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State-Owned Enterprises (SOEs)

The Trans-Pacific Partnership (TPP) levels the playing field for American workers and American businesses, leading to more Made-in-America exports and more higher-paying American jobs here at home. By cutting over 18,000 taxes different countries put on Made-in-America products, TPP makes sure our farmers, ranchers, manufacturers, service suppliers, and small businesses can compete—and win—in some of the fastest growing markets in the world. With more than 95 percent of the world’s consumers living outside our borders, TPP will significantly expand the export of Made-in-America goods and services and support American jobs.

EXECUTIVE SUMMARY

TPP’s State-Owned Enterprise (SOE) chapter ensures that businesses, regardless of ownership, compete fairly through enforceable rules to ensure that foreign-owned SOEs compete on the basis of quality and price, not on the basis of discriminatory regulation, subsidies, or favoritism. This will en-

sure that their trade and investment activities do not place private American businesses and their workers at a disadvantage.

CHAPTER OVERVIEW

Coverage

TPP's State-Owned Enterprise chapter provides broad coverage of SOEs that are principally engaged in commercial activity. At the same time, to avoid an outcome in which a government could easily evade its obligations by delegating its authority to an SOE, it includes rules requiring SOEs that operate under delegated authority to abide by the obligations of the TPP Agreement.

Commercial considerations and non-discriminatory treatment

The SOE chapter includes commitments by TPP Parties to ensure that their SOEs make commercial purchases and sales on the basis of commercial considerations, except when doing so would be inconsistent with any mandate under which an SOE is operating that would require it to provide public services. TPP governments also agree to ensure that their SOEs or designated monopolies do not discriminate against the enterprises, goods, and services of other Parties.

Immunity and impartial regulation

The SOE chapter includes obligations requiring TPP countries to provide their courts with jurisdiction over commercial activities of foreign SOEs so that a foreign SOE operating in a TPP country could not evade legal action regarding its commercial activities merely by claiming sovereign immunity. At the same time, it includes rules requiring Parties to ensure that administrative bodies regulating both SOEs and private companies do so in an impartial manner and do not use their regulatory authority to provide preferential treatment to their SOEs.

Non-commercial assistance

The SOE chapter ensures that, in providing any non-commercial assistance to SOEs, TPP Parties agree to not cause adverse effects to the interests of other TPP Parties. This includes a commitment from TPP Parties to not

cause injury to another Party's domestic industry by providing non-commercial assistance to a SOE that produces and sells goods in the territory of another Party.

Transparency

Having access to information about the SOEs of the TPP Parties and their activities is critical to ensuring the outcomes we hope to achieve through this chapter. Toward this end, the chapter requires TPP Parties to share a list of their SOEs with the other TPP countries and provide, upon request, additional information about the extent of government ownership or control and the non-commercial assistance they provide to SOEs.

Exceptions

The chapter establishes exceptions to the commitments on SOEs. For example, nothing in this chapter would prevent a Party from taking prudential measures or other measures to respond temporarily to an economic emergency.

Dispute settlement

SOE rules are fully enforceable, subject to State-to-State dispute settlement. Investor-state dispute settlement does not apply to the SOE rules.

Annexes

In addition to the exceptions that apply to all Parties, a set of country-specific Annexes define narrowly-tailored and country-specific exceptions to specific obligations as well as transition periods to provide certain countries additional time to meet the obligations of the chapter.

NEW FEATURES

TPP goes beyond previous agreements in addressing the distortions SOEs can cause in the market. It is the first Free Trade Agreement (FTA) to seek to address comprehensively the commercial activities of SOEs that compete with private companies in international trade and investment. Most of the key elements in the SOE chapter are new, and we expect them to blaze the trail for work on this issue throughout the Asia-Pacific region. The chapter's commitments build on principles in the World Trade Organization (WTO)

and on previous U.S. FTAs, but go beyond them in important ways, including by applying subsidies rules to services exports of SOEs and to the operations of SOE manufacturers outside their home territory. The TPP Agreement also broadens and strengthens non-discrimination rules to apply to all commercial purchases and sales of SOEs wherever they operate in the TPP trade area.

IMPACT

SOEs have grown rapidly as actors in global trade, in cross-border investment, and in major American export markets over the past decade. Whereas in 2000, there was only one SOE in the Fortune Global 50 list of the largest companies in the world, now there are close to a dozen. Their international activity has raised new concerns about government influence, potential trade distortions, and unfair competition. In addition, some TPP countries that maintain many SOEs are already considering reforms to enhance the efficiency and productivity of their economies.

SOEs exist in all TPP countries, are used for different purposes, and are regulated and managed in widely varying ways. Some SOEs provide public services, but other times, extensive government participation in economies through SOEs can distort competition to the detriment of private American firms and their workers. This can occur through SOEs that receive advantages from governments, such as preferential financing, including through State-owned banks; provision of goods or services from the government or from other SOEs at preferential prices or free of charge; direct subsidies and debt forgiveness, or other preferences. These preferences can tilt the playing field in favor of SOEs and against U.S. workers and businesses. Even where enforcement against SOEs in foreign markets has been pursued for anti-competitive behavior or other unlawful behavior, commercial SOEs have avoided prosecution by claiming sovereign immunity.

Concerns about the role of SOEs have grown in recent years because SOEs that had previously operated almost exclusively within their own territories are increasingly engaged in international trade of goods and services or acting as investors in foreign markets. Their coverage in a specific TPP chapter is a new feature in U.S. trade agreements that will help us address emerging concerns, including financing and subsidization of SOEs involved in exporting, domestic competition for business and contracts; and regulatory policies which, by design or because of lack of transparency, create inherent advantages for SOEs favored by home governments. At the same time, TPP recognizes, defines, and ensures legitimate roles for SOEs in

provision of public services.

