

# TRADE AGREEMENTS' NEW FRONTIER— REGULATION OF STATE-OWNED ENTERPRISES AND OUTSTANDING SYSTEMIC CHALLENGES

*Jaemin Lee\**

## ABSTRACT

*The TPP (CPTPP) contains a new chapter on State-Owned Enterprises (hereinafter “SOEs”) which sets forth detailed provisions to regulate a wide range of activities of SOEs and governments’ activities relating to SOEs. Given the increasing global attention to the operation of SOEs and the significant influence exerted by SOEs on international trade, the new chapter of the mega-FTA arguably provides important guidance and a useful platform for future discussions for new trade norms concerning SOEs. While offering a first stride in the right direction, the new chapter also includes ambiguities and uncertainties as regards key concepts and principles that could potentially render full implementation by contracting parties difficult and elusive. The chapter also contains provisions that would arguably lead to complex and controversial*

---

\* Professor of Law, School of Law, Seoul National University, Seoul, Korea. The author can be reached at: jaemin@snu.ac.kr. The core argument of this article was presented at the international conference entitled *Age of Mega-Regionals: TPP & Regulatory Autonomy in IEL*, organized by Global Economic Law Network of Melbourne Law School, University of Melbourne, on May 19-20, 2016. The author would like to thank the organizers of and participants in the conference for their valuable comments and suggestions. The author also would like to thank the comments and suggestions from the anonymous reviewers which has helped the author clarify and elaborate the themes in the right direction. This article was funded by the 2019 Research Fund of the Seoul National University Asia-Pacific Law Institute, donated by Seoul National University Law Foundation.

*analyses of market indicia in a way that has not been conducted or tested in existing WTO Agreements or FTAs. Should proper opportunities arise, key provisions of the TPP SOE Chapter merit more in-depth discussion for elaboration and clarification, and more importantly, for consistency with existing norms of international trade. Regardless of the future of the TPP, these discussions will help develop new norms to regulate SOEs in other trade agreements in future negotiations.*

**KEYWORDS:** *state-owned enterprises, TPP, CPTPP, SCM Agreement, non-commercial assistance, commercial activities, competition neutrality*