

Tim Brightbill Discusses TPP's Attempt to Level Playing Field Between SOEs and Private Businesses

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Timothy C. Brightbill, a partner in Wiley Rein's International Trade Practice, was quoted extensively in a November 17 *Law360* article discussing the Trans-Pacific Partnership (TPP) text that was released earlier this month, part of which sought to level the playing field between state-owned entities (SOEs) and private businesses. According to the article, the text calls for SOEs to buy and sell on the basis of commercial considerations in areas where they are in direct competition with private companies; this is of concern to the global business community given the growing prominence of the Asia-Pacific region and the dominance of SOEs in the marketplace.

"There are a number of good things in the state-owned enterprises chapter, but there are also substantial limitations and exceptions that could limit the usefulness of these new provisions," said Mr. Brightbill.

Mr. Brightbill mentions one point of contention within the text is that "the manner in which the text clarifies what an SOE is, limiting its definition only to enterprises in which the government controls 50 percent of the capital or voting rights, or retains the power to appoint a majority of the board. That somewhat limited definition would seem to offer relief to SOEs that have a more limited governmental role on paper, but drawing a simple line at majority ownership will leave some considerable gaps," he said.

"There are arrangements where a government can have small shareholding but still wield an awful lot of power," he said. "There are different ways to set up an SOE without having majority

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government ownership.”

Mr. Brightbill said “the U.S. and its members must make sure that the TPP lives up to its billing as a ‘living agreement’ that can adapt to new market dynamics and the inclusion of new members, particularly with regard to SOEs.”

“All in all it's positive to have these disciplines in place and hopefully this is something that the U.S. government can build on in future trade negotiations,” he said. “Trade agreements should be ‘TPP-plus’ not just what we see here in TPP;” he added.

To read the complete article, [click here](#).