

## TPP 協定對國營事業商業活動之規範

張南薰\*

### 摘要

傳統上國營事業的活動主要發生在國內的市場上，但是在透過貿易及投資而逐漸整合的全球化市場中，國營事業與私人企業在國際市場上之競爭也趨於白熱化。當國營事業走向國際市場時，其所享有私人企業所無法享有之競爭上利益，即被認為是一種不公平的競爭。在跨太平洋夥伴協定（TPP 協定）的談判中，美國希望透過對國營事業之商業活動加以規範，以確保國營事業與私人企業間之公平競爭。因此，TPP 協定國營事業章之目的即在於要求 TPP 協定之締約國除去或避免國營事業從事商業活動時所造成之貿易扭曲或不公平競爭，並透過商業考量原則之要求、除去造成市場扭曲之補貼及促進國營事業之透明化等義務，以期達到此一目標。本文從 TPP 協定的談判過程及 WTO 案例中對相關條文之解釋出發，希望有助於對 TPP 協定國營事業章之瞭解。

### Abstract

Traditionally the state-owned enterprises (SOEs) have been oriented towards domestic market. In a globalized world, characterized by a growing integration of markets via trade and investment, SOEs increasingly compete internationally with private firms. However, the advantages granted exclusively to SOEs by government are considered to be unfair when SOEs expand to international market and compete with private firms. In the Trans-Pacific Partnership (TPP) Agreement negotiations, the United State negotiated on SOEs with the goal of ensuring fair economic competition between SOEs and private companies. The goals of the SOEs Chapter call on TPP Parties to eliminate or prevent trade distortions and unfair competition favoring SOEs to the extent of their engagement in commercial activities, and to ensure that such engagement is based solely on commercial considerations, in particular through disciplines that eliminate or prevent discrimination and market-distorting subsidies and that promote transparency. To explore the negotiation processes between parties and analyze the significant provisions from the interpretation derived from the WTO cases will be the first step to understand the SOEs Chapter of the TPP Agreement.

---

\* 東吳大學國際經營與貿易學系專任助理教授 (Assistant Professor, Department of International Business, Soochow University)；國立政治大學法律學系法學博士 (Ph.D., Department of Law, National Chengchi University)。