



# Disseminating TPP SOE Chapter through New Japan-US Economic Cooperation Framework

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# Competitive Neutrality and SOEs \*

\*= “SOEs” (state owned enterprises) include designated monopoly

- Concern about “level playing field” and the rise of state capitalism (e.g., BRICs)
- Source of SOEs’ unfair competitiveness
  - Governmental assistance for SOEs

Outright subsidization	Monopolies and advantages of incumbency
Captive equity	Concessionary financing and guarantees
Exemption from bankruptcy rules	Other preferential treatment (regulatory regimes, public procurement, information asymmetries, etc.)

(Capobianco & Christiansen, 2011)

- Lack of stringent corporate governance in SOEs

# SOEs in Notable Recent Developments

Issue	Role and presence of SOEs
Overcapacity in China	<ul style="list-style-type: none"> <li>• Steel:               <ul style="list-style-type: none"> <li>– About 50% of the Chinese companies are SOEs, four of which are ranked in the world’s top 10 largest steel producers</li> <li>– SOEs in the sector are used as a vehicle to pursue governmental policies (e.g. Unreasonable discrimination between several steel merger cases)</li> </ul> </li> <li>• Aluminum:               <ul style="list-style-type: none"> <li>– SOEs account for more than 50% of the total primary aluminum output in China, several of which are top individual producers worldwide</li> <li>– Chinese Government intervenes in the SOEs (e.g. Strengthen control by Communist Party cells within an SOE) (European Commission, 2017)</li> </ul> </li> </ul>
“Made in China 2025” (中国製造2025)	<ul style="list-style-type: none"> <li>• Chinese Government obligates local SOEs to channel subsidies and investments to MIC 2025 projects</li> <li>• Chinese Government enhances consolidation of SOEs in several strategic sectors by support measures to build up their global competence and dominance (US Chamber of Commerce, 2017)</li> </ul>
“One Road, One Belt” (一帶一路)	<ul style="list-style-type: none"> <li>• SOEs play a key role in investment in infrastructure in the Belt and Road economies. (Du &amp; Zhang, 2017)</li> </ul>

# International Regulatory Frameworks on SOEs – Trade and Investment

		Applicable, but not specific to nor directly regulating SOEs	Specific to and directly regulating SOEs
Binding	Multilateral	<ul style="list-style-type: none"> <li>➤ WTO Agreement               <ul style="list-style-type: none"> <li>• GATT</li> <li>• SCM Agreement</li> <li>• AD Agreement</li> <li>• GATS</li> <li>• GPA 2014</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>➤ WTO Agreement               <ul style="list-style-type: none"> <li>• GATT (arts.17)</li> </ul> </li> </ul>
	Plurilateral/ Bilateral	<ul style="list-style-type: none"> <li>➤ FTA/EPA</li> <li>➤ TPP</li> <li>➤ BIT</li> </ul>	<ul style="list-style-type: none"> <li>➤ FTA/EPA (SOE/competition chapter)</li> <li>➤ <b>TPP Ch.17</b></li> </ul>
Non-binding /Cooperative	Multilateral		<ul style="list-style-type: none"> <li>➤ OECD 2015 SOE Corporate Governance Guideline</li> <li>➤ IMF Santiago Principle</li> </ul>
	Plurilateral/ Bilateral		



# What is Missing or Insufficient in the Current Rules?

- Most rules control SOEs only indirectly: Attribution to an owner state is required
  - Trade: *US-AD & CVD* (DS379) (SCM1.1(a)(i)) / *Canada-FIT* (DS412/426)(GATT3.4)
  - Investment: *Maffezini v. Spain* (Jurisdiction) / TPP 9.2.2(b)
- No subsidy rules in service trade, foreign investment, and business in foreign jurisdiction
- Partly non-binding/non-enforceable (IMF/OECD guidelines)
- Other residual issues
  - Transparency
  - Governmental ownership



# TPP Ch.17: Core Obligations Filling the Regulatory Lacuna

- Non-discrimination and commercial consideration
  - NT and MFN in selling/purchasing by SOEs (TPP17.4)
- Restrict non-commercial assistance causing adverse effects or injury (TPP17.6-17.8)
  - Broader sectoral coverage than WTO: trade in goods and services, provision of goods through direct investment
- Transparency (TPP17.10)
  - Publish a list of SOEs
  - Provide information on a specific SOE and non-commercial assistance programs



# TPP Ch.17: But Still Insufficient...

- Narrow definition of SOEs
  - More than 50% of capital, shares, or board members
  - SWFs and sub-national SOEs are in principle excluded
- Limited coverage and broad exception
  - Variety of activities entirely or partly outside of scope (*e.g.*, trade finance, public services, temporary measures responding to an economic emergency, domestic provision of services, etc.)
  - Party-specific list of exceptions (Annex IV)
- Failure to address important issues such as...
  - Regulatory preferences
  - Government ownership and involvement
  - Corporate governance, etc.



# Japan's Strategies to Disseminate TPP-equivalent SOE Rules

- Disseminate TPP-equivalent rules through its FTA negotiation
    - Japan-EU EPA: Successfully introducing high-standard SOE rules comparable to those of TPP
    - CPTPP (“TPP11”): Prompt entry into force is essential  
>>> Concluded on Jan. 23 at Tokyo, and scheduled to be signed on Mar. 8 in Chile
    - RCEP: No major achievement expected
  - Cooperative and managerial approach in APEC
    - Support Vietnam's initiative to internalize OECD 2015 Guidelines, and share best practices at Economic Committee in August 2017
  - Close cooperation with US in rule-making and enforcement
- ...to be continued to next slide





# Japan-US Cooperation – Framework

- Japan-US Economic Dialogue, 2<sup>nd</sup> Round (Oct 16, 2017) by D.P.M. Taro Aso & V.P. Mike Pence

“Technical-level work is underway that is to (1) result in more effective enforcement activities against unfair trade practices by third countries, as well as (2) identify new areas of common interest for promoting high trade and investment standards.”

“The United States and Japan are coordinating on specific sectors to promote economic benefits and job creation in both countries. These focus on ...dialogues that develop shared strategies to level the global playing field for businesses....”



# Japan-US Cooperation – Framework (cont.)

- Japan-US Summit Meeting (Nov. 6, 2017) by P.M. Shinzo Abe & President Donald Trump

“The two leaders welcomed that Deputy Prime Minister Aso and Vice President Pence confirmed the importance of strengthening bilateral economic, trade and investment ties at the second round of the Japan-U.S. Economic Dialogue held on October 16. They shared the view that both countries intend to take the initiative to establish high-standard trade and investment rules, advance cooperation on enforcement of unfair trade practices in third countries....”



# Japan-US Cooperation–Rulemaking

- Discussion aiming to TPP-plus template
  - >>> Prospective issues are...
    - Broader definition and coverage focusing on governmental control (*cf.* US-SIN FTA, NAFTA renegotiation)
    - List of prohibited assistance (*cf.* Japan-EU EPA)
    - Higher level of transparency
    - Structural issues
      - Corporate governance (*e.g.*, Japan-EU EPA, EU-VN FTA)
      - Government ownership and involvement (US-SIN FTA)
      - Privatization, etc.



# Japan-US Cooperation–Rulemaking (cont.)

- Multilateral fora: WTO, G20, OECD
  - Conclusion of policy recommendations at Global Forum on Steel Excess Capacity >>> Japan-US should take a leading role in implementation
  - Joint Statement at WTO MC 11: Good start of plurilateral talks among like-minded Members

“We shared the view that severe excess capacity in key sectors exacerbated by government-financed and supported capacity expansion, unfair competitive conditions caused by large market-distorting subsidies and state owned enterprises...are serious concerns for the proper functioning of international trade....”



# Japan-US Cooperation–Enforcement

- WTO dispute settlement
  - Abundant case law relating to SOEs in WTO: *e.g.*, *Canada–FIT* (DS413/426), *US–AD&CVD* (DS379)
  - Align legal claims/arguments they make as co-complainants or third parties
  - Share information in the course of investigation under 1974 Trade Act § 301
  - Touchstone cases: *China–Aluminum Subsidies* (DS519), *US–Price Comparison Methodologies* (DS515), *China–Aircraft* (DS501)
- Trade remedies (ADD, CVD)
  - Concerted investigation/imposition (*cf.* PET resin)
  - Information sharing on SOE-related unfair practices
  - Technical assistance (METI-USDOC/USITC annual seminar in Tokyo)



Thank you for your attention

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