
Commitments on State-Owned Enterprises

SEAN MINER

The rise of state-owned enterprises (SOEs) in many countries has alarmed the business world. Private firms observe that SOEs enjoy distinct advantages while operating in their domestic markets and abroad, allowing them to unfairly capture market share. These advantages include government support and protection in the form of favorable regulations, lax enforcement of competition policies, preferential treatment when making purchases or sales, and outright subsidies. Moreover, the sheer size of some SOEs, their opacity, and close connections with political leaders have fueled suspicions that governments will continue to ensure a favorable business environment for these enterprises.

International trade rules under the World Trade Organization (WTO) and various free trade agreements (FTAs) have attempted to discipline the behavior of SOEs, but with limited success (Bergsten, Hufbauer, and Miner 2014). By comparison, the provisions in the Trans-Pacific Partnership (TPP) are more ambitious. Chapter 17 in the TPP agreement establishes comprehensive standards for the management of SOEs, more than in any prior international agreement. Although exemptions for subcentral SOEs and those under a revenue threshold will limit some of its ability to create a completely level business environment, the TPP represents a major step in defining the rules of commercial engagement for SOEs. The main goal of the TPP rules is not to prohibit SOEs, rather to discipline policies that give SOEs an unfair advantage over private firms.

Sean Miner is China program manager and research associate at the Peterson Institute for International Economics.

All TPP countries have SOEs, including the United States (e.g., Amtrak and the United States Postal Service [USPS]), though most (except Malaysia and Vietnam) have less than a few dozen, primarily in industries such as energy production and distribution. To be sure, the commitments on SOEs will likely have a small effect on countries where SOEs have a less prominent role; however, countries like Vietnam with a vast state sector will need to drastically change their behavior.

Notably, Chapter 17 seems to have been written with China's potential entry into the TPP in mind. China has the largest state-owned sector in the world with over 100,000 SOEs, and complaints about the unfair advantages enjoyed by Chinese SOEs have been mounting over the years. The chapter is designed so that any prospective members must accept obligations on all SOEs, including subcentral SOEs, and negotiate any exceptions from the ground up. This could give the original TPP members some leverage when negotiating China's entry.

Chapter 17 basically prohibits SOEs from discriminating against other TPP firms when buying or selling goods or services. The TPP seeks to ensure that SOE purchases and sales are made only on the basis of commercial considerations. The text also prohibits the use of noncommercial assistance, namely subsidies, to support SOEs in many cases. The prohibition of harmful subsidies and favoritism will ensure that many SOEs operate on a more level playing field as any advantages over private firms are reduced, thus creating a more competitive business environment. Moreover, the TPP ensures that local courts have jurisdiction over SOEs in civil claims concerning commercial matters, and administrative bodies that regulate SOEs must ensure compliance in an impartial manner.

The TPP contains groundbreaking provisions on transparency that will require countries to provide other TPP members a list of all SOEs or otherwise list them on a public website. Each member must also provide information on specific SOEs upon the request of other TPP parties. For example, TPP members must disclose the percentage of government shares held in an SOE, the titles of government officials serving as officers or on the board, annual revenues, special legal benefits, and information on any policy or program that provides subsidies.

All SOE provisions are subject to the dispute resolution mechanism of the TPP, meaning that any violation could ultimately result in trade sanctions. A committee will be set up to monitor and review the implementation of SOE provisions, meeting at least annually. Moreover, the TPP countries commit to "further negotiations" within five years of entry into force to extend the application of disciplines on subcentral SOEs and subsidies.

The SOE provisions in the TPP exempt enterprises with an annual revenue below 200 million Special Drawing Rights (SDRs), about \$280 million, in any of the past three years; certain subsidies; country-specific nonconforming measures; official export credit agencies, like the US Export-Import Bank; and many SOEs owned by subcentral governments. Sovereign wealth funds,

including Singapore's Temasek, are largely exempt from Chapter 17 except that they, like governments, are also barred from providing subsidies to SOEs. Last, services provided by SOEs in their domestic market are also exempt, thus any subsidies received by the USPS, Japan Post, or Amtrak, for example, will not be disciplined as long as the SOE operates only in its home market.

Defining SOEs

Many SOEs have mixed ownership and it may not be clear whether the government has an important say in company operations. A big concern is SOEs where the state is not the majority shareholder but still effectively controls them. Could an enterprise with that structure evade the Chapter 17 disciplines? This question makes the TPP definition of SOEs crucial. The TPP defines an SOE as an enterprise:

- (a) that is principally engaged in commercial activities; *and*
- (b) in which a Party [a State]:
 - i. directly owns more than 50 percent of the share capital;
 - ii. controls, through ownership interests, the exercise of more than 50 percent of the voting rights; *or*
 - iii. holds the power to appoint a majority of members of the board of directors or any other equivalent management body.

While this definition is narrower than the one in the US-Singapore FTA, it is sufficiently broad to cast a wide net over the most troublesome enterprises. The enterprise must engage in commercial activity—in other words, sell or purchase goods or services—which leaves out regulatory agencies and other entities that merely grant licenses or permits.

The second part of the definition is more nuanced, since an entity that meets any of the three criteria will be considered an SOE. The first and second provisions are clear: If a state owns or has a voting share of more than half of the enterprise, it is an SOE. This covers the vast majority of enterprises considered to be state-owned. However, the third provision provides reasonable scope for encompassing enterprises where it may not be so clear whether an enterprise is state-owned. It asks whether the state has control over the board of directors, or a similar body in charge of hiring top-level managers. Effectively, if the state can appoint a majority of the board of directors, the enterprise is considered an SOE and will be covered by TPP provisions. This criterion includes enterprises where the state owns no shares or has no equity voting rights but controls the hiring of the top management. It also likely includes firms that are highly dependent on regulatory approval or public funds and for which the government effectively selects the board. In practice, proving that a state controls the board or similar entity may be difficult, and the complaining party will be responsible for making a convincing argument.

Chapter 17 also covers designated monopolies, including any private monopoly designated as such after the agreement enters into force or a government monopoly that is owned or controlled by the state. This definition covers national oil and gas firms, monopoly providers of electricity, and other enterprises that are the sole provider of a good or service.

SOEs in Current TPP Members

The majority of the TPP members have a small state-owned sector, usually comprising a few dozen firms and mainly confined to traditional state-owned sectors like energy production and distribution, mineral extraction, or lending related to mortgages or other local development financing.

The commitments on SOEs will have little effect on those countries, but Vietnam is a different story, due to its significant state sector. SOEs make up over 30 percent of Vietnam's GDP and use 60 percent of the bank loans.¹ According to the Organization for Economic Cooperation and Development (OECD), in 2012 Vietnam had over 3,300 SOEs, employing 1.5 million people, around 15 percent of total employment.² Of these, around 1,500 are subcentral SOEs, though they employ less than 25 percent of the 1.5 million SOE workers. These enterprises are smaller, averaging 260 employees, compared with around 800 for centrally owned SOEs. OECD data show that in 2012 the value of centrally owned SOEs was around \$100 billion, compared with \$10 billion for subcentral SOEs.

Malaysia has around 330 centrally owned SOEs and 100 subcentrally owned SOEs.³ These SOEs employ around 400,000 people, and as of 2005 were valued at nearly \$20 billion, or 15 percent of Malaysia's GDP of \$144 billion that year.⁴

Mexico has the next largest state-owned sector, with nearly 70 SOEs in 2012, valued at over \$80 billion, though the vast majority of the value is dominated by energy firms like Pemex, Mexico's state-owned oil company.

1. The GDP figure includes five state-owned banks. See "Breakthrough made in TPP negotiations on Vietnamese SOEs," *VietNamNet Bridge*, October 18, 2010, <http://english.vietnamnet.vn/fms/business/87015/breakthrough-made-in-tpp-negotiations-on-vietnamese-soes.html> (accessed on December 1, 2015).

2. Data from OECD Database on National Practices and Regulations with Respect to State Enterprises, <http://qdd.oecd.org/subject.aspx?Subject=8F22EF7D-B780-4570-A4B1-7E0CB3AD7E04>.

3. Ibid.

4. GDP data from the World Bank's *World Development Indicators* database, <http://data.worldbank.org/data-catalog/world-development-indicators>; and SOE data from the OECD, <http://stats.oecd.org/>.

Nondiscriminatory Treatment and Commercial Considerations

Nondiscriminatory treatment and commercial considerations are among the main disciplines on SOEs and are explained in Article 17.4. The TPP has refined the definition of commercial considerations from previous trade agreements, removing some ambiguity. It defines commercial considerations as:

price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale; or other factors that would normally be taken into account in the commercial decisions of a privately owned enterprise in the relevant business or industry. (Article 17.1)

SOEs must act in accordance with these considerations and accord equal treatment when purchasing or selling a good or service. They cannot favor domestic enterprises over foreign ones in their business dealings. Similar clauses apply to designated monopolies.

The last part of the definition—taking into account the commercial decisions of private firms in the relevant industry—makes it much easier for the complaining party to build a case that an SOE was acting for the state rather than as a private firm.

Noncommercial Assistance

Private firms and business groups have long targeted noncommercial assistance, or subsidies, because of the unfair advantages it gives to SOEs. Noncommercial assistance is explicitly defined as “assistance to a state-owned enterprise by virtue of that state-owned enterprise’s government ownership or control.” Assistance means direct transfers like grants, debt forgiveness, favorable loans, guarantees, favorable equity investment, or cheaper goods or services than those commercially available. “By virtue of that state-owned enterprise’s government ownership or control” is defined as government assistance that goes “predominantly” or “disproportionately” to the SOEs of that state.

To be clear, the TPP does not ban subsidies, only those provided to SOEs that cause “adverse effects” to another firm, similar to conditions that apply to private firms. Importantly, SOEs are also prohibited from providing noncommercial assistance to any of their own SOEs, such as subsidiaries or other linked SOEs through the sometimes complex state-owned networks. Moreover, SOEs operating in another TPP member’s territory are prohibited from causing “material injury,” or even the threat of material injury, or “material retardation of the establishment of such an industry,” to a domestic industry there through the use of noncommercial assistance, or subsidies.

The TPP lays out very specific instances where subsidies are deemed to adversely affect another firm, making prosecution of a violation easier. It defines these conditions more narrowly than the WTO Agreement on Subsidies and Countervailing Measures (ASCM). The main points are that if the sale of a

manufactured good from an SOE that received a subsidy “displaces or impedes” the sale, or significantly undercuts the price, of a like good from an enterprise of another party, then the subsidy is found to violate the TPP agreement.

Another notable aspect of “adverse effects” is that a private firm from a TPP country competing with an SOE in selling goods in a non-TPP country market is protected against subsidies in that third party as well. Annex 17-C calls for “further negotiations” within five years to extend the disciplines on subsidies and to address adverse effects caused in a non-TPP country by the supply of services by an SOE.

Article 17.6 contains an exception that a service supplied by an SOE in its home territory “shall be deemed to not cause adverse effects.” So SOEs like the USPS and Amtrak operating in the United States are not subject to the TPP disciplines, and subsidies provided to them could not be found to be harming other enterprises competing with them there. This exemption is an important consolation by the negotiators that could have important limitations after the expansion of the TPP. This means it might be more difficult to impose similar restrictions on the large state-owned service sector in a country like China.

The exemption, however, does not cover cross-border activity, so if the USPS expanded abroad, any subsidies that adversely affected another firm could be found violating the chapter disciplines. The provisions state that SOEs that supply services abroad will be forbidden from receiving subsidies that “displace or impede” the sale, or significantly undercut the price, of a like service supplied by another party, as mentioned above. This is the first time disciplines on subsidies for services have been established for SOEs in cross-border activity.

Transparency

The TPP makes significant strides in the area of transparency, mandating that the public or at least TPP members have access to more information on SOEs. First, all TPP members must provide other members, or otherwise make publicly available on a website, a list of all their SOEs, so there is no discrepancy between entities that are SOEs and those that are not.^{5,6} And they must also either provide TPP members or make publicly available on a website the designation of new monopolies or the expansion of a monopoly. Upon a TPP member’s request, a state must promptly provide a host of details of an SOE or designated monopoly, including:

5. Vietnam, Malaysia, and Brunei are given longer phase-in periods to be subject to these conditions. Vietnam and Malaysia won’t have to publish the full list of their SOEs until five years from entry into force of the TPP, meaning those with revenue of over SDR 200 million (\$280 million) in one of the last three years. But within six months of entry into force, both countries will have to publish the SOEs with revenue of over SDR 500 million in one of the last three years. Brunei will have three years to publish the SOEs that had revenue of over SDR 500 million in one of the last three years.

6. This exempts SOEs with reported revenue of less than SDR 200 million in all of their last three years. Ten of the 12 TPP members are exempt from having to list subcentrally controlled SOEs.

- a) percentage of shares that a party, its SOEs, or designated monopolies cumulatively own, and percentage of votes that they cumulatively hold, in the entity;
- b) a description of any special shares or special voting or other rights that the party, its SOEs, or designated monopolies hold, to the extent the rights are different from the rights attached to the general common shares of such entity;
- c) the government titles of any government official serving as an officer or member of the entity's board of directors;
- d) the entity's annual revenue and total assets over the most recent 3-year period for which information is available;
- e) any exemptions and immunities from which the entity benefits under the party's laws; and
- f) any additional information regarding the entity that is publicly available, including annual financial reports and third-party audits, and that is sought in the written request.

Additionally, the parties must, upon request, promptly provide information on any policy or program that provides subsidies, allowed or not.⁷ The response must include specific information: the form and annual amount of the subsidy (grant, loan, etc.), name of agencies and SOEs that have received or could receive a subsidy under the program or policy, the legal basis for the policy or program, and, in the case of a subsidized loan, the amount of the loan and the interest rate. Moreover, in the case of policies or programs providing subsidies like intermediate inputs, the response must specify the price charged of the good or service affected and, in the case of equity capital, the amount invested and the shares received.⁸

This extensive list of obligations could change the opaque nature of many SOEs and constrain future practices. As many SOEs thrive on their close relationship to the government and beneficial policies, these obligations may make some forms of subsidies hard to swallow for the public of some nations. One objective of the transparency obligations is to “name and shame” the agencies and SOEs involved, with the hope that the thought of the subsidy being made so public may deter the subsidy in the first place. Another objective is to simply keep track of all the government-provided subsidies.

7. The written request for information must include an explanation of how the policy or program may affect trade or investment between the parties.

8. Any party may request that any information submitted under the article of transparency be kept confidential.

Subcentral SOEs

SOEs owned by the subcentral level of government are not subject to most of the TPP obligations. Similar to a negative list, Annex 17-D notes which obligations will not apply to each country's subcentral SOEs.⁹ Table 19.1 shows exemptions for subcentral SOEs in each of the 10 countries in the annex. Notably, Singapore and Brunei are not listed in this annex as they have few levels of subcentral government; therefore, TPP provisions would cover any subcentral SOE in those two countries. Malaysia, Mexico, and Vietnam are the only countries not subject to any transparency obligations for subcentral SOEs.

Current and future subcentral SOEs in the United States (e.g., the New York Port Authority and the New Jersey Turnpike Authority), like in most other TPP countries, are exempt from many of the provisions prohibiting subsidies and discrimination in purchases and sales. Specifically, US subcentral SOEs are exempt from the obligation that SOEs must purchase and sell based only on commercial considerations as well as nondiscrimination. Similarly, they are exempt from clauses prohibiting the use of subsidies that adversely affect production and sale of a like good, supply of a service in another TPP country, or the supply of a service in a territory outside of the TPP.

TPP negotiators missed an opportunity here. Many US multinationals complain that in countries like China, where subcentral SOEs are both large and prevalent, local government subsidies to local SOEs remain a big problem. While China is not a member of the TPP, it may well try to join one day, and it could demand similar exemptions. For foreign multinationals operating in current TPP members, however, subsidies to subcentral SOEs are less of a problem mainly because they are not great in number or size. While there is little to stop a TPP member from restructuring future SOEs at the subcentral level, and growing the state-owned sector in that manner, doing so may be more difficult than it sounds.

Subcentral SOEs in most TPP countries are still prohibited from receiving subsidies that cause *injury* to another country's domestic industry. This obligation ensures some protection from large subcentral SOEs that may be receiving assistance at home and undercutting the manufacturing industry of another country. One example of this behavior is when a firm "dumps" products into the market of another country, inhibiting the growth of the industry there.

Explicitly listing exemptions in the annex, however, may give the original TPP members an advantage when negotiating with prospective TPP members. Prospective members will have to basically start from zero, meaning they have to accept the entire text as is, where subcentral SOEs are still subject to the provision, and must negotiate any exceptions for subcentral SOEs one by one, which will likely make it difficult to negotiate broad exceptions. This is harder

9. The 10 countries listing exceptions in Annex 17-D are Australia, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, the United States, and Vietnam.

Table 19.1 Subcentral SOE exemptions

SOE obligation	Malaysia	Mexico	Japan	New Zealand	Canada	United States	Vietnam	Chile	Peru	Australia
Buys or sells a service or product with only commercial considerations	x	x	x	x	x	x	x	x	x	x
Makes purchases using national treatment	x	x	x	x	x	x	x	x	x	x
Sells according to national treatment	x	x	x	x	x	x	x	x	x	
Treats investors according to national treatment	x	x	x	x			x			
Designated monopolies act with commercial considerations	x	x	x	x	x	x		x	x	x
Designated monopolies treat others according to national treatment	x	x	x	x	x	x		x	x	x
Designated monopolies sell according to national treatment	x	x	x	x		x		x	x	x
Designated monopolies will not engage in anti-competitive practices	x	x	x	x		x		x	x	x
Domestic courts must have jurisdiction over SOEs										
Subcentral regulatory bodies must treat SOEs and private firms impartially	x				x	x	x			
Cannot use subsidies that cause adverse effects	x	x	x	x	x	x	x	x	x	x
SOEs cannot give subsidies to other SOEs that cause adverse effects	x	x	x	x	x	x	x	x	x	x

(table continues)

Table 19.1 Subcentral SOE exemptions *(continued)*

SOE obligation	Malaysia	Mexico	Japan	New Zealand	Canada	United States	Vietnam	Chile	Peru	Australia
Cannot give subsidies for goods production that cause injury to another country's domestic industry			x	x	x					
Transparency: Must make publicly available a list of all SOEs	x	x	x	x	x	x	x	x	x	x
Transparency: Must notify new or expanded designated monopolies	x	x					x			
Transparency: Upon request, must provide detailed information on specific SOEs	x	x					x			
Transparency: Must provide information on new policies or programs that provide subsidies	x	x			x		x			

x = exempt

Source: TPP Chapter 17, Annex 17-D.

on the prospective member than if the exceptions for subcentral SOEs were simply in the main chapter rather than in the annexes. All original members have to agree to accept new members into the TPP, making negotiations to secure many exemptions difficult, especially if the prospective member has a large state sector.

To address the notable holes left by subcentral exemptions in Annex 17-D, Annex 17-C calls for “further negotiations” within five years of entry into force to extend the disciplines to the activities of subcentral SOEs. Depending on how negotiations progress for new members at that time, the original members could look to bring in more disciplines for subcentral SOEs.

Exceptions and Nonconforming Measures

Besides the aforementioned exceptions for revenue threshold and disciplines for subcentral SOEs, a number of other entities are not subject to certain conditions. Article 17.9.1 and Annex IV exempt specified SOEs from obligations on nondiscriminatory treatment and commercial considerations and noncommercial assistance. Each country has an annex that lists the entity that undertakes the nonconforming measures (NCMs), as well as the obligations concerned, the scope of the exception, and if applicable, measures relevant to certain regulations.

Some NCMs are more significant than others. Singapore and noticeably Japan have no schedule for NCMs in Annex IV. Many of the NCMs for the other 10 countries include some exemptions in preferential treatment and subsidies for indigenous persons, national oil, gas, and electricity companies, as well as some development banks. For example, Malaysia has major exemptions for providing preferential treatment to the Bumiputera, or native Malay population, as well as its national oil and gas SOEs and some development banks. The United States has exemptions for Fannie Mae and Freddie Mac, or other mortgage financing institutions, as well as the Federal Financing Bank, a bank operating under the Treasury Department that provides financing to the federal government and the public. The United States also has an exemption for a national infrastructure bank, allowing it to provide financing at below market rates.

Vietnam has the most NCMs, although the exemptions don’t appear to be broad enough to cause major harm to other firms operating in Vietnam. For example, all SOEs are exempt from certain commitments on preferential treatment or subsidies, but most of the activities related to those exemptions include helping underdeveloped areas and small and medium-sized enterprises (SMEs) and providing financing for restructuring to SOEs as long as it does not lead to a significant advantage in the market. Other NCMs relate to oil, electricity, or mineral SOEs and to several development banks.

China's Potential Entry into the TPP

Both Japanese prime minister Shinzo Abe and US president Barack Obama have alluded to China's possibly joining the TPP in the future, and indeed there have been calls within China to study what China would have to do to join the agreement. To be sure, China would face hurdles in any potential application to join the TPP, namely accepting disciplines on labor (free association), data flows, SOEs, and opening the service sector to more foreign direct investment. But the disciplines in the TPP also match some of the domestic reforms China is looking to implement—in SOEs in particular. To improve the efficiency of SOEs, China should introduce more competition into the market that they operate in, as well as reduce some of unfair advantages that SOEs enjoy over private firms.

To be clear, any real prospect of China joining the TPP would come many years down the line, and the application process would be difficult. China would start from a tough negotiating position on SOEs, and given the strength of the vested interests there, it will be a wide canyon to cross to come to an agreement on such strict disciplines for SOEs. Moreover, China would likely demand similar exemptions to its subcentral SOEs. China's SOEs earned nearly \$6 trillion in the first 10 months of 2015.¹⁰ Centrally owned SOEs accounted for \$3.5 trillion, and subcentral SOEs made up over \$2 trillion, or 40 percent. Thus the subcentral SOEs in China are formidable and currently contribute to the uneven business environment there, to the chagrin of private firms.

It's possible that the size and number of subcentral SOEs in China, nearly 100,000 as of 2012, would prompt some TPP members to insist on imposing more disciplines for them regarding the use of subsidies and nondiscrimination.¹¹ Additionally, China would push for a long list of NCMs, whereas all the current members have a relatively short list of enterprises with exemptions. As all current members would have to agree to allow new members in, any country could block entry and hold out for stronger disciplines.

The United States, however, will likely push for China to adhere to stricter rules and disciplines on transparency as well as to accept more commitments by China's subcentral SOEs. As the United States Trade Representative (USTR 2014) noted, China “continues to provide injurious subsidies to its domestic industries, and some of these subsidies appear to be prohibited under WTO rules.” Similarly, USTR noted that China submitted its first subsidies notification to the WTO in 2006, nearly five years late and “notably incomplete.” China's history of incomplete and late notices will provide significant impetus

10. “2015年1-10月全国国有及国有控股企业经济运行情况”[Nonfinancial SOEs], Chinese Ministry of Finance, November 23, 2015, http://qys.mof.gov.cn/zhengwuxinxi/qiyeyunxing-dongtai/201511/t20151120_1574607.html (accessed on December 2, 2015).

11. Data from OECD Database on National Practices and Regulations with Respect to State Enterprises, <http://qdd.oecd.org/subject.aspx?Subject=8F22EF7D-B780-4570-A4B1-7E0CB3AD7E04>.

to business organizations and members of Congress to push the US government for binding provisions to ensure that China follows the rules of the TPP.

China and the United States are currently negotiating a bilateral investment treaty (BIT), and the United States will likely pursue disciplines on SOEs at least somewhat close to what was achieved in the TPP. If the United States and China can agree on the BIT, it could represent an incremental step toward China meeting the SOE obligations in the TPP. However, the BIT talks have been stuck in the mud for some time and are unlikely to conclude before President Obama leaves office. But the progress of the BIT negotiations can be seen as a test case for China's appetite to move closer to the TPP standards.

Conclusion

The TPP commitments on SOEs aim to dramatically reduce the unfair advantages SOEs enjoy. The fact that the chapter is subject to the dispute settlement chapter should discourage serious violations, as the threat of trade sanctions looms for violators. This threat may have more teeth than that for violations in other international agreements in regards to obligations on SOEs simply because of the well-defined definitions and obligations and the better enforcement provisions. The dispute settlement process in the TPP will be much more limited in the amount of time a case can take than, for example, the dispute settlement process in the WTO, and can prevent defending parties from dragging out the process. The ability of governments to assist SOEs will now be limited, due to obligations forbidding subsidies and discrimination that harm other TPP firms. These obligations should help level the playing field for firms competing with SOEs from TPP countries in, and outside, the TPP market, as subsidies to SOEs for goods that adversely affect firms from a TPP party, anywhere in the world, are also forbidden. Similarly, firms engaging in business with SOEs will likely be treated more fairly when buying or selling goods or services to SOEs. The clause limiting SOEs to commercial considerations is stronger than in previous agreements and will make violations easier to prosecute.

The groundbreaking commitments on transparency set a new standard for agreements in the future. All TPP members will have a list of each other's SOEs, but more importantly, they can request additional information at any time. To be sure, compliance and implementation of these obligations at the beginning of the agreement will be key, and TPP members will have to be diligent in ensuring that their partners implement the obligations fairly.

One concern is that the exceptions for subcentral SOEs, the revenue threshold of \$280 million, and the nonconforming measures could significantly water down the commitments. But most TPP members have few subcentral SOEs and the NCMs are fairly limited in scope. The revenue threshold does provide a window for smaller SOEs; however, if the subsidies they receive allow them to grow quickly, they will eventually be over the threshold and, therefore, subject to the commitments. That said, one troublesome area is subcentral

SOEs in Vietnam, which number around 1,500. But with the total value of subcentral SOEs at \$10 billion and average value of \$650,000, they remain well below the threshold.

The TPP sets a solid foundation for expanded SOE disciplines, but there is room for improvement. Indeed, the text calls for further negotiations: Within five years the parties must reconvene to consider extending the commitments on subcentral SOEs. The further negotiations also apply to the disciplines on noncommercial assistance and adverse effects, as well as to the effects of SOEs that supply services outside their domestic market. While the TPP made progress in restricting harmful subsidies provided to SOEs for goods manufacturing, members will also look to expand the obligations on services supplied by SOEs.

Overall, the TPP's SOE commitments went beyond those previously agreed to in international agreements, and they have provided a good foundation for the rules governing SOE behavior well into the future.

References

- Bergsten, C. Fred, Gary Hufbauer, and Sean Miner. 2014. *Bridging the Pacific: Toward Free Trade and Investment between China and the United States*. Washington: Peterson Institute for International Economics.
- USTR (United States Trade Representative). 2014. *2014 Report to Congress on China's WTO Compliance* (December). Washington. Available at <https://ustr.gov/sites/default/files/2014-Report-to-Congress-Final.pdf>.