-owned Enterprises: Nature, Performance and Reform*, World Science Publishing Company. pp. 87.

¹⁵ Ibid, pp. 91.

and sell them to their own staff and workers at low price. From 2007 to 2009, the average tax burden of 992 state-owned enterprises was 10%, while that of private enterprises was as high as 24%. State-owned enterprises did not turn over any profits from 1994 to 2007¹⁶. In 2009, only 6% of state-owned enterprises' profits were turned over, and the rest was all distributed within enterprises. In 2010, it decreases to 2.2%. Moreover, dividend turnover by central enterprises mainly transfers within the central enterprise system¹⁷. Their significance in benefiting the common people has not been embodied yet.

The problems of administrative monopoly and income distribution were caused by inappropriate property structure of China's State-owned enterprise, which not only affect China's State-owned enterprise reform, but also affect the development of private sectors. For instance, the structural "Guo Jin Min Tui" phenomenon currently exists in China. In terms of capital, the proportion of State-owned enterprises in electric power, steam, and hot water production and supply industries rose from 85.8% in 2005 to 88.2% in 2008¹⁸. In terms of gross industrial output value, the proportion of state-owned enterprises in electric power, steam, and hot water production and supply industries increased from 90.5% in 2005 to 98.9% in 2008¹⁹. The quantitative analysis with the term, market power, on the monopolistic levels of industries shows that colored metal smelting and pressing industry, tobacco industry, oil processing industry, coking industry, nuclear fuel industry, and electric machinery industry, and so on, the monopolistic level in 2007 is higher than that in 2002²⁰. These industries are overlapped very much with those with higher ratio of the state-owned enterprises.

Therefore, State-owned enterprises should have a rather clear boundary that they are suitable for production of public goods and quasi public goods in which market mechanism could not be brought into full play. Products which are

¹⁶ Ibid, pp. 40.

¹⁷ Ibid.

¹⁸ See China Statistic Yearbook 2001 to 2009.

¹⁹ Ibid.

²⁰ Ibid.

purchased solely by governments or which should be stringently controlled during production progress should be supplied by State-owned enterprises, while other products should be supplied by private economy. The condition for existence of State-owned enterprises is when they supply public goods and the financing stage and cannot be separated from the production stage. The state-owned enterprise is a public organization different from ordinary governments or enterprises, whose aim is to realize public good of society rather than to make profits.

The nature of China's current State-owned enterprise reform is capitalization of State-owned assets, that is, making profits through management of state-owned assets. Therefore, the government gradually turns into personalized or institutionalized capital when state-owned assets constantly show the attributes of capital. As the main content of China's market-oriented reform, the reform orientation choice of state-owned assets capitalization had both logical inevitability and historical progressiveness especially at the primary stage of China's economic transition. However, with the establishment of market economy in our country, the historical mission of state-owned enterprise reform characterized by state-owned assets capitalization is about to come to an end.

A short-term reform plan for state-owned enterprises based on two major objectives should be designed, namely, breaking the administrative monopoly by State-owned enterprises, and regulating State-owned enterprises' income distribution system. The significance lies in that this will promote different economic main bodies to carry out adequate and fair economic competition, thus better realizing social justice and improving economic efficiency.

State-owned enterprise reform has two ultimate goals. The first goal is to change State-owned enterprises into non-profit public law enterprises, and the second one is to build up the constitutional governance framework for State-owned assets. To realize the ultimate goal of reform, State-owned enterprises have to gradually retreat from the profit-making fields (rather than merely the competitive fields).

2. Research Aims

The overall purpose of this thesis is to provide a systematic reform manner for China's State-owned enterprises. Accordingly, this thesis will argue for amending the current approach which nature is capitalization of State-owned assets to a more pragmatic one. The main research aims of this thesis are as follows:

First, to evaluate the current China's State-owned enterprise system, and find out shortcomings of it. This thesis attempts to identify the bottleneck in the current China's State-owned enterprise reform, and thus to modify it and promote further reform. The current reform approach is to make profits through management of State-owned assets, which had both logical inevitability and historical progressiveness especially at the primary stage of China's economic transition. However, with the establishment of market economy in China, current state-owned enterprise system no longer benefit to economy, even became to the block of the further and healthier development to some degree. Therefore, to evaluate and find out the shortcomings of current China's State-owned enterprise system is the primary task of this thesis.

Second, to analyse and examine three main problems in current China's State-owned enterprise system. Nowadays, China's State-owned enterprise system faces many problems, such as the management of State-owned assets, corporate governance issue, and efficiency issues etc.. Among these problems, three issues, namely the property structure, administrative monopoly, and income distribution are the core issues. Due to the misunderstanding about China's State-owned enterprise status, the government and state-owned assets supervision and management departments have motivations and excuses to give preferential policies and privileges to State-owned enterprise. Which lead to the administrative monopoly issues and income distribution issues, and seriously impedes economic development.

Third, to improve China's State-owned enterprise system. As mentioned above,

property structure issue, administrative monopoly issue and income distribution issue are the key to China's State-owned enterprise system, and they must be dealt with at the same time because they complement each other. Neglecting any issue of these three would cause the failure of other two reforms inevitably. This thesis will provide a new reform manner that deal with these three issues systematically, to improve State-owned enterprise system.

3. Research Questions

This research based on the recognition that the current China's State-owned enterprise reform approach could not solve existing problems and had negative impacts on economic development. This recognition is widely acknowledged by academic area and supported by statistics²¹.

This thesis addresses a primary research question: how should China's State-owned enterprise system be improved? In order to answer this question, this thesis will look at approaches to reform current China's State-owned enterprise system by addressing following questions: what are the main problems in current China's State-owned enterprise system? How did these problems emerge? What are the negative impacts of these problems on economic development? How to solve these problems? To three specific issues (property structure, administrative monopoly, and income distribution system), the following questions will be addressed in separate chapters: What are the limitations of current approach on China's State-owned enterprise's property structure, and what is the alternative approach? How administrative monopoly affect legal and economic reform of State-owned enterprise reform, and how to further reform it? How does the income distribution system in the past and present disproportionately benefit employees of State-owned enterprise, what the pitfall of current legal regime, and how to improve the income distribution system in the future reform?

²¹ See statistics in section 1 of this chapter.

4. Methodology

In order to test the hypothesis of the study and examine the main research questions raised in the process of research, this thesis adopts a combination of qualitative legal research methodologies, which includes literature review, synthesized comparison and analysis, case study, fieldwork and comparative methodologies.

4.1 Doctrinal Research

To understand the background of the relevant issues and set the foundation of this research, an in-depth review of literature in the form of government statistics, annual legal and economic reports, legislation, text books, journal articles and newspaper articles have been undertaken. This research mainly uses secondary sources and these data have been examined and distinguished by their publication date, reliability, professional level and reputation of their sources. In addition, primary sources have been considered, for example, some interviews with scholars and government officers have been taken to get their opinions about China's economic and legal reform, and which issues they consider to be fundamental. Although this research is about China's economic law, as well as collecting data in China's legal area, data in economics, historical and sociological areas also are concerned because the problems in China's legal system did not come from legal area alone.

4.2 Law and History Approach

Time is a basic dimension inherent in law. "History of law as academic discipline must search for methods to investigate the relationship between law and time, as well as contribute to historical research on changes in the legal systems."²² Legal norms, legal systems and ideas are continuously changing, suddenly or slowly, frequently or rarely. Legal history research connects to substantive law, to the

²² See the University of Oslo, Law School, Law, Society and Historical Change, <<http://www.jus.uio.no/english/research/areas/law-history/>>, accessed 8 November 2013.

sociology of law and to theories of law, all of which relate to the dimension of time in law. This method helps to show how law has evolved and why it changed.

4.3 Law and Economic Approach

Law and economics, or the economic analysis of law, is not a subject explaining law; it looks at the interaction of “economic questions and the legal rules which influence the economy”²³. The nature of this approach has been described by Posner, and cited by Coase, as follows: “Economics, the science of human choice in a world in which resources are limited in relation to human wants, explores, and tests the implications of the assumption that man is a rational maximizer of his ends in life, his satisfactions – What we shall call his ‘self-interest’. By defining economics as the “science of human choice, economics becomes the study of all purposeful human behaviour and its scope is, therefore, coterminous with all the social sciences [...] to handle sociological, political [and] legal [...] problems.”²⁴

4.4 Conducted Fieldwork

This thesis bases on the problems emerged in the process of transformation in China, and typical issues in China would reflect these problems, such as “house demolishing entities” which refers to property system, and the competition between state-owned enterprises and private enterprises refers to administrative monopoly. Therefore, Face-to-face interviews were conducted with three groups of interviewees. The use of interviews has been advocated as they provide detailed and insightful information, helping to uncover the meaning behind people’s experience and perceptions²⁵. The first group was academics from Pro. Yuliang Chen, Pro. Guo Feng and Pro. Tong Qi, who specialized in

²³ Alain Marciano, *Law and Economics: a Reader* (Alain Marciano (ed), Routledge, 2009), 3. See American Law and Economics Association, <<http://www.amlecon.org/index.html>>, accessed 9 November 2013.

²⁴ Ronald H. Coase, ‘Economics and Contiguous Disciplines’, in Marciano, *Law and Economics: a Reader*, 11-12.

²⁵ Zack, M.H. & McKenney, J.L. 1995. “Social Context and Interaction in Ongoing Computer Supported Management Groups”. *Organization Science*, 6(4), 394-422.

Chinese economic law. The second group was with employees from various state enterprises. The third group was with the people from private sector.

Interviews were carried out in a relaxed and comfortable environment, at a time convenient for the interviewees. Interviews were conducted in a one-to-one manner, with the interviewer taking necessary notes in the process.

The questions discussed differ between the three groups of interviewees with the first group concentrating on the academics' view and opinion on economic law; the second group focusing on state enterprise reform while the third group were asked about their opinion on competition.

The ethnical behavior of researchers is under unprecedented emphasis as they have become a basis for conducting effective and meaning research²⁶. The interviews carried out in this research strictly followed the *SOAS Research Ethics Policy*²⁷ as to protect participating interviewees from harm and unnecessary invasion of their privacy.

4.5 Limitations

In this thesis, all assumptions, analysis and arguments are undertaken only on theoretical level, without any relevant support in practice, so research will fail in persuasiveness to some extent.

5. Contributions of This Thesis

This thesis provides a new manner for China's State-owned enterprise further reform. The former reform approach is actually the capitalization of State-owned assets, which achieved successes at the primary stage of China's economic reform, however, it became to the obstacle of whole national economy with the

²⁶ Trimble, J. E., & Fisher, C. B. (Eds.). 2006. *The handbook of ethical research with ethnocultural populations & communities*. Thousand Oaks, CA: Sage.

²⁷ SOAS Research Ethics Policy [Online] Available at:
<<http://www.soas.ac.uk/researchoffice/ethics/file50158.pdf>>

establishment of market economy in China.

Under the former reform approach, the government takes on two roles, one as a provider of public goods (revenue government) and another as institutionalized capital (profit-oriented government). Such a dual nature is also reflected by the aims and actions of State-owned enterprises. First, as platforms for the operation of state-owned assets, State-owned enterprises need to maximize their profits in the form of independent corporations, just like regular enterprises. Yet State-owned enterprises also aim to address issues in the interests of the public such as employment, social stability, macro-control, the stability of the government and national security under some circumstances. Second, as asset managers, State-owned enterprises managers are virtually the same as regular agents. At the same time, as government goal implementers, they belong to the government and can partake in the revolving door between enterprise managers and government officials. Third, in market operations, State-owned enterprises will emphasize the public nature of State-owned enterprises and obtain some special privileges through “in-house lobbying” in order to pursue illegitimate interests.

The government’s aim of making money through State-owned enterprises is delegated to State-owned enterprises managers and, as a result, there is a principal-agent relationship between the government and State-owned enterprises managers, which is characterized by asymmetric information whereby the managers have more detailed and specialist knowledge about the operations of the enterprise than government officials, whose duties are much wider. When the information is asymmetric, interest groups will emerge consisting of State-owned enterprises managers and some government officials who claim to “make money for the public” but actually seek personal gains through state-owned assets. Such interest groups will not only make the goal of “making money for the public” come to nothing, but also control important social resources through their public power to constitute the socio-economic characteristics of bureaucratic capitalism or crony capitalism. This is actually the fundamental cause for the severe problems of administrative monopoly and

income distribution of China's State-owned enterprise.

The new reform manner for China's State-owned enterprise provided by this thesis requests the next stage reform should focus on dealing with property structure issue, administrative monopoly issue and income distribution issue at the same time. In fact, the status of SOEs is also the key to solving the problems of monopoly and income distribution. The core of these two problems is actually the misunderstanding about SOE's status. Regarding monopoly issues, it is the strategy of "making profit for public" and "making SOEs bigger and stronger" which caused the motivations and excuses of government and state-owned assets supervision and management departments for giving preferential policies and privileges to SOEs. In respect of income distribution issues, it is the unclear status of SOEs which resulted in the inappropriate income distribution mechanism. In addition, the issues of monopoly and income distribution are complementary and linked: on the one hand, majority profits of SOEs result from the monopolistic behavior of SOEs, and income distribution cannot be regulated properly if SOEs' monopolistic behaviors still persist; on the other hand, the reform of SOEs' income distribution mechanism would also affect the regulation of administrative monopoly.

Therefore, this thesis proposed that the problems of China's SOEs must be solved systematically, always neglected by the majority of scholars, who often tried to solve one specific problem by using one method within one area. The fundamental issue is the status of SOE. All former discussions about China's SOE reform are based on the perspective of private law, so a strategy of "hold on to the big and let to of the small" and "building SOEs bigger and stronger" is the inevitable results of the property approach. However, from the perspective of public interests and public functions, it is not necessarily so; it is also essential to build small SOEs into bigger and stronger ones and establish some new enterprises. In contrast, some large and strong SOEs may need to be downsized or even dissolved. Therefore, current SOE reform in China should be undertaken from the perspective of public law whereby SOEs are material means by which public functions are fulfilled, instead of the private law perspective of SOE assets

as property.

6. Outlines of This Thesis

Chapter One is the introduction chapter. The fundamental background of the whole study is introduced at first, and then the research aims and research questions are addressed. Following are the methodology and contribution of this research.

Chapter Two is the study of the process of China's State-owned enterprise reform. In order to answer the question of what are the existing problems in current China's State-owned enterprise system and how they are emerged, a thorough analysis on the nature, history, and current condition is necessary. At the beginning, the tasks of China's State-owned enterprise reform and achievements were introduced, which could be divided into the reform aiming at enhancing State-owned enterprise's vitality, aiming at changing State-owned enterprise's operation mechanism, and aiming at establishing a modern enterprise system. Then the process of State-owned enterprise reform are reviewed and examined into three stages, namely the period of Fang Quan Rang Li (1978-1986), the period of Liang Quan Fen Li (1987-1992), the period of Establishing Modern Enterprise System (1993-Present). At last, some decisions, policies, laws and regulations made by the government institutions that had directly influenced the reform process are introduced and reviewed.

On the basis of the historical review of the process of China's State-owned enterprise reform, Chapter Three focus on the theoretical area of it. This chapter reviews and analyzes several leading and popular theories and arguments in each stage comprehensively, to demonstrate mainstream points of view on each side, and to find out how they affect China's State-owned enterprise reform and what shortcomings they have. The first stage mainly focuses on analyzing the drawbacks of the traditional enterprise system, the cause of the inefficiency of State-owned enterprise and the lack of an incentive mechanism in order to find out the preferred system for the State-owned enterprise. The second stage

focused on putting forward appropriate methodologies for transforming State-owned enterprise from government subordinates into independent commodity producers. The third stage mainly focused on the goal of transforming the operating mechanism of State-owned enterprise and establishing a modern enterprise system, some famous debates in this stage such as the debate between Lin and Zhang, and the Debate between Lang and Gu are also introduced. The fourth stage focuses on some existing issues in current China's State-owned enterprise system, such as the property structure issue, the administrative monopoly issue, and income distribution issue. At last, assessment on these theories and arguments will be made to find out their advantages and disadvantages, and the influences on China's State-owned enterprise reform.

Chapter Four focuses on the property structure issue of China's State-owned enterprise, which is the main cause of the problems of administrative monopoly and income distribution. This chapter reviews the history, functions and role of State-owned enterprise at first, then introduces and analyzes the debates on the nature of State-owned enterprise. A case study of Guo Jin Min Tui is discussed afterward, to look at how the inappropriate property structure affects the whole economy. At the end, some proposals about further reform China's State-owned enterprise are put forward, including short-term plan and the ultimate task of China's State-owned enterprise reform.

Chapter Five is about the administrative monopoly issue of China's State-owned enterprise. Some basic theories are reviewed at first, such as what is administrative monopoly, the nature and origin of it, the forms of China's administrative monopoly, and the causes of it. Then the anti-administrative monopoly legal system of China is examined, to find out its characteristics and shortcomings. The solution on the administrative monopoly issue of China's State-owned enterprise is proposed at last, including the improvement approaches of Constitutional level, and approaches reform current anti-monopoly law.

Chapter Six attempts to solve the problem of China's State-owned enterprise income distribution system. At the beginning of this chapter, the development of China's State-owned enterprise income distribution legal system is reviewed stage by stage. And then the current condition of this system is examined and analyzed, including the monetary and non-monetary income, comparison of income of senior managers between State-owned enterprise and other types of enterprises, comparison of the tax payment between State-owned enterprises and other types of enterprises, and the profit payment and dividend distribution of State-owned enterprises. After above review and examination, the basic characteristic of China's State-owned enterprise income distribution system is concluded afterward. On the basis of former analysis, the factors contribute to current situation of China's State-owned enterprise income distribution legal system are discussed in the following section. At the end, this chapter proposes a reform approach that complete and perfect China's State-owned enterprise income distribution by anti-monopoly law.

CHAPTER TWO: HISTORY AND DEVELOPMENT OF CHINA'S SOE REFORM

The traditional Chinese state-owned enterprises were set up through several movements such as Socialist Three Major Transformation (She Hui Zhu Yi San Da Gai Zao 社会主义三大改造),²⁸ Abolishing Private Ownership (Xiao Mie Si You Chan Quan 消灭私有产权)²⁹ and National Industrialization (Guo Jia Gong Ye Hua 国家工业化)³⁰. Before reform and opening up, these traditional state-owned enterprises existed as branches of government department, carried out highly centralized planning management and operating based on administrative orders. In this model, managers are only the executors of administrative authorities' decisions, enterprises have no autonomies in human resources, finance, production and distribution, and managers and workers have no responsibilities for profitability, which caused inefficiency and high budget deficit³¹.

Since 1978, the reform of state-owned enterprises began with Decentralizing power and giving away profits (Fang Quan Rang Li 放权让利)³², and experienced following two stages, separating control from ownership (Liang Quan Fen Li 两权分立)³³ and establishing modern enterprise system (Jian Li Xian Dai Qi Ye Zhi Du 建立现代企业制度)³⁴. After 30 years development, the number of state-owned enterprises significantly reduced, the property right was clarified, and a fundamental modern enterprise system has been established and operating well. On the surface, it might seem that the task of reforming SOEs has been largely completed and that only consideration and improvement is now required.

In fact, the reform of SOEs is far from over. There are still many remaining problems, such as the lack of the ownership of SOEs, insufficient supervision

²⁸ 社会主义三大改造。Socialist Three Major Transformation.

²⁹ 消灭私有产权。Abolishing Private Ownership.

³⁰ 国家工业化。National Industrialization.

³¹ 漆多俊。2004。《经济法基础理论》。武汉：武汉大学出版社。Duojun Qi. 2004. *The Basic Theory of Economic Law*. Wuhan: Wuhan University Press.

³² 放权让利。Decentralizing powers and giving away profits.

³³ 两权分立。Separating control from ownership.

³⁴ 建立现代企业制度。Establishing modern enterprise system.

mechanism, excessive administrative intervention, low efficiency, and imperfect income distribution system. This chapter seeks to explore the motives behind SOE reform in different stages through an examination of the tasks and process of China's SOE reform.

1. The Tasks of China's SOE Reform

The reform of China's SOE has different tasks in different stages, which could be divided into the reform that aiming at enhancing SOEs' vitality, which aiming at transforming SOEs' operating mechanism, and which aiming at establishing and improving modern enterprise system.

1.1 The reform which aiming at enhancing SOEs' vitality.

1.1.1 Background

The period from 1978 to 1986 is the initial stage of China's SOE reform, and the general reform task in this stage is to enhance SOEs' vitality by expanding enterprises' autonomy. The set up of this reform task was depended on social and economic background and enterprises' realities of the day.

Under traditional planned economy, first of all, China's SOEs heavily dependent on government, state-owned theoretically equivalent to state-operated, and state-owned enterprises actually existed as government appendage. Second, higher administrative authorities had absolute management privilege to SOEs, including supply, production, sales, even dispute settlement and promotion of managers were all decided by higher authorities' wills. Which determined that enterprises' behaviors had clear political characteristics. Third, SOEs were under the administrative guidance of government department, and the decision-making power entirely belonged to government. It was the higher administrative authorities but the market demand affected SOEs behaviors. Which lead to that SOEs behaviors had significant administrative characteristics. Fourth, the manner that the government directly managed every aspect of SOEs

harmed SOEs staff's democratic power, such as the national unified wage system, all enterprise operation were decided by higher authorities, and managers were directly appointed and supervised by higher authorities but elected, supervised, and recalled by whole staff. Which lead to the separated relationship between SOEs and their staffs.

1.1.2 Key reform points

Firstly, expanding power and giving up profits. In July 1979, the State Council issued several documents concerned about expanding SOEs' autonomy and retained profits, and took eight SOEs as pilot. Which kicked off the SOEs reform. In the following years, the State Council successively published certain number of rules and regulations to make this policy more specific and detailed and applicable based on pilot experiences.

Secondly, expanding power meant increasing SOEs responsibilities, and then economic responsibility system was introduced and applied gradually. In 1981, the State Council approved temporary rule about industrial enterprise economic responsibility, which required that economic responsibility, economic effect and economic interests should be unified, and proposed the profits distribution ratio among the State, enterprise and staff.

Thirdly, replacing profits with taxes. In 1984, the State Council approved the policy that replacing profits with taxes, and ruled that enterprises could maintain certain profits after paying tax (55% of profit). Then the manner that profits and taxes coexist was transformed to entirely replacing profits with taxes, and enterprises could get all profits after paying income tax.

Fourthly, replacing financial allocation with loans. In 1984, the National Planning Commission, the National Construction Committee and The Construction Bank of China jointly issued the rule that the budgetary construction investment would apply the policy of replacing financial allocation with loans. Since then, all construction fund and floating capital for SOEs' development need to lend from

banks on their own behalf.

1.1.3 Task achievements

First, the situation that government controlled all aspect and enterprise had no decision-making power at all had been changed preliminarily. Through reform, the government gave most decision-making powers back to enterprises, such as production plan, sales, price, human resource, use of funds, production disposal and organization setting. Which turned SOE to a business entity with certain autonomy and enhanced its vitality.

Second, SOEs begun to know about market and acquaint the functions of market mechanism and law of value. After reform, SOEs had to face the market directly and produce and sale on themselves, thus the goods they produced must be in excellent quality and reasonable price. Which urged SOEs to innovate technology, improve management, and recognize the concept of market, competition and benefit.

Third, SOEs begun to change the labor system and distribution system, and initially established motivation system. Through reform, SOEs obtained certain decision-making power on human resource, which enable them to decide staff assignment within limits; to distribution and motivation system, SOEs could deicide staff's salary and bonus based on the principle of distribution according to work, which aroused the enthusiasm of staffs to some degree.

1.1.4 Problems

First, the reform of expanding power was limited. The administrative decentralizing and expanding power was undertaken under planned economy, and the State mandatory plan was still the foundation of SOEs behaviors. Although the government gave several decision-making powers back to enterprises, and emphasized outer reform by reducing tax and giving up some profits, the reform neither promote the enterprise management mechanism nor

establish unified responsibility and right mechanism and survival of the fittest mechanism.

Second, SOEs did not get rid of the subordination status. SOEs were still operated by the State, and the government still controlled the ownership and major management power of enterprises. In addition, due to the absence of supporting policies, some reform could not be implemented in practice.

Third, the efforts that giving up profits was limited, and SOEs could not develop by themselves alone. Although replacing profits with taxes defined the distribution relationship between government and enterprises and create an approximate fair tax environment, the problem of high tax rate and excessive tax categories still could not be solved. Which limited SOEs self-development, even increased tax burden to some enterprises.

1.2 The reform which aiming at changing SOEs's operation mechanism

1.2.1 Background

Through the reform of expanding autonomy and enhancing vitality, SOEs made the first step on making autonomous decision and recognizing market mechanism. Generally speaking, however, this reform did not find an appropriate manner that deal with the relationship between the government and enterprises, SOEs' management power still belonged to the State fundamentally, and all business behaviors had to obey government's instruction. In fact, the reform of expanding power and giving up profits under planned economy was limited and the implementation was also lack of standardization, which could not promote SOEs' vitality significantly. In addition, the real tax rate did not reduce after the reform of replacing profits with taxes, some enterprises' burden even increased due to technology improvement and loan repayment. In a word, the reform before did not transform SOEs to independent market entity that held responsibilities for its own profits and losses successfully. Therefore, a further reform focused on enterprise's management mechanism based on expanding

enterprise's autonomy was necessary. From 1987 to 1993, the SOE reform conducted various explorations concerned about enterprise's management mechanism, and entered to a new stage which aiming at changing SOE's management mechanism.

1.2.2 Key points of reform

Firstly, further expanding SOEs' autonomy. In 1987, the State Council approved the Temporary Regulation on Direct State Planning of Large-scaled Industrial Enterprises³⁵, which gave large-scaled enterprises more autonomy. In 1991, the State Council issued the Notice on Further Enhancing State-owned Large and Medium-scaled Enterprises' vitality, which decided to increase investment on technology improvement, reduce administrative instruction, lower loan rate, and clear triangle debts.

Secondly, continue to implement contract responsibility system. In 1986, the State Council issued the Several Regulations on Further Enterprise Reform and Enhancing Vitality³⁶, which emphasized that the further reform should focus on exploring various types of enterprise's management mechanism. The exploration included the joint-stock system, the leasehold system, the assets responsibility system, and contract responsibility system.

Third, changing enterprise management mechanism. In 1986, the Central Committee of CPC and the State Council jointly issued several documents to define the responsibilities and rights of enterprise administration, enterprise party committee, and the worker's congress, and clear the relationship among them. In 1988, the Company Law³⁷ was enacted, which clearly granted state-owned assets to SOEs to manage in legal form. Then the State Council issued the Regulations on State-owned Enterprise Changing Management

³⁵ 计划内大型国有工业暂行条例, The Temporary Regulation on Direct State Planning of Large-scaled Industrial Enterprise, 1987.

³⁶ 关于深化改革增强企业活力的若干条例, Several Regulations on Further Enterprise Reform and Enhancing Vitality, 1986.

³⁷ 公司法, The Company Law, 1988.

Mechanism in 1992³⁸, which stated that the task of changing enterprise's management mechanism is to let SOEs to become to independent market entity that responsible for their own profits and losses, and enjoy and bear civil rights and obligations.

Fourth, enterprise group pilot. The development of production and management and the police encouragement speeded up the process of horizon integration between SOEs. The State Council gradually issued several documents to promote SOEs horizon integration based on pilot experiences³⁹.

1.2.3 Task achievements

First, arousing the enthusiasm of SOEs. Through applying contract responsibility system SOEs obtained certain autonomy without changing ownership type, and the responsibility and right were clearly defined in contract form. The distribution arrangement of contract responsibility system not only guaranteed state revenue, but also aroused the enthusiasm of enterprises by giving them certain marginal retention.

Second, the management mechanism of SOEs begun to change. Though a serious of reforms, especially with the enact of Company Law, SOEs begun to participate in the market as independent entity with certain autonomy and self-interests. State-operated gradually became to self-operated, and it also bring some substantial changes to SOEs' management mechanism.

1.2.4 Problems

There were still problems existed. The purpose of the contract responsibility system was to let SOEs to become independent market entity by separating ownership and management. In fact, this attempt did not work in practice. The

³⁸ 转换国有企业经营机制条例, Regulations on State-owned Enterprise Changing Management Mechanism, 1992.

³⁹ Yingyi Qian, 2000, "The Process of China's Market Transition (1978 – 1998): The Evolutionary, Historical, and Comparative Perspective", *Journal of Institutional and Theoretical Economics*, Vol. 156.

contract responsibility system did not touch the property structure issue, and the ownership of assets still belonged to the state to some degree and SOEs only manage such assets on behalf of the state. SOEs could not response for profits and losses if they did not actually own such assets, thus SOEs were still subordinate to government department, and they could not became to independent market entity and bear civil obligations.

Furthermore, to obtain maximum interest, some SOEs always bargain with government on contract index and reduced cardinal number by any means, and increased current income by transforming assets to profits. These shrot-term behaviors not only affected the sustainable development of enterprises, but also lead to the losses of state-owned assets.

1.3 The Reform that Aiming at Establishing Modern Enterprise System

1.3.1 Background

With the deepening of SOE reform, some apparent contradictions had emerged. The former SOE reform theory mainly concerned about expanding autonomy and giving up profits, which only reform enterprises' management and operation but the whole SOE system, and it could not achieve the goal that let SOE to become to independent market entity. Which caused the long-term exited situation that unclear function of SOE, inappropriate property structure, imperfect supervision system, low efficiency, and backward business concept. Facts have proved that, SOEs management system could not be substantially changed without the establishment of an appropriate property structure and modern enterprise system.

Meanwhile, the sound and rapid development of private sector including collective economy in both urban and rural areas, cooperate economy, and individual economy also challenged the status of SOEs, and the SOE issue became to the core of China's economic system reform and draw a lot of attentions from the whole society.

To further and deepener the reform, the deep-rooted problem must be solved. And the reform designer believed that the most important and urgent reform tasks in this stage were to establish modern enterprise system, to find out an efficient approach that could combine socialist public economy and market economy. Since 1994, the SOE reform has transformed to establish modern enterprise system from interest stimulation.

1.3.2 Key points of reform

First, adjusting economic structure and strategic reconstructing SOEs. In 1995, the Fifth Plenary Session of the Fourteenth Central Committee of CPC decided to adjust state-owned economic structure⁴⁰. In 1997, the report of CPC's Fifteenth National Congress indicated that the basic economic system of primary stage of socialism is public ownership as the main body while diverse ownership co-existed⁴¹. In 1999, the Fourth Plenary Session of the Fifteenth Central Committee issued the Several Major Issues Concerning the Reform and Development of SOEs, which required to strategic adjust state-owned economic structure, and to improve industrial structure and adjust ownership structure⁴². In 2003, the State-owned Assets Supervision and Management Committee was established, which directly supervise and manage 196 central SOEs. In 2006, the State-owned Assets Supervision and Management Committee enacted the Guidance on Promoting State-owned Assets Adjustment and Reconstruction, which clearly defined the industries and key sectors that state-owned assets should be concentrated⁴³. In 2007, the latest SOE reform requirement of the CPC was to perfect state-owned economic structure, enhance the vitality, control and influence of SOEs⁴⁴.

⁴⁰ See the Report of Fifth Plenary Session of the Fourteenth Central Committee of CPC, 1995.

⁴¹ See the report of the CPC's Fifteenth National Congress, 1997.

⁴² 关于国有企业改革与发展的重大问题，Several Major Issues Concerning the Reform and Development of SOEs, 1999.

⁴³ 推动国有企业资产调整与重组的指导意见，Guidance on Promoting State-owned Assets Adjustment and Reconstruction, 2006.

⁴⁴ See the Report of the CPC's Fifteenth National Congress, 2007.

Second, reforming governmental agencies, and transforming government functions. In 1998, the National Congress approved the institutional reform of the State Council, to strengthen macro management and comprehensive coordination, and transform government function based on market economy principle and reduce the number of administrative examination and approval procedures. The establishment of the State-owned Assets Supervision and Management Committee in 2003 actually separated the public management function and investor function of the government.

Third, establishing and perfecting modern enterprise system. In terms of state-owned assets management, the State Council issued the Regulation on State-owned Assets Supervision and Management in 1994; the National Systematic Reform Committee issued the Guidance on the Pilot Scheme of Urban State-owned Assets Operation System Reform in 1997; the National Congress enacted the State-owned Assets Law in 2007; and the Treasury and the State-owned Assets Supervision and Management Committee jointly issued the Management Methods of Collecting Central SOE Capital Profits in 2007⁴⁵. In terms of changing management system, the Company Law was promulgated in 1994, and was amended in 1999; the State Council issued the Temporary Regulation on SOEs' Board of Supervisors in 2000, and send the board of supervisors to major and large-scaled SOEs at the same year; the State-owned Assets Supervision and Management Committee also issued several rules and regulations on standardizing SOEs' systematic transformation, liquidation assets and assignment of property⁴⁶.

Fourth, comprehensive supporting reform. In terms of foreign trade management, the Ministry of Foreign Trade and Economic Cooperation issued the Notice of Applying the Registration for the Record to Large-scaled Enterprises' Import and Export Right in 1999; in terms of foreign exchange management, the People's Bank of China issued the Announcement of Further

⁴⁵ Yongnian Zheng and Minjia Chen, 2007, *China's Recent State-owned Enterprise Reform and its Social Consequences*, China Policy Institute.

⁴⁶ Ibid.

Reforming Foreign Exchange Management System in 1993; in terms of social security, the Department of Labor and the National Economy and Trading Committee jointly issued the Notice on Doing Proper Work of Unemployment Insurance to Cooperate with the SOE reform pilot scheme in 1995, the State Council issued the Decision on Establishing United Basic Endowment Insurance System for Enterprises' workers in 1997, and the Decision on Establishing Basic Healthcare Insurance System for Urban Workers in 1998.

1.3.3 Achievements

First of all, a basic modern enterprise system has been established. Based on the Company Law, SOEs has been transformed to company form with clear property structure and scientific management system from traditional factory form, the ownership and management has been separated, and SOEs became to real market entity and independent legal person. Second, the strategic reconstruction made remarkable progress: state sector played an important and dominant role in some industries relating to national security and economic lifeline, and supported and promoted the development of the whole economy. Besides, several large internationally competitive companies and enterprise groups has been formed through market force and police guidance. Third, reforms in some other areas were put on agenda to support and promote the comprehensive reform of SOE, such as the reforms of finance, tax, investment, foreign trade, foreign exchange, social security and human resource. These reforms gradually standardized the relationship between government and SOEs, and created a fair and healthy environment for SOE's development.

1.3.4 Remaining problems

In terms of ownership relations, the manner in which the state-owned assets administration and supervision department (both central and local level) act as the owners of state-owned assets on behalf of the state has not really solved the problem of a lack of ownership of SOEs. Moreover, this model means that because state assets administration and supervision department lacks sufficient

supervision and oversight, it is easy for the organization to make concessions to the management of SOEs, allowing the misappropriation or embezzlement of state-owned assets. In addition, SOEs also benefited from monopolies in some key industries, where they have been able to squeeze out or swallow up other players through the power of their bureaucratic connections. In doing so, they have greatly violated market rules and have become the most important obstacle to the healthy development of China's economy.

2. The Period of “Fang Quan Rang Li”⁴⁷ (1978-1986)

2.1 History

The period from 1978 to 1986 was the exploration stage, and several types of reform were implemented within the original planning economic system. Its main feature was “Fang Quan Rang Li” (decentralizing power and giving away profits), which is to motivate managers and workers of enterprises by separating ownership from management, to increase production and revenue. The reform of decentralizing power and giving away profits included expanding enterprises' autonomy, paying income tax instead of handing over profits (Li Gai Shui 利改税)⁴⁸ and charter business.

(1) Expanding enterprises' autonomy

In November 1978, Sichuan Province took six enterprises including Jiangning Machine Tool Plant as reform pilot enterprise to allow them to keep some profits and their staff would get bonus if their profits increase⁴⁹. In May 1979, the National Economy and Trade Committee and other six departments took Capital Steel, Tianjing Bicycle Factory and Shanghai Diesel Factory as reform pilot scheme of expanding autonomy, and the State Council issued five papers concerning about expanding autonomy and piloted in local level in September

⁴⁷ 放权让利, Fang Quan Rang Li means decentralizing power and giving away profits.

⁴⁸ 利改税。Paying income tax instead of handing over profits.

⁴⁹ 董辅初。1995。《中国国有企业改革研究》。北京：中国人民大学出版社。Furen Dong. 1995. *The Research on China's State-owned Enterprises' Reform*. Beijing: China People's Press.

that year⁵⁰. Within one year, 16% of budget enterprises implemented this reform, which account for 60% of output value of whole enterprises and 70% of profits⁵¹.

This reform aroused enterprises' vitality and improved operating. However, due to the reason that these measures did not clear the limit of rights and the influence of macro-control, the initial reform of expanding autonomy did not achieve the goal of improving national revenue, and huge fiscal deficits occurred in 1979 and 1980. To implement revenue task, local authorities introduced some specific methods for industrial enterprises depend on initial reform, such as to retain profits and to bear responsibility for profits and loss.

To apply the pilot experiences, the State Council issued several documents in 1979, including the Several Regulations on Expanding State-owned Industrial Enterprises Management Autonomy, the Regulation on State-owned Enterprise Retained Profits, the Temporary Regulation on Increasing State-owned Enterprise Assets Depreciation Rate and Improving the Usage of Depreciations, and the Temporary Regulation on Imposing Property Tax on State-owned Industrial Enterprise. These regulations clearly defined the responsibilities, rights and interests of SOEs as relatively independent commodity producers and operators. Which are first, the production planning right; second, the sales right; third, profit distribution right; fourth, labor and employment right; fifth, the right to use funds; sixth, the property tax was imposed; seventh, the right to keep foreign exchange⁵². Among these reform measures, the most important one was the profit retention system, including the whole profit retention and base profit retention. Which broken the traditional balance of payment system and would give more profits to SOEs if they could produce more. To solve the problems emerged in pilot enterprises, the State Council approved the Temporary Regulations on State-owned Industrial Enterprise Profit Retention that was

⁵⁰ Ibid.

⁵¹ 董辅弼, 唐宗焜。1992。《中国国有企业改革:制度与效率》。北京:中国计划出版社。Furen Dong, Zongkun Tang. 1992. *The Reform of China's State-owned Enterprises: system and efficient*. Beijing: China Plan Press.

⁵² Yongnian Zheng and Minjia Chen, 2007, *China's Recent State-owned Enterprise Reform and its Social Consequences*, China Policy Institute.

amended by the National Economy Committee and the Treasury in 1980, which made the system more specific and applicable, and proposed some new measures to standard the system to avoid state-owned assets losses⁵³.

In 1980, the State Council approved and forwarded the *Report of the Achievements and Suggestions on Expanding Enterprise Autonomy Pilot Scheme*⁵⁴, which concluded the achievements of the reform; supplemented and perfected some measures, such as profit retention, sales, expanding export and foreign exchange distribution, usage of property and funds, assets depreciation, and organization settlement; and decided to apply the manner that expanding enterprise autonomy to the whole SOEs⁵⁵.

The system of responsibility for profits and loss has achieved some effects at first. By the end of 1980, except for Tibet, there were over 6,000 SOEs have participated in pilot scheme, 15% of whole SOEs, 60% of whole output value, and 70% of whole profits. According to statistics, in 1980 there were 5777 pilot enterprises got 165 billion Yuan industrial output, increased 6.8%; taken 33 billion Yuan profit, increased 11.8%; and delivered 29 billion Yuan profits to the State, increased 7.4%⁵⁶. In terms of profit distribution, in 1980, 87% of profit was delivered to the State, enterprises got 10%, and the rest 3% was paid back to bank⁵⁷.

Some enterprises increased production and income over a short period, but most of them did not benefit from it⁵⁸. The planned target of enterprises were made depending on their previous year's performance, thus this system would leave some space for enterprises to bargain with government, and caused unfair punishment and treatment at last. At the beginning of 1983, this system lead to

⁵³ See the Temporary Regulations on State-owned Industrial Enterprise Profit Retention, 1980.

⁵⁴ See the Report of the Achievements and Suggestions on Expanding Enterprise Autonomy Pilot Scheme, 1980.

⁵⁵ Hong Sheng, 2012, *China's State-owned Enterprises: Nature, Performance and Reform*, World Science, p 20.

⁵⁶ Ibid, p 24.

⁵⁷ Ibid, p 24.

⁵⁸ 董辅初。1995。《中国国有企业改革研究》。北京：人民出版社。Furen Dong. 1995. *The Research on China's State-owned Enterprises' Reform*. Beijing: China People's Press.

execution chaos and inflation of prices⁵⁹, and the central government decided to introduce the system of paying tax instead of handing over profits.

(2) “Li Gai Shui”⁶⁰ (Paying income tax instead of handing over profit)

By introducing the system of replacement of delivering of profits by tax, the policy designer wanted to standardize and stabilize the revenue, enhance enterprises’ economic obligation and balance the competition condition among them. In 1983, the State Council issued the *Proposed Methods of Replacement of Profit-Delivery by Tax of the Treasury Department*⁶¹, which proposed that this reform should be undertaken in two steps: first, collection of income tax by fixed ratio and confirmation of the ratio of profit-delivery after taxation by negotiation; second, carrying on single taxation system, adopting the progressive tax rather than proportional tax as income tax, cancelling profit-delivery system and collecting resource tax, asset tax and regulation tax⁶².

The first step was undertaken on 1st June 1983, and the main contents were: first, enterprises should pay 55% of profit as income tax, deliver certain ratio of after-tax profit and keep the rest of them; second, to small-sized profitable SOEs, applying the progressive tax rate in excess of specific amount, and left after-tax profits to SOEs; third, giving fixed amount financial subsidies to those SOEs whose losses were caused by policies, and asking those SOEs whose losses were caused by bad management to improve management within certain period and stop subsidies over period; fourth, to after-tax profit retention, SOEs should establish funds for new production trail, production development, reserve, staff welfare and staff bonus, and the total amount of the first three funds should no less than 60% of the whole profit retention⁶³. To support this reform, the manner of partly replacing financial allocation with loan was also introduced in

⁵⁹ Ibid.

⁶⁰ 利改税, Li Gai Shui means Paying income tax instead of handing over profit.

⁶¹ 财政部关于国营企业利改税试行办法。Proposed Methods of Replacement of Profit-Delivery by Tax of the Treasury Department. 1983.

⁶² Ibid.

⁶³ According to the Proposed Methods of Replacement of Profit-Delivery by Tax of the Treasury Department.

1983. The first step basically achieved the goal of stabilizing and increasing revenue. By the end of 1983, there were 107,145 SOEs adopted the measure of replacing profits with taxes, 92.7% of total profitable SOEs. These SOEs taken 66 billion Yuan profits in 1983, increased 11.1%, and 60% of them was delivered to the State and over 30% was left to enterprises⁶⁴.

The first step of replacing profit with tax changed the traditional manner that the State only collects profits but tax, and created a new distribution relationship between the State and enterprises. It overcame some disadvantages caused by the bargaining between the State and enterprises during the application of contract responsibility system to some degree, and made valuable attempt to standardize the distribution system between the State and enterprises. However, due to the lack of support reforms in macro systems such as price and investment system reforms, the tax rate was different depended on enterprises' real condition, which actually exacerbate the problems relating to the punishment of good performers persisted. Moreover, the system design of first step reform overemphasized the importance of increasing state revenue and ignored the enterprises' development potential, which severely weakened SOEs investment ability and potential development.

To overcome above disadvantages, the State Council approved the Report and Measures of Applying the Second Step of Replacing Profit with Tax of the Treasury in 1984⁶⁵. The main contents were: dividing tax into production tax, value added tax, sales tax and salt tax based on object of taxation, imposing income tax and regulation tax on SOEs' profits, and adding resource tax, construction tax, property tax and land holding tax. However, the ultimate practice deviated from the original intention of the reform. Many enterprises were unable to pay fund tax concerning funds rather than profit after paying product tax that had too large proportion in this system. Therefore, the fund tax was abundant at last and started to collect regulation tax from large and

⁶⁴ Zuo Liu, "The Policy of Replacing Profit with Tax and its Historical Meanings", *Tax Research*, 2004, Vol. 10.

⁶⁵ The Report and Measures of Applying the Second Step of Replacing Profit with Tax of the Treasury, 1984.

middle-sized enterprises that have more profit.

This reform did not change the situation that enterprises bear heavy tax, and unfair punishment and treatment were even more serious than before because of non-standardized tax system.

(3) Charter business

Since the pilot reform of Shenyang Motor Industry Company that was undertaken in 1984, many small-sized industrial enterprises tried to reform by charter method to stop loss. In practice, the government department rented the enterprises to individuals, when lease expired the government department could earn arranged rents and individuals could get the rest of profit. With the development of this kind of reform, partners and enterprise staff as a whole replaced individual, and fixed rents was replaced by sliding scales. After the contractual management responsibility system was introduced in 1987, the number of enterprises that adopted charter method was still increasing continuously. At the end of 1988, there were 24,660 enterprises that adopted charter system, which accounted for 56.1% of total small-sized state-owned enterprises.⁶⁶

(4) Further expanding enterprise's autonomy

At the same time as applying the policy of replacing profit with tax, in order to fully implementation of reform, further arouse the enthusiasm of enterprises, and improve enterprise's vitality and efficiency, the State Council issued the Temporary Regulations on Further Expanding State-owned Industrial Enterprise Autonomy in 1984. Which loosen up the restrictions on enterprises and expanding their management autonomy. The main contents were: first, the enterprise has the right to make decisions on production on the premise of complete state planning and supply contract; second, the enterprise shall sale

⁶⁶ Sujian Huang, 2008, "The Process and Experience of State-owned Enterprise Reform", *The Research of Economy and Management*, Vol. 10, 2008.

any product unless the State prohibited; third, the enterprise shall make decision on price; fourth, the enterprise can choose supplier of state unified distribution; fifth, the enterprise could use profit retention to set funds for development, new product trial, staff welfare and staff bonus; sixth, the enterprise could lease and sell unused and unnecessary fixed assets; seventh, the enterprise can make decision on setting up organization and human resources; eighth, the enterprise can choose its own wage system type on the premise of carrying out state unified wage standard; ninth, the enterprise can participate in multi-regional and multi-industrial cooperation without changing ownership type and administrative subordination⁶⁷.

2.2 Theories

In practice, the public ownership theory faced a challenge of motivation. The common ideas of 铁饭碗(Tie Fan Wan)⁶⁸ (secured job) and 大锅饭(Da Guo Fan)⁶⁹ (excessive equalitarianism) lead to low efficiency of state-owned enterprises and financial strain. The reform of decentralizing powers and giving up profits tried to change the situation that lack of motivation under public ownership system, by motivating managers and workers with retained partial profits to increase production and revenue.

(1) The challenges of traditional public ownership theory

The definition of public ownership means that all members owned the property and they exercise their rights together. The correlation between individual activities and group effort is very low, and each member would get benefit without paying the cost, which caused the free rider problem. The extensive free rider activities would lead to insufficient group effort, and performed as shifting responsibility, overstaffing and low efficiency. Thus, relevant agent organizations would be introduced to make sure the public ownership could work well, and

⁶⁷ According to the Temporary Regulations on Further Expanding State-owned Industrial Enterprise Autonomy.

⁶⁸ 铁饭碗。Secured job.

⁶⁹ 大锅饭。Excessive equalitarianism.

motivation and supervision mechanism also emerged as the agents have their own interests.

The planned economy system corresponds to the public ownership. Under planned economy, state-owned enterprises as the secondary organization of government department, had the obligations to stabilize society, provide jobs and develop economy. The department in charge could perform their functions through these enterprises, but they could not operate independently, which lead to the situation that there was no correlation between managers and workers' efforts and their benefits. Therefore, as the agent of state-owned enterprise, managers and workers might hide potential productivity and reduce their effort by using information advantages. The state-owned economy performed badly because no one was in charge of, and the state had to consider reform under the pressure of serious budget deficit⁷⁰.

(2) Theoretical exploration

During this period, theoretical circle put forward several theories, and the most important one of them is Jiang Yiwei⁷¹'s "three theories". Jiang thought that China's economic system reform should start from the reality that enterprises lack of autonomy, and enterprises should be developed to become independent economic subject that have self-management.⁷² In this stage, scholars reached a consensus on the issue of uniting enterprises' rights, obligations and benefits⁷³.

Although the reform of decentralizing powers and giving up profits neither touched state-owned enterprises' property rights, nor changed the relationship between government and enterprises, it made breakthrough in the area of benefit reallocation. However, the government still occupied a command

⁷⁰ 董辅初。1995。《中国国有企业改革研究》。北京：中国人民大学出版社。Furen Dong. 1995. *The Research on China's State-owned Enterprises' Reform*. Beijing: China People's Press.

⁷¹ Yiwei Jiang, "On the Standard of Enterprise", *China Social Science*, Vol. 1, 1980, P. 21-36.

⁷² 戴园晨, 徐小平。1993。“蒋一苇的‘三论’与国企改革”。《经济管理》1993年第一期。Yuanchen Dai, Yaping Xv. 1993. "Jiang Yiwei's Three Theories and State-owned Enterprises Reform". *Economic Management* 1993 Vol. 1.

⁷³ Ibid.

position under planned economy system, and it could take back powers at any time. Therefore, to both government and enterprises, any kind of reform of decentralizing powers was short-term activities.

The reform of decentralizing powers and giving up profits did not solve the problems of “Tie Fan Wan” and “Da Guo Fan” basically, on the contrary, it created new unbalance and reinforced unfair treatment and punishment situations because of the bargains that occurred frequently between government and enterprises. The efficiency issues also could not be solved because department in charge did not decentralize management to enterprises. It marked an end to the failure attempt of reforming state-owned enterprises when there was no room for any further compromise from the government to benefit from operations.

2.3 Assessments

The reform in this period achieved several positive results. First of all, this reform changed the situation that the government controlled every aspects of SOEs' management and enterprise had no autonomy at all. Before reform, SOEs were only the subordination of government department, and all business behaviors had to follow government direct planning and instruction. After reform, SOEs gradually became to market entity and had certain autonomy to some degree. For example, by the end of 1983, the proportion of SOEs who had decision-making power on output value has increased from 6.8% to 25.1%, from 7.3% to 26% on output amount, from 11.2% to 31.9% on production planning, and from 34.4% to 44.1% on market sales⁷⁴. Second, through this reform, SOEs begun to recognize the importance of market, paid attentions on market mechanism and the law of value, and attempted to improve management, production quality and efficiency under competitiveness. Third, SOEs begun to change traditional labor and distribution system, and a basic motivation mechanism has been established. Fourth, expanding autonomy provided the economic condition for SOEs self-development, and they could expand

⁷⁴ Jingang Guo, “The Reform of State-owned Industrial Enterprise Motivation System and Its Achievements”, *Economic Research*, 1992, Vol.10.

production and became to self-appreciation market entity based on profit retentions.

The problems also existed. First, the reform approach is limited. The reform of expanding autonomy and giving up profits was undertaken under the planned market economic system, and it only emphasized on the relationship between the State and enterprises instead of the relationship between central and local government. The main measure of this reform was to replace traditional state-owned and state-operated management type with state-owned and state and enterprise co-operated type, and SOEs could not become to real independent market entity with this management type. Second, there were no enough supporting reforms in relating areas, such as reforms of price system, financial system and tax system. Third, the effect of reform is limited. This reform did not solve the problem of SOEs' management system, and the state planning and instructions still deeply influenced SOEs business behaviors; this reform did not change the situation that SOEs were subordinations of government departments, the government still controlled the management and ownership of SOEs, and the integration of government administration and enterprise still existed; the reform also could not solve the problem of insider control efficiently: expanding power and giving up profit did not change the basic system of SOEs, and a efficient supervision mechanism has not been established.

3. The Period of “Liang Quan Fen Li”⁷⁵ (Separating Control from Ownership) (1987-1992)

“Liang Quan Fen Li” (separating control from ownership) is a milestone in the process of state-owned enterprises reform. In the first stage, the reform of decentralizing powers and giving up profits was limited and undertaken under the planned economy only, and separating control from ownership started to get to the core of economic system reform. In fact, separating control from ownership played an important role in ending traditional planned economy

⁷⁵ 两权分立, separating control from ownership.

system, but failed to complete the mission of reform due to its own shortcomings. The reform in this stage mainly included contract responsibility system and asset management responsibility system⁷⁶.

3.1 The Contract Responsibility System

The embryo of the contract responsibility system emerged as early as 1979. Under this system, an enterprise was leased to its management and a fixed tax was collected from the enterprise, allowing the enterprise to keep all the remaining profits. Since the central government put forward the idea of replacement of profit-delivery by tax in 1983, most enterprises suspended reform in contract responsibility system until 1987. In the end of 1986, the State Council issued the *Decisions on Deepening Enterprise Reform and Enhancing Enterprise Vitality*, which stated that the key of deepening enterprise reform is the separation between ownership and management, specifically were: applying leasehold system to small-sized enterprises and medium-sized enterprises with minor losses; apply multiple type contract responsibility systems to medium and large-sized enterprise; and applying joint-stock system pilot to selected medium and large-sized enterprises⁷⁷. By the end of 1986, 78% of industrial enterprise and 80% of medium and large-sized enterprise across the whole country has implemented the contract responsibility system. In some provinces such as Beijing, Hebei, Jilin, Jiangsu, Henan and Sichuan the proportion even reached over 85%⁷⁸.

In 1987, the National Congress first time confirmed the status of contract responsibility system in the government report, which stated that this year's reform should focused on completing enterprise management system, and implementing multi-type contract responsibility system based on the principle of

⁷⁶ 董辅初。1995。《中国国有企业改革研究》。北京：人民出版社。Furen Dong. 1995. *The Research on China's State-owned Enterprises' Reform*. Beijing: China People's Press.

⁷⁷ According to the *Decisions on Deepening Enterprise Reform and Enhancing Enterprise Vitality*.

⁷⁸ 陈佳贵。2008。《中国国企改革三十年研究》。北京：经济出版社。Jiagui Chen, 2008, *Research on the 30 Years of China's State-owned Enterprise Reform*, Beijing: Economic Management Press, P 51.

separating ownership from management⁷⁹.

In February 1988, with the promulgation of the *Interim Regulations on Contract Responsibility System of Public-owned Industrial Enterprises*⁸⁰, the contract system became the mainstream of urban economy system reform gradually. This regulation indicated that the contract responsibility system defines the relationship of rights and obligations between the State and enterprise, based on the principle of separating ownership from management and insisting socialist public ownership. From 1988 to 1990, 90% of industrial enterprises across the whole country had completed the first-round contract.⁸¹

In 1989, the Fifth Plenary Session of the Thirteenth Central Committee issued approved the *Decisions on Further Promoting and Deepening Reform*, which stated that the contract responsibility system aroused the enthusiasm of SOEs and promoted their development, and should be continued; at the same time, should promote what is beneficial and abolish what is harmful to continuously complete and perfect this system based on former experiences⁸².

In 1991, the Treasury and the State Systematic Reform Committee jointly issued the *Pilot Measures of Separating Profit from Tax, Paying Back Loan after Tax and After-taxed Contract Responsibility System*. By the end of 1991, there were 36 provinces and government departments, and over 2000 enterprises participated in this pilot scheme⁸³. These pilot schemes achieved some positive results such as giving stability and rationalization of distribution relationship between the State and enterprises, primarily achieving the goal of the State and enterprises share the risks and interests, and changing the traditional repayment measure. However, the problems also existed, for instance, the tax rate was still high and

⁷⁹ The Government Report of the National Congress 1987.

⁸⁰ 全民所有制工业企业承包经营责任制暂行条例。Interim Regulations on Contract Responsibility System of Public-owned Industrial Enterprises. 1988.

⁸¹ 董辅初。1995。《中国国有企业改革研究》。北京：人民出版社。Furen Dong. 1995. *The Research on China's State-owned Enterprises' Reform*. Beijing: China People's Press.

⁸² According to the Decisions on Further Promoting and Deepening Reform.

⁸³ 章迪诚，2006。《中国国企改革历程》。北京：中国工人出版社。Dicheng Zhang, 2006, *The History of China's State-owned Enterprise Reform*, Beijing: China Worker Press. P. 304.

unfair for enterprise to bear; and the profits after paying tax and paying back to the back greatly reduced, which obviously harmed enterprises' vest interests and dispelled their enthusiasm of participating in reform.

The contract responsibility system had many specific forms, such as the way in which contract specifies a profit remittance quota and allows the contractor to retain all above-quota profits, the way in which the contract retains profits at a progressive rate and the contract is written so that the contractor has an incentive to reduce losses. This simple and applicable system had won wide acceptance among enterprises and government, since the government could secure increased income without more spending, and enterprises also could benefit from increased production. The contract system operated well in the initial year of the first-round contract, enterprises could keep more retained profit after delivering profits and tax. However, the benefits of this system reduced gradually due to the change of economic environment, the unreasonable management of enterprises and changeable policies. Enterprises were reluctant to take part in the new-round contract when it started in 1991⁸⁴.

In the process of the contract system reform, the situation of short-term profit and long-term loss generally existed. For instance, in 1987 when the first year of implementing the contract responsibility system, the total output of industrial enterprises across the whole country increased 11.13%, sales increased 17.11%, tax increased 9.19%, loan repayment increased 31%, and profit retention increased 11%. And in 1989, the profit reduced 18.18%, cost increased 22.14%, and losses even doubled⁸⁵.

Although the contract system separated management from ownership provided autonomy for enterprises in certain period by legal form, it did not change the basic relationship between government and state-owned enterprises. The separating ownership from management of contract responsibility system did

⁸⁴ Ibid.

⁸⁵ State Economy and Trading Committee edit, 2000, *The Fifty Years of China's Industry (1985-1992)*, China Economy Press, Beijing, P. 2690

not clearly defined the rights and obligations between the State and enterprises by using specific standard, instead, most contracts were signed through negotiation. Which would easily lead to rent-seeking problem due to the absence of owner and moral risk. In addition, this system is unstable and had to resign the contract every three year, which caused large costs and resources were wasted during frequent negotiations.

In practice, government still could interfere with enterprises, and the management would be taken back in the case of poor performance of enterprises or reduced profits by higher wages. On the other hand, giving up management and back to the old system would be the first choice of enterprises when they could not fulfil the contract. However, the government had to decentralize powers and separate management from ownership again if it were the case that enterprises lack of energy and national revenue decline. Therefore, the contract system reform got stuck in the circle of decentralization – centralization -- decentralization.

3.2 The Asset Management Responsibility System

The asset management responsibility system attempted to reconstruct micro-economic base by absorbing other reforms' experiences. This system allowed the existence of private economy in certain areas, and enterprises would get rid of administrative subordinating relationship and become independent economic participant. The asset management responsibility system reform took the enterprises management issues as the core task, and was divided in three steps: first, the department in charge set up the evaluation committee to select enterprises managers through open competition based on assets in hand; second, the selected managers would sign the contract with the department as the legal person of enterprises, and had the autonomy to create or close relevant organizations and internal distribution; third, the committee would reselect the next manager at the end of the term, and the predecessor would be praised or blamed according to their performance. This type of reform draw a lot of attention and achieved some effects in practice, however, it could not be

accepted widely because by comparing with other reforms, the requirements for managers is high, and they would receive less benefits and more supervisions⁸⁶.

3.3 Changing Management System

In 1991, the National Congress approved the Ten Years Planning of National Economic and Social Development and the Eighth Five Year Planning Outline that was proposed by the Seventh Plenary Session of the Thirteenth Central Committee of the CPC. This outline required separating government from enterprise, separating ownership from management, making most SOEs independent market entity with self-management and responsible for its own profits and losses, exploring multi-type of public economy, and establishing a complete and efficient SOE management and operation system⁸⁷.

In 1992, the State Council issued the Regulations on Changing Management System of State-owned Industrial Enterprise. This regulation clearly required guaranteeing enterprise autonomy, speeding up changing management system, and making enterprise entirely independent market entity. Specifically, first, confirmed the task of changing management system; second, confirmed 14 management autonomy, including decision-making power, pricing right, sales right, importing and exporting right, and investing right etc.; third, confirmed the obligation that enterprise should responsible for its own profits and losses; and fourth, standardized the structure adjustment of enterprise. Besides, this regulation also proposed principle requirements on changing government functions⁸⁸.

According to statistics, there were 766 pilot enterprises changed their management system in 1991, and over 2000 enterprise changed their

⁸⁶ 章迪诚。2006。《中国国企改革历程》。北京：中国工人出版。Dicheng Zhang, 2006. *The History of China's State-owned Enterprise Reform*. Beijing: China Worker Press. P. 304.

⁸⁷ According to the Ten Years Planning of National Economic and Social Development and the Eighth Five Year Planning Outline.

⁸⁸ According to the Regulations on Changing Management System of State-owned Industrial Enterprise.

management system in any means by then end of 1992⁸⁹.

3.4 Theories

With a goal for the transition to the modern enterprise system, the reform of separating control from ownership achieved significant effects in practice. This reform confirmed the relationship of profits distribution between government and enterprises to some degree, generalized ideas of self-management, responsibility for profit and loss and property right. Besides, some entrepreneurs also grew up with market and modern management acknowledgement in this period.

The theory of separating control from ownership expected that enterprises would become independent market participant by giving managers self-management under the original property relationship. Differed from the method of motivating managers and workers by benefits in decentralizing powers and giving up profits period, the reform in this period attempted to achieve management objectives by promoting managers status⁹⁰. The rights and obligations of government and enterprises were confirmed through direct negotiation, and managers could obtain more space for self-management without excessive intervention from government. In the area of profit distribution, the department in charge could collect shared revenue by giving up certain degree management and enterprises could get promised benefits by increasing profits. Eventually, a profit distribution relationship with common risks and interests has been established.⁹¹

The theory of property right reform, advocated by Hua Sheng, tried to rebuild the micro base of economy by dealing with property right. Hua believed that the

⁸⁹ State Economy and Trading Committee edit, 2000, *The Fifty Years of China's Industry (1985-1992)*, China Economy Press, Beijing, P. 2689 – 2690.

⁹⁰ 章迪诚。2006。《中国国企改革历程》。北京：中国工人出版。Dicheng Zhang. 2006. *The History of China's State-owned Enterprise Reform*. Beijing: China Worker Press. P. 304.

⁹¹ 戴园晨，黎汗明。1988。“工资侵蚀利润 —— 中国经济体制改革中的潜在风险”。经济研究 1988 年第六期。Yuanchen Dai, Hanming Li. 1988. “Wages affect Profits – The Potential Risks of China's Economic Reform”. *Economic Research* 1988 Vol. 6.

state-owned enterprises reform would fail without breaking the original property right relationship.⁹²

In addition, as the most important human resource, the entrepreneurs' talent has attracted many attentions as well. Although the role reversal between government officer and enterprise manager happened frequently in the condition of a clear line between the functions of government and enterprises, many managers have transformed from executors of government decisions to professional managerial staff through competitive selection and promotion of their status.

3.5 Comments

All of problems emerged during the reform of separating control from ownership, such as bargain mechanism, soft budget and enterprise activity short-termism, were resulted from the property right relationship under public economy. This reform was limited to separation of enterprise management from public ownership, and enterprises could not operate independently and response for profit and loss completely.

As the superior of enterprises, the government has the power of examining, appointing and dismissing managers. In the practice of this reform, the bargain mechanism was used to confirm rights and obligations between government and enterprises. In this condition, enterprises would do anything possible to realise that their operating task could be achieved easily; government department would try to push the amount of operating task up, then they would form an alliance to request lower taxation and profit-delivery from tax and financial departments. The operating performance of enterprises depends on other factors rather than management, thus the unfair punishment and treatment would always exist.

⁹² 华生。1988。“中国改革十年：回顾，反思和前景”。*经济研究* 1988 年第十一期。Sheng Hua, 1988. “Ten Years of China's Reform: Review, Rethink and the Future”. *Economic Research* 1988 Vol. 11.

As an independent stakeholder, enterprises always attempt to obtain more retained profit by using information advantages actively. The situation of high salary but low profit would widely occur as managers and workers could ally easily. Besides, enterprises would ask more investment to produce more and get more profit without concerning loss. At last, these situations would cause both expansion of investment and consumption, which lead to failure of macro-control and the government had to innervate again.

The reform of separating control from ownership only gave enterprises partial management, which could not change their subordinated status. The government department could influence the operating of enterprises directly or indirectly according to their own needs, and the managers of enterprises only keen to emphasize on short-term interest rather than long-term development and innovations. Therefore, not surprisingly that the state-owned enterprises that had large scale of assets but low profitability failed to compete with private and foreign enterprises.

4. The Period of Establishing Modern Enterprise System (1993 – Present)

4.1 The Process

From “Fang Quan Rang Li” to “Liang Quan Fen Li”, then to “establishing modern enterprises system”, the state-owned enterprises reform had entered the core area progressively – the property right reform. The practice in separating control from ownership period provided some vital conditions for latter reforms, for instance, the non-public sector had emerged, the idea of property rights had been generalized and the economy system was transferring from planned to market rapidly. The reform aimed at establishing modern enterprises included the joint-stock system, strategic restructuring of state-owned enterprise and setting up the national state-owned assets management mechanism.

4.1.1 The joint-stock system reform

The earliest attempt to establish a joint-stock system began in the form of issuing employee shares. The establishment of Beijing Tianqiao and Shanghai Feili Acoustics issuance of shares in 1984 marked the official start of pilot in the joint-stock system. After the State began to adopt a tight monetary policy in the latter half of 1985, pilots in raising funds through share issuance began across the whole country with a view to solve the problem of insufficient working capitals for enterprises⁹³. Although the reform of joint-stock system was already a popular concept from 1985 to 1986 and pilots were conducted in different places, and the final results were unclear and new pilots were not carried on until 1987 when the Thirteenth CPC Congress was convened. The main effect of early reform of the joint-stock system was the establishment of new channels for financing. Since the holders of shares issued by most of the enterprises were able to repay the initial loan and accrued interests outright when they reached maturity, they seemed like hybrids of stocks and bonds. Such a fake joint-stock system actually became a way for enterprise to increase the incomes of their employees. Moreover, the financial market then lacked the necessary conditions, and the early reform of joint-stock system became a merely formality in the end.

The establishment of Shanghai and Shenzhen Stock Exchange in 1990 and 1991 marked that the state-owned enterprises reform has entered a new stage. In 1992, Deng Xiaoping approved the joint-stock experiments during his South Tour, and the National Structural Reform Commission⁹⁴ issued the *Measures for the Pilot Reform of Joint-stock Enterprises*⁹⁵ in May of the same year, which promoted the joint-stock system reform actively. At the end of 1992, the number of state-owned enterprises involved in joint-stock system reform developed to about 3700, and 92 of them were listed in the stock exchange⁹⁶. In 1993, The *Company Law*⁹⁷ was promulgated, which provided legal foundations for further reforms.

⁹³ Xiaoming Zhang, 1988,

⁹⁴ 国家体制改革委员会。National Structural Reform Commission.

⁹⁵ 股份制改革试点办法。Measures for the Pilot Reform of joint-stock Enterprises.

⁹⁶ 董辅弼。1995。《中国国有企业改革研究》。北京：中国人民大学出版社。Furen Dong. 1995. *The Research on China's State-owned Enterprises' Reform*. Beijing: China People's Press.

⁹⁷ 公司法。Company Law. 1993.

In 1993, the Third Plenary Session of 14th CPC Congress issued the *Decision on Issues Concerning the Establishment of a Socialist Market Economic System*⁹⁸, which required setting up a modern enterprise system with its corporate structure, governance, and management based on the principle of corporatization, and which provided provisions for full separation of the state's exercise of ownership from the enterprise's exercise of legal person property rights⁹⁹. In 1994, according to the notice, there were 100 large and medium-sized enterprises were selected to carry out the pilot on the establishment of the modern enterprise system. Pilots were also conducted in over 2,000 enterprises by various local governments and departments. By the end of 1997, 93 of 100 enterprises had transformed to enterprise form; and 69 of them were proprietorship, 17 were multi-ownership, and 10 were state-controlled. In terms of local enterprises, 1989 enterprise had completed enterprise form transformation. Through assets settlement and defining property right, these pilot enterprises established the investor relationship between the government and enterprises, and initially establishing a standard corporate governance structure by setting up the board of shareholders, board of directors, and board of supervisors.

Though the aim of the joint-stock system reform was to achieve the goal of establishing the modern enterprise system, it failed to solve the fundamental problems such as the mixed functions of the government and enterprises and the absence of owners or establish an efficient corporate governance structure. Competition form private and foreign-funded economies fully revealed the institutional weak points of SOEs which resulted in pervasive poor performance and losses. As losses continued, the State's financial burden constantly became heavier, promoting it to put forward suggestions on the strategic restructuring of SOEs aimed at resolving their various difficulties.

⁹⁸ 关于建立社会主义市场经济若干问题的决定。Decision on Issues Concerning the Establishment of a Socialist Market Economic System. 1993.

⁹⁹ Ibid.

4.1.2 Strategic restructuring of state-owned enterprises

Faced with continuous loss of uncompetitive state-owned enterprises and severe financial pressure, the government decided to bail them out by strategic restructuring. Since 1995, the state-owned enterprise reform expanded to the whole state-owned economy from the initial pilot scheme. In September 1995, the Fifth Plenary Session of 14th CPC Congress put forward the policy of strategic restructuring of state-owned enterprises and the strategy of 抓大放小¹⁰⁰(Zhua Da Fang Xiao)¹⁰¹; and the Fourth Plenary Session of 15th CPC Congress required strategic adjusting of state-owned economic sector and structure¹⁰². Due to the general problems such as lack of fund, overstaffing and heavy social burdens, some enterprises adopted the methods of seeking financing by listing on the stock exchange and restructured themselves in the process. In 1997, the government targeted to bail state-owned enterprises out within three years and accelerate strategic restructuring¹⁰³. The sector of state-owned economy was narrowed to industries involving national security, natural monopoly industries, industries providing public products and services and core enterprises in pillar and high-technology industries.

4.1.3 Setting up the national state-owned assets management mechanism

In November 2002, the 16th CPC Congress proposed to set up national state-owned assets management mechanism and to establish relevant organizations in both central and local level. According to the report of this congress, the basic system are: first, insisting on public ownership; second, establishing both central and local state-owned enterprise supervision and management departments; third, the State enjoys owner's interests by law as investor; fourth, to industries relating national security and economic lifeline, the central government plays the role of investor on behalf of the State, and local

¹⁰⁰ 抓大放小。Concentrated on major enterprises and leaves minor ones to fend on themselves.

¹⁰¹ 中国共产党十四届五中全会报告。The Report of the Fifth Plenary Session of 14th CPC Congress. 1995.

¹⁰² 中国共产党十五届四中全会报告。The Report of the Fourth Plenary Session of 15th CPC Congress. 1999.

¹⁰³ The target was put forward in the First Plenary Session of 15th CPC Congress, 1997.

government plays the role of investor to other State-owned assets.

The National State-owned Assets Supervision and Management Commission¹⁰⁴ was established in March 2003, which supervise and regulate large-scale state-owned enterprises involving in national security, infrastructures and natural resources as investors. In June 2006, each province established relevant organizations, and this mechanism was applied to infrastructure-city level¹⁰⁵ at the end of 2007. Until present, the National State-owned Assets Supervision and Management Commission issued sixteen regulations and forty regulatory documents concerning restructuring of enterprises, assignment of property, assets evaluation, operating examination and financial supervision, based on *The Tentative Regulations of State-owned Assets Supervision and Management*¹⁰⁶. Meanwhile, local state-owned assets supervision and management authorities also issued about 1000 relevant rules and regulations in succession¹⁰⁷. The basic regulatory system of state-owned assets supervision and management has thus been established.

4.1.4 Latest reform plan

In November 2013, the Third Plenary Session of the Eighteenth Central Committee of the CPC announced the new plan for China's SOEs. According to this plan, a series of factor-price reforms will be undertaken, the subsidies that SOEs have enjoyed will be reduced, a State Capital Operating and Investment Companies will be established, and the partial privatization plan, called mixed ownership reform will be conducted.

The idea of mixed ownership was popularised in SOEs' reform in 1990s, when many central SOEs listed a minority of their shares on stock exchange to attract

¹⁰⁴ 国有资产监督管理委员会。National State-owned Assets Supervision and Management Commission.

¹⁰⁵ A Chinese administrative level which between province and county.

¹⁰⁶ 国有资产监督管理暂行条例。Tentative Regulations of State-owned Assets Supervision and Management.

¹⁰⁷ Unirule Institute of Economics. 2011. *The Nature, Performance, and Reform of the State-owned Enterprises*. See link: <<http://www.unirule.org.cn/>>.

private capital. The new mixed ownership requires the withdrawal of SOEs from sectors with healthy and competitive environment, changing governance structure of SOEs, encouraging private investors to take a controlling interests, and allowing employees to hold shares. At the same time, SOEs have to maintain a controlling and influential role in the overall economy.

In April 2014, the State Council listed 80 projects in State-dominated sectors to private investors, including transportation infrastructure, information infrastructure, clean energy and traditional energy projects. In the same month, the Ministry of Finance announced plans to open China's munitions industry for private investments. Three months later, the State-Owned Assets Supervision and Administration Commission announced to implement pilot scheme six central SOEs, two of which — Sinopharm and China National Building Materials Group — will be open to ownership diversification. At the provincial level, many local governments have responded to the call of the central government. By September 2014, over 20 provinces, spanning most of the major municipalities (including Beijing, Shanghai, Guangdong and Chongqing), had announced concrete implementation programs involving the potential listing or selling off of assets in up to 70% of the provincial SOEs by 2017¹⁰⁸.

However, the language of this reform plan is vague, which leaves ample room for interpretation and more detailed implementation. In addition, the list of sectors that full of healthy and competitive environment did not promulgated, giving no indication where the SOEs should withdraw. Therefore, many observers continue to question the effect of this reform in the face of various incumbent interests, including political connected elites.

4.2 Theories and Arguments

In this period, the research in state-owned enterprise area mainly focused on the question about the need of solving current state-owned enterprises' problem

¹⁰⁸ Daniel Dusek., Peter X. Huang, Andre Zhu. *China M&A: Reform Plan Promotes Mixed Ownership of State-Owned Enterprises*. Skadden's 2015 Insights – Global M&A. January 2015.

through property right reform, and the question of how to implement it.

Some scholars represented by Yifu Lin believed in the importance of perfect information and competition mechanism of market¹⁰⁹. Since the asymmetric information and responsibility between managers and owners, a relevant mechanism should be introduced to prevent potential opportunism activities of agent. To state-owned enterprises, the managers would accept both the subsequent supervision based on average profit, and the antecedent supervision by internal management system. These scholars preferred to solve the problem of motivation and supervision of state-owned enterprises' managers, to reform in property right area.

Weiyang Zhang thought that, the state-owned enterprise reform should solve the problems of selection and motivation of managers, and the selection is the key issues above all. To solve this problem, the residual claim rights should be corresponding to residual control rights, and give it to those who have management talent and information advantages.¹¹⁰

4.3 Comments

The financial pressures are always the major reason for China's state-owned enterprises reforms. The initial state-owned enterprises reform began in the period of continuous deficit budget, the next phase joint-stock system reform aimed at providing funds for enterprises' development, and the strategic restructuring resulted from central finance could not afford state-owned enterprises' loss any more. However, as the most actively implemented reform, establishing national assets management mechanism deviated from the former path.

¹⁰⁹ 林毅夫。1997。“充分信息与国有企业改革”。《中国经济信息》1997年第十二期。Yifu Lin. 1997. “The Perfect Information and State-owned Enterprises Reform”. *China Economic Information* 1997 Vol. 12.

¹¹⁰ 张维迎。1996。“中国国有企业何处去？”。《经济社会体制比较》1996年第一期。Weiyang Zhang, 1996. “Where Should China's State-owned Enterprises Reform Go?”. *Comparative Research on Economic and Social System* 1996 Vol. 1.

The joint-stock system reform expected that enterprises could transfer operating mechanism and promote productivity by confirming the property right and management system of enterprises.¹¹¹ Formally speaking, state-owned enterprises could obtain self-management by avoiding direct intervention from government department through joint-stock system reform. However, as the shareholders of state-owned enterprises, government department still could influence the operating by all means, and the self-management could not be achieved satisfactorily. Though the joint-stock system reform did not promote enterprises' productivity and give them real self-management, it did provide foundations for next stage reforms by clearing property right relationship.

The goal of the principle of strategic restructuring state-owned enterprises -- focusing on major enterprises and leaves minor ones to fend on themselves, is to ease the burden and narrow the scope of state-owned enterprises. In practice, most minor enterprises were privatized to reduce financial pressures, and performed well due to both the owner and manager understood relevant market comprehensively. The scope of state-owned enterprises was limited to strategic and monopolist industries as a result of restructuring reform. However, with the rapid development of non-public economy, state-owned enterprises still faced challenges and pressures from private and foreign enterprises. Then the government put forward the task of "bail out within three years", and the main method to achieve it was to separate good assets from one or many different enterprise, then form a new enterprise with those assets and list it on stock exchange, and the original overstaffing and bad assets remain in the parent company. This reform was just simple separation and combination of original assets, which did not promote enterprises' profitability eventually.

If the strategic restructuring of enterprises could have lasted, the private economy could have replaced state-owned economy as mainstream of market progressively, and economic system reform would have been basically completed. However, the establishment of the national state-owned assets

¹¹¹ 郭克莎。1995。“国有产权制度改革模式和途径”。*经济研究* 1995 年第一期。Keshu Guo. 1995. "The Models and Approaches of State Ownership System Reform". *Economic Research* 1995, Vol. 1.

management mechanism, which enhanced state-owned economy power, has changed the situation. From the perspective of property right, the move to take the central and local state-owned assets management organizations as investors did not clear the property right, and the state-owned assets and its profits were annexed without supervision and regulation for the assets management mechanism. From the perspective of operating, the profitability of state-owned enterprises has been promoted to some degree, but it was no doubt that most achievements of them were based on low price or even free productive factors. From the perspective of competition, state-owned enterprises monopolized some industries in a long term, and freeze out even annexed other competitors by administrative power, which harmed the market severely and blocked the development of economy.

5. Policies that Drove the Reform of State-owned Enterprise

Research and analysis has played an important role in the course of the reforming SOEs. However, the reform process as a whole actually been implemented by the government. The decisions, polices, laws and regulations made by government institutions have directly influenced the reform process, and have determined the direction of the reform of SOEs to a great extent. From top design to specific areas, all these polices have played an decisive roles on the modes of SOEs reform. In the following section, some of the important polices, laws and regulations during the reform of SOEs will be reviewed in order to shed light on the forces which drove the reform process.

5.1 Establishment of the basic State policy on reform and opening up at the Third Plenary Session of Eleventh Central Committee of the CPC

Under traditional planned economy, the State comprehensively controlled the economy by planning, the production efficiency was poor, and lack of social goods. In rural areas, farmers had no incentives to work hard due to the state monopolized on purchase and marketing through collective modes of production. In urban area, as the subordination of government departments SOEs enjoyed no

management autonomy at all. Government departments controlled all aspects of enterprises' business behaviors, including madding production plan, allocating resources needed for production, and allocating funds and financial resources. Under this kind of planned economy, the producers in both rural and urban areas generally lacked enthusiasm for work. Resources were allocated through plans but not the market, efficiency was low, and the price mechanism was totally distorted. On the eve of the reform, the national economy was close to collapse and it was difficult to maintain the traditional planned economy any more. To this severe situation, the Third Plenary Session of the Eleventh Central Committee of the CPC issued the *Bulletin of the Third Plenary Session of the Eleventh Central Committee of the CPC*, which required to establish a basic state policy on reform and opening up, and removed the political barriers for industrial and agricultural reforms¹¹².

According to the bulletin, the main goal of the reform was to realize Four Modernizations, and focused on agriculture and the reform of industrial enterprises was still at a pilot stage. Due to a lack of piratical experiences, the main reform approach at the beginning could be described as “crossing the river by touching the stone”, and the reform was gradually undertaken after a serious of experiments and adjustments based on experience. In terms of agricultural reform, the Third Plenary Session of the Eleventh Central Committee of the CPC decided to discuss and pilot the *Decision of the Central Committee of the CPC on Several Issues concerning Accelerating Agricultural Development (Draft)*¹¹³ and the *Regulations on the Work of Rural People's Communes (Tentative Draft)*¹¹⁴. In terms of industry, the main reform approaches were decentralizing power and institution, cutting tax and sharing profits.

With sticking to the planned economy and focusing on the reform of

¹¹² 十一届三中全会公报。The Bulletin of the Third Plenary Session of the Eleventh Central Committee of the CPC, 1978.

¹¹³ 中共中央关于加快农业发展若干问题的决定（草稿）。The Decision of the Central Committee of the CPC on Several Issues concerning Accelerating Agricultural Development (Draft), 1979.

¹¹⁴ 人民公社工作条例（暂行稿）。The Regulations on the Work of Rural People's Communes (Tentative Draft), 1979.

decentralizing powers and giving up profits of SOEs, the State Council promulgated five documents including: *Several Provisions on Expanding the Management Authority of State-owned Industrial Enterprise*¹¹⁵ (the first so-called Ten Articles on Expansion of Autonomy), the *Provisions on the Profit Retention of SOEs*¹¹⁶, the *Interim Provisions on the Imposition of Fixed Assets Tax of SOEs*¹¹⁷, the *Interim Provisions on Elevating the Fixed Assets Depreciation Rates and Improving the Practices in the Use of Depreciation Costs of SOEs*¹¹⁸, and the *Interim Provisions on Acquisition of All Circulating Funds through Credits among State-owned Industrial Enterprise*¹¹⁹. In the following years, the State Council, the State Economic and Trade Committee, the Treasury and other government departments successively issued several policies and regulations to expand the scope of the reform pilot of decentralizing power and giving up profits, such as the *Tentative Measures on the Profit Retention of State-owned Industrial Enterprises*¹²⁰, the *Notice of the State Council on Implementing the Fiscal Management system of "Dividing Revenue and Expenditure between the Central and Local Governments and Holding Each Responsibility for Balancing Their Budget"*¹²¹, the *Interim Measures on Implementing Relevant Documents of the State Council on Expanding the Management Authority of State-owned Industrial Enterprises and Consolidating and Improving the Specific Practices in Expanding the Management Authority of State-owned Industrial Enterprises*¹²², the *Opinions on Several Issues concerning the Implementation of the Economic Responsibility*

¹¹⁵ 关于扩大国有工业企业自主权的若干规定。The *Several Provisions on Expanding the Management Authority of State-owned Industrial Enterprise*, 1979.

¹¹⁶ 国有企业利润上缴条例。The *Provisions on the Profit Retention of SOEs*, 1980.

¹¹⁷ 关于征收国有企业固定资产税的暂行条例。The *Interim Provisions on the Imposition of Fixed Assets Tax of SOEs*, 1980.

¹¹⁸ 国有企业评估固定资产折旧率暂行条例。The *Interim Provisions on Elevating the Fixed Assets Depreciation Rates and Improving the Practices in the Use of Depreciation Costs of SOEs*, 1981.

¹¹⁹ 国有工业企业通过信贷获得流动资金暂行条例。The *Interim Provisions on Acquisition of All Circulating Funds through Credits among State-owned Industrial Enterprise*, 1981.

¹²⁰ 国有工业企业利润留成暂行办法。The *Tentative Measures on the Profit Retention of State-owned Industrial Enterprises*, 1981.

¹²¹ 国务院关于财政管理系统实施中央与地方收支分离的通知。The *Notice of the State Council on Implementing the Fiscal Management system of "Dividing Revenue and Expenditure between the Central and Local Governments and Holding Each Responsibility for Balancing Their Budget"*, 1982.

¹²² 关于实施国务院关于扩大国有工业企业经营自主权若干文件的暂行办法。The *Interim Measures on Implementing Relevant Documents of the State Council on Expanding the Management Authority of State-owned Industrial Enterprises and Consolidating and Improving the Specific Practices in Expanding the Management Authority of State-owned Industrial Enterprises*, 1982.

*System in Industrial Production*¹²³, the *Interim Provisions on the Implementation of the Economic Responsibility System in Industrial Production*¹²⁴, the *Several Provisions on the Measures for State-owned Public Transport Enterprises in Implementing Profit Retention and Complete Responsibility for Profits and Losses*¹²⁵, and the *Tentative Measures on Replacing Profits with Taxes of SOEs*¹²⁶, etc.

Five years after the Third Plenary Session of the Eleventh Central Committee of the CPC, the reform in rural areas has made tremendous achievements. The successful experience and rural economic development provided favorable conditions for the focus of reform to be transferred into urban areas. In 1984, the Third Plenary Session of the Twelfth Central Committee of the CPC adopted the *Decision of the CPC Central Committee on Economic Restructuring*¹²⁷, which evolution of reform from rural areas to urban areas through stressing the necessity and urgency of accelerating economic restructuring.

The traditional theory believed that market economy is something unique to capitalism, and the planned economy is the foundation of socialist economy. This theory has been challenged by China's reform experiences. The Third Plenary Session of the Twelfth Central Committee of the CPC indicated that "commodity economy is an insurmountable stage in social economic development, and the socialist economy in our country is planned commodity economy based on public ownership"¹²⁸. The Third Plenary Session of the Twelfth Central Committee of the CPC indicated that the core of the reform is to enhance enterprises' vitality, and most attentions should be paid to expanding

¹²³ 工业生产实施经济责任制若干问题的意见。The Opinions on Several Issues concerning the Implementation of the Economic Responsibility System in Industrial Production, 1982.

¹²⁴ 工业生产实施经济责任制暂行条例。The Interim Provisions on the Implementation of the Economic Responsibility System in Industrial Production, 1983.

¹²⁵ 关于国有运输企业实施利润留成自负盈亏办法的若干规定。The Several Provisions on the Measures for State-owned Public Transport Enterprises in Implementing Profit Retention and Complete Responsibility for Profits and Losses, 1983.

¹²⁶ 国有企业利改税暂行办法。The Tentative Measures on Replacing Profits with Taxes of SOEs, 1983.

¹²⁷ 中共中央关于经济重组的意见。The Decision of the CPC Central Committee on Economic Restructuring, 1984.

¹²⁸ Ibid.

enterprises' autonomy¹²⁹.

From 1984 to 1991, the reform of decentralizing power and giving up profits was continued, and a number of policies and regulations were formulated under the theory of separating ownership from management. During this period, the State Council, State Economic and Trade Committee, the Treasury and other government departments enacted following policies, rules and regulations: the *Tentative Measures on the Second Stage of Replacing Profits with Taxes among SOEs*¹³⁰, the *Interim Provisions on Turning All the State Budgetary Investment in Capital Construction from Allocated Funds into Loans*¹³¹, the *Accounting Law of the PRC*¹³², the *Opinions on Deepening Reforms and Improving the Contractual Management Responsibility System*¹³³, the *Interim Regulations on the Contract System of Managerial Responsibility of Industrial Enterprise Owned by the Whole People*¹³⁴, the *Law of PRC on Industrial Enterprises Owned by the Whole People*¹³⁵, the *Law of the PRC on Chinese-foreign Contractual Joint Ventures*¹³⁶, and the *Measures on the Pilots in "Separating of Taxes and Profits, After-tax Loan Replacement and After-tax Contract Execution" Adopted by SOEs*¹³⁷, etc.

5.2 Recognition of the Socialist Market Economic System at the Sixteenth Party Congress (1992)

The reform from 1978 to 1991, the State Council and other government departments decentralized as much powers as possible to the enterprise while

¹²⁹ Ibid.

¹³⁰ 国有企业第二阶段利改税暂行办法。The Tentative Measures on the Second Stage of Replacing Profits with Taxes among SOEs, 1984.

¹³¹ The Interim Provisions on Turning All the State Budgetary Investment in Capital Construction from Allocated Funds into Loans, 1984.

¹³² 中华人民共和国会计法。The Accounting Law of the PRC, 1984.

¹³³ 关于深化改革加快管理责任制建设的意见。The Opinions on Deepening Reforms and Improving the Contractual Management Responsibility System, 1985.

¹³⁴ 全民所有制工业企业承包责任制暂行条例。The Interim Regulations on the Contract System of Managerial Responsibility of Industrial Enterprise Owned by the Whole People, 1986.

¹³⁵ 中华人民共和国全民所有制工业企业法。The Law of PRC on Industrial Enterprises Owned by the Whole People, 1988.

¹³⁶ 中华人民共和国合资企业法。The Law of the PRC on Chinese-foreign Contractual Joint Ventures, 1989.

¹³⁷ The Measures on the Pilots in "Separating of Taxes and Profits, After-tax Loan Replacement and After-tax Contract Execution" Adopted by SOEs, 1990.

sticking to the planned economic system to enhance enterprises' vitality. However, this reform could not solve the fundamental problems of SOEs. On one hand, the decentralizing model characteristics by dealing with problems on an *ad hoc* basis has put SOEs into a vicious circle of either too much control or too much chaos. On the other hand, most SOEs still felt they had too little autonomy with heavy social burdens and the restriction of economic system. Under this situation, a deeper reform was being introduced. In 1992, the Report of the Fourteenth CPC Congress issued the *Speed Up the Pace of Reform and Opening Up and Modernization Construction, and Achieve a Bigger Victory in the Cause of Socialist with Chinese Characteristics*, which officially pronounced that "the aim of China's economic restructuring is to build a socialist market economic system"¹³⁸. The concept of socialist market economic system greatly influenced the direction of China's reform.

In 1992, the tour of Xiaoping Deng laid important ideological foundation for the establishment of the legal political status of the socialist market economic system. In his speech, Deng held that the standard on reform and opening up is not the distinction of what is capitalism and what is socialism but "whether it is beneficial to the development of socialist productive forces, whether it helps increase the overall national strength of the socialist country, and whether it brings about better living standards of the people"¹³⁹. He also indicated that the objective model for reform was the socialist market economy. Later in 1993, the phrase "socialist market economy" was written into the Constitution to describe China's basic economic system.

To speed up SOEs management system reform, accelerate the development and cultivation of the socialist market system, and accelerate the improvement macro economic adjustment mechanism, the State Council enacted the *Regulation on the Transformation of the Management Mechanism of Industrial Enterprises Owned by the Whole People*, which stated that "Objectives for the

¹³⁸ The Speed Up the Pace of Reform and Opening Up and Modernization Construction, and Achieve a Bigger Victory in the Cause of Socialist with Chinese Characteristics.

¹³⁹ Xiaoping Deng, 1992, The Speech of South Tour.

transformation of the management mechanism of enterprises are to make enterprises adapted to market demands, change enterprise into commodity producing and managing entities that conduct independent business operations, assume sole responsibility for their own profits and losses and have self-development and self-restraint abilities, and also turn enterprises into enterprises legal persons that can independently enjoy civil rights and assume civil obligations.”¹⁴⁰

In 1994, the State Economy and Trade Committee issued *the Notice on Several Opinions concerning the Transformation of Management System of SOEs and the Establishment of a Modern Enterprise System*¹⁴¹, and began pilot reforms aimed at creating a modern enterprise system. By undertaking the reform of establishing a modern enterprise system, SOEs have gradually become independent market entities.

In terms of property structure, the State Council issued the *Regulations on Supervision and Management of the Properties of SOEs* in 1994, which specified that the “property of SOEs belongs to the State and that enterprise shall engage in independent operations over the property for which the State has granted it rights of possession, use and lawful disposal; the State Council shall exercise ownership over the property of enterprises in a unified way on behalf of the State and adopt level-to-level managements and supervision.”¹⁴²

5.3 Decision of the Fourth Plenary Session of the Fifteenth Central Committee of the CPC on the Strategic Adjustment in State-owned Economy (1999)

In 1999, the Fourth Plenary Session of the Fifteenth Central Committee of the

¹⁴⁰ 全民所有制工业企业管理机制转型条例。The Regulation on the Transformation of the Management Mechanism of Industrial Enterprises Owned by the Whole People, 1993.

¹⁴¹ 关于国有企业管理机制转型建立现代企业制度若干意见的通知。The Notice on Several Opinions concerning the Transformation of Management System of SOEs and the Establishment of a Modern Enterprise System, 1994.

¹⁴² 国有资产监督与管理条例。The Regulations on Supervision and Management of the Properties of SOEs, 1994.

CPC adopted the *Decision of the Central Committee of the CPC concerning Several Major Issues in the Reform and Development of SOEs*. This decision set out the short-term and mid-long term objectives for SOEs' reform and development. That is, "it is proposed that within about three years, most of the large and medium-sized state-owned loss-making enterprises should have been removed from their predicament, and a modern enterprise system for the bulk of large and medium-sized state-owned key enterprises should have been established initially by the end of the century... By 2010, the strategic adjustment and reorganization should be largely completed to form a relatively complete modern enterprise system, ...so that state-owned economy may play a dominant role in the national economy in a better way."¹⁴³

In the process of market-oriented reform over the past 20 years, SOEs have met with more and more competition in the market. Due to the institutional burdens and their own operational inefficiencies, SOEs were defeated in market competition. As a result, more and more of them became to loss incurring. With a view to reversing the situation, the SOEs had to retreat from competitive sectors and fell back on monopoly, fundamental and resources sectors. With respect to institutional construction, efforts were made to further improve the modern enterprise system, explore patterns of state-owned assets management, focus on the restructuring of major enterprise, and leave minor ones to fend for themselves, and enliven small and medium-sized SOEs. In 1999, the *Opinion concerning Several Issues on the Selling of Small SOEs*¹⁴⁴ issued by State Economy and Trade Committee, the Treasury and the People's Bank of China; the *Opinions concerning Several Issues on Debt-for-equity Swap*¹⁴⁵ issued by State Economy and Trade Committee and the People's Bank of China; the *Provisions on the Free Transfer Formalities of State-owned Assets Completed by Enterprises*¹⁴⁶ and other

¹⁴³ 中共中央关于改革与发展国有企业若干重大问题的决定。The Decision of the Central Committee of the CPC concerning Several Major Issues in the Reform and Development of SOEs, 1999.

¹⁴⁴ 关于出售小型国有企业的意见。The Opinion concerning Several Issues on the Selling of Small SOEs, 1999.

¹⁴⁵ 关于债券转股权若干问题的意见。The Opinions concerning Several Issues on Debt-for-equity Swap, 1999.

¹⁴⁶ 自由转让国有资产条例。The Provisions on the Free Transfer Formalities of State-owned Assets Completed by Enterprises, 1999.

policies were formulated under such a background.

5.4 Provisions of the Sixteenth Party Congress on the Reform of the State-owned Assets Management System (2002)

The establishment of modern enterprise system of large and medium-sized enterprise and the implementation of strategically adjusting state-owned economy provided the condition for SOEs to get out of trouble. In 2002, the state-owned economy continued to concentrate toward to large and medium-sized enterprise and made remarkable achievements in oil, petrochemical, power, telecommunications, metallurgy, nonferrous metal, railway, defense and other key major sectors. Because all these sectors had natural monopoly features and political protections provided by government departments, SOEs soon began to expand and make excessive profits in these sectors. Quite a number of SOEs implemented enterprise system reform through listing on the stock market, setting up China-foreign joint ventures, mutual shareholding and the joint-stock system, and got ready for the establishment of the State-owned assets management system.

In 2002, the *Report of the Sixteenth Congress of the CPC* put forward the new requirements for the framework of the state-owned assets management system, which indicated that “on the precondition of upholding state ownership, the state should establish a state property management system under which the central government and local governments perform the responsibilities of investor on behalf of the state respectively, enjoying owner’s equity, combing rights with obligations and duties and administering assets, personnel and other affairs. The central government should represent the state in performing the functions as investor in large SOEs, infrastructure and important natural resources that have a vital bearing on the lifeline of the national economy and state security while local governments should represent the State in performing the functions as investors with regard to other State property.”¹⁴⁷ However, this

¹⁴⁷ 中国共产党十六大报告。The Report of the Sixteenth Congress of the CPC, 2002.

report did not provide clear provisions on distinguish the function in the supervision of State-owned assets from the function in the management of State-owned assets and even mixed them up, it left behind the hidden dangers of the “absence of a clear line between management and operation”, and “the government serving as both referee and athlete”.

In March 2002, the State-owned Assets Supervision and Management Commission (SASAC) was officially established as a special agency under the State Council, and performs the duty of investor on behalf of the State. In the same year, the State Council adopted the *Interim Regulations on the Supervision and Management of State-owned Assets*¹⁴⁸ to provide a policy and legal basis for SASAC to supervise and manage SOEs. The State-owned assets supervision and management mechanism was finally established with the successively issuance of several documents, including the *Notice on Issuance of the Name of List of the Enterprises under the State-owned Assets Supervision and Administration Commission of the State Council which Perform the Functions of Investors*¹⁴⁹, the *Interim Measures for Assessment of the Operational Performance of Persons in Charge of Central SOEs*¹⁵⁰, the *Notice concerning the Opinions of the State-owned Assets Supervision and Administration Commission about Regulating the Work Relating to the Restructuring of SOEs*¹⁵¹, the *Interim Measures of the Management of the Transfer of the State-owned Property Right of Enterprises*¹⁵² and other policies and regulations.

The original purpose of setting up of SASAC was to equip the huge amount State-owned assets with an investor, which could perform the duty of investor

¹⁴⁸ 国有资产监督与管理暂行条例。The Interim Regulations on the Supervision and Management of State-owned Assets, 2002.

¹⁴⁹ 关于发布以国务院国有资产管理委员会名义履行投资人身份企业名单的通知。The Notice on Issuance of the Name of List of the Enterprises under the State-owned Assets Supervision and Administration Commission of the State Council which Perform the Functions of Investors, 2002.

¹⁵⁰ 国有企业负责人绩效评估暂行办法。The Interim Measures for Assessment of the Operational Performance of Persons in Charge of Central SOEs, 2002.

¹⁵¹ 关于国有资产委员会重组国有企业工作的通知。The Notice concerning the Opinions of the State-owned Assets Supervision and Administration Commission about Regulating the Work Relating to the Restructuring of SOEs, 2002.

¹⁵² 国有企业转让国有资产暂行管理办法。The Interim Measures of the Management of the Transfer of the State-owned Property Right of Enterprises, 2002.

and enjoy the rights and interests of owner on behalf on the State under the authorization of the central government and local governments. From the legal perspective, as the investor, the SASAC should be a civil entity and have the same legal status as SOEs and other civil subjects. However, the facts showed that the SASAC is a typical administrative subject and its scope far beyond that of civil entity. Although SOEs could avoid most administrative interventions from government departments, obtain more administrative protections, and get out of trouble by using monopolistic privilege, the problems of long-term absence of a clear line between then functions of the government and enterprise, and low production efficiency still could not be solved. In 2008, the *Law of the State-owned Assets of the PRC*¹⁵³ was approved the National Congress, it not only standardized the state-owned assets supervision and management mechanism to some degree, but also solidified the existing irrational mechanisms which have become obstacles to further reform in the future.

¹⁵³ 中华人民共和国国有资产法。The Law of the State-owned Assets of the PRC, 2008.

CHAPTER THREE: THE THEORIES AND ARGUMENTS ABOUT CHINA'S STATE-OWNED ENTERPRISES REFORM

The reform of China's SOEs is not only one of the most important but also most difficult one within China's whole economic system reform, and attracted many attentions from both public and academic areas from the very beginning. There have been various theories and arguments about the reform, from the structure design and strategy of reform to some specific corporate governance issues, all caused heated debates, such as the property structure of SOEs reform, whether the reform should be undertaken progressively or radically, and how to deal with the monopoly issues of SOEs¹⁵⁴. Briefly, the theories and arguments about SOEs reform gone through three stages.

This chapter will review and analysis several leading and popular theories and arguments in each stage comprehensively, to demonstrate mainstream points of view on each side, and to find out how they affect China's SOEs reform and what shortcomings they have.

1. The First Stage

The first stage, which from late 1970s to early 1980s, mainly focus on analyzing the drawbacks of the traditional enterprise system, the cause of the inefficiency of SOEs and the lack of incentive mechanism in order to find out the preferred system for the SOEs. During this period, most scholars¹⁵⁵ agreed that the reform of China's SOEs was inevitable, and the task of the reform was to transform SOEs from subordinate entities under total government control into autonomous economic entities.

For instance, Muqiao Xue indicated that the SOEs reform was the highest priority among all other reforms that require urgent solutions. According to Xue, the

¹⁵⁴ See Yifu Lin. 2001. *State-owned enterprises reform in China*. Hong Kong: China University Press.

¹⁵⁵ Yifu Lin. 2001. *State-owned enterprises reform in China*. Hong Kong: China University Press. P. 7.

objective of the reform was to turn SOEs into grass-roots level operation and management units with genuine economic dynamism¹⁵⁶. Yiwei Jiang suggested that the core of the economic system reform required a change in the state-centered system, and that should be a goal of the economic reform. This was characterized by the role of the state as the basic unit of economic organization responsible for unified management and accounting. However, the reforms did not seek to turn the system into a local government-centered system, where local governments acted as the basic unit of economic organization responsible for unified management and accounting. Instead, the goal was to make the enterprise become the basic economic entity, which can carry out independent business and accounting under the unified leadership and supervision of the state and establish the enterprise-centered management system¹⁵⁷. In addition, Furen Dong added that the reform should aim at changing the status of SOEs from being subordinate grass-root organizations of state administration into relatively independent commodity producers¹⁵⁸.

2. The Second Stage

The second stage, which is in the late half of 1980s, focused on putting forward appropriate methodologies for transforming SOEs from government subordinates with no managerial discretion into independent commodity producers that could enjoy a higher degree of autonomy. The task included finding specific measures to improve the newly introduced experimental institutions, and one of the most important one is the enterprise contracting system. The theories and arguments in this stage concentrated on how to reform the SOEs' micro-level operating mechanism, that is, focused on the measures to be adopted in order to encourage SOEs to become independent commodity producers, which could enjoy enterprise autonomy, assumed responsibility for profits and losses, and exercised self-restraint.

¹⁵⁶ 薛暮桥。1990。《中国社会主义经济问题研究》。北京：北京大学出版社。Muqiao Xue. *Research on China's Socialist Economic Issues*. Beijing: Beijing University Press. P.185.

¹⁵⁷ Yiwei Jiang, "On the Standard of Enterprise", *China Social Science*, Vol. 1, 1980, P. 21-36.

¹⁵⁸ 董辅初。1985。“全民所有制企业本质与地位问题”。董辅初选集。太原：山西人民出版社。Furen Dong. "On the Issues of the Nature and Status of All People Owned Enterprises". *Selected Works of Dong Furen*. Taiyuan. Shanxi People Press. P.295.

These theories and arguments could be divided into two parts, and each of them was represented respectively by Jinglian Wu, who raised the marketization theory, and Yijing Li, who raised the theory of stock. This was called the “Debates between Wu and Li”.

According to Jinglian Wu, the reason why SOEs practiced low efficiency lies in the insufficient growth of the market and lacks of the necessary market price mechanism. In order to reverse this negative situation, price reform should be carried out firstly. Shulian Zhou, Jinglian Wu and Haibo Huang thought the way to improve the system of the whole people’s ownership was to carry on the systematical reform. Systematical reform should both maintain the state ownership and make the enterprise become the relatively independent management body. The current reform must be carried on according to the adjustment and improve the adjustment. In the current situation, the ownership could not be reformed radically, so we must pay attention to fully display the potential of the state-owned economy¹⁵⁹. Wu also indicated that only the market, price fluctuation and benefit changed by it could guide the enterprise to make decisions that ensure the social resources effective use¹⁶⁰.

Yining Li and some other scholars raised the theory that the reason why showed a low efficiency was that SOEs hadn’t been taken as an independent individual in the market. Only if the enterprises pursue the profit maximization and the SOEs become an independent enterprise genuinely, the SOEs could achieve overall efficiency enhancement. These scholars emulated and adopted the developed market mechanism of the Western countries, and believed that SOEs should adopt a shareholding system so that the ownership of the production materials could be diversified. This would require a fundamental separation of the government from business operations, and promote the rational allocation and

¹⁵⁹ Shulian Zhou, Jinglian Wu and Haibo Wang. 1981. “Several Questions on Socialism System of Ownership of the Whole People”. *Qiushi*. Vol 4.

¹⁶⁰ Jinglian Wu, 1992, “Organization Structure, Basic Function and Constraints of the Market Economy”, *Lilun Qianyan*, Vol.4.

organization of production factors¹⁶¹. For instance, Li thought that the reform of SOEs was the key to establish the market economy in China. China must put reform on the traditional system of the whole people's ownership and the traditional collective ownership; adjust the ownership that did not suit the socialism commodity economy development. In a part of the whole people owned enterprises (generally large and medium-sized enterprises in their industries), a stock system of ownership substitute for the traditional whole people ownership should be introduced and adopted, and then formed the joint pattern ownership composed by the state, the enterprises and the workers. This procedure would not change the nature of the ownership in the socialist system, but it aimed at the establishment of new enterprises with the stock system of ownership¹⁶². This reform strategy suggested that the shareholding system be characterized by a set of economic mechanism built upon the separation of ownership and control. The mechanism, centering on capital markets, have taken shape through 200 years of development in advanced market economies. Nevertheless, the mechanism underpinning the shareholding system could be make compatible with socialist public ownership.

The debates between Wu and Li are actually the confrontation of Chinese reform mentality. Wu and Li argued on the sequence of the two aspects of the same question, essentially the argument is the exploration of the way of Chinese economic reform. China's SOE reform has enforced gradually in this kind of argument. In practice, the reform in the premise of following the market economy has enforced the stock system transformation in a suitable opportunity, thus has accelerated the establishment of China's market economy system. Yifu Lin and Minggao Shen raised a viewpoint that may give the above argument a good summary, they believed that from the aspect of institution design, the joint stock system as if had possessed the function that stimulated the state-operated large and medium-sized enterprises, and it was a pattern of independent enterprise organization of commodity producer's¹⁶³. But if we took a look at joint

¹⁶¹ Yining Li. 1987. *Exploration on Economic System Reform*, Beijing: People's Daily Press.

¹⁶² Yining Li. 1986. "The Ownership Reform and Stock Enterprise's Management", *Zhongguo Gaige*, Vol.12.

¹⁶³ Yifu Lin, Minggao Shen, 1992, "Analyst on the Reform of the Stock System and State-owned Large

stock system's external condition, the external environment and the system foundation of the reform was actually far from the Western joint stock system innovation and macroscopic system environment. Chinese market mechanism was imperfect, so the effect of the joint stock system reform would be difficult to totally display. However, if we waited for all conditions to be satisfied, SOEs reform would be lagged seriously. That contradictory displayed the focal point of Debates between Wu and Li, simultaneously, also reflected what impeded that kind of spanning type reform of China essentially.

Except for Wu and Li's theories, there was another theory existed in this stage, which suggested that the operating mechanism of the SOEs should be transformed through the introduction of the enterprise contracting system¹⁶⁴. This was a type of operation and management system that defined the relationship between the state and enterprises in terms of responsibility, rights, and benefits through contracts based on the principle of separation between ownership and control, with the emphasis of not requiring changes in the nature of ownership. The general practice was to require an enterprise to be responsible for delivering a certain amount of profits to the state. The enterprise could then retain profits in excess of the quota and would be permitted to link its payroll and welfare to its performance levels. The enterprise contracting system had many staunch proponents. For instance, some advocators argued "the adoption of the contracting system would put in place the operating system of Chinese socialist enterprises, leading to an atomic fission within the enterprise to give off its energy." Thus, this would facilitate the reform of the overall investment system, and help to bring about changes in the function of the government¹⁶⁵.

Among these theories, the enterprise contracting system was adopted and applied in practice at last in this stage. By the end of 1988, 93% of large and medium-sized enterprises had adopted the enterprise contracting system¹⁶⁶.

and Medium-sized Enterprises", *Jingji Yanjiu(Economic Research)*, Vol.9.

¹⁶⁴ Yifu Lin. 2001. *State-owned enterprises reform in China*. Hong Kong: China University Press.

¹⁶⁵ Peixin Yang, Contracting System – The Inevitable Road towards Enterprise Development.

¹⁶⁶ Yifu Lin. 2001. *State-owned enterprises reform in China*. Hong Kong: China University Press. P. 10.

However, although the contracting system was put into practice, the enterprise failed to gain complete adherence to the theoretical and policy debates. This was because the enterprise contracting system gave rise to a further series of problems. The most prominent one was the so-called “short-termism” in enterprise strategy. This means that there was asymmetry in the information of the state and that of the enterprises and their staff gained benefits from the increase in share of profits due to the increase in enterprise earning, while the state assets could not be increased along with the improvement in enterprise performance. After a period of active discussions, additional policy proposals¹⁶⁷ were put forward to solve the problems arising from the enterprise contracting system, which continued to aim at improving this system.

3. The Third Stage

The third stage of discussions over China’s SOE reform – in the mid-1990s – mainly focused on the goal of transforming the operating mechanism of SOEs and establishing a modern enterprise system. This followed the directive confirmed at the Fourteenth Congress of the CPC, which declared that the purpose of Chinese economic reform was to establish the socialist market economy system. In particular, during the Third Plenary Session of the Fourteenth Congress, the Decision of the Central Committee of the CPC on Several Issues Concerning the Establishment of the Socialist Market Economic System was ratified. The Decision defined the basic features of the modern enterprise system with a relatively clear delineation of property rights relations, enterprise responsibilities, capital contributors’ rights and interests, government functions and enterprise management system¹⁶⁸. With the deepening of reform, the discussion became to fierce debates, two of which are most famous and

¹⁶⁷ For example, “Assets Operation Responsibility System”, put forward by Sheng Hua, attempts to solve the issue of information asymmetry, enterprise “soft budget” constraints and the non-separation between government and enterprises by designing three links of assets evaluation, revenue sharing and assets operation responsibility. See Sheng Hua, 1986, “Reconstruction of Micro Economic Basis – Further Discussions on the Issues and Thinking of China’s further Reform,” *Economic Research*, Vol. 3, P.21-28.

¹⁶⁸ See Guidance on the Important Policies and Laws and Regulations Concerning the New System of Market Economy.

caused a lot of attentions from both public and academic areas, namely are the Debates between Lin and Zhang, and the Debates between Lang and Gu.

3.1 The Debates between Lin and Zhang

At the beginning of China's SOE reform, especially when the joint stock system reform took place, there was a debate between Yifu Lin and Weiyang Zhang. Lin believed that because of the lack of a perfect market system, transplanting such a kind of "the modern enterprise system" was not the most crucial thing, the really important thing was to create a fair competition condition and environment, thus the budget would be restrain it. Without a healthy competitive market environment, there would not be serials of targets that simply and intuitively reflected the enterprise management, there fore the owner would be unable to supervise the management of the enterprise, the problem between enterprise and operator's that different aims, asymmetry information as well as the unequal responsibility would be hard to handle with¹⁶⁹. Weiyang Zhang thought that the incomplete enterprise system was the main reason of the inefficiency of the SOEs, and that problem would be hardly solved under the system of the government-owned property, the only way out was to transfer "state-owned" enterprises to "non-state-owned" enterprises. It was impossible to raise and select the qualified entrepreneur community under system of the SOEs .The state-owned stockholder's rights must transform into creditor's rights or use other methods to realize the withdrawal of the state-owned stockholder's rights, making the state-owned business become the non-State-owned business¹⁷⁰.

3.1.1 The idea of Yifu Lin about China's SOE reform

¹⁶⁹ See Justin, Yifu, Lin, & Tan Guofu. 1999. "Policy Burdens, Accountability and Soft Budget Constraint". *American Economic Review*. Vol.89, No.2, pp 426-431. Justin, Yifu, Lin, Cai Fang & Li Zhou. 1998. "Competition, Policy Burdens, and State-Owned Enterprises Reform." *American Economic Review*. Vol.88. No.2, pp.422-427. Justin, Yifu, Lin, Shen Minggao. 1992. "Analyst on the Reform of the Stock System and State-operated large and medium-sized Enterprises". *jingji yanjiu(economic research)*. No.9

¹⁷⁰ See Weiyang Zhang. 1995. "Evaluates the State-owned Enterprises Reform from the Point of View of Modern Enterprise Theory". *Jiage Yu Shichang(the price and the market)*. No.2. Weiyang Zhang. 1996. "The System of Ownership, the Management Structure and the Principal-agent Relationship". *Jingji Yanjiu(Economic Research)*. No.9.

Yifu Lin concluded that the core problem of China's SOEs is the absence of viability which caused by policy burden. He criticized that the first stage of SOE reform was decentralizing powers and giving up profits, and promoting enterprises motivation, which could not solve the problem of SOEs' viability; and the second stage of reform was property structure reform, which did not deal with this issue appropriately either, thus the reform in this stage was also failed. Based on Lin's theory, the term viability according to the expected profitability of an industry in a perfectly competitive open market economy. And an industry is viable if firms in the industry have a socially acceptable expected profit without external assistance¹⁷¹. Therefore, if an industry could not achieve expected profit in practice, the reasons must be the problem of corporate governance, motivation mechanism, property structure, and inappropriate government intervention.

Lin thought that the SOEs' policy burdens include strategy burdens and social burdens, such as retirement pensions and other welfare costs, the redundant workers, and the persistence of price distortions. These burdens would cause policy-related losses for sure, and the government that is accountable for the policy burdens should give these enterprises, profitable or not, *ex ante* policy favors, such as access to low-interests loans, tax reductions, tariff protection, and legal monopolies, in order to compensate for the burdens. In addition, these enterprises would request that the government offer some *ex post* assistance if they still have some losses¹⁷². However, it is very difficult for the government to determine the net impact of policy burdens on the enterprise's costs, because each enterprise has different burdens and receives different favors. Therefore, the enterprise will often ascribe all its loss to the government's policy burdens, and the government will be in a difficult position to shun the responsibility. The soft budget constraint thus continues to exist. Under this situation, any property structure reform and corporate governance reform would fail, even lead to

¹⁷¹ Justin, Yifu, Lin, & Tan Guofu. 1999. "Policy Burdens, Accountability and Soft Budget Constraint", *American Economic Review*. Vol.89. No.2, p 427.

¹⁷² *Ibid*, p 430.

worse condition than in planned economy. Lin indicated that, the core issue of China's SOE is policy burdens, and for enterprise in viable industries, the prerequisite condition for a successful enterprise reform is the elimination of policy burdens¹⁷³.

From the perspective of information asymmetry and incomplete market, Lin argued that a fair competition market in China has not been established, and owing to the existence of policy burdens, China's SOEs' profits cannot be used as a sufficient indicator for managers' performance. The problems of incentive incompatibility and information asymmetry between SOE owners and managers remain. As the decentralization and profit-sharing reform goes on, the conflict of interests between owners and managers intensifies, and it becomes less likely that managers are about to refrain from such behaviors. Besides, due to the government lacks adequate information, it cannot tell policy-induced losses from operational losses, and SOEs tend to attribute all losses as policy -induced, so the government must bear the brunt of all their losses¹⁷⁴. To avoid this situation, the only method the government could take is to intervene into enterprises' operations, even into some specific and detailed activities. In fact, the more concerns about maintaining and increasing enterprises' assets, the more intervention the government would take. Unless a fair competition market has been established, in which the owners of enterprises could compare its profit level with average profit level to get full information of enterprise instead of operation details, the direct intervention is unavoidable. Under this circumstance, neither property structure reform nor the change of financing structure would success. Even these enterprises are privatized, private owners would still intervene into enterprise operation inevitably if they could not get full operation information through a fair competition market. In contrary, once a fair competition market has been established, the intervention would become unnecessary if the owners could get enough information about enterprise operation through market. In this circumstance, neither public nor private

¹⁷³ Ibid.

¹⁷⁴ Justin Yifu Lin, Fang Cai, Zhou Li. 2003. *The China Miracle: Development Strategy and Economic Reform*. Hong Kong: China University Press. P. 239.

owners would intervene into enterprise operation any more.

Based on above theories, the idea of Yifu Lin about China's SOE reform could be concluded as: first, to solve the problem of viability, SOEs should be divided into three types to deal with: the first type is capital and technology-intensive enterprise, which does not have comparative advantages but is necessary to the state, this type should be managed directly by the State; the second type is capital and technology-intensive enterprise which has huge domestic market, it should adopt the strategy of "market for capital" to solve the problem of lack of comparative advantages and viability; the third type enterprise also has intensive capital and technology but does not have enough domestic market, it should be privatized or transferred to another industry.

Second, to eliminate policy burdens. Due to the existence of policy burdens, SOEs could not compete with other types of enterprise, therefore the average profit level could not reflect the real enterprise operation, the problem of information asymmetry could not be solved, and the interests conflict between owners and managers still exists.

Third, to complete market mechanism. A fair competition market could perfect external environment of enterprises, form a reliable average profit standard, solve the problem of information asymmetry; the owners could learn enterprise performance through the average profit level, to establish an appropriate reward and punishment mechanism; an appropriate internal management system could be established based on this finally.

3.1.2 The idea of Weiyang Zhang about China's SOE reform

Weiyang Zhang held a negative attitude to SOEs' function. In the article "The Principal-agent Relationship in Public Economy – Theories and Policies", Zhang argued that the difference between SOEs and private enterprises as being on the tier of the agency. On the surface, it seems that owners of private enterprise may simply directly entrust managers to operate their assets. In the case of the SOEs,

the people as a whole as the owner of the properties have to entrust the government, which in turn independently entrusts the next tier of agents. Thus, this forms a multi-tier agency relationship. This lead to the paradoxical logic that the higher the level of the public ownership, the more the levels of principal-agent relations would form. This results in longer distance between the initial principal and the final agent and more inefficiency in supervision¹⁷⁵. Drawing from this logic, the route to higher enterprise efficiency could be achieved by eliminating the multi-tier agency structure (the public-government-SOE managers) through privatization and establishing a direct link between principal and agent (the shareholder-managers of private enterprises)¹⁷⁶.

To the approach of SOE reform, Zhang thought that the reform only focus on establishing a modern enterprise system rather than property structure reform is meaningless. And he indicated that the most important issues of China's SOE are motivation and how to select appropriate enterprises managers. To deal with these two issues, the residual claims and residual control rights must be allocated properly: first, residual claims and residual control of enterprise should correspond, which means the one who has the residual claims right and take a risk should also has the residual control rights; second, the residual claims right should be given to the most important members of an enterprise; third, certain proportion of residual claims and residual control rights should be given to those who are difficult to supervise and have information advantages. As a conclusion, those who makes decision and is responsible for enterprise operation should have certain residual reclaims and residual control rights of an enterprise.

To selection of managers, since a modern enterprise is a production organization made up by a team, there are information problems between team members.

¹⁷⁵ 张维迎。1995。公有制经济中的委托人—代理人关系。经济研究。1995年第4期。Weiyang Zhang. 1995. "The Principal-agent Relationship in Public Economy – Theories and Policies". *Economic Research*. Vol. 4.

¹⁷⁶ George Yarrow. "Does Ownership Matter?" in C. Valjanovski (ed.), *Privatization and Competition: A market Prospectus* (Hobart Paperback Series, No. 28). P. 52-69.

These problems may result in laziness or the operator's position may be held by an incompetent person. Solving this problem requires managers be selected by asset owners who assume risks in a real sense. As SOEs do not have real ultimate owners, the state may occupy state-owned assets by transferring state-owned property rights into state debts in order to realize the aim of ensuring stable yields despite drought or excessive rain¹⁷⁷.

Generally, Weiyang Zhang questioned the state shareholding advocates on the basis that the proposals are problematic in three crucial respects – the mechanism for managerial appointments, the value-adding of state assets, and the separation of government and enterprise operations¹⁷⁸. Instead, Zhang suggested that changing state assets into creditor rights in order to clarify property rights more realistically and thus separate government and enterprise operations. To clarify property rights in corporate governance and establish effective incentive and control mechanism¹⁷⁹. Zhang also argued that the genuine privatization is the only way forward for China's SOEs, supporting this argument by describing a number of cases of companies that have gone through such ownership restructuring in the late 1990s¹⁸⁰.

3.2 The Debates between Lang and Gu

3.2.1 Arguments of Xianping Lang

This debates actually between Xianping Lang and some mainstream scholars. In August 2004, Lang made number of consequent public statements that focused on Management Buy Out (MBO) activities during China's SOEs reform. He criticized it's a "evaporation" of the state-owned assets went through a number of unlawful deals and twists and ended up in private hand in the process of

¹⁷⁷ Weiyang Zhang. 1996. "The System of Ownership, the Management Structure and the Principal-agent Relationship". *Jingji Yanjiu(Economic Research)*. No.9.

¹⁷⁸ 张维迎。1999。企业理论与国企改革。北京：北京大学出版社。Weiyang Zhang. 1999. *The Enterprise Theory and China's SOE reform*. Beijing: Beijing University Press.

¹⁷⁹ *ibid.*

¹⁸⁰ Weiyang Zhang. 2000. "The Property Structure and Enterprise Internal Power Struggle". *Economic Research*. No. 6.

reform. Lang did not simply mention the fact of the state capital running off but made unprecedented and concrete accusations. For instance, he took Haier¹⁸¹ as an analyst case, told the story how this originally mainland state-owned enterprise became to a shell of Hong Kong Based private joint stock company. According to him, Haier's council of shareholders¹⁸² got 98,6% of the newly established "Haier Investment" company (with only 1,4% of shares in the hands of Haier itself) and in 2000 established joint venture with two Hong Kong based companies starting to produce mobile phones. In 2001 one of the two Hong Kong company's affiliated corporation bought both of the companies. As a result of this grey deal "Haier Investment" got almost 30% of joint venture's stock thus becoming the second biggest shareholder and renaming the venture into "Hailer Zhongjian". In April 2004 Haier company decided to merger its best washing machine producing facilities as well as the rest of 35,5% shares of former Hong Kong mobile phone producer with "Haier Zhongjian" thus controlling almost 60% of its stock. By means of this four steps operation main part of Haier's capital left for Hong Kong and became de-facto private. The central actor of the play was Haier's council of shareholders whose investment activity was purely illegal from the beginning¹⁸³.

Another object of Xiping Lang's offensive is the owner of Gerlinkeer Chujun Gu, who bought one of the biggest Chinese state-owned producers of refrigerators in 2001. Lang stated that Gu controlled the main facilities of "Gelinkeer" company through "Greencool Capital Limited" which was registered in Great Britain. His dubious fund rising practices were based on machinations with big amounts of ready cash left in his hands during the time gap between the customer's payment to the producing company and the latter's payment to shippers and advertisers. Lang's description of Gu's methods of taking control of state enterprises is written in the language of Chinese idioms and full of moral indignation¹⁸⁴.

¹⁸¹ A Chinese famous electronic consumer goods producers.

¹⁸² Institution which consists only of the company personnel and according to the Rules promulgated by high state organs of PRC such as Committee on Structural Reform in 1997 cannot be legal shareholding body and is not allowed to be engaged in investment activity.

¹⁸³ Jianshan Cao. 2005. *Lang Xianping Xuanfeng (The Start and the End of Lang Xianping's Tornado)*. Nanjing: Jiangsu People Press.

¹⁸⁴ See Jianshan Cao. 2005. *Lang Xianping Xuanfeng (The Start and the End of Lang Xianping's*

And then Xianping Lang began questioning the concept of property reform itself. In Lang's view the main problem with Chinese SOEs was not the vagueness of property rights (as was supposed by the reforms' theoreticians) but the overwhelming lack of trust and responsibility of the state companies' managers¹⁸⁵. The property rights' reform in China actually limits itself to the right of managers of state companies to become de-facto owners of state property instead of managing and augmenting it for the sake of the nation.

In conclusion, the position of Xianping Lang about the reform of China's SOE in this stage are: transition of state assets to private hands (from the state organs to the managers) "under the blanket" of the property reform is illegal; the price of the asset to be sold is the subject of covert bargain between the state organs and the management of given SOE and disproportionately low; it is not the privatization which is needed but the establishment of efficient system of trustful corporate governance in already existing state sector¹⁸⁶.

To Xianping Lang's arguments, there are three groups of view diametrically opposed. The first group agreed with Lang's view and believed that the SOE reform should insist the dominated position of state-owned economy in whole national economic system, and the reform should be undertaken progressively and cautiously to avoid losses of state-owned assets. The leading scholars are Yifu Lin, Guoguang Liu and Dapei Zuo¹⁸⁷. The second group included those who were not against reform property structure but thought it must be carried out in fully open, socially acceptable and generally limited way. The third group clearly against Lang and supported that SOE should reform its property structure, and

Tornado). Nanjing: Jiangsu People Press; Li Jian and Wang Xiaowei., eds. 2004. Chulu: *Lang Xianping Yinbao "Guoqi Gaige" Da Bianlun. (The Way Out: Big Discussion on "State Enterprise Reform" Invoked by Lang Xianping)*. Jingji Ribao Press, Beijing; Yuwen Deng, eds. 2005. *Feichang Jiaofeng. Guoqi Changquan Gaige Da Taolun Shilu. (Extraordinary Joust. Documentary Record of Big Discussion on State Assets Property Reform)*. Haiyang Press, Beijing.

¹⁸⁵ 郎咸平。2006。误区。北京：东方出版社。Xianping Lang. 2006. *Wu Qu. (Area of Mistake)*. Beijing: Dongfang Press.

¹⁸⁶ Ibid.

¹⁸⁷ Hong Sheng. 2012. *China's State-owned Enterprises: Nature, Performance and Reform*. World Science Publishing Company.

most SOE in China should be privatized. The leading scholars on this side are Weiying Zhang, Jinglian Wu and Yining Li¹⁸⁸. Actually, the core issue of this debate is about the property structure of China's SOE.

3.2.2 Standpoints that SOE should not reform its property structure

In the article "The Reform Does not Adhere to Socialist Path is also a Dead End"¹⁸⁹, Guoguang Liu pointed out that, currently the idea of "no reform is a dead end" should not be simply emphasized, on the contrary, the reform should adhere to socialist path, otherwise it is also a dead end. China should develop both public and private sectors on the basis of public ownership playing dominant role. Meanwhile, the degree and speed of public sector retreats as private sector advances in Chinese economy should be controlled and postponed, to prevent dominant ownership structure to be transformed from public to private, and resolutely stop the trend that privatizing state-owned assets on behalf of anti-monopoly. Liu also argued that, the difference in possession of property is the biggest factor that decide the income gap, thus the widening income gap in current China is deeply affected by the change of ownership structure and the situation that public sector retreats as private sector advances, rather than other factors such as personal capacity, education, training, opportunity and healthy. Therefore, to restructure income distribution system and narrow income gap, the fundamental method is to adhere to the basic principle that unswervingly consolidate and develop the public economy, persist in the dominant position of public ownership, give full play to the leading role of the state-owned sector, and continuously increase its vitality, controlling force and influence. In a word, the income gap could be narrowed as long as public ownership playing a dominant role in China's economy¹⁹⁰.

From the perspective of adhering to public sector should paly dominant role in China's national economy, Dapei Zuo held the same point of view with Guoguang

¹⁸⁸ Ibid.

¹⁸⁹ Guoguang Liu, http://paper.people.com.cn/rmlt/html/2012-03/20/content_1021972.htm?div=-1

¹⁹⁰ Selected works of Xiaoping Deng Vol.3 p149

Liu. In numerous articles and books, Dapei Zuo thought that the reform of China's SOE could be divided into two stages: the reform in the first stage was basically about improving enterprise efficiency and management in the basis of public sector play the dominant role; and the reform in the second stage which begin with 1996 actually became to a "privatization campaign" to some degree. Zuo's opinions are, in China the property rights of the state must be in the hands of the people. The problem here is that during three decades of reforms in China the institutional basis for that was not established. Management contract system in late 80s, according to him, undermined managers' discipline and greatly weakened financial and statistical control of the state over its property, namely SOE. At the same time the state seriously interferes into SOE economic activities, still proceeds from "political achievements" criteria and nominates and dismisses managers along nepotistic lines. All this breeds managers' voluntarism, dysfunctional administration and overwhelming corruption. Such state of affairs often causes the problem of "unclear owner" or, as Dapei Zuo puts it, the "ice-cream dilemma". Just as in hot summer ice-cream melts very quickly and you have to sell it as soon as possible to prevent its total meltdown, the Chinese state facing the lowering efficiency of SOE wants to get rid of them the sooner the better. And they sell them to managers at disproportionately low price – the so called "net value". This price does not include SOE debt which, according to Zuo, is twofold. The first is the SOE indebtedness to the bank (credit interest rates), the second is its indebtedness to the working personnel (wage arrears, postponed social payments of different sort etc.). The size of the debt at most of the SOE exceeds 50% and in some cases comes close to 90% of their asset value. Such deals, so believes Dapei Zuo, create undeserved wealth of the managers who capitalize on the state and simultaneously impoverish working class. Chinese MBO, being tremendously unjust, is unable to upgrade SOE efficiency either. "Ice-cream dilemma" is not escaped. It may be even enhanced when managers would try to transfer "illiquid" property to some others' hands, might be to foreign capital. In addition, Dapei Zuo also opposed Weiyang Zhang's words about the need to "treat managers benevolently" saying that who really deserve benevolence from the state are the working people of the SOE which are being sold. He called on to stop all forms of property structure reform immediately and

stressed that the urgent need of China is to establish a clear and effective state-owned property management system. According to Zuo, this system consist three levels: the first and highest one are SPRC and other central government department on behalf of whole people and represents the joint will of them; the second one includes organizations which are responsible for profitable operation of SOE; and the third one are SOEs themselves¹⁹¹.

Sheng Hua, sharing Dapei Zuo's view that Chinese MBO actually are nothing more than unjust "big free meal" for SOE managers, he wrote that in this country the concept of MBO itself suffers from intrinsic contradiction. If the government deals with state property in efficient way than there is no need for any MBO. If the government efficiency itself is low than MBO is even less suitable because in this case micro-level managers are prone to corrupt practices and the main task is not to give more power to them but to improve the overall systemic arrangement from the macro-level down¹⁹².

Another prominent scholar, Yifu Lin, also showed his support to Lang. Lin gave a number of interviews in which he opposed privatization of SOE using mainly economic reasoning. His general idea was that SOE in China are overburdened with political and social duties. They have high concentration of capital and manpower which is the legacy of central planning. Laborer in China is associated with the means of production. Under such circumstances, Lin believes, it is almost impossible to improve efficiency and profitability, be the enterprise state or private. The preliminary step to reform SOE should be elimination of this political and social burden¹⁹³.

3.2.3 Points of view that not against reform property structure but thought it must be carried out in fully open, socially acceptable and generally limited way

¹⁹¹ Dapei Zuo, 2006, *No Permission to Further Sale*, China Economic Press, Beijing

¹⁹² Yuwen Deng, eds. 2005. *Feichang Jiaofeng. Guoqi Changquan Gaige Da Taolun Shilu. (Extraordinary Joust. Documentary Record of Big Discussion on State Assets Property Reform)*. Haiyang Press, Beijing.

¹⁹³ Jianshan Cao. 2005. *Lang Xianping Xuanfeng (The Start and the End of Lang Xianping's Tornado)*. Nanjing: Jiangsu People Press.

The representative scholar in this group is Fan Yang. Yang called on to stop MBO at least for a time being. His argument was close to that of Zuo but he did not exclude managers' privatization for small local enterprises. While dealing with big local enterprises he suggested "equal attention to justice and efficiency" and "respecting the workers' choice" meaning that personnel at such SOE is not "against market" but "opposes corrupt management" and thus local governments should act together with the workers. As regards to 196 central SOE, Yang proposed to establish "strategic production" on their basis but added that 169 of them belong to "competitive branches" thus a sort of thoughtful diminution of state presence may be possible. The Chinese state which has controlling parcel of shares in such big SOE should "follow the plan on the market basis" and develop world famous national brands, probably in cooperation with foreign firms but by no means allowing transnational corporations to take the upper hand. These ideas were also in principle shared by Deqiang Han and Xiaodong Wang¹⁹⁴.

3.2.4 The points of view that clearly against Lang and supported that SOE should reform its property structure, and most SOE in China should be privatized

Weiyang Zhang started mentioning that at the early stages of economic reforms in China nobody spoke about the necessity to restructure the state property. This restructuring was not the result of anybody's beforehand planning or conspiracy but naturally came out from the practical experience. In certain sense state property reform was a forced one. Zhang admitted that there is a problem with pricing of the sold state-owned stocks. The root of this problem is in the Chinese stock market itself which "is not competitive enough" and thus prone to "inadequate information". Zhang said that currently the basis for pricing of the sold stocks is the so called "net value"¹⁹⁵ of an asset and insisted that it is very

¹⁹⁴ Yuwen Deng, eds. 2005. *Feichang Jiaofeng. Guoqi Changquan Gaige Da Taolun Shilu. (Extraordinary Joust. Documentary Record of Big Discussion on State Assets Property Reform)*. Haiyang Press, Beijing

¹⁹⁵ Chinese economists using this term mean the current price of fixed assets without counting their debt volume.

difficult to define if the state capital runs off in any case, irrespective whether the stocks are sold on the prices which are higher or lower than this basis. “Those who buy, buy not the past but the future of the concrete state asset”, - he stressed. While selling state assets, continued Zhang, one must “look in four directions”: “look forward”, meaning the need to upgrade the enterprise’s efficiency, “look back”, meaning to secure the interests of those who contributed to the development of this enterprise in the past, “look left and right” meaning to see if the general balance of interests, primarily those of working personnel is guaranteed and “look upwards” which means considering the demands and rules of government institutions and State Law¹⁹⁶.

Chaohua Han and Sujian Huang concentrated on the process of pricing of the sold state property. Han stressed that today the price of state shares acquired through MBO is defined by the bargain between government bodies and SOE management. In case the price seems unjust the main fault is on the side of the government that agrees to sell property so cheaply¹⁹⁷.

Sujian Huang accused Xianping Lang and his supporters of oversimplification in understanding the process of state assets’ pricing. He wrote that while letting state shares go to managers local governments consider not only (and probably not mainly) the state asset’s “net value” but the possibilities of its existence, market for its goods, employment capacities, personnel income, debt volume etc¹⁹⁸.

Zhiguo Han believed that due to unclear division of the property rights between central and local governments the only way for the latter to consolidate their tax revenue and political prestige is to allow MBO at the state assets¹⁹⁹.

¹⁹⁶ See Jianshan Cao, 2005, *Lang Xianping Xuanfeng (The Start and the End of Lang Xianping’s Tornado)*, Jiangsu People Press, Nanjing; Yuwen Deng, eds. 2005. *Feichang Jiaofeng. Guoqi Changquan Gaige Da Taolun Shilu. (Extraordinary Joust. Documentary Record of Big Discussion on State Assets Property Reform)*. Haiyang Press, Beijing

¹⁹⁷ Jianshan Cao, 2005, *Lang Xianping Xuanfeng (The Start and the End of Lang Xianping’s Tornado)*, Jiangsu People Press, Nanjing

¹⁹⁸ Ibid.

¹⁹⁹ Jian Li and Xiaowei Wang., eds. 2004. *Chulu: Lang Xianping Yinbao “Guoqi Gaige” Da Bianlun. (The Way Out: Big Discussion on “State Enterprise Reform” Invoked by Lang Xianping)*. Jingji Ribao Press,

In addition, there were some other scholars gave deeper understanding of the property reform. For instance, Hengpeng Zhu, who pointed out that Chinese public opinion and media highly overestimate the degree of real influence of economic theoreticians over the state economic policy. Intellectual economists may arrive at certain consensus but it may not at all be shared by the people and political leaders. Putting this theoretical consensus into practice by economic interest groups is even less likely. What is happening in China is not Russian or East-European type of purposeful large-scale privatization but a sort of spontaneous enlargement of non-state economic actors. As long as the market reforms are implemented the tendency to such enlargement is absolutely inevitable irrespective of what was initially planned by this or that reform. Spontaneous retreat of the state has unavoidable illegal dimension which involves state capital “evaporation” and joining up of political power and economic might. It is not that privatization itself should be blocked but such kind of corrupt practices during privatization²⁰⁰.

Zhu’s view was developed by Hui Qin, a professor of history. Qin indicated that both sides simply make fool of Chinese public. With the absence of democratic system of social and political checks and balances the first group of discussants would be unable to establish effective state while the second one would be equally incapable of creating efficient private property and lawful administration. Being a historian, Qin draws a parallel with Song dynasty when Wang Ahshi’s reforms and Si Maguang’s “liberal market” approach both failed under corrupt absolute monarchy, eventually causing political disintegration and systemic collapse. In a later article Qin dismissed the left-wing critic of Russian privatization. While admitting that privatization in post Communist Russia between 1992 and 1996 was far from just, Qin stressed that it was nevertheless implemented under “Eltsin’s democracy” which allowed wide public discussion. He believes that it is due to this fact that Russian public, although widely

Beijing

²⁰⁰ Hengpeng Zhu, 2009.9.6, “The Privatization of China’s SOEs Should not Follow Russian’s Approach”, *Southern Metropolis Daily*.

dissatisfied, still showed greater tolerance towards the results of privatization than Chinese public to the ongoing “property reform”²⁰¹.

3.3 Some other discussions in this stage

Firstly, the idea of establishing the modern enterprise system was officially put forward by the central government. This idea was based on the experience and lessons obtained from the experiments in the share-holding system taken place in 1990s. Many scholars and policy advisors accepted the view that the modern enterprise system carries the same connotation as the modern corporate system²⁰². That is to say, the establishment of modern enterprise system would require a remolding of the existing forms of enterprises in to companies based upon limited-liability stockholding, for example, turning into limited-liability corporations. One should also refer to this process of setting up a modern enterprise system as “corporatization”. For instance, Jinglian Wu stated that the modern enterprise institution is the modern corporate system, which has evolved and taken shape in developed market economies since the end of the last century²⁰³.

Secondly, the issue of corporate governance introduced above was being discussed as a means for solving the aforementioned principal-agent problem. It has become widely noted that both the contracting system and the share-holding experiments in SOEs, especially in large and medium-sized SOEs, have put the state in a poor position for obtaining the necessary information about enterprise operations. Moreover, the interests of the managers who possess the inside information differ from those of the state, leading to contradiction between ownership and management. This phenomenon is typical in the transitions of the SOEs in Russia and Eastern European countries²⁰⁴. Masahiko Aoki described this

²⁰¹ Hui Qin, 2007.9.7, “From Case to Issue then to Doctrine”, *South People Magazine*.

²⁰² Yifu Lin. 2001. *State-owned enterprises reform in China*, China University Press. Hong Kong. P. 11.

²⁰³ Jinglian Wu, 1993, *Reform of Large and Medium-sized Enterprises: Establishing Modern Enterprise System*, Tianjin People Press, Tianjin, P. 173.

²⁰⁴ Yifu Lin. 2001. *State-owned enterprises reform in China*, China University Press. Hong Kong. P. 12.

phenomenon occurring in these countries as a problem of “inside control”²⁰⁵. This concept was accepted by most Chinese scholars to explore the direction of SOEs reform.

Regarding the issue of how to reformulate the relationship between owners and managers, Jinglian Wu proposed a state-holding company model that built upon a hierarchical structure²⁰⁶. In this model, the National People’s Congress and its standing committee elected a Public Capital Management Committee. This committee would they serve as the board of directors of the SOE sector as a whole. They would be responsible for establishing and owning a level-one holding company and investment company, whose board of directors would be selected, appointed, and supervised by the committee. Under the level-one company, there would be a level-two holding company and affiliated companies, which would in turn control companies directly involved in business operations²⁰⁷. Wu suggested that this model could both separate the administrative functions of the state from the ownership functions, and address the issue of absentee ownership.

To state-owned bank, Mashiko Aoki suggested that when an enterprise encountered a financial crisis, in the case of insider control, the main bank within a loan consortium could automatically transfer the control of enterprise from the insiders to the outsiders²⁰⁸. However, this theory is more appropriate to the main bank type of corporate governance in Japan that it is to the SOEs in China, because the Banks in China in 1990s are heavily indebted with a high ratio of bad debt²⁰⁹. To this issue, Xiaochuan Zhou proposed a combination of the reshuffling of debt with the corporatization reform. The debt owned by the SOEs to banks could be transferred into shares of the enterprise held by the banks through

²⁰⁵ Masahiko Aoki and Yingyi Qian, *Corporate Governance Structure in Transitional Economies: Insider Control and the Role of Banks*.

²⁰⁶ Jinglian Wu. 1993. *Reform of Large and Medium-sized Enterprises: Establishing Modern Enterprise System*. Tianjin: Tianjin People Press. P. 181.

²⁰⁷ Ibid.

²⁰⁸ Masahiko Aoki and Yingyi Qian, *Corporate Governance Structure in Transitional Economies: Insider Control and the Role of Banks*.

²⁰⁹ Yifu Lin. 2001. *State-owned enterprises reform in China*. China University Press. Hong Kong. P. 14.

equity-debt conversion so as to set up Chinese-style main bank system of enterprise²¹⁰.

To reshuffling of assets and debts with the design of corporate governance, Weiyang Zhang suggested that state assets be converted into state credit to enterprises. The state would thus become the “creditor” of the SOEs and enjoy the rights to get a share in the result of the business operations while avoiding monitoring and controlling enterprises directly. This would also solve the problem of information asymmetry and effectively save the monitoring costs²¹¹.

4. The fourth stage

With the deepening of reform, China’s SOE has entered a new stage: the number of SOE drastically reduced, Central-SOEs has set up after large-scale merge and restructuring, basic modern corporate system was introduced, and a state-owned assets supervision and administration department has been established. The discussions about SOE in this stage paid more attentions on some specific areas, such as SOEs’ monopoly and efficiency issues, corporate governance issues, and the function and status of state-owned assets supervision and administration department. The discussions about monopoly, efficiency and income distribution of China’s SOE will be mainly introduced in this section.

4.1 Arguments about China’s SOE monopoly issues

China’s economic development over the last thirty years has been nothing short of remarkable. However, it still faces some social challenges, for instance, rising inequalities and increasing corruption. The continuing dominance of monopolies, especially SOE monopoly within Chinese political economy is a primary contribution to the problem of economic inefficiencies and corruption.

²¹⁰ Xiaochuan Zhou, Lin Wang, Meng Xiao and Wenquan Yin, Enterprise Reform: Choice of Model and Package Design.

²¹¹ Weiyang Zhang, “China’s SOE Reform Viewed from the Perspective of the Theory of the Firm”, *Economic News*, 17 Nov. 1994.

According to Peijun Duan and Tony Saich, the main SOE monopolies in China are resources monopoly, monopoly pricing, and market monopoly²¹². The resource monopoly includes energy resources and telecommunications industry. In energy area, several legislations were made to ensure SOEs monopoly control in this sector, cooperation with foreign partners is tightly controlled, restrictions limit competition among the main enterprises, the examination and procedural process of foreign engagement, governing investment and approval procedures, and engagement of private entities are also restricted. Similar trend toward monopoly control and restrictions on foreign and private sector engagement also exist in telecommunication industry. For instance, the permit system sets a number of conditions for any foreign investor to operate basic telecommunications services; restrictions are made on the form of business, foreign businesses can only invest in the sector as a Sino-foreign joint venture, with the foreign entity investing no more than 49 percent²¹³; some business-license restriction are also made, for example, a notification was made by the government that only China Telecom and China Netcom (both them are central SOEs) can engage in the internet phone business, at the same time, the Skype software was banned.

The monopoly pricing includes government pricing which are implemented in tobacco, electricity and railway sectors; government directive pricing which occurs when government or quasi-government enterprises set prices in accordance with market conditions, but control remains with the government or quasi-government enterprises; and hybrid pricing, which means government pricing, directive pricing, and market prices coexist in a particular field, as in the case of the telecommunication industry, which the price for value-added telecommunications are subject to the government-directed price as well as the market price.

The market monopoly means the high levels of market concentration in Chinese

²¹² See Peijun Duna, Tony Saich, 2014, *Reforming China's Monopolies*, Ash Center for Democratic Governance Innovation, Harvard Kennedy School, pp 5-10.

²¹³ See Telecommunications Regulations of the PRC, Law of the PRC on Sino-Foreign Joint Ventures, and Management Provisions on Foreign-Invested Telecommunications Enterprises.

railway, oil, and gas, and telecommunications industries. For examples, the state-owned railways still remained 94.87 percent in passenger traffic and 83.5 percent in freight traffic in 2007²¹⁴; in crude oil production market, although the share of CNPC has dropped from 98 percent to 53 percent, but the whole shares of CNPC, Sinopec, CNOOC (all of them are central SOEs) was still over 98 percent²¹⁵. Similar pattern can be found in the telecommunication market, where a basic monopoly was enjoyed by China telecom before 1998, now four enterprise, namely China Telecom, China Netcom, China Mobil and China Unicom (all of them are central SOEs) took the 97.6 percent shares of the market²¹⁶.

In the theory that the SOEs are publicly owned, the control and ownership belong to the state and its appointed agency, and state-owned assets supervision and administration department decides on mergers, separations, dissolutions, increases or decreases in registered capital, the issuance of corporate bonds, and these decisions must be reported to the government for approval. However, citizens as shareholders have no mechanism to restrict the possession, management, control, or distribution of profits. Thus, the appointed government agents hold a monopoly over the assets. This phenomenon leads to inefficiencies, a lack of innovation, inequitable distribution, corruption, and imbalances in the economic structure.

As the Prime Minister, Keqiang Li clearly aware the seriousness of this problem. In his first briefing, Li stated that China has “a lot to learn” to deepen market-oriented reforms and lower the entry barriers for private capital to engage with the finance, railway, and energy sectors. He also urged that administrative powers be reduced to enable markets to play a more significant role²¹⁷. This proposal has been recognized by majority of scholars. Jinglian Wu indicated that China’s SOEs do have monopoly issues and it must be regulated

²¹⁴ Huizong Wang, 2010, *A Study of Administrative Monopoly and the Introduction of Competition in the Chinese Railway Transport Industry*, Shangdong University Phd Dissertation.

²¹⁵ See The International Oil Economy, 1994, 1998, 2004, 2006, 2008, 2013; China Statistical Yearbook; The company annual reports of CNPC, Sinopec, and CNOOC.

²¹⁶ Peijun Duna, Tony Saich. 2014. *Reforming China’s Monopolies*. Ash Center for Democratic Governance Innovation, Harvard Kennedy School. P. 10.

²¹⁷ South China Morning Post, March 18, 2013.

properly. He stated that administrative monopoly in some important industries against the requirement of establishing the socialist market economy. To the point of view that only bad monopoly should be regulated and good monopoly (which benefit to the state) should not, he argued that this would turn anti-monopoly mechanism to an uncertain and useless system²¹⁸. Yining Li believed that the industrial monopoly of SOEs is the main factor that hinders their innovation. The root of SOEs' industrial monopoly is the existence of vested interests, which are always be protected by maintain the status quo, thus systematical reform was difficult to undertaken in practice. Li also indicated that industrial monopoly is the inheritance of planned economy rather than the outcome of market economy, it must be regulated by enterprises themselves or by the market mechanism; market economy does not means the state should not play its role on macro-control or on guiding and planning industrial development. On the other hand, the industrial monopoly also hider the development of SOEs, because they may satisfy with the monopoly profits and neglect innovation²¹⁹.

Some supporters of the state-owned sector of the economy and those benefiting from monopoly control have different opinions. Yu Zhang, who thought China's SOEs do not have monopoly problem, used HHI²²⁰ to analyze and examine some often criticized as monopoly industries such as oil and gas, electricity, telecommunication and coal, and concluded that apart from telecommunication and electricity where have natural monopoly, all other industries full of competition. From the perspective of industrial involvement, 90 percent SOEs are in competitive industries. The main factor that promotes SOEs' performance is systematical reform of state-owned sector rather than monopoly control. Therefore the core task is to make SOE bigger and stronger instead of regulating SOEs' monopoly activities²²¹.

Yuyang Li made a spirited defense of China's SOE system, claiming that

²¹⁸ Mingzhu Shang, 2008, *The Theory of Chinese Anti-monopoly Law and Practice*, Peking University Press, Beijing, p. 326-327.

²¹⁹ Ibid.

²²⁰ The Herfindahl–Hirschman Index, is a measure of the size of firms in relation to the industry and an indicator of the amount of competition among them.

²²¹ Yu Zhang, 2012, *Modern Chinese Economy*, People University Press, Beijing, p. 116.

privatization was not a viable path and that simply holding a dominant position in a particular market did not mean that the SOEs exhibited monopolistic behavior²²². Such contentions were quickly rebutted by Sheng Hong who argued that monopolistic trends in five industries (banking, oil, telecom, railways and salt) had led to social losses amounting to 4.8 percent of GDP in 2010²²³.

In addition, some scholars thought some special industries should be monopolized by SOEs because they relate to national security, such as oil and gas, and telecommunication industries²²⁴. Guoguang Liu pointed out that to those industries that relate to national security and lifeline, the problem is not whether there is monopoly control exists but who monopoly them. Generally, national strategy interests and social interests would be protected and promoted better if these special sectors and industries are controlled and monopolized by state rather than private sector²²⁵.

With the enactment of China's Anti-trust Law in 2008, the discussion about SOE monopoly became more detailed and specific, and turns to a hot topic as various groups attempted to influence policy direction. One of the most important issues is administrative monopoly, which not only directly relates to SOE, but also was clearly written in specific provisions in anti-trust law.

Most scholars believe that administrative monopoly restrict and eliminate competition in the same way as the economic monopoly, thus anti-trust law also should regulate them²²⁶. Some scholars even think the primary mission of current China's anti-trust law is to correct governmental distortion²²⁷. However, there some other scholars state that administrative monopoly is not the subject

²²² Yuyang Li, "A Hot Topic Concerning SOE Reform: The theory of the SOE Monopoly' is Untenable", *Economic Daily*, August 4 2013.

²²³ Sheng Hong, "SOE Monopoly leads to Economic Stagnation", *Financial Times Online*, August 8 2013.

²²⁴ Mingzhu Shang, 2008, *The Theory of Chinese Anti-monopoly Law and Practice*, Peking University Press, Beijing, p. 326-327.

²²⁵ *Ibid*, p. 273.

²²⁶ Zongjie Guo, 2007, *The Problem and Regulation of Administrative Monopoly*, Law Press, Beijing, p. 32.

²²⁷ *Ibid*, p.128

of regulation of anti-trust law, because first, the administrative monopoly is a political issue, which cannot be regulated by anti-trust law alone; second, all regulations relating to traditional anti-trust law are not administrative but economic monopoly activities; third, the administrative monopoly activities are practiced based on state power, which cannot be efficiently regulated and supervised, thus anti-trust law is powerless to affect administrative monopoly; and fourth, under a market economy, the self-interested behavior of a rational economic man could damage the interests of the whole society, and then government intervention is necessary, and the precondition of the Socialist market economy with Chinese characteristics is government intervention²²⁸.

To the provisions concerning administrative monopoly in China's anti-trust law, Jin Sun thought although current anti-trust law has established a basic mechanism for regulating administrative monopoly, some systematic deficiencies still exist²²⁹. And Shuli Hu stated that the law's limitations mean it has not been strong enough to take on the state enterprises. For example, the Article 7 of the law uses too many vague and general languages, which blurs the lines of oversight. Hu also pointed out that in the five years since the law's enactment, only two enforcement actions could be said to have targeted SOEs. One was the 2009 investigation by the National Development and Reform Commission (NDRC) into suspected price-fixing by TravelSky, a provider of IT solutions to the tourism industry, which went nowhere. The second was the 2011 investigation into the broadband business of the telecommunications giants China Unicom and China Telecom, which again the NDRC suspended after the two companies applied to have the case dropped. Such enforcement is disappointing, to say the least. It also reflects the scale of the challenge²³⁰.

4.2 Arguments about China's SOE efficiency issue

²²⁸ See Xiaonan Ji, 2001, *A Study on Chinese Legislation on Anti-monopoly Law*, People's Court Press, Beijing.

²²⁹ Jin Sun, 2010, On the Defects of Administrative Monopoly in China's Anti-trust Law and Its Improvement, *Canadian Social Science*, Vol. 6, No. 2, 2010, pp. 1-19.

²³⁰ Shuli Hu, "China Must Rein in Its State-owned Monopolies", August 29 2013, *South China Morning Post*.

The discussion about the efficiency of SOEs focuses mainly on the following areas: changes to performance in the process of transforming SOEs; varying levels of efficiency according to ownership; regional differences in efficiency; and research on the productivity of SOEs. The primary researches are: by measuring the factors influencing industrial efficiency with data collected through nationwide survey, Xiaoxuan Liu found that different ownership structures in industries has a very important influence on industrial efficiency²³¹. By using the data from various provinces during the period from 1978 to 2003, Zhigang Wang measured, compared and analyzed the production efficiencies between various regions with Stochastic frontier models, finding that eastern regions enjoyed the highest levels of efficiency, followed by the middle and the western regions in turn²³². Xiaonian Xu's study on listed companies in China indicated that the higher the proportion of state ownership within a company, the worse its performance is likely to be; conversely, the higher the proportion of corporate shares, the higher the company's performance is likely to be; the proportion of individual shares was, however, largely irrelevant to an enterprise's performance²³³. Xiaodong Xv and Xiaoyue Chen found that if two listed companies in China had different ownership structures and governance structures, and that the companies where the biggest shareholders were non-state shareholders had higher corporate values and stronger profitability²³⁴. Yang Yao found that non-SOEs were more efficient than SOEs by conducting an empirical study of state-ownership on the technical efficiency of Chinese industrial enterprises²³⁵. Xiao Chen and Dong Jiang pointed out that non-SOEs only enjoy remarkable higher efficiency in competitive industries²³⁶.

²³¹ See Xiaoxuan Liu, 2000, "The Impact of the structure of China's Industrial Enterprises Ownership on Its Efficiency Analysis of the 1995 National Industrial Census Data", *Economic Research Journal* Vol. 2; Xiaoxuan Liu, 2004, "The Effect of Privatization on Industrial Performance in Chinese Economic Transition – Analysis of the 2001 National Industrial Census Data", *Economic Research Journal*, Vol. 8.

²³² Zhigang Wang, 2006, "China's Regional Differences in Technical Efficiency and the Decomposition of Total Factor Productivity Growth (1978 – 2003)", *Social Sciences in China*, Vol. 2.

²³³ Xiaonian Xu, 1997, "Establish Corporate Governance Mechanism and Capital Market with Legal Entities as the main Body", *Reform Journal*, Vol. 5.

²³⁴ Xiaodong Xv, Xiaoyue Chen, 2003, "Analysis on the Largest Shareholders Impact on Corporate Governance and Performance", *Economic Research Journal*, Vol. 2.

²³⁵ Yang Yao, 1998, "The Impact of Non-state Sector to Chinese Industrial Enterprises' Efficiency", *Economic Research Journal*, Vol. 12.

²³⁶ Xiao Chen, Dong Jiang, 2000, "Ownership Pluralization, Firm Performance and Industry Competition", *Economic Research Journal*, Vol. 8.

From the perspective of financial index, Xiaoxuan Liu and Liying Li identified the typical features of enterprise restricting by using empirical and theoretical analysis of survey data. They conducted horizontal and vertical comparisons between the efficiency of enterprises of different ownership types. The conclusions found that restricted enterprises were indeed more efficient than those that had not conducted restricting, and that enterprises with greater levels of private capital were more efficient than those with higher levels of state-owned capital²³⁷. Yifan Hu studied the performance of privatized SOEs based on the World Bank's survey on 299 Chinese manufacturing companies. Hu concluded that there was a sharp increase in sales income and a remarkable decline in the cost of sales, significantly improving the companies' profitability, and the productivity of the companies was significantly improved after privatization²³⁸.

From the perspective of productivity indexes, Jinghai Zheng, Xiaoxuan Liu and Arne Bigsten examined the impacts of various endogenous or exogenous factors by making use of the data collected from 700 SOEs during the period from 1980 to 1994 and using growth in productivity and efficiency changes and technical advances of its component parts as variables²³⁹. Through flat panel data from 29 provinces in China from 1979 to 2001, Jinghai Zheng and Angang Hu found that China experienced a high growth period of total factor productivity (4.6%) from 1978 to 1995, and a period of low growth (0.6%) from 1996 to 2001²⁴⁰. Xiaoxuan Liu indicated that, in terms of productivity growth of enterprises, SOEs enjoyed the biggest growth. The productivity growth of SOEs mainly came from the growth in EC. However, the growth in TC of SOEs was quite limited and failed to surpass the TC growth of private enterprises²⁴¹.

²³⁷ Xiaoxuan Liu, Liying Li, 2005, "Efficiency Analysis of Corporate Property Reform", *Social Sciences in China*, Vol. 2.

²³⁸ Yifan Hu, 2006, "The Research on the Efficiency of Privatized SOEs", *Economic Research Journal*, vol. 7.

²³⁹ Jinghai Zheng, Xiaoxuan Liu, Arne Bigsten, 2002, "Efficiency, Technical Progress and Best Practice in Chinese State Enterprises (1980-1994)", *Quarterly Journal of Economics*, 1(3).

²⁴⁰ Jinghai Zheng, Angang Hu, 2004, "An Empirical Analysis of Provincial Productivity in China (1979-2001)", *Quarterly Journal of Economics*, 4(2).

²⁴¹ Xiaoxuan Liu, 2009, "Enterprises Productivity and Its Sources: Innovation or Demand Push?"

To the comparison of the efficiency of SOEs and private enterprises, Gary Jefferson measured and compared the efficiency of enterprises with different ownership structure using the data of 22,000 large and medium-sized Chinese industrial enterprises collected during the period from 1994 to 1999. He found a clear negative correlation between the proportion of state ownership and productivity, indicating the success of SOE reform in diversifying ownership. Even SOEs with lower proportions of state ownership remained less efficient than enterprises with other ownership structure²⁴². Yang Yao pointed out that the efficiency of non-SOEs was higher than those of SOEs through a study on the internal and external effects of non-state-owned capital on China's industrial enterprises²⁴³. Xiaoxuan Liu found that SOEs had an apparent negative effect on efficiency while private enterprises had a positive effect on efficiency²⁴⁴.

4.3 Discussions about China's SOE Income Distribution

The discussions about China's SOE distribution began in 2005 when the World Bank published the report of SOE Dividends: How Much and to Whom. In this report, the authors indicated that in China, no government entity – neither the Ministry of Finance nor state-owned assets supervision and management department – receives any dividends from large centrally-administered SOEs, a pattern that mostly applies as well to local governments and locally-administered SOEs, due to historical reasons. Which is in contrast to arrangements in other countries, where the state, as key shareholders, normally receives dividends, like other shareholders. The authors explained the reasons why SOE dividend policy is important to China, because this policy would divide SOEs' after-tax profit into two parts: retained earnings to finance investment in the group and dividends to finance general public spending (consumption or investment in other enterprise

Economic Research Journal, Vol. 7.

²⁴² Gary Jefferson. 2000. "Ownership, Productivity Change, and Financial Performance in Chinese Industry". *Journal of Comparative Economics*. December, 28(4). pp. 786-813.

²⁴³ Yang Yao, 1998, "The Impact of Non-state Sector to Chinese Industrial Enterprises' Efficiency", *Economic Research Journal*, Vol. 12.

²⁴⁴ Xiaoxuan Liu, 2004, "The Effect of Privatization on Industrial Performance in Chinese Economic Transition – Analysis of the 2001 National Industrial Census Data", *Economic Research Journal*, Vol. 8.

and projects) by the government. As such, the rationale for a sound dividend policy is twofold: first, it has the potential to enhance the efficiency of investments financed by retained earnings of SOEs; and second, it would improve the overall allocation of public financial resources²⁴⁵.

To the question of “how much to pay?”, this report suggested that: to companies with relatively slow and dependable growth can typically support a dividend payout ratio of 50 percent of earnings; to companies in cyclical industries, such as basic materials, dividends may reach or exceed 100 percent of earnings during cyclical downturns; and to high-growth or high-tech companies may pay little or no dividend, on the assumption that reinvestment in company is the best use for surplus cash²⁴⁶.

To the question of “who to pay?”, this report indicated that the state-owned assets supervision and management department as the shareholder agency of the government would be the direct recipient of SOE dividends, and the principle for specific arrangement on next level is that SOE profit and privatization proceeds are all public financial revenue and should be managed as such. In other words, nobody has the legal power to decide on their spending without approval of the NPC through the budgeting process. And from other countries’ experiences, while the state-owned assets supervision and management department acts as the state shareholder, SOE dividends and privatization proceeds should go to the Ministry of Finance and be subject to standard budget process; and by going through standard budget processes, the state-owned assets supervision and management department’s expenditure requests are assessed and weighed against other competing spending requests by the government and People’s Congress, which is supported to reflect the value judgment of the people²⁴⁷.

This report generated public concerns and debates. Those supportive of the

²⁴⁵ See World Bank Report, 2005, SOE Dividends: How Much and To Whom?

²⁴⁶ Ibid, pp. 5-6.

²⁴⁷ Ibid, pp. 7-8.

distribution of SOEs dividends hold the following views: first, since the state is the investor of SOEs; it has the right to participate in dividends distribution as a shareholder. By name and under the law, the shares of SOEs should belong to all citizens. The governmental departments are only exercising administrative power on their behalf. Therefore, all citizens, as opposed to certain groups, should become direct beneficiaries. Second, the high wages and welfare benefits of monopolistic SOEs come from their high profitability as they enjoy institutional monopolies. These profits should be turned over to the State and then, through secondary distribution of the government, be used to safeguard public undertakings such as education, medical care and old-age pensions. Third, reasonable income distribution can restrict the flow of state-owned capital and the investment and financing of SOEs. Besides, the government has borne the majority of SOEs' reorganization costs in social responsibilities such as schools, hospitals and the costs caused by unemployment and early retirement of employees. In fact, the exclusion of the above social burdens is one important reason for the rising profit of SOEs. This has also given more reason for the State to offset these costs²⁴⁸.

Some other scholars disagree with this view. One is that charging too much dividends from monopoly SOEs will force them to think of ways to increase costs and lower profits, such as trying every means to translate profits to employee incomes and welfare. The other is that this will lead to financing chaos in the country. The State should remove itself from market competition as quickly as possible so that state-owned capital may only be used to correct market failures and meet social public demands²⁴⁹.

5. Assessment China's SOE Reform Approaches and Theories

Since the onset of reform and opening up of China, SOE reform has undergone

²⁴⁸ Hong Sheng, 2012, *China's State-owned Enterprises: Nature, Performance and Reform*, World Science Publishing Company, pp. 115-123.

²⁴⁹ Sen Li, Xiuling Zhao, 2004, "On the Selection and Transformation of Finance Model in China – Starting From Studying the General Laws in the Development and Evolution of Finance Model", *Journal of Guizhou College of Finance and Economics*, Vol. 6.

several phases, including power decentralization and profit transfer, the contract system, the substitution of tax payment for profit delivery and the modern enterprise system. These reforms represented part of China's transition from a planned economy to a market economy. In the planned economic system, state-run enterprises only received and implemented government plans. The government directly controlled production, exchange, allocation and even consumption. In short, in the planned economic system, the main function of the government was to "produce for the public" by making and implementing plans.

When the development of a market economy was established as a goal for China, the rules of the economic game were changed dramatically. SOEs became independent corporations. This fundamentally ensured that SOEs could exit, develop and make profits in all economic areas. In addition, SOE managers were endowed with the same decision-making and managerial powers as managers in market economies. For its part, the government was transformed from the original plan maker to SOEs' capital contributor, which thereby enjoys the statutory rights and interests of a shareholder. In this way, as SOEs are further defined as "state-funded enterprises", one of the main functions of the government is changed from "producing for the public" to "making profit for the public"²⁵⁰. This process was, then, a process of commercialization and a move toward what we might call a "revenue-oriented government", which maximized its fiscal revenue by controlling and using social resources (state-owned assets, factors of production, rare resources and public power).

So far, the nature of China's SOE reform is the commercialization of state-owned assets, for instance, making profits through the operation of state-owned assets. When state-owned assets begin to take on capitalist attributes, the government slowly becomes a representative for their corporate interests. In this sense, the government is virtually the same as a businessman, and it also needs to make

²⁵⁰ According to the Law of PRC on the State-owned Assets of Enterprises (2008), the State Council shall perform capital contributor's duties and responsibilities on behalf of the state for large-scale state-invested enterprises concerning the lifeline of the national economy and national security and state-invested enterprises in important infrastructure, important natural resources and other sectors. For other state-invested enterprise, local people's governments shall perform capital contributor's duties and responsibilities on behalf of the state.

SOEs “larger and stronger”. When there is fierce competition in industries where SOEs are engaged, which makes SOEs suffer losses and heavy fiscal burdens, the government will flatly choose to withdraw SOEs. On the contrary, when there is a structure condition for monopoly in industries where SOEs are engaged, the government will establish institutional access barriers and impose monopolies for SOEs, allowing them to make huge profits. This is the nature of the reform entitled “hold on the big and let to of the small”. More importantly, when combining the motive to make money with public power it has, the government will control rare resources such as land, minerals and finance through laws, regulations and even by administrative means, so as to make huge profits for SOEs or directly for itself. This explains why after large-scale “private advance and state retreat” in the 1990s, we have seen structural “state advance and private retreat” in recent years.

In this way, as state-owned assets are commercialized, the government take on two roles, one as a provider of public goods (revenue government) and another as institutionalized capital (profit-oriented government). Such dual nature is also reflected by the aims and actions of SOEs. First, as carriers of platforms for the operation of state-owned assets, SOEs need to maximize their profits in the form of independent corporations, just like regular enterprises. Yet SOEs also aim to address issues in the interests of the public such as employment, social stability, macro-control, the stability of the government and national security under some circumstances. Second, as assets managers, SOE manager are virtually the same as regular agents, while at the same time, as government goal implementers, they belong to the government and can partake in the revolving door between enterprise managers and government officials. Third, in market operations, SOEs will emphasize the public nature of SOEs and obtain some special privileges through “in house lobbying” in order to pursue illegitimate interests.

The government’s aim of making money through SOEs is delegated to SOE managers and, as a result, there is a principal-agent relationship between the government and SOE managers, which is characterized by asymmetric information (the managers have more detailed and specialist knowledge about

the operations of the enterprise than government officials, whose duties are much wider). When the information is asymmetric, interests groups consisting of SOE managers and some government officials that claim to “make money for the public” but actually seek personal gains through state-owned assets will emerge. Such interest group will not only make the wish of “making money for the public” come to nothing but also control important social resources through their public power to constitute the social-economic characteristics of bureaucratic capitalism or crony capitalism.

Because of these multiple principal-agent links, the low efficiency of SOEs will not be fundamentally improved with changes in the competitiveness of industries, where SOEs are engaged. Although in recent years, the impressive paper results of SOEs have been used by some scholars to emphasize their high efficiency, the real performance of SOEs is seen to be far worse than that of other firms in the market after deducting resources rents, land rent, underestimated financial costs, government subsidies and administrative monopoly profits. Therefore, as long as SOEs do not meaningfully withdraw, even if their performance is improved after restricting, they are still in an unfavorable position as compared with private enterprises in all but a few cases.

The privatization of state-owned assets, especially at the beginning of China’s economic transformation, was not only logically inevitable, but also promoted meaningful market reforms. SOE reforms and the introduction of market mechanism promoted the development of a market economy represented by private enterprises. the large-scale withdraw of SOEs from many competitive areas also improved production factors and created space for the emergence of a market economy. As a result, China was able to improve the structure and efficiency of its national economy and achieve long-term stable and rapid economic growth.

However, along with the establishment of a market economy in China, the historical mission of privatization state-owned assets is about to come to an end. The reason is that SOEs are relatively less efficient, and more importantly, the

continuous existence of state-owned capital in for-profit factors has constituted and continues to constitute a severe threat to the driving force of China's economic growth, adequate and fair competition, and social justice.

To current China's SOEs, the most severe problems they faces are monopoly and income distribution issues. For instance, in 2010, the total profit of central SOEs are 1314.5 billion Yuan, accounting for 67.5 percent of the total profit of SOEs. Hereinto, CNPC and China Mobil made a profit of 128.56 billion Yuan and 148.47 billion Yuan, the total of which exceeds one fifth of the total profit made by central SOEs²⁵¹. It can be seen that ptofits of central SOEs were mainly realized by monopoly enterprises. To income distribution, from 2007 to 2009, the average tax burden of 992 SOEs was 10 percent, while that of private enterprises was as high as 24 percent; from 1994 to 2007, SOEs did not turn over any profits, and in 2009, only 6 percent of SOEs profits were turned over, and the rest was all distributed within enterprises; besides, dividend turnover by central SOEs mainly transfers within the central SOEs system, their significance in benefiting the common people has not been embodied yet; at the same time, the average staff wage of SOEs was 17 percent higher than that of other organizations in 2008, and their average labor income is 63 percent higher than that of private enterprises and 36 percent higher than that of non-state-owned enterprises²⁵².

As discussed above, the problems of monopoly and income distribution could not be solved by current reform approaches. In terms of ownership relations, the manner in which the state-owned assets supervision and management departments (both central and local) act as the owners of state-owned assets on behalf of the state has not really solved the problem of a lack of ownership of SOEs. Moreover, this model means that because state-owned assets supervision and management departments lacks sufficient supervision and oversight, it is easy for the organization to make concessions to the management of SOEs, allowing the misappropriate or embezzlement of state-owned assets.

²⁵¹ Hong Sheng, 2012, *China's State-owned Enterprises: Nature, Performance and Reform*, World Science Publishing Company, pp. 2.

²⁵² *Ibid*, p. 3.

In terms of operating performance, the question of whether the current performance of SOEs is linked to improved efficiencies is still quite controversial. However, it is obviously that SOEs have benefitted a great deal from rising global commodity prices and privileged access to land and resources. They have also benefited from monopolies in some key industries, where they have been able to squeeze out or swallow up other players through the power of their bureaucratic connection. In doing so, they have greatly violated market rules and have become the most important obstacle to the healthy development of China's economy.

In fact, the problems of China's SOEs must be solved systematically, which are always neglected by majority scholars, who often tried to solve one specific problem by using one method within one area. And the fundamental thing is the status of SOE. All former discussions about China's SOE reform based on the perspective of private law, in turn a strategy of "hold on to the big and let to of the small" and "building SOEs bigger and stronger" are the inevitable results of the property approach. However, from the perspective of public interests and public functions, it is not necessary so; it is also essential to build small SOEs into bigger and stronger ones and establish some new enterprises. In contrast, some large and strong SOEs may need to be downsized or even dissolved. Therefore, current China's SOE reform should be undertaken from the perspective of public law that SOEs are material means by which public functions are fulfilled instead of the private law perspective of property of SOE assets.

The status of SOE is also the key to solve the problems of monopoly and income distribution. The core of these two problems is actually the misunderstanding about SOE's status. To monopoly issues, it is the strategy of "making profit for public" and "making SOEs bigger and stronger" caused the motivations and excuses of government and state-owned assets supervision and management departments of giving preferential policies and privilege to SOEs. To income distribution issues, it is the unclear status of SOEs resulted in the inappropriate income distribution mechanism. In addition, the issues of monopoly and income

distribution are complementary and linkage: one hand, majority profits of SOEs are resulted from monopoly behavior of SOEs, and its income distribution could not be regulated properly if SOEs' monopoly behaviors still remain; on the other hand, the reform of SOEs' income distribution mechanism would also affect the regulation of administrative monopoly.

Therefore, a conclusion could be made that the problems of SOEs' monopoly and income distribution problems must be dealt with at the same time, based on the fundamental that recognizing SOE's status from public law perspective, otherwise, China's SOE reform would remain stagnant. In fact, the end of the reform characterized by the commercialization of state-owned assets does not mean that the SOE reform is finally accomplished. On the contrary, it only marks a new historical beginning. A new reform approach that based on the public law perspective and deal with monopoly and income distribution at the same time should be put on agenda.

CHAPTER FOUR: THE PROPERTY STRUCTURE OF CHINA'S STATE-OWNED ENTERPRISES

The issues concerning state-owned enterprises have always been the key to Chinese economic system reform. Before 1978, as an important part of public sector, state-owned enterprises had dominated almost every market of national economy for a long time. As a result, although state-owned enterprises had exited from most competitive areas and the proportion of them in whole national economy has decreased significantly, they still play an important role and dominate some markets in certain areas after the Reform and Opening Up policy. For the reform of state-owned enterprises, experts, scholars and politicians proposed varieties of reform plans and the government implemented most of them²⁵³. However, these solutions only scratched the surface, and the state-owned enterprises of China still face many challenges and problems at present. For instance, due to the unclear status of government functions, some competitive sectors are still controlled or dominated by state-owned enterprises, into which private sector could hardly enter. Lack of a modern cooperate governance system and the absence of a perfect supervision and profits distribution mechanism are some of the other challenges and problems. These examples actually reflect an imbalanced relationship between government and market.

In order to explore this subject in depth and find an appropriate solution, the nature of state-owned enterprises and its reform processes should be rethought profoundly, instead of looking for partial solutions by old and traditional ideas. In this chapter, the history, nature and reform processes of China's state-owned enterprises will be reflected, the current situation of it will be analysed by relevant cases, and the short-term plans of state-owned enterprises reform and the ultimate goals of it will be proposed at the end.

1. The History, Functions and Role of State-owned Enterprises

²⁵³ 漆多俊。2004。《经济法基础理论》。武汉：武汉大学出版社。Duojun Qi. 2004. *The Basic Theory of Economic Law*. Wuhan: Wuhan University Press.

At the end of the 19th century, along with the changes that major western capitalist countries finished their industrial revolution and went into monopoly capitalism period, the state was required to interact and adjust the market directly, and investing and creating enterprises by State was the main method²⁵⁴. After the First World War, especially after the Great Crash in 1929, the state-owned enterprise as the main method of adjusting national economy structure and operation, draw attention to themselves and developed rapidly, due to the fact that any other partial measures were useless. After the Second World War, the function of state-adjustment was enhanced, many countries set off waves of nationalization, and the state-owned enterprises took a fundamental position in national economy.

In France, there were three major nationalization movements, respectively in late 1930s, middle 1940s and early 1980s²⁵⁵. In 1938, the Societe Nationale des Chemins de Fer Francais was nationalized, and its State holding increased to 100% in 1982²⁵⁶. Some most important banks and Renault were nationalized in 1945, and a large part of the banking sector and industries of strategic importance to the state, especially in electronics and communications were nationalized in 1982²⁵⁷. According to statistics, in 1983, the French state-owned enterprise accounted for 17% of the GDP, 35% of total investment in fixed capital and 23% of employment²⁵⁸.

As early as 1657, the United Kingdom set up the Postmaster General, and nationalized inland telegraphs in 1870s²⁵⁹. During the two World Wars, the government of the UK controlled coal, railway and munitions industries to deal with specific issues during wartime²⁶⁰. In 1926, the Central Electricity Board was established under the *Electricity Act 1926*. The British Broadcasting Company

²⁵⁴ Ibid.

²⁵⁵ 郭克莎。1995。“国有产权制度改革模式和途径”。《经济研究》1995年第一期。Keshu Guo. 1995. “The Models and Approaches of State Ownership System Reform”. *Economic Research* 1995, Vol. 1.

²⁵⁶ Ibid.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ Ibid.

became British Broadcasting Corporation which operated under a Royal Charter in 1927²⁶¹. Afterwards, Bank of England, coal industry, cable and wireless, domestic transportation, electricity and steel industry were nationalized, by which state-owned enterprise had taken the fundamental position of the UK's economy²⁶². According to statistics, there were 16,283 state-owned enterprises in 1979, accounted for 11.1% of the GDP, 20% of total investment in fixed capital and 8.1% of employment²⁶³. Besides, after the economic crisis in 2008, the UK government also nationalized (or partly) some failing banks such as Northern Rock, Bradford & Bingley and the Royal Bank of Scotland to stabilize financial markets.

In other European countries, state-owned enterprises also had their own positions, for instance, in 1978, the state-owned enterprises of Italy accounted for 24.7% of the GDP, 47.1% of total investment in fixed capital and 25.1% of employment²⁶⁴. And in 1980s, the state-owned enterprises of the Federal Republic of Germany accounted for 12% of the GDP, 13% of total investment in fixed capital and 10% of employment²⁶⁵.

It is worthwhile to note that there was a new wave of nationalization after the 2008 economic crisis. For instance, Greece nationalized the Proton Bank in the midst of its financial crisis²⁶⁶; Iceland renationalized its leading commercial banks: Kaupping, Landsbanki, Glitnir and Icebank²⁶⁷; and Ireland nationalized Anglo Irish Bank to secure its viability²⁶⁸.

As concluded above, there are three main purposes of setting up state-owned

²⁶¹ Ibid.

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ 罗红波, 戎殿新。2000。《西欧国有企业大变革》。北京: 对外经贸大学出版社。Hongbo Luo, Dianxin Rong. 2000. *The Great Reform of State-owned enterprises in Western Europe*. Beijing: University of International Business and Economics Press.

²⁶⁵ Ibid.

²⁶⁶ It was nationalized in 2011. See link < <http://www.reuters.com/article/2011/10/10/us-greece-proton-idUSTRE79911320111010>>.

²⁶⁷ They were nationalized in 2009. See link < <http://www.studymode.com/essays/Nationalization-513613.html>>.

²⁶⁸ It was nationalized in 2009. See link < <http://www.rte.ie/news/business/2011/0331/299301-anglo/>>.

enterprises: financial purpose to expand national revenue; political purpose to safeguard national security by controlling important economic sectors; and economic purpose to promote development of economy by State investment and management directly. Before or at the initial stage of capitalism period, the state-owned enterprises mainly aimed at expanding national revenue and maintaining securities. Adjusting activities such as stabilizing grain market and balancing supply and demand also occurred sometimes but was subordinated to the former two purposes apparently. Since the 20th century, the purposes of state-owned enterprises were mainly focused on adjusting national economy. Implementing national economic policies and adjusting market are the major objective of modern state-owned enterprises. They still have the functions of expanding national revenue and safeguarding security, however, these functions are less important than the economic one relatively. For instance, the State has to invest into some economic sectors and industries for long-term for overall interests, even they could not gain profits in certain periods. On the other hand, the national revenue would be expanded and society would be stable if national economy develops healthily under the adjustment of State.

Unlike the state-owned enterprises in capitalist countries, there was another type of state-owned enterprises in socialist countries, the purposes of them were remarkably different from the capitalist one²⁶⁹. Although the socialist state-owned enterprises also have financial, political and economic functions, they are influenced and guided by communist theories. According to these theories, the ultimate goal of socialism is to achieve communism, abolish private ownership and establish common ownership of the means of production²⁷⁰. In practice, the socialist nationalization was regarded as common ownership, thus state-owned economy took the dominant position by seizing and transforming private economy, and state-owned became the main form of enterprises.

²⁶⁹ 漆多俊。2004。《经济法基础理论》。武汉：武汉大学出版社。Duojun Qi. 2004. *The Basic Theory of Economic Law*. Wuhan: Wuhan University Press.

²⁷⁰ 中共中央党校编。2013。《中国特色社会主义理论体系原著选编》。北京：中共中央党校出版社。Edited by the Party School of the Central Committee of CPC. 2013. *The Theoretical System of Market Economy with Chinese Characteristics*. Beijing: Party School of the Central Committee of CPC Press.

Afterwards, great changes occurred in these socialist countries. Differed from Russian and East European countries that carried out large scale of privatization, China transformed its economy system to the socialist market economy with Chinese characters and started reform its state-owned enterprises on its own way.

2. Debates on the Nature of State-owned Enterprises

Since 1978, the state-owned enterprises reform experienced a series of explorations and practices, such as decentralizing powers and giving up profits, contractual system reform, shareholding system reform and establishing modern enterprise system. In conclusion, all these reforms expected that state-owned enterprises would become independent market participants through separating government functions from enterprise management and strengthening enterprises self-management.

There is no doubt that such reforms have their own positive significances in certain conditions, however, the metaphysical researches also important as well. Basically, the most fundamental question of state-owned enterprises reform is: “what is state-owned enterprise?” and “what is not state-owned enterprise?”.

One of the most important tasks of current China’s economic reform is to further deepen the state-owned enterprise reform based on former experiences and lessons, and the top priority is to understand and define the nature and status of state-owned enterprises.

2.1 The state-owned enterprises as special public organizations

By comparing with government department, the state-owned enterprises are more similar to regular enterprises and they also share many common features – that is the reason why state-owned enterprise are treated as normal market participant. However, the understanding is superficial. In fact, state-owned enterprises and ordinary enterprises are fundamental different.

2.1.1 The characteristics of state-owned enterprises that different from regular government organization

State-owned enterprise is an organization invested, controlled and guided by the State. From the perspective of their forms and names, the state-owned enterprises have some characteristics of regular enterprises. The specific characteristics are the followings:

First, the organization structure of state-owned enterprises differs from regular government department. The state-owned enterprise always set up board of directors and supervisors like regular enterprises, which are relatively independent.

Second, by comparing with regular government department, the state-owned enterprises have more flexibility in human resources and finance. The budget of government department receives more strict control than state-owned enterprises. The budget of government department is approved by the NPC, and the surplus should return to exchequer as a general rule. The financial policies for state-owned enterprises are more flexible, in general they have a long-term appropriate funds system instead of the annual budget plan, which would benefit to turn from deficits to profit for those loss-making enterprises. Besides, only a few brief explanations are needed for the state-owned enterprises' budget, such as financial condition, income and expenditure, bonds due for repayment and other relevant supplementary specifications, because it is hard and impossible to predict the commercial demanding for a long-term project.

Third, the state-owned enterprises are ruled by private law more than public law due to the fact that they have much more civil activities, from this perspectives, state-owned enterprises are similar to regular enterprises rather than government department.

Fourth, the state-owned enterprises own, control and manage more assets,

especially profitable assets than government department. Therefore, most of them would obtain funds by loan, selling shares to government, providing services and any other self-fund methods rather than receiving funds from government directly.

2.1.2 The difference between state-owned enterprises and regular enterprises

The bureaucracy is the typical form of government department, but not the only one. Different government departments need different organization structures. In fact, structure determines function. The organization structure and operating method of public institutions depend on the nature of their public functions. For instance, the individual regulatory agency, which was criticized for against separation of powers, still could exist due to its public functions which need professional acknowledgement and experiences.

As the same principle, the reason why the form of enterprise is used rather than regular public institution is because this form would fulfil some specific public functions more appropriate due to its relative independent structure and flexible operating. Hence the government needs to adopt the more flexible and efficient form, which is the enterprise form, to deal with certain issues with more enterprise natures.

The public nature of state-owned enterprises could not be denied by its civil activities. Even the most typical public institutions would have civil activities, own and manage profitable assets. For example, regular government departments would gain profits by fine, auction and providing certain services. However, these governments still are public institutions rather than independent market participants, and should be ruled by public law.

As concluded above, the differences between state-owned enterprises and regular government department are relative and formally, and their uniformities are absolute and fundamental. There are no clear distinctions among different

public institutions. In addition, since 1980s, with the emergence and development of the theory of New Public Management, some scholars in this area believed that there is no fundamental difference in management between public and private sectors, and the theories and experiences of management in private sectors could also be applied to public sectors. Therefore, in some western countries, the state-owned enterprises could not be identified accurately and be separated from regular government department completely. For instance, the Tennessee Valley Authority, which is regarded as the biggest state-owned enterprise in the United State, the Federal Deposit Insurance Corporation and the Port Authority of New York and New Jersey are always recognized as traditional public institutions superficially.

2.1.3 The precondition of setting up the state-owned enterprises

In which condition a state-owned enterprise should be set up is the core issue of state-owned enterprises reform. However, there are no specific and applicable consensus which could be achieved up to today, though it has exerted all scholars and experts' strength and wisdom in this area. In general, setting up of the state-owned enterprise is to protect and promote public interests, but the purposes of other regular public institutions are the same as well. The public interest is a vague concept anyway, and has different explanations under different conditions. Thus it is difficult to define the precondition of setting up the state-owned enterprises accurately. Generally, to determine in which condition should a state-owned enterprise be set up to protect public interests would through public selection, to confirm whether it is appropriate and by which method. Simply speaking, it depends on democratic process. Therefore, setting up a state-owned enterprise in democratic countries has to be based on legislations instead of independent actions.

Although the judgment on the precondition of setting up the state-owned enterprises from practice perspective is relative, vague and subjective, it still has practical significances for those countries lack of public opinion expression mechanism. It is worthwhile to note that, the Annual Budget Message to the

Congress of Fiscal Year 1948 of the President Truman of the United States has listed four principles about government corporation, which is worth reference for this issue. The principles are: “the corporate form of organization is peculiarly adapted to the administration of governmental programs which are predominantly of a commercial character--those which are revenue producing, are at least potentially self-sustaining, and involve a large number of business-type transactions with the public”.²⁷¹

2.2 The normative significance of the state-owned enterprises as special public organizations

In fact, the state-owned enterprises are the extensions of government, and the nature and functions of government determines state-owned enterprise's nature and functions. The modern state should be the combination of different organizations fulfilling public functions, and the state-owned enterprise is only one of them – adopting the enterprise form is to fulfil public functions easily. The priority of state-owned enterprises is to fulfil public functions rather than gaining profits, since profits could be provided by private sectors as well. The word of enterprise could have more explanations than just a profit-gained economic organization. For instance, in other Chinese language districts, the state-owned enterprises are called “state-owned undertakings” in Taiwan, and “state-owned institutions” in Hong Kong. Furthermore, it is not necessary to fulfil government functions through bureaucracy and traditional and mandatory public activities only.

In a word, the state-owned enterprise is a special form of public institutions, and it is a public agency with enterprise form and differs from regular government department, that easily fulfil the functions of protecting and promoting necessary and major public interests. The public natures of the state-owned enterprises could be concluded as: it is owned by government; the ultimate owner is the whole people; the purposes of it are to promote national economy

²⁷¹ Harry S. Truman. 1947. *Annual Budget Message to the Congress of Fiscal Year 1948*. See link: <<http://trumanlibrary.org/publicpapers/index.php?pid=2046&st=&st1=>>.

and welfare; the function of it is to provide public facilities; and the regulations of it are the public rules and regulations based on whole citizens participant.

2.2.1 The legitimate purpose and the proportionality principle of setting up a state-owned enterprises

From the perspective of legitimacy, the primary, direct and only purpose of setting up a state-owned enterprise is to protect and promote major public interests, and profitability is legal only in the case of reducing cost and improving effective. Then the state-owned enterprises whose direct and primary purposes are profitability rather than public interests should be closed; by contrast, they should be established regardless profit and loss. From the perspective of proportionality principle: first, the necessity. In certain market, the state-owned enterprise may not be necessary. If market can be met and satisfied by the private sector and market mechanism itself, goods and services should not be provided by the state-owned enterprises. In situation where market cannot be satisfied, the state-owned enterprises and other methods such as Non-governmental Organizations (NGOs), government procurement and government subsidies could enter market. In a word, the state-owned enterprises should only be set up when it is the necessary and only mechanism to meet demand. Second, whether the cost of setting up a state-owned enterprise is proportional to the public interests also should be considered.

2.2.2 Setting up and closing the state-owned enterprise should according to law

The state-owned enterprises should be set up according to law that enacted by congress, rather than government department and the enterprise itself, and only congress could close existed state-owned enterprises by direct or clear authorization. The closure process would be reviewed by congress and under strict supervision, and general and massive withdraw of state-owned enterprises and assets allocation should through referendum.

2.2.3 The scope of activities of state-owned enterprise should defined by law

The state-owned enterprises should be strictly limited to its statutory scope as regular government department rather than free acting of private enterprises. The public interests that the state-owned enterprise would achieve should be confirmed by legislation, which determines that each state-owned enterprise has its specific scope of activities. Besides, the funds of the state-owned enterprises belong to public, and it could not be spent freely, since which would harm public property and operating rights.

2.2.4 Statutory organization structure and human resource

The organization structure of the state-owned enterprises should be base on law. Despite of adopting enterprise form, its staffs still belong to civil servant and should be regulated by the *Civil Servant Law*²⁷², and their salaries are controlled by congress and relevant legislations except of professional manager that cannot enjoy civil servant's welfares. The illegal activities of enterprises' staff would be punished as the same as civil servant of regular government department.

2.2.5 Statutory financial system

Although the budget and appropriate funds of state-owned enterprises are more flexible than regular government department, they are still restricted by public financial system. From the perspective of formativeness, the profits of state-owned enterprises should delivery to exchequer and public financial system undertakes legal and reasonable losses, and the system of responsibility for own profits and losses should be forbidden. In situation of under strict auditing and supervision, state-owned enterprises could use profits directly to cover expense and expand operating. Anyway, the tax and rent may not be necessary, but the profits could not be distributed by the state-owned enterprise

²⁷² 公务员法。Civil Servant Law. 2006.

itself only. By contrast, in current China, the state-owned enterprises could manage their profits and incomes after paying certain tax and rents.

2.2.6 The state-owned enterprises should be limited by The Institutional Law

The private activities of the state-owned enterprises still belong to public administration. The Institutional Law ruled that public institutions should respect the basic rights of citizens, and treat them equally, which should remain unchanged no matter what form the public institution would adopt. Therefore, state-owned enterprise should obey the institutional obligations when their private activities against them.

2.3 The strategic significance of reaffirming the public nature of state-owned enterprises for China's state-owned enterprises reform

Since the state-owned enterprises are more similar to regular enterprises, people always concentrate on its private characters and emphasize its self-management and independent status, and neglect its public characters and supervisions it should receive, which would result in the alienation of state-owned enterprises, make them become to an interest group of self-authority, self-duplication, self-expansion and self-profitability, and harm public interests. The famous aphorism of Germany legal system "Flucht in das Privatrecht" or "Flucht in die öffentliche Stiftung", which describes the situation that the private economic administration institutions such as the state-owned enterprises would evade its public characters and relevant restrictions by emphasizing its private characters and independent legal person status. Specifically, government department would avoid supervisions by adopting enterprise form, which lead to the failure of public functions and waste of public resources; and state-owned enterprise would become the back yard gardens of retired civil servants. For example, there is no doubt that the public functions could not be fulfilled, in the situation that on one hand, the financial obligations of national revenue still exist; on the other hand, the staff of state-owned

enterprises lack of strict regulation by the Civil Servant Law, ethics requirements and appropriate supervision mechanism.

Moreover, the state-owned enterprises would avoid public restrictions such as government budget, audit, human resource and procurement, by adopting private regulations. In 1945, the *Government Corporation Control Act*²⁷³ of the United States was promulgated based on the same reasons and situations, because during that period, many government departments are given enterprise status just for simple purchase or sale activities, or try to get rid of regular control and supervision from government, or setting up a new organization according to the *Company Law* is much more easier than basing on strict legislative process of congress.

Therefore, it is significant to review the nature and status of China's state-owned enterprises according to its public functions and characters. From this perspective, there are still many misunderstandings about the basic issues of China's state-owned enterprises reform currently, which are the followings:

2.3.1 Is the independent status of market must be the goal of reform?

In China, as the long-term and high-centralized planned economy damaged the autonomy and flexibility of state-owned enterprises severely, the reform concentrated on giving independent market status to state-owned enterprises at the beginning, and which was agreed by almost all scholars and experts²⁷⁴. However, this reform strategy could work only in specific period and conditions, for example, decentralizing powers and giving up profits have achieved certain effects only in the special condition that state-owned enterprises were completely controlled by government. Facts have proved that, current China's estate-owned enterprises obtain and enjoy many of privileges and advantages at the same time they could avoid many restrictions and obligations they should

²⁷³ United States. 1945. *Government Corporation Control Act*

²⁷⁴ 郭克莎。1995。“国有产权制度改革模式和途径”。*经济研究* 1995 年第一期。Kesha Guo. 1995. “The Models and Approaches of State Ownership System Reform”. *Economic Research* 1995, Vol. 1.

receive by emphasizing their independent status, which turn the state-owned enterprise to an interest group that could consume public resources and in the disguise of protecting and promoting public interest, and government would cover their losses and internal interest group divides profits.

In addition, this idea would also provide the potential theoretical foundations for blind expansion of the state-owned enterprises to some degree. As the independent subject of market, the state-owned enterprise could expand freely without any restrictions, which lead to a series of harmful consequences. For example, during China's economic stimulus program, most of RMB four trillion Yuan (about USD 571 billion at the time of writing) were given to state-owned enterprises²⁷⁵, thus they could expand in irregular speed. They even enter real estate industry that is out of their core business scope but has generous profits, which lead to the sharply increase of prices. Meanwhile, the blind expansions of state-owned enterprises also weaken private sectors' development, and enhanced monopoly and reduced free competition. It is true that the state-owned enterprises should have more independence and flexibility than regular government department, but must be under strict supervision of public law. In fact, the idea that state-owned enterprises should and must have complete independent status of market denied the public characters of state-owned enterprises. It would improve enterprises' operating under China's specific conditions and in short-term period, but also provides the strong excuses for public power "Flucht in das Privatrecht", avoiding restrictions and obligations from public law. This idea is the major and most dangerous idea of all misunderstandings during China's state-owned enterprises reform.

2.3.2 Does the government functions have to be separated from enterprise management?

Separating government functions from enterprise management is also one of the main streams of China's state-owned enterprises reform. The positive effects of it

²⁷⁵ 张平 Ping zhang (Director of China's Development and Reform Committee at that time) stated that at the press conference of the Second Session of the Eleventh NPC, on 6th March 2009.

could not be ignored, especially in China. In fact, however, it is very difficult to undertake it. In other word, to achieve the task of separating, it is not necessary to give legal person status to enterprises, but could turn enterprises to subsidiary organization of government department instead. Moreover, the combination of enterprises and government department is needed indeed in some situations. For examples, the United States Postal Service was transferred from Post Office Department directly, and the Tennessee Valley Authority combines functions of production and administration, which would reduce costs and strengthen government department's responsibility.

The original intention of separating government functions from enterprise management is to provide opportunities equal to state-owned enterprises for other ownership subjects in competition. However, the fact is the innumerable links between government department and state-owned enterprise always exist no matter if they are separated, such as post and communications areas. Furthermore, the government department and state-owned enterprises are all belong to public institutions, and they would easily enter into alliance, thus non-state enterprises could not obtain equally status and opportunities to compete at all.

2.3.3 The perspective of property right or public interests?

Reforming the state-owned enterprises from the perspective of property right is another popular idea, and relevant reforms have also achieved certain effects. However, from the perspective of formativeness, the major and basic purpose of setting up state-owned enterprises is to fulfil public functions, which is public law logic rather than the private law logic of acting as agency of state-owned property. According to the second logic, as the agent of state-owned property, the state-owned enterprise could do anything they want only if they could maintain and increase property values. And based on the first logic, the functions of state-owned enterprises are to fulfill public functions but maintaining and increasing state-owned property values, in fact, the state-owned enterprise is just the method of fulfilling public functions. In practice, state-owned enterprises

would get losses instead of maintaining and increasing values by undertaking some specific policies in some situations, and need subsidies from government. Therefore, the state-owned enterprises reform should be undertaken from the perspective of public interests and functions rather than property right, and that is also the reason why *Regulations of State-owned Assets Supervision* was denounced widely.

2.3.4 Is the “state-owned” must better than “state-operated”?

Similarly, turning state-operated enterprises to state-owned enterprises was considered improvement of reform as separating government functions from enterprises management. Nevertheless, it also has many disadvantages. The “state-operated” means that government has inescapable responsibilities for managing state-owned enterprises to provide better public goods and services, and the “state-owned” logic may turn the government to the “owner” rather than protector of public interests ultimately. In “state-operated” model, the government only have the management right of state-owned enterprises, and they are owned by the whole people.

2.4 Epilogue

For the reason of the public characters of state-owned enterprise, actions such as setting up and operating of them have to be under general restrictions the same as other public institutions: first, setting up and operating state-owned enterprises should follow the principles of limited and effective government; second, it should be through democrat process.

Of course, the state-owned enterprises should have necessary independent and flexibility to some degree. In fact, current China’s state-owned enterprises reform faces a kind of paradox, which is the state-owned enterprises have to be restricted by public law as giving them necessary independence and flexibility.

3. 国进民退(Guo Jin Min Tui) – Is It a Trend?

国进民退(Guo Jin Min Tui) means that the state advances as the private sector retreats in Chinese economy. After massive reforms since early 1990s, China's state-owned enterprises have exited from competitive areas gradually. The *Decisions on Major Issues Concerning the Reform and Development of State-owned Enterprises of the CPC*²⁷⁶ that was issued in 1999, called that state-owned enterprises should be limited to important industries and core areas that relate to lifeline of national economy. According to this decision, state-owned enterprises have taken absolute dominated position in such industries and areas progressively. Besides, from 2003 when the State-owned Assets Management and Supervision Commission was established to 2013, the number of central state-owned enterprises (which are invested and controlled by central government directly) has been reduced from 196 to 113²⁷⁷, and the government want to keep the target amount at below 100 in the future²⁷⁸. With the rapid expansion of state-owned enterprises by government encouragement, especially after economic crisis in 2008, some scholars claimed that government continued to prop up state-owned enterprises whilst letting private enterprises fall by the way side, which named "Guo Jin Min Tui"²⁷⁹.

The government keeps prudent on these arguments. At an economic conference in 2009, the director of China's National Bureau of Statistics said that the phenomenon of "Guo Jin Min Tui" that people claimed does not exist in the economy as a whole, by quoting statistics from 2005 to 2008²⁸⁰. While local officers in Shanxi Province where private coalmines had been nationalized described what had happened was not "Guo Jin Min Tui" but 优进劣退(You Jin Lie Tui)²⁸¹, and these movements was an attempt to improve safety conditions²⁸².

²⁷⁶ 中共中央关于国有企业改革和发展若干重大问题的决定。Decisions on Major Issues Concerning the Reform and Development of State-owned Enterprises of the CPC. 1999.

²⁷⁷ According to the statistics from the website of State-owned Assets Supervision and Administration Commission of China, see link : <www.sasac.gov.cn> 1st December 2013.

²⁷⁸ According to the plan of State-owned Assets Supervision and Administration Commission, see link: <www.sasac.gov.cn>.

²⁷⁹ Unirule Institute of Economics. 2011. *The Nature, Performance, and Reform of the State-owned Enterprises*. See link: <<http://www.unirule.org.cn/>>.

²⁸⁰ 何伟。2009。“‘国进民退’ 五定位”。*中国经济时报* 2009年11月25日。Wei He. 2009. "Five Issues of 'Guo Jin Min Tui'". *China Economic Times* 25th November 2009.

²⁸¹ 优进劣退。Which means the excellent enter and the inferior withdraw.

Another defence from the Bureau Chief of China’s Civil Aviation Administration, which argued that mergers and acquisitions in the aviation sector was a testament to “market behaviour”, and in the best interest of the industry as a whole (most of China’s private airlines were acquired by state-owned airlines during these mergers and acquisitions)²⁸³.

However, the fact is the phenomenon of “Guo Jin Min Tui” does exist in specific sectors, although not exist in the economy as a whole. This structural “Guo Jin Min Tui” set up, maintained and strengthened monopoly in specific industries, and encroached on legal properties of private enterprises, which harmed market orders and private economies severely.

3.1 The structural “Guo Jin Min Tui”

It seemed that the claim by the director of China’s National Bureau of Statistics that the statistics do not support people’s claim of “Guo Jin Min Tui” is justified. By observing China’s Statistical Yearbooks of recent years, the proportion of state-owned enterprises is reducing year by year from 1999 to 2009 (see chart 1 and 2). In addition, the number of registered private businesses grew by more than 30% a year between 2000 and 2009 according to China Macro Finance, a research firm in New York (see chart 3). And non state-owned enterprises account for 75%-80% of profit in Chinese industry and 90% in non-financial services according to Keywise Capital Management (see chart 4).

Chart 1. The proportion of state-owned enterprise’ industrial output (RMB billion Yuan)²⁸⁴

Year	Whole industrial output	State-owned enterprises industrial output	Proportion
------	-------------------------	---	------------

²⁸² “Review the development environment of Private Coal Enterprises from the Perspective of Nationalization of Shanxi Coal enterprises”. *China Land and Resource* 4th December 2009.

²⁸³ 何伟。2009。“‘国进民退’ 五定位”。*中国经济时报* 2009年11月25日。Wei He. 2009. “Five Issues of ‘Guo Jin Min Tui’”. *China Economic Times* 25th November 2009.

²⁸⁴ 中国统计年鉴 China Statistical Yearbook 1999-2009

1999	7270.704	3557.118	49%
2000	8567.366	4055.437	47%
2001	9544.898	4240.849	44%
2002	11077.648	4517.896	41%
2003	14227.122	5340.79	38%
2004	20172.219	7022.899	35%
2005	25161.95	8374.992	33%
2006	31658.896	9891.045	31%
2007	40517.713	11968.565	30%
2008	50744.825	14395.002	28%
2009	54831.142	14663.000	27%

Chart 2. The proportion of fund usage of state-owned enterprises²⁸⁵ (RMB billion Yuan)

Year	The fund usage of whole enterprises	The fund usage of state-owned enterprises	Proportion
1999	9492.487173	6382.45718	67%
2000	10370.27022	6837.202129	66%
2001	11192.42	7121.408	64%
2002	12028.102	7235.385	60%
2003	13755.618	7644.638	56%
2004	16073.396	8268.769	51%
2005	19536.218	8984.578	46%
2006	23109.142	11540.82	50%
2007	27547.027	11540.82	42%
2008	33919.962	13894.851	41%
2009	40258.577	16496.739	41%

Chart 3²⁸⁶.

²⁸⁵ 中国统计年鉴 China Statistical Yearbook 1999-2009

²⁸⁶ “Entrepreneurship in China: Let a million flowers bloom”. *The Economist* 12th March 2011.

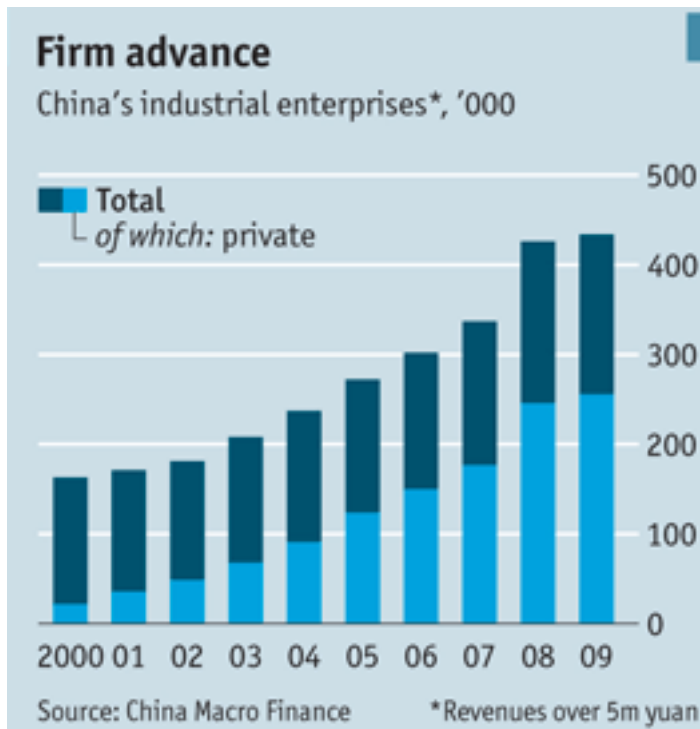
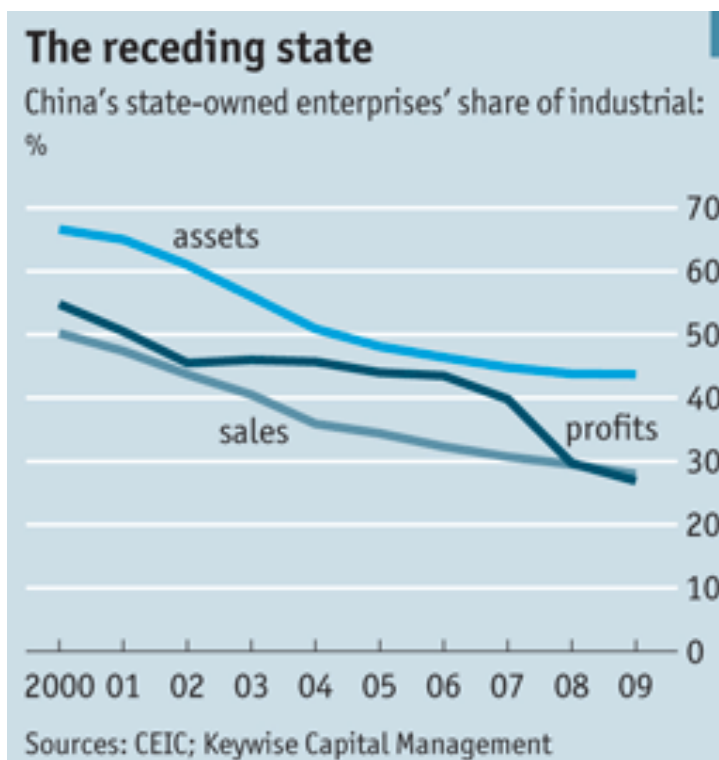


Chart 4²⁸⁷.



Although the phenomenon of “Guo Jin Min Tui” does not exist in industries as a

²⁸⁷ “Entrepreneurship in China: Let a million flowers bloom”. *The Economist* 12th March 2011.

whole, it does happen in some specific sectors. According to the *Guiding Opinions on Promoting State-owned Assets Adjustment and State-owned Enterprises Restructuring*²⁸⁸ of the State-owned Assets Management and Supervision Commission, the scope of state-owned enterprises was limited to important industries and core sectors relate to lifeline of national economy, which was divided into 11 sectors: coal mining and washing, petroleum and natural gas exploitation, ferrous metal mining, non-ferrous metal mining, petroleum and nuclear fuel processing, ferrous metal smelting and rolling, non-ferrous metal smelting and rolling, transportation equipment manufacture, production and supply of electricity and heating, production and supply of gas, and production and supply of water²⁸⁹.

According to the statistics from 1999 to 2009, the proportions of state-owned enterprises in fund usage, industrial added value and industrial output have increased in above 11 sectors, which could prove that a structural “Guo Jin Min Tui” ad indeed happened.

From the perspective of fund occupation, the state-owned proportion in petroleum and natural gas exploitation industry has raised from 96.3% in 2005 to 98.6% in 2006, and up to 95.7% in 2009 after a fall in 2008. In electricity and heating production and supply industry, the proportion of state-owned enterprises has raised from 85.8% in 2005 to 88.2% in 2008. And the proportions in ferrous metal smelting and rolling, gas production and supply and transportation equipment manufacture industries has raised from 56.7%, 57.1% and 51.6% in 2008 to 57.5%, 68.7% and 52.9% in 2009²⁹⁰.

From the perspective of industrial output, the state-owned proportion in petroleum and natural gas exploitation industry has raised from 90.5% in 2005 to 98.9% in 2006, and raised from 91.6% in 2008 from 89.3% in 2005 in

²⁸⁸ 国资委关于推进国有资本调整和国有企业重组指导意见。The Guiding Opinions on Promoting State-owned Assets Adjustment and State-owned Enterprises Restructuring of the State-owned Assets Management and Supervision Commission. 2006.

²⁸⁹ Ibid.

²⁹⁰ 中国统计年鉴 China Statistical Year Book 2005-2009.

electricity and heating production and supply industry²⁹¹.

The statistics of added industrial value also proved that the state-owned proportions in electricity and heating production and supply and petroleum and natural gas exploitation industries, which has raised from 87% and 88.9% in 2005 to 88.8% and 99.2% in 2008. Besides, the proportion in petroleum processing industry has risen from 59.5% in 2006 to 61.7% in 2007²⁹².

3.2 Relevant cases

Apart from statistics, some typical cases that affected regular competition mechanism also proved the grave consequences of “Guo Jin Min Tui”.

3.2.1 Setting up, maintaining and expanding monopoly in petroleum sector

In current China, the strong administrative monopoly existed in petroleum sector, and the government authorized the absolute dominated position to three oligarchs: Petro China, which concentrate on petroleum and natural gas exploitation; Sinopec, which concentrate on crude oil processing and chemical products; and CNOOC that mainly concentrate on offshore oil exploitation and processing. All of these three enterprises have controlled more than one stage in production and distribution process, and basically monopolized the whole China’s petroleum industry.

(1) The monopoly in wholesales petroleum products process

After the China’s Department of Petroleum Industry was dismissed in 1988, Petro China, Sinopec and CNOOC have taken over relevant management in their own areas. The *Plan of Institutional Reform of the State Council*²⁹³ that was

²⁹¹ Ibid.

²⁹² Ibid.

²⁹³ 国务院机构改革方案。Plan of Institutional Reform of the State Council. 1998.

approved by the NPC in 1998 decided to strategic restructure China's petroleum and petrochemical industries, and established Petro China and Sinopec by a series of mergers and acquisitions. Then the State Council issued the *Decisions on Clean-up and Rectification Small-sized Oil Refinery and Standardized the Circulation Process of Crude Oil and Petroleum Product*²⁹⁴ in 1999, which ruled that all petroleum products from oil refineries have to be wholesaled by Petro China and Sinopec only²⁹⁵. Besides, the National Economy and Commercial Commission also issued relevant rules to confirm no other enterprises and organizations but Petro China and Sinopec could wholesale petroleum products.

(2) The monopoly in supply and distribution process

The big three (Petro China, Sinopec and CNOOC) also monopolized the supply and distribution process. In 2003, the Railway Department of China issued the *Notice on Strengthening Management of Petroleum Transportation*²⁹⁶, which clearly stipulated that the railway department would only accept applications for petroleum transportation from Petro China and Sinopec only²⁹⁷. In addition, according to the *Plan of Expanding Ethanol Gasoline for Motor Vehicles Pilot*²⁹⁸ that was issued by the State Development and Reform Commission in 2008, only Petro China and Sinopec have the right to produce and supply ethanol gasoline²⁹⁹. And in Heilongjiang province, the local government issued the *Regulations on Popularizing and Using Ethanol Gasoline for Motor Vehicles*³⁰⁰, which ruled that the ethanol gasoline would be sold only by Petro China Heilongjiang branch since 2004.

²⁹⁴ 国务院关于清理整顿小炼油厂和规范原油成品油流通秩序的意见。Decisions on Clean-up and Rectification Small-sized Oil Refinery and Standardized the Circulation Process of Crude Oil and Petroleum Product of State Council. 1999.

²⁹⁵ Ibid.

²⁹⁶ 铁道部关于加强石油运输管理的通知。Notice on Strengthening Management of Petroleum Transportation of the Railway Department of China. 2003.

²⁹⁷ Ibid.

²⁹⁸ 发改委车用乙醇汽油扩大试点方案。Plan of Expanding Ethanol Gasoline for Motor Vehicles Pilot. 2008.

²⁹⁹ The State Development and Reform Commission, 2008, the Plan of Expanding Ethanol Gasoline for Motor Vehicles Pilot

³⁰⁰ 黑龙江省推广和使用车用乙醇汽油管理办法。Regulations on Popularizing and Using Ethanol Gasoline for Motor Vehicles of Heilongjiang Provincial Government. 2004.

(3) The monopoly in importation process

Currently, there are 5 state-owned and 22 private enterprises who could take petroleum importation business. The 5 state-owned enterprises are the big three, Sinochem and Zhuhai Zhenrong Company; and half of private enterprises have state background³⁰¹. In practice, any private enterprises must have certifications issued by Petro China or Sinopec to pass custom and apply for transportation, and the petroleum they imported have to sale to Petro China and Sinopec. Therefore, it is very hard for private enterprises to take petroleum importation business even though they have relevant qualification and quota.

(4) The monopoly in storage process

Even in the storage process the private enterprises were excluded. Since 2003, China started to build strategic oil reserve base, however, private enterprises that take half of whole petroleum retail market were excluded due to the government claimed that “they (private enterprises) are difficult to be supervised”³⁰². By contrast, the big three could participate at the beginning.

Obviously, excluding private enterprises by setting up monopoly is man-made and administrative monopoly although some processes in petroleum industry have natural monopolistic character, which has brought disastrous consequences to private economies. According to statistics, in early 2008, two-third of 663 private wholesale petroleum enterprises were closed or bankrupted, one-third of 45064 private petro stations were closed and more than 10000 get loss. Before 1998, 85% of petroleum product market was occupied by private enterprises, and they paid RMB 100 billion Yuan tax, which is less than RMB 20 billion Yuan at present³⁰³.

³⁰¹ Unirule Institute of Economics. 2011. *The Nature, Performance, and Reform of the State-owned Enterprises*. See link: < <http://www.unirule.org.cn/>>.

³⁰² Ibid.

³⁰³ Ibid.

3.2.2 Illegal mergers between monopolistic oligarchs in communication sector

According to Article 21 of China's *Anti-monopoly Law*, mergers between central state-owned enterprises must report to anti-monopoly authorities³⁰⁴. However, most of them did not do it, and the merger between China Network Communications (CNC) and China Unicom is the typical case of them.

In 24th May 2008, the Department of Industry and Information Technology, the State Development and Reform Commission and the Department of Finance jointly issued the *Announcement of Deeping Communication Structure Reform*³⁰⁵, which planned to merge six communication enterprises into three: China Unicom merges with CNC; China Telecom merges with China Satcom and get the CDMA business from CNC; and China Mobil merges with China Railcom³⁰⁶.

In 15th October 2008, the China Unicom and CNC announced that they were merged officially, however, this merger did not meet the requirements of anti-monopoly law that was enacted in 1st August 2008. According to Article 21 of the *Anti-monopoly Law*, "Where a concentration reaches the threshold of declaration stipulated by the State Council, a declaration must be lodged in advance with the Anti-monopoly Authority under the State Council, or otherwise the concentration shall not be implemented"³⁰⁷. And the *Regulations on the Standard of Concentration Declaration*³⁰⁸ of the State Council stipulated that, all enterprises involving concentration whose worldwide sum turnover more than RMB 10 billion Yuan, or more than RMB 2 billion Yuan within China, have to make to declaration³⁰⁹.

According to the *Report of the Major Assets Restructuring between China Unicom*

³⁰⁴ 反垄断法。Anti-monopoly Law. 2008. Art 21.

³⁰⁵ 关于深化电信体制改革的通告。Announcement of Deeping Communication Structure Reform. 2008.

³⁰⁶ Ibid.

³⁰⁷ See note 650.

³⁰⁸ 国务院关于经营者集中申报标准的规定。Regulations on the Standard of Concentration Declaration of the State Council. 2008.

³⁰⁹ Ibid.

and CNC (Hong Kong) that issued in 24th September 2008, in 2007, the turnover of China Unicom was about 100.47 billion Yuan, and CNC got RMB 86.92 billion Yuan³¹⁰. Therefore, both of China Unicom and CNC meet the requirement to make a declaration with the anti-monopoly authorities, but it never happened.

3.2.3 Encroaching on legal properties of private enterprises: coal mining nationalization in Shanxi Province

The state-owned enterprises also have advantages in coal mining sector, in which they could obtain mining right by administrative methods such as sale agreement, and could take the price of coal resources as capital³¹¹; by contrast, private enterprises have to go through bidding and pay in cash. Since 2009, the nationwide campaign of integration of coal resources gave other advantages to state-owned enterprises, which is to assign state-owned enterprises to merge private coal enterprises by administrative methods, which enhanced the monopolistic position of them in coal mining sector.

In May 2009, the *Plan of Adjusting and Promoting Coal Mining Industry of Shanxi Province*³¹² was unveiled, and its core tasks are: first, reducing the number of mines from 2,598 to 1,000 in 2011, then to 800 in 2015; second, reducing the number of enterprises from 2,200 to 130, and forming 4 extra large-sized enterprises that have the capacity of RMB 100 million tons per year and 3 large-sized enterprises that have 50 million tons capacity per year³¹³. Up to date, the number of coal mines in Shanxi province was reduced to 1,053, and the average capacity of single mines was increased from 300 thousand tons to 1 million tons per year; 5 major state-owned coal enterprises was set up (Tongmei Group, Shanxi Coking Coal Group, Yangquan Coal Group, Luan Mining Group, and Jincheng Anthracite Group)³¹⁴. During the massive mergers and restructures,

³¹⁰ The Report of the Major Assets Restructuring between China Unicom and CNC (Hong Kong), 24th September 2008.

³¹¹ 矿业权出让转让管理暂行规定。Temporary Regulation of Sale and Transfer Mining Right. Art 15.

³¹² 山西省煤炭产业调整和振兴规划。Plan of Adjusting and Promoting Coal Mining Industry of Shanxi Provincial Government. 2009.

³¹³ Ibid.

³¹⁴ “Review the development environment of Private Coal Enterprises from the Perspective of

there was almost no space left for private enterprises in Shanxi's coal mining sector.

There are so many reasons for the government to integrate coal resources, such as the effectiveness, environment and safety. However, these reasons are farfetched to some degree, for example, the Wangjialing mine that had an accident in 2010 just belong to Huajin Coking Coal Group, a state-owned enterprise³¹⁵. In addition, the mergers have to follow the principles of voluntariness and fairness, but what happened in Shanxi coal mining sector had broken all of them in practice. The private coalmines were forced to be sold to state-owned enterprises by government orders, and the price was made by the government directly, which was much lower than the market. Moreover, due to many private investors paid several times even dozens of times of regular price to purchase coalmines, they still would loss everything even they could get compensations based on market.

3.2.4 State-owned enterprises restructure private enterprises under government guidance

A profitable private enterprise – the Rizhao Steel was restructured by a loss making state-owned enterprise –Shandong Iron and Steel Group (Shandong Steel) under government guidance, is another typical case that reflect the bad living environment for China's private enterprises.

Shandong Steel, was created out of the restructuring of Jinan Steel, Laiwu Steel and Shandong Metallurgical Industry Corporation in 2008, it registered capital of 10 billion Yuan and fully owned by Shandong Provincial State-owned Assets Management Commission. Rizhao Steel was created in 2003 and engaged in smelting, processing and sale of steel products, and produced RMB 7.5 million tons of steel products in 2008³¹⁶. In 2009, just before the merger, both Jinan Steel

Nationalization of Shanxi Coal enterprises". *China Land and Resource* 4th December 2009.

³¹⁵ The report of the accident, see link: <<http://news.sina.com.cn/z/sxwjlmktssg/>>

³¹⁶ See Link: <<http://finance.sina.com.cn/focus/sdgtjgrzgt/>>

and Laiwu Steel reported loss, but Rizhao Steel made net profit of RMB 1.8 billion Yuan³¹⁷. Such case that a profitable enterprise was merged by a loss making enterprise has aroused widely controversies.

First of all, government guided this restructuring rather than a merger between market subjects based on principles of voluntariness and fairness. As early as 2007, Shandong provincial government issued the *Decisions on Speeding Up the Structure Adjustment of Iron and Steel Industry*, which proposed to construct a large-sized iron and steel factory in Rizhao³¹⁸. Besides, the *Plan of Adjustment and Promotion of Shandong Iron and Steel Industry (2009-2011)*, which was issued in 2009, also confirmed the task that Shandong Steel would restructure all steel enterprises in Shandong province³¹⁹. Thus, this merger was totally guided by government, which was not only against the *Company Law*, but also make China's market environment more unpredictable.

Secondly, according to the agreement, both Shandong Steel and Rizhao Steel jointly reorganized the assets to the joint venture by means of a capital injection, and Shandong Steel owns 67% stakes by cash and Rizhao Steel holds 33% stock with net assets³²⁰. However, there are still different opinions on the exact amount that Shandong Steel should pay in the joint venture, due to the fact that Rizhao Steel did not accept the result of assets evaluation that was made by the government³²¹.

3.2.5 Anti-competition policies on the ground of promoting public interests

In early 2010, Beijing government and Beijing Subway jointly issued a prohibition on newsagent in subway. This prohibition was made based on Article

³¹⁷ Ibid.

³¹⁸ 山东省政府关于进一步加快钢铁工业结构调整的意见。Decisions on Speeding Up the Structure Adjustment of Iron and Steel Industry of Shandong Provincial Government. 2007.

³¹⁹ 山东省政府钢铁工业调整振兴规划（2009-2011）。Plan of Adjustment and Promotion of Shandong Iron and Steel Industry (2009-2011) of Shandong Provincial Government. 2009.

³²⁰ See note 662.

³²¹ Ibid.

26 of the *Management Measures of Beijing Subway Safety*³²² that was promulgated in 16th June 2006, it stipulated that any activities that would affect traffic, rescue and evacuation such as street performer and newsagent, should be prohibited in ticket hall, platform, carriages and emergency exit³²³. However, another policy, the *Meeting Note about Newsagent Issues in Beijing Subway*³²⁴, which ruled that any organizations and individuals are prohibited to sell newspapers and magazines, except for the Star Daily, which is owned by Beijing Daily Group (a news corporation owned by Beijing government), would be allowed provided it does not affect subway safety.

If the original intention of the prohibition on newsagent in subway is to protect public safety, all newspapers and magazines including the Star Daily should be prohibited; and if the Star Daily could be allowed as long as it does not affect safety, other newspapers and magazines should be equally treated under the same condition. In fact, this policy is an anti-competition policy, which gave the monopolistic position of state-owned newspapers (the Star Daily) in certain market (Beijing Subway) on the ground of protecting public interests.

3.2.6 Anti-competition legislations

In postal sector, the living spaces of private enterprises were squeezed by relevant legislations.

According to Article 55 of the *China Postal Law*³²⁵ that was promulgated in April 2009, “No express delivery enterprise shall provide the correspondence delivery service which shall be exclusively provided by postal enterprises or deliver the official documents of state organs”³²⁶. Besides, Article 5 of it ruled that “The correspondence delivery services within the scope prescribed by the State

³²² 北京市城市轨道交通安全管理办法。Management Measures of Beijing Subway Safety. 2006.

³²³ Ibid. Art 26.

³²⁴ 轨道交通站内报刊发售问题会商会会议纪要。Meeting Note about Newsagent Issues in Beijing Subway. 2009.

³²⁵ 邮政法。Postal Law. 2009.

³²⁶ Ibid. Art 55.

Council shall be exclusively provided by postal enterprises”³²⁷, and the Regulations on the Business Scope of Postal Enterprises of the State Council clearly stipulated that the correspondence under 100g shall be exclusively delivered by postal enterprises. In practice, 40%-60% of private express enterprises businesses are correspondence delivery, and 80% of them under 100g³²⁸.

Thus, although law has confirmed the legal status of private express delivery enterprises at the first time, they still could not compete with postal enterprises (owned by state) due to discriminatory articles.

3.2.7 Abusing of dominant market position

To enter the urban gas sector that has basic market mechanism, Petro China adopted the strategy of exchanging resources for market by using its dominant market position. As the one of the founders of the West-East Gas Pipeline Project, Petro China has controlled gas supply in certain provinces (where the gas pipeline go through), which give it more bargaining powers to negotiate with such provincial governments for entering their gas market.

The bargain agreement Petro China signed with provincial governments give it comparative advantages over incumbent enterprises in market, and drove them out of business. For instance, in September 2007, Xinjiang Guanghui (a private enterprise) had signed an agreement with Wuwei (a district in Gansu Province) government for obtaining a gas supply license for 30 years through open tender. However, this license was abolished soon, since Petro China signed the agreement with Gansu provincial government in December 2007, which gave Petro China exclusive right to supply gas in whole Gansu province. The same situation also happened in Shandong and Zhuhai, in where incumbent private gas suppliers had to exit due to Petro China signed exclusive agreements with

³²⁷ Ibid. Art 5.

³²⁸ Unirule Institute of Economics. 2011. *The Nature, Performance, and Reform of the State-owned Enterprises*. See link: < <http://www.unirule.org.cn/>>.

local governments by using its strategic advantages. Obviously, pushing private enterprises aside by using dominant market position is monopolistic activities and against the Anti-monopoly Law, which enhanced state-owned enterprises' monopolistic positions and caused great damages to private economies.

3.3 Conclusion

The statistics above showed that the proportion of state-owned enterprises has reduced in national economy as a whole, but in some specific sectors especially in basic resources sector, the phenomenon of “Guo Jin Min Tui” is severe. The reasons are, first of all, the scope of state-owned enterprises was expanded. According to the *Decisions on Major Issues Concerning the Reform and Development of State-owned Enterprises of the CPC*³²⁹ that was issued in 1999, the scope of state-owned enterprises was limited to “sectors relating to national security and has natural monopoly”³³⁰. And the scope was expanded to “sectors relating to national security and major infrastructures and important natural resources” by the *Guiding Opinions on Promoting State-owned Assets Adjustment and State-owned Enterprises Restructuring* of the State-owned Assets Management and Supervision Commission that was issued in 2006³³¹, which give state-owned enterprises the right to enter more competition areas. Secondly, after 2008, both central and local government of China made revitalization plans to deal with economic crisis, which encourage and support state-owned enterprises to restructure and merge private enterprise. Thirdly, with the rapid rise of resources prices, state-owned enterprises try to make more profits by monopolizing basic resources sector.

The damages of structural “Guo Jin Min Tui” could not be ignored. The above cases showed that the administrative monopoly of state-owned economy was enhanced by its political and resource advantages, and private economy's competitiveness was weakened during “Guo Jin Min Tui”. In addition, the

³²⁹ 中共中央关于国有企业改革和发展若干重大问题的决定。Decisions on Major Issues Concerning the Reform and Development of State-owned Enterprises of the CPC. 1999.

³³⁰ Ibid.

³³¹ See note 634.

anti-monopoly rules and regulations were also ignored by state-owned enterprises and they did not get any punishment due to government's protection, such as the merger between China Unicom and CNC. Such activities damaged China's economic legal system and would lead China to oligarchy economy.

4. Deepening the Reform of China's State-owned Enterprises

4.1 Review and rethink China's state-owned enterprises reforms

Since Reform and Opening Up, China's state-owned enterprises have experienced several stages such as "Fang Quan Rang Li", "Liang Quan Fen Li" and "establishing modern enterprises system". These micro-level reforms reflected the transformation from planned economy to market economy to some degree.

Under planned economy, state-owned enterprises (or called state-operated enterprises) were only the executors of government plans, and single enterprise was a workshop if take whole national economy as a factory. The government controlled production, exchange, distribution even consumption directly. In a word, the major function of government is "producing for public" by creating and implementing plans in planned economy. Along with the task of socialist market economy has been confirmed, the rules of game among different market subjects also has changed. State-owned enterprises have obtained independent legal person status, which assured them to exist, develop and gain profits in every economic sectors as a stakeholder. Besides, the managers of state-owned enterprises also have been authorized the rights of making decisions and management. The government, turned to investors instead of plans makers, thereupon has relevant rights and obligations as shareholder. Thus, the state-owned enterprises could be defined as "state-invested" enterprises, and the major function of government would change to "making profits for public". This type of government could be described as "profit-making government", which aims at achieving revenue maximization by controlling and using social resources such as state-owned assets, elements of production, scarce resources and public powers.

So far, the nature of China's state-owned enterprises reform is capitalization of state-owned assets, which is to make profits by operating them. The government was personified gradually when state-owned assets were more and more capitalized. From this perspective, there are no fundamental differences between government and regular market participants. In practice, government would let state-owned enterprises exit certain sectors when they face strong competitions and make continuous losses; contrarily, if state-owned enterprises have had dominant positions in certain sectors, government would set up extra institutional barriers in it to make excess profits. More importantly, government would control scarce resources such as lands and mines by laws, policies even administrative methods, when the motive of making profits meets its public power. This would explain why the structural "Guo Jin Min Tui" occurred after massive withdraw from competition areas of state-owned enterprises in early 1990s.

With the capitalization of state-owned enterprises, government would have the both characters of public goods provider (regular government) and profit pursuer (profit-making government). First, on one hand, as the platform of state-owned assets and independent legal person, the state-owned enterprise is expected to achieve the goal of profit maximization the same as regular enterprises; on the other hand, it has to fulfil some public functions such as providing jobs, stabilizing society, macro control and protecting national security in some circumstances. Second, the managers of state-owned enterprises who operate state-owned assets in practice have no difference with regular agent; but they could switch between civil servant and entrepreneurs as the executor. Third, state-owned enterprises (or managers) would emphasize its public characters to obtain special conditions and advantages from government, and avoiding public restrictions and supervisions by emphasizing its private characters, to seek illegal and excess profits.

The government is made of officers of different levels, and state-owned enterprises need specific people to manage and operate, thus the task of making

profits through state-owned assets of government need specific people to achieve, which turned the agency relationship between government and state-owned enterprises to complex interpersonal relationships. In the situation of asymmetric information, certain interest group is made of managers of state-owned enterprises and some government officers, which would make profits for themselves by using state-owned assets on the ground of making profits for public. In fact, the formation of such interest group would fail the task of making profits for public, and lead China's economy to bureaucratic capitalism and crony capitalism.

Since too many links exist in agency relationship between government and state-owned enterprises, the inefficient would not be changed though different sectors have different competitiveness. According to statistics, from 2001 to 2009, the cumulative profit of China's state-owned enterprises are RMB 5846.2 billion Yuan, and the net profits are RMB 4051.7 billion Yuan. In 2010, central state-owned enterprises gained RMB 1341.5 billion Yuan profits, and Petro China and China Unicom donated more than one-third of them. And the net return on assets of state-owned enterprises is 8.16% from 2001 to 2009³³². However, such performance was achieved based on certain advantages in land and resources rent, financing and government subsidies. For examples, from 2001 to 2009, state-owned enterprises should have paid RMB 2578.7 billion Yuan for industrial land rent based on 3% of land cost, and RMB 2753.9 billion Yuan for loan interest margin (the average loan interest rate of state-owned enterprises is 1.6%, and regular one is 4.68%). Besides, they also received RMB 194.3 billion Yuan of government subsidies from 2007 to 2009. The real net return on assets of China's state-owned enterprises should be -1.47% if above costs is added, and the private economy achieved 12.9% during the same period³³³. Therefore, state-owned enterprises did not obtain higher efficiency by reforming, and they just made profits by taking advantages of exemption from land and resources rents, lower loan interest rate, government subsidies and

³³² 中国统计年鉴 China Statistical Year Book 2001-2009.

³³³ Unirule Institute of Economics. 2011. *The Nature, Performance, and Reform of the State-owned Enterprises*. See link: < <http://www.unirule.org.cn/>>.

administrative monopoly. Moreover, the expansion of low inefficient state-owned enterprises would cause fragility of China's macro economy.

No doubt that the approach of state-owned assets capitalization, as an important content of reform, is necessary and progressive at the beginning of China's reform, which promoted the development of market mechanism and system, and the withdrawal of state-owned enterprises from some competition sectors also provided certain living spaces for private economies. However, the state-owned enterprises reform featuring state-owned assets capitalization should be determined with the establishment of basic market economy, since not only state-owned enterprises have lower inefficiency, but also its existence in profitable sectors would harm competition and fairness, which are the motive powers for the development of economy.

Therefore, the reform featuring state-owned assets capitalization should be the beginning of the next stage of reform instead of the ending, which is more crucial, and more difficult.

4.2 Reform in transitional period

The state-owned enterprises reform in transitional period should focus on breaking up administrative monopoly and standardizing state-owned enterprises activities, which would promote fair and perfect competition between different economic subjects, and economic efficiency.

4.2.1 Breaking up administrative monopoly

(1) Standardize government behaviours by abolishing relevant rules and regulations

In current China, rules and regulations that are made by government department have more effectiveness than laws made by congress in practice. It seems certain that such rules and regulations would have administrative monopoly contents

since government departments have their own interests and purposes when creating them. And administrative monopoly is just the major factor that damages fair and perfect competition between different economic subjects.

In fact, systems concerning competition and monopoly should be the basic economic system. And according to the *Legislation Law of the PRC*³³⁴, basic economic system and basic systems of finance, taxation, customs, banking and foreign trade shall only be enacted and amended by the Standing Committee of the NPC³³⁵, other government department even the State Council have no such rights. This is the requirement of procedural justice. For the same reason, even the *Several Opinions on Encouraging and Guiding the Healthy Development of Private Investment of the State Council*³³⁶, which benefits to break up monopoly, should be enacted by the Congress rather than the State Council to obtain full legal status. Therefore, such rules and regulations, which damage substantive and procedural justices, should be abolished to standardize government behaviours, including but not limited to:

- *Decisions on Clean-up and Rectification Small-sized Oil Refinery and Standardized the Circulation Process of Crude Oil and Petroleum Product* (National Economy and Commercial Commission, 1999)
- *Decisions on Further Rectification and Standardized the Circulation of Petroleum Product* (State Council, 2003)
- *Notice on Strengthening Management of Petroleum Transportation* (Department of Railway, 2003)
- *Plan of Expanding Ethanol Gasoline for Motor Vehicles Pilot* (State Development and Reform Commission, 2008)
- *Regulations on Popularizing and Using Ethanol Gasoline for Motor Vehicles of Heilongjiang Province* (Heilongjiang provincial government, 2004)
- *Notice on Speeding Up Coal Mining Enterprises Mergers and Restructures* (Shanxi provincial government, 2009)

³³⁴ 立法法。Legislation Law. 2000。

³³⁵ Ibid. Art 8.

³³⁶ 国务院关于鼓励和引导民间投资健康发展的若干意见。Several Opinions on Encouraging and Guiding the Healthy Development of Private Investment of the State Council. 2011.

- *Regulations on the Business Scope of Postal Enterprises* (State Council, 2009)
- *Edible Salt Monopoly Regulation* (State Council, 1996)
- *Guiding Decisions on Prompting State-owned Assets adjustment and state-owned enterprises restructure* (State-owned Assets Management and Supervision Commission, 2006)

(2) Amend relevant rules and regulations, including but not limited to:

In current China, Tobacco was completely controlled and managed by government based on the *Tobacco Monopoly Law*³³⁷, which not only made excessive profits for China National Tobacco Corporation (a state-owned enterprises that controls all stages in China's whole tobacco sector) and some individuals (who have license), but also against tobacco control. Therefore, tobacco sector should open to all market participants by amending even abolishing *Tobacco Monopoly Law*.

The *Postal Law* also should be amended, for instance, Article 55, which ruled “no express delivery enterprise shall provide the correspondence delivery service which shall be exclusively provided by postal enterprises or deliver the official documents of state organs”³³⁸, should be deleted.

The most important issue currently is the administrative monopoly, but the *Anti-monopoly Law* not only ignores it but also provides protection for it. According to Article 7, “With respect to the industries controlled by the State-owned economy and concerning the lifeline of national economy and national security or the industries implementing exclusive operation and sales according to law, the state protects the lawful business operations conducted by the business operators therein. The State also lawfully regulates and controls their business operations and the prices of their commodities and services so as to safeguard the interests of consumers and promote technical progresses”³³⁹,

³³⁷ 烟草专卖法。Tobacco Monopoly Law. 2013.

³³⁸ See note 337.

³³⁹ 反垄断法。Anti-monopoly Law. 2008. Art 7.

which make Article 8 that ruled “No administrative organ or organization empowered by a law or administrative regulation to administer public affairs may abuse its administrative powers to eliminate or restrict competition” useless in practice³⁴⁰. Obviously, the self-contradictory anti administrative monopoly mechanism in China is but an empty shell.

(3) Break up administrative monopolies

Both government and state-owned enterprises should not seek for the complete control in certain sectors, which equal to administrative monopoly in fact.

Besides, the administrative monopoly should be broken up unconditionally instead of guiding by government. In practice, private enterprises are always limited in relatively less profitable sectors by government “guidance”. For example, Article 8 of the *Several Opinions on Encouraging and Guiding the Healthy Development of Private Investment* encourage private capitals enter oil and gas exploration and pipeline laying sectors that have relatively less profits³⁴¹, but refining and sales that would make more profits. Could it be said that the petroleum sales are more important to national security than pipeline laying?

(4) Ownership Diversification

Establishment of a diversified ownership economy. The diversified ownership should be integrated by State capital, collective capital and private capital, which is the prime method for materializing the basic economic system, helping improve function, increase value and promote the competitiveness of State capital. Allowing more state-owned enterprises and other ownership enterprises to develop into mixed-ownership enterprises. Non-state shares should be allowed in state capital investment projects. Mixed-ownership enterprises shall be allowed to utilize employee stock ownership to form a vested community of

³⁴⁰ Ibid. Art 8.

³⁴¹ 国务院关于鼓励和引导民间投资健康发展的若干意见。Several Opinions on Encouraging and Guiding the Healthy Development of Private Investment of the State Council. 2011. Art 8.

capital owners and workers. Improve the state-owned assets management system and strengthen state-owned assets supervision by focusing on capital management. Establishing a number of state-owned capital operating enterprises and support the transformation of qualified state-owned enterprises into state-owned investment enterprises.

4.2.2 Standardizing state-owned enterprises activities

(1) Improve management of state-owned enterprises

Under appropriate conditions, the boards and directors and supervisors of state-owned enterprises should have more prominent citizens, which would lay restraints on insider control issues and protect public interests. Thus, the *Company Law*³⁴² and *State-owned Assets Law*³⁴³ should be amended accordingly. For instance, Article 3 of the *State-owned Assets Law* could be amended to “the state-owned assets shall be owned by the state, i.e. owned by the whole people. In transitional period, the State Council that is authorized by the Congress shall, on behalf of the state, exercise the ownership of state-owned assets”.

To avoid insider control, when deciding directors of state-owned enterprises, more consideration should be given to those who are not involving in management; and relevant committee of experts should be set up to promote scientificity and efficiency of decision making. Besides, the switch between government officer and state-owned enterprises manager should be prohibited by law.

(2) Complete distribution mechanism

State-owned enterprises should deliver their incomes to State in different types such as rent, tax and profits, based on their different income sources, to ensure investor’s rights and reflect their real costs. The rent and tax should be paid

³⁴² 公司法。Company Law. 2005.

³⁴³ 国有资产法。State-owned Assets Law. 2009.

unconditionally, and investor should decide the proportion of profits delivering. Then such rent and profit should bring into whole national budget as the same as tax. Thus, the *Land Management Law*³⁴⁴ and the *State-owned Assets Law* should be amended accordingly.

(3) Strengthen supervision

Whether are listed or not, all state-owned enterprises should increase transparency by information disclosure, which is the important precondition of strengthening public supervision. The key supervision focus of State-owned Assets Management and Supervision Commission should be on whether state-owned enterprises activities are against fair and perfect competition, managers obey rules and regulations, and operating of enterprises fulfil public functions, rather than simply on whether enterprises could make profit or not.

4.3 The ultimate task of reform

4.3.1 Tasks

There are two ultimate tasks for China's state-owned enterprises reform, turning state-owned enterprises to non-profit enterprises that are regulated by public law, and establishing the state-owned assets governance mechanism under institutional structure.

As the non-profit enterprises that are regulated by public law, state-owned enterprises would focus on public interests instead of making profits, which would confirm the public nature and scope of it. Activities of state-owned enterprises such as setting up, management, operating and withdrawal have to be under specific legal procedure and public supervision. If state-owned enterprises would enter some profitable sector for special reasons, it has to be reviewed and approved by the congress.

³⁴⁴ 土地管理法。Land Management Law. 2004.

Since the whole people owns state-owned assets, thus, it is the Congress but government department who should be on behalf of the whole people exercise the ownership of state-owned assets, and the state-owned assets governance should belong to public governance. The Congress would not only regulate setting up, operating and withdrawal of state-owned enterprises by creating relevant rules and laws, but also instruct state-owned assets supervision mechanism to fulfil its functions legally and efficiently. Therefore, the governance of state-owned assets exists in the structure formed by congress, state-owned assets supervision mechanism and enterprises that are regulated by public law.

To achieve this task, firstly, the profit-making government needs to be transferred to service-oriented government. The profit-making government focuses on GDP and revenue maximization, and service-oriented government aims at promoting public welfare; profit-making government always develops economy by controlling or monopolizing social resources, and service-oriented government mainly focuses on providing better public goods. Therefore, the nature of this transformation is to remove the capitalization character of government, and turn it to a government only aims at providing public goods and pursuing social welfare maximization, instead of making profits and revenue maximization.

Secondly, state-owned assets (or state-owned enterprises) have to withdraw from profitable sectors. To remove the capitalization character of government, and turn state-owned enterprises to non-profit enterprises, state-owned assets must withdraw from profitable sectors. In other words, government has no necessity to own profitable assets in principle. Obviously, the former task of “state-owned enterprises withdraw from competition sectors” based on the capitalization of state-owned assets, which developed China’s economy objectively, but also caused state-owned enterprises’ monopolistic activities and administrative monopoly. The task of “state-owned enterprises withdraw from profitable sectors” ultimately denies the capitalization character of state-owned

assets, and the legitimacy of regular and administrative monopoly of state-owned enterprises, which provides the precondition for fair and perfect competition.

Thirdly, establishing supervision mechanism for state-owned enterprises that are regulated by public law. In current situation, the State-owned Assets Management and Supervision Commission not only fulfil the functions of investors, but also take up the mission of supervising, which give it too much power, and cause failures in both areas. In the future, it should be changed to a mechanism that only has supervision functions.

4.3.2 Specific arrangements for State-owned enterprises withdraw from profitable sectors

(1) Precondition and timing of withdraw

State-owned enterprise could withdraw from profitable sectors gradually, under fair competition, and after the administrative monopoly are broken up and private economy has certain strength.

(2) Ways of withdraw

State-owned assets could withdraw from profitable sectors by stock transfer, thus the withdraw of state-owned assets does not mean certain enterprises have to be closed. State-owned shares could be transferred to social insurance funds and change to preferred stock, which would secure the profits and benefit to the public. Such shares could be transferred to private enterprises and individuals, but to foreign enterprises and individuals, it must be under strict limitations. To avoid state-owned assets withdrawing from one sector meanwhile entering to another, the precondition, scope and limitation of government investment should be restricted by amending the *Enterprise State-owned Assets Law*, or creating the *Government Investment Law*, which should rule that every government investment shall be reviewed and approved by the congress.

(3) Complementary approaches

Managers of state-owned enterprises should be rewarded by equity, based on real performance of enterprises. Law should protect legal rights of laid-off workers. Besides, salaries of government officers should be increased largely to reduce resistance to reform.

The withdrawal of state-owned assets from profitable sectors should be completed within five to ten years.

4.3.3 Establishing the constitutional structure of state-owned assets governance mechanism

(1) Basic principles

- The principles of regular government: the government should be non-profit government, and should not engage in profitable activities.
- The public principles: state-owned enterprises should be regulated by public law, and the governance of state-owned assets belongs to public governance.
- Exception: State-owned assets entering to profitable sectors must be reviewed and approved by the Congress.

(2) Specific arrangements

- Deleting the content of “the basic economic system in which the public ownership is dominant” in the Constitution of PRC.
- Confirming the nature of status of state-owned enterprises as non-profit and public law enterprises, by amending the Constitution of PRC.

- The Congress, on behalf of the whole people, exercises the ownership of state-owned assets, which should be confirmed by the Constitution of PRC.
- State-owned assets governance should be ranked with legislation and administration, as the major functions of the Congress. Government department only provides public services, and purchases public goods from state-owned enterprises through legal procedures.
- The State-owned Assets Governance Commission should be established within or under the Congress (equal to the State Council and the supreme court), which specializes in managing and operating state-owned assets.
- The State-owned Assets Supervision Organization exercises its duties and functions based on law, and report to the Congress directly or through the State-owned Assets Governance Commission.
- Like government officer, board directors of state-owned enterprises should be appointed and dismissed by the Congress, and their term of service should be confirmed.
- There should be no administrative subordinations relationship between state-owned enterprises and the State-owned Assets Supervision Organization, and both of them need to report to the Congress directly or through the State-owned Assets Governance Commission.

This mechanism should be established within ten to fifteen years.

CHAPTER FIVE: ADMINISTRATIVE MONOPOLY IN CHINA

In transitional period, China faces a circumstance of imperfect market mechanism, excessive intervention of government to the market, and the absence of supervision mechanism³⁴⁵. Therefore, by comparing with Western countries, the main monopoly problem in China is administrative monopoly rather than regular monopoly activities, which not only preclude competition, but also affect the further and healthy development of China's economy³⁴⁶. The administrative monopoly in China is the consequence of political system, and is given the coat of legitimacy³⁴⁷, thus it could only be regulated and limited efficiently by rules and regulations. However, the current anti-monopoly legal mechanism is powerless to regulate administrative monopoly activities due to systematical deficiencies and lack of effective enforcement organizations, even after the enactment of the *Anti-monopoly Law*³⁴⁸ and has specific provisions about administrative monopoly.

This chapter will clarify the basic theories about administrative monopoly, such as what it exactly is, its characteristics and origins, introduce the current anti-monopoly legal system of China and analysis its shortcomings, and look to the experiences of European Community to suggest a path for implementation of the administrative monopoly provisions of the *Anti-monopoly Law*³⁴⁹.

1. Basic Theories of Administrative Monopoly

1.1 Administrative monopoly

Generally, the administrative monopoly can be defined as a monopoly the economic power of which is maintained at least in part by official administrative

³⁴⁵ In practice, economic activities are regulated mainly by government, not by market itself; lack appropriate price and competition mechanisms.

³⁴⁶ 尚明。2008。《反垄断法理论与中外案例评析》。北京：北京大学出版社。Ming Shang. 2008. *The Theory of Chinese Anti-monopoly Law and Practice*. Beijing: Beijing University Press.

³⁴⁷ 郭宗杰。2007。《行政垄断之问题与规制》。北京：法律出版社。Zongjie Guo. 2007. *The Problem and Regulation of Administrative Monopoly*. Beijing: Law Press.

³⁴⁸ 反垄断法。Anti-monopoly Law. 2008.

³⁴⁹ Ibid.

or regulatory power³⁵⁰. In practice, from local trash pick up to national electric grid are all administrative monopoly activities. The administrative monopoly could be abused when government uses its power to control markets through legislation, regulation, or use of administrative organizations to seek above market rents, which would harm overall social interests with increased prices, reduced output, and reduced competition.

The administrative monopoly in market is a common problem in transitional countries³⁵¹, and is strictly regulated and limited by their anti-monopoly laws. The typical countries are Russian and Ukraine.

Russian, a typical transitional country, experienced the same transition process as China, such as they all had a highly centralized planned economy for a long time, introduced market economy to reform their economic system, and had an economic structure in which private sector and public sector coexisted. Although the large-scale privatization of state-owned assets were undertaken after the collapse of Soviet Union, the public sector still dominant the national economy, and the interferences of the government to the market still existed due to immature market mechanism³⁵². Therefore, Russian made comprehensive and strict regulations on administrative monopoly, and the *Federal Law on Protection of Competition*³⁵³ is the major legislation. Article 4 of it defined the subject of administrative monopoly: "State or municipal preferences means granting advantages to economic entities by the federal executive bodies, the authorities of the constituent territories of the Russian Federation, local self-government bodies, other agencies or organizations exercising the functions of those bodies, which put then in more advantageous conditions for economic activity, by transferring State or municipal property, other objects of civil rights or by providing property allowances; State or municipal guarantees"³⁵⁴. And Article 16

³⁵⁰ 郭宗杰。2007。《行政垄断之问题与规制》。北京：法律出版社。Zongjie Guo. 2007. *The Problem and Regulation of Administrative Monopoly*. Beijing: Law Press.

³⁵¹ Ibid.

³⁵² 朱宏文，王建。2007。《反垄断法——转变中的法律》。北京：社会科学出版社。Hongwen Zhu & Jian Wang. 2007. *Anti-monopoly Law – Law in Transition*. Beijing: Social Science Press.

³⁵³ Russia. 2009. Federal Law on Protection of Competition.

³⁵⁴ Ibid. Art 4.

of the *Federal Law on Protection of Competition* clearly prohibits government agencies or relevant organizations abuse administrative power to seek rents and restrict competition³⁵⁵. This article ruled that:

Agreements between federal executive authorities, public authorities of the constituent territories of the Russian Federation, local self-government bodies, other bodies or organizations exercising the functions of the above-mentioned bodies, as well as public extra-budgetary funds, the Central Bank of the Russian Federation or between them and economic entities or execution of concerted practices by these bodies and organizations are forbidden if such agreements or such execution of concerted practices lead or can lead to prevention, restriction or elimination of competition, in Particular, to:

- 1) increase, decrease or maintaining of prices (tariffs) except the cases when such agreements are provided for by Federal Laws or statutory legal acts of the President of the Russian Federation, statutory legal acts of the Government of the Russian Federation;
- 2) economically, technologically or in any other way unjustified establishment of different prices (tariffs) for the same commodity;
- 3) division of the goods market according to the territorial principle, volume of sale or purchase of commodities, range of sold products or composition of sellers or purchasers (customers);
- 4) restriction of entry into a goods market (exit from a goods market) or removal of economic entities from it.³⁵⁶

In Ukraine, the *Law on Limitation of Monopolism and Prevention of Unfair Competition in Entrepreneurial Activities*³⁵⁷ also provides regulations on restricting and prohibiting administrative monopolies. The Article 6 of this legislation – “Discrimination against economic entities practiced by bodies of State power, bodies of local self-government, and bodies of administrative and

³⁵⁵ Ibid. Art 16.

³⁵⁶ Ibid.

³⁵⁷ Ukraine. 2001. Law on Limitation of Monopolism and Prevention of Unfair Competition in Entrepreneurial Activities.

economic management and control”³⁵⁸ ruled that following activities practiced by government agencies or relevant organizations should be restricted and prohibited, including:

- 1) establishment of new enterprises or other organization forms of entrepreneurship in any sphere of activities as well as putting restrictions on being engaged in some activities, on production of particular kinds of products, which resulted or can result in restriction of competition;
- 2) compulsion of economic entities to join associations, concerns, interbranch, regional, and other amalgamations of enterprises, to practice a priority conclusion of contracts, and to provide a primary supply to a particular circle of consumers;
- 3) making decisions about centralized distribution of products, which resulted or can result in monopoly position on the market;
- 4) establishment of prohibition against sale of products from one region to the republic into another one;
- 5) giving particular economic entities such as tax and other privileges that place them in a privileged position with respect to other economic entities, which resulted or can result in monopolization of the market of a particular product;
- 6) restriction of the rights of economic entities to purchase and sell products;
- 7) establishment of prohibitions or limitations with respect to particular economic entities or groups of economic entities³⁵⁹.

In addition, this article also ruled that “Conclusion of agreements between bodies of State power, bodies of local self-government, bodies of administrative and economic management and control, conclusion of agreements between those bodies and economic entities as well as their giving natural or legal persons powers to perform the actions provided for by item 1 of the present article shall also be considered to constitute discrimination against economic entities”³⁶⁰.

³⁵⁸ Ibid. Art 6.

³⁵⁹ Ibid. Art 6.

³⁶⁰ Ibid.

Apart from for transitional countries, some Western countries also have rules and regulations about administrative monopoly. For example, the *Act against Restrains on Competition of German*³⁶¹ ruled clearly that “this act shall apply also to undertakings which are entirely or partly in public ownership or are managed or operated by public authorities”³⁶².

In China, Chapter V of the *Anti-monopoly Law – Abuse of Administrative Power to Eliminate and Restrict competition*³⁶³, is the main legislation concerning about administrative monopoly. Chapter V begins with a series of negative duties; Article 33 prohibits government agencies and relevant organizations from granting monopolies³⁶⁴; Article 34 prohibits protectionist-bidding procedure³⁶⁵; Article 35 prohibits unequal treatment of outside business³⁶⁶; Article 36 prohibits government agencies from forcing business to engage in monopolistic activities³⁶⁷; and Article 37 is a catch-all provision prohibiting government agencies from eliminating or restricting competition³⁶⁸. However, Chapter V does not make a clear definition of administrative monopoly in detail, such as the subject of administrative monopoly activities.

1.2 The nature and origin of administrative monopoly

Generally, the term of monopoly means economic monopoly. It is the inevitable result of the development of market economy, it is pure market activities rather than State activities, and the power of the subject of monopoly activities could not beyond the State no matter how powerful it is. In other words, economic monopoly is the market activities while could be managed and restricted by the State. In the period when the anti-monopoly law in Western countries emerged and developed, the State rarely interfere the market, even in the mercantilism

³⁶¹ Germany. 2013. Act against Restrains on Competition of German.

³⁶² Ibid.

³⁶³ 反垄断法。Anti-monopoly Law. 2008. Chapter V.

³⁶⁴ 反垄断法。Anti-monopoly Law. 2008. Art 33.

³⁶⁵ Ibid. Art 34.

³⁶⁶ Ibid. Art 35.

³⁶⁷ Ibid. Art 36.

³⁶⁸ Ibid. Art 37.

period the State only enacted some rules and regulations that encouraging or prohibition export and import. Thus, the main regulation subject of regular anti-monopoly law (Western anti-monopoly law) is regular monopoly (economic monopoly) but administrative monopoly. The administrative monopoly problems widely existed in current China is neither the common phenomenon of the initial stage of market economy, nor the common characteristics of modern market economy. There are unique problems that arisen in those countries transferred from highly centralized planned economy to market economy, such as China, Russian and Ukraine. To determine which is the appropriate approach to solve the problems of administrative monopoly, the nature of it should be clarified at first.

To the nature of administrative monopoly, some scholar though it is a kind of economic monopoly to some degree, its purpose is to monopolize economic benefits rather than administrative power, and the monopoly activities are not practiced by regular enterprises but by abusing of administrative power³⁶⁹. They thought the nature of administrative monopoly is that the subjects of monopoly activities obtain excessive benefits by using administrative power that beyond the scope of authority in the market, which is for-profit behavior essentially³⁷⁰. Therefore, administrative monopoly is economic monopoly, and the only difference between them is the subject dominates the market by using administrative but economic power. And the results of administrative and economic monopoly activities are the same as well, which is to restrict and eliminate competition in certain market.

However, the above argument does not provide a comprehensive illustration of administrative monopoly as it only address the external performance of it. In essence, the administrative monopoly is the activities that are practiced by the government agencies or relevant organizations to restrict and eliminate competition on behalf of the State and based on coercive power of State³⁷¹. By

³⁶⁹ 杨兰品。2006。《中国行政垄断问题研究》。北京：经济科学出版社。Lanpin Yang. 2006. *Study on Administrative Monopoly in China*. Beijing: Economic Science Press.

³⁷⁰ Ibid.

³⁷¹ 游劝荣。2006。《反垄断法比较研究》。北京：人民法院出版社。Quanrong You. 2006. *Comparative*

comparing with regular monopoly, the fundamental differences between them are: administrative monopoly is undertaken on behalf of the State; it is backed with coercive power; and it is legitimate and always protected by law. These characteristics determine that administrative monopoly is the activities that restrict and eliminate competition with super power, which is much more powerful than economic power. And this is its nature. It is no doubt that the administrative monopoly shares some common features with economic monopoly, such as they all pursue excessive benefits, restrict and eliminate competition in certain market, and harm the interests of other market players and consumers. But, these common features are only similarities of external performance, and there are essential differences between them. In addition, by comparing with State monopoly, administrative monopoly has different purposes, which is to obtain excessive benefits rather than providing public goods and services³⁷². Therefore, administrative monopoly is a unique activity practiced by government agencies and relevant organizations by using their administrative power, and it is a State action rather than market activities.

The reasons caused the problems of the administrative monopoly are varied. First of all, the administrative monopoly is caused by political rather than market factors³⁷³. During planned economy period, the government agencies were authorized with strong economic functions, and the productive factors and the whole production process were not controlled by the market but by the State. The long-term planned economy not only resulted in low efficient productiveness, but also affected current economic system. For example, although the market mechanism has been introduced to China for three decades, the inertia of traditional system still remain: the functions of government rarely changed, and many government agencies are still interfering with the market just like what they did in the planned economic system. Therefore, the administrative monopoly is the result of the government controlling the market under “planned” thinking patterns, and it is the inheritance of planned economy.

Study on Anti-monopoly Law. Beijing: People’s Court Press.

³⁷² Ibid.

³⁷³ 郑鹏程。2002。行政垄断的法律控制研究。北京：北京大学出版社。Pengcheng Zheng. 2002. *Research on the Legal Control of Administrative Monopoly*. Beijing: Beijing University Press.

The administrative monopoly is not an economic but political problem, this is the essential characteristics of it, and should be considered as the fundamental of regulating the administrative monopoly activities.

Second, the incorrect profit motive is the subjective reason of the administrative monopoly problems³⁷⁴. In modern market economy, the government is allowed to interfere the market to some degree, but the purposes of this intervention are to maintain the operation of market mechanism and to pursue the interests of the whole society rather than interests of certain regions, industries and itself. The incorrect profit motive is resulted from current political system. Taking China as an example, after Reform and Opening Up, local governments were authorized with more autonomy in revenue, which directly relate to the development of regional economy, especially the performance of local state-owned enterprises. This situation has created opportunities for the creation and abuse of administrative monopoly and incentives for local protectionism. In practice, to increase revenues, the local government always provides local enterprises more preferential policies such as low loan interests, or directly set trade barriers to restrict and block the entry of enterprises from other regions. One example of this phoneme includes charging higher fees in Shanghai for cars produced outside the city.

Third, the government running or managing enterprises and engaging in commercial activities is another reason of the administrative monopoly problems³⁷⁵. Under market economy, enterprises should operate independently based on clear ownership, and the main functions of the government are to maintain the market order and to create a healthy environment for enterprises. The government should not interfere with the rightful competition among market players, and cannot directly participate in competition for certain groups' interests. However, in transitional countries, the close relationship between the government departments and enterprises still remained: on one hand, the government still controlled and managed enterprises under traditional planned

³⁷⁴ Ibid.

³⁷⁵ Ibid.

patterns, and gave them more preferential policies to obtain more benefits for themselves; on the other hand, enterprises heavily relied on the protection of government departments, and always seek for assistance from the government, which created opportunities for abusing of administrative power. This is the main reason of the administrative monopoly problems occurred widely.

Last but not least, the unbalanced position between the government and the market cause the problems of the administrative monopoly. Under market economy, the position of the government and the scope of its functions directly determine whether a market mechanism could be established and the performance of it. The development of economy should be based on the performance of market mechanism rather than the intervention of the government, and the government could neither participate in competition for the interests of certain industries, regions and itself, nor directly or indirectly restrict and eliminate competition by all means. In fact, the administrative monopoly is the inappropriate intervention of the government to the market, and it is the damage to market competition. From this perspective, to regulate administrative monopoly is to regulate the relationship between the government and the market.

Thus it can be seen that the administrative monopoly is not the inevitable result of the development of market economy but the remnant of planned economy and unique phenomenon in transitional period, it is the sequel of traditional political system and incomplete reform, it is the result of the government lowering its status from the provider of public goods and services to the represent of certain interests group, and it is the reflection of State power beyond society at the initial stage of the separation of civil society and State authorities. In essence, the administrative monopoly is a complicated systematical problem rather than an economic problem, and it is caused by political and systematical factors rather than market and economic factors.

2. The Administrative Monopoly in China

2.1 The Forms of China's Administrative Monopoly

The main administrative monopoly problems in China are industrial or departmental monopoly and regional monopoly. The industrial and departmental monopoly means the government agencies and relevant authorities control and dominate certain industries and departments, restrict and eliminate competition of other market players, and provide their subordinate enterprises with preferential policies so they could dominate or monopolize certain market, by using their legal administrative power and specific advantages such as investment power, resource management power, and financial power. In practice, on one hand, the government agencies and relevant authorities directly participate in competition and strengthen competitiveness of their subordinate or related enterprises by giving them preferential policies, such as low loan interests, tax preference, sufficient resources supply and fast-track for examination and approval. On the other hand, they restrict and eliminate competition of other market players, by setting direct or indirect market and systematical barriers. For examples, the tobacco monopolization system in China, and some local Administration of Press, Publication, Radio Film and Television³⁷⁶ directly stipulates that the sale and rent business of audio-video products are exclusively operated by its subordinate audio and video enterprise, these are examples of direct systematical and market barriers; in commercial bank industry in China, despite the fact that there is no existing laws and regulations that prohibit the private sector entering this industry, the difficulty in obtaining administrative and approval documents from the government made it impossible for private sector enter such market, this is a typical example of indirect market barriers.

The regional monopoly means the local government agencies and relevant authorities restrict competition and block new entrants from other regions by abusing their administrative power to protect their own interests. For instance, giving preferential policies to local enterprises to enhance their competitiveness

³⁷⁶ 新闻出版广电局。Administration of Press, Publication, Radio Film and Television.

and expand their market share; restricting the entrance of goods from other regions to local market by setting barriers at the border, applying unreasonable high standard for those goods; restricting the sale of other region's goods at local market, such as directly controlling the price to reduce the profits of the enterprises from other regions, even directly prohibition of them; and restricting local goods and technology outflow on behalf of protecting local interests.

In addition to above two main types of administrative monopoly, there are two other types in current China: the government appointed trade and the administrative enterprises³⁷⁷. The government appointed trade means that the government agencies and relevant authorities require consumers to buy or use certain goods and services from themselves or a designated business operator exclusively without any justifiable cause, by abusing their administrative power. For example, the government could directly appoint electricity or transportation suppliers by enacting relevant administrative orders, or it could restrict the scope and qualification of certain goods and services suppliers to force consumers to buy or use such goods and services from certain suppliers.

The administrative enterprises are those enterprises that have both the power to regulate an industry and engage in the industry itself. The administrative enterprises is a result of incomplete economic and political reform, and the combination of market participation and regulatory power are some of the problems associated with regulatory capture: an administrative enterprise will have the conflicting goals of earning profits in the market and regulating the market for the benefit of consumers, the economy, and the State as a whole. In practice, these administrative enterprises always pay more attentions on obtaining more profits for themselves than regulating market order, and restrict and eliminate competition of other market players to pursue excessive monopoly profits by abusing its regulatory power.

2.2 The Causes of China's Administrative Monopoly

³⁷⁷ 杨兰品。2006。《中国行政垄断问题研究》。北京：经济科学出版社。Lanpin Yang. 2006. *Study on Administrative Monopoly in China*. Beijing: Economic Science Press.

2.2.1 The inertia of the planned economy

Before reform and opening up, a highly centralized planned economic system had existed for almost 30 years in China. Under this system, the government managed the economy entirely by administrative decisions, directing all of the behavior of enterprises. Usually, the central government controlled both macro- and micro-economic variables through all-encompassing plans and orders. These long-blurred lines between government departments and enterprises fostered the long-standing practice of government administrators, directly commanding and managing enterprises.

During the first 20 years of reform and opening up, this situation has changed to a great extent, but these tendencies towards control have not been completely eradicated. The crucial political reforms during this period involved the transformation of government functions, but the exact division of powers and responsibilities was difficult to grasp given the speed of reforms. This leads to a disjointed and often-conflicting division of responsibilities, which opened the door to abuse of administrative power. This phenomenon is most apparent when dismantling, merging, or creating government departments. As a result, blurry lines separating government departments and enterprises laid the foundation for the creation of administrative monopolies.

Almost all the major industries characterized by administrative monopoly discussed in this study evolved out of the completely planned economic system.

Given that these industries evolved from the planned economy and an SOE-dominated system, many observers wait patiently with the expectation that the government will eventually break these monopolies and guide them into the market economy. Moreover, the concept of the planned economy persists in some people's minds and misleads them into thinking that some special industries require control and planning, leading them to tolerate such administrative monopolies.

2.2.2 Absence of fiscal pressure on central government for reform

One of the important driving forces for the reform in the 1980s and 1990s was the fiscal pressure felt by the central government. For example, fiscal pressure was the main factor that led to reform of the telecom industry³⁷⁸. The economic losses incurred by the government-run telecom industry not only increased the fiscal burden of the central government, but also restricted the development of the industry itself. When demand dramatically increased at the established price level, the financial shortages became apparent. At this time, the gains in revenue from loosening administrative controls made it a very practical and natural choice.

During the establishment of China Unicom, the State Council supported the move while also balancing the interests of all parties. The result was that the State Council ended up being one of the biggest beneficiaries of the move. The reason is that the establishment of China Unicom benefited the overall interests of the central government. First, the financial problems resulting from the development of the telecom industry were resolved. Second, the move greatly improved China's telecommunications networks by increasing the supply and better meeting customer demands through competition. Third, the central government's strong position allowed it to lower prices during negotiations with the telecoms. Fourth, given the huge markets in China, the entry of China Unicom did not need to be a zero-sum game for the Ministry of Posts and Telecommunications. More fundamentally, no matter what organization form or asset structure China Unicom took, it was still nominally a state-owned and state-controlled telecom enterprise for the near future. Therefore, in terms of the development of the industry, the establishment of China Unicom was beneficial to the central government's finances. This perhaps explains why the central government opened the door to a few new entrants to the telecom industry³⁷⁹.

³⁷⁸ 张维迎。1995。公有制经济中的委托人—代理人关系。经济研究。1995年第4期。Weiying Zhang. 1995. "The Principal-agent Relationship in Public Economy - Theories and Policies". *Economic Research*. Vol. 4..

³⁷⁹ Ibid.

As reforms progressed into the 1990s, most of the SOEs were found to be unprofitable. Rather than a major source of revenue for the central government, they instead became a burden. Now, after years of reforms to the political system, the main source of revenue has already shifted to taxable income. The central government has a motivation to reform SOEs, but not to break their monopolies. On the contrary, one of the ways to ease the fiscal burden brought by SOEs is to provide monopoly power through preferential policies for SOEs.

2.2.3 The market value of administrative monopolies and the formation of self-aware monopoly interest group

There is a huge gap between the monopoly interest groups and the interest groups formed by SOE managers because both groups have similar motivations. There exist great inducements in the form of valuable resources and related markets, and these groups are also now very aware of their own interests in these markets.

With the success of economic reforms in China, huge domestic markets have gradually taken shape in telecoms, energy, and finance, among others. The appearance of these promising markets, in turn, highlights the value of holding monopolies in these markets. On the other hand, the enormous value of these resources motivates relevant interest groups to seize monopoly power through administrative means. The goal of the interest group is to continuously expand the amount of wealth that falls within the boundaries of its operation, and at the same time to expand those boundaries.

There exist two key documents that have allowed interest groups to improperly expand their boundaries. The first key document is the Decisions by the State Council on the Implementation of a Tax Sharing Financial Management System issued in December 1993, which contained the following statement: “As a transitional measure, as judged on a case-by-case basis, most old SOEs that were registered before 1993 can be free from handing in their after-tax profits.” The

document set a precedent that SOEs could avoid turning over profits³⁸⁰. From 1994 up to today, SOEs as a whole have in fact not turned over a cent of their profits.

The second key document is the Opinions on the *Intensification of the Reform of Personnel, Labor, and the Distribution System of SOEs*, issued in 2001 by the State Economic and Trade Commission, the Ministry of Personnel, and the Ministry of Labor and Social Security. The document states that “The wage level of workers in an enterprise under the state’s macro control should be decided by the enterprise itself according to local average wage and the economic results of the enterprise.”³⁸¹ The document removed the upper limit on wages and bonuses in SOEs so that they can set the payment to their workers without constraints. By removing these limits, SOEs now saw their profits, which technically should be returned to the people, turn into higher compensation for SOE employees and managers. With gains to income for SOEs now being channeled into the pockets of managers and employees, the interest groups formed by them have even stronger motivations to expand their monopoly powers.

2.2.4 In house lobbying

“In-house lobbying” refers to senior SOE managers attempting to obtain administrative monopoly powers through the lobbying of administrative department officials. It is a phenomenon found in all the industries. One of the reasons this has proved successful is the revolving door that links officials in these industry-focused departments with the SOEs themselves. These officials and SOE managers are likely to swap positions over the course of their careers, giving good reason to foster good relations. How frequently officials and SOE managers use this revolving door is an important indicator that indirectly reflects the strength of the administrative monopoly in an industry.

³⁸⁰ The Decisions by the State Council on the Implementation of a Tax Sharing Financial Management System, 1993.

³⁸¹ The Intensification of the Reform of Personnel, Labor, and the Distribution System of SOEs, 2001.

For example, in China Telecom, 41% of their senior manager has spent time in the department tasked with overseeing the industry, and the proportion of that in China Mobil and China Unicom are 33% and 21%, respectively. In oil industry the proportion is even larger, and the average proportion of that of CNPC, Sinopec and CNOOC is 33%. This proportion in Railway Corporations³⁸², Four Big Banks³⁸³, and Salt Enterprises³⁸⁴ are 21%, 47% and 43%, respectively³⁸⁵.

2.2.5 Department Legislation

Departmental legislation refers to legislation that is guided or even controlled by administrative departments, and a broader definition can include administrative activity by departments that effectively amount to the creation of legislation. Departmental legislation emerges out of a political environment in which departments lack effective constraints on their actions, allowing them to both directly and indirectly affect legislation.

The narrowly defined version of department legislation emerges when administrative departments draft legislation or amendments and then submit these drafts to the People's Congress for approval. Chinese laws do not preclude administrative officials from also serving as representatives to the National People's Congress, and in fact approximately 40% of NPC members also serve in the government administrative department or related posts in the Chinese Communist Party. Elected representatives who do not hold posts in the government or the Party are also selected in non-competitive elections run by those powers. This means that drafts submitted by administrative departments are more likely to be approved by the National People's Congress, including laws that establish administrative monopoly powers, such as the Railway Law and the Sports Law.

The second form of departmental legislation occurs when departments use

³⁸² Including CNR, CSR, CRECG, CRCC, Northern, TAIJI, Jinxi Axle and TGOOD.

³⁸³ ICBC, CCB, BOC, ABC.

³⁸⁴ Including YSSC, LANTAI, NAFine, YanHu.

³⁸⁵ Statistics from annual reports of relevant enterprises.

“implementation guidelines” to add clauses that violate the principle of the law and further expand administrative powers.

The third form of departmental legislation occurs in areas where legislation is non-existent or unclear. In these situations, administrative departments directly issue administrative laws and regulations, department rules, even policy documents, all under the guise of “regulations,” “opinions,” or “notices.” These myriad forms of pseudo-legislation empower the departments, often granting them the right to establish administrative monopolies.

More important is that regardless of which government body makes the laws, administrative departments can always shape the way they are implemented and executed. In practice, the impact of any type of regulation does not depend on where it originates from, but whether it is executed or not. Though they may carry no legal weight, the opinions and guidelines put forward by departments can easily become the most influential, whereas regulations originating in the constitution, theoretically the highest law of the land, are dead paper if not implemented.

In some situations, departmental legislation directly benefits some enterprises and institutions. For example, almost all of the legislation that led to the creation of China Unicom came in the form of submissions from the Ministry of Posts and Telecommunications that were then quickly approved by the State Council. During this transition period, these departments became the biggest beneficiaries of the policies and the monopolies they created. When China Unicom was formed out of three departments, the Ministry of Posts and Telecommunications reinforced the ties between the government and the enterprise by solidifying its own monopoly powers. The task of managing an industry became, instead, a way to maintain monopoly status.

Even more serious problems arise when, under special circumstances, administrative departments give administrative powers directly to monopoly enterprises themselves. This is especially common during the process of

abolishing or combining of departments, when unclear boundaries and rapidly changing areas of responsibility open the door to abuses of administrative power. This has been apparent in the oil industry, where the related departments have undergone seven different changes in structure, with no departments in charge of management from 2001 to 2003. In September 1988, the government abolished the Ministry of Petroleum, restructuring it into CNPC. Personnel and responsibility for industry management were moved directly into the enterprise, binding at the hip the company and those responsible for management.

In summary, defects in the ability of the constitutional framework to limit administrative power are the main reason for the formation of administrative monopolies. In addition, the revolving door that links officials in administrative departments with high-level management at SOEs makes cooperation between the two all too easy. The easy opportunities to reap monopoly rents by shaping the formation and execution of laws are one of the main reasons for widespread administrative monopolies in China.

3. The Anti Administrative Monopoly Legal System of China

3.1 Arguments about the legislation of anti administrative monopoly

To administrative monopoly activities, most scholars believed that they restrict and eliminate competition as the same as the economic monopoly, thus they should be regulated by anti-monopoly law as well³⁸⁶. Some scholars even thought currently the primary mission of China's anti-monopoly law is to correct governmental distortion rather than limit private restrictive practices, due to excessive government intervention still widely existed all over the country and is by far the top threat to competition³⁸⁷.

³⁸⁶ 郭宗杰。2007。《行政垄断之问题与规制》。北京：法律出版社。Zongjie Guo. 2007. *The Problem and Regulation of Administrative Monopoly*. Beijing: Law Press.

³⁸⁷ 陈云良。2007。“回到中国，转轨经济法的价值”。《法律与社会发展》2007年第六期。Yunliang Chen. 2007. “Back to China, the Value of Transitional Economic Law”. In the *Law and Social Development* Vol. 6.

However, there are some other scholars who disagreed with this opinion, and stated that administrative monopoly is not the regulation subject of anti-monopoly laws³⁸⁸. Their main reasons are: firstly, they believed that the administrative monopoly is a political issue, which could not be regulated by anti-monopoly law only³⁸⁹. In fact, the solution to every social problem is a systematical process, including legislation, enforcement, judicial process, and public supervision. For example, to protect consumers' interests, the Consumer Protection Law is not the only legal mechanism to use, other laws such as competition law, civil law, product quality law and quarantine law must also be applied. It is no doubt that the administrative monopoly problems should be solved by both political and economic measures, and no one expects they could be completely solved just by one anti-monopoly law. In addition, although administrative monopoly and economic monopoly control and dominate the market by different approaches and powers, they all have the same consequences such as restriction and elimination of competition, damage to the market order, hampering the development of economy, and harm for the consumer and other market players' interests. Therefore, excluding administrative monopoly activities from the regulation of the anti-monopoly law is not tenable. Moreover, the possibility of the administrative monopoly transferring to economic monopoly also exists.

Secondly, some scholars stated that all regulation subjects of traditional anti-monopoly law are not administrative but economic monopoly activities, therefore exclude administrative monopoly from anti-monopoly law is an international general rules³⁹⁰. In fact, this is a misunderstanding about traditional anti-monopoly law. These scholars only noticed the external features of anti-monopoly law and neglected the nature of it. The fact is that administrative monopoly often happens in the Chinese market but less in western economies, and the anti-monopoly laws in western countries also have

³⁸⁸ 郭宗杰。2007。《行政垄断之问题与规制》。北京：法律出版社。Zongjie Guo. 2007. *The Problem and Regulation of Administrative Monopoly*. Beijing: Law Press.

³⁸⁹ 漆多俊。2004。《经济法基础理论》。武汉：武汉大学出版社。Duojun Qi. 2004. *The Basic Theory of Economic Law*. Wuhan: Wuhan University Press.

³⁹⁰ Ibid.

relevant provisions on restricting government intervention to the market by abusing administrative monopoly.

Thirdly, some scholars thought the administrative monopoly activities are practices based on State power, and which could not be efficiently regulated and supervised, thus anti-monopoly law is powerless to administrative monopoly³⁹¹. It is indeed true that administrative monopoly is hard to be regulated and restricted, because of the particularity of the subject matter and the complexity of its cause of formation. However, this situation was caused by the incomplete anti administrative monopoly mechanism, and the main discussion here should focus on how to make the anti administrative monopoly mechanism more rational and effective, and not whether such mechanism is needed or not.

Fourthly, some scholars argued that under market economy the self-interested behaviors of rational economic man would damage the interests of the whole society, then the government intervention is necessary, and the precondition of the socialist market economy with Chinese characteristics is government intervention³⁹². This point of view completely neglects the existence of market rationality and the restriction of the market to economic individuals, and it also denies the basic function of the market to allocate resources. This point of view tends to strengthen administrative power and activities, and essentially violate the purport of socialist market economy. It is certain that the market economy and the government intervention are not opposite to each other and could coexist, but market competition is the most effective way. The market should be managed and adjusted by itself, and the intervention from outside the market should be conditional and limited, and the government should only intervene the market when anti-competitive behavior results in market failure. Therefore, the government intervention should be based on market economy, and aims at restoring the competition market order. The only purpose of the government intervention should be providing conditions for achieving the optimum

³⁹¹ 陈云良。2007。“回到中国，转轨经济法的价值”。*法律与社会发展* 2007年第六期。Yunliang Chen. 2007. “Back to China, the Value of Transitional Economic Law”. In the *Law and Social Development* Vol. 6.

³⁹² Ibid.

efficiency of the market. Therefore, government should be penalized if it abuses its administrative power to restrict competition since this violates the objectives of the government intervention.

3.2 The legislations about administrative monopoly in China

The current China's legislations that concern about administrative monopoly could be divided in three aspects: first, comprehensive legislations that have provisions of prohibiting administrative monopoly. These legislations are: the whole fifth chapter of the *Anti-monopoly Law*; the Article 7 of the *Anti-unfair Competition Law*, which stipulates that "the government and its organ shall not abuse its authority to force the others to purchase the commodities from the appointed seller or prohibit the fair competition from the others...and shall not abuse its authority to prohibit outside commodities going into home market, or prohibit domestic commodities from going to outside market"³⁹³; the Article 22 and 23 of the *Price Law*, which stipulates that "in fixing government-set and guided prices, price departments and other related departments shall carry out investigations into prices and costs and hear from consumers, business operators and other quarters", and "in fixing government-set and guided prices for public utilities services of public welfare in nature and the prices for merchandises of monopoly in nature that are important to immediate interest of people, public hearings...should be conveyed..."³⁹⁴; the Article 6 and 12 of the *Bidding Law*, which rules that "no entity or individual shall illegally restrict or exclude the participation of legal persons or other organizations beyond the region or industry in the bidding, nor illegally interfere with the bidding activities in any other means", "no entity or individual shall in any way designate any bidding agency on behalf of the tenderer", and "no entity or individual may compel the tenderer to entrust any bidding agencies with bidding operations"³⁹⁵.

Second, specific legislations that prohibit industrial monopoly and regional trade

³⁹³ 反不正当竞争法。Anti-unfair Competition Law. 1993. Art 7.

³⁹⁴ 价格法。Price Law. 1998. Art 22, 23.

³⁹⁵ 招标投标法。Bidding Law. 2001. Art 6, 12.

barriers, and include the *Notice on Breaking Regional Trade Barriers and Promoting Commodity Circulation of the State Council*³⁹⁶, and the *Regulations on Prohibiting Regional Trade Barriers in Economic Activities*³⁹⁷.

Third, industrial legislations that have content of prohibiting administrative monopoly, including the *Telecommunication Regulations*³⁹⁸ and the *Pharmaceutical Administration Law*³⁹⁹. The discussion in the following section is primarily concerned with the relevant provisions of the *Anti-monopoly Law*, since it is the most comprehensive and powerful legislations about administrative monopoly.

3.2.1 The administrative monopoly provisions of the Anti-monopoly Law

As discussed above, the administrative monopoly is the top threat to competition in current China, thus China's *Anti-monopoly Law* has a special chapter addressing administrative monopoly. This unique feature distinguishes it from competition laws in most other jurisdictions. The provisions on administrative monopoly of the *Anti-monopoly law* include Article 8 in General Provisions, the whole fifth chapter, Article 51 in Chapter 7. Article 7 in General Provisions is a provision for exemption. Although these provisions could not completely solve the administrative monopoly problems due to their deficiencies, they reflect not only the interests and needs of current of Chinese common people, but also show the determination of the government on restricting and prohibiting administrative monopoly. For the first time the anti-monopoly legal system of China makes explicit and systematic regulations on administrative monopoly, which is a huge progress of the rule of law in China. The main contents of administrative monopoly provisions are embodied in following aspects:

a. Principle for the regulation of administrative monopoly.

³⁹⁶ 国务院关于打破地区间市场封锁进一步搞活商品流通的通知。Notice on Breaking Regional Trade Barriers and Promoting Commodity Circulation of the State Council. 2005.

³⁹⁷ 国务院关于禁止在市场经济活动中实行地区封锁的规定。Regulations on Prohibiting Regional Trade Barriers in Economic Activities. 2010.

³⁹⁸ 电信条例。Telecommunication Regulation. 2001.

³⁹⁹ 药品管理法。Pharmaceutical Administration Law. 2001.

Article 8 in the general provisions of the *Anti-monopoly Law* stipulates that “Administrative department or organizations authorized by laws or regulations to perform the function of administrative public affairs shall not abuse their administrative power to restrict and eliminate competition.”⁴⁰⁰In reality, the administrative monopoly problems are so complicated that current rules and regulations cannot completely restrict and prohibit them, and to set a principled regulation in the general provisions could apply the law to regulate them more easily in realistic economic life. This principled regulation also provides the enforcement agency of the anti-monopoly law discretion power to decide whether a behavior restricts and eliminates competition by abusing administrative power, but it is not clearly included in Chapter 5⁴⁰¹. Moreover, this principled regulation shows the special attention of the top legislature on regulating administrative monopoly.

b. Enumerate concrete forms of administrative monopoly in specific provisions

The *Anti-monopoly Law* of China not only set a principled regulation on administrative monopoly, but also enumerates specific characteristics of some administrative monopoly activities so as to give a comprehensive definition. The Chapter 5 – Abuse of Administrative Power to Restrict and Eliminate Competition, has six articles (Article 32, 33, 34, 35, 36, and 37) concerning about the specific behaviors of administrative monopoly. This chapter clarifies the denotation and external characteristics of administrative monopoly, and helps the enforcement agency of anti-monopoly law to judge administrative monopoly activities and enhance the maneuverable of the law.

Article 32 prohibits designating transactions of the government agencies and relevant authorities. Designating transaction means the government agencies and relevant authorities abuse their administrative power, “to restrict or restrict

⁴⁰⁰ 反垄断法。Anti-monopoly Law. 2008. Art 8.

⁴⁰¹ Ibid.

in a disguised form entities and individuals to operate, purchase or use the commodities provided by business operators designated by them.”⁴⁰² This activity is often used by local or departmental government agencies and relevant authorities to control or monopolized local market or certain industries, for their own interest. In practice, the designating transactions include compulsory sale, compulsory purchase and compulsory use.

Article 33 prohibits local protectionism and unequal treatment of local and outside goods⁴⁰³. In practice, local government agencies and relevant authorities often set regional trade barriers to hinder the free circulation of goods, and restrict and eliminate competitiveness of outside market players, by abusing their administrative power, to protect local interests., which harm the free flow and allocation of resources, and would divide a unified, open and competitive market into several narrow regional markets. Considering that the regional monopoly have many specific forms in reality, Article 33 uses 5 detailed paragraphs to make all kinds of regional monopoly activities to be subject to the regulation by the *Anti-monopoly Law*. These regional monopoly activities include: “imposing discriminative charge items, standards or prices upon outside goods”; “imposing technology requirements and inspection standards upon outside goods that different from those upon local goods”; “exerting administrative licensing specially on outside goods”; “setting barriers or other measures so as to hamper outside goods entering the local market”; or “other conducts for the purpose of hampering goods from free circulation between regions”⁴⁰⁴.

Article 34 prohibits protectionist bidding procedure⁴⁰⁵. Currently, local government agencies and relevant authorities often directly participate in bidding process to restrict and eliminate competitiveness of outside market players, and help local enterprises to win the bidding, by abusing their administrative power, which would harm the regular order and competition mechanism in bidding process, and the interests of market players from outside the locality. In order to

⁴⁰² 反垄断法。Anti-monopoly Law. 2008. Art 32.

⁴⁰³ 反垄断法。Anti-monopoly Law. 2008. Art 33.

⁴⁰⁴ Ibid.

⁴⁰⁵ 反垄断法。Anti-monopoly Law. 2008. Art 34.

maintain and restore an open, fair and impartial bidding and tendering system, Article 34 stipulates that protectionist bidding procedure is prohibited, such as “imposing discriminative qualification requirements or assessment standards or releasing information in an unlawful manner”⁴⁰⁶. Article 34 and relevant provisions in the *Bidding Law*⁴⁰⁷ constitute the mechanism that regulates administrative monopoly activities in bidding process.

Article 35 prohibits activities that “reject or restrict business operators from outside the locality to invest or set up branches in the locality by imposing unequal treatment thereupon compared to that upon local business operators, by abusing administrative power.”⁴⁰⁸ In practice, local government agencies and relevant authorities often restrict, and even reject market players from outside locality to invest or open branches in local market, by abusing their administrative power, in order to restrict and eliminate competitiveness of them and strengthen that of local enterprises, which not only harm the interests of outside market players, but also would turn local enterprises to monopoly enterprises and harm Local consumers’ interests eventually.

Article 36 prohibits government agencies and relevant authorities from forcing market players to practice monopoly activities as prescribed in the *Anti-monopoly Law* by abusing their administrative power⁴⁰⁹. In order to adjust structure in certain industries, and strengthen the competitiveness of certain enterprises in market, the local and departmental government agencies and relevant authorities often promote concentration of market players or directly force them to participate in monopoly conducts, which harm the autonomy of market players, distorts the competition mechanism of market, and violates the basic principles of market: voluntariness, equality, and compensating at equal values.

Article 37 rules that administrative organizations shall not enact any rules and

⁴⁰⁶ Ibid.

⁴⁰⁷ 招标投标法。Bidding Law. 2000. Art 6, 12.

⁴⁰⁸ 反垄断法。Anti-monopoly Law. 2008. Art 35.

⁴⁰⁹ 反垄断法。Anti-monopoly Law. 2008. Art 36.

regulations that restrict and eliminate competition by abusing their administrative power⁴¹⁰. In China's current legal system, administrative monopoly activities could be divided to specific and abstract administrative monopoly activities. The specific administrative activities mean government agencies and relevant authorities impose specific administrative activities to specific objects. The objects are concrete and the results will directly restrict and eliminate competition in specific market and harm interest of specific subjects. The abstract administrative monopoly activities refer to enactment by government agencies and relevant authorities of normative documents for extensive and unspecific objects to restrict and eliminate competition. The normative documents could be applied repeatedly over an uncertain period, and the objects whose interests are harmed are uncertain as well. Since the documents are legitimate, the administrative monopoly activities based on that are also legitimate apparently. In reality, due to lack of efficient supervision and restriction mechanism, government agencies and relevant authorities that are given the power to enact rules and regulations or normative documents, would abuse their legislative authority to expand their power and practice in administrative monopoly activities. The abstract administrative monopoly activities are more harmful than specific administrative monopoly activities and should be strictly restricted and prohibited, since they could repeatedly take place. Article 37 also shows that the economic law in China has a special function of both correcting market failures and adjusting government failures.

c. The anti-monopoly authorities

The provisions of the *Anti-monopoly Law* create two anti-monopoly authorities: the Anti-monopoly Commission⁴¹¹, and the Anti-monopoly Law Enforcement Agency⁴¹². According to Article 9, the Anti-monopoly Commission is established by the State Council to organize, coordinate and guide anti-monopoly work, and perform the functions of studying and drafting related competition policies,

⁴¹⁰ 反垄断法。Anti-monopoly Law. 2008. Art 37.

⁴¹¹ 反垄断委员会。Anti-monopoly Commission.

⁴¹² 反垄断法执法机构。Anti-monopoly Law Enforcement Agency.

investigating and assessing the competition situation of the market, constituting and issuing anti-monopoly guidelines, and other functions as assigned by the State Council⁴¹³. According to Article 10, the Anti-monopoly Law Enforcement Agency is designated by the State Council and shall be in charge of anti-monopoly law enforcement in accordance with the law⁴¹⁴. However, the status of the Anti-monopoly Law Enforcement Agency is unclear, such as whether it will be an independent body under the State Council, or part of another agency; or separate and subordinate to the Department of Commerce⁴¹⁵ or the National Development and Reform Commission⁴¹⁶.

d. The legal liability of the administrative monopoly activities

Article 51 of the *Anti-monopoly Law* provides that where government agencies and relevant authorities restrict and eliminate competition by abusing their administrative power, the department at higher level shall instruct them to rectify; the leading person directly in charge and the other persons directly responsible shall be given administrative sanctions in accordance with the law; the Anti-monopoly Law Enforcement Agency may submit a proposal to the relevant department at higher level for handling the matter according to law. In addition, in the event of a conflict between the *Anti-monopoly Law* and other specific rules and regulations that governing government agencies and relevant authorities, the other rules and regulations shall prevail⁴¹⁷, which actually limits the effectiveness of the *Anti-monopoly Law*.

e. The exemption of administrative monopoly

As an escape provision of the *Anti-monopoly Law*, Article 7 rules that “With respect to the industries controlled by the state-owned economy and concerning the lifeline of national economy and national security... the State protects the

⁴¹³ 反垄断法。Anti-monopoly Law. 2008. Art 9.

⁴¹⁴ 反垄断法。Anti-monopoly Law. 2008. Art 10.

⁴¹⁵ 商务部。Department of Commerce.

⁴¹⁶ 国家发展与改革委员会。National Development and Reform Commission.

⁴¹⁷ 反垄断法。Anti-monopoly Law. 2008. Art 51.

lawful business operations conducted by the business operators therein. The State also lawfully regulates and controls their business operations and the prices of their commodities and services...”.⁴¹⁸Article 7 would potentially exclude any state-owned entity that can be regulated by the *Anti-monopoly Law*, and cause the Anti-monopoly Law powerless eventually if the provision of Article 7 is interpreted broadly.

3.2.2 The assessment of the provisions on administrative monopoly of the Anti-monopoly Law

a. Regulations

Although relevant provisions of the *Anti-monopoly Law* have established a basic mechanism for regulating administrative monopoly problems, there still exist some systematical deficiencies and these provisions need to be clarified either through further regulations or by anti-monopoly authorities.

First of all, although the *Anti-monopoly Law* set a special chapter for administrative monopoly, it fails to do the most basic thing – define what administrative monopoly exactly it is. Instead, the *Anti-monopoly Law* just uses the vague language of “eliminate and restrict competition by abusing administrative power”. In addition, it also fails to give a comprehensive definition on the “abuse of administrative power”, which may give rise to different understanding and lead to the confusion in the identification of administrative monopoly. In common sense, the “abuse of administrative power” refers to abuse of discretionary power, which obviously violates the statutory goal and the common belief, and is just one of illegal administrative activities. In other words, it means the administrative subjects wrongfully perform their administrative power that violate statutory goal. From this perspective, the “abuse of administrative power” only includes specific administrative activities but abstract administrative activities, and the *Anti-monopoly Law* could only

⁴¹⁸ 反垄断法。Anti-monopoly Law. 2008. Art 7.

regulate specific but abstract administrative monopoly activities in practice. This will narrow and obscure the extent of administrative monopoly, and leave the abstract administrative monopoly activities free from the regulation of the *Anti-monopoly Law*.

Secondly, the purpose of Article 7 of the *Anti-monopoly Law* is to protect State monopoly. By comparing with administrative monopoly, which is illegal monopoly and its purpose is to obtain or protect local and departmental interests of administrative subjects, the State monopoly is legitimate and its purpose is to provide public goods and services or to protect national and social interests. They are fundamentally different. However, the extent of State monopoly is not defined clearly, which would lead to the situation where state-owned enterprises get away from the regulation of the *Anti-monopoly Law* in the name of the State monopoly.

Thirdly, the provisions of the *Anti-monopoly Law* prohibit the local government agencies or relevant authorities from restricting and eliminating the competitiveness of market players from outside the locality. However, there is a completely opposite phenomenon widely existing in reality – the reverse discrimination. The reverse discrimination refers to the circumstance where local government provides the foreign enterprises and capitals with preferential policies to attract foreign investments, and reverse discrimination to local enterprises, which strengthen the competitiveness of foreign enterprises and capitals in local market, and harm the interests of local enterprises, especially small and medium sized enterprises. The reason for this phenomenon is that some officers thought foreign investment would promote the local GDP and raise the profile of locality. It is a significant shortcoming that the *Anti-monopoly Law* ignores this phenomenon.

b. The anti-monopoly authorities

The establishment of the Anti-monopoly Commission is of great significance to China's anti-monopoly legal system, and its main function is to investigate and

assess the competition situation of the market and enact competition policies, which means it needs professional knowledge. However, the staff composition of this commission shows that its members are mostly ministers or vice ministers of relevant government departments rather than anti-monopoly experts. This would affect the regulation on industrial and departmental monopoly, and cause a weak commission who has enough authority but lack of efficiency and professional technology in practice.

According to current laws and regulations, the functions of anti-monopoly law enforcement in China are performed by three agencies: the State Administration for Industry and Commerce⁴¹⁹, which is responsible for monopoly agreement, abuse of market dominance, and abuse of administrative power; the State Development and Reform Commission, which is responsible for fixed price; and the Department of Commerce, which is responsible for concentration of business operators. Besides, the anti-monopoly law enforcement agencies may come down to provincial levels and to several industrial regulatory organizations with the authorization of the State Council.

This arrangement causes the following deficiencies of the anti-monopoly law enforcement agencies. First, lack of independence. The current enforcement agencies are all subordinated organizations, and they do not have enough power to regulate local enterprises or state-owned enterprises that have close relationship with government agencies and relevant authorities, or to regulate some administrative subjects that have higher level status than them. In particular, the State Development and Reform Commission has enacted rules and regulations that have contents of administrative monopoly, thus it is difficult for these agencies to enforce the law in practice. Second, lack of experienced and professional staffs. The officers in these agencies are all civil servants rather than law specialists and experts in anti-monopoly area, and the administrative monopoly issues are complex and relate to various branches of knowledge. They obviously lack specialized knowledge of economy and law and thus

⁴¹⁹ 国家工商行政管理总局。State Administration for Industry and Commerce.

unequipped to the anti-monopoly enforcement work. Third, lack of powerful regulations for enforcement. The administrative monopoly often based on administrative power, and it could not be efficiently and completely regulated without powerful regulations. However, the current rules and regulations provide only the powers of inspection, inquiry and consultation to these agencies, thus they could not perform their functions completely in reality. Fourth, lack of a unified coordination mechanism among these agencies. The division of anti-monopoly law enforcement functions to three agencies that belong to three departments creates the possibility for debilitating turf wars. These agencies may fight for jurisdiction or shift their responsibilities to another, and may even make contradictory statements, which would damage the judicial authority of the *Anti-monopoly Law*, and cause a high cost and low efficiency of enforcement. Fifth, lack of clear provisions on regulating the relationship between agencies and industrial and departmental authorities. In current China, many industrial and departmental authorities have the power to enact rules and regulations, and regulate economic activities in certain market, such as railway, oil, banking and electricity. It is not clear that which authority should be in charge when the administrative monopoly activities occur in these industries, the anti-monopoly law enforcement agencies or industrial and departmental authorities? And which law should be applied, the *Anti-monopoly Law* or the rules and regulations enacted by industrial and departmental authorities?

c. The legal liabilities

The provisions about the legal liability of administrative monopoly also have some deficiencies. Firstly, the principle that other rules and regulations are given priority to the provisions on administrative monopoly of the *Anti-monopoly Law* is unreasonable, which would weaken the authoritativeness of the *Anti-monopoly Law* and affect its enforcement effects. In current China, all the industries of telecommunication, railway, electricity, banking and postal services have their own regulations and authorities, and they are also the industries where

administrative monopoly problems mostly occurred⁴²⁰. If the rules and regulations of these industries have priority to the *Anti-monopoly Law*, and administrative subjects of these industries restrict and eliminate competition by abusing their administrative power in the name of social interests, the *Anti-monopoly Law* simply cannot regulate these activities and would exist only on paper.

Secondly, by comparing with the legal liabilities of economic monopoly activities, which include both civil and administrative liabilities, the provisions of the *Anti-monopoly Law* only provides the administrative liabilities to administrative monopoly activities. Administrative monopoly activities not only violate the regulatory goal, but also damage the interests of other market players and consumers, which should bear civil liabilities as well. Besides, the administrative monopoly activities violate the administrative law, the civil law and the criminal law, thus they should apparently bear the liabilities that include administrative liability, civil liability and criminal liability. In addition, the liability of “rectifying upon instruction” is difficult to be applied in practice without further and comprehensive explanation. The time limit of “instructing it to rectify” and the result of refusing to do it are not provided either by the *Anti-monopoly Law* or other rules and regulations. Moreover, “instructing it to rectify” actually is not a punishment measure, it just requires the violator to perform its statutory obligation, correct unlawful act, and remove negative effects, which is the liability of administrative inappropriateness and violation of administrative procedure. However, administrative monopoly activities obviously violate laws and have more serious effects than administrative inappropriateness and violation of administrative procedure, and apply the measure of “instructing it to rectify” is inappropriate. Therefore, the *Anti-monopoly Law* should enact more strictly punitive measures rather than “instructing it to rectify” to regulate administrative monopoly activities.

Thirdly, the Anti-monopoly law enforcement agencies are not authorized the

⁴²⁰ 郭宗杰。2007。《行政垄断之问题与规制》。北京：法律出版社。Zongjie Guo. 2007. *The Problem and Regulation of Administrative Monopoly*. Beijing: Law Press.

power to sanction the subjects of administrative monopoly activities. According to the provisions of the *Anti-monopoly Law*, only the “higher level authorities” have the right to impose punishments to the liable subjects, and the anti-monopoly authorities only have a suggestion right but no punishment right at all. This situation would cause many problems in reality, for example, the higher-level authorities of local and departmental agencies often tend to protect each other to protect administrative monopoly activities behind them, and they would negatively impose punishment to violators or accept suggestions from anti-monopoly agencies. They also lack professional knowledge of economy and law to deal with complex and specialist administrative monopoly issues. Moreover, the “higher level authorities” is not a judicial authority, and the legal procedure of correcting and punishing illegal activities and violators and relevant supervision mechanism are absent, which would lead to the higher level authorities to abuse their power again in the process of dealing with administrative monopoly.

Fourthly, the *Anti-monopoly Law* only provides the legal liabilities to administrative subjects, but no liabilities to enterprises that benefit from administrative monopoly activities, which means the enterprises could only enjoy the benefits but do not have to bear relevant liabilities, and their strengthened competitiveness and the damages to other market players would last. Besides, the *Anti-monopoly Law* also does not provide the legal liabilities to the executive officers of the enterprises that benefit from administrative monopoly, and they are the people who often require the administrative subjects to eliminate and restrict competition by abusing their administrative power on their own initiative in reality, and they also benefit from strengthened competitiveness of their enterprises such as excessively high salary. Therefore, the absence of the legal liabilities to the enterprises that benefit from administrative monopoly and their executive officers, is actually an encouragement to administrative monopoly, and would affect the enforcement of the *Anti-monopoly Law*.

d. The judicial remedy system

According to the *Administrative Procedural Law of PRC*⁴²¹, abstract administrative activities cannot be instituted legal proceedings to the court, and the only judicial remedy is the administrative reconsideration⁴²². And the *Anti-monopoly Law* stipulates that “the authorities for enforcement of the *Anti-monopoly Law* may submit a proposal to the relevant department at a higher level for handling the matter according to Law”⁴²³. Therefore, it is not the anti-monopoly authorities but the higher level authorities can directly regulate abstract administrative monopoly activities. As discussed above, the higher level authorities often deal with administrative monopoly positively, which results in that it is hard for the abstract administrative monopoly activities to get judicial remedy in practice.

Meanwhile, the *Anti-monopoly Law* does not provide the market players and consumers whose interests are damaged by administrative monopoly activates with any judicial remedies, such as civil and administrative lawsuits. What they only can do is to complain to superior authorities, or apply administrative reconsideration, or seek help from media. These indirect and weak remedies are obviously far from being enough to protect their lawful rights and interests.

4. The Improvement Approaches of Constitutional Level

4.1 Restricting and Forbidding Departmental Legislation

The constitution is the fundamental law of the nation. The key to controlling and regulating public powers lies in the constitution. From a normative perspective, the principle of legal reservation requires that all monopoly powers should be authorized explicitly by laws, because they constitute restrictions on economic freedom for enterprises and organizations. Therefore, Article 7 of the *Anti-monopoly Law* is far too vague in its allowance for state-run monopolies

⁴²¹ 行政诉讼法。Administrative Procedural Law. 1990.

⁴²² Ibid. Art 12.

⁴²³ Ibid. Art 51.

wherever national security or “national economic lifelines” are involved. Moreover, the article only reinforces current monopolies in its reference to industries where “state-owned economies are already dominant.” Almost all of the current administrative monopolies would be able to use this simple statement as a shield for their defense. Instead, the decision to provide monopoly status to some industries or enterprises should first be explicitly made by representative bodies through legislation, and whether the authorization is appropriate or not should be restricted by the constitution.

In current practice, some administrative monopolies are established in legislation enacted by the National People’s Congress or its Standing Committee. For example, the monopolies in the salt industry, railway industry, and sports industry are established by the *Power Law*, *Railway Law*, and *Sports Law* respectively. However, due to severe defects in legislative procedures in China, any laws enacted by the People’s Congress, still bear a clear imprint of departmental legislation. First, these laws were drafted by relevant administrative departments. Second, the legislatures of China are relatively weak and lack representation and expertise. It is hard for them to effectively differentiate and examine the problems existing in legislative drafts, and they often pass inappropriate authorizations of monopoly powers.

The above situation is widespread in Chinese legislative bodies. Similarly, legislation involving administrative monopoly such as the *Power Law*, the *Railway Law*, and the *Sports Law*, were drafted by the former Ministry of Power, the Ministry of Railways, and the former Sports Commission. Furthermore, the laws that were finally approved have few if any substantive changes compared to the drafts submitted by administrative departments. From this rubber-stamp legislative procedure we can see that the submission of drafts to acquiescent legislatures has become its own kind of administrative monopoly, with the administrative departments as monopolists.

If we hope to eliminate departmental legislation, improvements should be made to legislative procedures and legislative techniques. There should be a rule

barring administrative departments from submitting draft-legislation, which establishes administrative monopolies that operate under the department. At the very least it should be drafted by a neutral party and then submitted to the legislature for authorization. Moreover, the legislature should organize committees of experts to consult on drafts of laws that establish monopolies for specific industries. Finally, the establishment of any monopoly should be treated as an exception rather than the rule, and no broad categories (for example, “related to national security”) should be used to justify the creation of monopolies.

Whether the administrative monopolies that have been already established are proper or not should be examined by restrictions that satisfy the constitution. However, as we all know, despite a seemingly perfect system for reviewing the constitutionality of laws, we all recognize deep deficiencies in the process. For example, the Standing Committee of the National People’s Congress, which is responsible for guarding the constitution, is a conference organization whose actual political status is limited. Further, the proceedings for checks on constitutionality are internal procedures that are closed to public. Taken together, these factors have crippled the system’s checks and made it such that the proceedings have never had any substantive function to date. With some glaringly inappropriate administrative monopolies untouchable through the constitutional review process, improvements to the review system itself are needed to truly restrict administrative monopolies.

In addition, new provisions should be added to the constitution to prevent administrative departments from establishing administrative monopoly powers through department regulations. For example, administrative departments should not have the power to establish specific monopolies, and any monopolies established by administrative departments’ regulations or statutes are illegal. On top of this, departments should be banned from drafting “implementation details” or “regulations,” or at the very least supervision should be strengthened to prevent these additions from establishing specific monopolies.

Moreover, it should also be stipulated at the constitutional level that the power of administrative departments' to regulate prices comes specifically from legislative action. When an administrative department uses its price regulating power, it should be bound by the Price Law, i.e. it should follow due processes specified by the law. In particular, it should differentiate between adjustments of interest rates by the central bank to implement monetary policy from adjustment to interest rates at commercial banks. This would help avoid the conflation of appropriate actions on monetary policy from undue interference in commercial interest rates.

4.2 Effective Control of State Economy and SOEs

One problem that requires addressing is the numerous articles in the constitution that implicitly or explicitly privilege the state sector, especially SOEs. These provisions pose a threat to progress in that they appear to provide a constitutional basis for administrative monopoly. Below are several examples of such language. Article 6: "The basis of the socialist economic system of the People's Republic of China is socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people," ... "In the primary phase of socialism, the state adheres to the basic economic system with the public ownership playing a dominant role and diverse forms of ownership developing side by side."⁴²⁴ Article 7: "The state economy is the sector of the socialist economy under ownership by the whole people; it is the leading force in the national economy. The state ensures the consolidation and growth of the state economy."⁴²⁵ Article 12: "Socialist public property is inviolable. ... The state protects socialist public property. Appropriation or damaging of state or collective property by any organization or individual by whatever means is prohibited."⁴²⁶

It is not hard to see that, in order to fundamentally break administrative

⁴²⁴ Article 6, The Constitution of China.

⁴²⁵ Article 7, The Constitution of China.

⁴²⁶ Article 12, The Constitution of China.

monopoly, the above provisions in the constitution should be reinterpreted, or even amended. Otherwise, any anti-administrative monopoly measures will be unable to withstand criticism and challenges relying on these constitutional provisions. Specific practices could include: (1) reinterpreting “socialism”; (2) amending provisions regarding publicly owned property in the constitution in order to equally protect the private economy, public property, and private property; (3) for the state-owned economy, establish special supervisory and regulatory institutions to prevent the abuse and embezzlement of state-owned property, including strict restrictions on the acquisition of monopoly power by SOEs.

In fact, from another point of view, the constitutional protections of the publicly owned economy and the state sector could be used to monitor and constrain the management of state-owned companies more effectively. Given that public resources and assets should be owned by all people, the supervision of these resources and assets should be strengthened. It must be assured that these assets are not co-opted and controlled by managers of state-owned companies. In fact, the very difficulty of creating institutions and mechanisms to monitor public resources is reason to emphasize this point in the constitution. Otherwise, the “publicly owned economy” can become a mere pretext for enterprises to take a bite out of the public interest.

At the constitutional level, special care should be given to the following questions in relation to the public economy and the state-owned economy: first, are the public resources sold or rented for reasonable prices? In other words, have the enterprises paid enough in compensation for using national resources? Second, has compensation of managers and employees in SOEs been controlled at a reasonable level? Third, have the profits derived from state-owned property been turned over to the relevant bodies or used for reinvestment? And fourth, is the supervision of public resources and state-owned property by administrative departments sufficient and effective?

Given the lackluster record to date on supervising the use, allocation and

revenue recovery from public resources and state-owned property, the Chinese people should be more cautious in allowing the establishment of more public institutions and SOEs. The corresponding legislatures should establish strict legal procedures in order to prohibit the unauthorized establishment of public institutions and SOEs by administrative departments.

5. The Improvement Approaches of China's *Anti-monopoly Law* Regarding Administrative Monopoly

5.1 Enact detailed and specific rules and regulations for implementation of the *Anti-monopoly Law*

Since the *Anti-monopoly Law* only has 8 chapters and 57 articles, there are general principles that are to some degree too general and flexible to apply in practice. For example, the *Anti-monopoly Law* would be difficult to apply to some cases due to the ambiguity application standards and unclear definition, and results in anticompetitive activities being left out regulations and punishments. The implementation of the *Anti-monopoly Law* is a highly specialized and professional work, which demands clarity and certainty of the law itself. Thus, detailed and specific rules and regulations for its implementation need to be enacted as early as possible, in order to improve the efficiency of anti-monopoly works and the practicability of the *Anti-monopoly Law*. Only by this would solve the problems that the *Anti-monopoly Law* is powerless when facing specific cases in practice due to its unclear and general provisions. In 2009, the *Procedure Provisions for Industry and Commerce Preventing from Excluding or Restricting Competition by Abusing Administrative Power*⁴²⁷ was issued by the State Administration for Industry and Commerce. This is a good start and has great significance in practice. However, it is far from satisfaction and need more relevant rules and regulations in the future.

⁴²⁷ 工商行政管理机关制止滥用行政权力排除、限制竞争行为程序规定。Procedure Provisions for Industry and Commerce Preventing from Excluding or Restricting Competition by Abusing Administrative Power. 2009.

Furthermore, the emphasis should also be focused on the coordination between the various departmental laws and the *Anti-monopoly Law*, giving specific rules and regulations on how to deal with the relationship between them when they conflict with each other, to avoid the situation of fighting for jurisdictions or mutually making excuses⁴²⁸.

5.2 Improve the deficiencies of the provisions on administrative monopoly of the *Anti-monopoly Law*

The provisions on administrative monopoly of current *Anti-monopoly Law* have some deficiencies that need to be improved.

Firstly, clearly defining the concept of administrative monopoly. The *Anti-monopoly Law* uses the phrase of “eliminating or restricting competition by abusing administrative power”. This provision cannot cover all State anticompetitive activities, for instance the anticompetitive activities practiced by legislative authorities are also the State anticompetitive activities but they apparently are excluded from the regulation; the term “abuse” is too principle to apply in practice. Therefore, such activities should be defined as “eliminating and restricting competition by illegally using public power”. Using “public power” would cover all State activities including legislative, judicial and administrative activities, and the term “illegally” would be far more applicable in reality for enforcement. Moreover, activities that “illegally using public power” should be identified by the Constitution, thus it may add a general provision on prohibiting activities that eliminate and restrict competition.

Secondly, clearly defining the scope of “the industries concerning the economic lifeline of the State and national security”. The current scope is so general and wide that most state-owned monopoly enterprises could be excluded from the regulation of the *Anti-monopoly Law* by using it as exemption. The *Anti-monopoly Law* and some relevant rules and regulations should specifically list all markets

⁴²⁸ 游劝荣。2006。《反垄断法比较研究》。北京：人民法院出版社。Quanrong You. 2006. *Comparative Study on Anti-monopoly Law*. Beijing: People’s Court Press.

that belong to natural monopoly or concerning “economic lifeline and national security”, and which should be approved by the NPC. The anticompetitive activities should be strictly limited to these markets and cannot shift to neighboring but separate markets.

Thirdly, adding provisions on prohibiting reverse discrimination. In order to regulate and restrict reverse discrimination issues that widely existed in some local market, an equal treatment should be given to both local and outside market players, and protect and maintain fair competition. In this regard the *Anti-monopoly Law* should add provisions prohibiting local government agencies and relevant authorities from taking any reverse discrimination against local private and small-medium sized enterprise or any other reverse discrimination activities that would harm the free and fair competition.

5.3 Improve the regulations on the Anti-monopoly Committee

The functions of the Anti-monopoly Committee means that it should be an authority with comprehensive knowledge including law, economy, management and so on, and its members should be jurists, economists, and experienced experts rather than civil servants. Although current committee consists of high-level government officers (most of them are ministers or vice ministers of relevant departments such as the Department of Commerce and the State Administration of Industry and Commerce) benefit to its authoritativeness, it would fail to effectively perform its functions due to lack of relevant knowledge and experiences. Therefore, a rigorous personal selection process and mechanism should be established to ensure the members of this committee are qualified. Besides, this committee should be authorized with some enforcement functions and powers to deal with some complicated cases that general anti-monopoly enforcement agency cannot regulate and to make final decisions, and to review and correct the decisions made by general anti-monopoly enforcement agency. Moreover, in order to obtain the power to review, amend and abolish anticompetitive rules and regulations, this committee should be set up directly under the NPC rather than the State Council.

5.4 Improve the regulations on Anti-monopoly Enforcement Agency

The current arrangement of anti-monopoly enforcement has some systematical deficiencies, and should be improved at following aspects.

First, the anti-monopoly enforcement should be independent, which is the guarantee to the justice and efficiency of this agency. Therefore, this agency should be directly set up under the Anti-monopoly Committee rather than as a subordinated organization of government departments. Besides, there also should be some provisions on the officers of this agency to ensure its independence. For example, the officers of this agency should not serve any duties in any other organizations or enterprises by all means; they should be appointed and dismissed by strictly procedure; and they would be punished if they fail to perform their duties.

Second, similar to the Anti-monopoly Committee, the anti-monopoly enforcement agency also needs officers with professional knowledge and skills. Therefore, a personal selection process and mechanism should be established accordingly. In addition, by comparing with the Anti-monopoly Committee, this agency needs a huge numbers of staffs due to the fact that it is the frontier to deal with massive complicated and detailed works, which require that a specific training mechanism or organization should be established to meet the human resource demands of anti-monopoly enforcement works.

Third, this agency should be granted clear authorities by law to effectively perform its duties. Currently, the *Anti-monopoly Law* only provides the agency with the rights to inspection, interrogation, and examination, which obviously are not enough to regulate anticompetitive activities in practice. To solve this problem, this agency should also be authorized the following rights: rule-making right, examination and approval right, administrative compulsory measures such as force to stop, dissolve, seal and seizure, penalty right, punishment recommendations right, and the right to transfer certain case to judiciary or to

the Committee. Besides, to some rules and regulations that may contrary to the *Anti-monopoly Law*, this agency should be authorized the right to make objection to relevant authorities.

Fourth, a coordination system for current anti-monopoly enforcement agencies should be established. For example, a joint conference system involving the People's Bank of China⁴²⁹, Securities Regulatory Commission⁴³⁰ and Banking Regulatory Commission⁴³¹ to communicate each other and ensure the unification of the identification and treatment to the same or similar cases to guarantee its fairness and authoritativeness. Furthermore, it is also necessary to coordinate the relationship between the anti-monopoly enforcement agencies and other departmental or industrial regulators. Currently, most industries of China have their own regulators, and the anti-monopoly enforcement agencies would be useless and powerless if these regulators have exclusive right to regulate all activities within certain industries. Especially for departmental and industrial monopoly activities, the regulators often have the trend to protect them by all means rather than to regulate them to protect their own interests. Thus, there should be a provision to draw a clear line between them and stipulate that these industrial regulators have no right to deal with anticompetitive activities. All of above measures should be temporary, and the final goal is to set up an independent and united anti-monopoly enforcement agency that directly under the Anti-monopoly Committee.

5.5 Improvements for the legal liabilities of State anticompetitive activities

First of all, the legal liabilities for State anticompetitive activities should be unified. Before the *Anti-monopoly Law* was issued, some industrial and departmental authorities such as the Banking Supervision Committee and Electricity Supervision Committee⁴³², enacted some industrial and departmental rules and regulations such as the *Telecommunication Law* and the *Electricity*

⁴²⁹ 中国人民银行。China's central bank.

⁴³⁰ 证监会。Securities Regulatory Commission.

⁴³¹ 银监会。Banking Regulatory Commission.

⁴³² 电监会。Electricity Supervision Committee.

*Law*⁴³³, to regulate the competition activities in certain market. These rules and regulations are contradictory to the *Anti-monopoly Law* on the legal liability of State anticompetitive activities to some degree. Therefore, it is necessary to amend and abolish such rules and regulations that contrary to the *Anti-monopoly Law* so as to set up an effective and authoritative anti-monopoly enforcement and unified legal liability for State anticompetitive activities.

Second, improving the administrative liability system for State anticompetitive activities. The *Anti-monopoly Law* only provides the anticompetitive activities with the liability of “correct ordered by higher authority”, which is obviously not strong enough. The administrative liabilities for State anticompetitive activities should also include measures of dismissing illegal administrative organizations, ordering subjects to stop illegal activities, declaring anticompetitive activities invalid, and administrative compensation and punishment. Besides, the personal liability of State anticompetitive activities should also be considered. Although State anticompetitive activities are practiced by government agencies and relevant authorities in the name of the State, the policy makers and specific executors may have direct responsible for such activities in some situation. Therefore, the person directly in charge and other responsible person should take personal responsibilities, which should be clearly stipulated by the *Anti-monopoly Law*.

Third, improving the civil liability for State anticompetitive activities. According to Article 121 of the *General Principles of the Civil Law of the PRC*, the State organ or its staff shall bear civil liability if it encroaches upon the lawful rights and interests of a citizen or legal person and caused damage⁴³⁴. From the perspective of civil law, the State anticompetitive activities damage the property right of other market players due to their competitiveness are restricted, which is a kind of civil trespass. Therefore, the subjects of State anticompetitive activities should bear the civil liabilities if this activities cause economic loss to citizens and legal persons. The civil liabilities provided by the *General Principles of the Civil Law*

⁴³³ 电力法。Electricity Law.

⁴³⁴ 中国民法通则。General Principles of the Civil Law of China. 1987. Art 121.

include stopping infringement, removing and eliminating obstacles, compensation for economic loss and so on, which should be the base of civil liability system for State anticompetitive activities. Among these measures the compensation is the most important, therefore a clear compensation calculation method for damages caused by State anticompetitive activities, should be provided by the *Anti-monopoly Law* or relevant rules and regulations.

Fourth, the criminal liability. As an illegal activity, the social damages caused by State anticompetitive activities are far more serious than that caused by some economic crimes, thus the criminal liability for State anticompetitive activities is necessary. According to Article 397 of China's *Criminal Law*, "A public servant of a State organ who abuses his power of office or neglects his duty, thus causing a heavy loss to public property or interests of the State or the people, shall be sentenced to fixed-imprisonment of not more than three years or criminal detention; and where the circumstances are exceptional serious, not less than three years and not more than seven years of fixed-term imprisonment"⁴³⁵. Apart from China, there are some other countries which also set criminal liability for State anticompetitive activities. For example, Article 21 of the *Federal Law on Protection of Competition* of Russian states that, "the federal administrative authorities, administrative authorities in Russian federation departments and municipal officials, commercial organs, non-profit organs and their operators, citizens will be pursued to bear civil, administrative and criminal liability when they are sentenced to have violated anti-monopoly law"⁴³⁶. To China's *Anti-monopoly Law*, a provision that the person directly involved in a serious State anticompetitive activity shall bear criminal liability should be set.

Fifth, the sanction on administrative anticompetitive activities should be exercised by the anti-monopoly enforcement agency. According to current *Anti-monopoly Law*, the authorities excising the power of sanction on administrative anticompetitive activities is the "higher authorities", and the anti-monopoly enforcement agencies only have the suggestion right to them. In

⁴³⁵ 刑法。Criminal Law of China. Art 397.

⁴³⁶ Russia. 2009. The Federal Law on Protection of Competition

practice, the higher authorities cannot effectively regulate administrative anticompetitive activities due to lack of professional knowledge and experiences, and a trend to protect those activities practiced by their subordinated organs. Therefore, the anti-monopoly enforcement should be authorized exclusive power to punish administrative anticompetitive activities, at least be given the compulsory power for proposing sanction suggestions.

Sixth, providing the sanctions on the enterprises that benefit from State anticompetitive activities. Every State anticompetitive activity has specific purposes, and most of them are to protect certain economic interests and certain enterprises are the eventual beneficiaries. The punishment of only the subjects of these activities and the person directly in charge of them is obviously unfair, which would help the enterprises that benefit from anticompetitive activities only obtain profits but do not have to bear any risk and liability; and they would still have strong competitiveness which would continuously harm other market players' interests. Hence, the *Anti-monopoly Law* should set a provision that impose sanctions to enterprises that benefits from anticompetitive activities, and require them to bear civil and administrative liabilities, such as compensation and removing specific license; if the circumstances are serious, they should bear criminal liability according to the *Criminal Law*.

Last, providing the sanctions on the executors of the enterprises that benefit from State anticompetitive activities. Generally, almost all anti-monopoly laws in different countries have the provision that directors, managers and other senior management members shall bear the legal liability if the enterprises they work in carry out anticompetitive activities, because they are the direct and specific decision maker and executor of the decision making and implementation. Therefore, China's *Anti-monopoly Law* should set a provision that the director, manager and other management members of certain enterprises that benefit from anticompetitive activities, shall bear corresponding legal liabilities, otherwise they need to prove that they have made appropriate efforts to prevent such activities happened.

5.6 Improve the judicial remedy system for State anticompetitive activities

The judicial remedy system for State anticompetitive activities should be improved. Firstly, the rule of “illegal *per se*” should be adopted by the *Anti-monopoly Law*. The term “illegal *per se*” means that the act is inherently illegal. This rule and the “rule of reason” are the two basic principles to identify the illegality of monopoly activities. When the rule of “illegal *per se*” is applied, the plaintiff only need to prove that the share of the monopoly enterprises in the market exceed a certain amount or its activities are prohibited by the law, and the defendant and its activities would be identified as monopoly or anticompetitive activities, even though the defendant argue that such activities would promote competition to some degree. If the rule of reason is applied, the court needs to review specific activity carefully and examine its background and the influences on the market. To the activity that restrict and eliminate competition while also promoting competition or other overall social benefits, it would be considered to be legitimate. Only the activity that restrict and eliminate competition without any reasonable excuses would be identified illegal. By comparing with the rule of reason, the “illegal *per se*” apparently have more advantages to be adopted: The “illegal *per se*” is far clearer than the reason of rule in practice. It would draw a clear line between legal and illegal, and is easier for the judge to determine whether an activity is anticompetitive activity by using this principle. This principle obviously suits the real condition in China that most judge and officers of anti-monopoly enforcement agencies lack relevant acknowledges and experiences. Contrarily, the rule of reason requires high professional acknowledges and experiences to examines and analyze the facts of a specific activity, which is a big challenge to current China’s judicial structure and the quality of judges and anti-monopoly officer. And the flexibility of this rule would cause different judges and anti-monopoly officers make different decision to the cases that have same or similar conditions, which would harm the authoritativeness of the *Anti-monopoly Law* and affect the enforcement of it. On the other hand, the rule of “illegal *per se*” would save the litigation cost of anti-monopoly due to its clear definition and fewer objects need to be examined and analyzed, this is important to effectively enforce the *Anti-monopoly Law* as

there are too many State anticompetitive activities in China that need to be regulated.

Second, the Anti-monopoly Committee directly under the NPC should be authorized more functions and powers to deal with anticompetitive rules and regulations. For those rules and regulations that have been issued, the Committee could adopt the measure of judicial review to examine whether they have restricted and eliminated competition and are contrary to the *Anti-monopoly Law*, and propose suggestions of amending or abolishing those anticompetitive rules and regulations to the NPC. The Anti-monopoly Committee also could use the measures of prior review to examine the rules and regulations relating to competition. If the Committee finds some provisions of these rules and regulations may restrict and eliminate competition, it could prevent their promulgating and implementing, and require the issuing authorities to amend these provisions within limited period, or it could propose the suggestion of revoking these rules and regulations to the NPC or relevant authorities.

Third, establishing the public interests litigation system against State anticompetitive activities, which means that when a State competitive activity has damaged or may damage social and public interests, any citizen, organ and legal person could bring a suit against the subject that practices such activity under their own name. For example, in the US, both corporate victims and common citizen can claim or acquire injunctive relief to monopoly activities. To introduce this system, the provisions of the *General Principles of Civil Law* that the plaintiff must be the “direct interested person” should be amended to “any citizen, organ and legal person could bring a suit against State anticompetitive activities to the court for public interests”. Establishing the public interests litigation against State anticompetitive activities is meaningful to China: in practice, it is hard to sue an abstract anticompetitive activity due to the fact that its objects are unspecific and the victims are difficult to identity. The public interests litigation system would strengthen the protection of the victims of abstract anticompetitive activities, and make the litigation against them much easier and applicable in practice. Moreover, it would strengthen the ideas of

anti-monopoly, especially against State anticompetitive activities among common peoples, and arouse the citizen's initiative of participating and supervising anti-monopoly enforcement.

CHAPTER SIX: CHINA'S STATE-OWNED ENTERPRISE INCOME DISTRIBUTION LEGAL SYSTEM REFORM

1. The Development of China's State-owned Enterprise Income Distribution Legal System

1.1 Breaking equalitarianism period (1978-1992)

From 1953, China has carried out the socialist transformation, which intended to transfer the capitalism to national capitalism, then to socialism eventually. At the end of the first quarter of 1956, 99% of private industry and 85% of private commerce business were public-private joint management⁴³⁷, which marked that the socialist transformation has been completed basically. Along with the change of the system of ownership of the means of production, relative income distribution system has been established as well. From 1956 the socialist transformation had been completed to 1978 China started to reform, the only system of ownership of the means of production was public ownership, namely the ownership by the whole people and collective ownership, and the only income distribution system was distribution according to work, under which the wage system was applied to all enterprise owned by the whole people, government department and urban collective enterprises, and the 工分(Gong Fen)⁴³⁸ system was applied to rural collective economy.

Generally, there were little legislation concerned about income distribution system during this period, and income was distributed mainly by planning orders and administrative management of government departments. In urban area, all accommodation, education and health care were covered by the State, and individuals were paid depending on their positions that was stipulated by the State; in rural area, the *Regulations on People's Commune of Rural Area*⁴³⁹ ruled that the collective owns all the lands of rural area including curtilage, and

⁴³⁷ 中国统计年鉴 China Statistical Yearbook.

⁴³⁸ 工分。Work point system.

⁴³⁹ 农村人民公社工作条例。Regulations on People's Commune of Rural Area. 1962.

members of collective only have the usufruct of such lands⁴⁴⁰. This system lasted till late 1970s.

Due to the shortcomings of the system of distribution according to work, the Third Plenary Session of the 11th CPC Congress put forward “breaking equalitarianism”⁴⁴¹. Then the Fourth Plenary Session affirmed the system of contracted responsibility that peasant could retain all rest agricultural products after delivering to state and collective, which cleared the distribution relationship among state, collective and peasant⁴⁴².

In October 1984, the Third Plenary Session of the 12th CPC Congress issued the *Decision on Economic Reform of the CPC*⁴⁴³, which encouraged some areas and individuals to become rich first by honest work and lawful operation, emphasized on the importance of economic reform in urban area rather than rural area, and required to establish various types of economic responsibility system and apply the principle of distribution according to work⁴⁴⁴.

The reform of income distribution system in this period could be divided into two stages: the rural income distribution system reform and the urban income distribution system reform. In rural area, the main reform is to establish the household contract responsibility system, which allows farming household to manage agricultural production on their own initiatives while the farmland remains in the ownership of the rural collective. This system not only remained the origin collective ownership structure, but also aroused the enthusiasm for production of peasant. According to statistics, the gross grain output increased significantly from 282,725,000 tons to 391,512,000 tons for the period between 1978 and 1986, and the gross value of agricultural production increased from RMB 101.82 billion Yuan to RMB 277.2 billion Yuan from 1977 to 1986⁴⁴⁵. In

⁴⁴⁰ Ibid.

⁴⁴¹ 十一届三中全会报告。The Report of the Third Plenary Session of the 11th CPC Congress. 1978.

⁴⁴² 十一届四中全会报告。The Report of the Four Plenary Session of the 11th CPC Congress. 1979.

⁴⁴³ 中共中央关于经济体制改革的决定。The Decision on Economic Reform of the CPC. 1984.

⁴⁴⁴ Ibid.

⁴⁴⁵ 中国统计年鉴。China Statistical Yearbook 1977-1986.

urban area, the reform of income distribution system was carried out after the contract responsibility system had achieved a great significance in rural area. This reform concentrated on expanding autonomy of and wage scheme of state-owned enterprises. The *Decision on Economic Reform of the CPC* proposed a series of methods including: to establish an economic responsibility system mainly depend on contract responsibility system, apply the responsibility system of manager to state-owned enterprises, giving more autonomy to state-owned enterprises (including the decision to set their own wage), widen the wage gap between different management levels in aiming to encourage and reward more efficient staffs⁴⁴⁶. In addition, the State Council also issued the *Notice on the Reform of Wage Scheme of State-owned enterprises*⁴⁴⁷, which required that the total wage of a state-owned enterprise should be tied to its benefits⁴⁴⁸.

Specifically, in terms of SOEs' profit distribution, before 1984, all SOEs had to turn in their profits to the State and then received funding from the Treasury for to make investments and to cover their losses. In 1978, revenue from enterprises were the primary source of fiscal revenue. SOEs turned in 57.199 billion Yuan, accounting for 50.5% of fiscal revenue⁴⁴⁹. The SOE reforms in the 1980s started with expanding management autonomy and allowing SOEs to retain some profits. The core of this reform strategy was to break the old system in which everyone benefitted equally, regardless of their contribution. According to the profit-retention policy, SOEs that made higher profits could retain more of their profits. Some of the retained profits could be used for collective benefits and employee reward, so that the managers and employees could receive tangible benefits and foster profit motives in SOEs. Moreover, in most cases, the bonus rewards that employees received were decides and allocated by the management. Better-performing employees could receive compensation in line with their performance.

⁴⁴⁶ See note 715.

⁴⁴⁷ 国务院关于国有企业工资改革问题的通知。Notice on the Reform of Wage Scheme of State-owned enterprises. 1985.

⁴⁴⁸ Ibid.

⁴⁴⁹ Sheng Hong. 2011. *China's State-owned Enterprises; Nature, Performance and Reform*. Unirule Institute of Economics. P. 195.

In 1984, SOEs began to pay taxes instead of turning in profits with the issuance of the *Interim Measures for Substitution of Tax Payment for Profit Delivery for State-run Enterprises*⁴⁵⁰ by the State Council. In practice, medium- and large-sized state-run enterprises paid income tax at a rate of 55%. They then turned in some post-tax profits and retained some profits according to the ratio approved by the state. Small-sized state-run enterprises could completely pay taxes instead of turning in profits to the state. After paying taxes according to the 8-level progressive tax, they could independently allocate the remaining profits and assume sole responsibility for their own profits or losses. But for enterprises that still had huge profits after paying the taxes, the state could collect some contract fees or a fixed amount of profit⁴⁵¹. In September of the same year, the *Report on the Step-2 Reform of Substitution of Tax Payment for Profit Delivery for State-Run Enterprises*⁴⁵² and the *Interim Measures for Step-2 Substitution of Tax Payment for Profit Delivery for State-run Enterprises*⁴⁵³ were issued by the State Council, which stated that Profit-making medium and large-sized state-run enterprises shall pay income taxes at a fixed rate of 55%. Profit-making small-sized state-run enterprises shall pay income taxes according to the new 8-level progressive tax rate in excess of specific amount.” “50% of the profits that enterprises retain from the increased profit shall be used for production and development, 20% for collective employee benefits and 30% for employee rewards.”⁴⁵⁴

In terms of SOEs' remuneration and internal distribution system, SOEs began to give out bonuses in addition to salaries to employees after the policy of power decentralization and profit transfer was adopted in 1978, which changed the situation that SOE leaders were officials who were appointed and dismissed by

⁴⁵⁰ 关于国营企业利改税的推行办法。Measures for the Implementation of Paying Tax instead of Delivering Profits of State-owned Enterprises. 1984.

⁴⁵¹ Ibid.

⁴⁵² 关于国营企业推行利改税第二步改革方案办法。The Report on the Step-2 Reform of Substitution of Tax Payment for Profit Delivery for State-Run Enterprises, 1984.

⁴⁵³ 国营企业第二步利改税试行办法。The Interim Measures for Step-2 Substitution of Tax Payment for Profit Delivery for State-run Enterprises, 1984.

⁴⁵⁴ According to note 16, 17.

the government and whole remuneration was also decided by the State. Generally speaking, the bonuses of the managements were higher than those of ordinary employees, but the disparity was quite limited.

From 1987, SOEs began to adopt the contract managerial responsibility system in a bid to provide managers with greater powers. The basic principles of the system were to solve the fundamentals of the system, increasing profits, and reducing inefficiency. In 1988, the State Council issued the *Interim Regulations on Contracted Managerial Responsibility System in Industrial Enterprises Owned by the Whole People*⁴⁵⁵. In 1992, the Ministry of Labour and the Economic and Trade Office of the State Council issued the *Opinions on Improving the Income Distribution Measures for Managers of Enterprises Owned by the Whole People*⁴⁵⁶. This clearly stipulated that, if an enterprise fulfils its targets and increases its asset values for three consecutive years, the managing director or other leaders of the same level should be rewarded, further linking the income of managers to their work performance.

In the 1990s, China gradually loosened control over income distribution inside SOEs by linking salaries to performance. SOEs therefore acquired greater power to decide salaries within their overall budgets. According to Article 19 of the *Regulations on Transforming the Management Mechanism of Industrial Enterprises Owned by the Whole People*, “enterprises have the power to distribute salaries and bonuses. Gross salaries should be determined by linking gross salaries to economic performance. Enterprises have the power to use and distribute salaries and bonuses within the extracted gross salaries.”⁴⁵⁷ At that time, SOE executives did not dare to increase the disparity between their remuneration and the income of ordinary employees so as not to intensify the conflict. However, to make up the insufficient cash remuneration incentives, invisible incomes and duty consumption were increase rapidly.

⁴⁵⁵ 全民所有制工业企业承包责任制暂行条例。The Interim Regulations on Contracted Managerial Responsibility System in Industrial Enterprises Owned by the Whole People.

⁴⁵⁶ 关于提高全民所有制企业收入分配办法的意见。The Opinions on Improving the Income Distribution Measures for Managers of Enterprises Owned by the Whole People.

⁴⁵⁷ Article 19 of the Regulations on Transforming the Management Mechanism of Industrial Enterprises Owned by the Whole People, 1992.

In a word, the unitary income distribution was modified, inspiring mechanism such as bonus and welfare income were introduced although the main principle was still distribution according to work.

1.2 The period that multiple distribution system coexist while distribution according to work as the fundamental means (1992-2002)

In 1992, the 14th National Congress of the CPC put forward to set up the socialist market economic system⁴⁵⁸, which marked that China's economic reform has entered into a new stage. It clearly stated that partial people and areas are allowed and encouraged to get rich first, to bring along the rest to achieve the goal of common prosperity gradually. In 1993, the *Decisions on Establishing Socialist Market Economic System*⁴⁵⁹ was issued, which set up the basic distribution system under market economic system initially⁴⁶⁰. It proposed that individual income distribution should insist on the system in which distribution according to work is dominant and in which a variety of modes of distribution coexist, and put forward the principle of giving priority of efficiency with due consideration to fairness⁴⁶¹. The subjects and methods of distribution were pluralized, and unearned incomes such as stock dividend, interests and bonus were legalized⁴⁶².

In terms of SOEs profit distribution, the *Decision on Implementing a Tax-sharing System*⁴⁶³ was adopted in 1993. Which stated that "A distribution system shall be gradually established in which the investment proceeds of state-owned assets shall be divided in line with contributions, or the after-tax profits of SOEs shall be turned in. As a transitional measure, most SOEs that were registered before

⁴⁵⁸ 中国共产党十四大报告。The Report of the 14th National Congress of CPC. 1992.

⁴⁵⁹ 中共中央关于建立社会主义市场经济体制若干问题的决定。Decisions on Establishing Socialist Market Economic System. 1993.

⁴⁶⁰ Ibid.

⁴⁶¹ Ibid.

⁴⁶² Ibid.

⁴⁶³ 实施分税制的决定。The Decision on Implementing a Tax-sharing System, 1993.

1993 may retain their after-tax profits.”⁴⁶⁴ Although the measure prescribing that SOEs should pay taxes to the government (administrator) and not to turn in their profits to the owners was classified as a temporary measure, it was enforced for 14 years. The reasons why SOEs exempted from turning in their profits to the government were: first, the core of SOEs reform at that time was to expand enterprise management autonomy and reduce government intervention. This policy was a natural condition of the SOE reform approach followed throughout the 1980s. Second, in the early 1990s, the financial condition of SOEs was generally very poor. The government could hardly get any profit back from SOEs. The injection of capital into SOEs was considered to be a more urgent and necessary task. The net profit of nonfinancial SOEs only accounted for 0.3% of GDP in 1994⁴⁶⁵. Third, SOEs were originally exempted from turning in their profits so that they could use such profit to solve a series of reform-related problems such as the relocation of laid-off workers and pension funds.

In terms of SOEs’ remuneration and internal distribution system, SOEs’ wages were decided by themselves before SASAC was founded. According to the *Opinions on Deepening the Reform of Personnel, Labour and Distribution Systems inside State-owned Enterprises* which was issued by the State Economic and Trade Commission in 2001, “Salary levels of employees should be decided by enterprises under the state macro control according to the local average salary levels and the economic performance of enterprises.”⁴⁶⁶ This provided a policy basis for SOEs to determine wages. In addition to nominal remuneration, there is much room for invisible incomes and expenses for senior SOE executives.

Furthermore, the Report of the 15th National Congress of the CPC⁴⁶⁷ put forward that capital, technology and other factors of production are allowed and encouraged to participate in the distribution of income, illegal earning should be banned, excessively high incomes should be regulated, individual income tax

⁴⁶⁴ Ibid.

⁴⁶⁵ See the Financial Year Book of China 1995.

⁴⁶⁶ The Opinions on Deepening the Reform of Personnel, Labour and Distribution Systems inside State-owned Enterprises, 2001.

⁴⁶⁷ 中国共产党十五大报告。The Report of the 15th National Congress of CPC. 1997.

system and new taxes as inheritance tax should be improved and introduced, and distribution system should be standardized. It also required correctly handling the relationships among the state, enterprises and individuals, and between the central and local government, improving the level of education, medical and health care, and providing basic social security⁴⁶⁸.

In legal area, the 1993 Amendment to the Constitution confirmed that China is at the primary stage of socialism⁴⁶⁹, revised the statement of “the state practices planned economy...it ensures the proportionate and coordinated growth of the national economy through overall balancing by economic planning...” to “the state practices socialist market economy...the state strengthens economic legislation, improve macro-regulation and control”⁴⁷⁰, and recognized the legal status of responsibility system (the main form of which is household contract) in rural area⁴⁷¹. Then the 1999 Amendment added a paragraph to the Constitution, which provided “China governs the country according to law and makes it a socialist country ruled by law.”⁴⁷²It stated that “in the primary stage of socialism, the state uphold the basic economic system... in which the public ownership is dominant and diverse forms of ownership develop side by side and keeps the distribution system... in which distribution according to work is dominant and diverse models of distribution coexist.”⁴⁷³This Amendment also abandoned the contents about household contract responsibility system, and recognized that non-public sectors of economy constitute an important component of the socialist market economy.

1.3 The period paying equal attentions to efficiency and fairness (2003-present)

⁴⁶⁸ Ibid.

⁴⁶⁹ 中华人民共和国宪法修正案 The Amendment to the Constitution of PRC. 1993. Art 3.

⁴⁷⁰ 中华人民共和国宪法修正案 The Amendment to the Constitution of PRC. 1993. Art 7.

⁴⁷¹ 中华人民共和国宪法修正案 The Amendment to the Constitution of PRC. 1993. Art 6.

⁴⁷² 中华人民共和国宪法修正案 The Amendment to the Constitution of PRC. 1999. Art 13.

⁴⁷³ 中华人民共和国宪法修正案 The Amendment to the Constitution of PRC. 1999. Art 14.

Although the distribution system in which distribution according to work is dominant and divers models of distribution coexist has arose the enthusiasm of majority of workers, there were many problems in income distribution area due to factors such as the widening income gap. Therefore, *The Decisions on Issues concerning about Improving Socialist Market Economic System*⁴⁷⁴ that was issued in the Third Plenary Session of the 16th CPC Congress in 2003, and *The Decisions on Several Major Issues on Building Socialist Harmonious Society*⁴⁷⁵ that was issued in the Sixth Plenary Session of the 16th CPC Congress in 2006, aimed at improving income distribution system and standardizing income distribution orders⁴⁷⁶. These two decisions called for increasing regulation on income distribution, and said attention should be paid to the problem of increasing income gap among social members. They called for efforts to speed up building a social security system in accordance with the economic development, to improve endowment insurance system, unemployment insurance system and urban residents' basic medical insurance system, and to build a rural lowest life insurance system in some areas⁴⁷⁷. These two decisions also called for improving the distribution system in which distribution according to work is dominant and divers models of distribution coexist, adhering to the principle that allows factors of production participate in distribution according to their contribution, paying more attentions to social equity, and narrowing income gap among different areas and social members⁴⁷⁸.

In 2007, the Report of the 17th National Congress of the CPC stated “equitable income distribution is an important indication of social equity”,⁴⁷⁹and called for efforts to pay equal attention to efficiency and equity in both primary distribution and redistribution, with particular emphasis on equity in redistribution. It held that efforts will be made to raise the income of low-income group, increase poverty-alleviation aid and the minimum wage, and set up a

⁴⁷⁴ 中共中央关于完善社会主义市场经济体制若干问题的决定。Decisions on Issues concerning about Improving Socialist Market Economic System. 2003.

⁴⁷⁵ 中共中央关于构建社会主义和谐社会若干重大问题的决定。The Decisions on Several Major Issues on Building Socialist Harmonious Society. 2006.

⁴⁷⁶ Ibid.

⁴⁷⁷ Ibid.

⁴⁷⁸ Ibid.

⁴⁷⁹ 中国共产党十七大报告。The Report of the 17th National Congress of the CPC. 2007.

mechanism of regular pay increases for enterprise employees and a mechanism for guaranteeing payment of salaries. Lawful incomes will be protected, excessively high income will be regulated and illegal gains will be banned⁴⁸⁰.

In 2010, the 12th Five-Year Plan was passed, which aimed at protecting and improving people's livelihood, adjusting income distribution relations, increasing the share of personal income in the distribution of national income, and raising that of work remuneration in primary distribution. It stressed that legal income and private property of citizen should be protected on the premise of adhering to the basic income distribution system, increasing transfer payments, intensifying the regulation of incomes through taxation, overhauling income distribution practices, and reversing the growing income disparities between urban and rural area, among different areas and industries.

During this period, SOEs profits increased significantly with improved profitability. In 2007, the aggregate profits of nonfinancial SOEs reached 7% of GDP, equivalent to one-sixth of China's capital formation. Had it been completely added to the budget, the total government fiscal revenue would have been higher by one-third. In 1998, for example, nonfinancial SOEs collectively reported 0.3 Yuan aggregate profits⁴⁸¹ for every 100 Yuan of sales revenue. This ratio rose to 9 Yuan in 2007. Similarly, the aggregate profits that SOEs earned for every 100 Yuan of equity capital jumped from 0.4 Yuan to 12.1 Yuan in these 10 years⁴⁸². This highlights the potential significance of SOE dividend policy⁴⁸³.

A dividend policy for SOEs would divide its after-tax profits into two parts: retained earnings to finance investment in the group and dividends to finance general public spending by the government. As such, the rationale for a sound dividend policy is twofold. First, it has the potential to enhance the efficiency of investments financed by retained earnings of SOEs; and second, it would improve the overall allocation of public financial resources. The absence of a

⁴⁸⁰ Ibid.

⁴⁸¹ Defined as total profit net of loss of all non-financial SOEs

⁴⁸² See Financial Year Book of China 2008, and China Statistical Yearbook 2008.

⁴⁸³ World Bank, 2010.

dividend policy seems to have an implicit assumption that there is no better use of SOE profit other than reinvestment back into SOEs. This is obviously questionable. Indeed, China now faces the urgent challenge of refocusing its public spending to improve equity and efficiency of the delivery of key social services, such as education and health, which are considered critical to achieve national development goals. And the isolation of SOE profits from the normal budgeting process unjustified. From this, the reform kicked off by the *Opinions of the State Council on the Pilot Implementation of the State-owned Capital Management Budget*⁴⁸⁴ (No. 26 Document) issued by the State Council in 2007 marked a major step in the right direction. Which stated “The state-owned capital management budget shall refer to the income and expenditure budget for the state as the owner to legally receive and distribute the proceeds from state-owned capital, which constitutes an integral part of the government budget.” Therefore, SOEs are legally owned by the whole people, and they should advance the benefits of the whole society rather than benefit a few people.

At the end of 2007, SASAC and the Ministry of Finance jointly issued the Interim Measures for the Administration of the Collection of Proceeds from State-owned Capital of Central SOEs⁴⁸⁵, marking the end of an era of 14 years in which SOEs only paid taxes and retained profits. According to relevant regulations, SOEs were divided into three categories for turning in their profits: SOEs in five resource sectors including tobacco, petroleum and petrochemical, power, telecom and coal should turn in 10% of their profits; SOEs in steel, transportation, electronics, trade, construction and other generally competitive sectors should turn in 5% of their profits. Research institutions reorganized in defence sector did not need to turn in their profits. Obviously, these rates were too low⁴⁸⁶. In 2009, the profits and net profits of central SOEs covered in the state-owned capital management budget totalled 965.56 billion Yuan and 702.35 billion Yuan respectively. However, the management budget after profits were

⁴⁸⁴ The Opinions of the State Council on the Pilot Implementation of the State-owned Capital Management Budget, 2007.

⁴⁸⁵ The Interim Measures for the Administration of the Collection of Proceeds from State-owned Capital of Central SOEs, 2007.

⁴⁸⁶ Ibid.

drawn only reached 44 billion Yuan in 2010, accounting for only 6% of their net profits, a rate lower than the individual income tax rate⁴⁸⁷.

In terms of SOEs' remuneration and internal distribution system, in 2003, local state-owned assets supervision and administration committees were established. The State Council and local governments began to perform capital contributor's duties and responsibilities, and enjoy the capital contributor's rights and interests for state-funded enterprises on behalf of the state in accordance with laws and administration regulations. At the end of 2003, SASAC issued the *Interim Measures for Evaluation of Operational Performance of Persons in Charge of Central SOEs*⁴⁸⁸. In 2004, it issued the *Detailed Rules for the Implementation of the Interim Measures for Evaluation of Operational Performance of Persons in Charge of Central SOEs*⁴⁸⁹, adopting a performance-driven annual remuneration system for people in charge of central SOEs.

After 2004, the remuneration of SOE employees began to exceed the salary of employees of other enterprises, exacerbating income inequalities. In 2010, SASAC began to launch a new salary management system in central SOEs in its portfolio. This involved a "dual control" system where the overall salary budget was managed, as well as per-capita salaries. The detailed procedure is as follows: at the beginning of a year, central SOEs would, according to their performance and profits in the previous year, submit their salary budget plan for the year to SASAC. On its part, SASAC would check whether the plans are reasonable according to the budgets submitted by central SOEs and its own control requirements and decide the upper, middle and lower per-capita salary increase limits according to the salaries in different industries. It hoped to solve the problems of irrational salary distribution structures between different groups of employees in central SOEs and too high salaries in some monopolized industries

⁴⁸⁷ Sheng Hong. 2011. *China's State-owned Enterprises; Nature, Performance and Reform*. Unirule Institute of Economics. P. 197.

⁴⁸⁸ 央企负责人绩效评估暂行条例。The Interim Measures for Evaluation of Operational Performance of Persons in Charge of Central SOEs, 2003.

⁴⁸⁹ 央企负责人绩效评估暂行条例执行细则。The Detailed Rules for the Implementation of the Interim Measures for Evaluation of Operational Performance of Persons in Charge of Central SOEs, 2004.

through the salary reform.

SASAC began the pilot of new governance structure in some central SOEs in 2005, where the remuneration committee in the board would decide the remuneration of senior executives. The *Regulations on the Executives of State-owned Enterprises for Performing Management Duties with Integrity*⁴⁹⁰ also stipulated that the remuneration, housing subsidy and other benefits of executives should not be determined without the approval of the organization that performs capital contributor's duties and responsibilities for state-owned assets and the personnel authority⁴⁹¹. The document also stipulated that the remuneration of SOE executives should be linked to the performance of SOEs⁴⁹². However, the reality did not show the positive relationship between the remuneration of SOE executives and SOE profits. As of February 15, 2009, according to the annual reports released by 31 companies listed at the main board markets of Shanghai and Shenzhen stock exchanges, 17 companies reported a significant increase in net profits over 2007 and 14 companies posted a slide in their performance. However, 21 companies reported an increase in executive remuneration over 2007, 2 companies registered unchanged executive remuneration and 8 companies posted decline in executive remuneration⁴⁹³.

In December 2009, SASAC released the *Interim Measures for Evaluation of Operational Performance of Persons in Charge of Central SOEs*⁴⁹⁴, linking the “economic value added” (EVA) to the remuneration of senior executives of central SOEs for the first time. Although it is a commendable advance to introduce the EVA index to evaluate the performance of those in charge of central SOEs because it brings some restraint and pressure to the operational behaviour of senior executives of central SOEs. However, it still cannot hide the fact that the operational performance of central SOEs is not based on fair market

⁴⁹⁰ The Regulations on the Executives of State-owned Enterprises for Performing Management Duties with Integrity, 2009.

⁴⁹¹ Ibid.

⁴⁹² Ibid.

⁴⁹³ Sheng Hong. 2011. *China's State-owned Enterprises; Nature, Performance and Reform*. Unirule Institute of Economics.

⁴⁹⁴ The Interim Measures for Evaluation of Operational Performance of Persons in Charge of Central SOEs, 2009.

competition. The large quantity of resource elements occupied by SOEs for free or at low costs and the monopoly enables SOEs to gain profits much higher than what they can get under fair market competition.

1.4 Conclusion

As a conclusion, the development of China's SOE income distribution system was based on the acknowledgement about the relationship between efficiency and equity. From traditional equalitarianism to give priority to efficiency due consideration to equity, then to correctly handling the relationship in both primary distribution and redistribution with particular emphasis on equity in redistribution, which reflected different positions of income distribution system in different periods. The legal system of income distribution is incomplete, relevant rules and regulations scattered instead of a single income distribution law. Before economic reform, income distribution was guided by the government and mainly depended on policies and orders of the State, and there were no other rules and regulations to regulate income distribution except for the Constitution. Since Reform and Opening up, some relevant rules and regulations were created to standardize income distribution orders and balance the relationship between efficiency and equity. However, due to the fact this system is unstable and discontinuous and lacks of contents about redistribution, the income distribution are regulated by policies of the government more frequently rather than the market and laws.

2. The Current Condition of China's SOE Income Distribution System

2.1 The Monetary and Non-monetary Income of the Employees of SOEs.

2.1.1 The Comparison between SOEs and other economic organizations and the social average

According to statistics, in 2005, the average wage of SOEs exceeded the average incomes of other units for the first time. After that, the gap kept increase each

year. In 2008, the average wage of the employees of SOEs was 17% higher than that of non-SOEs. In 2009, the average wage of SOEs employees was 65% higher than that of urban collective units and 8.87% higher than that of other units⁴⁹⁵.

The gradually widening gap between the incomes of SOE employees and the incomes of other units and the whole society after 2004 was due to the “holding onto the big and letting go of the small” policy of SOE restructuring that began in 1997. From 1997 to 2009, the number of SOEs dropped from 98,600 to 20,500⁴⁹⁶. The small SOEs with either losses or poor performance were closed down, forced to suspend operations, merged with others or shifted into different lines of production, and most of the enterprises left are those in “important industries and key sectors related to national security and the health of the national economy”⁴⁹⁷.

The range of the gross wages of enterprises in our country is based on the *Provisions on the Composition of Gross Wages*⁴⁹⁸ promulgated by National Bureau of Statistics in 1990. However, according to the provisions, invisible incomes such as insurance and welfare funds, labor protection fees, housing funds, extra premiums, transfer incomes and other incomes are not included in the gross wage. As a result, most SOEs have made use of the loopholes in wage linkage policies and grant welfare subsidies and invisible incomes to senior executives and employees. According to the data of relevant statistical agencies, in some monopoly industries, the highest proportion of off-the-book income to declared wages has reached 60%⁴⁹⁹. We can find examples from the annual reports of listed companies, in which employees' remuneration mainly consists of three parts: wage, salary and allowance, employee welfare benefits and social insurance premiums. According to the provisions, only wage, salary and allowance belong to gross wage, and the rest belong to off-the-book income.

⁴⁹⁵ See China Statistics Yearbook 2010.

⁴⁹⁶ *Idid.*

⁴⁹⁷ Sheng Hong. 2011. *China's State-owned Enterprises; Nature, Performance and Reform*. Unirule Institute of Economics. P. 67.

⁴⁹⁸ The Provisions on the Composition of Gross Wages, 1990.

⁴⁹⁹ Sheng Hong. 2011. *China's State-owned Enterprises; Nature, Performance and Reform*. Unirule Institute of Economics. P. 67.

In addition, through calculation based on the data from China Statistical Yearbook 2010, before 2004, the per-capita labor's remuneration of SOEs was lower than those of private and non-SOEs; after 2004, the per-capita labor's remuneration of SOEs exceeded those of private and non-SOEs and the differences are getting bigger. The growth in 2008 was exceptionally noticeable when it was 63% higher than private enterprises and 36% higher than non-SOEs⁵⁰⁰.

2.1.2 The Comparison of wage levels between different industries

The correlation between remuneration levels and industries gets stronger while the differences between industries are widening. According to China Statistical Yearbook 2009, the top five sub-sectors in terms of average wages of employees in 2008 were securities, other financial activities, air transport and software and computer services. Among them, the average employee the securities industry earned 10 times as much as one in the textile industry. Within the industrial sector alone, the top five industries in terms of average wages were tobacco products, oil and natural gas exploitation, electric and thermal production and supply, oil refinery, coking and nuclear fuel, and ferrous metal smelting and rolling processing⁵⁰¹.

A considerable number of SOEs, especially those in a monopolistic position, may obtain high profits without improving market competitiveness or expanding market sales volumes, thanks to their monopoly of key resources, the use of land, minerals and other natural resources at low cost or even for free, the preferential credit and taxation treatments, and the existence of the policies linking wages with efficiencies have also caused gross wages to rise. The average incomes of the employees of such monopolistic SOEs are far higher than the average incomes of the employees of general SOEs. About one-third of the wage differences between different industries in our country have been caused by

⁵⁰⁰ See China Statistic Yearbook 2010.

⁵⁰¹ See China Statistic Yearbook 2009.

monopoly⁵⁰².

According to a statistical yearbook compiled by Statistics Evaluation Bureau of SASAC on July 11, 2006, the wages of the employees of 12 SOEs in petroleum and petrochemical, telecommunications, coal, traffic and transportation and electric power industries were two to three times higher than the average wages across the country. The median of labor cost per capita of the employees of these enterprises was between 60,000 Yuan to 70,000 Yuan, while the average employee wage in eastern provinces and the central regions in that year were 22,400 Yuan and less than 15,000 Yuan respectively. National Bureau of Statistics data indicates that the average wage of the employees in electric power, telecommunications, finance, insurance, water, electricity and gas supply and tobacco industries were one to two times higher than those of other industries. If off-the-book incomes and the differences in welfare benefits are taken into account, the actual income gap may be five to ten times⁵⁰³.

According to Wang Xiaolu's estimation, in 2005, there were 8.33 million employees in electric power, telecommunications, petroleum, finance, insurance, water, electricity and gas supply and tobacco industries. This number was less than 8% of the total number of employees across China, but their gross income and off-the-book income was 1.07 trillion Yuan, accounting for 55% of the gross wage of employees across the whole country in the same year⁵⁰⁴. Most of the SOEs in these industries are central SOEs

The income levels of employees in labor-intensive SOEs and SOEs in industries with perfect competition are relatively low. For instance, in textile, feather and chemical fiber manufacturing industries, the wages of SOE employees were not only significantly lower than those of other units but also slightly lower than urban collective units.

⁵⁰² Sheng Hong. 2011. *China's State-owned Enterprises; Nature, Performance and Reform*. Unirule Institute of Economics.

⁵⁰³ See China Statistic Yearbook 2008.

⁵⁰⁴ Sheng Hong. 2011. *China's State-owned Enterprises; Nature, Performance and Reform*. Unirule Institute of Economics.

2.1.3 Comparison of employee benefits

An employee's income mainly includes wage, salary and allowance, benefit, social insurance and housing fund.

In terms of retirement benefits, in addition to participating in and enjoying the local government-organized integrated planning on the endowment of retirees with fixed contributions, some SOEs also participate in the supplementary old-age insurance schemes and medical insurance plans under the management of independent insurance companies. Besides, some SOEs with satisfactory performances also provide their employees with enterprise annuity. According to incomplete statistics made by State Administration of Taxation, by the end of 2008, 33,000 enterprises in China had established enterprise annuity systems, which covered 10,380,000 employees, or only about 6% of those participating in the national basic old-age insurance scheme. Most of these enterprises that have established annuity systems are in electric power, railway, finance, insurance, telecommunications, coal, nonferrous metal, transportation, petrol and petrochemical and other high-income or monopoly sectors⁵⁰⁵.

In terms of medical insurance, the standards on the payment of the national medical insurance are: the work unit contributes 8% of the wage base while individual employee contributes 2%. In addition to the medical insurance prescribed by the State, the high-performing SOEs also buy commercial supplementary medical insurance for their employees. For example, according to its 2009 annual reports, Jinxi Axle Company Limited paid each employee 11,796 Yuan in medical insurance benefits, while Aerospace Communications Holdings Co., Ltd. paid 41,977 Yuan to each employee, both of which far exceeded the State requirement⁵⁰⁶.

⁵⁰⁵ Sheng Hong. 2011. *China's State-owned Enterprises; Nature, Performance and Reform*. Unirule Institute of Economics. p. 71.

⁵⁰⁶ See the Annual Report of Jinxi Axle Company Limited and Aerospace Communications Holdings Co., Ltd., 2009.

In terms of housing, according to the current provisions on the accumulation fund system, the deposit ratios of accumulation funds of an employee and his employing unit should not be lower than 5% of the average monthly wage of the employee in the previous year and should not be higher than 12% in principle. Many SOEs and public institutions in monopoly industries have raised the percentage to 20%. According to the principle of “equal payment by individual employee and his employing unit,” individual employees are the ultimate beneficiaries of the housing funds. Thus, it can be seen that the excessive payment of the funds for employees in monopoly industries is a typical payment of additional welfare benefits in disguise. Besides, SOEs also provide a large amount of non-monetary welfare benefits in the form of housing subsidies, which are allocated in two ways. One is that SOEs build apartments on the land allocated by the State for free, and the other is that SOEs sell houses bought in the market to respective employees at low prices. Although the State has banned the allocation of apartments to employees, in reality, the vast land SOEs took over at low or no cost has provided “favorable conditions” for them to build houses on their own.

2.2 Comparison of Income of Senior Managers between SOEs and Other Types of Enterprises

The executive annual salaries of listed companies in China was disclosed began in 1998. In that year, the average annual salary of board chairman and general managers of over 840 companies was 51,800 Yuan. According to the information from SASAC, the average annual salaries of senior executives of SASAC-administered central SOEs increased from 350,000 Yuan to 550,000 Yuan from 2004 to 2008. And in 2009, the average annual salary of central SOEs’ CEOs was about 600,000 Yuan. The remuneration structure of the senior executives of central SOEs comprises capital salary and performance salary. A few listed companies also provide stock options. Performance salary is a loose component of the remuneration value system. Although most SOEs have adopted measures used to incentivize executives in Europe and the U.S., they have only imitated the forms and there still lacks a supervision mechanism.

According to annual reports of listed SOEs, the remunerations of a considerable number of members of the boards of directors and boards of supervisors were “zero.” However, they also hold other posts and receive remunerations and allowances from the shareholders or other affiliated units. We cannot find the specific remunerations of these senior executives. Besides, the senior executives of SOEs also enjoy institutional advantages that market-oriented enterprises do not have, such as enjoying preferential treatment and expenses reserved for bureaucratic officials. These institutional bonuses are also a part of the remunerations of senior executives at SOEs. Relevant researches indicate that the annual remunerations of senior executives are always far less than their expenses. During the period from 1999 to 2002, the average position-related consumption of senior executives of listed companies was 11.8 times higher than their average annual remuneration⁵⁰⁷.

According to the analysis conducted by the Investor Journal on the efficiencies of senior executive incentive schemes of listed companies of different ownership structure, it remains questionable whether the operational efficiency of an SOE and the remunerations of its senior executive are correlated in a fair way. First, SOE’s possession and use of resources may ensure their profitability. Second, the senior executive of some SOEs are selected through bureaucratic, but not market-oriented appointment. Third, senior executive of SOEs do not have to pass appropriate evaluation to obtain high remuneration, and the assessment mechanism is not transparent⁵⁰⁸.

2.3 Comparison of the Tax Payment between SOEs and Other Types of Enterprises

2.3.1 Payment of income taxes

⁵⁰⁷ 陈东华, 陈新元, 万华林。2005。“国有企业中的薪酬管制与在职消费”。经济研究。2005年第3期。Donghua Chen, Xinyuan Chen and Hualin Wan. 2005.

⁵⁰⁸ Sheng Hong. 2011. *China's State-owned Enterprises; Nature, Performance and Reform*. Unirule Institute of Economics. p. 73-75.

According to the analysis by Investor's Journal, among all listed companies, the income taxes of private enterprises (average value from 2007 to 2009) were significantly higher than those of SOEs. Among the more than 1,700 A-share listed companies, 992 companies (nearly 60% of all the listed companies) resemble SOEs. The average income tax paid by 992 SOEs was only 10%, while that of private enterprises during the same period averaged 24%, which was 14% higher than that of the SOEs. This means that the tax burdens of private enterprises were far heavier than those of SOEs⁵⁰⁹.

2.3.2 Overall tax burdens

In 2009, the overall tax burdens of central and local SOEs and private enterprises were 8.8%, 3.5% and 3.1%, respectively. The tax burdens of central SOEs were higher than those of private enterprises⁵¹⁰. In the list of top tax-paying enterprises in China published by the State Administration of Taxation and the Journal of Taxation, 304 of the top 500 tax-paying independent enterprises were SOEs⁵¹¹. The tax they paid accounted for 75.58% of the total tax paid by the 500 enterprises; 305 of the top 500 tax-paying group enterprises were SOEs, the tax they paid accounted for 89.75% of the total tax paid by the 500 enterprises; 65 of the top 100 enterprises paying EIT were SOEs, the total tax they paid accounted for 77.84% of the total tax paid by the 100 enterprises. The overall tax burdens of central SOEs were higher than those of private enterprises⁵¹².

This is due to the following reasons: first, as a result of monopolies, most of the listed central SOEs are in industries with higher tax burdens such as petrol, coal, petrochemical, finance and real estate. There are special tax categories in all these industries. In terms of different industries, mining, real estate and financial services are the three industries with the heaviest tax burdens. Some of the special tax categories in these industries should also be regarded as resource

⁵⁰⁹ Sheng Hong. 2011. *China's State-owned Enterprises; Nature, Performance and Reform*. Unirule Institute of Economics. p. 75.

⁵¹⁰ 任鹏宇。2010。“垄断造就央企高税负”。*投资者报*。2010年4月19日。Pengyu Ren. 2010. "Monopoly Causes the High Tax Burden of SOEs". *Investor Daily*. March 19 2010.

⁵¹¹ Ibid.

⁵¹² Ibid.

rents. In these industries, central SOEs enjoy overwhelming advantages in output value.

Second, statistics indicate that, due to monopolies, the sales margin of listed central SOEs is also significantly higher than that of private enterprises. As a result, the general tax burden of central SOEs is higher when using income, as opposed to pre-tax profit, as the denominator. The main reason for the significant difference is the high profit rate of central SOEs. According to the statistics of the Data Research Department of Investor Journal, in 2009, the overall net profit margin of central SOEs reached 11.03%, while that of private enterprises was only 8.85%. The reason central SOEs have higher net profits is also due to their monopolistic advantages. In the market environment where there is insufficient competition, central SOEs may have stronger pricing power over their products and enjoy higher gross profit ratios. Moreover, compared with private enterprises, central SOEs may save quite a sum on sales expenses⁵¹³.

2.3.3 Comparison of tax burdens between SOEs and non-SOEs using the VAI

From the perspective of VAI, and using the VAI data provided by the National Bureau of Statistics, the total tax burden of SOEs (nominal tax burden - subsidies - resource rents for oil and natural gas paid) accounts for about 24.1% of VAI, while that percentage of non-SOEs is 18%. Considering the fact that most SOEs are monopolistic, and there are other special tax types besides the resource rents paid, as well as the fact that the average value-added tax rate of non-SOEs (which are usually smaller) is relatively low (10.8%), we may consider that SOEs and non-SOEs have similar tax burdens. However, as the share of total profit of SOEs is higher than that of non-SOEs, it is unusual that the share of income tax SOEs paid (2.2%) is significantly lower than that of non-SOEs (5%). The result is that SOE's net profit rate (20%) is significantly higher than that of non-SOEs (15.8%)⁵¹⁴.

⁵¹³ Sheng Hong, 2011, *China's State-owned Enterprises; Nature, Performance and Reform*, Unirule Institute of Economics, p. 77.

⁵¹⁴ Calculated based on the data from China Statistic Yearbook 2010; also see Sheng Hong, 2011, *China's State-owned Enterprises; Nature, Performance and Reform*, Unirule Institute of

2.4 The Profit Payment and Dividend Distribution of SOEs

2.4.1 SOEs' profits contribution to the State

Based on a report of the SASAC in 2009 about 108 central SOEs' operation, the total profit of the top ten SOEs such as Petro China, China Mobil, China telecom and China Unicom was 530 billion Yuan, accounting for about 74% of the total profit of all SASAC-administrered central SOEs⁵¹⁵. Among them, the profit of Petro China and China Mobil were 129 billion Yuan and 149 billion Yuan, respectively⁵¹⁶. Their total profit exceeded one third of the total profits of all central SOEs. Therefore, most SOE profit come from central SOEs, and most central SOEs profits come from SOEs in monopoly industries.

In 2007, the State Council issued the *Opinions of the State Council on the Pilot Implementation of the State-owned Capital Operation Budget*⁵¹⁷. According to this document, the government start to collect some SOEs' profits from 2006, and it would implement central-level state-owned capital operating budget. Which ended the thirteen years of SOEs not paying dividends to the government. However, the central state-owned capital operating budget currently only covers the SASAC-administered central SOEs, China National Tobacco Corporation, China Post Group, and over 6,000 enterprises affiliated to over 80 central departments (units), such as science and technology, education, culture, health, administration, politics and law, agriculture, railway and finance departments are not covered by the pilot program.

The profits turned over by SOEs account for a very low proportion of their overall profits. In 2009, the total profit turned over by SOEs accounted for 7.38% of the total profit of SOEs. In 2010, this proportion further dropped to 2.12%.

Economics, p. 80-84.

⁵¹⁵ The Report of the SASAC on Central SOEs' Operation, 2009.

⁵¹⁶ Ibid.

⁵¹⁷ The Opinions of the State Council on the Pilot Implementation of the State-owned Capital Operation Budget, 2007.

Except for the profits turned over, all the rest profits are distributed within SOEs⁵¹⁸.

2.4.2 Dividend rates of SOEs listed abroad

According to the report of the World Bank, although China's SOEs did not deliver to profit to the government, those SOEs listed in overseas markets have followed the international convention on dividend distribution policies. From 2002 to 2008, the average dividend rate of 172 Chinese enterprises listed in Hong Kong Stock Exchange, owned directly or indirectly by the Chinese Government through shareholding, was 23.2%, and the median was 22.7%⁵¹⁹. According to the data as of 2005, the average dividend rate of the main Chinese SOEs listed in the US was 35.4%⁵²⁰. According to the study of the World Bank on 1,264 Chinese SOEs, 35% of them (444) did not distribute dividends. The Chinese SOEs with negative profits rarely distribute dividends, and only eight, or 0.6% of the 1,264 companies distributed dividends when they were at a loss.⁵²¹

2.4.3 Expenditure structure of dividends contributed

According to statistics provided by the Ministry of Finance, from 2008 to 2011, the total operating budget expenditure of SOEs was 285.186 billion Yuan⁵²². These funds were mainly used in state-owned economic and industrial restructurings, subsidizing reforms and reorganizations, new investments, and supplementing SOEs, SOE post-disaster production resumption and reconstruction central SOEs, and relief subsidies for central SOEs during reform. From 2008 to 2001, the total expenditure in the above five areas amounted to 235.04 billion Yuan, accounting for 82.42% of SOEs' operating budget

⁵¹⁸ Sheng Hong. 2011. *China's State-owned Enterprises; Nature, Performance and Reform*. Unirule Institute of Economics. p. 80.

⁵¹⁹ The Report of the World Bank, 2005.

⁵²⁰ Ibid.

⁵²¹ Ibid.

⁵²² Sheng Hong. 2011. *China's State-owned Enterprises; Nature, Performance and Reform*. Unirule Institute of Economics. p. 80-82.

expenses⁵²³. Among the 27 billion Yuan of state-owned capital supplements in 2008, the three major airlines and the five major electric power SOEs received huge capital injections. China Eastern Airline received 9 billion Yuan twice, and China Southern Airline received 3 billion Yuan. In 2009, a special fund of 60 billion Yuan from the operating budget expenditure of state-owned capital was used in telecom restructuring⁵²⁴.

About 10 billion Yuan of funds was brought into public budgets and used to supplement social securities. These funds only accounted for 3.51% of the total expenditure⁵²⁵. In terms of the expenditure structure, the contributed dividends are mainly transferred within the SOE system. Little is spent to benefit the people. The common international practice is that regardless of the state shareholder representatives, SOEs are required to turn over dividends to the financial departments to be used for the public.

3. The Basic Characteristics of China's SOE Income Distribution Legal System

By reviewing the development of China's SOEs income distribution legal system, and its current situation, the conclusion could be made that SOEs' dividend distribution neither embodies equality nor fixes important social injustice problems. It has actually infringed upon the principle of equality severely: through paying fewer or not resource rents, such as land rents, natural resource rents and other resource rents, a significant portion of resource owners' income is transferred to SOEs; through obtaining below-market interest rates, incomes of loan owners have been transferred to SOEs; under the guise of huge ostensible profits, public finance resources are transferred to SOEs; SOEs have obtained unjust monopoly profits through bureaucratic monopoly; through price control, usually set higher, consumers benefits are compromised by SOEs; for a long time, SOEs did not give back profits to their owners to let them decide on

⁵²³ Ibid.

⁵²⁴ Ibid.

⁵²⁵ Ibid.

dividend distribution . They also barely distributed any dividend; based on the aforementioned factors, SOEs record ostensibly larger profits and use them for internal rewards, thus transferring the benefits that should have belong to other factor owners and the public to the management and employees of SOEs; higher nominal profits, and fewer income taxes to a large extent mean that SOEs' nominal net profits are also higher and that SOE owners receive higher returns on investment. Therefore, SOEs play a negative role in income distribution, and the main characteristics of it are the followings:

3.1 The Income Distribution System is Regulated Mainly by Policies rather than Rules and Regulations

One of the characteristics of China's SOE income distribution legal system is that policies play more important role in it than rules and regulations⁵²⁶. By reviewing history, the development of income distribution system was guided by policies made by the CPC. Under planned economy, since the State applied the method of unified distribution according to planning, the government exclusively exercised the right of income distribution depended on polices, and there were few rules and regulations to regulate income distribution except for the Constitution. After 1978, the socialist market economic legal system has taken shape initially, and the amount of rules and regulations about income distribution has been increased gradually. However, these rules and regulations are too general to practice, and the regulating function of them could not be realized. For example, there are no relevant rules and regulations but the government directly manages and regulates the standards of wage scheme and social security, and the distribution of financial fund. Generally, most plans and advices about income distribution system reforms are put forwarded by relevant government department, and are decided by the Central Committee of the CPC. Thus, the guiding theory of income distribution are usually proposed in the National Congress of the CPC, which confirms the direction, principles and models, and are implemented by governments in different levels. The policies of

⁵²⁶ 薛江武。2011。收入分配之经济法调节。南昌：江西人民出版社。Jiangwu Xue. 2011. *The Regulation of Economic Law on Income Distribution*. Nanchang: Jiangxi People Press.

the CPC remain the dominant position in regulating income distribution, and the Constitution and other relevant rules and regulations are just the legalization of such policies.

3.2 The Income Distribution Legal System Pays More Attentions to Primary Distribution

In 1993, the paragraph of “the state strengthens economic legislation, improves macro-regulations and control” was added to the Constitution⁵²⁷. After that, numerous civil and economic rules and regulations including legislations about income distribution were created to promote the development of socialist market economy. However, the current income distribution legal system pays more attentions to primary distribution than redistribution, which caused the inequity of income redistribution. For instance, legislations about social security, social welfare and transfer payment are still incomplete as yet, especially the seriously short of rules and regulations about promoting coordinated development among different regions, transferring payment and taxation. This leads to the income gap among different regions social members increased continuously.

3.3 The Income Distribution Legal System Pays More Attentions to Protect the Interests of the State than that of Individuals

China is a socialist country based on public ownership, the State interest is paramount to all others before the law, and no interest of individual may contravene that of the State or collective. All of rules and regulation, whether the Constitution or civil and economic legislations, incline to protect the State interests, in both the planned economy or market economy period. For instance, the State and the collective have the advantages in resource allocation over individual, and the state and collective fortune always increase much faster than that of individual. After 1978, individual’s interest began to be respected by law,

⁵²⁷ 中华人民共和国宪法修正案 The Amendment to the Constitution of PRC. 1993. Art 7.

especially the Amendment to the Constitution confirmed that the lawful private property of citizens may not be encroached upon, and the relations between the State, collective and individual should be handled correctly. In practice, however, the interests of the State and collective still have priorities, and the interests of individual will become weaker before them. Current land-related demolition system and expropriation system have proved that. In addition, the on-going reforms of health care, state-owned enterprises and housing also do not show enough respect to individual's interest, the imbalance between the State and individual in income distribution system is obvious.

3.4 The Great Income Disparity among Different Industries

Currently, the income gap between monopoly and non-monopoly industries is the hot issue in China and attracts most attentions. During the transition period, the market mechanism is incomplete and the influence of traditional planned economy still exists, the government has the exclusive power to guide the development of economy and market segmentation. As some important industries relating to national economy were controlled by the government in a long term, and the management and manufacturing activities of these industries were protected by the State policies, the monopoly industries have taken shape inevitably, which must lead to the imbalance of income between monopoly and non-monopoly industries. For instance, in monopoly industries such as banking, electricity, communication, postal and oil, monopolistic enterprises (most of them are state-owned enterprises) gains excessive benefits by using their dominant advantages, then these benefits are transferred to excessive income and welfare of their staffs, which lead to the continuous growing gap of income between monopoly and non-monopoly industries, and between monopolistic and regular enterprises. In fact, from 1995 to 2005, there is a rising trend on average wage rate, however the rate for those in monopoly industries experiences a significantly higher rise for the same periods⁵²⁸.

⁵²⁸ The Development and Reform Commission of China. 2007. *The Basic Situation and Main Problems of China's Wage Distribution*. See Link: <http://politics.people.com.cn/GB/30178/5757458.html>.

According to statistics⁵²⁹, from 1990 to 2002, the ratio of average wage in top-paid industries to that in the lowest-paid industries has been increased from 1.76:1 to 2.99:1. After 2002, since the new standard of industry classification of national economy was applied, this ratio was further increased to 4.63:1 in 2003, 4.60:1 in 2004 and 4.88:1 in 2005. According to the Ministry of Labour and Social Security, the average wage of electricity, communication, banking, insurance and tobacco industries is twice even thrice as much as that of other industries; in 2005, the average wage of top 12 state-owned enterprises that earned more than 10 billion Yuan benefits is thrice even four times of that of the whole country. In consideration of off-payroll income and welfare, the real proportion between them could be 5 to 10 times. From 1990 to 2002, the average growth rate of average wage is 20.2% in banking and insurance industry, 17.0% in postal and communication industry, and 16.4% in electricity and gas industry, which are obviously higher than that in mining, building and agriculture industries. In 2007, the average wage of the whole country is RMB 24,721 Yuan, and the average wage of the securities – the top-paid industry is RMB 14,0505, which is 14.61 times of that of animal husbandry.

Furthermore, the inequity income distribution also exists within monopoly industries. Even in the same enterprise, the investors and managers could gain much more incomes than regular staff. According to Rongrong Li⁵³⁰, the former chairman of the State-owned Assets Supervision and administration Commission, in 2006, the average wage of senior executives of central state-owned enterprises was RMB 531,000 Yuan, and that of regular staff was only RMB 100,000 Yuan. In oil industry, the ratio of the top-paid to the lowest paid even reaches 100:1⁵³¹.

3.5 The Imbalanced National Income Distribution

⁵²⁹ Ibid.

⁵³⁰ 李荣融。Rongrong Li.

⁵³¹ The Research on the Wage System of Central Sate-owned Enterprise. 5th September 2013. See link: < <http://finance.people.com.cn/money/BIG5/n/2013/0905/c218900-22810760.html>>.

As a socialist country based on public ownership, the State interests of China is paramount to all others, and have priority to individual interests when they collide. The Constitution also stipulated “socialist public property is inviolable”⁵³². In national income distribution, resources allocation inclines to the State and collective, and state-owned enterprises controls massive properties on behalf of the state. This results in private properties and interests are neglected, and the growth rate of national wealth is significantly faster than that of individual wealth. Therefore, the proportion of individual income in the national income distribution is seriously imbalanced.

Statistics shows that the share of individual income in national income distribution continuously decreases while that of enterprise and government income increases. In 1978, the income distribution ration of individual, enterprise and the government is 55.0:11.1:33.9. Then the shares of enterprise and the government income have decreased to some degree in the period between 1978 and 1988, and increased slightly from 1995 to 2000. After 1995, the shares of enterprise and the government income in national income distribution significantly increased while that of individual income considerably decreased. In 2004, the proportion of individual income in national income distribution decreased from 66.81% in 1995 to 57.83%, and that of the government increased from 16.5% in 1995 to 20.3%⁵³³.

According to this, some scholars believe that wealth tend to become concentrated in China’s national income distribution: first, wealth is concentrated in the hand of the government. During the period between 1994 and 2008, the ratio of the government revenue to GDP has increased from 10.39% to 19.99%⁵³⁴. Second, the share of labour remuneration continuously decreases. From 1996 to 2007, the ratio of that has decreased from 53.4% to 39.7%⁵³⁵. Third, wealth is concentrated to monopoly industries.

⁵³² 中华人民共和国宪法 The Constitution of PRC. Art 12.

⁵³³ 中国统计年鉴 China Statistical Year Book 1995-2004

⁵³⁴ 中国统计年鉴 China Statistical Year Book 1994-2008

⁵³⁵ 中国统计年鉴 China Statistical Year Book 1996-2007

In redistribution area, this phenomenon also exists. Since 1998, the reforms of old-aged pensions, healthcare and education system are carried out, the policies of free accommodation, medical, education and old-aged pensions which are all provided by the government under planned economy are abolished. Therefore, although the income of individual has increased to some degree, they also spent much more on accommodation, healthcare and education that used to be free.

The table of the revenue and expenditure of the government

Year	The government revenue (billion Yuan)	Expenditure on economic development (billion Yuan)	The proportion of expenditure to the revenue	Expenditure on agriculture (billion Yuan)	The proportion of expenditure to the revenue	Expenditure on social security (billion Yuan)	The proportion of expenditure to the revenue	Expenditure on administrative management (billion Yuan)	The proportion of expenditure to the revenue
1980	115.9	71.5	61.68%	14.9	12.2%	0.5	0.46%	7.5	6.51%
1985	200.4	112.7	56.24%	15.3	7.66%	0.7	0.38%	17.1	8.53%
1990	293.7	136.8	46.58%	30.7	9.98%	1.2	0.41%	41.4	14.11%
1995	624.2	285.5	45.75%	57.4	8.43%	24.1	0.39%	99.6	15.96%
2000	1339.5	574.8	42.91%	123.1	7.75%	59.1	0.46%	276.8	20.67%
2005	3164.9	931.6	29.44%	245.0	7.22%	32.4	1.02%	651.2	20.58%

By observing the table of the revenue and expenditure of the government⁵³⁶, it is clear that the expenditure on administrative management increases rapidly and significantly more than that on agriculture and social security areas, and the proportion of the expenditure on these two areas continuously decreases.

Therefore, all income distribution among individual, enterprise and the government, between different enterprises, individuals and regions are imbalanced. After three decades development since economic reform, the incomes of individual, rural residents, non-monopoly industries and developing regions have greatly increased, however, they did not accord with the economic development and were slower than the increase of the income of others. These widening income gaps not only hinder the development of economy, but also lead to social instability.

4. The Factors Contribute to Current Situation of China's SOE Income Distribution Legal System

The widening income gap and inappropriate income distribution system are resulted from many factors, such as the basic economic system, resources allocation mechanism, the boundary between market regulation and macro-control and relevant legal system.

4.1 The Inequity Resource Allocation Mechanism and Imbalanced Distribution of Factors of Production

The income of social members is determined by the social resources they could use, and the resource allocation mechanism determines whether the income distribution is equity or not⁵³⁷. Under planned economy, the public ownership of means of productions is applied, social resources are possessed by the whole people, and labour is the only factor that could participate in income distribution,

⁵³⁶ 中国统计年鉴 China Statistical Year Book 2007

⁵³⁷ 薛江武。2011。收入分配之经济法调节。南昌：江西人民出版社。Jiangwu Xue. 2011. *The Regulation of Economic Law on Income Distribution*. Nanchang: Jiangxi People Press.

thus distribution according to work could be accepted widely during that period. In market economy, the income of a social member is closely related to the means of productions he occupied, and the income of one industry depend on the market resources and means of productions it obtained rather than its productivities⁵³⁸. Therefore, whether social members could equally enter certain market divisions and participate in resources allocation is directly relate to the equity of income distribution.

The basic principle of income distribution under market mechanism is distribution according to factors of productions. The factors of productions contain labour factor and non-labour factor, and the later includes land, natural resources, technology and capital and etc.. On one hand, as China has an enormous population and labour surplus, the labour market is the buyer's market, labour force devalues and the income of regular staff that gains payment only by labour is low. On the other hand, China adopts the system that resources are owned by the State, all land and natural resources are exclusive owned, operated and used by the State, and it is hard for market mechanism to perform its functions. These resources are directly used or transferred at a low price even free, which virtually increase the value of other non-labour factors. Therefore, in practice, those who have capitals could obtain excessive benefits by purchasing low-price land and natural resources, and the growth rate of the benefits of non-labour factors such as capital and technology is much faster than that of labour factor. The more capital factor he has, the more benefits and social wealth he could obtain, and the one has less capital is always at an unfavourable position, which would lead to the Matthew effect at last. The history told us the income gap is unavoidable while the market economy handling the efficiency issues. To narrow this gap, an income distribution system in accordance with market economy must be established.

4.2 Market and the State Regulation Failure

After 30 years development, China has established a basic market mechanism

⁵³⁸ Ibid.

during transitional period. However, it could not perform all of its functions due to the absence of regulation on market competition. In income distribution area, the market mechanism failure lead to national income polarizes because this system gives more attention to efficiency while neglects equity.

In addition, the regulation of the State to income distribution also does not achieve the object aimed at. For example, due to inappropriate standard of transfer payment, unscientific taxation rate and administrative monopoly, the imbalanced primary distribution could not be corrected by redistribution; on the contrary, the contradiction is increased. The fact that the government controls excessive fundamental resources and fail to distribute them is one of the most important reasons that causes widening income gap between different regions and industries. Specifically, first, the land resources are highly concentrated and exclusively controlled by the government, and marketization of land resources guided by the government (such as forced demolition and expropriation) certainly will deprive individuals of their interests and give excessive benefits to the government, which will lead to housing price increases significantly thus the real estate developer can gain excessive benefits. Second, some industries such as banking, electricity, communication, postal, oil, railway and tobacco are totally controlled by state-owned enterprises, and the resources allocation of these industries could not be optimized by market mechanism. These state-owned enterprises in monopoly industries directly or indirectly transfer the excessive benefits to their staff's income or welfare, which results in the high-income level of these monopoly industries. Third, by comparing with private enterprises, medium and small sized enterprises and individuals, state-owned enterprises and large sized enterprises can obtain loan easier and get more supports from credit policy of the state. Without sufficient capital, private enterprises, medium and small sized enterprises cannot compete with those state-owned and large sized enterprises, and the development and income of them are limited. Fourth, the fiscal and taxation system do not solve the problems emerged in primary distribution. On contrary, due to the unscientific decision, less expenditure on vulnerable group, absence of social security system, and imbalanced development among different regions, the redistribution also failed. To solve

these problems, the intervention of the government to the market must be reduced, expand the resources allocation space by market mechanism as much as possible, and push forward the reform of income distribution system.

4.3 The Shortages of Current Income Distribution Legal System

The imperfect income distribution legal system is another important factor contributes to the current situation of income distribution, and is marked by insufficient legislations, imbalance between efficient and equity and lack of practicability.

4.3.1 The imbalance between efficiency and equity

A big issue in economics is the relation between efficiency and equity, and the nature of income distribution is how to correctly handle this relation. The equilibrium point between efficiency and equity is the foundation of a reasonable income distribution system. China, however, fails to achieve the balance between them.

Under the planned economy, the State over emphasized on equity and neglected efficiency, which lead to inefficiency of productivity. After the economic reform, following by the guideline of development of economy is a top priority, efficiency became to the centre of attention and equity was neglected, which resulted in the widening income gap among individual, enterprise and the government, and between different regions and individuals. In market economy, efficiency is superior to equity, it is determined by the nature and characteristics of market economy. Only in this way, the potential of market player could be developed as much as possible to promote economic development. There is no efficiency if equity is overemphasized, and the equity without efficiency is also pointless.

Giving priority to efficiency does not deny the importance of equity. The cognition of the relation between them is changeable according to different historical circumstances and specific conditions. At the initial stage of economic

reform, to rapidly develop economy, the State adopts the principle of giving priority to efficiency due consideration to equity, which gives priority to the development of urban area and eastern regions, and allow partial individuals to get rich first. This not only promotes the economic development greatly, but also leads to the imbalance between urban and rural area, and between eastern and central and western regions. With the income gap continuously widens, equity should draw attentions. Therefore, there is no specific standard for the balance between efficiency and equity, and it should change according to different situations and keep up with times.

4.3.2 Current legislations about income distribution are unlikely to work in practice

In current China's income distribution legal system, relevant legislations are too general, and are unlikely to work in practice, which should be supported by specific rules and regulations to apply. For example, the Constitution stipulates the basic principle of income distribution is "distribution according to work is dominant and divers models of distribution coexist"⁵³⁹. The term of "divers models of distribution", however, is too general, and which models belong to it and which does not is not clear. Besides, there are also no specific rules and regulations about the subject and object of distribution, rights and obligations of them, and legal liability in distribution process. It is no doubt that, without these rules and regulations, the general principle of the Constitution could not be applied to practice, and the balance between efficiency and equity would not be achieved. Another example is, according to the Constitution, individual's lawful rights are protected and defended. However, in early time, individuals could not get any remedy at all if their lawful rights were invaded as the judicial remedy mechanism was absent. Although recently some legislations about labour contract and social security are created, and the basic labour arbitration mechanism is established, the 维权(Wei Quan)⁵⁴⁰ phenomenon still exists.

⁵³⁹ 中华人民共和国宪法 The Constitution of PRC Art 6.

⁵⁴⁰ Which means that individual protect and defend his lawful rights through litigation and legal activism.

4.3.3 Insufficient legislations about primary distribution

Primary distribution is the core of income distribution system, and an appropriate legal system is the precondition of equity primary distribution. Civil and commercial law under market economic system is the basic rules and regulations to regulate primary distribution. However, as affected by the legal thoughts of Soviet Union, China pays more attentions to public law and neglect private law, the civil and commercial law is underdeveloped for a long term⁵⁴¹. Before reform, there were barely legislations about income distribution except for the basic principle of the Constitution, and even basic civil law was absent until 1986 the *General Principles of Civil Law* was created. After 1993 that socialist market economy is confirmed, some commercial laws such as the *Company Law*, the *Securities Law*, the *Bankruptcy Law* and the *Insurance Law* are created and improved gradually. There are still no legislations about regulating excessive income, illegal income, transfer payment and macro-control on the table. This is the main factor contributing to the situation of inequity primary distribution.

For example, during transitional period, the State overemphasizes on decentralizing power to state-owned enterprises and giving them autonomy, and neglect regulating to them by administrative and legal methods. Therefore even the benefits distribution and wage scheme of monopolistic enterprises are decided not by the State, but these enterprises themselves, which lead to the huge income gap between top managers and regular staff.

The direct result of overemphasizing on efficiency and economic development while neglecting equity and livelihood is inequity income distribution and widening income gap. Therefore, to solve these problems, the primary distribution legal system must be improved at first, to protect the lawful rights of individuals and achieve the balance among individual, enterprise and the state

⁵⁴¹ 薛江武。2011。收入分配之经济法调节。南昌：江西人民出版社。Jiangwu Xue. 2011. *The Regulation of Economic Law on Income Distribution*. Nanchang: Jiangxi People Press.

by legal means.

4.3.4 The secondary distribution legal system is imperfect

Generally, the secondary distribution is regulated by economic law, labour law and administrative law. However, legislations in these areas such as competition law and macro-control law are neglected in a long term in China. Take anti-monopoly as an example. Although the *Anti-monopoly Law* is created in 2008, it does not contain any strong contents in regulating administrative monopoly, which is the main issue in China's economy. On contrary, some industrial legislation such as the *Oil Law*, the *Gas Law*, the *Communication Law* and the *Electricity Law* have strong overtones of protecting monopoly industries.

Legislation in social security area is also imperfect. The nature of social security system is the distribution and redistribution of social income, it directly relate to distribution equity. Most countries have a social security and assistance system that aims at protecting basic rights of citizens, and developed countries such as the UK have a perfect and complete social security legal system. This not only protects individual's rights but also maintains social stability. However, as China's economy has gained significantly achievement, its social security system and relevant legislation are lagged behind obviously. Despite the *Social Security Law* is promulgated in 2008, the problems such as narrow coverage, insufficient fund and low security level still exist in current social security system.

5. Regulating SOE Income Distribution by Anti-monopoly Law

In economic law system, market regulations include anti-monopoly law, anti-unfair competition law and consumer protection law. All of them are aimed at removing market barriers, improving competition mechanism, regulating excessive income from monopoly and unfair competition activities, and protecting legal rights of market players. Since antimonopoly activities is the main factor distributes to the widening income gap in current China's income distribution system, and it is also the most important and efficient method of

market regulation, this section will focus on discussing and analysing the theoretical and practical issues in current China's income distribution system and how to reform it from the perspective of anti-monopoly.

5.1 General theory

Free competition is the indispensable factor of healthy development of economy, and the precondition and fundamental of market mechanism performing its functions. However, it also results in the survival of the fittest and reduces the amount of market players inevitably, and then the monopoly is emerged. The monopolistic activities not only hinder economic development, but also affect the equity of income distribution. In micro level, it causes the inequity income distribution among market players; in macro level, it would affect social stability if the inequity income distribution becomes general and severe. Thus it can be seen that monopoly and unfair competition activities are the main factor that hinder market mechanism performing its functions and regulating income distribution. To monopoly and unfair competition activities, civil and commercial law are powerless since they are based on freedom of contract, and some monopolistic alliances such as price trust and the agreement of sharing market are based on the very same principle. At this moment, anti-monopoly law emerges as the times require.

The existence of monopolistic activities enable industries and enterprises that have dominant positions to obtain excessive income and lead to widening income gap, and anti-monopoly law would protect free competition and maintain social equity by breaking these monopolies. In fact, the process of breaking up monopolies is also the process of income distribution and redistribution.

The basic theory of income distribution by anti-monopoly law will be discussed and analysed as following:

5.1.1 Monopoly profits is the main source of excessive high income in

monopoly industries

Free competition is the quintessence of market economy, and monopoly is the inevitable result of free competition. Some powerful and well-performed enterprises could obtain monopolistic position during competition. By using advantages of their dominant position, these enterprises (and industries) could control market and resources, and obtain monopoly profits much higher than average level. The high income of staffs in monopoly enterprises (and industries) closely relate to monopoly profits. Monopoly enterprises (and industries) creates higher price to obtain monopoly profits by using their dominant position, and these profits would ultimately transfer to their staff's excessive high income due to shortages of external supervision and individualism and arbitrariness in internal contribution system. Therefore, monopoly profit is the fundamental of excessive high income in monopoly enterprises and industries.

The formation of monopoly profits severely breaches the law of value because it is not the result of free competition. Monopoly enterprises (and industries) obtains monopoly profits at the cost of sacrificing the interests of regular enterprises and consumers: on one hand, monopoly enterprises uses their monopoly position to restrict and exclude competition activities of regular enterprises, as a result these enterprises could not obtain reasonable profits; on the other hand, staffs of these monopoly enterprises would earn much higher income than that of regular enterprises. This would result in the large and widening income gap between monopoly and regular enterprises, and between staffs in them. Take China as an example, electricity, communication and tobacco industries obtain excessive high profits and their staffs also earn much higher income than regular level. These excessive incomes, however, do not result from these staff have more efficient productivity and create more labour value but from excessive monopoly profits. Monopoly enterprises and their staffs share the monopoly profits while other market players and consumers' interests are harmed, which lead to the imbalanced income distribution. Civil and commercial laws are powerless to regulate and redistribute monopoly profits, and only anti-monopoly law could break up monopoly and regulate monopoly profits,

which is the main purpose of it.

Monopoly could be observed in two aspects: structural monopoly and monopoly activities. Structural monopoly means enterprise has obtained market dominant position and no other enterprises could compete with it; monopoly activities include monopoly agreement, concentration of business operators and abuse of dominant position. Anti-monopoly law should regulate both of them.

Currently, the main regulation object of almost all countries' anti-monopoly law is monopoly activities. For instance, the *Anti-monopoly Law* of China makes specific provisions of monopoly agreement (chapter 2), abuse of market dominance (chapter 3) and concentration of business operators (chapter 4) separately.

Structural monopoly also should be regulated, because under market economy, it would easily lead to abuse of market dominant position and it is the result of monopoly activities. In the United States, in order to break up structural monopoly and turn a monopoly market to a competitive market, a large enterprise could be divided into several small enterprises if it has too much power and too large proportion of certain market, even there is no evidences that show this enterprise abuses of its dominance at that moment. Recently, China introduces competition mechanism into traditional monopoly markets to hinder enterprises in this market obtaining excessive monopoly profits. For instance, the mobile communication business was exclusively run by China Mobile with high price in a long term, which severely affected consumers' interests. Then introducing Unicom and other operators into communication market broke up this structural monopoly. The petrol industry has the similar situation, in which Petro China, Sinopec and the CNOOC compete each other to some degree. However, the problem is the structural monopoly in such industries has not been broken up totally, they are dominated by state-owned enterprises and it is hard for private enterprises to enter, and the monopoly profits still exist in these industries.

5.1.2 Monopoly would harm consumers' interests

Protecting consumers' interests is one of the core tasks of anti-monopoly law, and some scholars even believed it is the only purpose of anti-monopoly law. For instance, Japanese scholars thought the direct purpose of the antimonopoly act is to achieve free and fair competition, but its ultimate task is to protect consumers' interests⁵⁴². In the United States, both *Sherman Antitrust Act* and *Clayton Antitrust Act* clearly aim at increasing consumers' welfare, and Chicago School also stated that increasing consumers' welfare is the only task of antitrust law⁵⁴³. Besides, all of Germany, Sweden, Finland and Poland's anti-monopoly law give priority to protecting consumers' interests⁵⁴⁴. The reason monopoly activities such as predatory pricing, concentration of enterprises and abuse of dominant position should be regulated is because they distort price goods under free market and damage the interests of consumers. Therefore, the ultimate purpose of anti-monopoly law is to protect consumers' interests⁵⁴⁵. The *Anti-monopoly Law of China* also takes it as its main purpose and value goal.

In practice, monopoly activities force consumers to increase expenditures by making predatory and unfair price, or reducing the service level, which causes the decline of consumers' living standard and decreases in their earnings. For example, the electricity company forces their customers to buy high-priced electric meter from appointed supplier, gas supplier increases gas price without authorization, and identity photos must be taken at appointed photo studios, all of these activities would directly damage consumers' interests and reduce their incomes. In addition, monopoly enterprises could add excessive salary as a make-up to cost price by using their dominant position to increase the prices of

⁵⁴² 赖源河。2002。公平交易法新论。北京：中国政法大学出版社。Yuanhe Lai. 2002. *The New Theory of Fair-trading Law*. Beijing: China University of Political Science and Law Press.

⁵⁴³ 孔祥俊。2001。反垄断法原理。北京：中国法制出版社。Xiangjun Kong. 2001. *The Basic Theory of Anti-monopoly Law*. Beijing: China Legal Press.

⁵⁴⁴ 尹世杰。1997。“市场经济是消费者主权的经济”。《中国工商管理研究》1997年第三期。Shijie Yin. '997. "Market Economy is a Economy Dominated by Consumers". *The Research on China's Industry and Commerce Management* 1997 Vol. 3.

⁵⁴⁵ 颜运秋。2005。“反垄断法的终极目标与消费者权益保护”。《社会科学家》2005年第五期。Yunqiu Yan. 2005. "The Ultimate Task of Anti-monopoly Law and Consumers' Interests Protection". *Social Scientists* 2005 Vol. 5.

goods and services and obtain excessive monopoly profits. Therefore, monopoly profit is not the result of creating value but consumers' losses. In fact, it is the deprivation of consumers' interests.

Anti-monopoly law has positive impacts on changing this situation. It could ensure diversification of market players and protect free competition of market. Market mechanism with free competition would break monopoly, and introduce price competition mechanism to give consumers more choices. Thus, by protecting consumers' interests, anti-monopoly law increases consumers' living standard, increases their income relatively and achieves equity between consumers and business operators. Furthermore, in a free competition market, competitors would provide goods and services with lower price and better quality by all manner of means to meet consumers' requirements, which also benefit consumers.

Competition brings more choices and higher service quality to consumers, which changes the demand-supply relationship between consumers and business operators, and also increases their living standard and income level relatively. In fact, protecting consumers' interests of antimonopoly law is the readjustment of the income relations among business operators, and between consumers and business operators.

5.1.3 Monopoly would affect the efficiency of social resources allocation

Economic activities are closely related to social resources allocation. The process of economic activities is a process of continuously consuming all sorts of resources, and the total quantity of resources is limited, thus how to use them efficiently and get them to where they could make most impact is a common concern issue. So far, among divers resources allocation models, market economy is proved to be the most economic and efficient system. As mentioned earlier, the quintessence of market economy is free competition, and it could ensure market mechanism is given full play, regulate price by invisible hand, and promote rational allocation of resources. Through restoring competition order,

protecting public interests, and promoting rational allocation of social sources and factors of production, anti-monopoly law could increase economic efficiency and balance national income distribution.

Divers resources are allocated efficiently and rationally through competition. However, as competition under market economy is a process of survival of the fittest, and is a survival competition among market players, every competitor in market faces to be eliminated at any time. Thus, to survive and develop in competition and protect their own interests, market players certainly will exclude rivals by all means, and anti competition activities such as restrictive competition and unfair competition behaviours emerges.

These anti competition activities damage the interests of other competitors and consumers and cause inequity income distribution, more seriously, it also distorts the law of value, harms regular competition mechanism, affects allocation of social and economical resources, and reduces income distribution efficiency. Since the market does not have self-adjustment function, the principle of good faith and tortious liability system of civil and commercial law could not regulate these anti competition activities, and the individual-based value orientation of civil and commercial law could not maintain economic and distribution efficiency, anti-monopoly law is the only force that could regulate and restrict such activities. Regulating market and distributing income by anti-monopoly law, not only aims at balancing interests among market players and maintaining equity of income distribution system, but also to promote and protect competition order, increase social economic efficiency, and maximize the efficiency of resources allocation and income distribution.

5.2 Shortcomings of China's current anti-monopoly legal system

Current China's anti-monopoly legal system mainly includes three aspects: comprehensive legislations, such as the *Anti-monopoly Law*, the *Anti-unfair Competition Law*, the *Consumer Protection Law* and the *Price Law*; some industry rules and regulations that contain anti-monopoly contents, such as *the*

Telecommunications Regulations and the *Pharmaceutical Administration Law*; some specific legal documents aims at prohibiting regional blockades, such as the *Notice on Breaking Regional Market Blockades and Further Promoting Commodity Circulation* issued by the State Council, and the *Regulations on Prohibiting Regional Blockades in Market Economic Activities*. Although a basic anti-monopoly legal system has been established, it has limited effectiveness in practice due to its shortcomings.

5.2.1 Shortage of efficient regulations on administrative monopoly

By comparing with western countries, the main type of monopoly in China is administrative monopoly because of its institutional causes. The transformation from planned economy to market economy of China is a gradual process. In order to protect national security, China insists on the principle of steadily promoting economic and social reform: on one hand, it encourages the development of private sector; on the other hand, it maintains the control of some industries that relate to national security and major interests. After Reform and Opening Up, the government reduces control and intervention in certain industries but not industries involving in national security and major interests.

The main features of administrative monopoly is that the administrative subjects (such as the government) exclude and restrict competition by abusing their administrative power, to protect certain interest and obtain excessive profits; in other words, the formation of monopoly results from not economic power but administrative power. Administrative monopoly includes industry monopoly and regional monopoly, which are widely found in current China. For examples, in Jilin Province, a local government appoints only one enterprise to establish its information network, and all others are excluded⁵⁴⁶; in Hubei Province, the government appoints a local wine the official appointed wine to increase its share in local market⁵⁴⁷; driving test can only be applying through driving

⁵⁴⁶ 薛江武。2011。收入分配之经济法调节。南昌：江西人民出版社。Jiangwu Xue. 2011. *The Regulation of Economic Law on Income Distribution*. Nanchang: Jiangxi People Press.

⁵⁴⁷ Ibid.

schools after attending driving course in such schools⁵⁴⁸.

Administrative monopoly in China not only severely harms free competition in market, but also has positive impacts on political and economic reform. In order to obtain excessive profits and protect local interests, some administrative subjects and enterprises rig the market and price by abusing their administrative power, which harm consumers' interests and lead to the widening income gap among industries, between monopoly and regular enterprises, and between staffs in monopoly and regular enterprises.

Since administrative monopoly results from control and intervention of administrative subjects to economy, it is always wrapped by lawful appearance, and it could be regulated only by rules and regulations. China's current *Anti-monopoly Law*, however, still remains on paper. First of all, there is no completed legal system to specifically regulate administrative monopoly, rules and regulations in this area are divided into numerous temporary regulations, notices, decisions and anti-monopoly legislations; second, most of rules and regulations on administrative monopoly are created by government department in both central and local level, and they are precisely the source of administrative monopoly; third, most of current rules and regulations adopt the method of enumeration to stipulate which activity should be regulated, and there are still many administrative monopoly activities outside the law. Therefore, current China's monopoly legal system is powerless to regulate administrative monopoly in practice.

5.2.2 Failure to regulate monopoly activities of state-owned enterprises

Essentially, state-owned enterprises' monopoly activities in China are indirect administrative monopoly, they obtain dominant market position by government intervention rather than free competition.

Under planned economy, the government controlled every aspect of economy,

⁵⁴⁸ Ibid.

and the proportion of state-owned sector was dominant. After several reforms, the proportion of state sector in whole national economy has greatly decreased, but some industries relate to national security and major interests are still controlled by the government, in which the problem of state-owned enterprises monopoly is severe in recent years. For instance, in 2006, the State-owned Assets Supervision and Management Committee issued the *Guiding Opinions about Promoting Adjustment of State-owned Capital and Reorganization of State-owned Enterprises*⁵⁴⁹, which specifically stated that state sector should maintain “absolute control” of seven industries including war industry, electricity, oil, telecommunication, coal, civil aviation and shipping, and “strongly control” nine industries including equipment manufacturing, automobile, electronic information, construction, steel, nonferrous metals, chemical, survey and design service and technology⁵⁵⁰. So called “absolute control” means such industries should be totally controlled by the State, and exclude private sector; although “strongly control” means certain industries open to private sector, the entry requirement is so high that it is impossible for any enterprise in private sector to enter the market. Therefore, above industries are monopolized by state-owned enterprises essentially.

No doubt that there are some industries that should be in the hand of the government to protect national security, provided they have sufficient reason and meet the exceptions of anti-monopoly law. Thus the range of industries needs to be absolute and strongly controlled by the state is widely doubted. For instance, when there is a natural monopoly, the government tends to have total control not only on that industry but all relating industries. This is highly inefficient and such relating industries should be open to the private sector, such as infrastructure construction in electricity and telecommunication industries, and sale in oil industry. Thus it can be seen this scope is too wide, and new market barriers are built.

⁵⁴⁹ 关于推进国有资本调整和国有企业重组的指导意见。Guiding Opinions about Promoting Adjustment of State-owned Capital and Reorganization of State-owned Enterprises. 2006.

⁵⁵⁰ Ibid.

The regulations of the *Anti-monopoly Law* on state-owned enterprises monopoly is useless due to its vague language. For example, the scope of “major industries and key fields relating to national security and national economic lifelines” is too general to define exactly what they are. Besides, even though some countries allow exceptions in their anti-trust law, they are strictly restricted to industries relating to public interest. There is rarely any country like China that permits monopoly to operate in a whole industry. This is unjustified. Thus, not only current China’s anti-monopoly legal system cannot regulate monopoly activities of state-owned enterprises, but it also legalizes them objectively.

5.2.3 Failure to efficiently regulate monopoly profits

Due to lack of efficient mechanism to regulate monopoly profits that are made by state-owned monopoly enterprises, these profits are transferred to their staff’s salary and welfare rather than delivering to the state. According to statistics, the average income of some monopoly industries such as electricity, telecommunication and tobacco are twice even triple as much as that in competitive industry. In 2008, even though the proportion of the people working in monopoly industries is only 8% of the total workforce, their salary amounts to approximately 50% of the total salary⁵⁵¹. The income gap is huge even in the same industry, for example, in some industries such as oil and telecommunication, the salary of top-paid is 100 times as much as that of lowest paid⁵⁵². Thus, some scholars believed that excessive income of monopoly industries is the main factor that contributes to the widening income gap in China⁵⁵³.

The reason why monopoly profits cannot be regulated is, on one hand, these monopoly enterprises who have been granted market dominant position from the government are either state-owned enterprises or leading enterprises in local area, their performances are closely related to economic development and

⁵⁵¹ 谭伟。2009。《中国收入差距》。北京：中国发展出版社。Wei Tan. 2009. *China’s Income Gap*. Beijing: China Development Press.

⁵⁵² Ibid.

⁵⁵³ Ibid.

government revenue; on the other hand, the income distribution within monopoly enterprises lacks of supervision and regulation. Although salary is tied to performance in current salary management system, the characteristics monopoly industries do not separate from that of competitive industries--the performance of monopoly industries include benefits which result from market dominant position and preferential policy of the state, thus staffs in monopoly industries could earn more salary because their enterprises have more profits. In addition, decision makers always created distribution plan based on their own interest, such as the *Oil Law*, the *Gas Law* and the *Telecommunication Law* which are heavily influenced by relevant industries when they were creating. These legislations strengthen the protection of such monopoly industries instead of breaking up them to some degree.

State-owned monopoly enterprises not only obtain excessive income by using their market dominance, but also do not need to deliver them to the state. After the tax system reform in 1994, state-owned enterprises did not need to deliver profits to the state for 13 years, and most of these profits were transferred to their staffs' salary and welfare. This situation was ended with the publication of the *Managing Methods of Collection Capital Dividend of Central State-owned Enterprises*⁵⁵⁴ in 2007. Even though, there is upper-limit to the profits the state-owned enterprise delivered: 10% to state-owned monopoly enterprises such as tobacco, oil, electricity and telecommunication enterprises, and 5% to those enterprises in competitive market such as steel and transportation⁵⁵⁵.

As a conclusion, these shortcomings of current China's anti-monopoly legal system could regulate neither administrative monopoly that is the main problem in China market, nor monopoly profits that is the main factor contributing to the widening income gap. To protect free competition, restore market order and balance income distribution, current anti-monopoly legal system must be modified and improved.

⁵⁵⁴ 中央企业国有资本收益收取管理办法。Managing Methods of Collection Capital Dividend of Central State-owned Enterprises. 2007.

⁵⁵⁵ Ibid.

5.3 Improving the income distribution function of China's anti-monopoly legal system

Currently, the widening income gap in China mainly results from excessive monopoly profits that are made by administrative monopoly activities. To achieve equity of income distribution, restricting administrative monopoly and establishing a monopoly profits distribution system must improve the distribution function of China's anti-monopoly legal system.

5.3.1 Restrict administrative monopoly

By comparing with private enterprises monopoly and transnational enterprises monopoly, administrative monopoly is the major problem in China's transitional period. It destroys the order of free competition, hinders the social resources allocation and created massive monopoly profits. To restrict administrative monopoly, relevant issues were taken into account and reflected in current *Anti-monopoly Law*. The current *Anti-monopoly Law* has 8 chapters and 57 articles, and chapter 5 is specific on administrative monopoly, which set a principle regulation on administrative monopoly in general, enumerates concrete forms of administrative in specific, and provides anti-trust commission and the legal liability of administrative monopoly activities. However, there are also some deficiencies on these regulations, such as the definition of administrative monopoly is not provided, the universal existing problem of reverse discrimination is ignored, and the regulation of authority for enforcement and the legal liabilities are imperfect.

To compensate these deficiencies, the *Anti-monopoly Law* should be modified as: making detailed rules for implementation of *Anti-monopoly Law*; defining the conception of administrative monopoly; defining the scope of 'the industries concerning the state economic lifeline and state security'; clarifying that prohibiting reverse discrimination; improving the regulations on Anti-monopoly committee and implementation agency; improving the liability system of

administrative monopoly; and establishing a judicial remedy system for anti-administrative monopoly.

5.3.2 Set up a monopoly profits distribution mechanism

There are two major measures to regulate excessive monopoly profits in current China: restricting and eliminating administrative monopoly to reduce monopoly profits; redistributing monopoly profits, standardizing internal distribution within monopoly enterprises, and strengthening supervision and management of dividend and salary delivery system. In transitional period, as breaking up administrative monopoly is a long-term process, the most efficient measure is to set up a monopoly profits distribution mechanism at first.

This mechanism should, firstly, set up an effective performance evaluation system. This system could effectively reflect the real performance of monopoly enterprises, not only could arouse the enthusiasm of production but also benefit to equity income distribution. Secondly, improving the state-owned capital management budget system. Due to the inertness of the income distribution system under planned economy, most monopoly profits are distributed within state-owned enterprises, and the state – the real owner of state-owned assets could not share these profits. This system would balance the distribution relations between the state and state-owned enterprises, and prohibit staffs from earning excessive salary. Thirdly, improving the resource tax system. For a long time, the low resource tax level increased monopoly profits of state-owned enterprises objectively, and lead to the imbalanced incomes between the state and state-owned enterprises. A scientific and reasonable system that could reflect the scarcity of resources would benefit to evaluate the real performance of state-owned enterprises. Fourthly, allocating social resources equally, strengthening supervision on monopoly industries, and promoting transparency of the processes of decision-making, legislation, supervision, enforcement, auditing and hearing of monopoly industries. Fifthly, eliminating welfare corruption of state-owned enterprises, such as abolishing massive allowances of transportation, living and housing that result from excessive monopoly profits.

Sixthly, applying the total control to wage system, improving regulations on the total quantity of salary and average salary level of monopoly enterprises, and strictly prohibiting excessive incomes of their staffs especially senior executors⁵⁵⁶.

5.3.3 Limit the scope of State monopoly

Although the proportion of State sector in whole national economy has decreased greatly since Reform and Opening Up, there are about 17 industries are totally controlled by the State, which result in the excessive monopoly profits and the huge income gap between monopoly enterprises and competitive enterprises.

The scope of state monopoly is defined according to Article 7 of the *Anti-monopoly Law*, which states “With respect to the industries controlled by the State-owned economy and concerning the lifeline of national economy and national security or the industries implementing exclusive operation and sales according to law, the state protects the lawful business operations conducted by the business operators therein”⁵⁵⁷. This provision does not limit the scope of state monopoly but actually is a protection of that.

To restrict and ultimately eliminate monopoly profits, this scope must be limited. It is necessary to put some industries into the scope of state monopoly because they have certain characteristics of natural monopoly initially. However, with the development of economy, these characteristics have disappeared gradually and the State should not control these industries any more. In fact, currently only the war industry belongs to ‘the industries concerning the state economic lifeline and state security’, whose administrative monopoly should be protected, and all others should open to the private sector. Therefore, the State sector should be strictly limited to public interests industries, and the competitive mechanism

⁵⁵⁶ 薛江武。2011。收入分配之经济法调节。南昌：江西人民出版社。Jiangwu Xue. 2011. *The Regulation of Economic Law on Income Distribution*. Nanchang: Jiangxi People Press.

⁵⁵⁷ 反垄断法。Anti-monopoly Law. 2008. Art 7.

should also be introduced to the infrastructure construction of an industry even though it belongs state monopoly.

To those industries that open to private sector, the requirements for access should be reasonable and practical. Although the government issued some decisions and notices to encourage private sector to enter some industries such as electricity, telecommunication, railway, civil aviation and oil, it is still impossible for them to enter in practice due to the high access requirements and other barriers. Therefore, the “open” is meaningless without a reasonable and practical access mechanism for the private sector.

CHAPTER SEVEN: CONCLUSION

1. The Nature of SOE: An Economic Perspective

1.1 The Nature of Enterprise

As Professor Ronald H. Coase argued, an enterprise is by its nature an alternative to the market system⁵⁵⁸. Its function is to organize and allocate resources for productive activities. In market practice, people negotiate on an equal basis and reach agreements at will to transfer and allocate resources for productive activities. But within an enterprise, these resource allocation activities are replaced by the command and obedience relations between managers and workers.

From a wider perspective, Coase's definition of the nature of an enterprise has another meaning: enterprises are alternatives to market systems but are not replacements for government systems. Yet generally speaking, the market is an effective system for resource allocation in the area of private goods, while the government is an effective system for the allocation of public goods. Therefore, the enterprise is an alternative system to the market for resource allocation in the area of private goods.

Several systems can be used for the efficient allocation of resources for private and public goods. The market, enterprises and families can be used to allocate private goods. Public goods can be allocated by governments, religious groups, NGOs, etc. As such, the role of enterprises should not move beyond the provision of private goods.

As Coase argues, the boundary between enterprises and the market is located at the point where the marginal costs of market transactions are equal to those of inner-enterprise management transactions⁵⁵⁹.

⁵⁵⁸ Ronald H. Coase, 1937, "The Nature of Firm", *Economic Journal* 47 (16), pp. 386-405.

⁵⁵⁹ *Ibid.*

1.2 The Nature of the State

The state is a political system that has spatial and temporal dimensions. In its spatial dimension, the state refers to a group of people and the territory they inhabit. In its temporal dimension, it refers to the trans-individual social body that is formed by successive generations. It involves not only common ancestry but also common history, culture and traditions. Irrespective of how these people form a society, they are the origin of the state's power. Indeed, in modern times, the concept of popular sovereignty has been accepted by almost all countries in the world.

In this kind of society (formed by successive generations of people), there must be an area of public goods provided through a government system. The government system refers to a system that collects some resources from social output in the form of mandatory taxes and provides public goods through legislative, judicial and executive means. Some of these public goods need to be provided in the form of organized violence, such as defense, public security and execution of court decisions.

The government is different from the state. The state is comprehensive, cross-generational and conceptual. In contrast, the government is a concrete system through which the state carries out governance in the public arena. The concept of popular sovereignty indicates that the government is an agent of the state, and also an agent of the people.

As a trans-generational system, the state mainly provides public services for society. For its part, the government is mainly engaged in the area of public goods.

1.3 The Nature of SOE

If we accept these definitions of the enterprise and the state, we may feel that the

concept of the SOE is a strange one. On the one hand, the word “enterprise” suggests that SOEs should be engaged in the provision of some private goods. On the other hand, the word “state” suggests that they should be engaged in the area of public goods. This gives rise to two questions: (a) does a society need SOEs? and if so (b) how can SOEs reconcile the differences between enterprises and the state?

First, there is no “either- or” border between the areas of private goods and public goods. Instead, there is a transitional zone in which there are private goods for which the market cannot provide, including (1) private goods for which there are natural monopolies, such as public utilities, tap water and pipeline gas; due to the inherent monopolistic nature of these goods, the market pricing system does not work, and no competition mechanism is present; (2) private goods that have very low price elasticity and are necessary for people's daily lives. The fluctuation of supply will result in dramatic price changes, and in some cases panic, as seen in the two oil crises; and (3) private goods that, due to emergency or geographic monopolies, plunge demand into a very unfavorable position, causing the malfunction of market pricing mechanisms (such as emergency treatment services for critically ill patients).

Second, there are private goods that have some public qualities and public goods that have some private qualities, including (1) public goods with limited use, such as roads in villages and public facilities that benefit specific communities; (2) goods that are of both public and private nature, such as reservoirs that can serve the purposes of irrigation (private goods) and flood protection (public goods); (3) goods that are public to some people and private to others, such as primary education. For families that can afford to pay for private education, it is a private good. But for families that cannot afford private education, compulsory education is provided; in this case, it is a public good; (4) goods which individuals or enterprises are unwilling to undertake risks to obtain; in this case, these goods become public in nature; (5) goods which are not really valuable from the perspective of the limited lifespan of individuals (positive discount rate), but very valuable from a trans-generational perspective (zero discount

rate). In the former case, they are private goods, but in the latter case, they are public goods. There is a transitional zone between them.

Due to the presence of such a transitional zone, it is not appropriate to simply adopt an “enterprise” system or “government” system. Instead, different combinations of the two systems should be applied. Such combinations include (1) enterprises that carry out joint sales or expansion; (2) enterprises regulated by the government; (3) non-governmental non-profit organizations; (4) enterprises that receive government subsidies for production; (5) enterprises that receive orders from the government for production; and (6) SOEs. For most cases in this transitional zone, the first five combinations can be applied, and there are very few cases in which the “SOE” model can be applied.

1.4 The Relationship between Enterprise and the State

To sum up, SOEs and the government share common public goals. It is simply that they take different forms and have different responsibilities. If this were not the case, upon entering competitive markets (including competitive government procurement) or even the area of private goods, SOEs would compete with other enterprises in the market. When the government acts as the agent of the state, it will strive to maximize the profits of SOEs. The profits of SOEs are affected not only by their competitiveness but also by relevant systems, policies and regulations that are formulated by the government.

Once this is the case, as the provider of public goods, the government's role will conflict with its identity as an agent of SOEs. The most important for so-called “public goods” include the protection of property rights, the maintenance of market order and fair judgment. If public power is used to maximize the profits of SOEs, it is impossible for other market subjects to be treated equally and the government will be hindered from providing just and effective public goods. Moreover, the property rights will be infringed, the market order destroyed and one party will be favored in the judicial process. This will fundamentally overturn the public nature of the government and derail government behavior

from its original purposes.

The constitutional principles defining the government should be that “the government should not compete for profit with the people” and that “in a state, pecuniary gain is not to be considered to be prosperity, but its prosperity will be found in righteousness”⁵⁶⁰ (Sheng Hong, 2010). That is to say, the government and SOEs it sets up should not be engaged in for-profit sectors to ensure their fairness when providing public goods. The legitimate and normal source of government revenues should be the taxes it levies on the condition that it provides public goods.

2. The Nature of SOE: A Legal Perspective

2.1 SOE is Special Public Organization

In the sense of form, SOEs refer to joint ventures or organizations wholly funded, controlled or dominated by the state. Indeed, only in the sense of form and name do SOEs have many common characteristics with regular enterprises, which clearly distinguish them from regular bureaucratic bodies and organizations. Specifically, they have the following characteristics: (1) They differ from regular government organizations in terms of organizational structure. SOEs normally have organizations similar to the board of directors in other enterprises and are relatively independent; (2) They are more flexible than regular bureaucratic departments in terms of personnel and finance. Particularly, the budget of government organizations is strictly controlled in constitutional democracies. But SOEs are not subject to strict financial systems; (3) SOEs are more engaged in civil and commercial activities, and subject to private laws. They can possess and dispose of assets, execute contracts and institute proceedings in their own names rather than in the name of the government. In this sense, SOEs are similar to private companies, and more flexible than regular administrative organizations; (4) They possess, control and manage more assets than regular

⁵⁶⁰ Hong Sheng. 2012. *China's State-owned Enterprises: Nature, Performance and Reform*. World Science Publishing Company.

bureaucratic organizations and are generally profit-making enterprises. Compared with regular administrative organizations, SOEs possess more assets, especially operational assets. Most SOEs rely less on funds allocated by the congress and more on government procurement, lending, fees or revenues from the services they provide, or other means by which they can be financially independent.

The typical form of government organization is bureaucracy but this is not the unique form. It is quite normal that different administrative organizations adopt different structures. Essentially, the structure decides their functions. What structure and operational mode a public institution adopts depends on the nature of public functions it assumes. This is an issue concerning management science and utility analysis. For instance, although independent regulatory agencies were first denounced for violating the principle of the separation of powers and the principle of responsible government, they still existed and developed. The reason is that the public responsibilities they assumed required professional knowledge and expertise. Based on the concept and need of autonomy, public universities are more autonomous.

Similarly, SOEs adopt the form of companies rather than regular government organizations because their relative independence in organizational structure and relative flexibility in operation aim to better fulfill public functions. That is to say, when fulfilling tasks that are of a corporate nature, the traditional form of bureaucratic organization is no longer applicable. Instead, greater flexibility is required for higher efficiency. Therefore, the organization of private companies is used as the reference for SOEs.

Also, the public nature of SOEs cannot be denied because they take part in civil activities. Even the most typical bureaucratic organizations that use coercive power frequently need to take part in purely civil activities. Moreover, some large bureaucratic organizations possess and manage considerable assets. In addition, regular bureaucratic organizations can benefit from the fulfillment of official duties, such as fines, charges and income from asset auctions. In

particular, some regular bureaucratic organizations charge some service fees for the specific administrative services they provide, although the charge items may take up a tiny fraction of their duties. However, we cannot for this reason take bureaucratic organizations to be private and independent market subjects. Instead, they are first and foremost public institutions that are bound by relevant public laws.

To sum up, SOEs have some features in common with government organizations as well as some features distinct from them. Government organizations of different types are not well differentiated from each other. In addition, the New Public Management movement has become widespread since the 1980s. According to the New Public Management theory, the public and private sectors have no essential differences in management style. The management strategies of the private sector are also applicable to the public sector. This makes it more difficult to distinguish between different government organizations, especially between regular bureaucratic organizations and SOEs.

With regard to the circumstances under which enterprises rather than traditional administrative organizations should be established, there is no clear definition. Notably, the four fundamental principles are drawn from President Truman's 1949 budget message about the use of corporate methods in administration of governmental programs: (1) governmental programs are predominantly of a commercial character; (2) such programs are revenue producing and are at least potentially self-sustaining; (3) they involve a large number of business-type transactions with the public; and (4) in their business operations such programs require greater flexibility than the customary type of appropriation budget ordinarily permits.

2.2 The Normative Significance of SOE as Special Public Organization

In view of what has been said earlier, SOEs are an extension of the government. The nature and functions of the state decide the nature and functions of SOEs. Modern states are essentially organizations that implement public functions.

SOEs are only one of the many government forms that facilitate the implementation of public functions. They adopt an organizational form similar to that of enterprises. They must primarily implement public functions rather than seek profits because profits can be contributed by the private sector. The word enterprise has many other definitions than a profit-seeking economic organization. This is also why in other Chinese-speaking countries/ regions, such as Taiwan, SOEs are called state-run “undertakings” and in Hong Kong SOEs are called public-run “organizations.” In addition, government functions do not have to be fulfilled by bureaucratic organizations, or in a traditional manner through the exercising of public power characterized by coercion and obedience.

In sum, we take SOEs to be a special type of bureaucratic organization. They are just public agencies in corporate form. They are different from regular government organizations, which are established to facilitate the implementation of safeguarding necessary and important public interests. Moreover, some Japanese scholars have made a thorough and insightful summary about the public attributes of SOEs as follows: (1) public ownership i.e. owned by the government; (2) public subject i.e. all the ultimate subjects are nationals; (3) public purpose i.e. substantive improvement in the life structure and economic welfare of nationals; (4) public use i.e. provision of public utilities; and (5) public regulation i.e. public regulation on condition of national participation.

2.3 The Strategic Significance to China’s SOE Reform of Reaffirming the Public Nature of SOEs

As SOEs become more like regular enterprises and adopt a flexible corporate form, people often see their private law attributes and stress their status as autonomous and independent market subjects but ignore their public law attributes and the due public law restraints they should be subject to. This will cause SOEs to dissimilate into interest groups which authorize, reproduce and propagate by themselves and seek gains for themselves, which in turn will harm public welfare. Even under the mature framework of constitutional democracy in

some countries, such cases are not rare.

The famous catchphrase in German law “ Flucht in das Privatrecht or Flucht in die öffentlicheStiftung” describes such a phenomenon and malpractice. Only the private law attributes and status of independent legal entities are stressed for SOEs and other private economic administrative organizations. As a result, SOEs evade and extricate themselves from public law attributes and the due restraints they should be subject to. Specifically, this phenomenon results in negligence toward public tasks, waste and the loss of public resources because administrative organizations evade supervision by adopting a corporate form. Consequently, SOEs including public institutions become a back garden in which officials can enjoy a life after retirement, hire relatives and even seek private gain. The financial obligations shouldered by the public treasury are not relieved much. The strict discipline, ethical requirements and severe criminal punishments for civil servants are no longer applicable to the employees who are legally relieved of the identity of civil servants. If the legislature fails to supervise them properly, and the political atmosphere for the collusion between government officials and business people is not eliminated, public functions are bound to fail and treasury resources to be misused.

Furthermore, SOEs shun government budgeting, accounting, remuneration, personnel, procurement and other public law regulations they should be subject to by way of private laws, and turn a blind eye to individuals encroaching on state assets and the over-issue of remuneration and benefits. As a result, public undertakings become syndicated and privatized, which only benefit certain individuals.

In the final analysis, this research simply wants to reiterate the fact that SOEs are subject to public law as special agents responsible for fulfilling public tasks. The establishment and management of SOEs must comply with the general constraints that public institutions are subject to, and SOEs should never completely enjoy the autonomy of private law. The key points are: (1) the establishment of SOEs must comply with the basic principle of limited and

effective government; and (2) the establishment and management of SOEs must comply with the principles of democratic legitimacy, the rule of law and responsible government.

3. Continued SOE Reform

3.1 Reflection and Comments on SOE Reform

Since the onset of reform and opening up of China, SOE reform has undergone several phases, including power decentralization and profit transfer, the contract system, the substitution of tax payment for profit delivery and the modern enterprise system. These reforms represented part of China's transition from a planned economy to a market economy. In the planned economic system, “state-run enterprises” only received and implemented government plans. The government directly controlled production, exchange, allocation and even consumption. In short, in the planned economic system, the main function of the government was to “produce for the public” by making and implementing plans.

When the development of a market economy was established as a goal for China, the rules of the economic game were changed dramatically. SOEs became independent corporations. This fundamentally ensured that SOEs could exist, develop and make profits in all economic areas. In addition, SOE managers were endowed with the same decision-making and managerial powers as managers in market economies. For its part, the government was transformed from the original plan maker to SOEs' capital contributor, which thereby enjoys the statutory rights and interests of a shareholder. In this way, as SOEs are further defined as “state-funded enterprises,” one of the main functions of the government is changed from “producing for the public” to “making money for the public”¹ This process was, then, a process of commercialization and a move toward what we might call a “revenue-oriented government,” which maximizes its fiscal revenue by controlling and using social resources (state-owned assets, factors of production, rare resources and public power).

So far, the nature of China's SOE reform is the commercialization of state-owned assets i.e. making profits through the operation of state-owned assets. When state-owned assets begin to take on capitalist attributes, the government slowly becomes a representative for their corporate interests. In this sense, the government is virtually the same as a businessman, and it also needs to make SOEs "larger and stronger." When there is fierce competition in industries where SOEs are engaged, which makes SOEs suffer losses and heavy fiscal burdens, the government will flatly choose to withdraw SOEs. On the contrary, when there is a structural condition for monopoly in industries where SOEs are engaged, the government will establish institutional access barriers and impose monopolies for SOEs, allowing them to make huge profits. This is the nature of the reform entitled "hold on to the big and let go of the small". More importantly, when combining the motive to make money with the public power it has, the government will control rare resources such as land, minerals and finance through laws, regulations and even by administrative means, so as to make huge profits for SOEs or directly for itself. This explains why after a large-scale "private advance and state retreat" in the 1990s, we have seen structural "state advance and private retreat" in recent years.

In this way, as state-owned assets are commercialized, the government take on two roles, one as a provider of public goods (regular government) and another as institutionalized capital (profit-oriented government). Such dual nature is also reflected by the aims and actions of SOEs. First, as carriers or platforms for the operation of state-owned assets, SOEs need to maximize their profits in the form of independent corporations, just like regular enterprises. Yet SOEs also aim to address issues in the interest of the public such as employment, social stability, macrocontrol, the stability of the government and national security under some circumstances. Second, as assets managers, SOE managers are virtually the same as regular agents, while at the same time, as government goal implementers, they belong to the government and can partake in the "revolving door" between enterprise managers and government officials. Third, in market operations, SOEs (managers) will emphasize the public nature SOEs are endowed with and obtain some special privileges through "in-house lobbying" in order to pursue

illegitimate interests.

The government's aim of making money through SOEs is delegated to SOE managers and, as a result, there is a principal– agent relationship between the government and SOE managers, which is characterized by asymmetric information (the managers have more detailed and specialist knowledge about the operations of the enterprise than government officials, whose duties are much wider). When the information is asymmetric, interest groups consisting of SOE managers and some government officials that claim to “make money for the public (the state)” but actually seek personal gains through state-owned assets will emerge. Such interest groups will not only make the wish of “making money for the public” come to nothing but also control important social resources through their public power to constitute the socio-economic characteristics of bureaucratic capitalism or crony capitalism.

Because of these multiple principal– agent links, the low efficiency of SOEs will not be fundamentally improved with changes in the competitiveness of industries, where SOEs are engaged. Although in recent years, the impressive paper results of SOEs have been used by some people to emphasize their high efficiency, the real performance of SOEs is seen to be far worse than that of other firms in the market after deducting resource rents, land rent, underestimated financial costs, government subsidies and administrative monopoly profits. Therefore, as long as SOEs do not meaningfully withdraw, even if their performance is improved after restructuring, they are still in an unfavorable position as compared with private enterprises in all but a few cases. More importantly, due to the inherently low efficiency of SOEs and their presence and expansion in fundamental or resource areas, the operation of China's macro economy is still quite “fragile” i.e. the inflation cost for per unit economic growth is quite high.

The privatization of state-owned assets, especially at the beginning of China's economic transformation, was not only logically inevitable but also promoted meaningful market reforms. SOE reforms and the introduction of market

mechanisms promoted the development of a market economy represented by private enterprises. The large-scale withdrawal of SOEs from many competitive areas also improved production factors and created space for the emergence of a market economy. As a result, China was able to improve the structure and efficiency of its national economy and achieve long-term stable and rapid economic growth. However, along with the establishment of a market economy in China, the historical mission of privatizing state-owned assets is about to come to an end. The reason is that SOEs are relatively less efficient, and more importantly, the continuous existence of state-owned capital in for-profit factors (i.e. private goods areas, including competitive and monopolistic sectors) has constituted and continues to constitute a severe threat to the driving force of China's economic growth – adequate and fair competition – and social justice. In short, state-owned capital is detracting from the health of China's overall economy and society.

Therefore, the end of the reform characterized by the commercialization of state-owned assets does not mean that the SOE reform is finally accomplished. On the contrary, it only marks a new historical beginning.

3.2 Short-term Plan

Short-term SOE reform plans should be designed around two major objectives, namely, breaking the administrative monopoly of SOEs and regulating the income distribution system of SOEs. The significance is that this will promote adequate and fair competition between different economic actors and thus better facilitate social justice and improve economic efficiency.

3.2.1 Administrative monopoly

In short, the "administrative monopoly" is a kind of monopolies established by the administrative departments. The definition of Administrative monopoly is that an administrative department, through issuing administrative documents (such as regulations, statutes or suggestions), grants the monopolistic power(s)

to business agents--enterprises or profit-making administrative bodies, which are realized as accessing to exceptional facilities and advantages, forming different degrees of monopolistic forces and the status of the situation by setting of barriers to entry and regulating prices.

Granting the monopolistic powers to enterprises is important economic decisions and a change of basic economic institutions (the "socialist market economy"). Under the Law of Legislation, monopolies shall be established by the legislature. According to the principle of law reservation, monopolies, without establishments of legislature, are the damages to economic freedoms of potential competitors and choosing rights of consumers. In practice in China, most of administrative monopolies are established by formal files of administrations. This situation is a kind of self-granted. The monopolistic powers established by the administrative public powers are unconstitutional and illegal at some level. Broadly, the Administrative departments use their superiority over drafting legislative acts to establish monopolistic powers in favor of some enterprises through a weak legislature, also regarded as administrative monopoly. Since reform and openness, China's constitution has been amending several times. There are great changes in its fundamental principles, such as adding principle of "socialist market economy", and that of "that the state encourages, supports and conducts non-public economy". The laws including content of administrative monopolies are violated from the principles of constitutions.

Almost all of the main administrative monopoly industries discussed in this study is evolved from the complete planned economy. After years of fiscal system reform, the Central Government's main sources of revenue have become taxable income. Central Government has incentive to reform state-owned enterprises but no incentive to abolish the monopolistic powers. Instead, granting administrative monopolies as preferential policies to State-owned enterprises could be a way to reduce the fiscal burden from State-owned enterprises.

With the success of China's economic reform, huge domestic markets came to the

fore, which in turn highlighted the value of monopolies on these markets. Because the enterprises with monopolistic powers do not need to hand in profits, and have no ceilings on the level of wages and bonuses, they keep all the profit due to administrative monopolies. As interest groups, they have sufficient motivation to strive for greater administrative monopolies.

Because public powers are integral factor of administrative monopolies, and impetus of governmental departments in the formation, maintenance and strengthening of administrative monopolies, credibility and authority of the relevant administrative departments were considerably weaken and undermined, while administrative monopolies damage economic efficiency and social justice. Therefore, state-owned enterprises and their control over the national economy (in fact, is the administrative monopolies) is the real "threat to ruling" rather than "ruling basis".

Although there are some shortcomings in current Anti-Unfair Competition Law and Anti-monopoly Law, there are still some normal content to constraint behaviors of administrative monopoly. The monopolistic behaviors the Anti-monopoly Law defines include achieving monopolistic agreements between business agents, abusing monopolistic positions, concentrating firms for purpose of excluding, limiting competitors. There is a certain chapter in the law to state forbidding "abuse of administrative powers to exclude and to limit competition."

It should establish "legislation evaded rule" for drafts of making or amending laws to establish specific monopolies. In other words, the administrative departments that related to specific monopolies should not draft Bills. At least it should be drafted by a neutral agent(s) that authorized by legislature. Moreover, the legislature should organize the Committee of experts to consult about the drafts establishing of monopolies for specific industries. Furthermore, the establishing of a specific monopoly should be treated as a single monopoly, that is, we cannot use "category" as the unit to create a monopoly. For instance, it cannot set "national economy related" as a category.

Administrative departments do not have the power to establish specific monopolies. Any administrative department establishes monopoly through regulations or statutes is illegal. Setting up the rules that related administrative departments should evade the drafting of related "implementation details" or "regulations"; or strengthen the reviewing on drafting of "implementation rules" of specific laws to prevent adding the articles related to establishing or expanding of specific monopolies.

The Constitutional resource of public-owned economy and state-owned sector could be used to monitor and constraint the managements of state-owned companies more effectively. Because public resources and assets should be owned by all people, the supervision of these resources and assets should be strengthened. It must be assured that these assets should not be controlled by managements of state-owned companies. Because it is difficult to monitor public resources and assets on institutional and technological term, it should be emphasized in Constitution, and establish corresponding institutions and rules in laws.

3.2.2 Income distribution

In terms of China's SOE income distribution, it neither embodies equality nor fixes important social injustice problems. It has actually infringed upon the principle of equality severely. China's SOEs play a negative role in income distribution: through paying fewer or not resource rents, such as land rents, natural resource rents and other resource rents, a significant portion of resource owners' income is are transferred to SOEs; through obtaining below-market interest rates, incomes of loan owners have been transferred to SOEs; under the guise of huge ostensible profits, public finance resources are transferred to SOEs; SOEs have obtained unjust monopoly profits through bureaucratic monopoly; through price control, usually set higher, consumers benefits are compromised by SOEs; the obvious preferential treatments in tax reduction and exemption damage the interests of public finance and which is transferred to shareholders at home and abroad; for a long time, SOEs did not give back profits to their

owners to let them decide on dividend distribution . They also barely distributed any dividend; even after adopting an operating budget, the profits turned over by central SOEs are spent mostly on central SOEs. The public has not benefited from state-owned capital; based on the aforementioned factors, SOEs record ostensibly larger profits and use them for internal rewards, thus transferring the benefits that should have belong to other factor owners and the public to the management and employees of SOEs; higher nominal profits, and fewer income taxes to a large extent mean that SOEs' nominal net profits are also higher and that SOE owners receive higher returns on investment.

To improve China's SOE income distribution system, first, the deficiencies of current Anti-monopoly Law should be compensated: making detailed rules for implementation of *Anti-monopoly Law*; defining the concept of administrative monopoly; defining the scope of 'the industries concerning the state economic lifeline and state security'; clarifying the prohibition of reverse discrimination; improving the regulations on the Anti-monopoly committee and implementation agency; improving the liability system of administrative monopoly; and establishing a judicial remedy system for anti-administrative monopoly.

Second, a monopoly profits distribution mechanism should be set up, specifically: an effective performance evaluation system should be established; the state-owned capital management budget system should be improved; the resource tax system should be improved; allocating social resources equally, strengthening supervision on monopoly industries, and promoting transparency of the processes of decision-making, legislation, supervision, enforcement, auditing and hearing of monopoly industries; the welfare corruption of state-owned enterprises should be eliminated, such as the abolishing massive allowances of transportation, living and housing that result from excessive monopoly profits; and applying total control to the wage system, improving regulations on the total quantity of salary and average salary level of monopoly enterprises, and strictly prohibiting excessive incomes of their staff especially senior executives.

Third, limit the scope of State monopoly. The State sector should be strictly limited to public interests industries, and the competitive mechanism should also be introduced into the infrastructure construction of an industry even though it belongs to a state monopoly. Furthermore, to those industries that open to private sector, the requirements for access should be reasonable and practical.

3.3 Ultimate Goals of SOE Reform

There are two ultimate goals for the reform of SOEs. The first goal is to change SOEs into non-profit public law enterprises, and the second one is to establish a constitutional governance framework for state-owned assets.

In terms of changing SOEs into non-profit public enterprise, SOEs will not aim to make profits but to serve the public's interest. This defines the scope and boundary of SOEs and establishes the nature of SOEs as public enterprises. They must be founded, managed, operated and withdrawn under public oversight in accordance with specific legal procedures. Accordingly, SOE managers should be deprived of their function as assets managers and should work purely to implement the public interest. If SOEs need to enter for-profit sectors (or exist in for-profit sectors) for special reasons, they must first seek approval from the People's Congress.

In terms of establishing a constitutional governance framework for state-owned assets, State-owned assets belong to the public. Therefore, the People's Congress (rather than bureaucratic organizations) should exercise the ownership of state-owned assets on behalf of the public. When this is accomplished, the governance of state-owned assets will fall into the scope of public governance. The People's Congress should legislate regarding the governance of state-owned assets to regulate the establishment, expansion and withdrawal of public enterprises, approve the budget of SOEs and also instruct regulators of state-owned assets to perform the functions of public enterprise regulators in a legal and effective way; hence the structure consisting of the People's Congress,

regulators of state-owned assets and public enterprises for the governance of state-owned assets.

To achieve these ultimate goals, first, the nature of the government need be changed from a “revenue-oriented government” into a “ service-oriented government”. SOE reform cannot be continued without this governmental transition. Specifically, the current “revenue-oriented government” should be changed into a “service-oriented government.” In terms of targets, revenue-oriented governments will emphasize the maximization of GDP growth and fiscal revenue, while service-oriented governments pay more attention to improving public welfare. In terms of paths to economic development, revenue-oriented governments often directly participate in the economy by controlling or monopolizing social resources, while service-oriented governments pay more attention to promoting economic development by improving the general environment and improving economic goods. Therefore, the nature of the transition is to change the current dual role of the government, eradicating (or weakening) its role as a representative of the interests of capital, and to build it into a government that serves the people and provides public goods to maximize social welfare rather than fiscal revenues.

Second, withdraw SOEs from for-profit sectors. In order to change SOEs into non-profit public enterprises, state-owned capital must withdraw from for-profit sectors. This will be conducive to economic development in China and will create conditions for fair competition.

Bibliography

Chinese Material

Books and Other Monographs

曹沛霖。1998。《政府与市场》。杭州：浙江人民出版社。Cao, Peilin. 1998. *Government and Market*. Hangzhou: Zhejiang People Press.

曹中强，黄辉。2005。《中国商标报告第四卷》。北京：中信出版社。Cao, Zhongqiang and Huang Hui. 2005. *China Trademark Report Vol. IV*. Beijing: CITIC Press.

陈佳贵。2008。《中国国企改革三十年研究》。北京：经济出版社。Chen, Jiagui. 2008. *Research on the 30 Years of China's State-owned Enterprise Reform*. Beijing: Economic Management Press.

陈云良。2004。《中国经济法的国际化路径》。北京：中国政府大学出版社。Chen, Yunliang. 2004. *The International Path of China's Economic Law*. Beijing: China University of Political Science and Law Press.

董辅初。1985。“全民所有制企业本质与地位问题”。《董辅初选集》。太原：山西人民出版社。Dong Furen. "On the Issues of the Nature and Status of All People Owned Enterprises". *Selected Works of Dong Furen*. Taiyuan. Shanxi People Press.

董辅初，唐宗焜。1992。《中国国有企业改革：制度与效率》。北京：中国计划出版社。Dong, Furen and Tang, Zongkun. 1992. *The Reform of China's State-owned Enterprises: system and efficient*. Beijing: China Plan Press.

董辅初。1995。《中国国有企业改革研究》。北京：中国人民出版社。Dong, Furen .

1995. *The Research on China's State-owned Enterprises' Reform*. Beijing: China People's Press.

顾耕耘。2002。《经济法教程》。上海：上海人民出版社。Gu, Gengyun. 2002. *The Text Book of Economic Law*. Shanghai: Shanghai People's Press.

郭宗杰。2007。《行政垄断之问题与规制》。北京：法律出版社。Guo, Zongjie. 2007. *The Problem and Regulation of Administrative Monopoly*. Beijing: Law Press.

韩世远。2008。《合同法》。北京：法律出版社。Han, Shiyuan. 2008. *Contract Law*. Beijing: Law Press.

胡代光，厉以宁。1982。《当代资产阶级经济学主要流派》。北京：商务印书馆。Hu, Daiguang and Lie Yining. 1982. *Major Schools of Present Capitalism Economics*. Beijing: Commercial Press.

经济法的若干问题编写组。1987。《经济法的若干问题》。北京：法律出版社。The Editing Group of "Various Theories of Economic Law". 1987. *Various Theories of Economic Law*. Beijing: Law Press.

金沢良雄。Kanazawa, Yoshio. 1961. *Economic Law*. Tokyo: Yuhikaku Publishing.

金沢良雄。 Kanazawa, Yoshio. 2005. *The Guideline of Economic Law* (translated by Man Daren). Beijing: Legal Press.

赖源河。2002。《公平交易法新论》。北京：中国政法大学出版社。Lai, Yuanhe. 2002. *The New Theory of Fair-trading Law*. Beijing: China University of Political Science and Law Press.

郎咸平。2006。《误区》。北京：东方出版社。Lang, Xianping. 2006. *Wu Qu. (Area of Mistake)*. Beijing: Dongfang Press

李昌麒。2002。《经济法》。北京：中国政法大学出版社。Li, Changqi. 2002. *Economic Law*. Beijing: China University of Political Science & Law Press.

李明德。2007。《知识产权法》。北京：社会科学出版社。Li, Mingde. 2007. *Intellectual Property Law*. Beijing: Social Science Academic Press.

李顺德。2005。《知识产权法基础》。北京：知识产权出版社。Li, Shunde. 2005. *Fundamentals of Intellectual Property Law*. Beijing: Intellectual Property Press.

梁慧星，王利明。1986。《经济法的理论问题》。北京：中国政法大学出版社。Liang, Huixing and Wang, Liming. 1986. *The Theoretical Issues of Economic Law*. Beijing: China University of Political Science & Law Press.

梁慧星，王利明。1987。《经济行政法论》。北京：法律出版社。Liang, Huixing and Wang, Liming. 1987. *The theory of Administrative Economic Law*. Beijing: Law Press.

梁慧星。1996。《民法总论》。北京：法律出版社。Liang, Huixing. 1996. *Fundamentals of Civil Law*. Beijing: Law press.

梁慧星。1998。《民法》。成都：四川人民出版社。Liang, Huixing. 1998. *Civil Law*. Chengdu: Sichuan People's Press.

林毅夫。1997。“充分信息与国有企业改革”。《中国经济信息》1997年第十二期。Lin, Yifu. 1997. "The Perfect Information and State-owned Enterprises Reform". *China Economic Information* 1997 Vol. 12.

刘文华，史际春。1999。《经济法》。北京：中国人民大学出版社。Liu, Wenhua and Shi, Jichun. 1999. *Economic Law*. Beijing: China People University Press.

罗红波，戎殿新。2000。《西欧国有企业大变革》。北京：对外经贸大学出版社。Luo, Hongbo and Rong, Dianxin. 2000. *The Great Reform of State-owned*

enterprises in Western Europe. Beijing: University of International Business and Economics Press.

罗平汉。2003。农村人民公社史。福州：福建人民出版社。Luo, Pinghan. 2003. *The History of People's Communes in Rural China*. Fuzhou: Fujian People's Press.

茅于軾。2002。中国经济学。上海：上海人民出版社。Mao, Yushi. 2002. *China's Economy*. Shanghai: Shanghai People Press.

漆多俊。2002。宏观调控法研究。北京：中国方正出版社。Qi, DuoJun. 2002. *Research on Macro-control Legal System*. Beijing: China Fangzheng Press.

漆多俊。2004。经济法基础理论。武汉：武汉大学出版社。Qi, DuoJun. 2004. *The Basic Theory of Economic Law*. Wuhan: Wuhan University Press.

尚明。2008。反垄断法理论与中外案例评析。北京：北京大学出版社。Shang, Ming. 2008. *The Theory of Chinese Anti-monopoly Law and Practice*. Beijing: Beijing University Press.

史际春。1998。经济法基础理论。北京：法律出版社。Shi, Jichun. 1998. *The General Theory of Economic Law*. Beijing: Law Press.

孙宪忠。2009。中国物权法总论。北京：法律出版社。Sun, Xianzhong. 2009. *Chinese Property Law*. Beijing: Law Press.

谭伟。2009。中国收入差距。北京：中国发展出版社。Tan Wei. 2009. *China's Income Gap*. Beijing: China Development Press.

王保树。1988。经济法。成都：四川人民出版社。Wang, Baoshu. 1988. *Economic Law*. Chengdu: Sichuan People Press.

王保树。1999。经济法原理。北京：社会科学文献出版社。Wang, Baoshu. 1999. *The Basic Theory of Economic Law*. Beijing: Social Science Document Press.

王家福，谢怀栻。1986。《合同法》。北京：中国社会科学出版社。Wang, Jiafu and Xie Huaishi. 1986. *Contract Law*. Beijing: China Social Science Press.

王家福。1988。《经济法要义》。北京：中国财政经济出版社。Wang, Jiafu. 1988. *Understanding Economic Law*. Beijing: China Finance and Economy Press.

王晓晔。2008。《中华人民共和国反垄断法详解》。北京：知识产权出版社。Wang, Xiaoye. 2008. *Fully Explanation of Anti-monopoly Law of PRC*. Beijing: Intellectual Property Press.

吴家麟。1983。《宪法》。北京：群众出版社。Wu, Jialin. 1983. *Constitution Law*. Beijing: Qunzhong Press.

吴敬琏。1997。《构筑市场经济的基础结构》。北京：中国经济出版社。Wu, Jinglian. 1997. *The Basic Structure of Market Economy*. Beijing: China Economy Press.

薛江武。2011。《收入分配之经济法调节》。南昌：江西人民出版社。Xue Jiangwu. 2011. *The Regulation of Economic Law on Income Distribution*. Nanchang: Jiangxi People Press.

薛暮桥。1990。《中国社会主义经济问题研究》。北京：北京大学出版社。Xue, Muqiao. 1990. *Research on China's Socialist Economic Issues*. Beijing: Beijing University Press.

杨兰品。2006。《中国行政垄断问题研究》。北京：经济科学出版社。Yang, Lanpin. 2006. *Study on Administrative Monopoly in China*. Beijing: Economic Science Press.

杨紫烜。1999。《经济法》。北京：北京大学出版社。Yang, Zixuan. 1999. *Economic Law*. Beijing: Beijing University Press.

杨祖功, 田春生, 莫伟。1999。《国家与市场》。北京: 社会科学文献出版社。
Yang, Zugong, Tian Chunsheng and Mo Wei. 1999. *State and Market*. Beijing: Social Science Document Press.

游劝荣。2006。《反垄断法比较研究》。北京: 人民法院出版社。You, Quanrong. 2006. *Comparative Study on Anti-monopoly Law*. Beijing: People's Court Press.

章迪诚。2006。《中国国企改革历程》。北京: 中国工人出版。Zhang, Dicheng. 2006. *The History of China's State-owned Enterprise Reform*. Beijing: China Worker Press

张守文, 于雷。1993。《市场经济与新经济法》。北京: 北京大学出版社。Zhang, Shouwen and Yu, Lei. 1993. *Market Economy and the New Economic Law*. Beijing: Beijing University Press.

张维迎。1996。“中国国有企业何处去?”。《经济社会体制比较》1996年第一期。Zhang, Weiying. 1996. "Where Should China's State-owned Enterprises Reform Go?". *Comparative Research on Economic and Social System* 1996 Vol. 1.

张维迎。1999。《企业理论与国企改革》。北京: 北京大学出版社。Zhang, Weiying. 1999. *The Enterprise Theory and China's SOE reform*. Beijing: Beijing University Press.

张友渔。1989。《中国法学四十年》。上海: 上海人民出版社。Zhang, Youyu. 1989. *Forty Years of Legal Studies in China*. Shanghai: Shanghai People's Press.

郑鹏程。2002。《行政垄断的法律控制研究》。北京: 北京大学出版社。Zheng, Pengcheng. 2002. *Research on the Legal Control of Administrative Monopoly*. Beijing: Beijing University Press.

周友苏。2006。《新公司法论》。北京: 法律出版社。Zhou, Yousu. 2006. *New Survey on Company Law*. Beijing: Law Press.

周之源。1988。《经济法概论》。长春：吉林大学出版社。Zhou, Zhiyuan. 1988. *The General Theories of Economic Law*. Changchun: Jilin University Press.

中共中央党校编。2013。《中国特色社会主义理论体系原著选编》。北京：中共中央党校出版社。 Edited by the Party School of the Central Committee of CPC. 2013. *The Theoretical System of Market Economy with Chinese Characteristics*. Beijing: Party School of the Central Committee of CPC Press.

中国人民大学法学院。1985。《经济法教程》。北京：中国人民大学出版社。 School of law of China People University. 1985. *The Text Book of Economic Law*. Beijing: China People University Press.

中国统计年鉴。China Law Yearbook.

朱宏文，王建。2007。《反垄断法——转变中的法律》。北京：社会科学出版社。Zhu, Hongwen and Wang, Jian. 2007. *Anti-monopoly Law – Law in Transition*. Beijing: Social Science Press.

Journal Articles and Chapters in Edited Volumes

曹平，高桂林，侯佳儒。2006。《中国经济法理论基础新探索》。北京：中国法制出版社。Cao, Ping, Gao Guilin and Hou Jiaru. 2006. *The New Exploration of China's Basic Economic law Theory*. Beijing: China Legal Press.

陈昌麟。2009。“再回应转轨经济法：一个虚构的伪命题”。《现代法学》2009年第七期。Chen, Changlin. 2009. “On the Transitional Economic Law Again: a Fictitious Pseudo-Proposition”. *Present Law Science* Vol. 7 (3).

陈云良。2006。“转轨经济法：西方范式与中国现实之间的选择”。《现代法学》第三期。Chen, Yunlian. 2006. “The Transitional Economic Law: A Choice Between Western Paradigm and China's Reality”. In the *Modern Law Science* Vol. 3.

陈云良。1998。“公共管理者与所有者——论国家干预经济时的双重身份”。

中央政法管理干部学院学报 1998 年第 3 期。Chen, Yunliang. 1998. "Public Manager and Owner – the Duality of Government in State Intervention". In the *Journal of the Central Institute of Politics and Law for Administrative Cadres* Vol.3.

陈云良。2007。“回到中国，转轨经济法的价值”。*法律与社会发展* 2007 年第六期。Chen, Yunliang. 2007. "Back to China, the Value of Transitional Economic Law". In the *Law and Social Development* Vol. 6.

戴园晨，黎汗明。1988。“工资侵蚀利润 —— 中国经济体制改革中的潜在风险”。*经济研究* 1988 年第六期。Dai, Yuanchen and Li, Hanming. 1988. "Wages affect Profits – The Potential Risks of China's Economic Reform". *Economic Research* 1988 Vol. 6.

戴园晨，徐小平。1993。“蒋一苇的‘三论’与国企改革”。*经济管理* 1993 年第一期。Dai, Yuanchen and Xu, Yaping. 1993. "Jiang Yiwei's Three Theories and State-owned Enterprises Reform". *Economic Management* 1993 Vol. 1.

邓正来。2005。“中国法学向何处去？”*政法论坛* 2005 年第三期。Deng, Zhenglai. 2005. "China's Legal Science: Where is it headed?" In the *Journal of China University of Political Science and Law* 2005 (3) .

范健，金滔。2003。“转轨时期的中国经济法”。*经济法论坛*第一期。Fan, Jian and Jin, Tao. 2003. "Chinese Economic Law in Transitional Period". *Economic Law forum* Vol. 1.

高会宗，樊增强。1998。“市场经济中的市场失灵及其防范”。*政治学研究* 1998 年第 1 期。Gao, Huizong and Fan, Zengqiang. 1998. "The Market Failure of Market Economy and the Prevention". *Political Science Research* 1998 Vol. 1.

顾明。1981。“关于加强经济立法的若干问题”。*法学杂志*第三期。Gu, Ming. 1981. "Some Issues about Strengthening Economic Legislation". In the *Journal of Law Magazine* 3.

郭克莎。1995。“国有产权制度改革的模式和途径”。*经济研究* 1995 年第一期。Guo, Keshu. 1995. “The Models and Approaches of State Ownership System Reform”. *Economic Research* 1995, Vol. 1.

何伟。1999。“西方政府职能理论的源流分析”。*南京社会科学* 1999 年第 7 期。He, Wei. 1999. “The Analysis of Western Government functions Theories”. *Nanjing Social Science* 1999 Vol. 7.

何伟。2009。“‘国进民退’五定位”。*中国经济时报* 2009 年 11 月 25 日。He, Wei. 2009. “Five Issues of ‘Guo Jin Min Tui’”. *China Economic Times* 25th November 2009.

华生。1988。“中国改革十年：回顾，反思和前景”。*经济研究* 1988 年第十一期。Hua, Sheng, 1988. “Ten Years of China’s Reform: Review, Rethink and the Future”. *Economic Research* 1988 Vol. 11.

孔祥俊。2001。*反垄断法原理*。北京：中国法制出版社。Kong, Xianjun. 2001. *The Basic Theory of Anti-monopoly Law*. Beijing: China Legal Press.

李景鹏。1999。“走向现代化中的国家与社会”。*学习与探索* 1999 年第 3 期。Li, Jingpeng. 1999. “Modern State and Society”. *Study and Explore* 1999 Vol. 3.

李克强。Li, Keqiang Li. 2013. The speech at the meeting on functional transformation and institutional reform of local government. 11th November 2013.

李鹏 Li, Peng. 2001. Report of the Standing Committee at the Forth Session of the Ninth NPC.

李晓。1996。*东亚奇迹与“强政府”：东亚模式的制度分析*。北京：经济科学出版社。Li, Xiao. 1996. *East Asia Miracles and Strong Government: Analysis of East Asia Political System*. Beijing: Economy and Science Press.

李永诚。2005。“市场不足与中国经济法”。*河南师范大学期刊（社会学部）* 2005 年第三期。Li, Yongcheng. 2005. “Market Ineffectiveness and Chinese Economic Law.” In the Journal of *Henan Normal University (Philosophy and Social Sciences)* Vol.3.

刘俊奇。1999。“试论市场与政府的关系”。*学术月刊*1999 年第 6 期。Liu, Junqi. 1999. “The relationship between Market and Government”. In the journal of *Academic Monthly* 1999 Vol. 6.

吕忠梅。1997。中国经济法的独立立法。*法律与商业研究* 1997 年第四期。Lv, Zhongmei. 1997. “The Independent Legislation of Chinese Economic Law”. In the *Studies in Law and Business* 1997 (4).

史际春。1992。“经济法的地位问题与传统法律部门划分理论批判”。*当代法学* 1992 年第三，第四期。Shi, Jichun. 1992. “The Status of Economic Law and Critical Assessment of Traditional Law Departmentalization”. In the Journal of *Modern Legal*. Vol. 3 & 4.

史际春。1999。“中国经济法的诞生与发展”。*法学家* 1999 年第六期。Shi, Jichun. 1999. “The Emergence and Development of China’s Economic Law”. *The Jurist* 1999 Vol. 6.

佟柔。1984。“关于经济法的几个理论问题”。*中国法学* 1984 年第二期。Tong, Rou. 1984. “Several Theoretical Issues about Economic Law”. In the Journal of *China Legal*. Vol. 2.

王五洲。1997。“我国现阶段的市场和政府及其新关系的构建”。*学术月刊* 1997 年第 8 期。Wang, Wuzhou. 1997. “China’s Current Market and Government and Constructing a New Relationship between Them”. *Academic Monthly* 1997 Vol. 8.

吴红英，华忠林。2001。“中西经济法形成的不同”。*浙江学术期刊* 2001 年第六期。Wu, Hongying and Hua, Zhonglin. 2001. “The Difference of Emerge of

Economic Law between Eastern and Western”. In the *Zhejiang Academic Journal* Vol. 6.

徐斌。2009。“我国居民收入分配的变化与趋势探讨”。*商业时代* 2009(34)。
Xv, Bin. 2009. “The Change and Trend of Chinese Citizen Income Distribution”.
Business Times 2009 Vol. 34.

颜运秋。2005。“反垄断法的终极目标与消费者权益保护”。*社会科学家* 2005
年第五期。Yan Yunqiu. 2005. “The Ultimate Task of Anti-monopoly Law and
Consumers’ Interests Protection”. *Social Scientists* 2005 Vol. 5.

尹世杰。1997。“市场经济是消费者主权的经济”。*中国工商管理研究* 1997
年第三期。Yin, Shijie. 1997. “Market Economy is a Economy Dominated by
Consumers”. *The Research on China’s Industry and Commerce Management* 1997
Vol. 3.

张平 Zhang, Ping. 2009. Speech at the press conference of the Second
Session of the Eleventh NPC. 6th March 2009.

张世明。2002。*中国经济法历史渊源原论*。北京：中国民主法制出版社。
Zhang, Shiming. 2002. *The Research on the Development of Economic Law*. Beijing:
China Democracy and Legal Press.

张维迎。1995。公有制经济中的委托人—代理人关系。*经济研究*。1995年
第4期。Zhang, Weiying. 1995. “The Principal-agent Relationship in Public
Economy – Theories and Policies”. *Economic Research*. Vol. 4.

English Material

Books and Other Monographs

Boxberger, Gerald. 1997. *Sozialpolitik und Transformationsprozesse*. Bern:

Peter Lang.

Casey, Michael. 2013. "Has China's Debt Crisis Moment Arrived?" *The Wall Street Journal* Oct 23 2013.

Edited by Chinese Academy of Social Science. 1980. *Law Dictionary*. Shanghai: Shanghai Dictionary Press.

Chinese Academy of Social Science, Institute of Law Research Group. 1993. "Theories and Policy Proposals for the Construction of a socialist Market Economy Legal System". *Chinese Journal of Law* Vol.6.

Clarke, Donald, Peter Murrell and Susan Whiting. 2008. *The Role of Law in China's Economic Development*. Cambridge: Cambridge Press.

David, Ricardo. 1817. *On the Principles of Political Economy and Taxation*. Piero Sraffa. 1951. *Works and Correspondence of David Ricardo, Volume I*. Cambridge: Cambridge University Press.

Fei, Xiaotong. 1939. *Peasant Life in China: A Field Study of Country Life in the Yangtze Valley*. London: G. Routledge and New York: Dutton.

Fei, Xiaotong. 1948. *Rural Recovery*. Shanghai: Guancha Press.

Friedman, David. 1990. *Price Theory: An intermediate Text*. Nashville: Southwestern Publishing.

Fridersizick, Hans W. et al. European State Aid Control: An Economic Framework, in HANDBOOK OF ANTITRUST ECONOMICS 627 (Paolo Buccirossi ed., 2008) (citing Judgment of the European Court of Justice of July 24, 2003, Case C280/00, Altmark Trans GmbH v. Nahverkehrsgesellschaft Altmark GmbH, 2003 E.C.R. I-7747, 75).

Geoffrey, Hodgson. 2006. *Economics in the Shadows of Darwin and Marx*. Cheltenham: Edward Elgar.

Hayek, Friedrich. 1941. "The Counter-Revolution of Science". In the *Journal of Economics* Vol. 8.

Hayek cited. Petsoulas Christian. 2001. *Hayek's Liberalism and Its Origins: His Idea of Spontaneous Order and the Scottish Enlightenment*. London: Routledge.

Hicks, John. 1976. *Economic Perspectives*. Oxford: Oxford University Press.

Jean Charles Lenoard de Sismondi. 1847. *Political Economy and the Philosophy of Government*. London: John Chapman.

Keynes, John. 1935. *The General Theory of Employment, Interest and Money*. Cambridge: Harcourt, Brace and Company.

Kotz, David, Field Mark G. and Bukhman Gene. 2000. *Neoliberal Economic Policy, State Desertion, and the Russian Health Crisis*. ME: Common Courage Press.

Lardy, Nicholas R. 1998. *China's Unfinished Economic Revolution*. Washington, DC: Brookings Institution Press.

Levenson, Joseph R. 1958. *Confucian China and its Modern Fate*. Berkeley: University of California Press.

Lin, Yifu. 2001. *State-owned enterprises reform in China*. Hong Kong: China University Press.

Lin, Yifu, Fang Cai, Zhou Li. 2003. *The China Miracle: Development Strategy and Economic Reform*. Hong Kong: China University Press.

List, Friedrich. 1841. *The National System of Political Economy*. See link:

<http://oll.libertyfund.org/titles/315>.

Morelly. 1755. *Code de la Nature, ou le véritable Esprit de ses Loix*.

Ody, Anthony. 1990. *Rural Enterprises Development in China, 1986-1990*. Washington, D.C: The World Bank.

Okun, Arthur, 1975, *Equality and Efficiency: The Big Trade Off*, Washington, Bookings.

Polanyi, Karl. 1971. *Primitive, Archaic, and Modern Economics: Essays of Karl Polanyi*. Boston: Beacon Press.

Qin, Tianyun. 1986. *Opening Up and Economic Law, Economic Research*. Shanghai: Fudan University Press.

Ren, bo. 1993. *The History of Foreign Economic Legal System*. Chongqing: Southwest University of Political Science and Law Press.

Salamon, Lester. 2002. *The Tools of Government: A Guide to the New Governance*. New York: Oxford University Press.

Sheng, Hong. 2012. *China's State-owned Enterprises: Nature, Performance and Reform*. World Science Press.

Shills, Edward. 1961. *The Intellectual between Tradition and Modernity: the Indian Situation*. Mouton: The Hague Press.

Shirk, Susan. 1993. *The Political Logic of Economic Reform in China*. Oakland: University of California Press.

Smith, Adam. 1776. *An Inquiry into the Nature and Causes of the Wealth of Nations*. Chicago: University of Chicago Press (1977 edition).

Stiglitz, Joseph. 1988. *Economics of Public Sector*. New York: W.W.Norton.

Stiglitz, Joseph. 1994. *Whither Socialist?* Cambridge: MIT Press.

Stiglitz, Joseph. 2002. *Economics* (Third Edition). New York: W.W.Norton.

Stiglitz, Joseph. 2002. *Principles of Macroeconomics* (Third Edition). New York: W.W.Norton.

Stiglitz, Joseph. 2006. *Economics (Fourth edition)*. New York: W.W.Norton.

Stiglitz, Joseph. 2010. *Time for a Visible Hand: Lessons from the 2008 World Economy*. Oxford: Oxford University Press.

Trimble, J. E., and Fisher, C. B. (Eds.). 2006. *The handbook of ethical research with ethnocultural populations & communities*. Thousand Oaks, CA: Sage.

Truman, Harry S. 1947. *Annual Budget Message to the Congress of Fiscal Year 1948*. See link: < <http://trumanlibrary.org/publicpapers/index.php?pid=2046&st=&st1=>>.

Unirule Institute of Economics. 2011. *The Nature, Performance, and Reform of the State-owned Enterprises*. See link: < <http://www.unirule.org.cn/>>.

Wolf, Charles Jr. 1995. *Market, Governments, and Society*. Santa Monica: Rand Corporation.

Zhang, Yunfu. 1983. *Definition of Economic Law, Collections of Legal Theories*.

Journal Articles and Chapters in Edited Volumes

Chen, Su. 2009. "The Establishment and Development of the Chinese

Economic Legal System in the Past Sixty Years (translated by Xie Zengyi)". In the *Journal of Columbia Journal of Asia Law* 23(1).

Council Regulation No. 1/2003 of December 16, 2002, on the implementation of the rules on competition laid down in articles 81 and 82 of the Treaty.

Davis, Bob and Orlik, Tom. 2013. "Beijing Plan Signals Reform to Come Quick". *Wall Street Journal* 6th Feb 2013.

Lin, Yifu, Tan, Guofu. 1999. "Policy Burdens, Accountability and Soft Budget Constraint". *American Economic Review*. Vol.89, No.2.

Dong, Lu. 1988. Speech at the Seventh Session of the First National People's Congress: Explanation on the "Draft Law on Industrial Enterprises owned By the Whole People".

Duan, Peijun, Tony Saich. 2014. *Reforming China's Monopolies*. Ash Center for Democratic Governance Innovation, Harvard Kennedy School.

Dusek, Daniel, Peter X. Huang, Andre Zhu. *China M&A: Reform Plan Promotes Mixed Ownership of State-Owned Enterprises*. Skadden's 2015 Insights – Global M&A. January 2015.

"Entrepreneurship in China: Let a million flowers bloom". *The Economist* 12th March 2011.

Huang, Sujian. 2008. *The Process and Experience of State-owned Enterprise Reform*, *The Research of Economy and Management*, Vol. 10, 2008.

Jefferson, Gary. 2000. "Ownership, Productivity Change, and Financial Performance in Chinese Industry". *Journal of Comparative Economics*. December, 28(4)

Liu, Zuoqing. 1979. "Economic Legislation and Economic Judicature". In Public Daily 16th November 1979.

Sheng, Hong. 2013. "SOE Monopoly leads to Economic Stagnation". *Financial Times Online*. August 8 2013.

State Administration of Industry and Commercial, Statistical Analysis: Report on the Main Development of National Economic Organizations in the First Quarter of 2009.

Sweeney, Pete and Siao, Xiaoyi. 2013. *China to Postpone Widening of Property Tax Pilot Program: Report*. Reuters: 1st Feb 2013.

Unknown Author. 2007. The Development and Reform Commission of China. 2007. *The Basic Situation and Main Problems of China's Wage Distribution*. See Link: <<http://politics.people.com.cn/GB/30178/5757458.html>>.

Unknown Author. 2009. "Review the development environment of Private Coal Enterprises from the Perspective of Nationalization of Shanxi Coal enterprises". *China Land and Resource* 4th December 2009.

Unknown Author. 2008. The Report of the Major Assets Restructuring between China Unicom and CNC (Hong Kong), 24th September 2008.

Unknown Author. 2013. The Research on the Wage System of Central State-owned Enterprise. 5th September 2013. See link: <<http://finance.people.com.cn/money/BIG5/n/2013/0905/c218900-22810760.html>>.

Yarrow, George. "Does Ownership Matter?" in C. Valjanovski (ed.), *Privatization and Competition: A market Prospectus* (Hobart Paperback Series, No. 28).

Zack, M.H. and McKenney, J.L. 1995. "Social Context and Interaction in Ongoing Computer Supported Management Groups". *Organization Science*, 6(4).

Zheng, Yongnian and Chen, Minjia. 2007. *China's Recent State-owned Enterprise Reform and its Social Consequences*. China Policy Institute.

Zhou, Maoqing. 2011. "Research on China's Informal Finance". *Modern Economic Management* 2011 Vol. 10.

Cases

Bureau national interprofessionnel du cognac v. Yves Aubert, C136/86.

Consorzio Industrie Fiammiferi (CIF) v. Autorita Garante della Concooenza e del Mercato. C198/01.

Kommission v. Italien. C35/96.

Regie des telegraphes et des telephones v. GB-Inno-BM SA, C18/88.