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Reforming WTO Rules on State-Owned Enterprises

In the Context of SOEs Receiving Various Advantages

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Preface

The purpose of this book is to make proposals to the World Trade Organization (WTO) rules to address the problem of granting advantages to state-owned enterprises (SOEs). SOEs tend to receive various advantages, including financial advantages, monopolies and exclusive rights, regulatory advantages, and so on, leading to economic concerns. The problem is typical in the context of China. However, current WTO rules are not sufficient to address the problem of SOEs receiving various advantages.

The book makes recommendations to improve them. It makes three types of proposals, i.e., trade remedy proposals, trade rule proposals, and competition rule proposals. It assesses these proposals in terms of the possibility of implementing them, particularly the political willingness of WTO members to accept these proposals. Lastly, the book lays out the framework for the competition rule proposals.

Beijing, China Yingying Wu

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Introduction

State-owned enterprises (SOEs) have become a focal issue in discussions worldwide, both academically and practically recently. SOEs' engagement in international markets, particularly with respect to trade and investment, cannot be ignored. SOEs from emerging countries are more active in global markets than decades ago. Concerns have arisen about the level playing field between SOEs and private-owned enterprises (POEs) as regards to many advantages received by SOEs and the relationship between SOEs and governments. SOEs' behavior and their receipt of advantages may negatively affect the market; against this background, the book focuses on the problems of SOEs receiving from governments various advantages, i.e., financial advantages, monopolies and exclusive rights, and regulatory advantages. It then explores ways to solve the problems within the WTO framework by making recommendations, after analyzing the inadequacy of the WTO rules in this regard.

Chapter 1 examines the global presence of SOEs, broadly describes the problem to be addressed—the various advantages granted to SOEs—and explains why it is a problem from a historical and an economic perspective. First, the chapter offers a general overview of the presence of state capitalism globally and the various advantages granted to SOEs, including financial advantages, monopolies and exclusive rights, regulatory advantages, and other advantages. It then identifies SOEs' international activities and points to the fact that SOEs are becoming more involved in international trade. To the extent that SOEs receive advantages from their governments, SOEs' behavior will affect their competitors, i.e., POEs, in the markets. Hence, associated concerns have arisen in the international community in this regard, both politically and economically. Second, in order to have a big picture, the chapter provides a narrative about the role of SOEs from a historical perspective. It traces the history of SOEs in the world economy and explains how the grant of advantages to SOEs has been perceived as more problematic over time. It addresses why the presence of SOEs and grants of various advantages to them, which helped expand foreign markets before the nineteenth century, were not perceived as problematic. It also highlights the reason why the presence of SOEs and grants of advantages to them have been gradually perceived as more problematic in light of interdependence and globalization since the Industrial Revolution. A brief narrative is given about regional and historical reaction and responses to the problem of SOEs receiving advantages, such as privatization and regulations in the early GATT and EU. Third, the chapter offers an explanation why the existence of SOEs and their receipt of advantages are problematic from an economic perspective. It goes through different economic theories underlying international trade and explains how grants of advantages to SOEs threaten to prevent the achievement of the gains that those theories predict would result from international trade. To that end, Chap. 1 outlines the problem to be addressed and explains why it is a problem from a historical and economic perspective.

Chapter 2 considers the extent, nature, and effect of advantages granted to SOEs by looking at the problem of SOEs in the context of China. First, the chapter begins with a general overview of the presence of SOEs in China and then looks at the extent to which SOEs are present in several industries that are considered as key industries, such as the coal, civil aviation, petroleum and petrochemical, shipping building, telecommunications, automotive, steel, nonferrous metals, machinery and equipment, and information technology sectors. In particular, it considers the extent to which Chinese SOEs get various advantages from the Chinese Government in the above industries and sectors. Second, the chapter describes the nature of the advantages granted to SOEs in China by pointing out that SOEs are givers of advantages, such as capital and inputs. It also describes the nature of financial advantages, the nature of advantages of monopolies and exclusive rights, and the nature of regulatory advantages in favor of SOEs. Third, it lays out the trade effects of advantages granted to Chinese SOEs. In particular, it considers the importance of the facts that China is a large trader and that Chinese SOEs play a significant role in international trade. This has caused concern at the international level regarding the grants of advantages and the behavior of SOEs. Last, the chapter explains why there is little domestic incentive in China to deal with the problems from the perspectives of political economy theory, history, and ideology. Hence, the chapter addresses the problem in the context of China and highlights the need of having international rules to deal with the problems.

Chapter 3 outlines the existing WTO rules addressing the problem and their weaknesses from a normative perspective. First, the chapter identifies the current WTO rules that are relevant to address the various advantages granted to SOEs and special rules that are applicable to China. Second, it explores potential ways to maximize existing WTO rules in order to solve the problem. Unfortunately, each potential way within the current WTO framework has weaknesses. The chapter addresses (i) the deficiency of rules regarding financial advantages granted to SOEs, such as the problem of SOEs giving advantages to other SOEs, the problem of upstream subsidies in the context of Chinese SOEs, privatization of SOEs, and the elements of “specificity” and “benchmark prices” for the situation of SOEs; (ii) the deficiency of rules regarding advantages of monopolies and exclusive rights granted to SOEs in which the WTO allows the grants of monopolies and exclusive rights, and the regulation of the behavior of SOEs with monopolies or exclusive rights is inadequate in respect of discriminatory behavior, behavior not based on commercial considerations, and anti-competitive behavior; and (iii) the inadequacy in rules regarding regulatory advantages granted to SOEs in light of the distinction between regulations and subsidies. Hence, the chapter points out the deficiency of existing WTO rules dealing with the problems, i.e., some issues that are not caught or disciplined by these rules.

Chapter 4 puts forth proposals for WTO rules to address the problems and the assessments of these proposals. First, proposals will be made, respectively, regarding the structure of separating rules disciplining SOEs receiving advantages from those that discipline POEs receiving advantages and the coverage of rules applicable to trade in goods, trade in services, and trade-related investment. Three kinds of suggestions will be made: one is the trade remedy suggestion, one is the other trade rule suggestion, and the last one is the competition law element suggestion.

The trade remedy approach considers solving the problems in the context of trade remedies, such as rules and agreements about subsidies and countervailing duties under the WTO. The trade rule approach prefers to address the problems, particularly monopolies and exclusive rights granted to SOEs in the context of state trading, such as rules and agreements about state trading under the WTO. The competition rule approach looks at the problems from the competition perspective and proposes to introduce competition rules-like into the WTO.

Chapter 5 tries to assess the possibilities of these proposals from the perspective of the WTO in general as an appropriate forum to implement proposals. In other words, the chapter tries to find out whether the WTO has the capacity to adopt proposals dealing with state ownership, regulation of monopolies or exclusive rights, embodiment of competition rules, etc. It also analyzes the deficiency and difficulties of other forums, such as bilateral investment agreements or free trade agreements, in addressing the problems. In addition to that, the chapter assesses the possibility of applying practically technical ways to embrace these proposals, such as through aggressive interpretation of current WTO rules, through revising current WTO rules, or through negotiating a new set of rules. Last, the political willingness of WTO members to accept those proposals is significantly important, particularly those nations with a presence of many SOEs. Among many things, the idea of trade-offs is explored to find out whether nations with a presence of many SOEs are willing to subject their SOEs to rules under the WTO in exchange for broader access to foreign and world markets such as in the field of investment. To that end, an explanation will be offered toward why a balanced competition rule proposal is preferred, and a framework of the proposal will be outlined.

Throughout the book, the essential methodological approach is the doctrinal approach in analyzing the deficiency of current WTO rules in addressing the problems identified, especially through case analysis. In analyzing why grants of advantages to SOEs are problematic, the historical approach as well as the economic approach is applied. In describing the presence of Chinese SOEs and the extent of advantages they get from the Chinese Government, empirical method is used to collect information through looking at annual reports from 2007 to 2014 of top Chinese SOEs which are publicly traded on stock exchanges in ten industries. The comparative approach is also used in recommending proposals in light of the European Union rules and the Trans-Pacific Partnership Agreement.

The scope of this book is related to its premise, which is that the existence of SOEs per se is not the essential problem, rather, the underlying problems are (i) the disproportionate granting of advantages to SOEs as compared to POEs and (ii) the behavior of SOEs to the extent that they receive advantages. To that end, the book doesn't challenge the establishment and existence of SOEs. In addition, by focusing only on certain advantages as far as SOEs are concerned, political resistance from countries with significant presence of SOEs can be reduced. This book only addresses those SOEs that produce goods or services rather than sovereign wealth funds nor SOEs that merely made investment.

Contents

Table of Cases

Panel Report on *EEC—Programmes of Minimum Import Prices, Licences and Surety Deposits for Certain Processed Fruits and Vegetables (EEC—Minimum Import Prices)*, L/4687, Oct. 18, 1978, BISD 25S/68.

GATT Panel Report, *Japan—Trade in Semi-Conductors*, L/6309, May 4, 1988, BISD 35S/116.

GATT Panel Report, *Canada—Administration of the Foreign Investment Review Act (Canada-FIRA)*, L/5504, Feb. 7, 1984, BISD 30S/140.

GATT Panel Report, *Canada—Import, Distribution and Sale of Alcoholic Drinks by Canadian Provincial Marketing Agencies (Canada—Provincial Liquor Boards (EEC)),* L/6304, March 22, 1988, BISD 35S/37.

GATT Panel Report, *Canada—Import, Distribution and Sale of Certain Alcoholic Drinks by Provincial Marketing Agencies (Canada—Provincial Liquor Boards (US))*, DS17/R, Feb. 18, 1992, BISD 39S/27.

GATT Panel Report, *Belgian Family Allowances*, G/32, adopted 7 November 1952, BISD 1S/59.

GATT Panel Report, *Japan—Restrictions on Imports of Certain Agricultural Products*, L/6253, 2 March 2, 1988, BISD 35S/163.

GATT Panel Report, *Republic of Korea—Restrictions on Imports of Beef—Complaint by the United States (Korea-Beef (US)),* L/6503, Nov. 7, 1989, BISD 36S/268.

Appellate Body Report, Japan–*Countervailing Duties on Dynamic Random Access Memories from Korea (Japan-DRAMs (Korea))*, WT/DS336/AB/R, Nov. 28, 2007.

Panel Report, *Canada—Measures Affecting the Export of Civilian Aircraft (Canada—Aircraft),* WT/DS70/R, Apr. 14, 1999.

Appellate Body Report, *Brazil—Export Financing Programme for Aircraft* (*Brazil-Aircraft)*, WT/DS46/AB/R, Aug. 2, 1999.

Panel Report, *Brazil—Export Financing Programme for Aircraft* (*Brazil-Aircraft)*, WT/DS46/R, Apr. 14, 1999.

Appellate Body Report, *China—Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum (China- Rare Earths)*, WT/DS431/AB/R, Aug. 7, 2014.

Appellate Body Report, *United States—Subsidies on Upland Cotton (US—Upland Cotton)*, WT/DS267/AB/R, Mar. 3, 2005.

Panel Report, *United States-Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors from Kore*a *(US—Countervailing Duty Investigation on DRAMs)*, WT/DS296/R, Feb. 21, 2005.

Appellate Body Report, *United States-Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors from Korea (US—Countervailing Duty Investigation on DRAMs)*, WT/DS296/AB, June 27, 2005.

Panel Report, *United States—Measures Treating Export Restraints as Subsidies (US-Export Restraints)*, WT/DS194/R, May 19, 2000.

Appellate Body Report, *United States—Measures Treating Export Restraints as Subsidies (US-Export Restraints)*, WT/DS194/R, June 29, 2001.

Panel Report, *China—Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products (China—Publications and Audiovisual Products),* WT/DS363/R, Aug. 12, 2009.

Appellate Body Report, *China—Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products (China—Publications and Audiovisual Products),* WT/DS363/AB/R, Dec. 21, 2009.

Panel Reports, *Korea—Measures Affecting Imports of Fresh, Chilled and Frozen Beef* (*Korea –Various Measures on Beef*), WT/DS161/R, WT/DS169/R, July 31, 2000.

Appellate Body Report, *Korea—Measures Affecting Imports of Fresh, Chilled and Frozen Beef* (*Korea –Various Measures on Beef*), WT/DS161/AB/R, WT/DS169/AB/R, Dec. 11, 2000.

Panel Report, *European Communities—Measures Affecting Trade in Large Civil Aircraft (EC and certain member States—Large Civil Aircraft),* WT/DS316/R, June 30, 2010.

Appellate Body Report, *European Communities—Measures Affecting Trade in Large Civil Aircraft (EC and certain member States—Large Civil Aircraft),* WT/DS316/AB/R, May 18, 2011.

Panel Report, *United States—Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom (US—Lead and Bismuth II*, WT/DS138/R), Dec. 23, 1999.

Appellate Body Report, *United States—Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom* (*US—Lead and Bismuth II)*, WT/DS138/AB/R, May 10, 2000.

Panel Report, *United States—Countervailing Measures Concerning Certain Products from the European Communities (US—Countervailing Measures on Certain EC Products)*, WT/DS212/R, July 31, 2002.

Appellate Body Report, *United States—Countervailing Measures Concerning Certain Products from the European Communities (US—Countervailing Measures on Certain EC Products)*, WT/DS212/AB/R, Dec. 9, 2002.

Panel Report, United States—Preliminary Determinations with Respect to Certain Softwood Lumber from Canada (*US—Softwood Lumber III)*, WT/DS236/R, Sept. 27, 2002. (no AB, but mutually agreed solution on 12 Oct. 2006)

Appellate Body Report, United States—*Final Countervailing Duty Determination with respect to certain Softwood Lumber from Canada (US-Softwood Lumber IV*), WT/DS257/AB/R, Jan. 19, 2004.

The Appellate Body Report, *Canada—Measures Relating to Exports of Wheat and Treatment of Imported Grain (Canada—Wheat Exports and Grain Imports),* WT/DS276/AB/R, Aug. 30, 2004.

The Panel Report, *Canada—Measures Relating to Exports of Wheat and Treatment of Imported Grain (Canada—Wheat Exports and Grain Imports),* WT/DS276/R, Apr. 6, 2004.

Panel Report, *Korea—Measures Affecting Trade in Commercial Vessels (Korea-Commercial Vessels)*, WT/DS273/R, Mar. 7, 2005.

Panel Report, *United State definitive anti-dumping and countervailing duties on certain products from China (US-Anti-Dumping and Countervailing Duties (China))*, WT/DS379/R, Oct. 22, 2010.

Appellate Body Report, *United State definitive anti-dumping and countervailing duties on certain products from China (US-Anti-Dumping and Countervailing Duties (China))*, WT/DS379/AB/R, Mar. 11, 2011.

Panel Report, *China—Measures Related to the Exportation of Various Raw Materials (China—Raw Materials),* WT/DS394/R, WT/DS395/R, WT/DS398/R, July 5, 2011.

Appellate Body Report, *China—Measures Related to the Exportation of Various Raw Materials (China—Raw Materials),* WT/DS394/AB/R, WT/DS395/AB/R, WT/DS398/AB/R, Jan. 30, 2012.

Appellate Body Report, *United States—Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products From India (US—Carbon Steel (India))*, WT/DS436/AB/R, Dec. 8, 2014.

Panel Report, *United States—Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (US—Carbon Steel (India))*, WT/DS436/R, July 14, 2014.

Panel Report, *United States-Countervailing Duty Measures on Certain Products from China (US Countervailing Measures (China)),* WT/DS437/R, July 14, 2014.

Appellate Body Report, *United States-Countervailing Duty Measures on Certain Products from China (US Countervailing Measures (China)),* WT/DS437/AB/R, Dec. 18, 2014.

Panel Report, *China—Certain Measures Affecting Electronic Payment Services (China-Electronic Payment Services)*, WT/DS413/R, July 16, 2012. (no AB report).

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Appellate Body Report, *Mexico—Measures Affecting Telecommunications Services (Mexico—Telecoms),* WT/DS204/AB/R, Apr. 2, 2004.

Panel Report, *EU—Anti-dumping measures on Biodiesel from Argentina (EU-Biodiesel)*, WT/DS473/R, Mar. 29, 2016.

Appellate Body Report, *EU—Anti-dumping measures on Biodiesel from Argentina (EU-Biodiesel)*, WT/DS473/AB, Oct. 6, 2016.

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Abbreviations

SOEs	State-owned or controlled enterprises, referring to commercial enterprises in which the state is the majority shareholder, or the state is the controller
POEs	Privately owned or controlled enterprises, referring to commercial enterprises that are privately owned or controlled
FOEs	Foreign-owned or controlled enterprises, referring to commercial enterprises that are owned or controlled by foreigners
SWFs	Sovereign wealth funds
STEs	State trading enterprises
State capitalism	Any investment made by the state in enterprises, including SWFs and state-owned entities
FCN Treaties	Treaty of friendship, commerce, and navigation
CVDs	Countervailing duties
OPEC	Organization of the Petroleum Exporting Countries
OECD	Organization for Economic Cooperation and Development
TPP Agreement	Trans-Pacific Partnership Agreement
R&D	Research and Development
BRICS	Brazil, Russia, India, China, and South Africa
FDI	Foreign direct investment
ECSC	European Coal and Steel Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
COMECON	Council for Mutual Economic Assistance
SASAC	State-owned Assets Supervision and Administration Commission
FSU	The former Soviet Union
SOB	State-owned banks
AB	Appellate Body in the WTO dispute settlement body
TRIMs	Agreement on Trade-Related Investment Measures
ADA	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994

CCP	Chinese Communist Party
ECJ	European Court of Justice
VCLT	Vienna Convention on the Law of Treaties
ITO	International Trade Organization
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TBT	Agreement on Technical Barriers to Trade
SCM Agreement	Agreement on Subsidies and Countervailing Measures
NAFTA	North American Free Trade Agreement
DSU	Dispute Settlement Understanding

Chapter 1
The Global Presence of SOEs and Their Receipts of Advantages

The focus of this book is the treatment by governments of their state-owned enterprises (SOEs). This Chapter broadly describes the problem to be addressed, i.e., the various advantages granted to SOEs, and explains why it is a problem from a historical and an economic perspective. In addition, it explains why governments grant advantages to SOEs. It is important to examine the problem from these different perspectives to provide a context for the analysis of current legal rules and possible proposals to improve them.

Section 1 begins with a general overview of the presence of state capitalism globally and its involvement in international trade. It points out the problems that arise when SOEs receive various advantages from their governments, and associated concerns arising in the international community. These advantages can be categorized into financial advantages, monopolies and exclusive rights, regulatory advantages and others. Section 2 traces the history of SOEs and explains how the grant of advantages to SOEs has been perceived as more problematic over time. It also looks at the phenomenon of SOEs in a larger context, considering the relationship between governments and commercial enterprises in general, and the extent to which SOEs have been established and granted advantages. Section 3 explains why the existence of SOEs is a problem from an economic perspective. It goes through different economic theories underlying international trade and explains how grants of advantages to SOEs threaten to prevent achievement of the gains that those theories predict would result from international trade. It further explains whether there is a need to regulate the various advantages granted to SOEs at the international level and whether potential exceptions should be recognized.

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1 The Presence of SOEs Globally and the Grants of Advantages to SOEs

1.1 SOEs in the Global Economy

State capitalism[1] is omnipresent in the global economy.[2] There are various forms of state capitalism, including SOEs, SWFs and so on. This book's focus, however, is mainly SOEs. Looking at the data and information about SOEs' number, size, sector distribution and country distribution, it can be inferred that SOEs are pervasive globally, particularly in emerging countries.

State investment is present in the global economy through the forms of state fully-owned enterprises, state-controlled enterprises, enterprises with minority state ownership, sovereign wealth funds (SWFs), public pension funds, reserve funds, life insurance funds and so on.[3] This book's focus is on government-controlled commercial enterprises (SOEs) that produce goods or services.[4] "Control by the state" can be found through majority ownership, management, or other means.[5] This book doesn't deal with the international financial system, which includes SWFs and other funds.[6]

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[1] There is an extensive literature that analyses state capitalism, including its definitions, its various forms, whether the state capitalism is a good economic model, and its impact on nations and the global trading system. Bremmer distinguishes state capitalism from command economies and free market economies. The state functions as the leading economic actor and uses markets primarily for political gain. The state uses SOEs and SWFs, or selects POEs to maximize the state's profits. The ultimate motive is not economically maximizing growth but politically maximizing the state's power and the leadership's chances of survival. *See* Ian Bremmer, "State Capitalism Comes of Age," *Foreign Affairs*, Vol. 88, Iss. 3 (May/Jun 2009): 40. https://www.scribd.com/doc/89651394/Bremmer-State-Capitalism-Comes-of-Age.

[2] An investigation of the world's largest 2000 public companies (Forbes Global 2000) reveals that more than 10% of these firms are majority state-owned. *See* Kowalski, P. et al., "State-Owned Enterprises: Trade Effects and Policy Implications", OECD Trade Policy Papers, No. 147 (OECD Publishing, 2013), 9. https://doi.org/10.1787/5k4869ckqk7l-en

[3] Aldo Musacchio and Sergio G. Lazzarini, "Leviathan in Business: Varieties of State Capitalism and Their Implications for Economic Performance" (working paper 12–108, Harvard Business School, June 4, 2012), 2. http://www.hbs.edu/faculty/Publication%20Files/12-108.pdf

[4] There might be some deviations across different definitions of SOEs. The definition that SOEs are "government owned or government controlled economic entities that generate the bulk of their revenues from selling goods and services", is used by the World Bank in its research report. *See* World Bank, "Bureaucrats in Business," World Bank Policy Research Report (Washington, DC: World Bank, 1995), 26.

[5] The state might also exert de facto control over a firm through holding a minority share such as a golden share or any other specific enabling legislation, *see* Max Büge, Matias Egeland, Przemyslaw Kowalski and Monika Sztajerowska, "State-owned Enterprises in the Global Economy: Reason for Concern?" VOX: CEPR's Policy Portal, May 2, 2013. http://voxeu.org/article/state-owned-enterprises-global-economy-reason-concern

[6] For a discussion regarding the distinction between international trade and international finance (international capital markets), *see* Michael Gadbaw, "Systemic Regulation of Global Trade and Finance: A Tale of Two Systems," in *International Law in Financial Regulation and Monetary*

Table 1.1 The number of SOEs in the top 10 companies globally

Year	2000	2002	2004	2006	2008	2010	2012	2014	2015
Number of SOEs	1	1	1	0	0	3	4	3	5
Nationality of the SOEs	China	US (Fannie Mae)	US (Fannie Mae)			China	US (Fannie Mae) China 3	China	China

Data sources: Forbes, Fortune, and my calculations (My calculation is based on databases such as Fortune (Fortune Global 500), Forbes (Forbes Global 2000), Orbis, World Development Indicator by World Banks. For instance, there was no SOE among the top 10 firms of the Fortune Global 500 list in 2005. However, there were three SOEs among the top 10 in 2013, all of which were Chinese SOEs, i.e., Sinopec Group, China National Petroleum and State Grid. *See* "Global 500: the tope 10," *Fortune*, http://money.cnn.com/magazines/fortune/global500/2013/full_list/ (accessed September 2, 2016))

There are some data sources about the significant presence of SOEs in the global economy. They use different methods for the purpose of estimation. One method uses a sample of world's largest firms and their subsidiaries as a base, and then counts the number of SOEs in that base.[7] Some sources count the number of SOEs in the Forbes Global 2000 list, which is approximately 200 on average.[8] Overall, the number of large SOEs is increasing, comprising 10% of world's 2000 largest companies.[9] That estimate is for the year of 2011. The table below looks at the number of SOEs in the Top 10 companies globally from 2000 to 2015. (See Table 1.1 below).

Apart from the number of SOEs, the size and weight of SOEs in the global economy also signals the pervasive presence of SOEs. Therefore, the second method uses the value of SOEs of some countries relevant to their GDP and labor/employment. (See Table 1.2).[10] However, the data only encompasses OECD countries and

Affairs, eds., Tomas Cottier, John Jackson and Rosa Lastra (UK: Oxford University Press, Jan. 2013). *See* also Paul R. Krugman, Maurice Obstfeld and Marc J. Melitz, *International Economics: Theory and Policy*, 9th edition (Pearson Education, 2012), 1–7.

[7] *See* Kowalski, P. et al., "State-Owned Enterprises: Trade Effects and Policy Implications", OECD Trade Policy Papers, No. 147 (OECD Publishing, 2013). https://doi.org/10.1787/5k4869ckqk7l-en

[8] There were 204 SOEs in the year 2010–2011 out of 2000 largest companies listed on Forbes Global, *see* Grzegorz Kwiatkowski and Pawel Augustynowicz, "State-owned Enterprises in the Global Economy-Analysis Based on Fortune Global 500 List," (Conference Paper, Management, Knowledge and Learning Joint International Conference 2015, held by Managing Intellectual Capital and Innovation for Sustainable and Inclusive Society, 27–29 May 2015, Bari Italy), 1740. http://www.toknowpress.net/ISBN/978-961-6914-13-0/papers/ML15-353.pdf

[9] Max Büge, Matias Egeland, Przemyslaw Kowalski and Monika Sztajerowska, "State-owned Enterprises in the Global Economy: Reason for Concern?" VOX: CEPR's Policy Portal, May 2, 2013.

[10] *See* Hans Christiansen, "The Size and Composition of the SOE Sector in OECD Countries", OECD Corporate Governance Working Papers, No. 5, (OECD Publishing, 2011); OECD Working Group on Privatisation and Corporate Governance of State-Owned Assets, "The Role of State-Owned Enterprises in the Economy: An Initial Review of the Evidence," DAF/CA/PRIV (2008) 9, 18 Nov. 2008; OECD Working Group on Privatisation and Corporate Governance of State Owned Assets, "State-Owned Enterprises in India," DAF/CA/PRIV/RD(2008)15, 18 Nov. 2008;

Table 1.2 SOEs share of GDP and employment in OECD and emerging countries in 2008

	OECD countries	China (2008)	Russia (2008)	India (2008)	Brazil (2008)
SOEs share of GDP	From near-zero to 13%	1/3	1/3	13%	10%
SOEs share of employment	From near-zero to 15%	1/3	1/3	6%	10%

Table 1.3 Top sectors with high presence of SOEs globally in 2011

Sectors	Mining support activities	Civil engineering	Land transport and transport via pipeline	Mining of coal and lignite	Extraction of crude petroleum and gas
SOEs shares %	42.7	40.8	40.3	35.1	34.1

emerging countries. In addition, the data about Brazil, China, India and Russia was collected in 2008. Many changes have taken place since 2008.

A third method selects a sample of the 2000 largest global companies as the database, and then calculates the weighted average of SOE shares of sales, assets and market values. The 204 SOEs account for 10% of sales in the sample of the 2000 largest companies, and 11% of market value correspondingly. With respect to the distribution of SOEs by sector, the top sectors with high presence of SOEs are mining, civil engineering, transportation, petroleum and natural gas, as shown in Table 1.3.[11] Sector distribution varies depending on the country in which SOEs are located. In OECD countries, top sectors with high presence of SOEs are providers of electricity, gas and steam, and the manufacturers of tobacco, as shown in Table 1.4 below, while in emerging countries, top sectors with high presence of SOEs are mainly the natural resources, manufacturing, financial and telecommunication sectors, as shown in Table 1.5.[12]

With respect to the distribution of SOEs by country, there is information about SOEs among 150 publicly traded companies by country.[13] The top ten countries with highest "country SOEs shares"[14] are China, followed by United Arab Emirates,

[11] Kowalski, P. et al., "State-Owned Enterprises: Trade Effects and Policy Implications", OECD Trade Policy Papers, No. 147 (OECD Publishing, 2013), 29. https://doi.org/10.1787/5k4869ckqk7l-en

[12] OECD, "Corporate Governance of State-Owned Enterprises: A Survey of OECD Countries" (Paris: OECD Publishing, 2005); Kowalski, P. et al., "State-Owned Enterprises: Trade Effects and Policy Implications", OECD Trade Policy Papers, No. 147 (OECD Publishing, 2013), 30. https://doi.org/10.1787/5k4869ckqk7l-en

[13] Kowalski, P. et al., "State-Owned Enterprises: Trade Effects and Policy Implications", OECD Trade Policy Papers, No. 147 (OECD Publishing, 2013), 22–25.

[14] Country SOEs shares (CSS) is a weighted average of SOE shares of sales, assets and market values among country's top ten companies. *See* Kowalski, P. et al., "State-Owned Enterprises: Trade Effects and Policy Implications", OECD Trade Policy Papers, No. 147 (OECD Publishing, 2013), 22. https://doi.org/10.1787/5k4869ckqk7l-en

Table 1.4 Top sectors with high presence of SOEs in OECD countries in 2011

Sectors	Provision of electricity, gas and steam	Manufacture of tobacco	Warehousing	Manufacture of motor vehicles	Financial intermediation
SOEs share %	18.3	15	11.7	6.7	6.7

Russia and Indonesia. Seven out of ten are emerging countries or developing countries, as shown in Table 1.6.[15] Taking the proposed TPP Agreement as an example, some Members of the TPP Agreement have SOEs, such as Vietnam, New Zealand, Singapore and Chile.[16] Thus, it can be inferred that even in the absence of China, the presence of SOEs in the global economy is still significant. Hence, the problem is not only a Chinese one, but rather a universal one.

The presence of SOEs in OECD countries is quite different from that in emerging countries. The difference can be observed from aspects of the sectors they are in, their size, and their weight in the economy.[17] In OECD countries, most data also counts enterprises with golden shares held by the government as SOEs.[18] While in emerging countries, databases usually exclude enterprises with golden shares held by the government as SOEs.[19] The number of SOEs were declining due to privatization, particularly in OECD countries over the past decades. In contrast, the extent and scope of privatization is less in emerging countries, and the retreat of SOEs has slowed down in some countries.[20] For instance, evidence can be found that the oil and energy sector are monopolized by SOEs in the Middle East, and the strategic industries are dominated by SOEs in countries such as Russia, Brazil, China, and

[15] Data comes from Forbes, World Development Indicator by World Banks, Orbis database, Forbes Global 2000, and my calculation.

[16] William Krist and Kent HugHes, "Negotiations for a Trans-Pacific Partnership Agreement," *Wilson Center: Trade and Development,* Dec. 4, 2012, https://www.wilsoncenter.org/publication/negotiations-for-trans-pacific-partnership-agreement; Ian F. Fergusson, Mark A. McMinimy and Brock R. Williams, "The Trans-Pacific Partnership (TPP) Negotiations and Issues for Congress," Congressional Research Service, 7–5700 R42694 (20 Mar. 2015), 43, in its footnote 116 quoting "Economist Intelligence Unit," Vietnam Country Report, (Mar. 2012), 12.

[17] Hans Christiansen, "The Size and Composition of the SOE Sector in OECD Countries" OECD Corporate Governance Working Papers, No. 5, (OECD Publishing, Paris, 2011), 7–8. https://doi.org/10.1787/5kg54cwps0s3-en

[18] *Id.*, at 72.

[19] *Id.*, at 72. Normally, the golden share are taken into account in finding SOEs in OECD countries.

[20] Hans Christiansen, "The Size and Composition of the SOE Sector in OECD Countries", OECD Corporate Governance Working Papers, No. 5, (OECD Publishing, 2011), 3. Jeremy Schwartz, "Emerging Markets and State-Owned Enterprises," *NASDAQ*, Dec. 05, 2014. http://www.nasdaq.com/article/emerging-markets-and-state-owned-enterprises-cm420401

Table 1.5 Top sectors with high presence of SOEs in emerging countries (particularly BRICS countries) in 2011

Sectors	Mining support activities	Civil engineering	Land transport and transport via pipelines	Mining of coal and lignite	Extraction of crude petroleum and gas	Manufacture of fabricated metal and basic metals	Financial intermediation	Telecommunication	Electrical equipment & machinery and equipment	Air transport
SOEs share %	42.7 (Mainly from China)	40.8 (Mainly from China)	40.3 (Mainly from China)	35.1 (Mainly from China)	26.5	12.9+9.1=22	12.4	10.3	8.3+7.7=16	7.3

Table 1.6 Top countries with high "Country SOEs Shares" in 2011

Name of the country	China	The United Arab Emirates	Russia	Indonesia	Malaysia	Saudi Arabia	India	Brazil	Norway	Thailand
Country SOEs shares	95.9	88.4	81.1	69.2	68	66.8	58.9	49.9	47.7	37.3
Emerging country or not	Yes	No	Yes	Yes	Yes	No	Yes	Yes	No	Yes

Vietnam.[21] Nowadays, the model of state capitalism has been embraced by many countries, such as China, Russia, Brazil and South Africa.[22]

Other sources of information are scarcer. State-backed companies account for 80% of the value of China's stock market and 62% of Russia's.[23] Taking the oil and energy sector for an example, there are national oil companies that are Middle Eastern SOEs (Dubai), Russian SOEs (Gazprom), Chinese SOEs, and Brazilian SOEs, some of which are publicly traded with their governments remaining as the majority shareholders.[24] The world's ten biggest oil-and-gas firms, measured by reserves, are all SOEs.[25] Nationalization in recently years in Latin America is also worthy of attention.[26]

In short, whatever the measure used, it is clear that SOEs are pervasive globally.

1.2 SOEs Receive Various Advantages from Their Governments

The various advantages granted to SOEs by governments can be categorized into three types, i.e., financial advantages, monopolies and exclusive rights, and regulatory and other advantages.[27] The three categories of advantages or benefits have something in common, i.e., they all put SOEs in a better position from an economic perspective. The reason for the categorization is that advantages granted in different forms may result from different policy choices and have distinct characteristics, and hence are worthy of different treatments.

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[21] Keith Bradsher, "Trans-Pacific Partnership's Potential Impact Weighed in Asia and U.S." International Business, *New York Times*, July 8, 2015.

[22] Sprenger, "The Role of State Owned Enterprises in the Russian Economy," (paper written for the OECD Roundtable on Corporate Governance of SOEs. 2008).

[23] "The Rise of State Capitalism," Emerging-Market Multinationals, *The Economist*, Jan 21st, 2012.

[24] Seven out of the 10 largest oil companies are state owned, they are Saudi Aramco, Gazprom (Russia), National Iranian Oil Company, Rosneft (Russia), PetroChina, Pemex (Mexico), Kuwait Petroleum Company. http://www.forbes.com/pictures/mef45miid/1-saudi-aramco/

[25] "The Rise of State Capitalism," Emerging-Market Multinationals, *The Economist*, Jan 21st, 2012.

[26] "Nationalization in Latin America", Infographic, *The Globe and Mail*, Jul. 11, 2012. http://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/nationalization-in-latin-america/article4409002/; John Paul Rathbone, "Latin American Nationalization Dominoes," Blogs.ft.com, May 2, 2012. http://blogs.ft.com/the-world/2012/05/latin-american-nationalisation-dominoes/

[27] For a general discussion on special privileges enjoyed by SOEs, *see* Richard R. Geddes, "Case Studies of Anticompetitive SOE Behavior," in *Competing with the Government, Anticompetitive Behavior and Public Enterprises*, eds., Richard R. Geddes (Hoover Institution Press, 2004); OECD Policy Roundtables on "Competition, State Aids and Subsidies," in the OECD Global Forum on Competition 2010, DAF/COMP/GF(2010)5, (May 19, 2011), 17.

Financial Advantages

The financial advantages granted to SOEs can be divided into government expenditures and government revenues foregone. These advantages have following forms[28]: (1) direct money transfers to SOEs; (2) provision of goods or services at below-market prices to SOEs, for instance, SOEs may be given privileged access to government-owned or controlled natural resources, land, or rights of way; (3) financing and guarantees from the government, such as credit, below-market interest rates, and state guarantees for loans taken out by SOEs through banks, particularly SOBs. State guarantees for loans by SOEs means that the government assumes the risk of default on the loan, rather than the bank, which in turn means that the bank can offer the borrower more favorable lending terms, such as a lower rate of interest; (4) the fact that state holds shares in SOEs gives SOEs the advantage of captive equity insofar as state capital in SOEs is locked in. SOEs are not fully exposed to market takeover pressure as the transfer of state shares requires the prior approval of the state[29]; favorable dividend policy lowers dividend payout ratios and thus lowers the cost of capital of SOEs. To that end, SOEs can generate losses in a long period of time without the fear of going bankrupt, so they may engage in anti-competitive behavior, such as below-cost pricing; and (5) tax forgone in that taxes otherwise owed by SOEs are not collected by the government.[30]

Monopolies and Exclusive Rights Advantages

SOEs may be given different kinds of monopoly and exclusive rights, such as production or exploitation permits, production quotas, distribution rights, export rights or import rights.[31] Commonly, the exclusive export or import rights are associated with state trading, which usually means that the state has control over trade with foreigners in terms of importation and exportation varying in the degree of

[28] Capobianco, A. and H. Christiansen, "Competitive Neutrality and State-Owned Enterprises: Challenges and Policy Options", OECD Corporate Governance Working Papers, No. 1 (OECD Publishing, 2011), 5–7. https://doi.org/10.1787/5kg9xfgjdhg6-en; OECD, "State Owned Enterprises and the Principle of Competitive Neutrality," Policy Roundtables, DAF/COMP(2009)37, (OECD, 2009), 36–37.

[29] For instance, the transfer of shares of Chinese SOEs that will affect the state's control over the entity, needs approval from the SASAC or its local office, *see* the legal document, Measures for Supervision and Management of State Assets, Article 7, June 24, 2016. [Qiye Guoyou Zichan Jiaoyi Jiandu Guanli Banfa].

[30] For more information about grants of advantages granted to SOEs in detail, *see* Richard R. Geddes, "Case Studies of Anticompetitive SOE Behavior," in *Competing with the Government, Anticompetitive Behavior and Public Enterprises*, eds., Richard R. Geddes (Hoover Institution Press, 2004), 28–34.

[31] Geddes, *Ibid.*