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# International Trade and Investment by State Enterprises

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## Abstract

### INTERNATIONAL TRADE AND INVESTMENT BY STATE ENTERPRISES

Przemysław Kowalski and Kateryna Perepechay

The recent surge in competition between state and private firms in global markets calls for a reflection on how to minimise any potentially distortionary effects on international trade and investment created by state enterprises while at the same time restraining any undue protectionist policy responses directed at them. This paper provides an assessment of the extent and nature of existing and potential problems as well as a stocktaking of regulatory approaches that can be used to alleviate them. The new empirical evidence on the extent and nature of existing problems presented in this paper comes from the *OECD Business Survey on State Influence on Competition in International Markets* conducted on 157 firms in 2014. The characterisation of the regulatory landscape draws on the information contained in the *OECD Database on National Practices and Regulations with Respect to State Enterprises* which comprises 41 indicators covering relevant practices and regulations across 43 countries. In conclusion, cross-border effects of state enterprises remain an important policy issue but views on how to obtain a more level international playing field differ across countries. Further consideration of the definition of entities which should be the focus of guidance of potential international disciplines would be an important area for future exploration and, crucially, would require greater transparency both from the governments and the entities under their influence. These discussions should not be limited only to state-owned entities, but should be extended to a broader spectrum of state firms. In the meantime, it is important that governments neither use state enterprises to influence competition in international markets, nor unduly discriminate against foreign state enterprises that trade and invest according to market principles.

**Keywords:** International trade; international investment; trade and competition; state enterprises; state-owned enterprises; state-controlled enterprises; SOEs; state trading enterprises; STEs; public enterprises; national champions; subsidies; public bodies; preferential treatment; corporate governance of state-owned enterprises; WTO; trade agreements; investment treaties, business survey; regulatory data.

**JEL:** F02; F13; F21; F23; F5; F6; G34; G38; H1; H2; H4; H7; H8; H57; K2; K33; L3; L44; L5

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*Table of contents*

Executive summary .....	4
1. Introduction .....	7
2. Concerns related to cross-border activities of state enterprises .....	8
2.1 Increasing presence .....	8
2.2 Selected international dispute cases involving state enterprises .....	10
2.3 Business perceptions: Evidence from the OECD Business Survey on State Influence on Competition in International Markets .....	12
3. Regulatory frameworks and practices with respect to state enterprises: A cross-border perspective ...	24
3.1 Balancing the role of state and private enterprises in domestic and international markets .....	24
3.2 Overview of current rules and approaches .....	25
3.3 Country practices: Overview of results from the OECD Database on National Practices and Regulations .....	30
4. Conclusions .....	51
References .....	55
Annex 1. OECD Business Survey on State Influence on Competition in International Markets .....	56
Annex 2. Figures and tables .....	57
Annex 3. List of indicators in the regulatory database .....	76

## Executive Summary

Recent research shows that state-owned, state-controlled or otherwise state-influenced enterprises are increasingly competing with private firms in global markets for market shares, resources, ideas and intermediate products. A key concern in this context is that governments may provide them with certain financial or regulatory advantages, or influence them to confer such advantages on other firms. If this is the case, goods and services may end up being produced not by those who can do it most efficiently, but by those that receive the greatest advantage. Capital and other productive resources can be allocated in unproductive ways. Hence, the rationale for—and the benefits from—more open policies related to international trade and investment may be undermined.

The policy challenge is to minimise any potentially distortionary effects on international trade and investment created by state enterprises and restrain undue protectionism that may be directed at them. This requires an assessment of the extent and nature of potential problems as well as a stocktaking of regulatory approaches that can be used to alleviate them. This report draws on the work on this subject completed by the OECD Trade Committee in 2013 and presents results of the 2014 *OECD Business Survey on State Influence on Competition in International Markets* which sheds additional light on concerns related to cross-border activities of state enterprises. It also summarises key results from the *OECD Database on National Practices and Regulations* which contains information on national and international regulation with respect to state enterprises. Finally, it situates the work of the OECD Trade Committee in the context of endeavours of other OECD committees and bodies which have engaged in exploring cross-border implications of state enterprises as well as in the context of recent multi-stakeholder discussions on this subject.<sup>1</sup>

### ***What are the concerns of competitors related to cross-border activities of state enterprises?***

While it is virtually impossible to provide a comprehensive assessment of the incidence and the impact of the many types of enterprises that are controlled or influenced by states, existing empirical work suggests strongly that their presence has grown considerably in recent years. Some of them feature prominently among the world's largest and most influential enterprises and are important players in internationally contestable and vertically-linked industries.

The *OECD Business Survey on State Influence on Competition in International Markets* conducted in 2014 aims to further inform the policy making and business communities about the nature, the extent, and the effects of government-granted advantages which have a bearing on competition in international markets.

Key findings from the survey include:

- A majority of surveyed firms indicate a belief that their competitors benefit from preferential treatment granted by foreign governments; this belief is much less widespread regarding domestic governments. Potentially this illustrates the greater difficulty of minimising state enterprise-related distortions in an international context;

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1. Two recent OECD Workshops on Trade and Investment by State-owned and State controlled Enterprises held in 2012 and 2014 brought together different policy perspectives on these issues. They provided an opportunity to present and discuss the latest empirical and policy analysis and to solicit contributions from practitioners, business and academic experts. Documentation for these two events can be consulted at the following links: <http://oe.cd/workshop-competition> and <http://oe.cd/workshop-state-enterprises>.

- Ownership status of firms is perceived to matter; the reported severity of the impact of preferential treatment of enterprises by governments is higher for state-owned enterprises;
- Financial and regulatory support granted to both private and state enterprises are the most often indicated concerns although the reported market effects are stronger for state firms. This implies that tightening of the WTO subsidy rules and further development of similar rules on regulatory advantages might be a useful across-the-board approach that could also alleviate some of the most pressing concerns related to state enterprises;
- The economic effects of preferential treatment by foreign governments are reported to extend well beyond foreign markets affecting domestic sales of respondents almost to the same extent. This is likely a consequence of the deepening of international commercial links and increasing geographical fragmentation of production which means that even the policies which might be oriented primarily towards domestic firms and markets now span more easily across national borders;
- Many firms reported the use of state enterprises by governments to indirectly grant advantages to respondents' competitors through lower prices or better accessibility of inputs. This suggests that the issue of determining more clearly and predictably what kind of relationship with the government makes an enterprise susceptible to be considered as potential provider of a subsidy or another advantage—for example in the context of the WTO—may be an important one to focus on in the future;
- Central or federal levels of government are reported to be granting advantages with strong negative impact on competition more frequently than sub-federal governments, though it is clear that the latter are engaging in discriminatory behaviour as well.

### ***Regulatory frameworks and practices with respect to state enterprises: A cross-border perspective***

In seeking to achieve both a more even international playing field while at the same time restraining any undue protectionism that may be directed at state enterprises, one key issue to consider is whether legitimate domestic objectives can be achieved more efficiently through promotion and international co-ordination of domestic reforms and implementation of good practices and guidelines, or through additional binding international rules.

On the one hand, public policy purposes which state enterprises often pursue may not easily yield themselves to a more stringent regulation at the international level. This suggests that domestic reforms and softer forms of international co-ordination of these reforms might have better potential for covering a wider range of issues and delivering desired outcomes. The policy areas that are relevant in this respect include national competition policies, corporate governance of the state sector and “competitive neutrality” policies which encompass a set of domestic measures that aim to identify and neutralise competitive advantages of state entities.

On the other hand, some of the relevant binding international rules that discipline discriminatory government behaviour related to state enterprises can already be found in the WTO law as well as certain preferential trade agreements (PTAs) and bilateral investment treaties (BITs). WTO rules concentrate generally not on actions of enterprises but on discriminatory actions of governments. As such, they can in principle indirectly discipline also actions by certain state enterprises which can be proven to exercise governmental functions. Still, it is not entirely clear what can be understood by governmental functions in different competitive contexts and different countries.

Some additional rules relating to state enterprises have been added in selected existing PTAs, and some new ones are being currently negotiated, most notably in the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership negotiations. In general, PTA provisions build on and try to fill the gaps in the existing WTO rules by providing clearer definitions and by including additional obligations, for example, on transparency and consultation. However, they naturally reflect

specificities and sensitivities of the signatory countries and can differ from one agreement to another. While they provide some indications of directions in which the WTO rules could evolve in the future, the potential for their harmonisation at the multilateral level remains unclear.

The *OECD Database on National Practices and Regulations* with respect to state enterprises takes stock of domestic policies and international obligations of different countries. It is available online<sup>2</sup> and is devised as a transparency tool which objectively informs the governments and the publics about the different practices and regulations. It covers all 34 OECD member countries, Brazil, People's Republic of China (hereafter “China”), India, Indonesia, Russian Federation, South Africa and a number of emerging countries with high incidence of state enterprises (e.g. Malaysia, United Arab Emirates, Viet Nam). It compiles information on 41 specific questions in the following areas: size, composition and outward orientation of the state sector; elements of national competitive neutrality arrangements; state enterprise-related elements of national investment regimes; and external obligations with respect to the state sector (WTO, PTAs and BITs).

### **Implications**

Overall, while cross-border effects of state enterprises remain an important policy issue, views on how to obtain a more level international playing field differ in practice. For example, it is not clear whether future policy responses should target specific types of enterprises (e.g. state-owned firms) or whether they should cover a wider range of state enterprises and target specific behaviors. This suggests that further consideration of the definition of entities which should be the focus of guidance of disciplines would be an important area for further exploration.<sup>3</sup>

As international dialogue on internationally active state enterprises expands, it is important that governments continue to honour their commitments under international agreements and that they act in the spirit of non-discrimination. This implies that governments should neither use state enterprises to influence competition in international markets nor should they unduly discriminate against foreign state enterprises that trade and invest according to market principles.

While it may be too soon to start formulating concrete rules or guidelines on internationally active state enterprises, it is clear that open and fair competition in international markets requires greater transparency both from the governments and the entities under their control. The time seems ripe for governments, business and experts to engage in more intensive and open international discussion on state enterprises and the associated challenges. These discussions should not be limited only to state-owned entities, but should be extended to a broader spectrum of state firms.

In this context, the report on *International Trade and Investment of State Enterprises* and the *OECD Database on National Practices and Regulations* will support further OECD work to deepen dialogue, gather further evidence on the internationalisation of state enterprises, and provide a consultation mechanism for countries to discuss concerns about state enterprises operating in international markets.<sup>4</sup> The dialogue will include representatives from interested OECD committees (currently the Competition, Corporate Governance, Investment, Steel and Trade Committees) and government representatives from other interested non-OECD economies.

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2. The database can be accessed at <http://oe.cd/state-enterprises>.

3. This has also been flagged by Hufbauer et al. (2015) who suggested the definition of covered state enterprises will be a threshold issue for potential future plurilateral negotiations on state enterprises in the WTO context.

4. OECD (2014a).

## 1. Introduction

Recent empirical research shows that state-owned, state-controlled or otherwise state-influenced enterprises—referred to deliberately in this report jointly as “state enterprises”<sup>5</sup>—are increasingly competing with private firms in global markets for market shares, resources, ideas and intermediate inputs. One reason for this is the recent dynamic growth and trade expansion of some of the large emerging market economies with important state sectors. Other factors include internal circumstances concerning state firms as well as the dynamics of markets in which they operate. However, adoption by some countries of deliberate policies supporting the foreign expansion of state enterprises may also have played a role.<sup>6</sup> In addition, the increasing interconnectedness of national economies via deepening trade and investment links in goods and services sectors, proliferating international supply chains and “servicification” explain further why the effects of state policies—even those oriented primarily towards specific domestic firms and sectors—are perceived to span more easily across the whole economy and national borders.

The apparent increase in the incidence of state enterprises in global markets—dubbed by some as an emergence of “state capitalism”—has met with critical reactions of business, policy makers and media. For example, the January 2012 special issue of the *Economist* argued that “the spread of a new sort of business in the emerging world will cause increasing problems”. While correcting market failures, delivering public goods and fostering economic development are some of the legitimate reasons for establishing and maintaining state enterprises, in some cases these entities can also be a source of market distortions which have wider-ranging implications and are more difficult to minimise in an international context.

The key concern is that governments may provide state enterprises with certain financial or regulatory advantages, or influence them to confer such advantages on other firms. If this is the case, goods and services may end up being produced not by those who can do it most efficiently, but by those that receive the greatest advantage. Capital and other productive resources can be allocated in unproductive ways. The rationale for—and the benefits of—more open policies related to international trade and investment may be undermined.

It is in this context that the emergence of state enterprises as global players in recent years led to calls for a reflection on how to minimise any potentially distortionary effects on international trade and investment created by state enterprises and, at the same time, how to restrain undue protectionism that may be directed at them. Such reflection must necessarily involve an assessment of the extent and nature of potential problems as well as a stocktaking of existing regulatory approaches that can be used to alleviate them.

In 2013, the OECD Trade Committee completed an initial assessment of trade effects and policy implications of state enterprises.<sup>7</sup> Drawing on this work, it mandated the OECD Secretariat to undertake further empirical work on the nature of distortions that may be associated with them as well as on relevant practices and regulatory approaches. The current report presents the results of the new work and situates them in the context of endeavours of other OECD committees and bodies which

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5. As developed throughout the main body of this report, the analysis of concerns related to state enterprises takes an inclusive approach to definitions in order to consider a broad enough set of issues. Ownership, for example, implies certain interests, rights and obligations characteristic to an owner and thus exertion of influence is more likely. It is also directly observable. Yet, it is also clear that ownership is neither necessary for governments to influence enterprises’ operations, nor does it inevitably entail such influence.
  6. E.g. Kowalski, Buege, Sztajerowska and Egeland (2013).
  7. See Kowalski, Buege, Sztajerowska and Egeland (2013).



have also engaged in exploring cross-border implications of state enterprises as well as in the context of recent multi-stakeholder discussions on this subject.<sup>8</sup>

In the remainder of this report, Section 2 reviews the recent evidence on incidence of state enterprises, provides a discussion of a number of disputes associated with their cross-border activity and presents the results of the *OECD Business Survey on State Influence on Competition in International Markets* conducted by the OECD in 2014. Section 3 first discusses the different regulatory approaches which can help alleviate possible distortions associated with state enterprises. Next, it summarises key results from the *OECD Database on National Practices and Regulations* which contains information on national and international regulation and practices which may have a bearing on the competitive position of state enterprises in international markets. Section 4 concludes and discusses some potential initiatives that can be taken by the international trade and other policy communities in the future.

## 2. Concerns related to cross-border activities of state enterprises

### 2.1 Increasing presence

While it is virtually impossible to provide a comprehensive assessment of the many types of enterprises that are controlled or influenced by states, some of them, such as the majority state-owned enterprises (SOEs), are relatively well defined. This is where recent quantification efforts have been concentrated. They revealed that presence of such state enterprises in the global economy has grown considerably in recent years. Today some of them feature prominently among the world's largest and most influential enterprises and are important players in several internationally contestable and vertically-linked economic sectors.

For example, a report prepared for the OECD Trade Committee estimated that in the business year 2010-2011 approximately 10% of the 2000 world's largest firms on the Forbes' Global list were majority SOEs.<sup>9</sup> The value of their sales corresponded to approximately 19% of the value of global cross-border trade in goods and services and approached an equivalent of 6% of world GNI exceeding the values of GDPs of countries like Germany, France or the United Kingdom. A report prepared under the OECD initiative on New Approaches to Economic Challenges suggests further that the share of SOEs among the 2000 largest firms may have increased to as much as 14% in the business year 2012-13.<sup>10</sup> A report prepared under the auspices of the OECD Investment Committee found an even higher incidence (19%) of state ownership among the Fortune's Global 500 world's largest firms in 2011 and showed that their importance had grown strongly during the recent decade, with the share of SOE revenues among the Fortune Global 500 increasing from 6% in 2000 to 20% in 2011 and the share of SOE employment among the largest firms increasing respectively from 19 to 30%.<sup>11</sup>

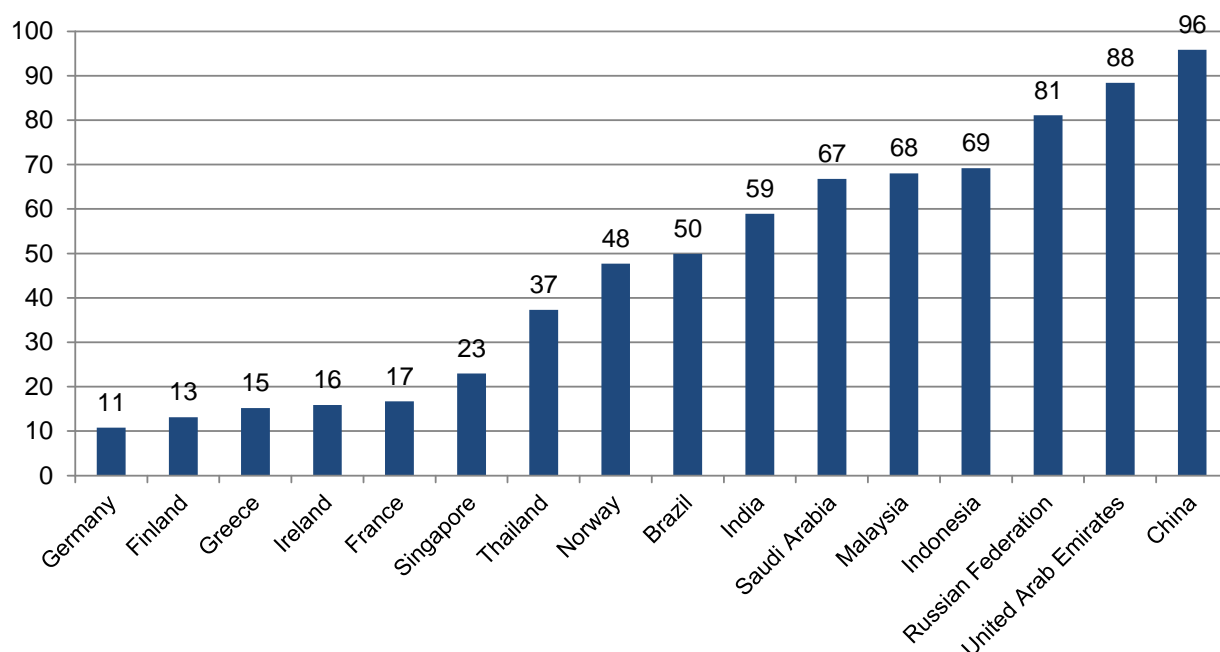
State ownership has been estimated to be most prominent in—although not restricted to—the large emerging economies. For example, 70 out of the 204 SOEs among the 2000 world's largest companies in 2012 were owned by central or local governments of China, followed by India

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8. Two recent OECD Workshops on Trade and Investment by State-owned and State controlled Enterprises held in 2012 and 2014 brought together different policy perspectives on these issues. They provided an opportunity to present and discuss the latest empirical and policy analysis and to solicit contributions from practitioners, business and academic experts. Documentation for these two events can be consulted at the following links: <http://oe.cd/workshop-competition> and <http://oe.cd/workshop-state-enterprises>.
  9. See Kowalski, Buege, Sztajerowska and Egeland (2013).
  10. Christiansen and Kim (2014).
  11. OECD (2013a).

(30 enterprises), Russian Federation (9), the United Arab Emirates (9) and Malaysia (8).<sup>12</sup> These countries also tended to have the highest shares of state-ownership among their largest firms (Figure 1). In industrialised countries the state sector is currently significantly smaller than in emerging countries but remains important across the board in a few industrialised economies and in particular in network industries (energy, telecommunications, and transport) and the banking sector. The industrialised countries with prominent incidence of state ownership in 2012 included Norway, France, Ireland, Greece and Finland.

Several in principle internationally contestable economic sectors record high incidence of state ownership. These include, for example, mining of coal and lignite and mining support activities, civil engineering, land transport and transport via pipelines, extraction of crude petroleum and gas, and telecommunication and financial services. Beyond natural resources and services, manufacturing of metals is another area where state ownership is quite prominent (Figure 2). Products of many of these sectors are intensely internationally traded and their ownership is increasingly transnational. Many of the sectors with significant state presence are also known as playing important upstream and downstream roles in international supply chains.

**Figure 1. Importance of SOEs among countries' top ten firms, in %**

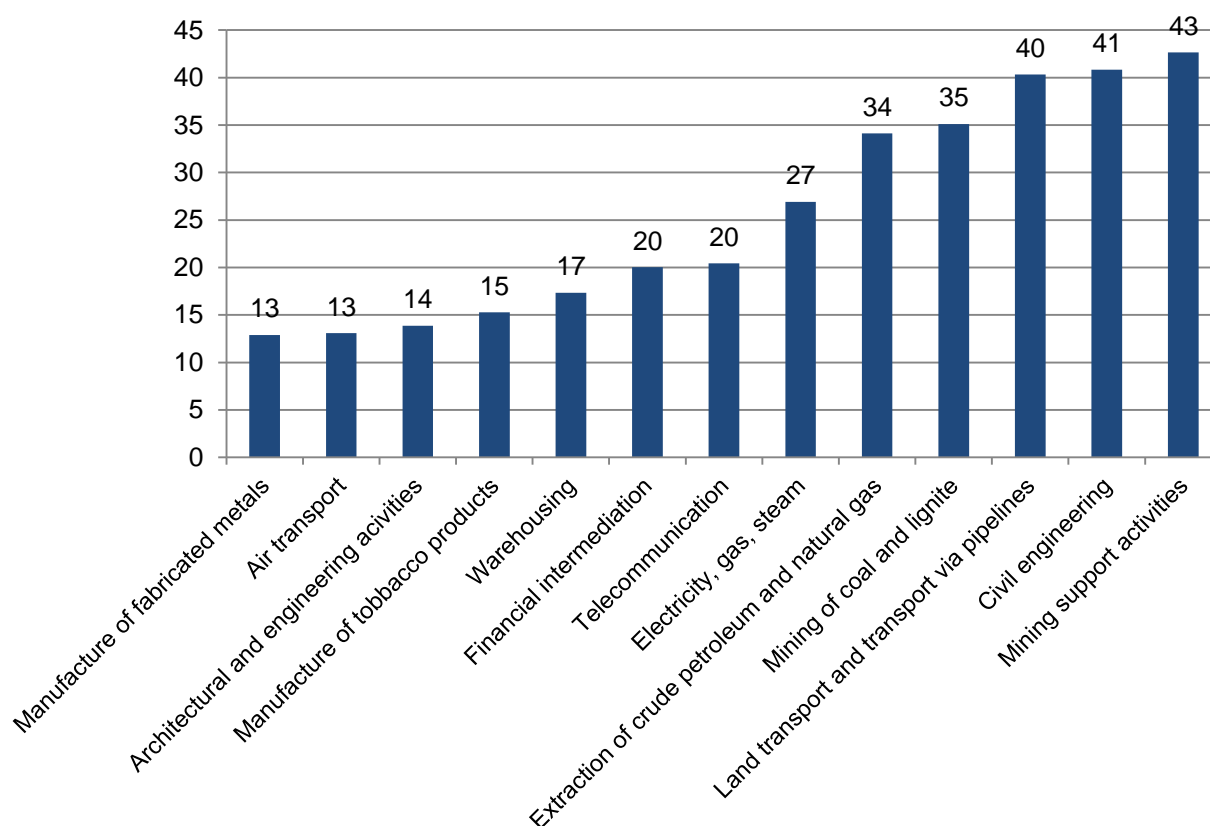


*Note:* The shares refer to equally-weighted average of shares of SOEs in sales, assets and market value of country's top ten firms. Only countries with shares above 10% are shown.

*Source:* Kowalski et al. (2013).

12. Kowalski et al. (2013)

Figure 2. Importance of SOEs among sectors' top ten firms, in %



Note: Only sectors with shares above 10% are shown.

Source: Kowalski et al. (2013).

## 2.2 Selected international dispute cases involving state enterprises

Actions of state enterprises have been considered in a number of WTO disputes. For example, two early cases concerned the question of special privileges granted to, and state influence on the level or direction of trade of, state trading enterprises (STEs) as defined by Article XVII of GATT (See also Section 3.2). In the *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef* (DS161)<sup>13</sup> case the activities and the management of tender procedures by an import state trading monopoly were considered to violate the general principles of non-discriminatory treatment under the Article XVII. In the *Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain* (DS276)<sup>14</sup> on the other hand the WTO's ruling rejected the claim that Canada had violated the provisions on state-trading.

Preferential regulatory treatment of a state entity was a subject of *China – Certain Measures Affecting Electronic Payment Services* (DS413)<sup>15</sup> settlement where the United States challenged the regulatory requirement that certain credit card transactions in Renminbi be handled by China UnionPay (CUP). The proceedings established that CUP held a monopoly for one type of transaction

13. WTO (2001).

14. WTO (2004).

15. WTO (2012).

and that this, together with other regulatory advantages enjoyed by the entity, represented a breach of China's commitments under GATS Article XVI (market access) and Article XVII (national treatment).<sup>16</sup> Importantly, while CUP was established under the approval of the State Council and the Chinese People's Bank of China, the question of CUP's ownership or state enterprise status was not considered. What was considered however is that it was a beneficiary of a dominant market position associated with preferential regulatory treatment by government.

The WTO dispute settlement case *US – Anti Dumping and Countervailing Duties (China)* (DS379)<sup>17</sup> found that certain Chinese state-owned commercial banks were granting subsidies in the form of concessionary financing when providing loans at below-market interest rates to companies selling to international markets. The same case considered also if certain Chinese SOEs were conveyors of subsidies under WTO law by providing inputs to other Chinese companies for allegedly less than adequate remuneration. Of particular interest in this case was the determination whether, in the understanding of the WTO Agreement on Subsidies and Countervailing Measures, the state-owned banks were “public bodies” and thus whether or not they could be treated as giving a subsidy. In this case Chinese state-owned commercial banks were found to be public bodies as they were seen to be “meaningfully controlled by the government in the exercise of their functions”.

The meaning of the term “public body” and its relationship to government ownership has been explored further in the recent case *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (DS436)<sup>18</sup> which, among other issues, considered whether Tata Steel Ltd. benefited from the subsidy provided through the purchase of high-grade iron ore from India's National Mineral Development Corporation. In this case, while the corporation was 98% government-owned, the WTO Appellate Body found that its “public body” status had not been sufficiently proven. The significance of findings of the WTO Appellate Body in both these cases (DS379 and DS436) is that to be considered a “public body” an entity must be “vested with or exercises governmental authority”. Importantly, government ownership is by itself not sufficient to prove it (see also Section 3.2.2 on state enterprise-related rules in the WTO).

In an earlier investment dispute considered under the Argentina-Spain Bilateral Investment Treaty by the International Centre for Settlement of Investment Disputes (ICSID) a private Argentinean investor Mr. Maffezini claimed that acts of SODIGA—a company with which he had engaged in a joint-venture and later had a business dispute and which was 88% owned by the Spanish state—were attributable to Spain because of the firm's public entity status. Spain in turn argued that SODIGA was a commercial corporation established under Spanish law and that its activities were by consequence of private commercial character. A tribunal established at the ICSID to rule on this case considered, among other issues, structural and functional tests of what firms can be considered state entities. Similarly to the above-discussed WTO cases, it argued that ownership or control alone are not sufficient to define a state entity and that a functional test was necessary to determine whether firm's operations are commercial or governmental in nature, where the latter means that the entity undertakes functions that can be classified as governmental. The implication of this ruling is that, following the functional test, in some circumstances privately-owned firms can be considered to be state entities as well (ICSID, 2000).

State enterprises have also received special attention in the context of the application of “national benefit” and “national security” tests under national investment laws.<sup>19</sup> In 2009, for example, concerns

16. This case is covered in more detail in Kowalski et al. (2013).

17. WTO (2011).

18. WTO (2014).

19. See also the discussion on state enterprise-related elements of national investment regimes in Section 3.3.C.

over “national security” were cited as one of the key reasons for the collapse of an acquisition deal between Anglo-Australian mining company Rio Tinto—an owner of iron-ore and copper mines in Australia—and Chinese state-owned Aluminium Corp. of China (Chinalco).<sup>20</sup> In 2012, Canada’s federal government approved two acquisition deals by foreign state enterprises in the energy sector<sup>21</sup> and at the same time—and with an explicit reference to a growing presence of foreign SOEs in Canada’s natural resources—the government tightened criteria against which it reviews the investment by foreign SOEs.<sup>22,23</sup> The new policy stipulated also that “the Minister of Industry will find the acquisition of control of a Canadian oil-sands business by a foreign SOE to be of net benefit to Canada on an exceptional basis only” (Industry Canada, 2012). The latter is seen by some as contentious because most of the Canadian oil-sands are located in the province of Alberta which has interest in attracting foreign investment with a view to their development.<sup>24</sup>

### 2.3 *Business perceptions: Evidence from the OECD Business Survey on State Influence on Competition in International Markets*

The *OECD Business Survey on State Influence on Competition in International Markets* conducted in 2014 was designed to further document specific advantages granted to state enterprises that result in most cross-border distortions and to compare them with advantages granted to private enterprises.<sup>25</sup> The survey solicited information on crucial policy questions and issues raised in the literature and on-going discussions on cross-border activity of state enterprises. Since one of its key purposes was to determine the extent to which the various trade or investment-distorting advantages that may be granted by governments are inherent to state enterprises, the survey was designed in an ownership status-neutral manner.

The survey was sent to representatives of enterprises operating in the sectors characterised by traditionally close relations between the state and business (e.g. manufacture of steel, mining of steelmaking raw materials, air transport services, telecommunications services, energy) and, to ensure a fair coverage in all other sectors, to several national and international business associations for further circulation among their members. Approximately 650 enterprises accessed the on-line survey and 157 of them completed it either fully or partially. Sensitivity and complexity of the topic were likely two main factors behind the partial completion rate. The fact that the sensitive information provided may be identified and, as a result, harm enterprises’ business operations was among the most frequently-indicated reasons for not responding. Some business representatives preferred to discuss the topic off the record.

According to the obtained results the most respondents came from the following economic sectors: the manufacture of steel and basic metals (20% of respondents); professional, scientific and

20. See e.g. “Rio Tinto Scuttles Its Deal with Chinalco”, *The Wall Street Journal*, 5 June 2009.

21. These were the acquisition of Progress Energy Resources Corp. by Malaysian-controlled PETRONAS’ and Nexen Inc by Chinese state-owned China National Offshore Oil Corporation.

22. See for example, the speech by Prime Minister Harper from 7 December 2012: “In light of growing trends, and following the decisions made today [i.e. the approval of two acquisitions by foreign SOEs], the Government of Canada has determined that foreign state control of oil sands development has reached the point at which further such foreign state control would not be of net benefit to Canada.” More, on the Canadian criteria (SOE Guidelines) can be found in Kowalski et al. (2013).

23. Note that some other countries also differentiate between private and state enterprises in their inward foreign direct investment screening procedures and requirements (see Section 3.3.C).

24. See e.g. Beaulieu and Saunders (2014).

25. See Annex 1 for the details of business survey design and implementation. A pdf version of the survey can be consulted with the following link: <http://oe.cd/influence-survey>.

technical activities (6%); manufacture of food products (6%); telecommunications (6%); financial services (5%); manufacture of chemicals and chemical products (5%) and energy (4%).<sup>26</sup> The prominent response from the steel sector can be explained by the fact that it is characterised by a significant state involvement as well as important vertical links with upstream and downstream sectors (e.g. raw materials) which are also often subject to significant levels of government intervention and influence (see also Sections 2.1 and 2.2). In addition, in recent decades the sector saw a significant shift towards production in non-OECD economies which currently account for around two-thirds of global steel production, with China alone accounting for 50%. Telecommunications services have developed from a largely state-owned monopoly towards one of the most competitive ones. However, around 26% of world fixed line operators remain state-owned, 33% of them are only partly privatised and many infrastructure providers are state-owned.

The lower number of responses from the energy and air transport sectors might suggest that many firms in these sectors benefit from state influence or do business with firms who are beneficiaries and thus are constrained in voicing their concerns. For example, some of the contacted energy companies indicated openly that they were not interested in filling in the survey. This is hardly surprising since energy and natural resources are a traditional attribute of national sovereignty, and natural resource extraction is an area known for expropriation and state control.<sup>27</sup> International air transport was also traditionally dominated by state-owned carriers and served by state-owned airports. The last two decades have seen significant deregulation, privatisation and easing of the restrictions on the foreign ownership of international carriers but hundreds of airlines<sup>28</sup> and airports<sup>29</sup> remain majority state-owned and several others are minority state-owned.

In terms of ownership status, 84% of survey participants represented wholly privately-owned enterprises while wholly and majority state-owned enterprises accounted together for 7% of respondents.<sup>30</sup> 42% of all respondents reported global employment of 10 000 or more workers.<sup>31</sup> 17% of respondents had headquarters in the United States, 8% in Spain, 6% in Denmark and Germany, 5% in the United Kingdom and Brazil, 4% in Belgium, Israel and Mexico, 3% in Canada, Ireland and Portugal.<sup>32</sup> Coverage of firms with headquarters in large emerging markets other than Brazil was limited.<sup>33</sup>

26. See Annex Figure 1.

27. Some estimate, for example, that 50% of power plants and 70% of global oil reserves are under the state control.

28. ICAO Economic Policy and Infrastructure Management Section's internal database, 2008.

29. Of the world's 30 busiest airports, 19 are state-owned and most of the rest are public-private partnerships. (The Economist, "Runways required", 26 May 2011).

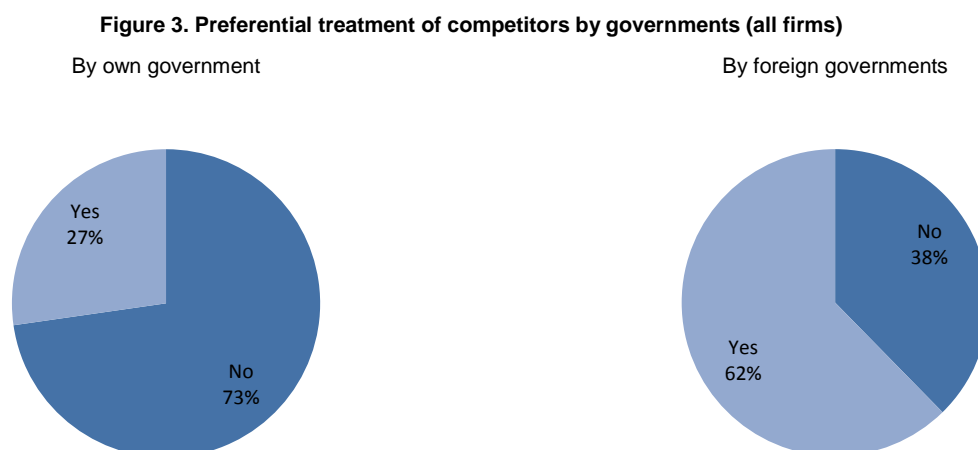
30. See Annex Figure 2 and 3. Note also that while the private firms may have had more incentives to respond to our survey, this seems to be broadly in line with the extent of state ownership globally. Kowalski et al. (2013), for example, estimated that majority state-owned enterprises account for approximately 10% of world 2 000 largest firms.

31. They are followed by 17% of enterprises employing more than 1000 but less than 10 000 of workers (Annex Figure 4). When steel firms are excluded, small and medium enterprises become the second most represented group (17 % of respondents, Annex Figure 5).

32. See Annex Figure 6. Approximately similar geographical distribution is observed when steel firms are excluded. However, Brazil accounts for only 1% of no-steel firms (Annex Figure 7).

33. Firms located in Argentina, China, Indonesia, India, Russian Federation and South Africa accounting for 1% each. Only limited information has been provided by respondents on where they sell their products—around 40% of them did not indicate their top sales market at all (Annex Table 1) while 16%

According to the results, 62% of respondents indicated that their competitors benefit from preferential treatment by foreign governments and only 27% reported such preferential treatment by domestic governments (Figure 3).<sup>34</sup> Potentially this illustrates the greater difficulty of minimising state enterprise distortions in an international context. Among foreign governments that were indicated as extending preferential treatment with “strong negative impact” on respondents’ sales were: China (37% of respondents), Albania (7%), Russian Federation (5%), Brazil, France, India and Turkey (4%) (Figure 4, Panel A).<sup>35</sup> Foreign governments that were reported to extend preferential treatment with “significant negative impact” on sales included: China (14%), India (8%), Korea (8%), Russian Federation (7%), Algeria, Brazil and Venezuela (5%) (Figure 4, Panel B).<sup>36</sup>



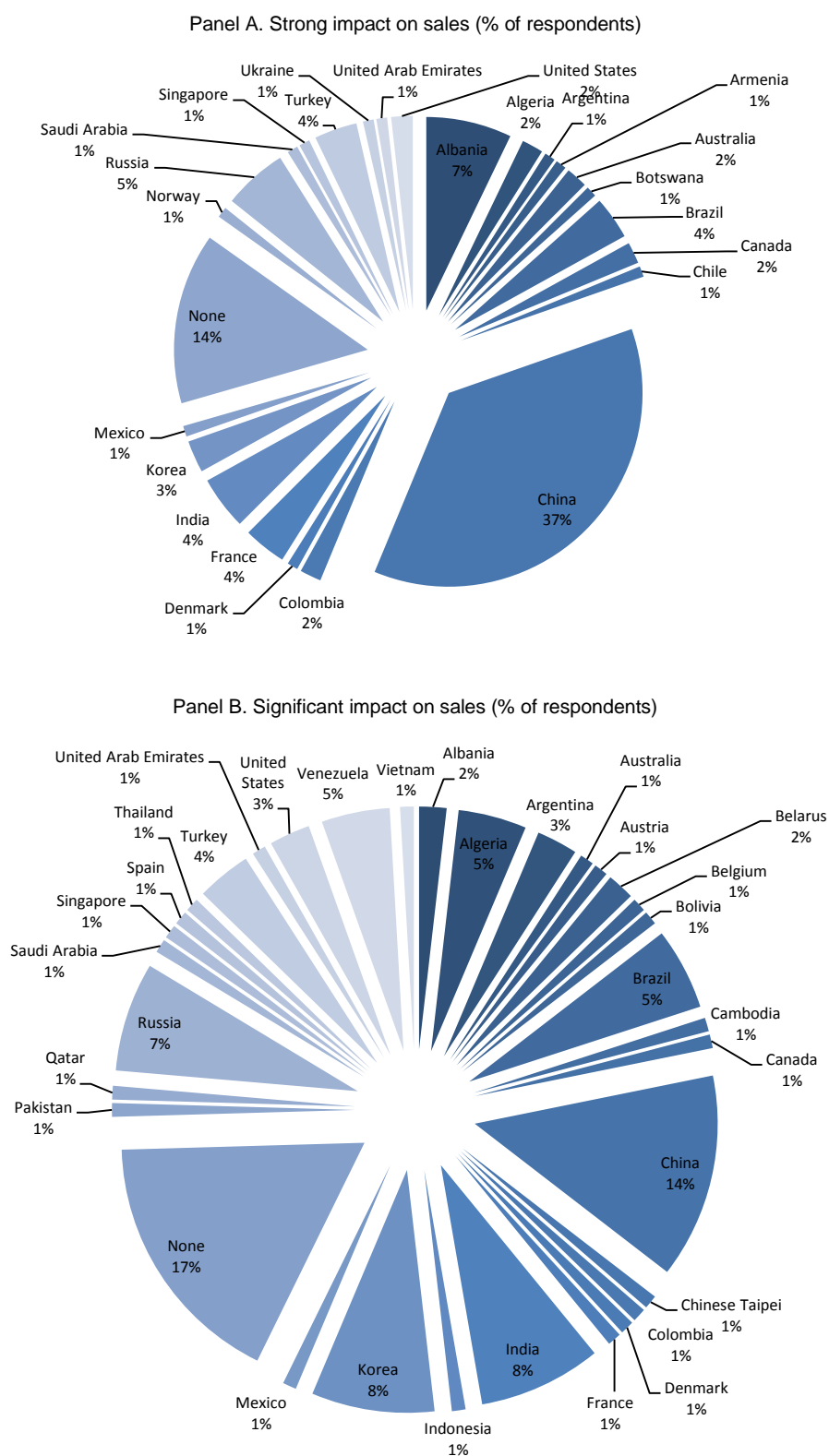
*Note:* This figure is based on responses to question “Do any of your main competitors benefit from preferential treatment by your own government or foreign government?”

*Preferential treatment* is defined as government measures or actions, which affect costs or prices of commercial enterprises and which are extended only to certain specific enterprises or groups of enterprises. *Own government* is defined as the governments of country of headquarters (see the survey questionnaire).

*Source:* OECD Business Survey on State Influence on Competition in International Markets.

indicated the United States, 26% one of the EU markets and 15% indicated markets outside of the OECD area.

34. A similar trend is observed when steel firms are excluded, respectively 55 and 33% (Annex Figure 8).
35. For non-steel firms the corresponding statistics are: China (27%), Albania (13%), India (8%), France and Brazil (6%), Australia, Algeria, Columbia, Canada, Russian Federation and the United States (3%) (Annex Figure 10, Panel A).
36. For non-steel firms the corresponding statistics are: China (17%), Algeria (8%), Brazil (7%), Argentina, India, Korea and Russian Federation (5%) (Annex Figure 10, Panel B).

**Figure 4. Which foreign governments extend preferential treatment to competitors? (all firms)**

Source: OECD Business Survey on State Influence on Competition in International Markets.



Ownership status was reported to play a significant role when it comes to perceptions of preferential treatment of enterprises by foreign and own governments. Indeed, the reported severity of the impact of preferential treatment on respondents' sales was related positively to the degree of state ownership (Figure 5).<sup>37</sup> When comparing the level of perceived impact of preferential treatment granted to state-owned enterprises by domestic and foreign governments a strong perception was expressed that both types of governments tend to favour their state-owned firms. For example, while 6% and 15%<sup>38</sup> of respondents reported that preferential treatment by respectively domestic and foreign governments granted to privately-owned enterprises (less than 10% state ownership) resulted in strong negative impact on their sales, the corresponding statistics for majority state-owned enterprises<sup>39</sup> rose to 31% and 54%.<sup>40 41</sup>

Among the specific forms of preferential treatment, tax concessions and in-kind subsidies granted to both state-owned and privately-owned companies by foreign governments were reported as having a strong negative impact on sales by the largest number of respondents (Figure 6).<sup>42</sup> However, the degree of reported impact varied depending on ownership status of the enterprises. For instance, while 49% and 46% of respondents reported being negatively affected by tax concessions and in-kind subsidies granted to state-owned competitors, respectively 33% and 34% of respondents reported the same types of advantages granted to private competitors. Other forms of preferential treatment granted to state-owned competitors with strong reported impact on sales were grants and other direct payments, concessionary financing, government guarantees and preferential regulatory treatment.

The ranking of the most harmful measures granted to private enterprises was similar, though again, relatively fewer firms reported this is a problem as compared to state-owned firms. Preferential treatment in public procurement and exemptions from antitrust enforcement and bankruptcy laws of state-owned companies were not far behind. Support in form of commercial diplomacy, price support and preferential access to information were reported as having negative impact less frequently.<sup>43</sup>

Overall, financial and regulatory forms of support seemed to concern the respondents the most. This implies that tightening of the WTO subsidy rules and further development of similar rules on regulatory advantages might be a useful across-the-board approach that could also alleviate some of the most pressing concerns related to state enterprises.

37. Corresponding results for non-steel firms are presented in Annex Figure 11.

38. For non-steel firms the statistics are respectively 7% and 16%.

39. Defined as entities with state ownership of between 50% to 100%.

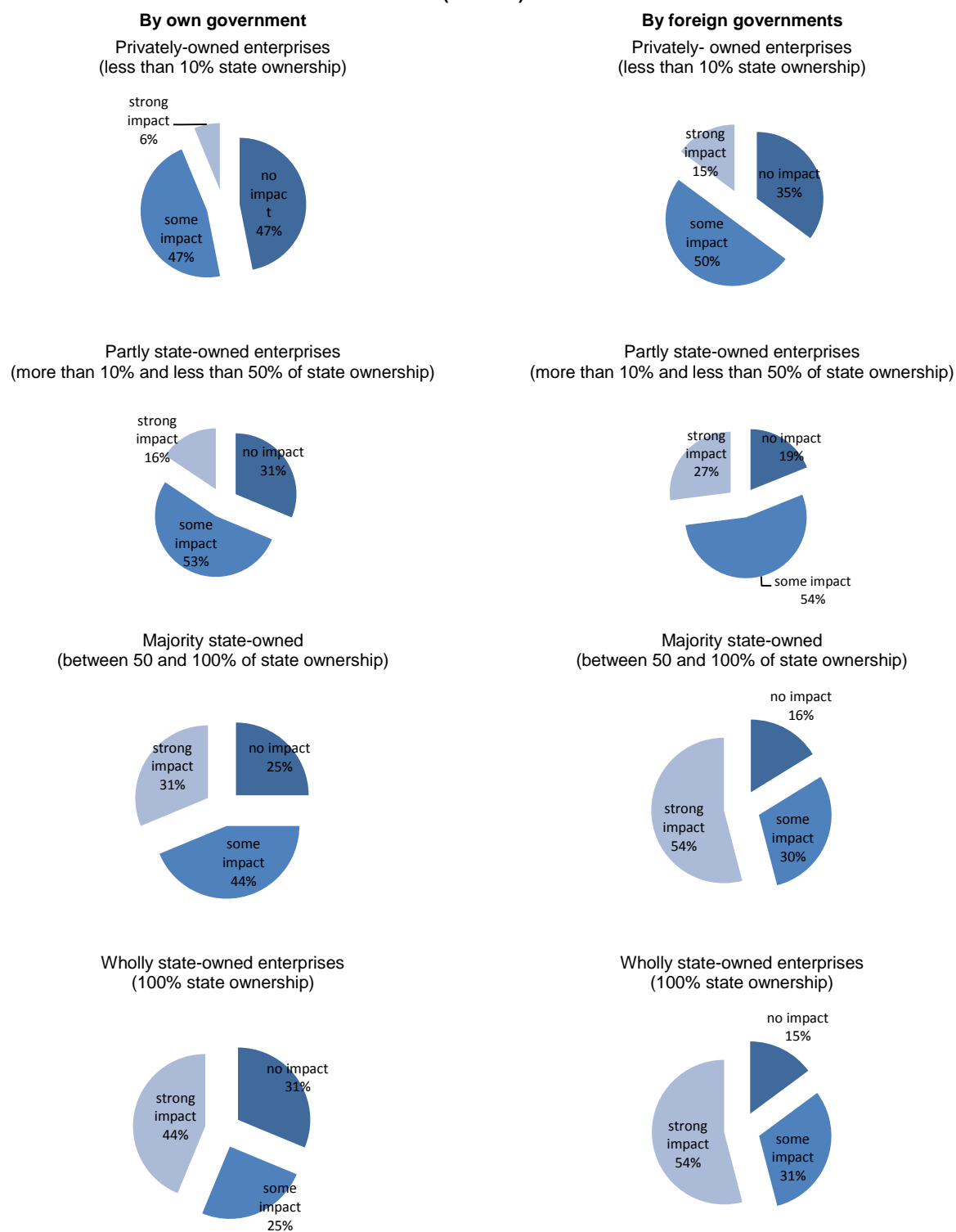
40. For non-steel firms the statistics were respectively 30% and 38%.

41. This result held also for specific forms of preferential treatment presented Figure 6.

42. Corresponding results for non-steel firms are presented in Annex Figure 12.

43. When steel firms were excluded (Annex Figure 12), preferential regulatory treatment took the lead with 41% of respondents report being negatively impacted when state-owned competitors were beneficiaries and 30% when it was granted to private competitors. Financial or in-kind subsidisation (concessionary financing, government guarantees, grants and other direct payments and tax concessions) followed. Support in form of commercial diplomacy and exemptions from competition laws and bankruptcy rules had strong negative impact on sales of smaller number of respondents. However, these two forms of preferential treatment cannot be neglected, especially with regard to the level of their impact when they are provided to state-owned enterprises. Similar to results for all firms, preferential access to information and price support were reported to have negative impacts less frequently.

**Figure 5. Preferential treatment of which enterprises by foreign governments has the most impact on respondents' sales? (All firms)**

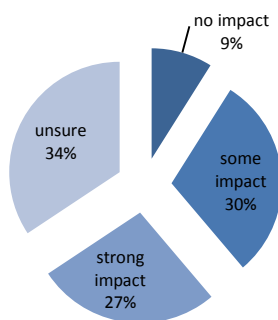


Source: OECD Business Survey on State Influence on Competition in International Markets.

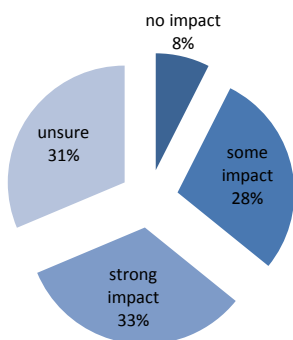
**Figure 6. Which forms of preferential treatment granted to privately-owned and state-owned enterprises have the most harmful impact on respondent's sales? (All firms)**

### Privately-owned enterprises

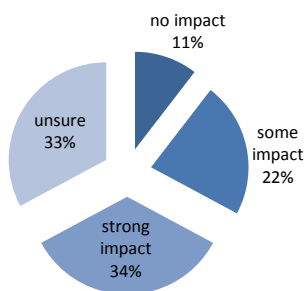
Grants and direct payments



Tax concessions

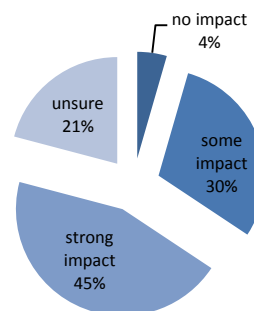


In-kind subsidies

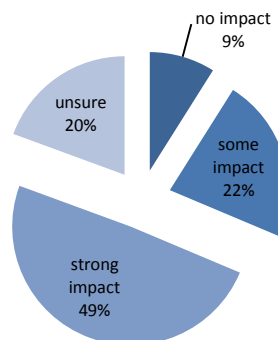


### State-owned enterprises

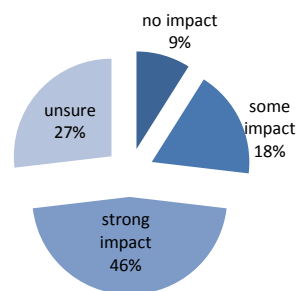
Grants and direct payments



Tax concessions



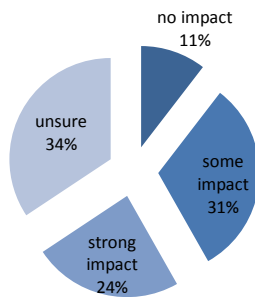
In-kind subsidies



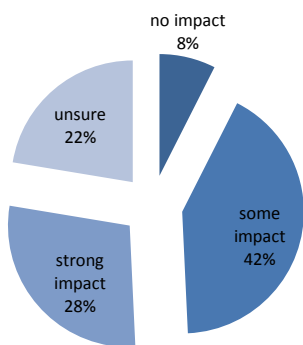
**Figure 6. Which forms of preferential treatment granted to privately-owned and state-owned enterprises have the most harmful impact on respondent's sales? (All firms) (continued)**

**Privately-owned enterprises**

Concessionary financing and guarantees

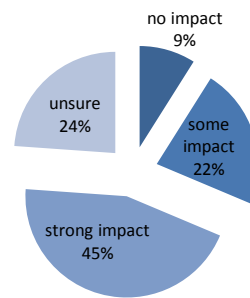


Preferential regulatory treatment

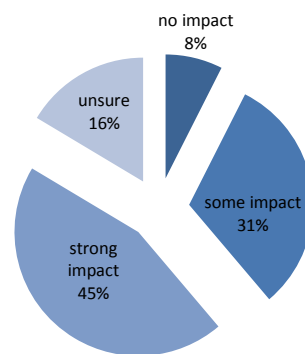


**State-owned enterprises**

Concessionary financing and guarantees



Preferential regulatory treatment

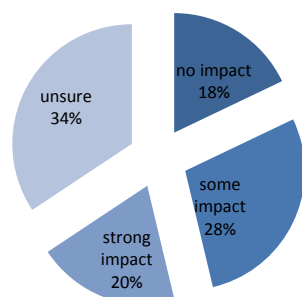


Source: OECD Business Survey on State Influence on Competition in International Markets.

**Figure 6. Which forms of preferential treatment granted to privately-owned and state-owned enterprises have the most harmful impact on respondent's sales? (All firms) (*continued*)**

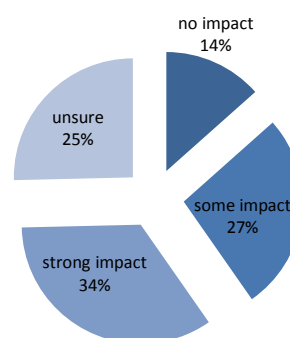
**Privately-owned enterprises**

Exemptions from anti-trust enforcement and bankruptcy laws

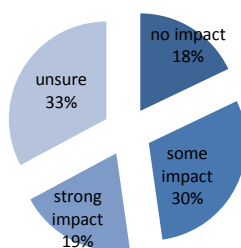


**State-owned enterprises**

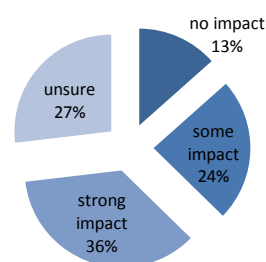
Exemptions from anti-trust enforcement and bankruptcy laws



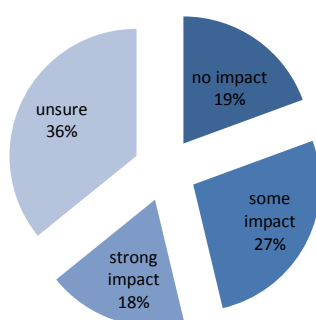
Preferential treatment in public procurement



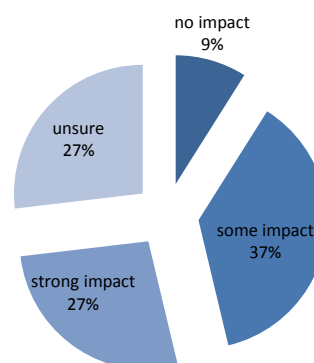
Preferential treatment in public procurement



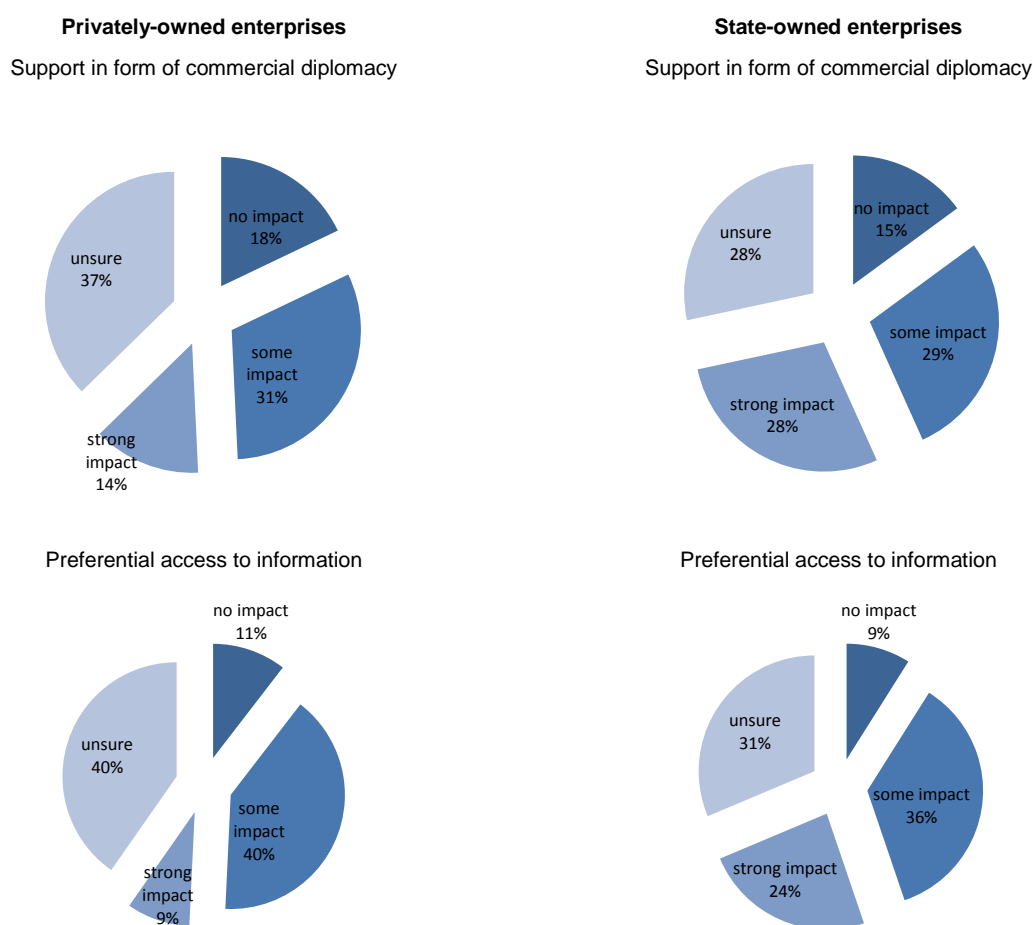
Price support



Price support



**Figure 6. Which forms of preferential treatment granted to privately-owned and state-owned enterprises have the most harmful impact on respondent's sales? (All firms) (continued)**



Source: OECD Business Survey on State Influence on Competition in International Markets.

The economic effects of preferential treatment by foreign governments were reported to extend well beyond foreign markets, affecting the sales in domestic markets almost to the same extent (Figure 7). While 51% of respondents reported that such measures strongly affected their sales in foreign markets, only a slightly smaller share of respondents (45%) reported strong negative impact on sales in their domestic market.<sup>44</sup> Domestic and foreign investments seemed to be affected to a lesser extent than sales but the impact on foreign investments was larger than on domestic investment (Figure 8).<sup>45</sup>

44. However, the results differ when steel firms are excluded; while roughly 52% report strong negative impact on their foreign sales only 27% report such impact on domestic sales (Annex Figure 13).

45. See also Annex Figure 14.

**Figure 7. What part of respondent's commercial operations is harmed the most by foreign governments' preferential treatment of competitors? (All firms)**



Source: OECD Business Survey on State Influence on Competition in International Markets.

The reported use of state-owned enterprises by foreign governments to indirectly grant advantages to respondents' competitors was much more prevalent upstream in the value chain than downstream. 55% of respondents reported that SOEs were used to lower the prices or facilitate accessibility of inputs while only 30% reported that they were used to offer more favourable prices or procurement terms (Figure 9).<sup>46</sup> This suggests that the issue of determining more clearly and predictably what kind of relationship with the government makes an enterprise susceptible to be considered as potential provider of a subsidy or another advantage—for example in the context of the WTO—may be an important one to focus on in the future (See also Section 3.2.2).

Central or federal levels of foreign governments were reported to grant advantages with strong negative impacts on respondents' sales more frequently (by 68% of all respondents) than sub-federal governments (40%, Figure 10)<sup>47</sup>, though it is clear that local governments were perceived to be engaging in discriminatory behaviour as well.

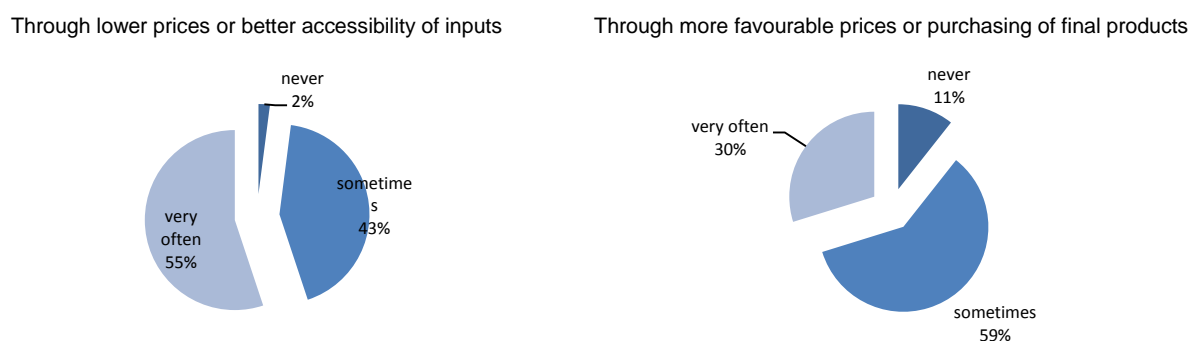
46. However, slightly different picture is observed when looking at the results excluding the steel sector. While almost the same share of respondents (29%) report the provision of preferences by foreign governments through the use of SOEs downstream in a value chain, a lower percentage of respondents (41%) indicate that SOEs are used to reduce the prices or facilitate accessibility of inputs (Annex Figure 15). This difference of the results might be explained by the specificity of the steel sector where availability and accessibility of inputs are crucial for production with a further direct impact on output price and its competitiveness on the market.

47. Corresponding results for non-steel firms are presented in Annex Figure 16.

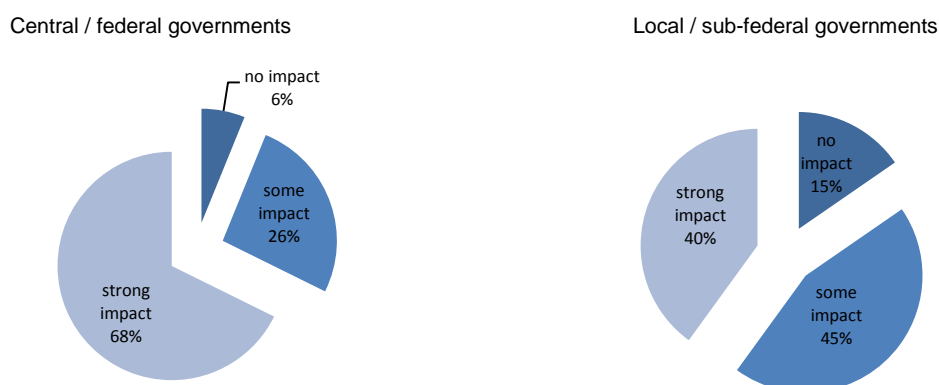
**Figure 8. What part of respondent's commercial operations is harmed the most by foreign governments' preferential treatment of competitors? (All firms)**



**Figure 9. How prevalent is the use of state-owned enterprises by foreign governments to indirectly grant advantages to your competitors? (All firms)**



**Figure 10. What levels of foreign governments grant advantages to competitors with the strongest negative impact on respondents' business? (All firms)**



Source: OECD Business Survey on State Influence on Competition in International Markets.



### 3. Regulatory frameworks and practices with respect to state enterprises: A cross-border perspective

#### 3.1 *Balancing the role of state and private enterprises in domestic and international markets*

There are legitimate economic and non-economic reasons for establishing and maintaining state enterprises and views on their role in the economy may differ across countries, depending on their history, political system, access to resources and structural characteristics. In some circumstances, intervention through state enterprises may deliver outcomes which may be preferred to those that would be attained by unregulated, or poorly regulated, markets. Particularly at earlier stages of economic and institutional development, correcting domestic market failures, providing public goods, and fostering economic development may in some cases require state control or support of certain entities.<sup>48</sup> This necessarily involves some form of preferential treatment *vis-à-vis* other market players and in some cases can also involve unintended market distortions.<sup>49</sup>

In a domestic context, if private sector development and market-based competition are important elements of a national economic development strategy, both the government and the public have an interest in clearly agreeing on the objectives of state enterprises as well as the types of preferential treatment afforded to them. In addition, they are interested in minimising the unintended distortions so that, to the extent possible, goods and services are produced by those that can do this most efficiently. To achieve these objectives, appropriate provisions can be included in domestic company law, competition and state aid regulations, and regulations relating specifically to the state sector.

Minimising state enterprise-related distortions is however more challenging in an international context for several reasons. First, citizens in different countries can have diverging views on the role of state enterprises in the economy and thus on the rationale for and forms of special and preferential treatment afforded to them. It is not unconceivable that some countries may deliberately use state enterprises to pursue strategic economic and political objectives to the detriment of their foreign competitors. Second, approaches to regulating the state sector tend to vary across countries which in itself may distort the international level playing field. Third, enforcement may be less stringent or simply violated when state enterprises compete in foreign markets. Finally, disclosure and transparency, which take on a particular importance in state sector management, are also more elusive in an international context.

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48. For example, state monopolies may be a sensible economic policy in industries with substantial economies of scale and important externalities. State enterprises can also be useful as instruments of provision of public or merit goods which would not be supplied by competitive markets at socially optimal levels. They have also been used to foster development of industries that are considered economically desirable and that would not otherwise be developed through private investment (e.g. OECD, 2012a).

49. There are several reasons why in general commercially operating state enterprises may be less efficient than their private counterparts. For example, objectives pursued by state enterprises can be blurry and transient in the context of changing policies and administrations (Gosh and Whalley, 2008; Megginson and Netter, 2001). They may be more likely than private firms to have lesser budget constraints, to enjoy politically-motivated state funding, and be exempted from the bankruptcy rules (Bai and Wang, 1998; MacCarthaigh, 2012; Liu et al., 2001). They may be more likely to be pressured to hire management or employees according to politically-motivated reasons, rather than commercial need or qualification (Krueger, 1990). Also, shareholders of private firms are more likely to internalise the costs of monitoring and conduct more efficient management control, as compared to the supervision of state enterprises by bureaucrats (Shleifer and Vishny, 1986).

### 3.2 Overview of current rules and approaches

The emerging evidence on increased presence and impact of state enterprises in international markets and the concerns associated with it call for a reflection on how to minimise any potential anti-competitive effects created by state enterprises and how to restrain undue protectionism that may be directed at them. One important question to be considered in this context is whether legitimate domestic objectives can be achieved more efficiently through promotion and international co-ordination of domestic reforms and implementation of good practices and guidelines with respect to the state sector, or through additional binding international rules, or by combining the two approaches.

#### 3.2.1 Domestic reforms and softer forms of international co-ordination

Public policy purposes which state enterprises often pursue may not easily yield themselves to a more stringent regulation at the international level. This suggests that domestic reforms and softer forms of international co-ordination of these reforms might have better potential for covering a wider range of issues and delivering desired outcomes. The policy areas that are relevant in this respect include national competition policies, rules with respect to corporate governance of the state sector and the so-called “competitive neutrality” policies which encompass a set of domestic measures that aim to identify and neutralise competitive advantages of state entities.

##### *National competition policies*

Competition policies focus mainly on actions of enterprises which have effects in national markets and usually apply regardless of the type of relationship between enterprises and states or nationality. However, in some jurisdictions state enterprises may be excluded from their application.<sup>50</sup> Competition policies normally contain provisions addressing predatory abuse of dominant position, including predatory pricing strategies, and anticompetitive effects associated with merger and acquisition activity of state enterprises. However, they rarely deal with subsidies or state aid which, as we have seen earlier in this report, is an important concern associated with state enterprises.<sup>51</sup>

Practices of predatory pricing by state enterprises which can significantly affect competition also in international markets are a subject of on-going discussions by the OECD Competition Committee.<sup>52</sup> The main issue is whether competition policy rules are effective in restraining predatory pricing by state enterprises which may enjoy softer financial constraints and may not have to recoup.<sup>53</sup> Calculation of costs benchmarks for state enterprises and other tests can also be more difficult because of their non-commercial goals and because of a lesser transparency and more difficult access to information in a cross-border context.

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50. Another potentially important exemption includes sovereign immunity where some foreign state enterprise may be shielded from jurisdiction (see e.g. Gaukrodger, 2010). For more on the application of competition policy to state enterprises see Capobianco and Christiansen (2011) and Kowalski et al. (2013).
  51. A notable exception is the EU where the community-level state aid and competition policies are integrated.
  52. For example, state enterprises and the issue of competitive neutrality were discussed at the Roundtable on Competitive Neutrality at the meeting of the OECD Competition Committee in June 2015. The main issues discussed were the impact on competition of subsidies and state aid granted to state enterprises as well as the possible enforcement and non-enforcement tools that can be used to address state enterprises-related competition distortions.
  53. See e.g. Capobianco and Christiansen (2011).

*OECD Guidelines on Corporate Governance of State-owned Enterprises*

The 2005 OECD Guidelines on Corporate Governance of State-owned Enterprises (OECD, 2005) which were updated in 2015 (OECD, 2015)<sup>54</sup> recommend the maintenance of a level playing field among state-owned and privately-owned incorporated enterprises operating on a commercial basis.<sup>55</sup> They list and elaborate on a number of guiding principles in areas such as: legal and regulatory framework; principles of the state acting as an owner; equitable treatment of shareholders; relations with stakeholders; transparency and disclosure; as well as the responsibilities of the boards of state-owned enterprises. They are a legal instrument with which all OECD members must formally associate themselves.<sup>56</sup> They are focusing on corporate outcomes while giving individual jurisdictions freedom to decide on whether and how to achieve these.

Some of the potential limitations of the Guidelines include their focus on state ownership, lack of explicit consideration of cross-border issues, as well as their voluntary nature and lack of regular assessment of implementation. Nevertheless, they can be a useful reference for advocacy-oriented approaches to creating a more level playing field in the international market and can also have more direct applications in international context. For example, they have been used as a benchmark to assess the quality of potential state investors by investment regulators. The Guidelines have also been recently referenced in the transparency and corporate governance section of the European Union's initial proposal for legal text on state-owned enterprises in the currently-negotiated Transatlantic Trade and Investment Partnership.<sup>57</sup>

*Competitive neutrality*

Some countries go beyond corporate governance issues in their regulation of state entities and pursue additional national policies that aim to identify and neutralise their competitive advantages with respect to taxation, financing costs, regulatory neutrality as well as profit orientation (OECD, 2012). The 2012 OECD report on competitive neutrality identifies the most important issues that governments need to address in order to achieve level playing field between private and public businesses.<sup>58</sup> These are framed around eight building blocks, including among others: choosing the best corporate form; achieving a commercial rate of return; accounting for public service obligations; improving debt neutrality; and making public procurement open and transparent. The report provides also examples of how to implement competitive neutrality policies in practice based on countries' experience.

Among the OECD countries, Australia and the European Union are considered to have the most advanced approaches in this area.<sup>59</sup> The supranational character of the European Union's

54. See more information on OECD Guidelines on Corporate Governance of State-owned Enterprises with the following link:

[www.oecd.org/daf/ca/revisionoftheoecdguidelinesoncorporategovernanceofstate-ownedenterprises.htm](http://www.oecd.org/daf/ca/revisionoftheoecdguidelinesoncorporategovernanceofstate-ownedenterprises.htm).

55. The updated Guidelines envisage their application to state-owned enterprises pursuing economic activities, either exclusively or together with the pursuit of public policy objectives or the exercise of governmental authority or a governmental function. The Guidelines are not intended to apply to entities whose primary purpose is to carry out a public policy function, even if those entities have the legal form of an enterprise.

56. In addition to OECD members, several non-OECD countries participated in the review of the Guidelines on equal basis and have associated themselves with the revised document.

57. See: [http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc\\_153030.pdf](http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153030.pdf)

58. See OECD (2012a).

59. See Kowalski et al. (2013) for a more extended discussion of competitive neutrality provisions in Australia and the EU from the perspective of cross-border competition.

arrangements, their ownership-neutral character and the fact that they comprise competition, state aid, transparency and government procurement rules, make them particularly interesting in the context of cross-border issues considered in this report.

However, apart from the EU, competitive neutrality policies are adopted on a unilateral basis and thus do not deal with any potential differences across countries with respect to the rationale for maintaining state enterprises and bestowing them with advantages in the first place. International discussions on co-ordination of competitive neutrality approaches are relatively nascent; the 2012 OECD report on competitive neutrality provided examples of relevant practices but it did not attempt to identify best practices or develop guidelines.<sup>60</sup> Moreover, since competitive neutrality policies are formulated with respect to own state entities, they do not shield countries from the effects of foreign state enterprises. Additionally, it is not clear to what extent they can effectively protect foreign private entities competing with domestic state enterprises.<sup>61</sup> They may also be less rigorously applied when it is competition abroad of domestic state enterprises that is in question.

### *3.2.2 Binding international rules*

Some of the relevant binding international rules that discipline discriminatory government behaviour related to state enterprises can already be found in the WTO law as well as certain regional and preferential trade agreements (PTAs) and bilateral investment treaties (BITs).

#### *Selected relevant WTO disciplines*

Several WTO rules are useful in curbing anti-competitive behaviour of states and state enterprises but there are also important deficiencies. First, there are the WTO rules that discipline some of the trade-distorting government policies that may be directed at state enterprises. For example, the current rules of the Subsidies and Countervailing Measures Agreement (SCMA) prohibit or discipline various forms of trade-distorting financial preferences irrespective of whether they are granted to state or private firms. Another example is GATT Article III on national treatment which bans discrimination favouring domestic producers, including state enterprises.

In addition, in principle all WTO obligations (e.g. subsidies, most-favoured nation, national treatment, bans on import and export restrictions) can be applied to state enterprises if the complainant in a dispute is able to demonstrate that such enterprises are acting under governmental instructions.

For example, whether state enterprises are disciplined by the SCMA rules as granters of subsidies depends on whether they can be considered a “public body”. The WTO case law has recently established that “public body” must be “an entity that possesses, exercises or is vested with governmental authority.” (See Box 1 and Section 2.2. for the related WTO disputes) It has been established that ownership is a relevant criterion in the determination of whether an entity is a “public body”, but it is not a determining factor. Determination of “public body” statute has to reflect on what is considered as government functions in the legal order of the country in question but it may also consider what features are normally exhibited by public bodies. In some cases, such as for example when the vested government authority is stipulated clearly in statutes or legal instruments, determining “public body” status may be straightforward. In other cases “the picture may be more mixed, and the

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60. See OECD (2012a).

61. See e.g. Capobianco and Christiansen (2011). However, the answer to this question is not necessarily negative. In fact, one of the few existing complaints filed within the Australian competitive neutrality framework does involve a subsidiary of the government-owned Meteorological Services of New Zealand Limited as a complainant against the state-owned Australian Civil Aviation Safety Authority’s. See Commonwealth Competitive Neutrality Complaints Office (2001).

challenge more complex.”<sup>62</sup> This approach does not single out any particular type of entities which can be considered as vehicles of subsidies which lends it useful flexibility. On the other hand, it can be seen as creating uncertainty.

#### Box 1. WTO case law interpretation of the “public body” term

Excerpts from the Appellate Body report on *United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (DS436) concluded in 2014 (WTO, 2014) which draw on findings from *US — Anti-Dumping and Countervailing Duties (China)* (DS379) concluded in 2011 (WTO, 2011) give the following interpretation of the term “public body” within the meaning of the SCMA:

“Regarding the meaning of the term “public body”, the Appellate Body found, in *US — Anti-Dumping and Countervailing Duties (China)*, that a “public body within the meaning of Article 1.1(a)(1) of the SCM Agreement must be an entity that possesses, exercises or is vested with governmental authority.”[1] In determining whether or not a specific entity is a public body, it may be relevant to consider “whether the functions or conduct are of a kind that are ordinarily classified as governmental in the legal order of the relevant Member.”[2] The Appellate Body stated that the classification and functions of entities within WTO Members generally may also bear on the question of what features are normally exhibited by public bodies.[3] The Appellate Body added that “just as no two governments are exactly alike, the precise contours and characteristics of a public body are bound to differ from entity to entity, State to State, and case to case.”[4] The Appellate Body explained that, in some cases, such as when a statute or other legal instrument expressly vests authority in the entity concerned, determining that such entity is a public body is a straightforward exercise. In other cases, the picture may be more mixed, and the challenge more complex.[5]

The Appellate Body further stressed that the absence of an express statutory delegation of governmental authority does not necessarily preclude a determination that a particular entity is a public body.[6] Instead, there are different ways in which a government could be understood to vest an entity with “governmental authority”, and therefore different types of evidence may be relevant in this regard. The Appellate Body stated that evidence that “an entity is, in fact, exercising governmental functions may serve as evidence that it possesses or has been vested with governmental authority.”[7] The Appellate Body added that “evidence that a government exercises meaningful control over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions.”[8] The Appellate Body stressed, however, that “the existence of mere formal links between an entity and government in the narrow sense is unlikely to suffice to establish the necessary possession of governmental authority.”[9] Instead, “[a]n investigating authority must, in making its determination, evaluate and give due consideration to all relevant characteristics of the entity and, in reaching its ultimate determination as to how that entity should be characterized, avoid focusing exclusively or unduly on any single characteristic without affording due consideration to others that may be relevant.”[10] Thus, the mere ownership or control over an entity by a government, without more, is not sufficient to establish that the entity is a public body.”

[1] Appellate Body Report, *US — Anti-Dumping and Countervailing Duties (China)*, para. 317.

[2] Appellate Body Report, *US — Anti-Dumping and Countervailing Duties (China)*, para. 297.

[3] Appellate Body Report, *US — Anti-Dumping and Countervailing Duties (China)*, para. 297.

[4] Appellate Body Report, *US — Anti-Dumping and Countervailing Duties (China)*, para. 317.

[5] Appellate Body Report, *US — Anti-Dumping and Countervailing Duties (China)*, para. 318.

[6] Appellate Body Report, *US — Anti-Dumping and Countervailing Duties (China)*, para. 318. As the Appellate Body observed, “[w]hat matters is *whether* an entity is vested with authority to exercise governmental functions, rather than *how* that is achieved”. (Ibid. (emphasis original))

[7] Appellate Body Report, *US — Anti-Dumping and Countervailing Duties (China)*, para. 318.

[8] Appellate Body Report, *US — Anti-Dumping and Countervailing Duties (China)*, para. 318.

[9] Appellate Body Report, *US — Anti-Dumping and Countervailing Duties (China)*, para. 318. The Appellate Body also explained that panels and investigating authorities are called upon, in all instances, “to engage in a careful evaluation of the entity in question and to identify its common features and relationship with government” (ibid., para. 319), and that the “mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity” (ibid., para. 318).

[10] Appellate Body Report, *US — Anti-Dumping and Countervailing Duties (China)*, para. 319. (fn omitted)

Source: WTO (2014).

62. WTO (2014) Appellate Body Report, *US — Anti-Dumping and Countervailing Duties (China)*.

In addition, a number of specific WTO provisions discipline some practices in which certain types of enterprises can be used by governments as vehicles to influence international trade. For example, Article XVII of the GATT requires WTO members to notify so-called state trading enterprises (STEs) which are enterprises that “are granted exclusive or special rights or privileges”.<sup>63</sup> The Article disciplines cases where the level of purchases or sales conducted by STEs is not based on economic principles but rather on political considerations. The narrow definition of STEs means however that the Article may be of limited use when it comes to curbing anti-competitive actions of state enterprises seen more typically in global markets today (i.e. those that are influenced by the state but have not been granted exclusive or special rights or privileges). Also, no separate obligation is applied to STEs to operate in accordance with commercial considerations; they can act in an anti-competitive manner insofar as they do not violate the obligation of non-discrimination.<sup>64</sup>

The GATS does not refer to state enterprises, state trading enterprises or state-owned enterprises explicitly, but contains two related concepts. Article I:3(b) of the GATS carves out from the scope of the Agreement “services provided in the exercise of governmental authority”. These services are defined as services which are “supplied neither on a commercial basis nor in competition with one or more service suppliers”.<sup>65</sup> The GATS also contains disciplines regarding monopolies which apply to both public and private monopolies. Under the GATS Article XVIII, Members must ensure that monopoly suppliers act in a manner consistent with members' specific commitments, as well as with the MFN obligation.

An important gap in the area of services however is the absence of specific WTO disciplines—equivalent to the SCMA in the area of goods—on subsidies in the services sectors. This is a significant omission considering the important presence of state enterprises in the services sector as well as the vertical links that exist between goods and services sectors.

Overall, WTO rules concentrate generally not on actions of enterprises but on discriminatory actions of governments. As such, they can indirectly discipline actions by certain state enterprises which can be proven to exercise governmental functions. Thus, in principle WTO rules cover a broad range of relevant anti-competitive practices related to state enterprises. Still, uncertainty exists as to what can be understood by governmental functions in different competitive contexts and different countries.

#### *State enterprise-related provisions in PTAs*

Some additional rules relating to state enterprises have been added in selected existing PTAs, and some new ones are being currently negotiated in the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership negotiations.<sup>66</sup> In general, they build on and try to fill the gaps in the existing WTO rules by providing clearer definitions of state enterprises, more precise interpretations of certain related concepts (e.g. commercial considerations) and by including additional obligations, for example, on transparency and consultation.

63. See Understanding on the Interpretation of Article XVII of the GATT 1994.

64. See e.g. Nakagawa (2012).

65. This means that services provided by state enterprises otherwise are covered by the GATS.

66. Although they are beyond the direct scope of this report, bilateral investment treaties are also an important part of the picture. Some aspects of treatment of state enterprises in these agreements have been covered by OECD (2013a) and Kowalski et al. (2013).

For example, in NAFTA, US-Korea or Colombia-US FTAs state-owned enterprises are obliged by the same non-discriminatory obligations as the governments.<sup>67</sup> The US-Singapore FTA has additional transparency provisions, prohibits direct government influence on SOEs, collusion and other anti-competitive activities and foresees a progressive reduction in the number of Singapore's SOEs. The Singapore-Australia FTA also has extensive references to "competitive neutrality." Some PTAs contain provisions on services or the so-called "trade +" provisions on intellectual property rights, technical barriers to trade, or investment and competition, which may also be extended to state enterprises.

Currently, twelve countries—including countries with important state sectors such as Malaysia, Singapore or Viet Nam—are tackling the issue of additional disciplines on state enterprises in on-going negotiations on the Trans-Pacific Partnership (TPP). While the final shape of new provisions is not yet known, state ownership and the concept of effective government control have been cited as a likely approach.<sup>68</sup>

Disciplines on state enterprises are also being discussed in another potential mega trade deal—the Transatlantic Trade and Investment Partnership between the US and the European Union—which will involve several economies with important state sectors from both Western and Eastern Europe. When it comes to defining state enterprises, the European Union's public initial proposal for legal text on state-owned enterprises<sup>69</sup> for example takes a broad approach and makes, among others, references to state ownership, voting rights that may be held by the state as well as to the ability of state to appoint members of administrative, supervisory and managerial boards. It also includes some of the terms used in the WTO, including "enterprises granted special and exclusive rights and privileges" as well as "commercial considerations" of state enterprises.

Overall, the types of state enterprise-related provisions seen in PTAs naturally reflect specificities and sensitivities of the signatory countries and can differ from one agreement to another. While they provide some indications of directions in which multilateral rules could evolve in the future, the potential for their harmonisation at the multilateral level remains unclear. Still, given the economic significance of countries involved in the TPP and TTIP negotiations, the provisions that will be agreed may have important implications not only for the concerned parties but also for the third countries and for the future bilateral, regional and multilateral trade and investment agreements.

### 3.3 *Country practices: Overview of results from the OECD Database on National Practices and Regulations*

As has been seen, a number of domestic policies and international obligations discipline some of the potentially harmful effects of state enterprises. The *OECD Database on National Practices and Regulations* takes stock of the different country-specific regulations which may have a bearing on the competitive position of state enterprises in international markets. It is devised as a transparency tool which allows governments to objectively inform each other about practices and regulations in place and to cross-check regulations in other countries. The database covers OECD member countries, Brazil, China, India, Indonesia, Russian Federation and South Africa, as well as a number of emerging countries with high incidence of state enterprises (e.g. Malaysia, United Arab Emirates, Viet Nam). It compiles information on 41 specific questions in the following areas:

67. In US-Korea, for example, this includes control through ownership interests. Ownership, or control through ownership interests, may be direct or indirect. See the text of the Agreement at: <https://ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text>

68. See e.g. Kawase (2014).

69. See: [http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc\\_153030.pdf](http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153030.pdf)

- A. Size, composition and outward orientation of the state sector
- B. Elements of national competitive neutrality arrangements
- C. State enterprise-related elements of national investment regimes
- D. External obligations with respect to the state sector (WTO, FTAs and BITs)

The OECD Secretariat has conducted background research and, wherever possible, filled in the information on the 41 questions (Annex 3) for all covered countries resulting in more than 3 000 entries. The country notes collecting all country-specific data were sent to the respective governments for verification and, where applicable, filling in missing data. At the time of preparing this report the country-specific data has been verified by 30 out of 43 governments. The database is available online.<sup>70</sup>

The remainder of this section provides a discussion of selected findings that can be drawn on the basis of information contained in the database. While it first provides an overview of the data on size and composition of the state sector, it does not make an attempt for cross-country comparisons as—because of definitional issues discussed below—this kind data should be used carefully and preferably interpreted in country-specific contexts. Instead, the discussion of results below focuses mainly on the regulatory sections of the database.

### 3.3.A *Size, composition and outward orientation of the state sector*

The first section of the database intends to provide an indication of the size of the state sector, recent changes in the size as well as the degree of the sector's outward orientation.<sup>71</sup> The data on the number, value and employment of SOEs for the OECD countries were collected from the two official OECD stocktaking exercises for 2008-2009 and 2012, summarised respectively in Christiansen (2011) and OECD (2013e).<sup>72</sup> Some of the data that were missing from these sources were provided by countries during the recent verification process. The corresponding entries for non-OECD countries were filled in on the basis of publicly available official data.<sup>73 74</sup>

One important cross-cutting issue which has been flagged when collecting data for the current database—and in the larger OECD discussions on the theme of state enterprises—is their definition.

70. It can be accessed at: <http://oe.cd/state-enterprises>

71. The corresponding entries are A.1 through A.7. See Annex 3 for the database structure.

72. However, Iceland, Luxembourg and the Slovak Republic are not covered in the more recent stocktaking. In the earlier stocktaking exercise, the United States, Ireland, Turkey, Slovak Republic and Luxembourg were not covered and only partial data was available for Greece, Japan, Mexico, Poland and Slovenia.

73. For example, data presented by Brazil's Ministry of Planning, Budget and Management (2013), Government of India (2013), Russian Federal Agency for State Property Management (2013), Ministry of Planning and Investment of Viet Nam (2013), or expert data (Musacchio, Lazzarini (2014). In some cases different data sources yield different results. For example, data on numbers on SOEs reported in China State Owned Assets Supervision and Administration's Yearbook 2012 is different from the data reported by the Ministry of Finance of China.

74. The data on outward orientation of state enterprises across countries is drawing on the results of the recent stocktaking of international mergers and acquisitions (IM&As) which involved SOEs conducted by the OECD's Investment Committee (OECD, 2013a). Using this data the corresponding section entries (A6 and A7) were filled in for all OECD and non OECD countries covered in the database.



Since there is currently no “official” OECD definition,<sup>75</sup> the starting point for the current exercise is the definition used in two recent OECD stocktakings undertaken under the auspices of the OECD Working Party on State Ownership and Privatisation Practice.<sup>76</sup> In this work, an SOE was defined as “any autonomous public entity controlled, directly or via other government-controlled institutional units, by the central or federal level of government, involved in commercial activities”.<sup>77</sup> A useful distinction has also been made in this work between three legal forms of SOEs: majority-owned listed companies, majority-owned non-listed companies and statutory or quasi corporations.<sup>78</sup>

A certain degree of flexibility is required in application of these definitions since a strict adherence would significantly limit country coverage, particularly in the case of non-OECD countries.<sup>79</sup> In fact, it would be unrealistic to expect full comparability.<sup>80</sup> Instead, the approach aims to balance the objective of maximising comparability with the—sometimes competing—objective of maximising coverage, while documenting any definitional and statistical differences wherever possible.

The adopted definition of state enterprises can also be seen as somewhat limited, for example with its focus on enterprises controlled by federal, but not local governments.<sup>81</sup> It can also be interpreted differently by different countries, for example, with respect to what can be considered a “commercial activity”. For instance, the OECD (2013e) defines “commercial” so as to denote “market producer” which in turn is defined to depend on an assessment of whether or not the entity charges “economically significant prices”. This definition is based on the System of National Accounts (SNA). However, as described in earlier sections, Article I:3(b) of the GATS, for example, carves out from the scope of the Agreement “services provided in the exercise of governmental authority”. These services are defined as services which are “supplied neither on a commercial basis nor in competition with one or more service suppliers”. These key terms have been subject to varying interpretations by countries, for example in the context of postal services.<sup>82</sup> As a result, some countries may have chosen, for example, to report in the database their state postal services enterprise, while other may have chosen otherwise.

While statistics collected in this way reveal some basic facts about the size of the state sector they do need to be interpreted taking into account specific contexts of the countries for which they are compiled. For example, in countries in which state enterprises operate on a commercial and competitive basis, state enterprise sector employment figures may mean something entirely different as compared with a country where state enterprises are shielded from competition and are in fact maintained specifically to create employment.

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- 75. Rather, different groups of policy analysts and country representatives at the OECD used different definitions to do empirical and policy work in different contexts.
  - 76. Christiansen (2011) and OECD (2013e).
  - 77. OECD (2013e).
  - 78. This is because, normally, incorporated SOEs, would be expected to be subject to country’s company law while statutory corporations are governed by their statutes.
  - 79. For example, the available statistics on SOEs do not distinguish between different legal forms for countries such as China, India and Viet Nam. In Viet Nam, the data on the degree of state ownership is only available for the whole of central and local levels of government.
  - 80. The readily available data on the size and composition of state sector is not fully comparable even for the OECD membership (e.g. OECD, 2013e).
  - 81. However, the database does contain statistics on local state enterprises for selected countries, including China, India, the Russian Federation, Viet Nam and South Africa.
  - 82. E.g. Sinclair (2002).

Despite these caveats, the data collected allows first comparisons across countries and facilitates discussions of their future refinements. Using it, governments can engage in discussions on comparability and relevance of the data as well as on specific characteristics of state entities that may be particularly worth focusing on in future updates of this work. For example, they may decide that categorising state enterprises according to their contribution to domestic public services (e.g. state health care provision), or indeed the degree of involvement in international trade and investment, can be a meaningful way of differentiating between the entities that should be in focus of international discussions from those that are of limited interest in this context. This may ultimately lead to developing a more precise and relevant definition of state enterprise in the future.

### 3.3.B *Elements of national competitive neutrality arrangements*

The issue of definitions applies also to the other sections of the database where the database provides information on country practices and regulations with respect to “SOEs”, “publically-controlled enterprises” and “state enterprises”, without having strictly defined them. However, this captures the range of terms that refer in different legal texts to enterprises that can be influenced or favoured by the state—the subject of our study. Adhering to any one specific definition in this context would be tantamount to limiting the scope of the study right at the outset. Bearing this in mind, the following sections present a snapshot of the differences in approaches to regulating state enterprises across countries and different regulatory areas.

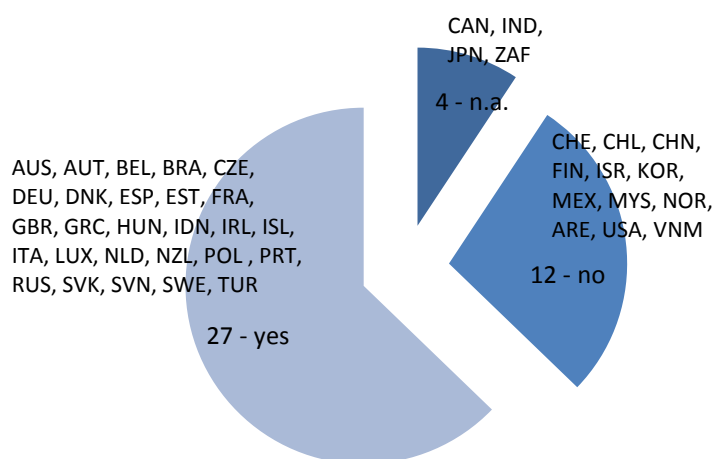
Many indicators included in this section build on the data already collected and presented in the OECD reports on national practices with respect to competitive neutrality and the results of the OECD questionnaire on national approaches to financing state-owned enterprises (OECD, 2012a; OECD, 2013b; OECD, 2013d and OECD, 2014c). The indicators chosen for inclusion in the database concentrate mainly on financing issues and the types of regulation most relevant for minimising the potentially anticompetitive effects of state enterprises in international markets (Section 2).

A significant problem with existing rules on subsidies—for example the WTO Subsidies and Countervailing Measures Agreement—is that it can be difficult to detect a public subsidy if, for example, it is hard to separate the finances of state enterprises from the finances of the state itself, or if operations of such enterprises are not transparent. The OECD Guidelines on Corporate Governance of State-Owned Enterprises (OECD, 2005 and OECD, 2015)<sup>83</sup> and OECD work on Competitive Neutrality (OECD, 2012a) encourage the companies to separate their commercial and non-commercial activities, especially ones that have public service obligations alongside their commercial activities. The existence of relevant legal requirements would make it possible to monitor whether public funds extended by the government to enterprises were used to cover public service obligations. The absence of the requirement to separate the activities may enable the enterprises that receive funds from the state budget to use them for commercial purposes. It may provide them with a competitive advantage in domestic and international markets in comparison with other companies. It can also enable cross-subsidisation from profit-making to loss-making activities.

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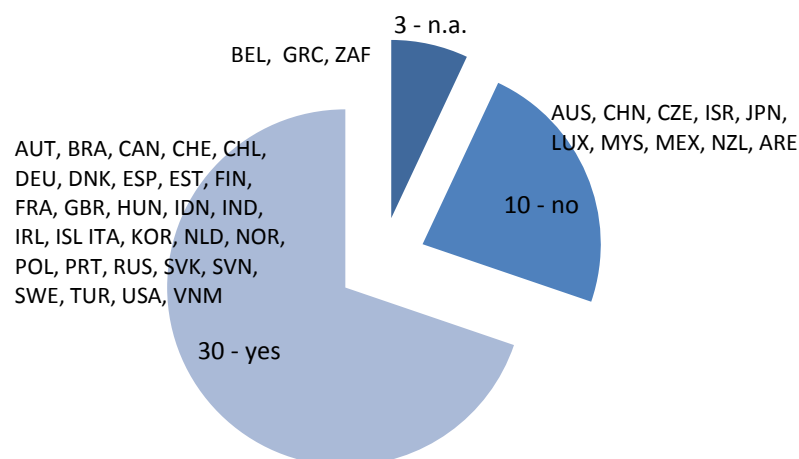
83. The SOE Guidelines first developed in 2005 were revised in 2015. See subsection 3.2.1.

*Question B.1. Does the country have legal obligations or rules applicable to SOEs to separate commercial and non-commercial activities?*



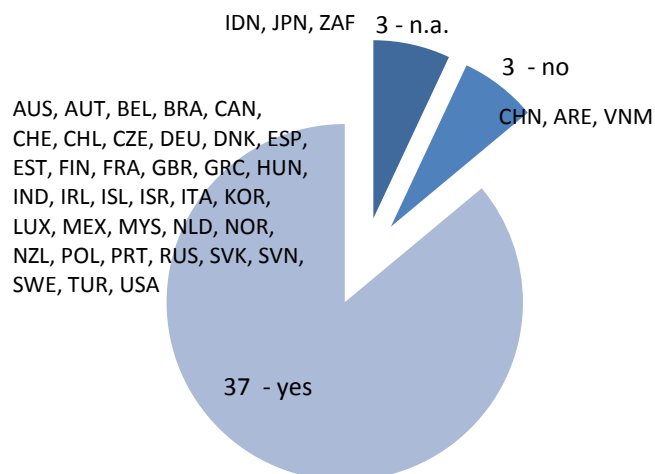
In many countries state enterprises are compensated for their public service obligations. When this is the case, it is important that the compensation is adequate and corresponds to the real costs that were incurred. The existence of a legal framework on compensation of public service obligations can ensure transparency and proportionality of such government payments.

*Question B.2. Does the country have legal provisions / mechanisms on direct state support delivering to SOEs in order to cover public service obligations?*



To ensure fair competition and transparency, state-owned enterprises should follow the same reporting requirements as listed companies (OECD, 2015). For instance, disclosure of the financial report based on nationally and internationally recognised standards, and regular reporting on company's performance would ensure transparency of SOEs' operations. In some countries disclosure requirements are similar for state-owned and listed enterprises, in others SOEs may benefit from less stringent reporting requirements and consequently have greater flexibility in their operations.

*Question B.3. Are country's SOEs subject to as stringent reporting requirements as listed private enterprises?*



The selection of data for the next two questions builds on the results of OECD questionnaire on national approaches to financing state-owned enterprises<sup>84</sup> performed for OECD countries, on the basis of OECD reports on national practices with respect to competitive neutrality<sup>85</sup> which cover OECD and some key partner countries, as well as on direct inputs by countries to the current database.

Rates of return relate to how efficiently enterprises use the capital resource at their disposal. Not having to earn a rate of return comparable to other market participants can amount to a competitive advantage and result in market distortions and inefficient resource allocation.<sup>86</sup> This is why some countries establish rate of return requirements on commercial state enterprises consistent with private sector actors.<sup>87</sup>

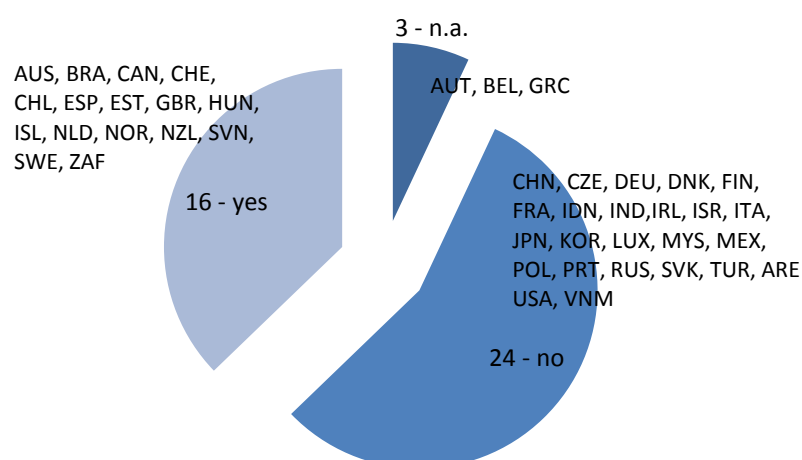
84. OECD (2014c and 2013d).

85. OECD (2012a and 2013b).

86. The absence of rate of return requirement can be even more distortive when the companies are not obliged to separate commercial and non-commercial accounts.

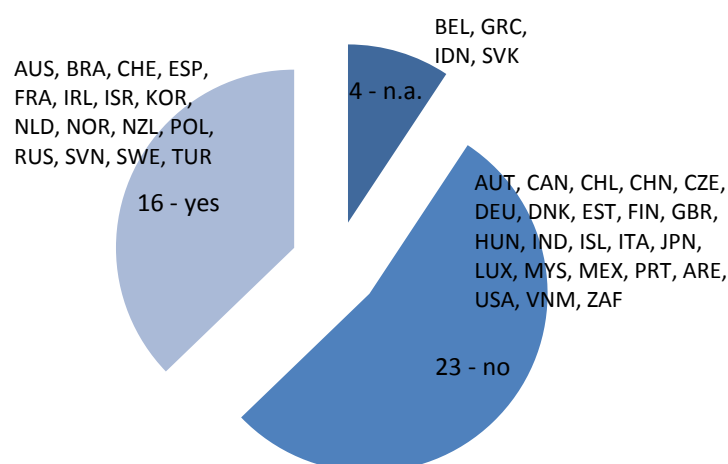
87. OECD (2014c).

*Question B.4. Does a state agency establish rate of return targets for SOEs consistent with the private sector?*



A dividend is a payment made by a corporation to its shareholders to distribute profits. In some countries no dividend guidelines exist for SOEs and dividend levels are negotiated annually between SOE boards and owners.<sup>88</sup> This may create situations of not having to pay a dividend by some SOEs. In other countries explicit, broad or more specific, dividend guidelines exist for the state sector as a whole. In this context, it is useful to make a distinction between countries with no dividend guidelines or targets, broad guidelines, explicit percentage of income dividend target, and guidelines linked to optimal capital structure.<sup>89</sup>

*Question B.5. Does the country have explicit dividend guidelines or targets for SOEs?*



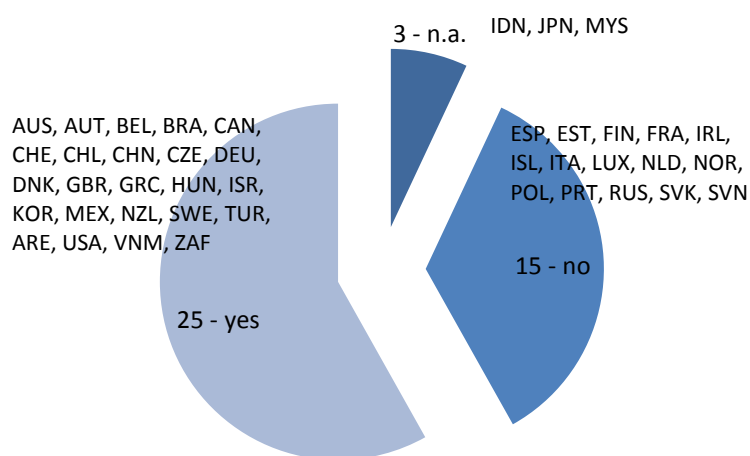
88. OECD (2014c).

89. OECD (2014c).

The next two questions are based directly on the results of the 2013 OECD Regulatory Indicators Questionnaire implemented as a part of the update of OECD indicators of Product Market Regulation (PMR) and covers OECD and more than twenty non-OECD economies.<sup>90</sup>

Access to preferential financing in form of loans guaranteed by the state, or preferential loans from state-controlled banks or the state itself, may provide state enterprises with competitive advantage. Governments may use such practices to support their industrial policies or in order to sustain loss-making state-owned enterprises which in the absence of such support would be forced to leave the market.

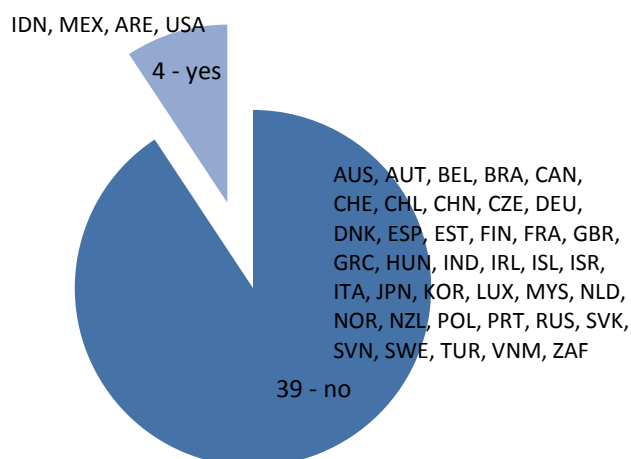
*Question B.6. Can publically-controlled firms receive financing which is not available to private companies?*



It is a common practice that national competition laws ensure regulatory neutrality in treatment of state and private enterprises. In a small number of countries, however, state enterprises are excluded from the application of the general competition law.

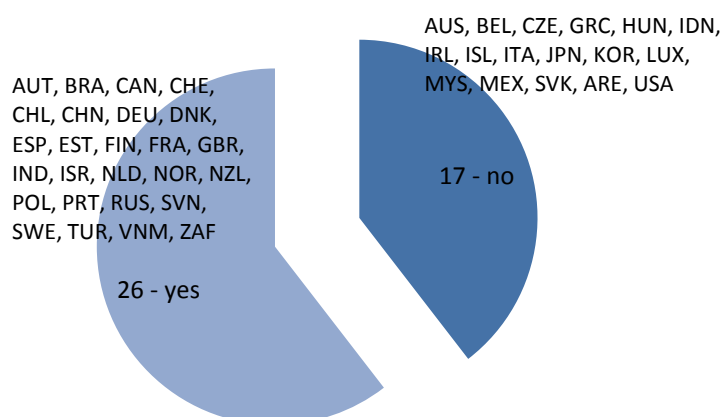
90. Koske et al. (2015).

*Question B.7 Are publically-controlled enterprises subject to an exclusion or exemption, either complete or partial, from the application of the general competition law?*



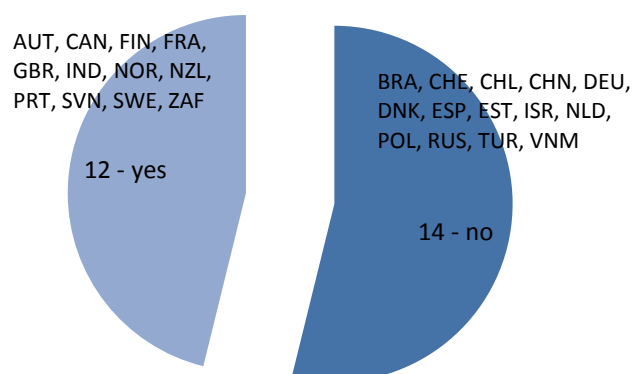
Transparency and disclosure play a particularly important role in governments' and firms' international interactions. In addition to individual annual reporting by public entities, OECD Guidelines on Corporate Governance of State-Owned Enterprises encourage countries' or co-ordinating ownership entities to publish annually an aggregate report on SOEs that would present an overview of the performance and evolution of all public enterprises. Existence or absence of such a report, as well as its availability to a wider audience in foreign languages, is an indication of the extent to which different countries are transparent about their state sectors.<sup>91</sup>

*Question B.8 Does government prepare annually an aggregate report on SOEs?*



91. The information for the latter two indicators was collected by the OECD Secretariat on the basis of publically available information.

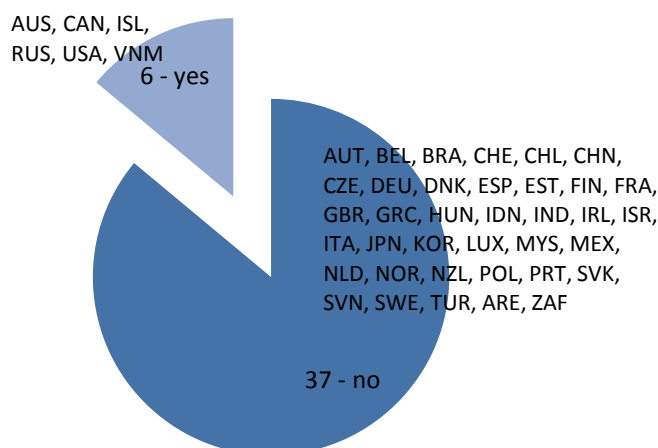
*Question B.9 Is the government report on SOEs available in English<sup>92</sup>?*



### 3.3.C State enterprise-related elements of national investment regimes

Various countries use different foreign direct investment (FDI) policy frameworks and policy designs, with differing degrees of strictness applied to SOEs. These provisions may comprise stricter application of the so-called “national security” or “net benefit” tests and stricter approval requirements for SOE investment overall or for such investment in “strategic” sectors (see also Section 2.2). Initial data entries for this indicator had been sourced from the recent stocktaking sponsored by the OECD Investment Committee (OECD, 2013a), which surveyed domestic regulatory provisions in thirteen countries. The coverage was extended to other countries using public sources.

*Question C.1 Does the country have inward FDI policies specific to SOEs?*

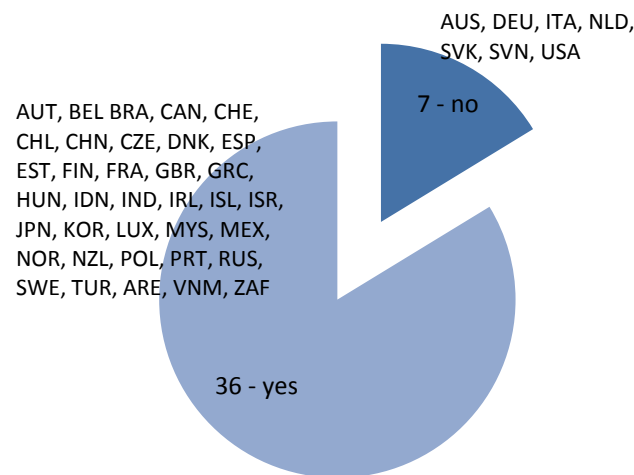


92. The chart covers 26 countries that prepare an annual report on SOEs. See chart B.8.

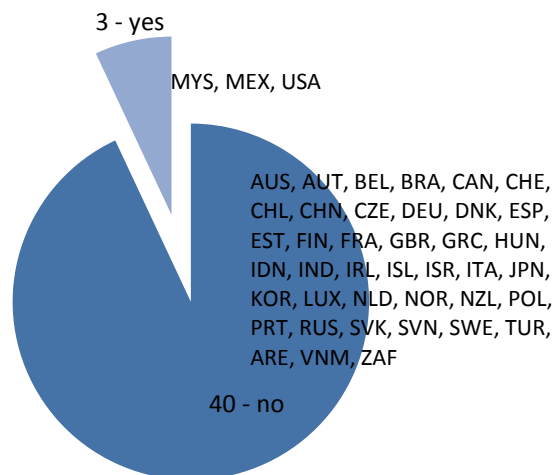


The following two indicators draw on the OECD Services Trade Restrictiveness Index (STRI)<sup>93</sup> questionnaire and countries' Schedules of Specific Commitments in the GATS. These indicators capture whether a country differentiates between publically-controlled and private actors in its FDI equity restrictions in specific services sectors. The current database preserves the sector specificity and lists relevant measures and sectors to which they apply. They are summarised below in an aggregate manner.

*Question C.2 Are there any statutory or other legal limits to the number or proportion of shares that can be acquired by foreign investors in services firms that are controlled by national, state or provincial governments?*



*Question C.3 Does the country ban licences to foreign government-owned services providers in certain sectors?*



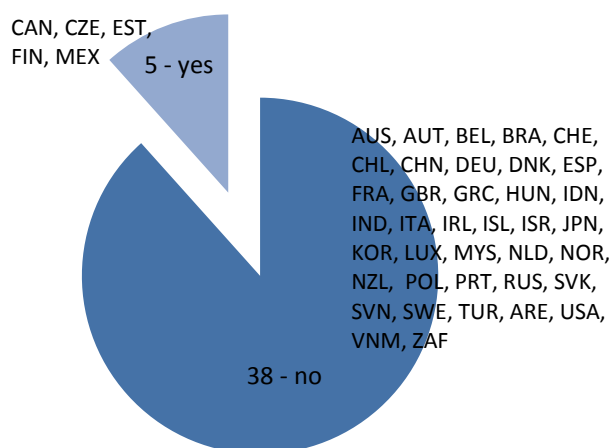
93. More information about OECD Services Trade Restrictiveness Index (STRI) can be found at: <http://www.oecd.org/tad/services-trade/services-trade-restrictiveness-index.htm>

### 3.3.D External obligations with respect to the state sector

The part of the database entitled *External obligations with respect to the state sector* collects country-specific information on provisions on state enterprises and competitive neutrality contained in international agreements of covered countries.

While the WTO rules are in general ownership-neutral, some WTO provisions allow exemptions of certain state enterprises from the application of the WTO disciplines or commitments. Under the GATS, in sectors and modes of services provision where WTO members undertake commitments, they may protect national enterprises, including state enterprises, in various ways. For instance, they can stipulate that the commitment will apply only to private entities. Alternatively, they may limit the number of service suppliers, refrain from granting national treatment or maintain some measures granting more favourable treatment to national entities.

*Question D.1 Do any of the country's GATS commitments stipulate that the commitment will apply only to private entities?*



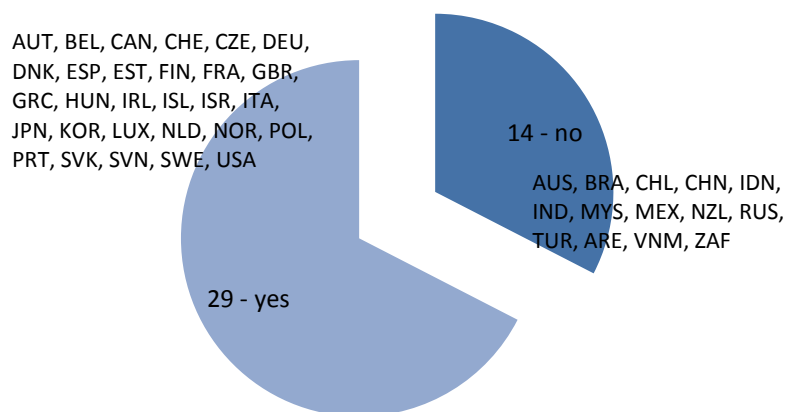
Some WTO members have agreed to further market opening in the area of government procurement which concerns purchases of goods and services by public bodies for governmental purposes. The WTO Agreement on Government Procurement (GPA) obliges member countries' entities covered by the agreement to open their contract solicitations to competition from all other GPA countries without discriminating between foreign and domestic products and suppliers.<sup>94</sup> In negotiating GPA commitments, WTO members can, in their schedules to the Agreement, both list relevant state enterprises and add qualifying provisions that limit the extent of their obligations. The WTO GPA signatory countries as well as those that are in the process of accession are often reluctant to name their state enterprises as such that procure<sup>95</sup> as these entities would automatically lose their

94. See the text of the revised WTO GPA, Article 4. The revised version of 1994 WTO Agreement on Government Procurement (GPA) entered into force on 6 April 2014.

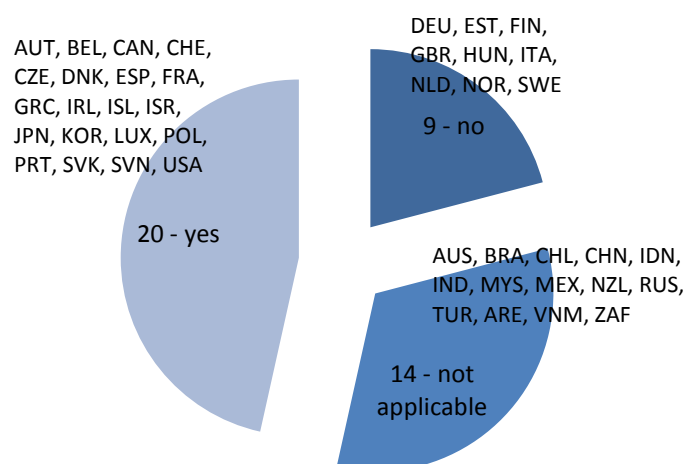
95. To benefit from GPA provisions the members must either provide definitional characteristics or catalogue all of their government entities on central and sub-central levels that will be bound by the GPA rules.

discretionary power to favour national industry when making purchasing decisions.<sup>96</sup> Thus, in the context of new countries' adherence to GPA and member-countries' cooperation within GPA, there are some discussions on the scope of the agreement as a response to the problem of state enterprises under-coverage.<sup>97</sup> The charts below provide an overview of the current coverage of state undertakings by the GPA.

*Question D.2 Is the country a member of the GPA?*



*Question D.3 Did the country list any SOEs in its Schedule to the GPA<sup>98</sup>?*

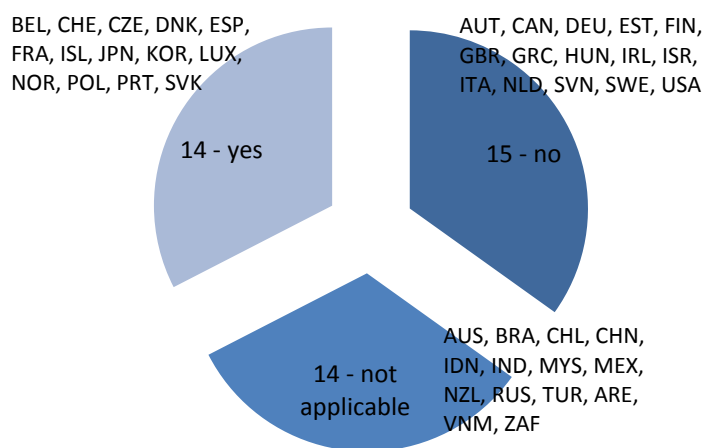


96. Skye Mathieson, (2010), "Accessing China's Public Procurement Market: Which State-Influenced Enterprises Should the WTO's Agreement Cover", Vol. 40, No. 1, *Public Contract Law Journal*.

97. Idem.

98. Please note that the countries which are not the parties of GPA are marked on the chart as such to which the indicators D3 and D4 are not applicable.

*Question D.4 Did the country add any qualifying provisions that limit the extent of its GPA obligations with respect to SOEs?*

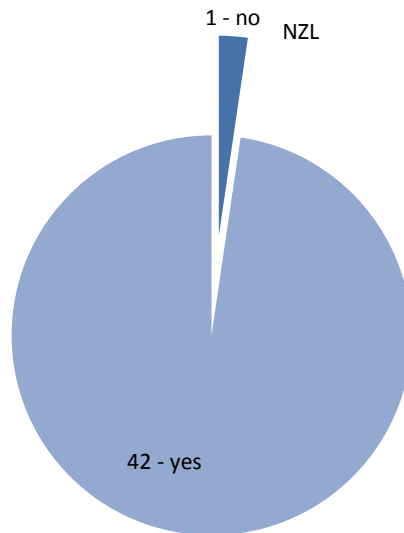


A number of recent PTAs include certain state enterprise-specific provisions.<sup>99</sup> They may explicitly specify that party's non-discrimination obligations under the agreement apply similarly to state enterprises, clarify some of the definitional lacunae, or include additional state enterprise-specific disciplines relating to transparency, consultation, dispute settlement, state aid and government procurement. The indicators listed below provide a preliminary overview of existing obligations towards state enterprises that are included in PTAs of covered countries. Such a compendium may serve as a reference for bilateral, plurilateral and multilateral trade negotiations. The information underlying these database entries was gathered by the Secretariat drawing on earlier work<sup>100</sup>, consulting texts of specific agreements as available in the WTO database on regional trade agreements by member country, as well as on the basis of the information provided individually by the countries.

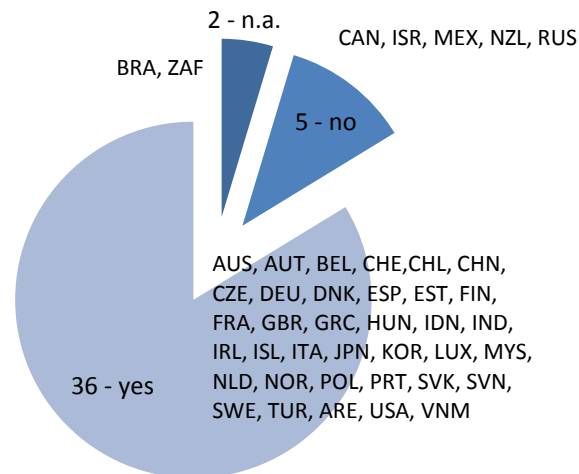
99. E.g. Solano, O. and A. Sennekamp (2006) and P. Kowalski et al. (2013).

100. E.g. Solano, O. and A. Sennekamp (2006).

*Question D.5 Does the country have trade agreements that include provisions on non-discrimination or anti-competitive behaviour specific to state enterprises (SEs)?*<sup>101</sup>



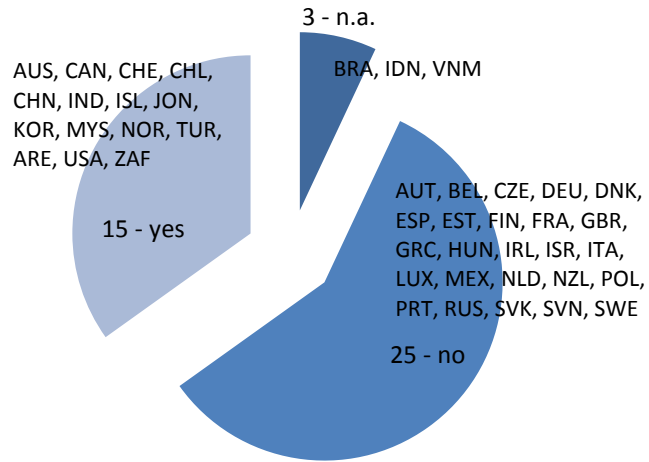
*Question D.6 Does the country have trade agreements that include transparency and information provisions with respect to SEs?*<sup>102</sup>



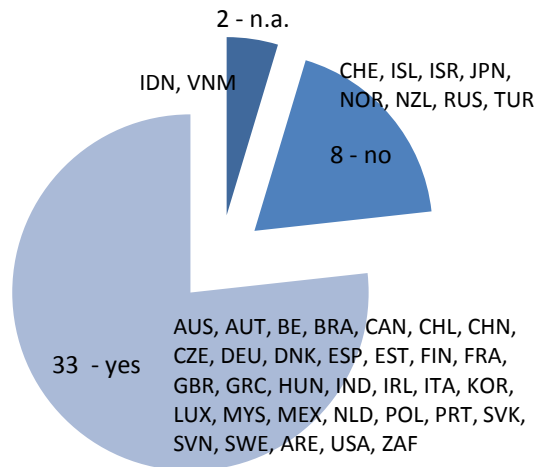
101. The term “state enterprise” appears in many existing trade agreements although it may be defined differently in each of them. For the purposes of this paper the term should be treated as corresponding to “SOEs”.

102. Since for some countries not all trade and investment agreements were available and they have not yet verified information concerning them, some of the answers for indicators D6, D7, D8, D10, D11 and D12 for these countries are marked as non-available (n.a.).

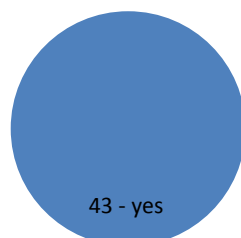
*Question D.7 Does the country have trade agreements that include consultation provisions with respect to SEs?*



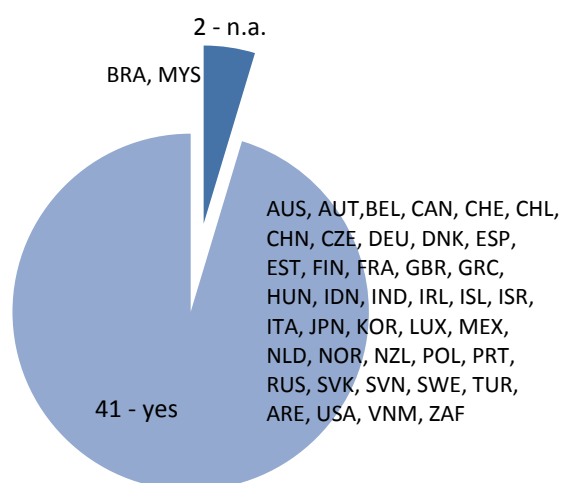
*Question D.8 Does the country have trade agreements that include dispute settlement provisions with respect to SEs?*



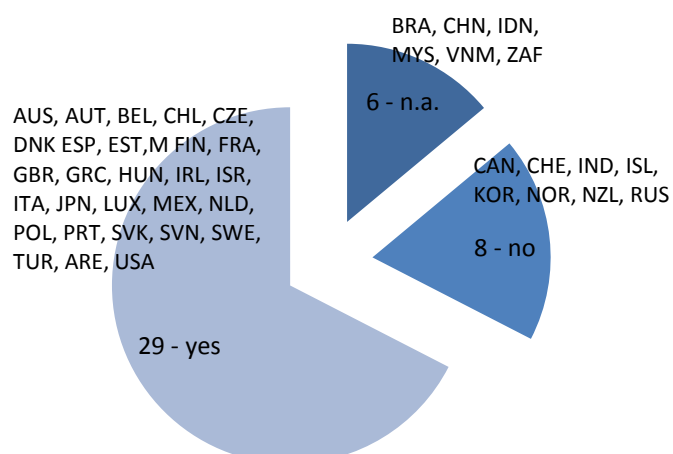
*Question D.9 Does the country have trade agreements that include state aid or subsidy provisions?*



*Question D.10 Does the country have trade agreements that include government procurement provisions?*

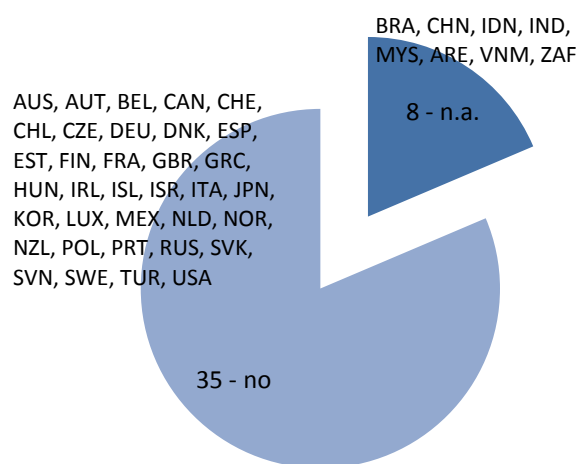


*Question D.11 Does the country have trade agreements that include government procurement provisions that apply to specific SEs?*



The majority of previously concluded international investment agreements (IIAs) provide state-owned investors with the same protection as the private ones. In recently agreed IIAs there is a tendency to include explicit reference to state enterprises and specify whether these enterprises are covered, or not, by the agreement.<sup>103</sup> Thus the stocktaking of facts on the treatment of state-owned investors<sup>7</sup> by different countries provides an overview of existing practices and might be an input for future negotiations in this area. The information for these indicators is based on the work undertaken earlier at the OECD<sup>104</sup>, WTO GATS Schedule provisions and on the publically available data that was collected by the OECD Secretariat for the purpose of this exercise.

*Question D.12 Does the country have at least one investment agreement where any of its state enterprises are exempted from the investment protection provisions?*

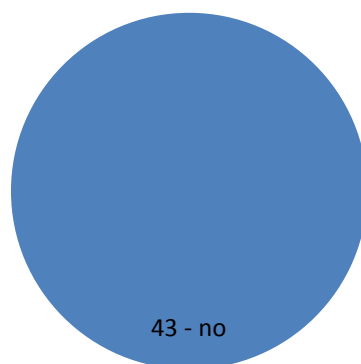


103. Shima (2015).

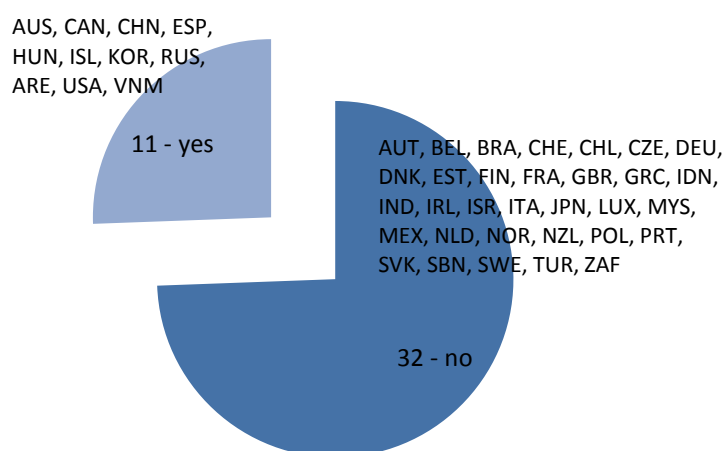
104. Shima (2015).



*Question D.13 Does the country have at least one investment agreement specifying explicitly that its state enterprises are not covered?*



*Question D.14 Does the country reserve the right to apply an additional government approval procedure for direct investments made by government-owned service providers in certain sectors?*

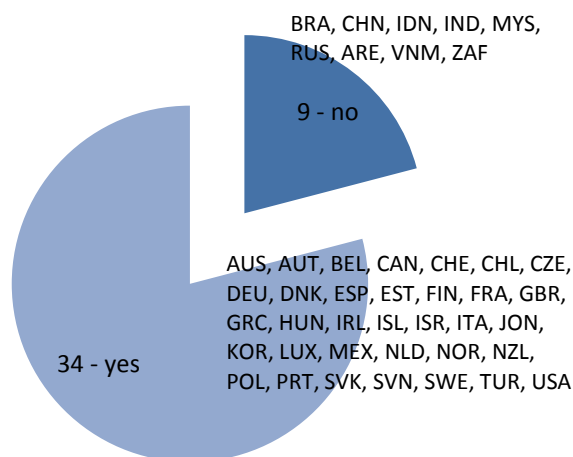


In the past years sovereign wealth funds increased their investment activities in international markets and some IIAs include specific reference to them. On the multilateral level, the Generally Accepted Principles and Practices on SWFs referred to as “Santiago Principles” contribute to the development and maintenance of an open and stable investment environment. According to the Principles sovereign wealth funds of the signatory countries should meet transparency and disclosure requirements<sup>105</sup>, comply with regulatory obligations of the countries in which they operate, pursue

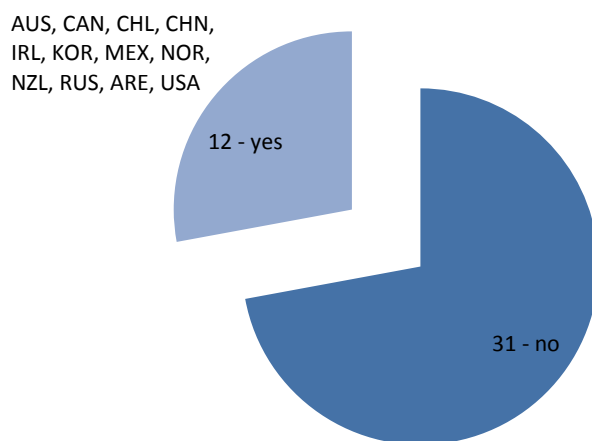
105. For example, release an annual report and accompanying financial statements on the SWF's operations and performance in accordance with recognised international or national accounting standards.

clear and consistent policies. Adherence to these Principles indicates that countries pledge to be transparent about the operations of their respective sovereign wealth funds. The information for this part of the database is based on the OECD and International Forum of Sovereign Wealth Funds documentation.

*Question D.15 Has the country adhered to the OECD Declaration on Sovereign Wealth Funds and Recipient Country Policies?*



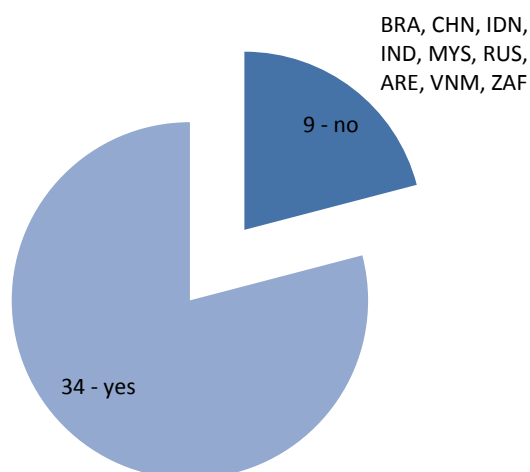
*Question D.16 Is the country a signatory of the Generally Accepted Principles and Practices on SWFs?*



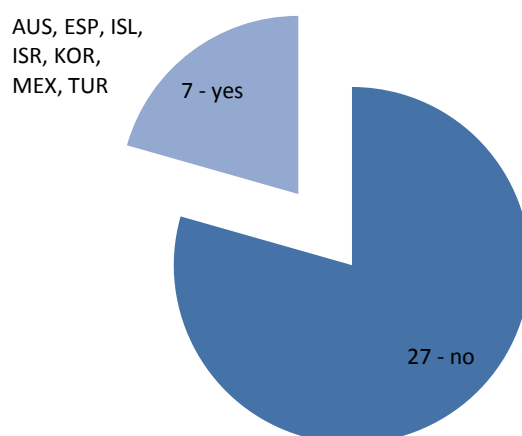
OECD Codes of Liberalisation of Capital Movements and of Current Invisible Operations encourage signatory countries to abolish restrictions on movements of capital to the extent necessary for effective economic co-operation between the members. Equal treatment of all non-resident-owned assets is one of the key foundations of the document. These legally binding rules apply to both state-owned and private entities of the member countries. The adherents to the OECD Codes have to fulfil

the obligations listed in the document unless they lodge the list of reservations. Some countries made use of this provision to put some limitations on the operations of foreign governments or (and) state enterprises in some specific sectors. The regulatory database indicates if, and if so which, members have lodged the reservations on foreign state entities activities in their economies.

*Question D.17 Is the country an adherent to the OECD Codes of Liberalisation of Capital Movements and of Current Invisible Operations?*



*Question D.18 Has the country lodged any exceptions in the Codes relating to state enterprises?*<sup>106</sup>



106. The chart covers only OECD countries as other countries covered by the database are not the adherents to the Codes of Liberalisation of Capital Movements and of Current Invisible Operations.

#### 4. Conclusions

This report draws on the work on this subject completed by the OECD Trade Committee in 2013 and presents results of the recently completed *OECD Business Survey on State Influence on Competition in International Markets* which sheds additional light on concerns related to cross-border activities of state enterprises. It aims to further inform the policy making and business communities about the nature, the extent, and the effects of government-granted advantages which have a bearing on competition in international markets.

Key findings from the survey include:

- A majority of surveyed firms indicate a belief that their competitors benefit from preferential treatment granted by foreign governments; this belief is much less widespread regarding domestic governments. Potentially this illustrates the greater difficulty of minimising state enterprise-related distortions in an international context;
- Ownership status of firms is perceived to matter; the reported severity of the impact of preferential treatment of enterprises by governments is higher for state-owned enterprises;
- Financial and regulatory support granted to both private and state enterprises are the most often indicated concerns although the reported market effects are stronger for state firms. This implies that tightening of the WTO subsidy rules and further development of similar rules on regulatory advantages might be a useful across-the-board approach that could also alleviate some of the most pressing concerns related to state enterprises;
- The economic effects of preferential treatment by foreign governments are reported to extend well beyond foreign markets affecting domestic sales of respondents almost to the same extent. This is likely a consequence of the deepening of international commercial links and increasing geographical fragmentation of production which means that even the policies which might be oriented primarily towards domestic firms and markets now span more easily across national borders;
- Many firms reported the use of state enterprises by governments to indirectly grant advantages to respondents' competitors through lower prices or better accessibility of inputs. This suggests that the issue of determining more clearly and predictably what kind of relationship with the government makes an enterprise susceptible to be considered as potential provider of a subsidy or another advantage—for example in the context of the WTO—may be an important one to focus on in the future;
- Central or federal levels of government are reported to be granting advantages with strong negative impact on competition more frequently than sub-federal governments, though it is clear that the latter are engaging in discriminatory behaviour as well.

The report discusses also the different regulatory approaches which can help alleviate possible distortions associated with state enterprises. It suggests that it is important to consider whether legitimate domestic objectives can be achieved more efficiently through promotion and international co-ordination of domestic reforms and implementation of good practices and guidelines with respect to the state sector, or through additional binding international rules. On the one hand, public policy purposes which state enterprises often pursue may not easily yield themselves to a more stringent regulation at the international level. On the other hand, some of the relevant binding international rules that discipline discriminatory government behaviour related to state enterprises can already be found in the WTO law as well as certain PTAs and bilateral investment treaties.

The *OECD Database on National Practices and Regulations* with respect to state enterprises, which has been made available on line<sup>107</sup> and results of which are summarised in this report, takes stock of the different country-specific domestic policies and international obligations. It is devised as a transparency tool which objectively informs the governments and the publics about the different practices and regulations. It covers all 34 OECD member countries, Brazil, China, India, Indonesia, Russian Federation, South Africa, and a number of emerging countries with high incidence of state enterprises (e.g. Malaysia, United Arab Emirates, Viet Nam). It compiles information on 41 specific questions in the following areas: size, composition and outward orientation of the state sector; elements of national competitive neutrality arrangements; state enterprise-related elements of national investment regimes; and external obligations with respect to the state sector (WTO, PTAs and BITs).

Overall, while cross-border effects of state enterprises remain an important policy issue, views on how to obtain an international level playing field in practice differ. For example, it is not clear whether future policy responses should target specific types of enterprises or whether they should be more universal. Since state-owned and private firms alike can in principle be favoured by the state, some argue for *ownership-neutral* rules and advocate disciplining the use of various state-granted advantages that can influence the competitive position of firms engaged in commercial activities rather than focusing on ownership *per se*. Others argue that ownership implies certain interests, rights and obligations characteristic to an owner, and may effectively mean that the government combines the roles of a regulator, regulation enforcer and business owner. From the latter perspective there is a case for a *state ownership-specific* approach to regulation. It is not yet clear which will be the dominant approach in future international trade agreements. This suggests that further consideration of the definition of entities which should be the focus of guidance of disciplines would be one area for further exploration.<sup>108</sup>

As international dialogue on conduct of internationally active state enterprises and policy responses expands, it is important that governments continue to honour their commitments under international agreements and that they act in the spirit of non-discrimination. This implies that governments should neither use state enterprises to influence competition in international markets nor should they unduly discriminate against foreign state enterprises that trade and invest according to market principles.

While it may be too soon to start formulating concrete rules or guidelines on internationally active state enterprises, open and fair competition in international markets requires greater transparency both from the governments and the entities under their control. The time seems ripe for governments, business and experts to engage in more intensive and open international discussion on state enterprises and the associated challenges. These discussions should not be limited only to state-owned enterprises, but should be extended to a broader spectrum of state firms.

In this context, the report on *International Trade and Investment of State Enterprises* and the *OECD Database on National Practices and Regulations* will support further OECD work to deepen dialogue, gather further evidence on the internationalisation of state enterprises, and provide a consultation mechanism for countries to discuss concerns about state enterprises operating in international markets.<sup>109</sup> The dialogue will include representatives from interested OECD committees (currently the Competition, Corporate Governance, Investment, Steel and Trade Committees) and government representatives from other interested non-OECD economies.

107. The database can be accessed at: <http://oe.cd/state-enterprises>.

108. Hufbauer et al. (2015), for example, suggested the definition of covered state enterprises will be a threshold issue for potential future plurilateral negotiations on state enterprises in the WTO context.

109. OECD (2014a and 2014b).

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- WTO (2012), “China — Certain Measures Affecting Electronic Payment Services”, Dispute Settlement, Dispute DS 413. Accessible at: [www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds413\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds413_e.htm).
- WTO (2014), “United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India”, Dispute Settlement, Dispute DS 436. Accessible at: [www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds436\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds436_e.htm).



## Annex 1.

### OECD Business Survey on State Influence on Competition in International Markets

#### *The design and implementation of the survey*

The survey questionnaire<sup>110</sup> was prepared in consultation with concerned parts of the OECD Secretariat (i.e. divisions responsible for the OECD Corporate Affairs, Investment, Competition and Steel Committees), the OECD Business and Industry Advisory Committee (BIAC) and the OECD member delegations.

The survey consisted of one mandatory and one non-mandatory sections. In the mandatory section, the respondents were first asked about several aspects of international business operations of their enterprise such as the sector of commercial activity, ownership status, size, country of headquarters, major markets in terms of sales as well as the location of their foreign affiliates. Subsequently, the respondents were asked whether their main competitors benefit from preferential treatment by their own and/or foreign governments.<sup>111</sup> Depending on the answer to this question, the survey further split<sup>112</sup> into three branches focusing on the types of advantages granted to competitors by domestic, foreign, or domestic and foreign governments as well as the types of enterprises concerned. In sum the information was gathered on: the ownership status of favoured enterprises; key forms of preferential treatment (e.g. financial incentives or preferential regulatory treatment); the parts of international operations that are harmed the most (e.g. domestic or foreign sales or investment opportunities); whether state-owned enterprises are used as vehicles of preferential treatment by governments and, if so, where in the value chain this occurs; and whether advantages are granted by central or sub-central governments. In the second non-mandatory part of the survey, the enterprises were invited to provide additional details on the forms of preferential treatment by governments.<sup>113</sup>

The survey was launched on-line<sup>114</sup> in February 2014. Given the sensitivity of the subject, the survey was anonymous and confidential in the sense that no enterprise-specific information was solicited on a mandatory basis. Responding enterprises were given an opportunity to provide enterprise or personal contact details if they wish to receive the results of the survey. At the same time, the respondents were assured that any information provided voluntarily would not be disclosed and that the survey results would only be made available in an aggregated format. To enhance the security of the survey, it was protected by a password.

The initial intention was to have a good coverage of enterprises operating in the five proposed pilot sectors (manufacture of steel, mining of steelmaking raw materials, air transport services, telecommunications services, energy) as well as across all sectors through dissemination of the survey by BIAC and other business and sectoral associations. The two-pronged approach had been devised to, on the one hand, control the representativity of the sample in the selected sectors (characterised by

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110. A pdf version of the questionnaire can be consulted at the following link: <http://oe.cd/influence-survey>.

111. Question 8 in the questionnaire.

112. The fourth, and important possibility, is a termination of the survey on this question if the respondent does not report preferential treatment by either own or by foreign governments.

113. The questions in this part of the survey depend on the answers provided in the mandatory part.

114. This was done using Checkbox © survey tool which is a specialised secured software for on-line surveys.

traditionally sensitive relations between the state and business) and, on the other hand, to solicit responses from as large a number of enterprises as possible.

The survey was initially sent to a pre-identified list of contacts in approximately 700 enterprises belonging to the five pilot sectors, covering the most important market players, including SOEs and privately-owned enterprises. Simultaneously, BIAC sent the survey to its whole membership. To the best of our knowledge, an invitation to the survey was also spread by the International Chamber of Commerce, BUSINESSEUROPE, Trans-Atlantic Business Council, European Telecommunications Network Operators' Association, American Insurance Association and Confederation of Indian Industry. In addition, the OECD Steel Committee raised awareness about the survey across the steel sector. A number of other business associations were also invited to advertise the survey with varying responses.

By November 2014, approximately 650 respondents had accessed the survey. 104 completed the entire survey<sup>115</sup> while an additional 53 completed the survey partially. The results below are thus based on the total number of 157 replies, or 125 replies for the non-steel sub-sample.

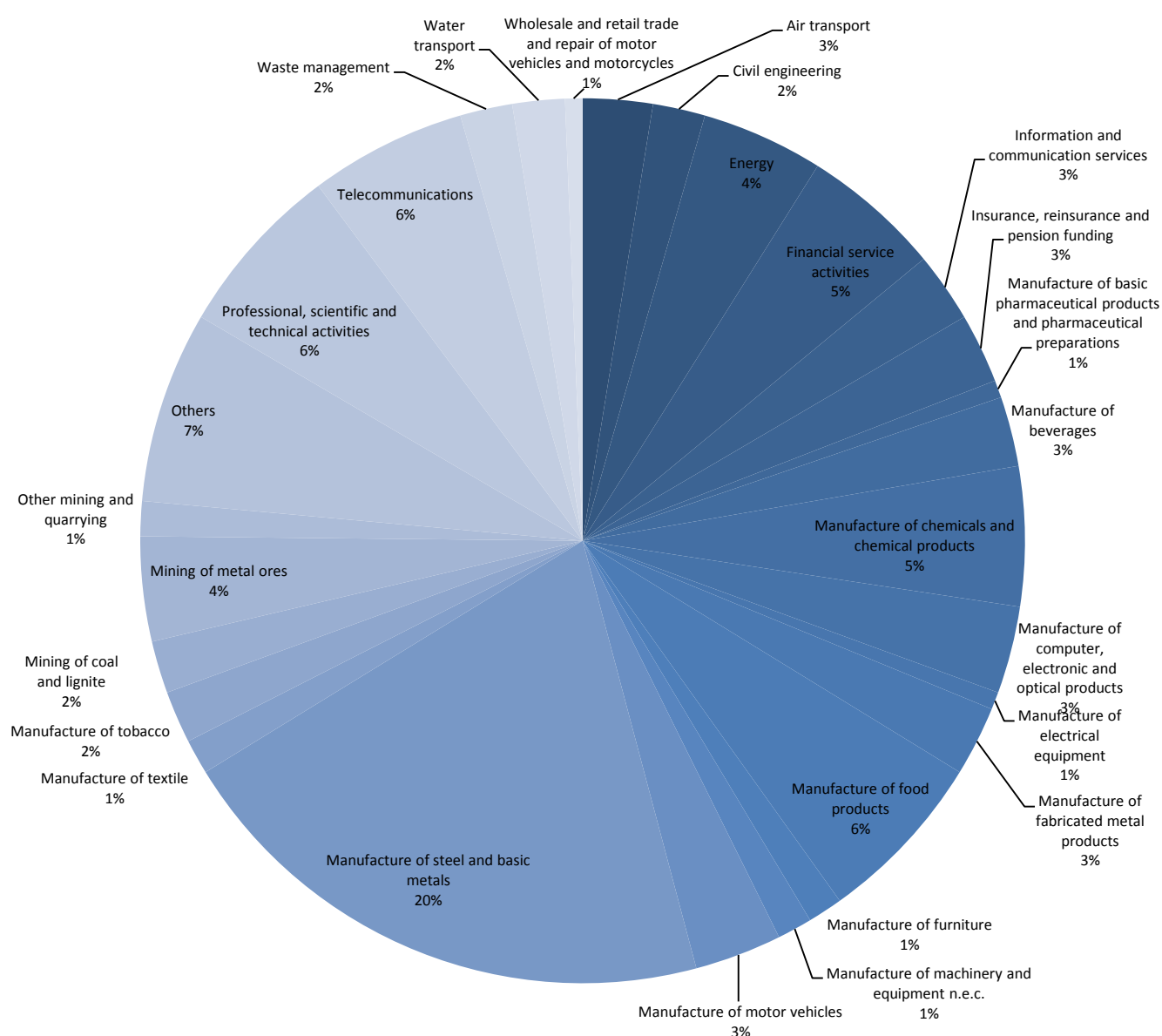
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115. Please note, however, that not all questions were mandatory. Full completion means providing answers to all mandatory questions.

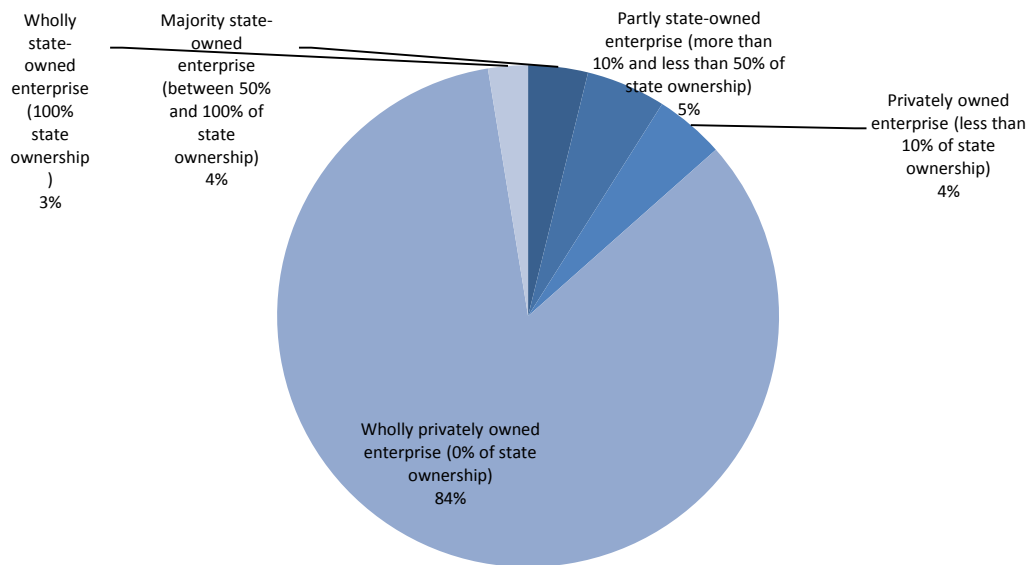
## Annex 2.

### Figures and tables

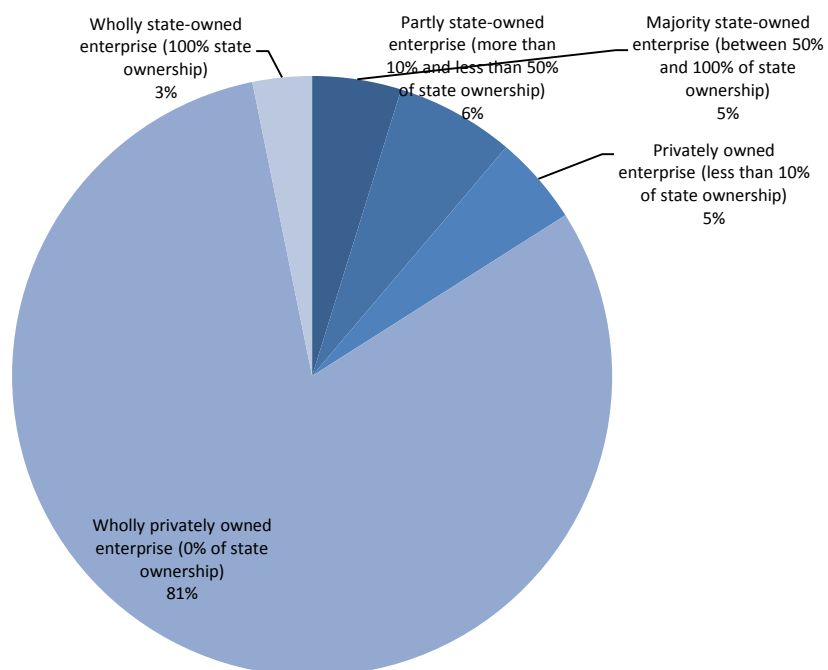
**Annex Figure 1. Type of commercial activity of respondents (All firms)**



Source: OECD Business Survey on State Influence on Competition in International Markets.

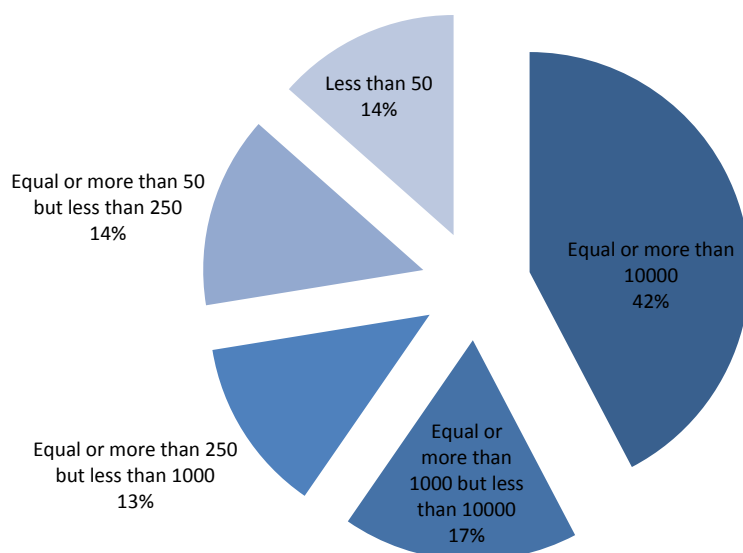
**Annex Figure 2. Respondents by ownership status (All firms)**

Source: OECD Business Survey on State Influence on Competition in International Markets.

**Annex Figure 3. Respondents by ownership status (Non-steel firms)**

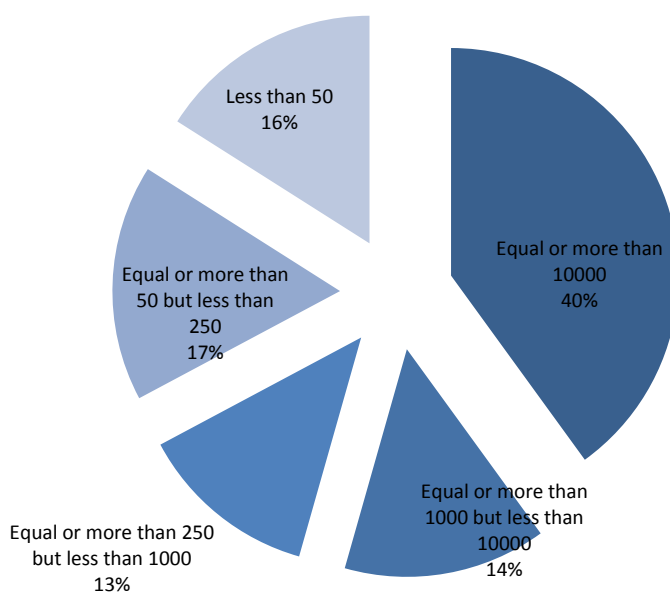
Source: OECD Business Survey on State Influence on Competition in International Markets.

**Annex Figure 4. Responding firms by their number of employees (All firms)**



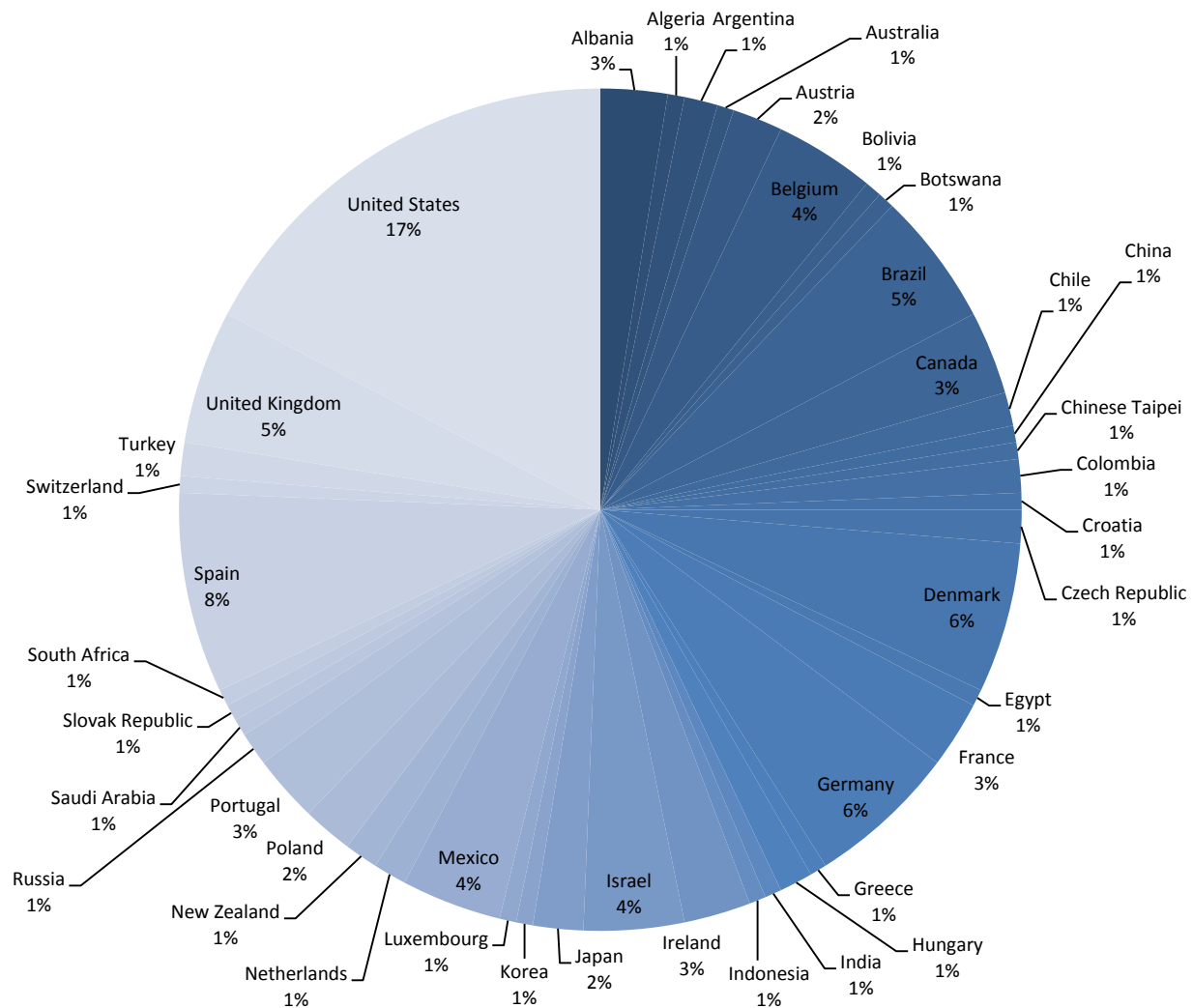
Source: OECD Business Survey on State Influence on Competition in International Markets.

**Annex Figure 5. Responding firms by their number of employees (Non-steel firms)**

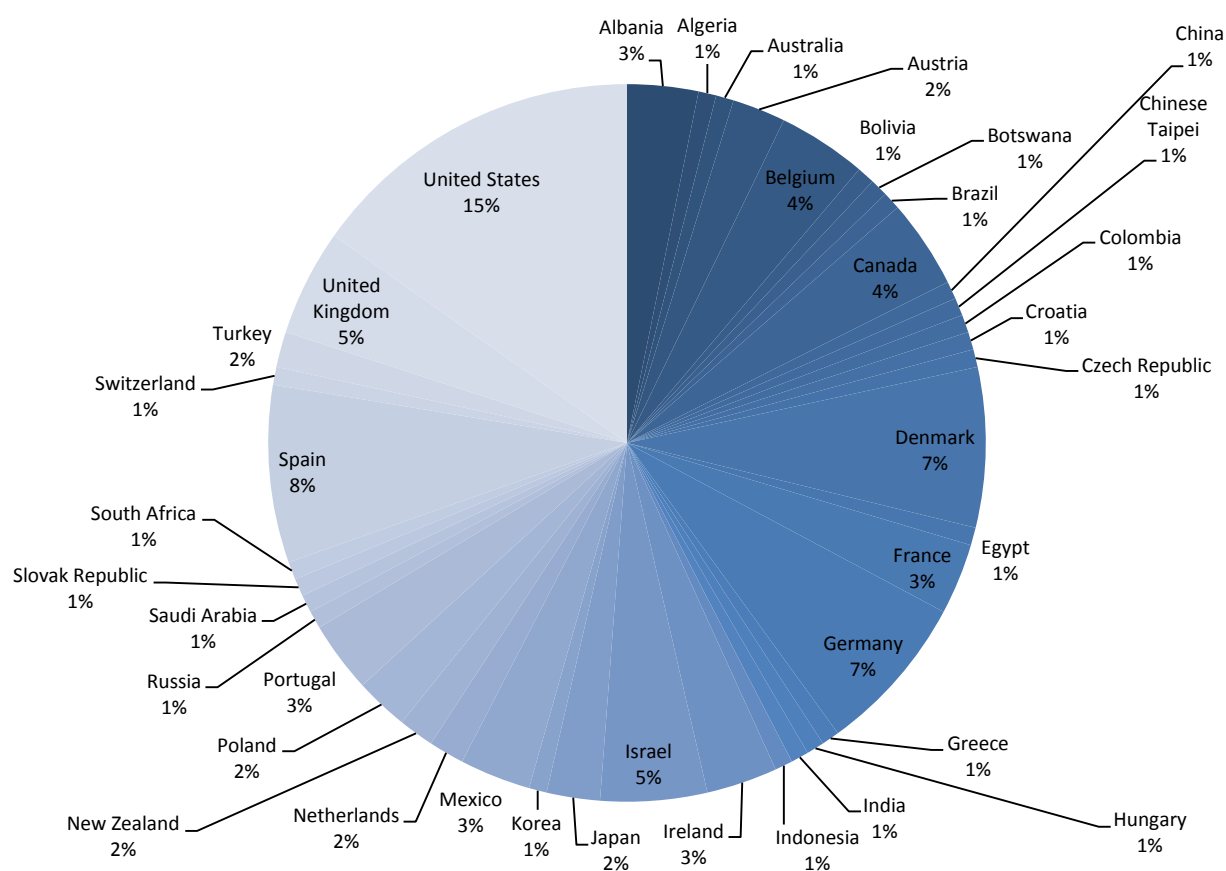


Source: OECD Business Survey on State Influence on Competition in International Markets.

Annex Figure 6. Respondents by country of headquarters (All firms)

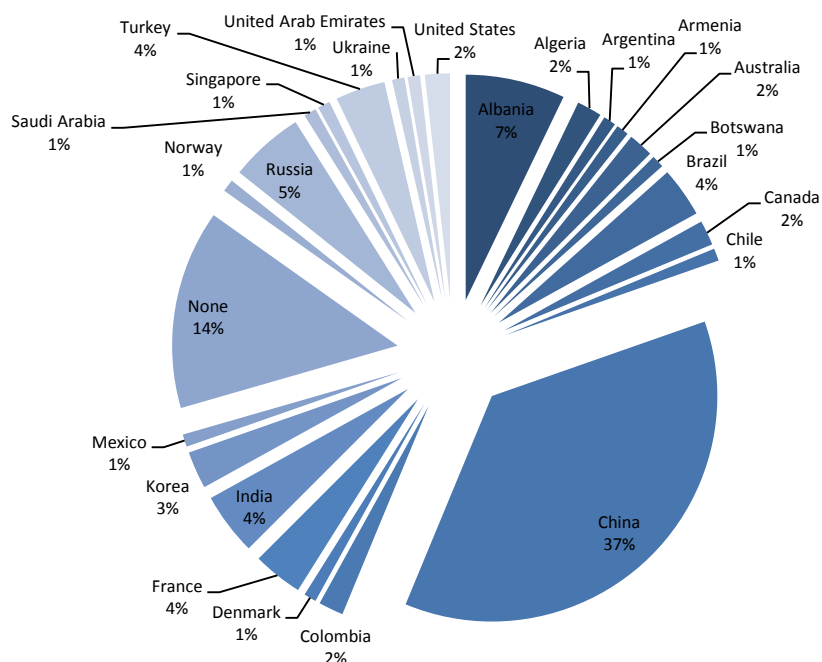
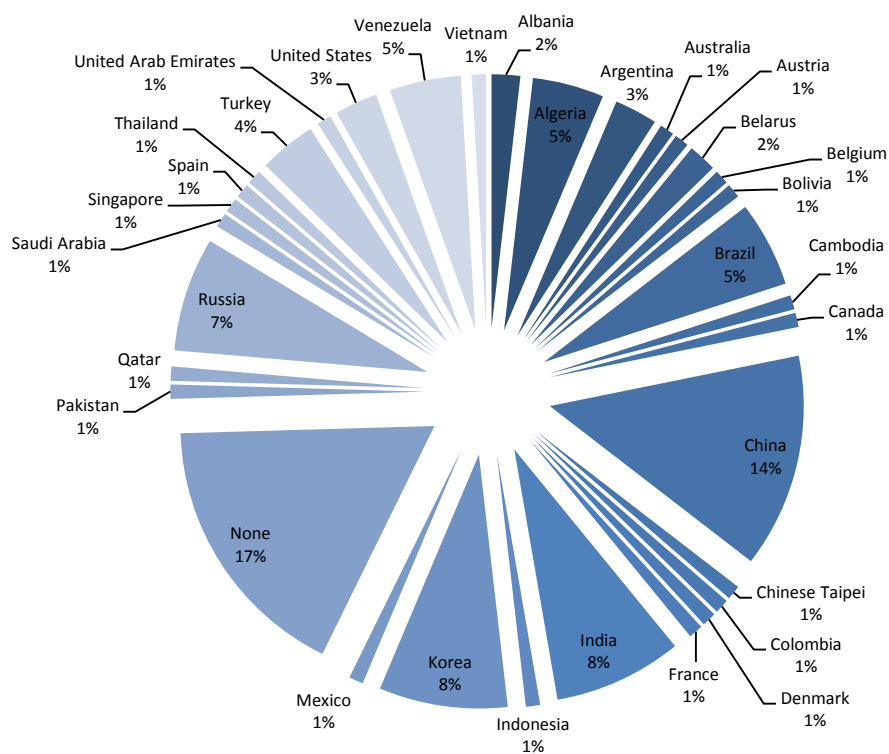


Source: OECD Business Survey on State Influence on Competition in International Markets.

**Annex Figure 7. Respondents by country of headquarters (Non-steel firms)**

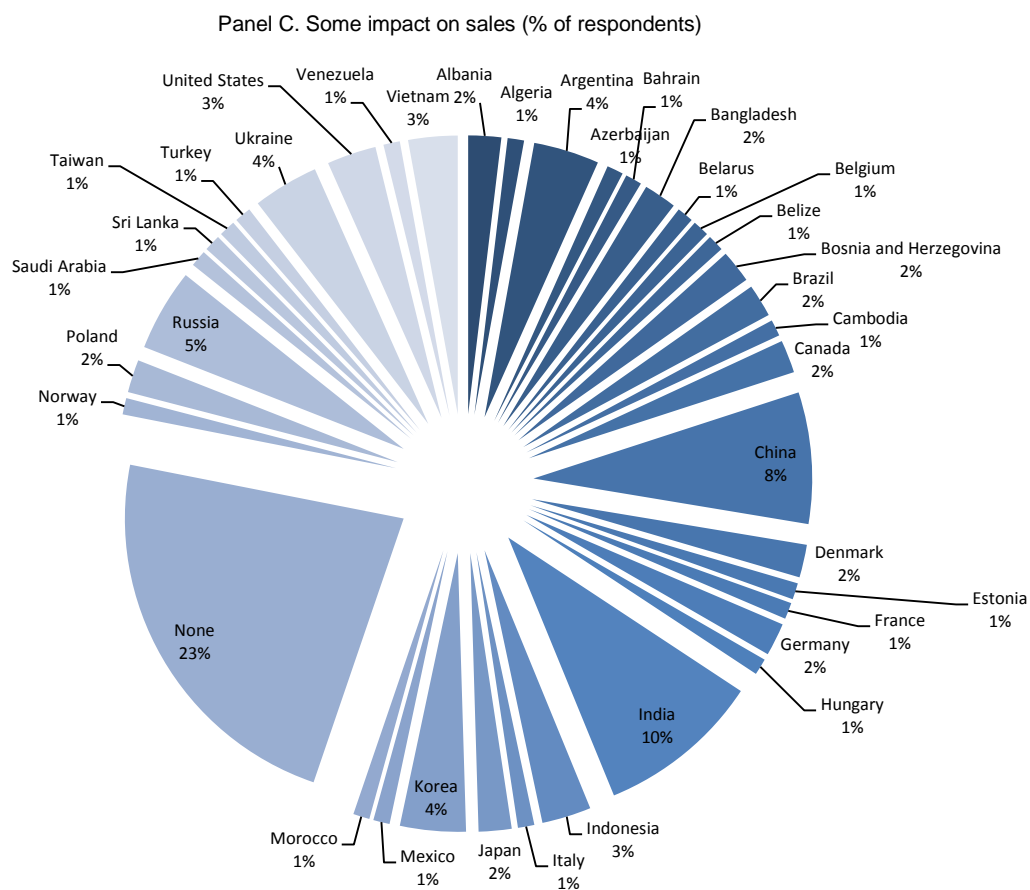
Source: OECD Business Survey on State Influence on Competition in International Markets.

**Annex Figure 8. Preferential treatment of competitors by governments (Non-steel firms)**

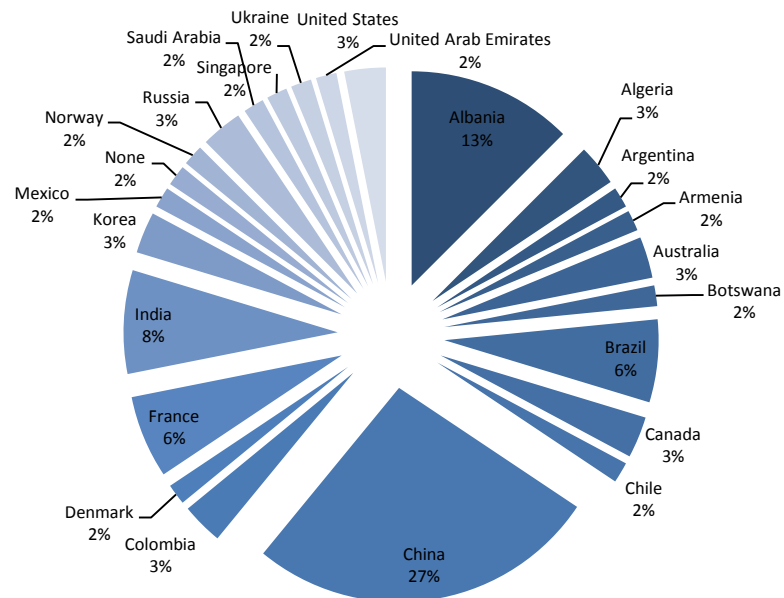
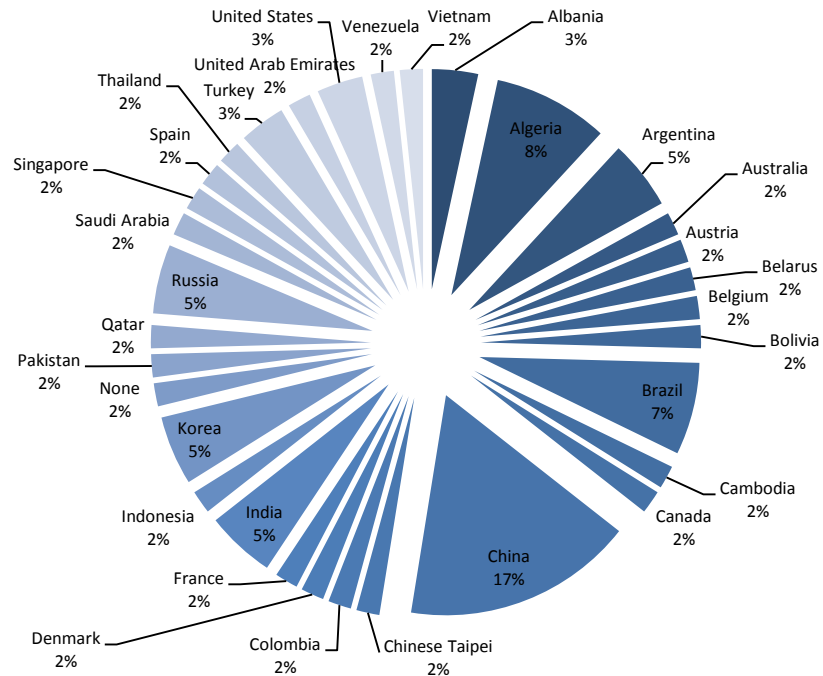
**Annex Figure 9. Which foreign governments extend preferential treatment to competitors? (All firms)****Panel A. Strong impact on sales (% of respondents)****Panel B. Significant impact on sales (% of respondents)**



**Annex Figure 9. Which foreign governments extend preferential treatment to competitors? (All firms)**  
(continued)

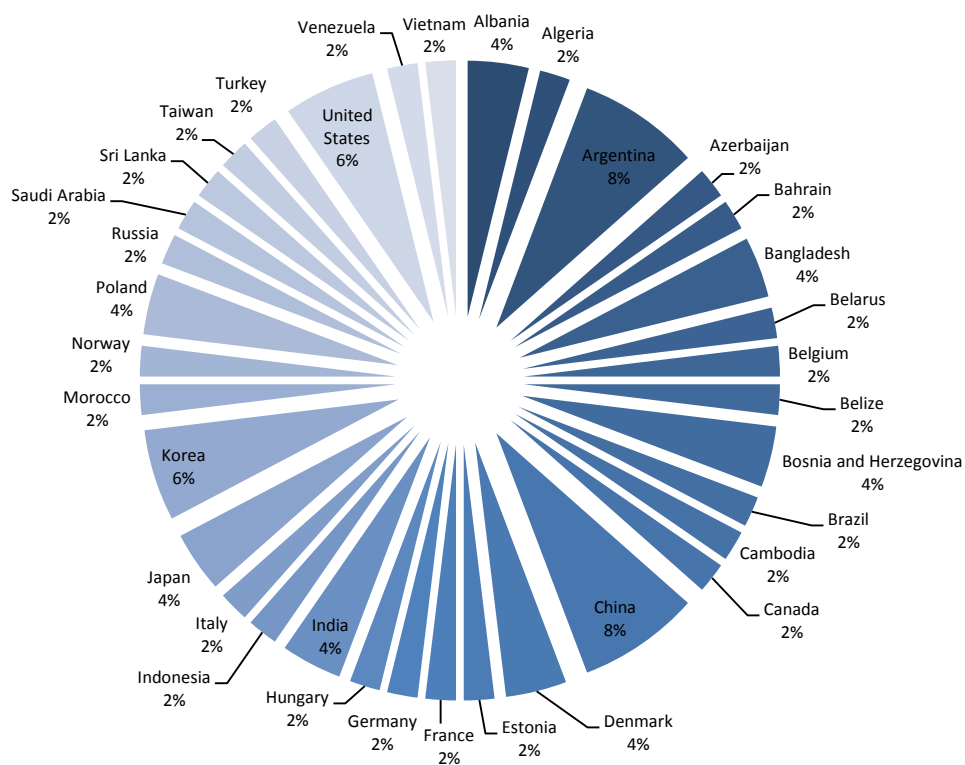


Source: OECD Business Survey on State Influence on Competition in International Markets.

**Annex Figure 10. Which foreign governments extend preferential treatment to competitors? (Non-steel firms)****Panel A. Strong impact on sales (% of respondents)****Panel B. Significant impact on sales (% of respondents)**

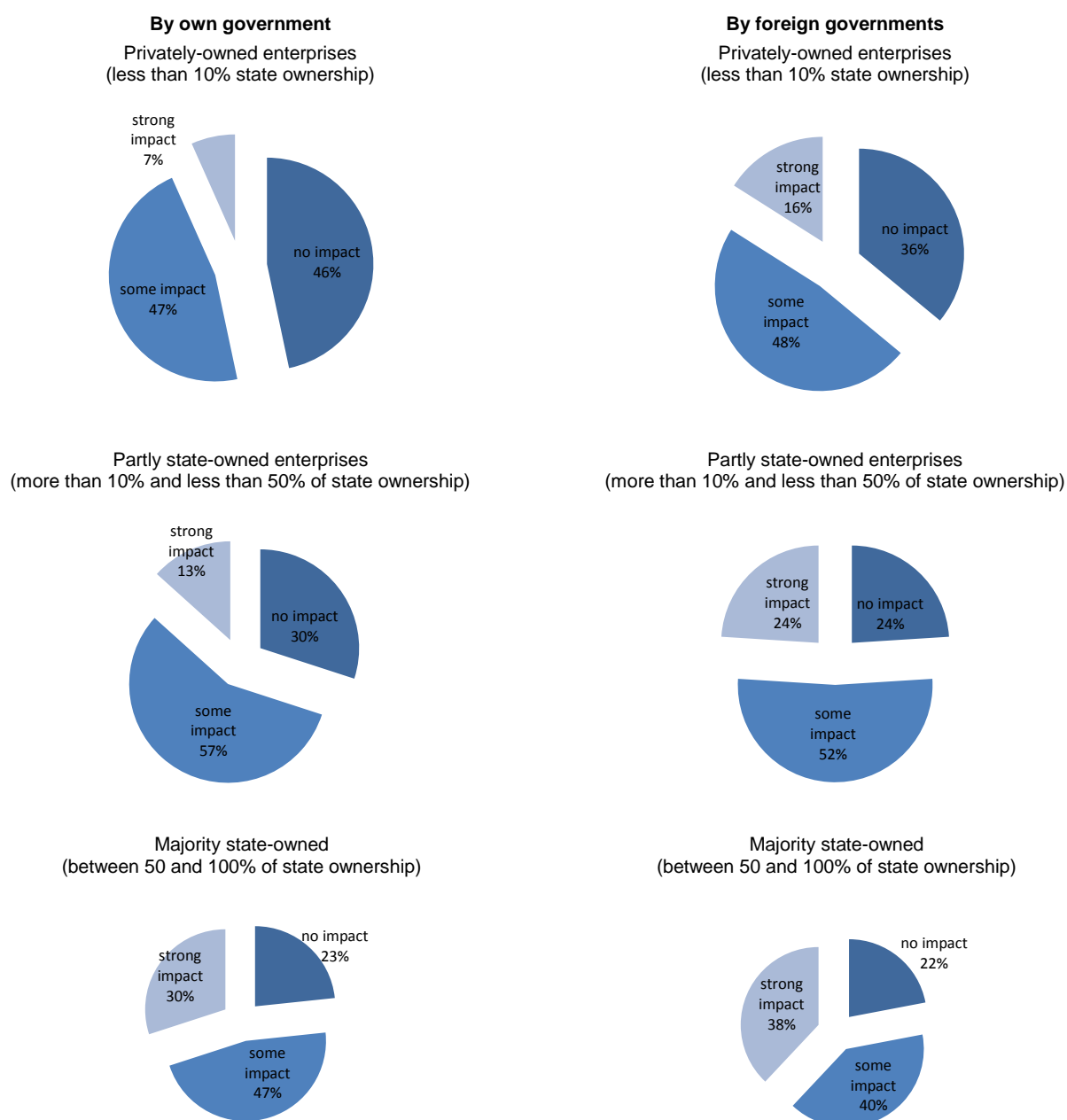
**Annex Figure 10. Which foreign governments extend preferential treatment to competitors? (Non-steel firms)**  
(continued)

Panel C. Some impact on sales (% of respondents)

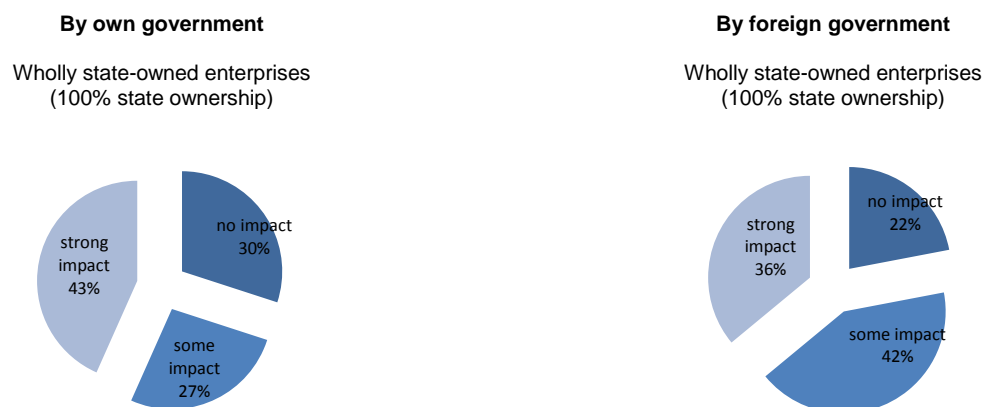


Source: OECD Business Survey on State Influence on Competition in International Markets.

**Annex Figure 11. Preferential treatment of which enterprises has the most harmful impact on respondents' sales?  
(Non-steel firms)**



**Annex Figure 11. Preferential treatment of which enterprises has the most harmful impact on respondents' sales?**  
(Non-steel firms) (continued)

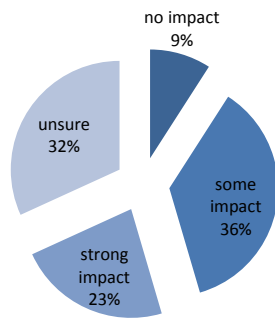


Source: OECD Business Survey on State Influence on Competition in International Markets.

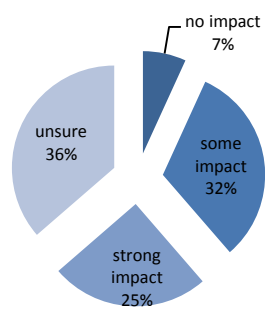
**Annex Figure 12. Which forms of preferential treatment granted to privately-owned and state-owned enterprises have the most harmful impact on respondent's sales? (Non-steel firms)**

**Privately-owned enterprises**

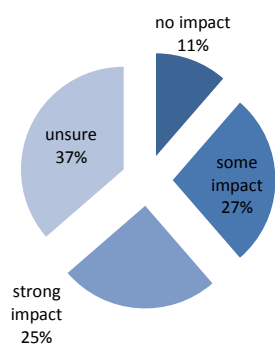
Grants and direct payments



Tax concessions

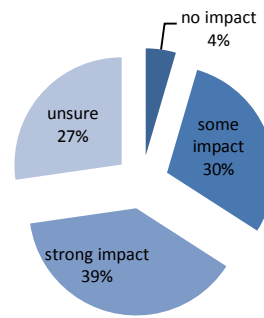


In-kind subsidies

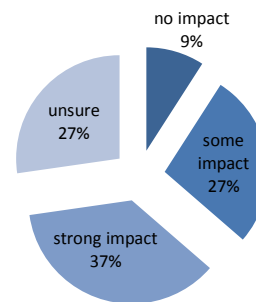


**State-owned enterprises**

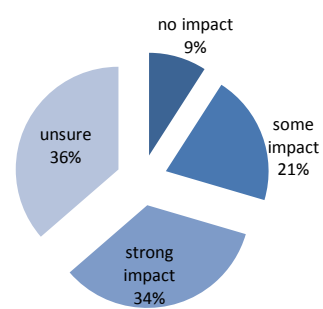
Grants and direct payments



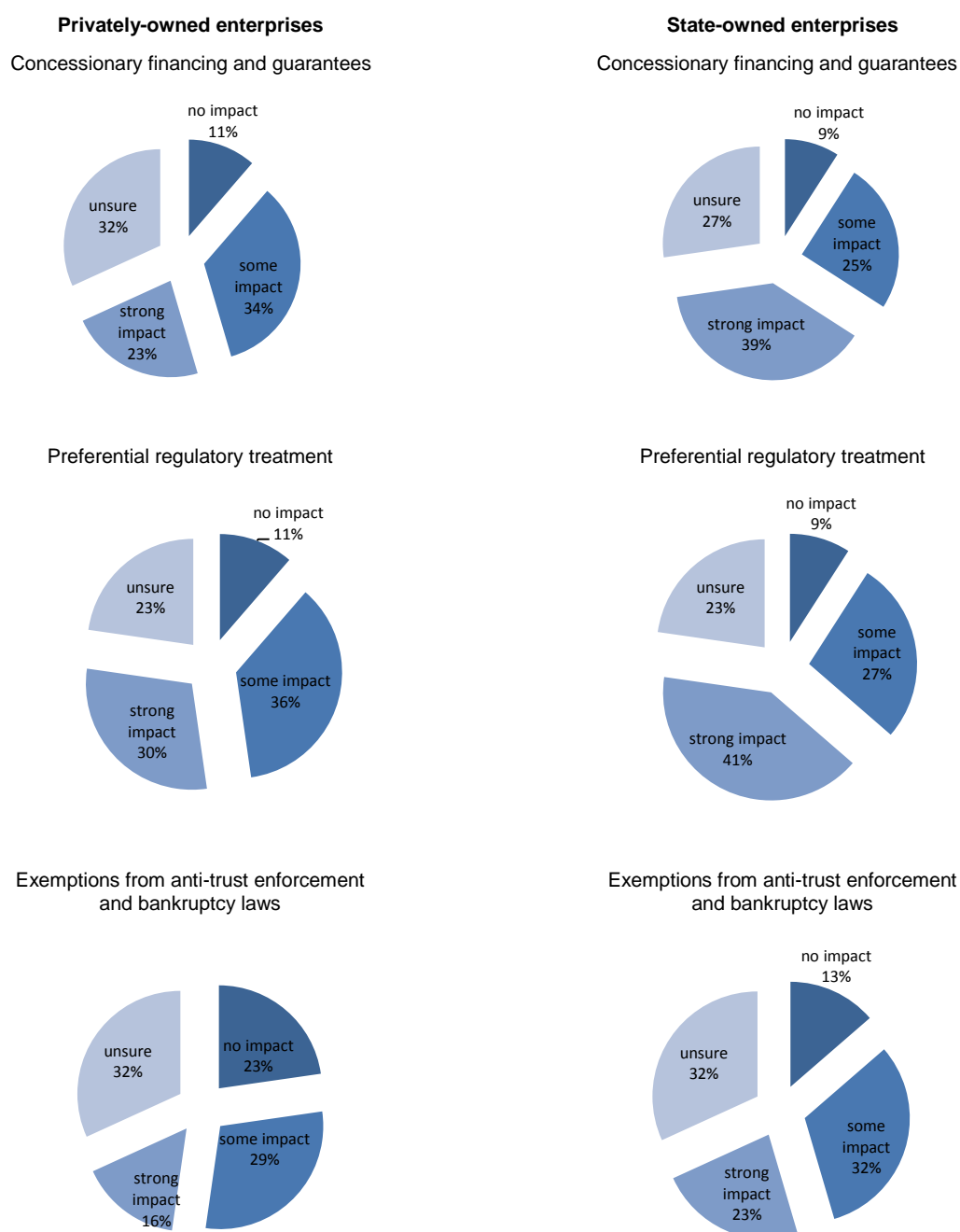
Tax concessions



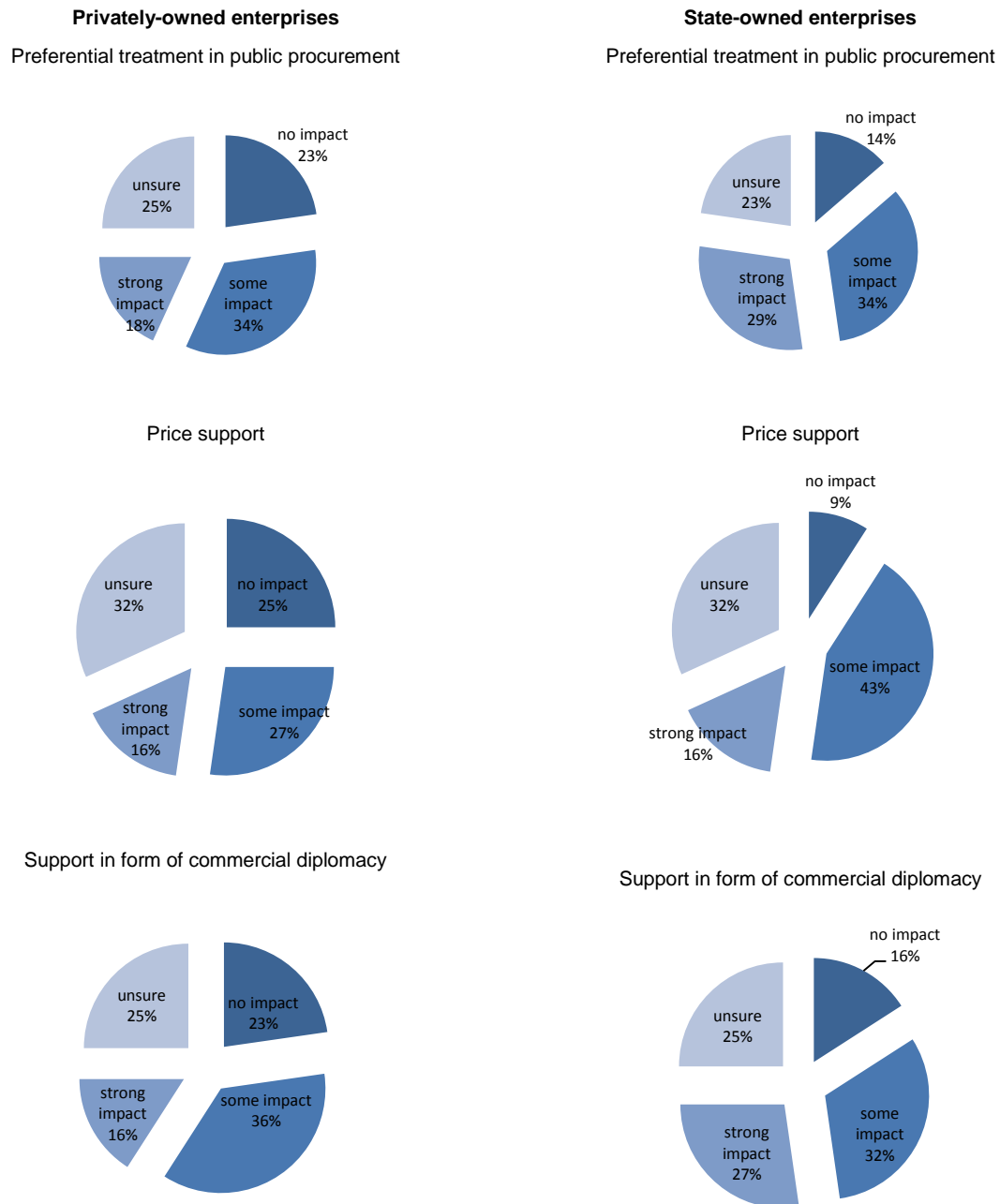
In-kind subsidies



**Annex Figure 12. Which forms of preferential treatment granted to privately-owned and state-owned enterprises have the most harmful impact on respondent's sales? (Non-steel firms) (continued)**



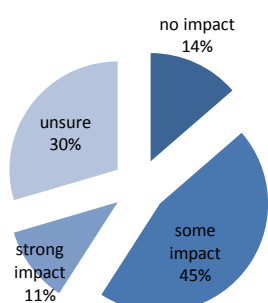
**Annex Figure 12. Which forms of preferential treatment granted to privately-owned and state-owned enterprises have the most harmful impact on respondent's sales? (Non-steel firms) (continued)**



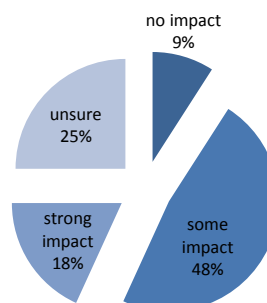


**Annex Figure 12. Which forms of preferential treatment granted to privately-owned and state-owned enterprises have the most harmful impact on respondent's sales? (Non-steel firms) (continued)**

**Privately-owned enterprises**  
Preferential access to information

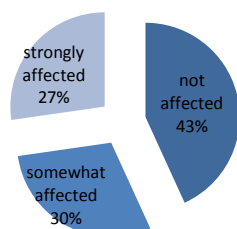


**State-owned enterprises**  
Preferential access to information

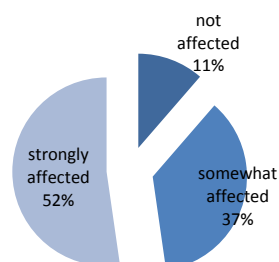


**Annex Figure 13. What part of respondent's commercial operations is harmed the most by foreign governments' preferential treatment of competitors? (Non-steel firms)**

**Sales in the domestic market**



**Sales in the foreign market**



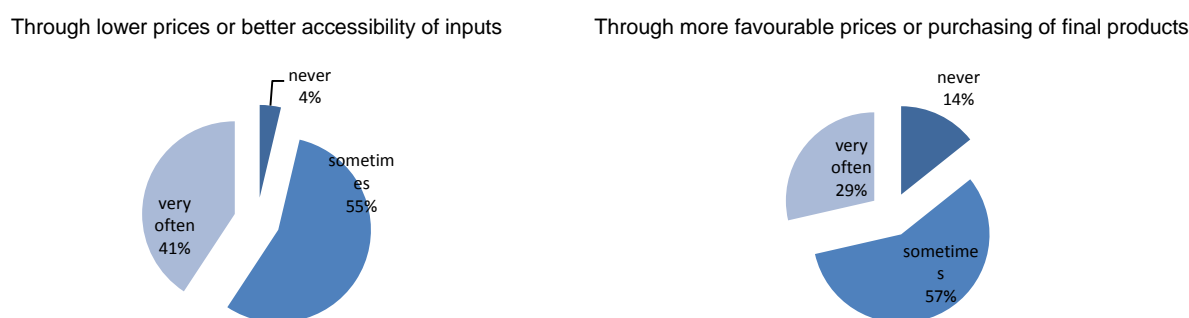
Source: OECD Business Survey on State Influence on Competition in International Markets.

**Annex Figure 14. What part of respondent's commercial operations is harmed the most by foreign governments' preferential treatment of competitors? (Non-steel firms)**



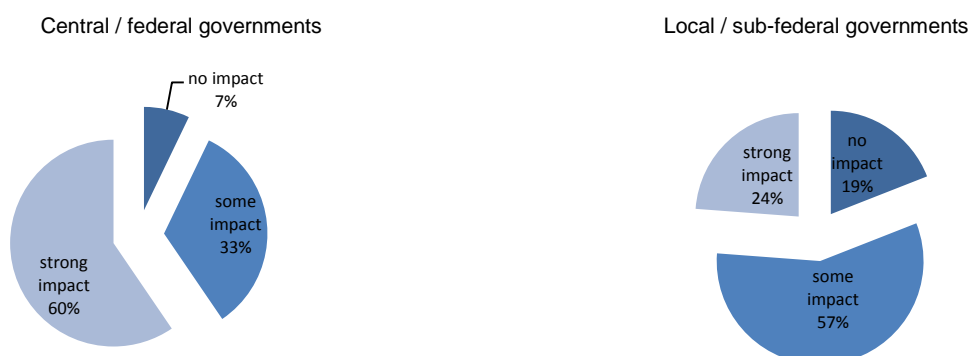
Source: OECD Business Survey on State Influence on Competition in International Markets.

**Annex Figure 15. How prevalent is the use of state-owned enterprises by foreign governments to indirectly grant advantages to your competitors (Non-steel firms)**



Source: OECD Business Survey on State Influence on Competition in International Markets.

**Annex Figure 16. What levels of foreign governments grant advantages to competitors with the strongest negative impact on respondents' business? (Steel manufacturing enterprises are not considered)**



Source: OECD Business Survey on State Influence on Competition in International Markets.

Annex Table 1. Respondents' top sales markets (All firms)

Country	Respondents' Top Market 1 for sales (in %)	Respondents' Top Market 2 for sales (in %)	Respondents' Top Market 3 for sales (in %)
Albania	2%	n.m.	n.m.
Algeria	n.m.	1%	n.m.
Argentina	1%	3%	n.m.
Australia	1%	2%	1%
Austria	n.m.	1%	1%
Belarus	n.m.	n.m.	1%
Belgium	1%	1%	1%
Brazil	3%	2%	4%
Bulgaria	n.m.	1%	1%
Cambodia	n.m.	1%	1%
Cameroon	1%	n.m.	1%
Canada	2%	3%	4%
Chile	1%	n.m.	n.m.
China	3%	4%	5%
Chinese Taipei	1%	n.m.	n.m.
Colombia	1%	1%	n.m.
Czech Republic	1%	n.m.	1%
Ecuador	n.m.	1%	n.m.
European Union	n.m.	1%	n.m.
Denmark	3%	n.m.	n.m.
Egypt	1%	n.m.	n.m.
Finland	1%	n.m.	1%
France	3%	n.m.	3%
Gabon	n.m.	n.m.	1%
Germany	6%	3%	4%
Hong Kong	n.m.	1%	n.m.
Hungary	1%	n.m.	n.m.
India	n.m.	1%	n.m.
Ireland	1%	n.m.	n.m.
Israel	2%	n.m.	n.m.
Italy	n.m.	1%	1%
Japan	1%	2%	1%
Korea	n.m.	n.m.	1%
Lebanon	n.m.	n.m.	1%
Mexico	2%	3%	1%
Netherlands	1%	1%	1%
Nigeria	n.m.	1%	n.m.

Country	Respondents' Top Market 1 for sales (in %)	Respondents' Top Market 2 for sales (in %)	Respondents' Top Market 3 for sales (in %)
Norway	n.m.	n.m.	1%
Oman	n.m.	1%	n.m.
Paraguay	n.m.	1%	n.m.
Poland	1%	1%	1%
Portugal	2%	1%	n.m.
Russia	2%	1%	1%
Slovak Republic	n.m.	1%	n.m.
South Africa	n.m.	1%	n.m.
Spain	2%	1%	1%
Sweden	n.m.	1%	1%
Switzerland	1%	n.m.	n.m.
United Arab Emirates	n.m.	n.m.	1%
United Kingdom	3%	6%	3%
United States	16%	10%	4%
Uruguay	n.m.	n.m.	1%
Venezuela	n.m.	n.m.	1%
Not specified	38%	46%	53%

## Annex 3.

## List of indicators in the regulatory database

Section	Indicator
A. Size of the state sector	A.1. Number of SOEs (distinguishing between majority-owned listed, majority-owned non-listed and statutory and quasi corporations)
	A.2. Number of SOE employees (distinguishing between majority-owned listed, majority-owned non-listed and statutory and quasi corporations)
	A.3. Value of SOEs (distinguishing between majority-owned listed, majority-owned non-listed and statutory and quasi corporations)
	A.4. Share of SOE employment in total dependent employment
	A.5. Value of SOEs as a per cent of value of GDP
	A.6. Number of IM&A deals involving country's SOEs
	A.7. Value of IM&A deals involving country's SOEs
B. Elements of national competitive neutrality arrangements	B.1. Does the country have legal obligations or rules applicable to SOEs to separate commercial and non-commercial activities?
	B.2. Does the country have legal provisions / mechanisms on direct state support delivering to SOEs in order to cover public service obligations?
	B.3. Are country's SOEs subject to as stringent reporting requirements as listed private enterprises?
	B.4. Does a state agency establish rate of return targets for SOEs consistent with the private sector?
	B.5. Does the country have explicit dividend guidelines or targets for SOEs?
	B.6. Can publically-controlled firms receive financing which is not available to private companies?
	B.7. Are publically-controlled subject to an exclusion or exemption, either complete or partial, from the application of the general competition law?
	B.8. Does government prepare annually an aggregate report on SOEs?
	B.9. Is the government report on SOEs available in English?
C. State enterprise-related elements of national investment regimes	C.1. Does the country have inward FDI policies specific to SOEs?
	C.2. Are there any statutory or other legal limits to the number or proportion of shares that can be acquired by foreign investors in services firms that are controlled by national, state or provincial governments?
	C.3. Does the country ban licences to foreign government-owned services providers in certain sectors?
D. External obligations with respect to the state sector	D.1. Do any of the country's GATS commitments stipulate that the commitment will apply only to private entities?
	D.2. Is the country a member of the GPA?
	D.3. Did the country list any SOEs in its Schedule to the GPA? (if yes, to name the companies)
	D.4. Did the country add any qualifying provisions that limit the extent of its GPA obligations with respect to SOEs?

	D.5. Does the country have trading agreements that include provisions on non-discrimination or anti-competitive behaviour specific to state enterprises (SEs)?
	D.6. Does the country have trading agreements that include transparency and information provisions with respect to SEs?
	D.7. Does the country have trading agreements that include consultation provisions with respect to SEs?
	D.8. Does the country have trading agreements with dispute settlement provisions with respect to SEs?
	D.9. Does the country have trading agreements that include state aid or subsidy provisions?
	D.10. Does the country have trading agreements that include government procurement provisions?
	D.11. Does the country have trading agreements that include government procurement provisions that apply to specific SEs?
	D.12. Does the country have at least one investment agreement where any of its state enterprises are exempted from the investment protection provisions?
	D.13. Does the country have at least one investment agreement specifying explicitly that its state enterprises are not covered?
	D.14. Does the country reserve the right to apply an additional government approval procedure for direct investments made by government-owned services providers in certain sectors?
	D.15. Has the country adhered to the OECD Declaration on Sovereign Wealth Funds and Recipient Country Policies?
	D.16. Is the country a signatory of the Generally Accepted Principles and Practices on SWFs?
	D.17. Is the country an adherent to the OECD Codes of Liberalisation of Capital Movements and of Current Invisible Operations?
	D.18. Has the country lodged any exceptions in the Codes relating to state enterprises?