

## Comparison of Administrative Charge Systems in Main Countries and Regions in the World

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### Abstract

At present, “arbitrary charge” problem remains rather serious in China. Many regions and units continually violate national regulations to randomly increase charge items and elevate charge standards under a jumble of names and with excessively high criteria. In essence, administrative “arbitrary charge” is the illegal expropriated action performed by main administrative subjects by virtue of coercive administrative power to deprive the property right of administrative counterparts in specific conditions. “Arbitrary charge” is not only an economic problem, but also a grave political problem, legal problem and social problem. As a result, normalizing administrative charge becomes an urgent problem to be solved in China now. In most countries across the world, administrative charge is an extremely important charge item for government departments. This thesis will mainly introduce the administrative charge systems in America, Canada, Germany, Britain, Singapore and Finland and expect to draw useful references for the specification of administrative charge in China.

**Key words:** Administrative charge; Beneficiary pays principle; Charge law; Supervisory mechanism

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### 1. AMERICA

In America, administrative charge is referred to as user fees. The federal government defines it as the fees

gathered by government departments oriented towards beneficiaries (individuals or organizations) for the provision of goods or services (Shribman & Young, 1986). In recent years, the government is more inclined to raise fund in the form of user pays. From 1977 to 1983, the annual growth rate of administrative charge revenues reached 11.4%, increasingly by two percentage points than previous two decades (McCarney, 1983). According to Government Finance Statistics (GFS) released by International Monetary Fund (IMF), the administrative charge revenues of American government accounted for 12.41% of state government financial revenues in 2014, among which the proportion of state government administrative charge revenues was approximately over 90% in overall state government revenues. Such growth reflects the reduction of financial subsidy granted by the federal government to states and regions and the resistance of the public against growth of tax revenues. This circumstance leads to a problem in need of prompt solution—namely how should the government set up charge items and formulate charge standards? (Gillette & Hopkins, 1987)

Before 1952, all organs under the jurisdiction of American Federal Government could only solicit charge on the approval of the Parliament. Such practice exerts enormous functions in the protection of citizen property rights but lowers administrative efficiency. Consequently, for improving the administrative efficiency, American Parliament enacted The Independent Offices Appropriations Act (IOAA) in 1952. This is the uppermost legal basis concerning the specification of administrative charge rights in America by far. IOAA law empowers the charge item establishment right to administrative department and legislative department, which mean that administrative department has the due right to solicit charge from citizens according to IOAA. Pursuant to the act, the chief officers in all organs subject to the Federal Government could formulate administrative rules and

establish charge items without specific legal authorization. But the charge standards shall meet two requirements. First of all, the charge standards should meet the requirement of justice and fairness. Secondly, the charge standards should conform to the costs of government goods or services, the interests of beneficiaries, and the purpose of public policies or public interests. In addition, for fear of power abuse in the administrative department, charge collected in line with IOAA should be turned in the general income account of Financial Department in the Federal Department. Without any approval from the Parliament, administrative department must not preserve collected charge as the annual budget.

The fundamental principle of American administrative charge is “beneficiary pays principle” (BPP). In another word, who benefits, who undertakes responsibilities and more benefits symbolize more responsibilities. The precondition of BPP application is that there must have specific benefits and beneficiaries. In case *NationalCable Television Ass’n, Inc. v. United States*, the Supreme Judicial Court judges the charges of Federal Communications Commission (FCC) to be invalid, for the reason that the charge standards refer to the overall budget of commission rather than private interests obtained by supervisory subjects.<sup>1</sup> While in case *FPC v. New England Power Co.*, the Supreme Judicial Court considers it irrational to collect charge on the basis of full-industry supervisory costs. The right of charge in Federal Electricity Commission should be limited in “specific charge collected for specific services provided by individuals or companies”.<sup>2</sup> OMB Circular No.A-25 stipulates that “specific benefits” exist in the following conditions. (i) Beneficiaries could obtain more immediate or major benefits or values than the public. (ii) It provides business stability or improves public confidence towards beneficiary business activities. (iii) It usually exceeds the same industry, group or the public to obtain services according to the request of beneficiaries or for the convenience of applicants.

If BBP is taken as the sole reference standard, some low-income groups will not enjoy public services. This is also unfair. Consequently, administrative charge field could also apply the capacity payment principle and appropriately mitigate charge in accordance with user payment capacity. For instance, National Credit Union Administration exempts the management charge on Federal Credit Union members with less than \$ one million assets.<sup>3</sup> In exceptional conditions, out of the needs of public policy objectives, it might exempt fees of some groups so as to encourage public welfare actions. For instance, Food and Drug Administration (FDA) collects medicine

ensorship charge towards public health protection medicine according to small-company standards.<sup>4</sup>

While determining charge standards, the first thing is to consider the cost of services provided by the government and the second thing is to consider the benefits and values created for users. If government cost expenditure is greater than user benefits and values, then the government could only charge according to the cost and undertake surplus part with tax revenues. In terms of the calculation of cost, both direct cost and indirect cost should be included.<sup>5</sup> OMB Circular No.A-25 regulates that except for predetermined appropriation or authorized post-event charge, the charge should be collected before or during services. The restriction of collection time aims to cut down administrative cost.

The main subject of charge collection is administrative organ which provides services. For instance, Prescription Drug Fee includes expenditures paid for medicine security review, medicine TV advertisement review, and medicine security system reinforcement business. Corresponding collection organ is Food and Drug Administration (FDA) of the Department of Health and Human Services.<sup>6</sup>

As for the supervisory mechanism of administrative charge, by reference to the regulation in the Chief Financial Officers Act (CFO Act) and OMB Circular No.A-25 enacted by Office of Management and Budget in 1990, administrative organs have to review and make report for administrative charge in at least every two years. The report contents shall disclose the cost accounting, pricing method, revenue appropriation conditions, performance and adjustment suggestions for goods or services provided by the government departments. U.S. Government Accountability Office (GAO) also assumes the responsibility of external supervision on the charge of each administrative organ. Directly responsible to the Parliament, GAO shall investigate non-tax revenue in financial balance conditions of the government, and compile reports to offer decision references.

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## 2. CANADA

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Before 2004, all organs in Canada issued regulations to collect charge for beneficiaries of goods, labor, facilities, regulatory activity permit or license. In March 2004, Canada released the User Fees Act, with the view to reinforce the accountability, supervisory mechanism and transparency of charge in Canadian governments at all levels. Canadian Federal Government, provincial

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<sup>1</sup> 415 U.S. 336 (1974)

<sup>2</sup> 415 U.S. 349 (1974).

<sup>3</sup> Website: [http://en.wikipedia.org/wiki/National\\_Credit\\_Union\\_Administration](http://en.wikipedia.org/wiki/National_Credit_Union_Administration)

<sup>4</sup> Website: <http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/>

<sup>5</sup> See GAO, *Federal User Fees: Substantial Reviews Needed to Align Port-Related Fees with the Programs They Support*, GAO-08-321 (February, 2008).

<sup>6</sup> Website: <http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/>

(regional) and three-level governments shall refer to this act either in the establishment of new administrative charge items or the adjustment of charge sum. Overall charge shall be uniformly incorporated into the Consolidated Fund account of Receiver General. Subject to the centralized management of the government, this part of fund is separated from the expenditures of each related department and organ. Corresponding related expenditures will be incorporated to financial budget on the approval of State Treasury and Parliament.

In the 1980s, total administrative charge of Canadian governments at all levels accounted for less than 8% of government financial revenues. As of the 1990s, the proportion increased up to over 8%. Pursuant to the Government Finance Statistics (GFS) released by International Monetary Fund (IMF), in 2014, the proportion of total Canadian administrative charge reached 8.83% of government financial revenues. Among which provincial (state) government administrative charge had maximal proportion as high as 50% of total local government revenues at the same level. The proportion of prefecture-level (county) government ranked the second place as 30% and the proportion of Central Government was minimum at 10%.

Based on the regulations in existing Canada Administrative Charge Act, prior to the establishment of new charge items or revision of charge standards, the administrative organs shall notify counterparts of negotiation about possible problems, assess possible positive and negative influences of the charge and finally give response to counterparts' opinions by explaining the reasons of adoption or refusal. The administrative organs could not collect charge once failing to perform above-mentioned public participation procedures.

### 3. GERMANY

In the Government Finance Statistics (GFS) released by International Monetary Fund (IMF), in 2014, the proportion of Germany government administrative charge revenues was 7.8% of state government financial revenues. Among which the proportion of Central Government administrative charge was over 20% of total government revenues at the same level, the proportion of state government was over 30%, and the proportion of local government was over 40%. In general, administrative charge is the source of German state government and local government budget revenues, but it has a small proportion in total government financial revenues. In accordance with the Fundamental Law in Germany, the establishment of charge items, including the formation and adjustment of charge standards, is decided by the local parliament. All government departments, including the financial department, do not have any right to enact charge regulations nor formulate charge standards. As for legally stipulated charge, total

revenues have to be incorporated into state or local financial budget for management. As the source of state or local budget revenues, charge revenues should be directly contributed to state or local treasury and enrolled in the budget for the approval of parliament together with tax revenues and other revenue sources in planned appropriation. The expenditures of administrative charge units are uniformly arranged by the budget. Except for special conditions, charge revenues incorporated in the budget could not be generally used for assigned purpose.

The charge legislation in Germany is constituted by federal law, state law and local law. It is a stereoscopic legal system including general law, special law, professional law/department law. The special law concerning administrative charge in Deutscher Bund is Bundesgebührengesetz (BGebG). Revised in 2013, the law has 24 articles about principle and framework regulations, including regular charge concepts, scope, charge collection subjects, charge payment obligors, regular charge collection standards, regular charge remission conditions, regular charge collection procedures, punishment of overdue charge payment, legal remedy and so forth. For instance, Articles 1-3 in BGebG stipulate German administrative charge as the payment of individual belongings provided by the country. Such payment targets at the activities organized according to public law, including maintenance of public facilities and appropriation of channel as well as supervision, review and examination. In addition, if the payment is applied or purposefully used by counterparts to add their benefits, or the payment has proper legal relationship with the obligation of counterparts, then it could be taken as personal payment of individual belongings.

Article 5 and Article 6 in BGebG stipulate subjects who have rights to collect regular charge as powerful legal entities that provide individual belongings payment or personnel that performs government functions (if the personnel also provides individual belongings payment). There have three types of payment obligors, including entities who accept specific payment, entities who claim to undertake payment responsibilities to government departments, and entities who undertake other's payment responsibilities according to the law. In particular, it is worth noticing here that government organs shall mutually provide services for one another free of charge. At the same time, it is regulated that several entities who have payment responsibilities should undertake responsibilities as joint debtors.

Article 7 in BGebG clearly stipulates 11 non-charge conditions as follows. (i) offering oral, simple written or electronic material; (ii) precise information retrieved from register and database; (iii) offering simple e-copy; (iv) in case of emergency; (v) complaints against civil servants; (vi) government laws and technical supervisory measures;

(vii) under the context of existing or previous employment or official business relationship; (viii) activities within the scope of duty and statutory business; (ix) supported by financial budget fund; (x) charge delay, relief or refund conditions; (xi) in absence of regulations by the federal law.

Article 9 in BGeB stipulates the criterion of charge calculation. The charge should include all specific payment-related direct payment and indirect payment, namely labor, material resource and relevant expenditures consumed for specific payment. Among which indirect payment further contains legal and technical supervision cost. If specific payment has economic values or benefits to counterparts, and such economic values or benefits could be measured by capital, then corresponding economic values or benefits should be appropriately taken into account besides cost while calculating the charge. However, counterpart's economic conditions also deserve high attention, for fear that citizens could not enjoy public services out of payment incapability. Therefore, out of the reasons of public interests or fairness, the government is supposed to remit charge of vulnerable groups. For instance, social vulnerable groups supported by the government could submit relevant documentary evidence to apply for TV license fee exemption.<sup>7</sup> Obviously, regular charge collection in Germany is mainly based on cost-compensation principle and benefit-reward principle supplemented by the capacity payment principle. This points out the direction and consideration factors for the calculation of regular charge. As for specific charge collection, it should refer to the regulations in federal administrative rules, state laws or local laws in different conditions.

Articles 13-19 in BGeB stipulate the procedures of regular charge collection. Administrative charge could be collected in either formal or informal means. In principle, the charge should be paid in the moment of establishing payment responsibility. While payers could also prepay or delay the term of payment. The regular charge payment claim right of administrative organs will be invalid and weakened without exertion in statutory period (generally for five years). Overdue payment regular charge could be collected under coercion.

In addition to BGeB, the charge and spending bill in each state is also special law. Besides, professional law, village and town rules, tax payment rules, decrees and administrative rules in administrative state fee and spending bills all have regulations concerning the charge collection. At present, 13 regional states and 3 city states in Germany have established professional charge collection bills. The earliest bill is the Regular Fee and Benefit Fee Act enacted in Berlin state in 1957. The charge and spending bills in all states illustrate elaborate

regulations concerning charge collection category and procedures, but specific charge items and sum are decided by local laws.

#### 4. BRITAIN

In Britain, government charge means the charge collected by the government against individuals or organizations who directly benefit from the government or impose costs on the government to some extent. As indicated by the Government Finance Statistics (GFS) issued by International Monetary Fund (IMF), British administrative charge revenues accounted for 6.42% of state government financial revenues in 2014, among which the proportion of administrative charge revenues of total government revenues at the same level was around 40% for central government and 60% for local governments.

Administrative legal person shall cover all costs while setting up goods and service charge, except for specific laws or policy regulations. Moreover, charge and charge collection demand regular self-criticism on an annual basis as part of legal person's business operation plans.

Although various charge collection regulations in Britain disperse in different laws, regulations and even administrative rules, The Treasury explicitly expresses the importance of administrative charge and the full disclosure principle in the work manual.<sup>8</sup> The full disclosure principle in Britain demands government departments or organs to make a report to the Parliament in each year and declare topics for discussion including charge revenue appropriation conditions, regular charge collection rate, regular charge collection sum, overall cost and unit cost of provided services, subsidy or excessive collection problems as well as realization of financial objectives. The decision-making factor of British government charge standards includes the following three points. (i) The cost is compensated pursuant to different property of charge. As a general rule, regular charge simply compensates marginal cost while use fee partially or wholly compensates cost. (ii) It has to represent government policy orientation. Taking the traffic congestion charge in London for example, drivers who enter into the central toll area have to pay 11.05 pounds at 7:00 am-6:00 pm from Monday to Friday. The purpose of this rule is to encourage citizens to choose public transportation, and accordingly improves traffic congestion and air quality in London area.<sup>9</sup> (iii) It has to consider the economic affordability and interest pursuits of charge payers. Taking TV license fee for example,

<sup>7</sup> Website: <http://rnd.pts.org.tw/p2/2013/05/German%20Licence%20Fee.pdf>

<sup>8</sup> Website: [http://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/454191/Managing\\_Public\\_Money\\_AA\\_v2\\_-\\_jan15.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-_jan15.pdf)

<sup>9</sup> Website: [http://en.wikipedia.org/wiki/London\\_congestion\\_charge](http://en.wikipedia.org/wiki/London_congestion_charge) and <https://read01.com/jemxxE.html>

citizens aged above 75 are exempted from payment while blind citizens or citizens with visual impairment just pay 50% fee. Citizens do not have to pay if they just tune in aired TV programs through Internet (such as iplayer and YouTube).<sup>10</sup>

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## 5. SINGAPORE

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As early as 1881 during British colonial period, Singapore had enacted a professional administrative charge law – The Fees Act. Revised in 2013, the act altogether has 9 articles principally about some principle regulations. Article 2 in Fees Act assigns the Treasury Department as general administrative authority of administrative charge. In fact, under the authorization of Article 2 in Fees Act, the Treasury Department fabricates over 40 fees orders to specify regular charge collection matters in each organ of the state, wherein the No.1 fees order - Fees (Ministry of Defense) Ordered principally demonstrates various charge in Singaporean Ministry of Defense and illustrates due charge sum of each item.

From the Fees Act, the charge category in Singapore is divided to regular charge, license fee and permit fee. The Treasury Department takes charge of making a statement for the regular charge, license fee and permit fee and releasing the statement on government poster. The statement takes into effect on the day of release. Subsequently, the Treasury Department shall submit the statement to the Parliament. Prior to the payment of obligors, officials from the court, government authority and department have the due right to refuse to provide any services. Without particular legal regulations, administrative officials responsible for regular charge collection should make a request from the police court to solicit regular charge and license fee prescribed in the decree according to fine summary procedures.

Article 9 in the Fees Act authorizes the Treasury Department to exempt, remit or waive charge, formulate regular charge or other charge exemption and remission statements, or assign designated persons to be exempted from regular charge.

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## 6. FINLAND

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As shown in the Government Finance Statistics (GFS) released by International Monetary Fund (IMF), Finland administrative charge revenues accounted for 13.69% of state government financial revenues in 2014, among which the proportion of administrative charge revenues of total government revenues at the same level was around 30% for central government and 70% for local governments.

Finland had already formulated uniform government charge law—Act on Criteria for Charges Payable to the State in 1992. The act contains five chapters, including general principles, charge application range and standards, charge item establishment, other regulations, transitional regulations and entry into force. The 14 articles are about principle regulations regarding administrative charge. The administrative charge in Finland declares that the government could collect corresponding charge for specific persons who benefit from government activities or other activities restricted by public laws. Whereas, the charge up to business standards, charge for state-owned companies and national fund collected by the government according to law are not applicable for the Act on Criteria for Charges Payable to the State. “Government activities” refer to the management actions performed by the government to provide public goods and services. “Activities restricted by public laws” mean government activities held according to laws or decrees and goods provided by the government in monopoly status.

If government specific activities intend to satisfy or add the benefits of counterparts, the government could charge for counterparts. Article 4 in Act on Criteria for Charges Payable to the State indicates that government could collect charge in the following few conditions. (i) goods produced by the government; (ii) entrusted or claimed services; (iii) decisions based on application; (iv) temporary assignment of use right (real right for usufruct) and other rights; (v) other actions (actions caused by the receivers). In the meanwhile, Article 5 defines non-charge conditions prohibited by the state. If the payment provided by the government does not aim at single or specific person, company or other apparently restricted group, or the purpose of payment is to guarantee the basic sustenance of citizens, or government suggestions, instructions, guidance and information simply produce trivial costs, then the government does not have right to collect charge without rational ground.

Administrative charge standards in Finland are basically established on cost-compensation principle, which implies that the government charge should correspond to overall cost produced by specific activities. Whereas, in case of any just cause related to health care, medical treatment, other social purposes, judiciary, environmental protection, education or general activities or any other similar cause, the government could remit or exempt the charge of specific groups below action cost price. By contrast, in case of any special cause, the government could collect higher charge above service cost price.

The administrative charge collection procedure in Finland abides by uniform regulation, which means that the charge is collected in the Act on the Collection of Taxes and Charges in Execution Proceedings. In addition, concrete charge standards, overdue fine, payment term,

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<sup>10</sup> Website: <http://rnd.pts.org.tw/p2/2012/05/BBC%20Licience%20Fee.pdf>

prepayment, guarantee, exemption and other matters related to the collection will be implemented in line with other decrees.

## 7. COMPARISON OF REGULAR CHARGE SYSTEM IN SIX COUNTRIES AND REGIONS

Administrative charge constitutes one of the important revenue sources of state government departments in market economy and mainly copes with the resources appropriated by government departments for specific services towards specific subjects. Among the six countries, except Britain, all the other countries and regions have formulated uniform and normative administrative charge professional laws and stipulated administrative charge collection scope, calculation standards, expenditure appropriation principles, charge adjustment cycle, exemption, remission and preferential regulations and supervisory management mechanism, such as Germany, Finland, Canada, America, Singapore. In particular, the administrative charge law in Canada - User Fees Act even demands the federal government departments to negotiate with obligors and assess possible impacts while determining charge items or adjusting charge standards. Existing articles in Trans-Pacific Strategic Economic Partnership Agreement (TPP) place great emphasis on this mechanism. Whenever state policies affect citizens or add the tax payment burdens of citizens, the government should establish assessment procedures and negotiation mechanism oriented toward stakeholders, with the purpose of reducing the impacts brought about by the reduction of new tax. This mechanism deserves the references of administrative charge organs in China.

The common features of above-mentioned six countries and regions could be summarized as the following points.

(i) The general proportion of administrative charge in total government revenues is below 15%. Finland ranks the first place in this dimension, for its government administrative charge revenues account for 13.69% of state government financial revenues. Moreover, the proportion of administrative charge revenues of total government revenues at the same level will be higher in grassroots governments. The phenomenon is also true for China. To put it simply, along with the decline of government level, the status and role of administrative charge in government financial revenues will be gradually elevated (Fisher, 1993). It should be attributable to two causes. On the one hand, public goods provided by local government have an intimate correlation with local residents' life and corporate manufacturing and operation activities. Specific beneficiaries mostly benefit

from the allocation efficiency of quasi public goods. On the other hand, local governments closer to regional residents and companies could better know about true willingness. This not only creates convenience for local governments to choose optimal local public goods provision quantity and government fund-raising means in view of local consumers' consumption preferences, but also helps local government conduct cost-benefit analysis, accept consumer supervision and add feasibility of charge. Consequently, local governments' inclination towards administrative charge in the fund raising process conforms to public goods supply efficiency principle and government fund-raising means selection principle.

(ii) Professional legislation concerning administrative charge explicitly stipulates that the main intention of administrative charge is to compensate for the expenditures of public facilities, labor or goods and meanwhile states factors to be considered in rate calculation standards. In principle, administrative charge is supposed to compensate all expenditures, but partial cost pricing method will be adopted when such public facilities or labor possess the property of public interests. Besides, regular rate adjustment and adjustment cycle are mentioned in detail too.

(iii) Administrative charge could be only collected after strict legal procedures and on the approval of the parliament. Just like Germany, the establishment of charge items, formation and adjustment of charge standards are all the responsibilities of local parliament. All government departments, including the financial department, do not have any right to enact charge regulations nor formulate charge standards.

(iv) In the aspect of administrative charge classification, there generally exists a certain consistency to some extent if the comparison reference is the classification practice in China which divides administrative charge into administrative charge and undertaking charge. In other words, as for the eight countries and regions, they fundamentally levy overwhelming sub-items subject to administrative charge and undertaking charge.

(v) In the aspect of supervisory management, the six countries all have set up high requirements. For instance, in America, the administrative organs should review and make report for administrative charge in every two years at least. The report should disclose cost accounting, pricing method, revenue appropriation condition, performance and adjustment suggestions about goods or services provided by government departments. U.S. Government Accountability Office (GAO) assumes the responsibility of external supervision on the charge of each administrative organ. Directly responsible to the Parliament, GAO shall investigate non-tax revenue in financial balance conditions of the government, and compile all sorts of auditing reports to offer decision references. Furthermore, in terms of budget management,

administrative charge is mostly incorporated into the public budget. While in terms of fund use management, unified state control over revenues and expenditures and special fund for special use are rather commonplace.

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