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# The British Steel Takeover and the UK-China Bilateral Investment Treaty

Roberto Castro de Figueiredo · Thursday, May 1st, 2025

The takeover of the Chinese-owned British Steel Limited by the UK Government under the Steel Industry (Special Measures) Act 2015 can lead to the submission of a dispute to investment treaty arbitration under the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China concerning the Promotion and Reciprocal Protection of Investments of 15 May 1986 ("UK-China BIT").

If this is the case, the arbitral tribunal would have to decide whether the measures taken by the UK Government amounted to an expropriation of British Steel, as there was no formal transfer of ownership. This would certainly raise a jurisdictional challenge, given that the UK-China BIT, like most Chinese BITs, limits the scope of investment treaty arbitration to disputes "concerning an amount of compensation". In previous cases, arbitral tribunals have reached different conclusions as to whether disputes concerning the existence of an expropriation fell within the limited scope of investment treaty arbitration under Chinese BITs.

**The Steel Industry (Special Measures) Act 2015**

On 12 April 2025, the UK Parliament was recalled from its Easter holiday to debate and vote on the Steel Industry (Special Measures) Bill. The bill was presented due to alleged concerns over the potential shutdown of British Steel's two last blast furnaces in Scunthorpe, England, which would make the UK the only State in the G20 without the capacity to produce virgin steel. After it received royal assent on the same day, the Steel Industry (Special Measures) Bill became the Steel Industry (Special Measures) Act 2025, allowing the UK Government to take immediate control of British Steel, which is owned by the Chinese Jingye Group.

Section 2 of the Steel Industry (Special Measures) Act 2025, confers ample powers on the UK Government to take control of "steel undertakings" in England and Wales in case it appears that an asset, such as a blast furnace, has ceased to be used or is at risk of ceasing to be used on a permanent or temporary basis, and there is a public interest that such asset should continue or resume operations. The powers conferred on the UK Government include the power to direct the conduct of the business of the steel undertaking, appoint the company officers, enter into agreements, including employment contracts, and prevent the steel undertaking from taking any insolvency proceedings. Under Section 4 of the Steel Industry (Special Measures) Act 2025, any

failure to comply with a direction given by the UK Government is a criminal offence.

The Steel Industry (Special Measures) Act 2025 makes no provision for prompt compensation for the takeover of steel undertakings. A compensation scheme is set forth in Section 7 of the Steel Industry (Special Measures) Act 2025, which is subject, however, to further regulations to be introduced by the UK Government. But in the case of British Steel, it seems unlikely that it would result in any compensation, as the UK Business Secretary, who accused Jingye of not negotiating in good faith, has already stated that British Steel's market value was zero.

**The UK-China BIT**

The UK-China BIT, which is in force since 1986, provides for different substantial standards of treatment, including the right of investors to be compensated in cases of expropriation. Pursuant to Article 5(1) of the UK-China BIT:

> "[investments] of nationals or companies of either Contracting Party shall not be expropriated, nationalised or subjected to measures having effect equivalent to expropriation or nationalisation (hereinafter referred to as 'expropriation') in the territory of the other Contracting Party except for a public purpose related to the internal needs of that Contracting Party and against reasonable compensation".

Article 5(1) provides further that:

> "[such] compensation shall amount to the real value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge, shall include interest at a normal rate until the date of payment, shall be made without undue delay, be effectively realisable and be freely transferable".

Like most Chinese BITs, investment treaty arbitration under the UK-China BIT is limited in scope. By virtue of Article 7(1) of the UK-China BIT:

> "[a] dispute between a national or company of one Contracting Party and the other Contracting Party concerning an amount of compensation which has not been amicably settled after a period of six months from written notification of that dispute shall be submitted to international arbitration".

The limited scope of Article 7(1) raises the question as to whether an arbitral tribunal would have jurisdiction to hear an eventual investment treaty arbitration initiated against the UK Government. Given that the Steel Industry (Special Measures) Act 2025 does not amount to a formal transfer of ownership, it could be argued that the issue as to whether the measures taken by the UK Government amount to "measures having effect equivalent to expropriation or nationalisation" does not fall within the scope of Article 7(1).

### *Tza Yap Shum* and *Beijing Urban*

The scope of investment treaty arbitration under Chinese BITs was decided by arbitral tribunals in a number of cases.

In *Señor Tza Yap Shum v. The Republic of Peru* ("*Tza Yap Shum*"), the tribunal dismissed, in the Decision on Jurisdiction of 19 June 2009, the allegation that consent to arbitration under Article 8(3) of the Peru-China BIT was limited to disputes related to the amount of compensation for expropriation. Pursuant to Article 8(3):

> "[if] a dispute involving the amount of compensation for expropriation cannot be settled within six months after resort to negotiations as specified in Paragraph 1 of this Article, it may be submitted at the request of either party to the international arbitration of the International Center for Settlement of Investment Disputes (ICSID). […] Any disputes concerning other matters between an investor of either Contracting Party and the other Contracting Party may be submitted to the Center if the parties to the disputes so agree".

*Beijing Urban Construction Group Co. Ltd. v. Republic of Yemen* ("*Beijing Urban*") was submitted to investment treaty arbitration under the China-Yemen BIT. Article 10(2) of the China-Yemen BIT provides that:

> "if the dispute [concerning investment between the Contracting Party and the investor of the other Contracting Party] cannot be settled amicably by the parties to the dispute within six months from the date of the written resolution, the dispute shall be submitted at the investor's option: (1) [the] court in which the contracting party of the investment has jurisdiction, or (2) [arbitration] of the International Center for Settlement of Investment Disputes […]".

Article 10(2) provides further, however, that:

> "[for] this purpose, either Contracting Party shall grant irrevocable consent to the arbitration proceedings referred to in these terms for the dispute concerning the amount of compensation. Other dispute submission procedures shall be subject to the consent of the parties".

In the Decision on Jurisdiction of 31 May 2017, the tribunal dismissed the allegation that consent to arbitration under the China-Yemen BIT comprised disputes relating to the amount of compensation only, excluding disputes as to whether there was an expropriation. According to the tribunal, "the words 'relating to the amount of compensation for expropriation' must, in context, be read to include disputes relating to whether or not an expropriation has occurred".

### *Beijing Shougang* and *AsiaPhos*

A different outcome was reached, however, in *Beijing Shougang and others v. Mongolia* ("*Beijing Shougang*") and in *AsiaPhos Limited and Norwest Chemicals Pte Limited v. People's Republic of China* ("*AsiaPhos*"), the first under the China-Mongolia BIT, and the second under the China-Singapore BIT.

In both cases, the jurisdiction of the tribunals was challenged on the basis that investment treaty arbitration under the China-Mongolia BIT and the China-Singapore BIT was limited to disputes over the amount of compensation for expropriation. Similar to Article 7(1) of the UK-China BIT, Article 13(3) of the China-Singapore BIT provides that:

> "[if] a dispute involving the amount of compensation resulting from expropriation, nationalization, or other measures having effect equivalent to nationalization or expropriation mentioned in Article 6 cannot be settled within six months after resort to negotiation as specified in paragraph (1) of this Article by the national or company concerned, it may be submitted to an international arbitral tribunal established by both parties".

Likewise, pursuant to Article 8(3) of the China-Mongolia BIT:

> "[if] a dispute involving the amount of compensation for expropriation cannot be settled within six months after resort to negotiations as specified in paragraph 1 of this Article, it may be submitted at the request of either party to an ad hoc arbitral tribunal".

In *Beijing Shougang*, the tribunal decided in the Award of 30 June 2017 that:

> "[only] this narrow issue [involving the amount of compensation for expropriation] falls within the jurisdiction of an arbitral tribunal while all disputes, including those involving the amount of compensation for expropriation, can be submitted to the competent court of the Contracting State accepting the investment".

Similarly, in the Award of 16 February 2023, the majority of the *AsiaPhos* tribunal concluded that Article 13(3) of the China-Singapore BIT did not "cover Claimants' claim for indirect expropriation". According to the majority:

> "[the] scope of the arbitration clause is limited to disputes involving the amount of compensation, whereas disputes on the occurrence and legality of an expropriation can only be brought before domestic courts as provided in Articles 13(2) and 6(2) of the Treaty".

In the dissenting opinion, however, Stanimir A. Alexandrov, who was appointed by claimants, concluded that "[the] correct interpretation is that the scope of Respondent's consent to arbitration under the Treaty covers Claimants' claims for indirect expropriation".

It should be noted that, although Article 13(3) of the China-Singapore BIT and Article 8(3) of the China-Mongolia resemble Article 7(1) of the UK-China BIT, the three treaties are not identical. Differently from the UK-China BIT, Article 13(2) of the China-Singapore BIT as well as Article 8(2) of the China-Mongolia BIT provide that:

> "[if] the dispute [between a national or company of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party] cannot be settled through negotiations within six months, either party to the dispute shall be entitled to submit the dispute to the competent court of the Contracting Party accepting the investment".

In both *Beijing Shougang* and *AsiaPhos* Awards, Article 13(2) of the China-Singapore BIT and Article 8(2) of the China-Mongolia BIT were materially relevant to the outcome of the cases, as both tribunals concluded that disputes concerning the existence of an indirect expropriation fell within the jurisdiction of national courts. Article 7 of the UK-China BIT makes no reference to the jurisdiction of courts to decide investment disputes under the treaty.

**Conclusion**

The different decisions in *Tza Yap Shum*, *Beijing Urban*, *Beijing Shougang*, and *AsiaPhos* on the scope of investment treaty arbitration under Chinese BITs indicate that the potential submission of the British Steel's takeover to investment treaty arbitration under the UK-China BIT could lead to jurisdiction challenges, to the extent that there was no formal transfer of ownership under the Steel Industry (Special Measures) Act 2025. Nevertheless, the different wording employed in the UK-China BIT, compared with the China-Singapore BIT and the China-Mongolia BIT, could lead to a different outcome, allowing the arbitral tribunal to decide whether British Steel's takeover amounted to an expropriation.

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