16.1. INTRODUCTION

Across the ages and geographically, states have always intervened in the economy through various forms of state enterprises. Almost since the beginning, these enterprises have been regulated by trade rules and agreements. Notable examples are the General Agreement on Tariffs and Trade (GATT) of 1947 and the Treaty of Rome of 1957 setting up the European Economic Community. The authors have mapped the provisions on state enterprises in 283 preferential trade agreements (PTAs) signed between 1957 and early February 2016 and included in the World Bank's Deep Integration database. This mapping, which uses as a benchmark the relevant disciplines in the WTO, is useful to assess the vertical depth of these provisions, which is the ultimate purpose of the World Bank's Deep Integration research agenda.

This chapter outlines the methodology underlying the creation of a new dataset on provisions regarding state enterprises, and includes an initial description of the main patterns that emerge. The final section of the chapter offers some tentative conclusions on the vertical depth of the state enterprise provisions in the examined PTAs.

16.2. LITERATURE AND PREVIOUS DATASETS

Though states have always intervened in their economies through various forms of state entities, and both the GATT and EU have always had rules on state enterprises, the topic did not attract much attention in the literature until the 1990s, when the processes of liberalization and privatization in the 1980s started to produce their effects. Thus, for example, while the GATT rules on state enterprises received distinct treatment as early as 1969, it was not until the late 1990s that studies began to focus specifically on the regulation of state enterprises, mostly in the treaties that created the WTO and the EU. Despite these works, “issues surrounding the operation of state-owned enterprises (SOEs) in the international trading system [remained] an understudied area and yet one of increasing importance, particularly given the size and significance of Chinese state-owned enterprises (SOE).” It is only in the

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1 The dataset actually includes 282 PTAs. Normally, amendments are not counted separately, but treaties for the accession of new parties are. For counting purposes, given the complexity of the successive iterations of the regulatory framework, there are 3 different sheets for (9) CARICOM; i.e., (9.1) CARIFTA, (9.2) CARICOM, and (9.3) CARICOM + CSME. For the sake of simplicity and consistency with the datasets of the other authors, only (9.2) CARICOM has been considered for the analysis of the stylized facts. Always for consistency reasons, (216) East African Community (EAC)-Accession of Burundi and Rwanda has been counted as two separate agreements (EAC-Accession of Burundi and EAC-Accession of Rwanda), thus raising the count to 283.

2 The research agenda aims at complementing the existing dataset on the ‘horizontal’ depth of PTAs created by the World Bank. See Hofmann, Osnago, and Ruta 2017.

3 Jackson 1969 was an early seminal study.

4 See, for example, Cottier and Mavroidis 1998, Blum and Logue 1998, and Buendia-Sierra 2000.

5 Marvroidis and Janow 2017.
past few years that scholars have started to focus their attention on the ability of WTO rules to regulate state trading and state capitalism.\textsuperscript{6}

Interesting research on state enterprises is being carried out by international institutions. The Organisation for Economic Co-operation and Development (OECD) and the World Bank have, for example, carried out work with a focus on SOEs from a competition and corporate governance perspective.\textsuperscript{7} For its part, the European Union Commission has recently completed a review of the situation of state-owned enterprises in the EU.\textsuperscript{8}

There are also works that focus on specific issues or angles related to state enterprises. For example, the literature on subsidies regularly deals with issues related to the fact that the entity providing assistance is a state enterprise (e.g., imputability of conduct, benchmarking, and privatization).\textsuperscript{9} The analysis of the conduct of state entities in the market is also tackled in the competition or trade/internal market literature.\textsuperscript{10} Equally relevant is the literature on the regulation of liberalization and privatization processes\textsuperscript{11} or on the regulation of public services at both global and European levels.\textsuperscript{12}

Against this background, it should be noted that the only mapping exercise that is comparable to the World Bank’s Deep Integration agenda is the Design of Trade Agreements (DESTA).\textsuperscript{13} It is, however, difficult to identify any works that map the content of state enterprise provisions in PTAs in a comprehensive and detailed manner and expressly look at the depth of the provisions.\textsuperscript{14} For example, DESTA has only one question on state enterprises in the competition chapter (“Is there a provision on state trading enterprises?”).

\textbf{16.3. NEW DATASET}

The dataset of the Deep Integration project represents a new level of comprehensiveness. It examines a sample of 283 PTAs that include provisions on state enterprises. This section of the chapter outlines the methodology used in the mapping exercise by offering an overview of the template and a specific examination of a few selected coding issues.

\begin{itemize}
\item \textsuperscript{6} See, for example, Wu 2016; Mavroidis and Janow 2017; Zhou et al. 2018; and Bown 2018.
\item \textsuperscript{8} See European Commission 2016.
\item \textsuperscript{9} See, for example, Rubini 2009 and Mavroidis et al. 2008.
\item \textsuperscript{10} See, for example, Fox and Crane 2010 and Oliver 2010.
\item \textsuperscript{11} Szyszczak 2007.
\item \textsuperscript{12} See, for example, Krajewski 2003, 2015.
\item \textsuperscript{13} See Dür, Baccini, and Elsig 2014.
\item \textsuperscript{14} There are recent works analyzing state enterprise provisions in PTAs, but they only consult specific PTAs, such as the Trans-Pacific Partnership. See Willemsys 2016 and Fleury and Marcoux 2016.
\end{itemize}
16.3.1 Overview of the template

It is useful to distinguish the information included in the template according to its two main dimensions: rows and columns.

16.3.1.1 Categories and questions (rows)

The template is divided into six different categories, which reflect the key types of provisions regulating state enterprises in PTAs. These are:

- Objectives and coverage of disciplines
- Substantive disciplines
- Transparency and corporate governance
- Enforcement
- Special and differential treatment (SDT)
- Miscellaneous

Each category is divided into various questions. The template begins by asking whether the PTA specifically spells out the objective of regulating state intervention in the economy via state-controlled or state-delegated entities, and whether the PTA makes reference to GATT/WTO rules on state enterprises. It then maps the existence of specific definitions of a variety of public entities that may intervene in the market (state-owned enterprises, state enterprises or public undertakings, state trading enterprises, public or government monopolies, designated monopolies, entities with special or exclusive rights, sovereign wealth funds). The template also maps definitions of key concepts such as government control or influence, commercial activity, commercial considerations, and non-commercial assistance.

The template then focuses on the coverage of the PTA, with questions on what entities or regulatory elements are present in the agreement and immediately signaling the most notable exclusions. There are questions on the presence of de minimis thresholds, on the coverage of specific activities and sectors, and on rules that impact the ownership of state enterprises.

Questions on substantive disciplines focus on the provisions that prohibit or mandate certain types of behavior (e.g., prohibitions of discrimination, anti-competitive behavior, distortions of trade, subsidization; and obligations to act in accordance with commercial considerations, afford companies adequate opportunities to compete, accord fair and equitable treatment, and ensure the compliance of delegated entities with PTA obligations). There are questions capturing any requirement for proof of negative effects on the market, of any reference to the specific geographical market where the conduct or the effects need to take place, and exceptions specific to state enterprises.
Finally, there are questions that capture various levels of transparency, deliberation, and assessment, and the existence of any corporate governance requirement. The section on enforcement aims to capture those mechanisms that, beyond transparency, are specifically devoted to ensuring that the rules are respected and possible breaches of the rules remedied. Questions on the presence of elements of special and differential treatment (SDT), and on the review of the PTA and further negotiation of rules in the area, close the template.

Specific issues arising out of the coding of these questions are discussed below.

16.3.1.2 Further information on PTAs depth (columns)

The questions in the row are intersected with columns that convey further information about the depth of the PTA. There are columns on WTO coverage, enforceability, benefit to non-members, and sectoral coverage and exclusions, as well as a column for providing comments. The most relevant for the purposes of this study are WTO coverage, enforceability, and benefits to non-members.

16.3.1.2.1 WTO coverage

This column indicates the relationship between the coverage of the disciplines for state enterprises in the PTA and the corresponding regulation in the WTO. Essentially, it answers the question of whether the PTA adds to the WTO disciplines on state enterprises. State enterprises are regulated in the WTO. PTA disciplines on state enterprises can thus be “WTO =” (if the rules essentially restate or provide a level of regulation similar to WTO commitments); “WTO +” (if the rules exceed WTO disciplines or commitments), or “WTO –” (if the commitments are more limited than WTO requirements). For example, the question on Competition Law may be coded “WTO +” for goods and “WTO =” for services (because of the presence of GATS Article IX).

There are two important caveats when comparing the coverage of individual PTAs and corresponding WTO disciplines. First, WTO disciplines on state enterprises are quite varied according to the sector, the type of entity, and the type of prohibition or obligation. It may well be that there is not an exact correspondence between PTA and WTO coverage, with the result that the coding inevitably has to be approximate. For example, one PTA may expressly prohibit discriminatory behavior by monopoly suppliers of services without regulating similar conduct in trade in goods (though, via the GATT, the WTO does also prohibit discrimination by state trading enterprises). This type of provision is coded “WTO =.”

Second, while the assessment of the PTA disciplines could be reasonably specific (by considering the relevant schedules and lists of reservations and coding some of the most interesting examples), the assessment in this study of the corresponding WTO discipline
has been carried out at a more preliminary level. The coding of the WTO coverage simply indicates whether there are disciplines in the PTA that can also be found in principle in the WTO. If, for example, the PTA regulates state enterprises in the service sector, the WTO coverage has been coded “WTO =” because state enterprises are in principle also regulated in the GATS. In other words, the coders have considered the coverage of WTO law in general, without examining the specific GATS schedules of the relevant parties. This approach necessarily leads to an approximation, but a specific perusal of the GATS schedules would have created too much complexity, especially when the PTA is multi-party. This is beyond the current mapping exercise.

In some cases, the coders have specifically relied on the ultimate goal of the coding exercise; i.e., to determine the depth of integration pursued by the PTA. The assessment of WTO coverage has thus focused on the depth of the commitment of the PTA relative to the WTO rule-book. The goal is not to assess whether certain PTA provisions are WTO law compliant but whether they pursue a level of integration that is deeper (or otherwise) than the WTO. A few practical examples are discussed below in the section on specific coding issues and, in particular, in the exceptions section.

16.3.1.2.2 (Legal) enforceability

In general, the question of enforceability does not apply to definitions or coverage (except for questions on ownership regimes of state entities and liberalization processes), but only to substantive disciplines, transparency, and special and differential treatment provisions.

The coders have used the scale established at the beginning of the Deep Integration project:

- 0: non-binding
- 1: non-binding provision with best efforts
- 2: binding provision with no dispute settlement (DS)
- 3: binding provision with state-to-state dispute settlement
- 4: binding provision with only private-state dispute settlement (ISDS)
- 5: binding provision with both state-to-state and private-state dispute settlement.

The most common codes have been “3” when dispute settlement mechanisms are available and “2” when they are not. For example, the coding of the Competition Law question is normally “2” because very often PTAs exclude competition provisions from dispute settlement. If, by contrast, dispute settlement provisions are applicable to the competition chapter at large or, in any event, to the specific competition provisions on state enterprises and monopolies, the coding is “3.” The use of “4” is limited to those rare cases where there is a national treatment obligation in investment chapters for which investor-state dispute settlement (ISDS) is provided.
16.3.1.2.3 Benefits to non-members

This column focuses on the impact of providing de facto benefits or positive externalities to non-members of the PTA. There are two possible alternatives: “1” for a positive answer or “0” for a negative answer. If the issue is not relevant (because it is not possible to determine the existence of an externality in the abstract), the cell has not been coded. In particular, the questions under objectives, definitions and coverage, transparency and enforcement, and special and differential treatment provisions have not been coded because either the question of any benefit to non-members is not relevant or the existence of any such benefit cannot be easily determined through the abstract coding of legal texts. For similar reasons, the questions on the possible proof of negative effects or on the requirement to identify the geographical market affected were not coded. The question on whether the PTA requires the parties to ensure that state enterprises comply with the parties’ commitments and obligations has not been coded either. The other questions on disciplines were coded “1” if it was clear that the obligation/prohibition was not limited to the parties. For example, when the Competition Law question has been coded, a positive externality for non-members has been assumed, thus leading to coding “1.”

Do PTAs lead to most-favored-nation (MFN) discrimination against non-signatories? The answer depends on whether, for example, the prohibition is a general one (for example, anti-competitive behavior), or rather it only concerns inter-party trade. The questions “Does the agreement require state enterprises to act in accordance with commercial considerations?”, “Does the agreement require affording companies adequate opportunities to compete?,” and “Does the agreement provide for an obligation to accord fair and equitable treatment?” trace their origins to GATT Article XVII and have accordingly all been coded “WTO =.” However, in terms of possible externalities to non-members, while the first two have been coded “1,” the last one has been coded “0.”

In terms of WTO coverage, subsidy rules are considered to offer a benefit to non-members, thus leading to a “1” coding. If they are, however, expressly limited to the parties (for example, prohibition of export subsidies on goods destined to the territory of the other party), this is not considered as conferring any distinct benefit to non-members, and hence are coded “0.”

The question “Does the agreement prohibit discrimination by state enterprises?” refers to any non-discrimination provision, mostly national treatment or MFN based. If the PTA has any such provision, the comments section of the template is used to highlight what type of discrimination is prohibited, and whether the prohibition applies to goods and/or services. If the prohibition of discrimination refers only to the other party or to reciprocal trade, this is coded “0” because there can be no benefit to non-members.
16.3.2 Selected coding issues

After offering a general overview of the template’s structure and a few examples of how coding has been carried out, the study now specifically examines how coding has contributed to the overall goal of determining the objectives of PTA provisions that regulate state enterprises, and assessing the depth of those provisions.

16.3.2.1 Objectives of PTAs regulating state enterprises

The coders have looked for specific expressions of the objectives to regulate state intervention in the market through public entities. If present, these objectives are normally broadly phrased and may not have a huge practical relevance. It does not then come as a surprise that there are very few examples of these objectives, particularly in the opening provisions of Competition Law chapters which then include rules on state enterprises. One example is (160) US-Peru. The competition chapter of that PTA includes specific provisions on designated monopolies and state enterprises, and immediately sets out the objectives of those provisions: “Recognizing that the conduct subject to this Chapter has the potential to restrict bilateral trade and investment, the Parties believe that proscribing such conduct, implementing economically sound competition policies, and cooperating on matters covered by this Chapter will help secure the benefits of this Agreement” (Article 13.1).

In conclusion, it is not normally possible to obtain any meaningful indication of the depth of the PTA by considering the explicit objectives the parties set for themselves. This goal can only be achieved through interpreting the content of the PTAs. In particular, the analysis of certain provisions may offer useful indications about the goals underlying the regulation of state enterprises.

One good example comes from the coding of the question on ownership regimes, which may indeed indicate different objectives of the PTA disciplines on state enterprises.

The question “Does the agreement expressly regulate ownership or property regimes, or liberalization processes?” refers to those provisions that may have an impact on government decisions about how to organize certain companies and sectors of the economy. Among the most common provisions are those that declare the neutrality of the parties with respect to the decision to set up or maintain public monopolies or state enterprises. An extremely common provision is, for example: “Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining state enterprises and/or designated monopolies” (276) Republic of Korea-Colombia (Article 13.9). The same PTA includes another provision with a similar content in the investment chapter: “For greater certainty, nothing in this Chapter shall be construed to impose an obligation on a Party to privatize any investment that it
owns or controls or to prevent a Party from designating a monopoly” (Chapter 8, footnote 1). Another example of the “principle of neutrality” is (265) Mauritius-Pakistan, which reads at Article 16.1: “Nothing in this Agreement shall prevent a Contracting Party maintaining or establishing a state trading enterprise as provided for in Article XVII of GATT 1994.”

There are also other provisions that have been coded under this question but that embody a different principle. One good example is (110) Korea-Singapore (Article 15.4): “Each Party shall take reasonable measures to ensure that its government does not provide any competitive advantage to any government-owned businesses in their business activities simply because they are government owned.” Along the same theme, many PTAs include provisions that call on the parties to progressively adjust their state monopolies of commercial character to ensure that no discrimination regarding the conditions under which goods are procured and marketed will exist between the parties. These provisions are particularly common in the PTAs signed by the EU and mirror the corresponding provision in the (1) EC Treaty (Article 37). See, for example, (30) EU-Turkey (Article 42). They can also be found in the PTAs of those countries closely linked to the EU. See, for example, (26) EFTA-Israel (Article 9.1) or (105) Turkey-Tunisia (Article 23). Importantly, these provisions do not embody the “principle of neutrality” (vis-à-vis state enterprises) but rather a concept of “level playing field” (in favor of private operators). They are not intended to protect state enterprises and, through them, the state prerogative in organizing the economy; rather, they aim to protect private operators from the possible advantages state enterprises may enjoy.

Expanding a bit on this discussion of the possible objectives of PTA rules on state enterprises, and considering other provisions, it seems that the “level playing field” idea underlies most of the disciplines that have been coded (clearly competition Law and state enterprise provisions, but also rules and obligations to act in accordance with commercial considerations, and to accord fair and equitable treatment or adequate opportunities to compete). Different rationales support the various provisions that prohibit non-discrimination (national treatment, MFN, general prohibitions on discrimination). By contrast, the obligation to ensure that state enterprises comply with the commitments and obligations entered into by the PTA parties is general and open ended and its rationale fundamentally depends on the specific commitments or obligations.

16.3.2.2 Exceptions

There are various questions that may lead to coding exceptions. Two questions are in the “coverage” part of the template (“Does the agreement expressly regulate/exclude state enterprises pursuing public services?” and “Does the agreement expressly regulate/exclude state enterprises in strategic sectors?”). Two more questions relate to “substantive disciplines” (“Does the agreement provide for exceptions specific to state enterprises?” and “Does the agreement include any other specific discipline for certain sectors or objectives?”).
Provisions that may be considered exceptions to the normal disciplines on state enterprises are common in PTAs. Not only was it important for the coders to determine where (i.e., under what questions) these provisions had to be coded, but, most crucially, how their relation to WTO disciplines should be assessed. This is because the coding, especially of the WTO coverage, is particularly important to determine vertical depth. Are these “WTO –” or “WTO +” provisions?

The main rule followed is that exceptions for horizontal or general objectives, such as the performance of public services or the pursuit of public policy goals (e.g., environmental protection), have been coded “WTO +.” The thinking is that, while horizontal exceptions may depart from WTO commitments, their presence is typical of more integrated systems and implies that the parties accept the fact that certain economic or competitive benefits they would otherwise obtain from the PTA can (or indeed should) be limited by the pursuit of other, often non-economic, goals. This is considered a sign of more mature, deeper experiments with integration. The horizontal nature of these goals is a proxy for their non-protectionism. By contrast, sectoral carve-outs (exclusions or limitations for certain industries or products) for strategic sectors, and without any clear reference to a general public policy goal, are more likely to be protectionist and can be coded “WTO –.” See, for example, (217) Colombia-Northern Triangle (Annex III; Schedules), with various limitations on oil products and regional television; (239) Costa Rica-Peru (Schedules, Costa Rica), with Costa Rica’s express reservation on oil import and wholesale distribution as a State monopoly; or (277) Costa Rica-Colombia (Schedules), with various restrictions on oil products and national roads, docks, and airports (Costa Rica) and on regional television and financial services (Colombia).

Similarly, there are a few PTAs that (except for sectors that can be defined as strategic) include limitations and reservations for state monopolies and for undertakings with special or exclusive rights in the schedules. These have been coded under the question on special rules for certain sectors. However, in the absence of specific information that could indicate the actual existence of horizontal public policy tasks (or otherwise), the “WTO coverage” has normally been left blank. See, for example, (195) EU-Korea (Schedules).

One interesting example can be found in (48) EFTA-West Bank and Gaza (Article 9, Protocol C), in which the general obligation to adjust monopolies of commercial character shall apply to Liechtenstein and Switzerland with regard to State monopolies concerning salt, but only to the extent that these parties will have to fulfill corresponding obligations under their trade relations with the European Community and EFTA States. This reservation is common in many EFTA PTAs. In the absence of further information of the type indicated above, the “WTO coverage” question has been left blank.

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To be sure, special treatment for certain sectors like regional television may be justified by horizontal or general goals like the protection of culture.
Article 106(2) of the (1) EC Treaty is the model of provisions that can be frequently found in other PTAs. It reads:

Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

When present (and this is common in PTAs signed by the EU), this provision has been coded under two different questions and with different “WTO coverage” codings. The exception in favor of undertakings entrusted with the operation of services of general economic interest (read: public services) has been coded under the question on public services, with a “WTO +” coding. By contrast, the exception for revenue-producing monopolies has been coded under the general question on the existence of specific exceptions for state enterprises, and, given its generality, has not been coded under “WTO coverage.” (184) EU-Serbia is a good example on this point.

Quite similarly in other cases, when the language of the provision was general, it was not possible to code either as “WTO −” or “WTO +” and, in the absence of more information, the relevant cell was left blank. It is, for example, very common to find provisions whereby the state enterprise is subject to certain obligations, such as the obligation to act in accordance with commercial considerations, or disciplines, such as those specified in competition law, but only in so far as those rules do not obstruct the performance of specific tasks assigned to it. These provisions were coded under the question on specific exceptions for state enterprises, but their WTO coverage has been left blank. Among several examples, see (270) China-Korea (Article 14.5.3(b), exception from competition laws); and (260) Canada-Korea (Article 15.2.3(b), exception from obligation to act in accordance with commercial considerations).

16.4. ANALYSIS: DESCRIPTIVE STATISTICS

16.4.1 General overview of the evolution and distribution of provisions on state enterprises

This section begins with a few basic descriptive statistics on the evolution and distribution of state enterprise provisions in the 283 PTAs in the sample.

16.4.1.1 Evolution of the number of PTAs with provisions on state enterprises

Figure 16.1 shows the evolution of the number of PTAs with state enterprises provisions vis-à-vis those without these provisions. Given their relevance the figure also shows those limited PTAs that regulate state enterprises via general competition laws only. While state enterprise provisions were fairly rare before 1991, featuring in only 11 out of 21 PTAs, their frequency steadily increased in the following decades, and the share of PTAs with such provisions has been
clearly and robustly dominant since 2012. In the 2012-2016 period, a total of 30 out of 33 PTAs signed included state enterprise provisions. Competition law appears as an important tool to regulate state enterprises in the 1992-2003 period, with 23 out of 102 PTAs signed including competition law provisions but no dedicated state enterprise provision. The most successful years for competition law as a tool to regulate state enterprises were 1992 to 1996, with an 18/24 ratio between competition provisions and specific state enterprise provisions. Cumulatively, in the full period covered by the template (1957-2016), 16218 PTAs have been concluded that regulate state enterprises, either through express state enterprise provisions (193) or through competition provisions (25). Only 65 PTAs have neither state enterprise nor competition provisions.

**Figure 16.1:** Evolution of the number of PTAs with state enterprise provisions

![Figure 16.1](image)

*Source: Deep Trade Agreements Database.*

The steady increase of state enterprise provisions over time is confirmed by Figure 16.2, which shows the evolution of the average number of these provisions over time (the figure only includes those PTAs with state enterprise provisions).

**Figure 16.2:** Number of state enterprise provisions (average) over time

![Figure 16.2](image)

*Source: Deep Trade Agreements Database.*

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16 All figures and tables refer to the 2010-2017 period, mainly for the sake of consistency with the other chapters. However, the most recent PTA coded in the context of the mapping exercise underlying this paper dates back to February 2016.
Figures 16.3a and 16.3b introduce a distinction in state enterprise provisions among “disciplines” (provisions that tell parties what they can or cannot do with regard to state enterprises), 17 “transparency” provisions, and “enforcement” provisions.

Figure 16.3a: Evolution of the number of PTAs with state enterprise provisions

![Figure 16.3a](image)

Source: Deep Trade Agreements Database.

Figure 16.3b: Evolution of the share of PTAs with state enterprise provisions

![Figure 16.3b](image)

Source: Deep Trade Agreements Database.

Figure 16.3a shows that disciplines, transparency, and enforcement provisions all increase in the periods considered, reaching the apex in the 2005-2009 period, then decreasing in the 2010-2017 period. This decrease is mainly due to the lower number of PTAs signed and does not necessarily detract from the upward trend that has been noted. The sharpest increases occur for transparency provisions between the pre-WTO and 1995-1999 periods, and for disciplines and enforcement provisions between the 2000-2004 and 2005-2009 periods.

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17 Disciplines in particular refer to the questions in rows 37-48 of the template (section on substantive disciplines).
periods. What is probably more significant, though, is the evolution of the share of PTAs with state enterprise provisions. The main indication coming from Figure 16.3b is one of stability. Except for the pre-1995 period, when they were present in only 8 percent of PTAs, transparency provisions are consistently present in the next periods with only small variations (46 percent in 1995–1999, 53 percent in 2000–2004, 46 percent in 2005–2009, and 49 percent in 2010–2017). A similar pattern can be noticed for enforcement provisions. They move from 58 percent (pre-1995) to 78 percent (1995–1999) and then fluctuate mildly (back to 66 percent in 2000–2004, to 74 percent in 2005–2009, and 77 percent in 2010–2017). The provisions on disciplines show a similar pattern, the only difference being that they were already strong in the pre-WTO period (71 percent), before peaking at 88 percent in the 1995–1999 period, decreasing to 72 percent in 2000–2004, and then progressively increasing to 75 percent in 2005–2009 and to 81 percent in 2010–2017. It goes without saying that these are very much macro categories and can only give very broad indications. A more detailed analysis of the trends within each category is presented below.

16.4.1.2 Distribution and evolution of PTAs with state enterprise provisions by level of development of their members

This section considers the distribution and evolution of PTAs with state enterprise provisions by level of development of the country, as defined following the World Bank country classification of 2017. Figure 16.4 shows the distribution and the share of PTAs with state

![Figure 16.4: Share of PTAs with state enterprise provisions by level of development](image)

Developed-Developing: 110 PTAs (74%)
Developed-Developed: 36 PTAs (90%)
Developing-Developing: 72 PTAs (76%)

*Source:* Deep Trade Agreements Database.

*Note:* The figures listed at the bottom (left) of each bar represent the number of North-North, North-South, and South-South PTAs with state enterprise provisions.

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Developing countries are composed of low-income and lower-middle-income economies, whereas upper-middle-income and high-income countries are considered Developed. Low-income economies are defined as those with a gross national income (GNI) per capita, calculated using the World Bank Atlas method, of US$1,005 or less in 2016; lower-middle-income economies are those with a GNI per capita between US$1,006 and US$3,955; upper-middle-income economies are those with a GNI per capita between US$3,956 and US$12,235; high-income economies are those with a GNI per capita of US$12,236 or more.
enterprise provisions by level of development. While state enterprise provisions are present in the large majority (90 percent) of trade agreements signed between developed (North) countries, they are less frequent although still common in those signed between developing (South) countries or between North and South countries (76 and 74 percent, respectively).

Figure 16.5 shows an increase in state enterprise provisions in the PTAs between North countries from a 71 percent share before 1995 to 100 percent in all subsequent periods except 2005–2009, when it dropped to 83 percent. The share of state enterprise provisions in North–South PTAs has fluctuated (averaging 74 percent and with peaks at 85 and 88 percent, respectively, in 1995–1999 and 2010–2017). The data are more revealing for the PTAs between South countries, where the share has decreased consistently since the early 2000s. In particular, after an increase from 78 percent (before 1995) to 89 percent (between 1995 and 1999), there were clear decreases in almost every subsequent period: 76 percent (-14.6 percent compared to the previous period) in 2000–2004 and 2005–2009, down to 53 percent (-30.3 percent) in 2010–2017.

**Figure 16.5:** Share of PTAs with state enterprise provisions by level of development, by year of signature

We now consider the distribution and evolution of PTAs with state enterprise provisions by geographic group, defined following the World Bank classification. Figure 16.6 shows that almost all PTAs signed by EFTA (97 percent) include state enterprise provisions. A very high presence of these provisions (from 72 to 85 percent) can be found in the large majority of the geographic groups (from the highest to the lowest: Central Asia, North America, Latin America & Caribbean, Middle East & North Africa, the EU, and East Asia & Pacific). South Asia PTAs still score relatively high (64 percent). Sub-Saharan Africa lags behind (44 percent).

16.4.1.3 Distribution and evolution of PTAs with state enterprise provisions by geographic group

We now consider the distribution and evolution of PTAs with state enterprise provisions by geographic group, defined following the World Bank classification. Figure 16.6 shows that almost all PTAs signed by EFTA (97 percent) include state enterprise provisions. A very high presence of these provisions (from 72 to 85 percent) can be found in the large majority of the geographic groups (from the highest to the lowest: Central Asia, North America, Latin America & Caribbean, Middle East & North Africa, the EU, and East Asia & Pacific). South Asia PTAs still score relatively high (64 percent). Sub-Saharan Africa lags behind (44 percent).

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Looking now at these data together with those of Table 16.1, what emerges is a mixed picture. EFTA PTAs have consistently included state enterprise provisions, scoring 100 percent in all periods except for the period before 1995, when the share was 89 percent because of one agreement (with the Faroe Islands) that did not include state enterprise provisions. With the exception of the last period, Central Asia also has a high share of state enterprise provisions. East Asia & Pacific and South Asia both show a moderate increase in state enterprise provisions, reaching, respectively, 86 and 100 percent in the 2010-2017 period. North America features a strong increase from the pre-WTO to the post-WTO period, doubling the share of PTAs with state enterprise provisions (from 50 percent to 100 percent), then decreasing to almost the previous level (57 percent) in 2000-2004 and then increasing robustly in the next periods to reach 100 percent in 2010-2017. Latin America & Caribbean also shows a robust increase from the pre-WTO to the post-WTO period (from 56 to 89 percent), but then progressively decreases after that (to 85 percent in 2000-2004 and 78 percent in 2005-2009 and 2010-2017). The EU always scores well above 80 percent except for the pre-WTO period (71 percent) and the 2005-to-2009 period (64 percent). The share of PTAs with no state enterprise provisions during each period depends mainly on the special nature of the relevant PTAs (enlargement agreements, agreements with significantly smaller countries). South Asia shows a consistent increase, which is particularly noticeable in the latest three periods (after 100 percent in the post-WTO period, the shares were, respectively 60 percent, 70 percent, and 100 percent). The share of PTAs with state enterprise provisions for Sub-Saharan Africa is largely consistent, never scoring above 50 percent in any period.

Source: Deep Trade Agreements Database.
Note: The figures listed at the bottom of each bar represent the number of PTAs with state enterprise provisions.

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16.4.2 Analysis of scope

After analyzing the general traits of state enterprise provisions in PTAs, this section focuses more specifically on the scope of these agreements.

16.4.2.1 Most common provisions

The most common state enterprise provisions are shown in Figure 16.7. Some of these provisions will be subject to deeper analysis in Section 16.4.3.

It may be useful to recall that, among the 283 PTAs coded, 218 include state enterprise provisions, divided into provisions specific to state enterprises (193) and general competition provisions (25). Figure 16.7 does not consider the questions on the types of covered entities (which are analyzed in detail below) or those provisions that scored less than 10.21 All provisions on definitions have been counted together.22

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21 In particular, “Does the agreement expressly regulate/exclude sovereign wealth funds (SWFs)?” (9); “Does the agreement require domestic administrative bodies to act impartially?” (4); “Does the agreement require proof of negative effect on the market?” (3); “Does the agreement provide for any other special and differential treatment with respect to state enterprises?” (2); “Does the agreement provide for cooperation or technical assistance specific to state enterprises?” (2); “Does the agreement require domestic courts to have jurisdiction on covered entities?” (2); “Does the agreement include a de minimis threshold (i.e. state enterprises under it are not covered)” (2); “Does the agreement indicate the geographical market where the objectionable conduct or the effect takes place?” (2); “Does the agreement provide for the supervision or review of the rules on state enterprises?” (2); “Does the agreement provide for further negotiations in the area of state intervention in the economy?” (2); “Does the agreement provide for any other requirement or mechanism to deal with transparency or corporate governance with respect to state intervention in the economy?” (1); “Does the agreement provide for any other enforcement mechanism?” (0).

22 The dataset has separate questions for the definitions of (a) state-owned enterprise (SOE), state enterprise (SE), or public undertaking; (b) state trading enterprise (STE); (c) public or government monopoly; (d) designated monopoly; (e) entity with special or exclusive privileges and rights; (f) government control or influence; (g) sovereign wealth fund (SWF); (h) commercial activity; (i) commercial considerations; and (j) non-commercial assistance.
The first information that can be derived from the figure is that the very large majority of PTAs with state enterprise provisions also regulate those in the agriculture sector (195, or 89 percent). The coverage of state enterprises operating in the service sector is significantly lower (56 percent).

Two of the most common provisions do not deal with disciplines or commitments but are much more general (existence of institutions dealing with transparency and enforcement, 183; dispute settlement mechanism, 143). The most common provisions that include commitments are those that (a) prohibit the anti–competitive behavior of state enterprises (190, or 87 percent of PTAs); and (b) regulate subsidization of state enterprises (156, or 71.5 percent); and (c) prohibit discrimination by state enterprises (140, or 64 percent). Provisions that regulate ownership or property regimes or liberalization processes appear in 109 PTAs (exactly 50 percent of those with state enterprise provisions).

Provisions that require parties to ensure that state enterprises or monopolies do not act inconsistently with the parties’ obligations or commitments appear in 83 of the PTAs (38 percent), and notification requirements\textsuperscript{23} occur in 78 (36 percent). There are 73 PTAs (33 percent) with provisions that provide for specific exceptions for state enterprises, and 64 PTAs (29 percent) that commit state enterprises to carry out any commercial activities in accordance with commercial considerations.

\textsuperscript{23} Notification requirements (for example, on granting a monopoly exclusive or special rights, the operations or conduct of state enterprises, and the goods/services covered) were the first type of transparency provisions included in PTAs.
Much less frequent are PTAs with disciplines that oblige state enterprises to accord fair and equitable treatment to non-state enterprises (39), and to afford them adequate opportunities to compete (37). Nearly as frequent (36 PTAs) is a type of transparency commitment that requires transparency of ownership, governance, and financial information. By contrast, provisions providing for discussion of information on state enterprises, or deliberation and assessment of their operations or conduct, are significantly less common (10). Interestingly, only 24 of the PTAs that regulate state enterprises include corporate governance requirements (about “structure” or “behavior”). All transparency provisions are discussed in further detail below: While 35 PTAs specifically exclude the application of public procurement rules to state enterprises, 27 include the fourth-less-common type of discipline, which is the obligation of state enterprises not to distort trade. Only a handful of PTAs regulating state enterprises include specific rules on strategic sectors (19), public services (17), financial services (12), and other specific disciplines for certain sectors (15). The question on the existence of provisions with specific disciplines for certain sectors or objectives has been coded in 15 PTAs.

In conclusion, four commitments emerge as the most relevant provisions in PTAs that regulate state enterprises: prohibitions of anti-competitive behavior (87 percent), rules on subsidies (71.5 percent), prohibitions of discrimination (64 percent), and provisions that directly impact ownership regimes (50 percent). Other disciplines are less common: the obligation to act in line with the parties’ obligations (38 percent) or in accordance with commercial considerations (29 percent), the obligation to accord fair and equitable treatment (18 percent) and to afford companies adequate opportunities to compete (17 percent), and finally the obligation not to distort trade (12 percent).

Overall, transparency requirements show a modest recurrence. The most common commitment is the notification requirement, present in 36 percent of PTAs. Transparency of ownership, governance, and financial information are present in 16.5 percent of the agreements; discussion of information, or deliberation and assessment of operations or conduct, can be found in a mere 4.6 percent of PTAs; and requirements pertaining to corporate governance are in 11 percent of PTAs.

A significant share of state enterprise provisions (34.4 percent) is not enforceable through dispute settlement mechanisms. The reason is that many state enterprise provisions are included in competition chapters, for which PTAs regularly exclude dispute settlement.

### 16.4.2.2 Most common provisions by level of development

Figure 16.8 shows that North-North PTAs have the higher number of state enterprise provisions, followed by North-South PTAs. South-South agreements lag behind, with, respectively, 37.6 and 24.4 percent fewer state enterprise provisions than North-North and North-South PTAs.
This general pattern holds when looking at the categories of provisions in more detail, as shown in Figure 16.9. What comes out, however, is a higher frequency of disciplines and coverage provisions (from around 75 percent for South-South and North-South PTAs to 90 percent in North-North PTAs). The rules on enforcement also score high, with shares between 67 and 78 percent. By contrast, transparency provisions clearly score lower. Even the 50 percent share in North-North PTAs is not very high and decreases to 46 percent in North-South and to a mere 29 percent in South-South PTAs. Interestingly, special and differential treatment, cooperation, and miscellaneous (e.g., supervision of agreement and further negotiations) provisions are virtually non-existent.

Figure 16.9: Most common provisions by level of development

Source: Deep Trade Agreements Database.

16.4.2.3 Most common provisions by geographic group

Figure 16.10 shows that North America and EFTA PTAs have the higher number of state enterprise provisions (respectively, 17.8 and 16.3, on average). Latin America and the
Caribbean follows with 14.1. Then come two different groupings: PTAs with between 12.4 and 10.4 provisions (Middle East & North Africa, East Asia & Pacific, the EU, and Central Asia) and those with 8.8 and 6.0 (Sub-Saharan Africa, South Asia).

![Figure 16.10: Most common provisions by geographic group](image)

Source: Deep Trade Agreements Database.

EFTA and North America PTAs have the highest average number of state enterprise provisions, as shown in Table 16.2. EFTA PTAs have a very strong frequency in coverage, disciplines, and enforcement provisions. North America PTAs consistently score very high in most of the categories, except for SDT and miscellaneous provisions. Interestingly, they have the highest score in definitions provisions.

<table>
<thead>
<tr>
<th>Table 16.2: Most common provisions by geographic group (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>Definition provisions</td>
</tr>
<tr>
<td>-----------------------</td>
</tr>
<tr>
<td>Coverage provisions</td>
</tr>
<tr>
<td>Discipline provisions</td>
</tr>
<tr>
<td>Transparency provisions</td>
</tr>
<tr>
<td>Enforcement provisions</td>
</tr>
<tr>
<td>SDT provisions</td>
</tr>
<tr>
<td>Miscellaneous provisions</td>
</tr>
</tbody>
</table>

Source: Deep Trade Agreements Database.
16.4.2.4 Notable countries

A few countries have been selected, mostly because of their active role in signing PTAs, for a deeper analysis. As shown in Figure 16.11, Canada has by far the highest score (23.1). EFTA is the second highest (16.3). Then there is a large group with scores between 13 and 15, which includes Korea (13), New Zealand (13.5), Australia (13.6), the United States (13.8), Singapore (14), Central America (14.4), and Mexico (15.1). The few other countries selected lag slightly behind: Japan and Chile (12.7), the EU and Turkey (11.5), and China (10.1).

![Figure 16.11: Most common provisions by notable countries](Image)

These numbers are explained in Table 16.3. Generally speaking, there are high and very high scores for coverage, disciplines, and enforcement provisions, and lower scores for definitions, and transparency and corporate governance. As seen already, the recurrence of SDT and miscellaneous provisions is scarce.

Looking now at the individual countries, Canada is extremely high in all scores (92-100 percent) and comparatively high in definitions and transparency. EFTA is very high in all categories (with a lower performance on transparency provisions) but is low on definitions. EU is very modest in transparency provisions (32) and definitions (only 9). Singapore, Central America, Mexico, and Korea show a similar pattern, with very high scores for coverage, disciplines, and enforcement and more modest (slightly below 60 percent) scores for definitions and transparency. Australia has good scores for coverage and disciplines (both 77) and relatively good scores (between 62 and 69) for definitions, transparency, and enforcement. New Zealand has very high scores except for transparency, and corporate governance, which score merely 50 percent. Similarly, Turkey has very high score in all categories, but its PTAs feature no definitions at all. The United States is consistent in not having high scores (50s-60s) in all categories. China scores less than 60 percent in all categories, while Chile scores relatively high (69) only for coverage and disciplines; definitions, transparency, and enforcement are below 60 percent.
16.4.3 Specific analysis of types of provisions

This section sketches a few descriptive statistics concerning specific types of state enterprise provisions, in particular, those on definitions, coverage, disciplines, exceptions, transparency and corporate governance, and enforcement.

16.4.3.1 Definitions

The WTO does not provide an official definition of state trading enterprise but only a working definition\(^{24}\) and an illustrative list.\(^{25}\) The same applies to the concept of monopoly. Definitions are, however, important because through them the parties can make the scope of disciplines broader or narrower. Therefore, many PTAs include their own definitions agreed upon by the parties. The most common definitions concern the concept of monopoly and state enterprise, as shown in Figure 16.12. In particular, 65 PTAs include definitions of public or government monopoly, 35 feature definitions of designated monopolies, and 37 include definitions of state-owned enterprise, state enterprise, or public undertaking. The remaining definitions included in the dataset are scarcely coded with the exception of the notion of commercial considerations, which appears in 17 PTAs (while only 2 agreements include an explicit definition of commercial activity).

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\(^{24}\) See the Memorandum of Understanding on the interpretation of Article XVII of the GATT 1994, para. 1.

\(^{25}\) Illustrative list of relationships between governments and state trading enterprises and the kinds of activities engaged in by these enterprises (G/STR/4).
Over time, there has been a progressive increase in PTAs that include the most common definitions; i.e., public monopoly, state enterprise, and designated monopoly, shown in Figure 16.12.

Figure 16.12: Definitions

<table>
<thead>
<tr>
<th>Definition</th>
<th>Number of PTAs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public or government monopoly?</td>
<td>65</td>
</tr>
<tr>
<td>State-owned enterprise (SOE), state enterprise or public undertaking</td>
<td>37</td>
</tr>
<tr>
<td>Designated monopoly?</td>
<td>35</td>
</tr>
<tr>
<td>Commercial considerations?</td>
<td>17</td>
</tr>
<tr>
<td>Government control or influence?</td>
<td>7</td>
</tr>
<tr>
<td>State trading enterprise (STE)?</td>
<td>4</td>
</tr>
<tr>
<td>Entities with special or exclusive privileges</td>
<td>3</td>
</tr>
<tr>
<td>Sovereign wealth fund (SWF)?</td>
<td>2</td>
</tr>
<tr>
<td>Commercial activity?</td>
<td>2</td>
</tr>
<tr>
<td>Non-commercial assistance?</td>
<td>2</td>
</tr>
</tbody>
</table>

Source: Deep Trade Agreements Database.

Given its practical importance, one specific question focuses on the tests used to determine government control or influence (“does the agreement provide for a definition of government control or influence?”). However, only 7 PTAs include such a definition. One good example is (83) US-Singapore (Articles 12.8.1, 12.8.5), which provides for various tests and includes an annex (Annex 12A) with various examples of application of these tests. Another good example is the definition in (281) Trans-Pacific Partnership (Article 17.1).

Finally, it is interesting to note that a few PTAs, in addition to (or replacing) common definitions, incorporate domestic definitions. See, for example, (27) NAFTA, Annex 1505, which contains each country’s definitions of state enterprise. Domestic definitions are present in 10 PTAs.

16.4.3.2 Coverage (entities, sectors, ownership regimes)

This section analyzes the PTAs in terms of entities and sectors covered, as well as the presence of any provision regulating ownership and liberalization processes.
16.4.3.2.1 Entities

It is necessary to begin with a brief note on methodology. The dataset includes questions on the coverage of various types of state entities (state-owned enterprises, state enterprises, public undertakings, state trading enterprises, government and designated monopolies, and entities with special or exclusive privileges or rights). When coding these questions, two approaches can be followed: either (a) explicit reference, or (b) inclusion through a reasonable interpretation of the legal text (which takes into account the significant overlap among these definitions). While the first approach is less prone to errors, it may not give an accurate representation of the entities actually covered. In other words, it may de facto be under-inclusive. To give a more accurate picture of the coverage of the various PTAs, the coding follows a more comprehensive approach, with the comments section of the dataset including the rationale for the coding decisions. This should reduce the susceptibility to over-inclusion of this approach.

Since this chapter focuses mostly on the quantitative analysis of what is “coded” (“1”) and “not coded” (“0”), which may lead to losing important granularity of information, in this section we juxtapose and analyze the data coming out of the two approaches.

Figure 16.13 depicts the statistics generated by a comprehensive approach to coding PTAs. If one bears in mind that 218 PTAs include state enterprise provisions (of which 193 include specific rules while 25 include general competition provisions), the main finding is that virtually all PTAs are apt to cover and regulate virtually all types of entities considered. The only important finding from this approach is not quantitative but qualitative, in so far as it signals a potentially broad coverage of all PTAs (always with respect to the question of the entities that are covered).

It is now interesting to juxtapose these data with those coming out of the stricter coding, which detects only explicit references. We call this coding approach “limited” due to the

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28 For example, if one PTAs explicitly regulates public monopolies this does not exclude that these monopolies may also act as a trading enterprise or may have special rights or privileges.
possibility of under-inclusion. In particular, it may be too easily concluded that, since the PTA does not explicitly make reference to a given type of entity, this entity cannot be captured and regulated. The template on which Figure 16.14 is based is similar to that of the previous figure with very few minor tweaks. On the one hand, references to state and delegated monopolies have been merged. On the other hand, the figure maps specific references to state entities that the dataset shows under different provisions (i.e., monopolies of commercial character, undertakings entrusted with services of general economic interest, and monopoly suppliers of services/exclusive service suppliers).

**Figure 16.14: Coverage of state entities, limited coding approach**

- State/delegated monopolies: 147
- State enterprises, public undertakings, state-owned enterprises: 99
- Undertakings entrusted with special or exclusive rights: 85
- State trading enterprises: 63
- State monopolies of commercial character: 49
- Monopoly suppliers of services/exclusive service suppliers: 32
- Monopoly suppliers: 17

*Source:* Deep Trade Agreements Database.

With this methodological premise in mind, the data coming out of the two figures can be compared. In particular, the two different coding exercises seem to bear similar results. PTA provisions on state enterprises seem to share a specific focus on monopolies, with a cumulative score of 196. Adding to this number the category of monopoly suppliers of services/exclusive service suppliers (32) brings the score significantly higher. References to state enterprises still feature second (99), and are followed by undertakings with special or exclusive rights (85) and state trading enterprises (63). Incidentally, it should be noted that the mission of state monopolies of commercial character (language derived from (1) EC Treaty) is essentially the same (in GATT parlance) as that of state trading enterprises; it would therefore make some sense to put these two together, which would lead to a score of 112. Finally, there are two categories which refer mostly to the PTAs signed by the EU and countries close to it: state monopolies of commercial character (49) and undertakings entrusted with services of general economic interest (17).

The distribution of express references to state entities by income group is shown in Figure 16.15. Generally speaking, all groups seem to follow the general pattern indicated above, with a prevalence of references to monopolies, state enterprises, and undertakings with special or exclusive rights. These data are reinforced by considering the categories of state monopolies of commercial character and the specific group of state entities in services
(monopoly suppliers of services/exclusive service suppliers). Specific references to state trading enterprises, mostly through references to GATT Article XVII, and to undertakings entrusted with services of general economic interest, lag behind. North-North and South-South PTAs are characterized by a relatively even distribution of references (and hence disciplines). This evenness is less marked for North-South PTAs, in particular for the very low frequency of provisions on enterprises that provide services of general economic interest.

16.4.3.2.2 Sectors

Statistics on sectoral coverage, combined with the recurrence of special provisions regulating ownership and liberalization, are shown in Figure 16.16. Most of the PTAs with state enterprise provisions include regulation of state entities in the agriculture sector (89 percent). By contrast, only 61 percent of PTAs also cover service state enterprises. The provisions having an impact on ownership regimes are quite recurrent, featuring in half (that is 109) PTAs with state enterprise provisions. As seen above, these provisions belong to a varied group and are particularly useful in giving indications about the objectives of the rules.
If one looks at the evolution of sector provisions over time, the coverage of agriculture is stable, while provisions on state enterprises in services and on ownership and liberalization are increasingly included.

The analysis of these provisions by level of development, shown in Figure 16.17, offers interesting statistics. The general pattern analyzed above can be found only in North-South PTAs. Quite expectedly, while North-North PTAs have a similar coverage of state enterprises in the agriculture and services sectors, South-South PTAs cover state entities in agriculture more than three times as often as they cover state entities in services (66 versus 20). Interestingly, provisions on ownership regimes are very frequent in all PTA groups.

![Figure 16.17: Coverage (sectors) by income groups](image)

Source: Deep Trade Agreements Database.

### 16.4.3.3 Disciplines

Figure 16.18 reproduces part of Figure 16.7 above. This section of the paper analyzes these known statistics to offer a little bit more detail on the relevant provisions.

![Figure 16.18: Disciplines](image)

Source: Deep Trade Agreements Database.

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29 In referring to disciplines, Figure 16.7 focused on all the questions in rows 37-48 of the template (section on substantive disciplines). This part of the chapter distinguishes among these provisions. Section 16.4.3.3 thus only refers to the substantive commitments in rows 37-44. Other questions included in the substantive disciplines section of the template, and in particular “exceptions specific to state enterprises” and “any other specific discipline,” are analyzed in Section 16.4.3.4 below.
The two most common disciplines on state enterprises are in fact generic provisions: competition laws (190) and subsidy rules (156). What has been coded under the subsidy law question is simply the existence of provisions that provide substantive obligations or prohibitions on subsidies to state enterprises (excluding non-substantive and countervailing duty [CVD] provisions). Importantly, if the only provisions applicable to state enterprises in the PTA are subsidy rules, they have not been coded.

Given their importance, a different approach is adopted for competition provisions. We have coded also those agreements where the only coded disciplines are competition provisions. Many disciplines specifically dedicated to state enterprises are expressly located within competition chapters, signaling that the parties often consider state enterprises a competition policy/law issue. For example, in (33) Canada-Israel, state enterprises and government monopolies are regulated under separate provisions, both included in the chapter on competition policy. In other cases, the PTA does not include separate provisions on state enterprises in competition chapters, but it does expressly subject public undertakings to general competition provisions. This is the case, for example, in (221) EFTA-Montenegro (Article 17.2). At the same time, there are many PTAs that do not feature any specific discipline for state enterprises but include general competition law norms. These norms are broad enough to cover the conduct of state enterprises. In particular, the notions of enterprise, undertaking, or business have been taken by the coders to also include state or public enterprises, undertakings, or businesses. Considering the relevance of competition laws for governing the conduct of state enterprises, these general provisions have been coded as well.

The data confirm the importance of competition provisions. In 25 PTAs, competition provisions are applicable to state enterprises on their own; in 165 PTAs, they are applicable in combination with specific state enterprise disciplines.

As seen already in Figure 16.3, the third-most-common (140) disciplines are those that prohibit discrimination, which is mostly based on national treatment or MFN.

It is interesting to note that, from the perspective of evolution over time, provisions on competition and subsidies for state enterprises are firmly stable, but many others show a progressive increase. This applies, for example, to the obligations to act in accordance with commercial considerations, accord fair and equitable treatment, and afford companies adequate opportunities to compete. The same evolution is seen with prohibition of discrimination.

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30 What is coded is only anti-competitive (or antitrust) behavior proper. Thus, the question does not cover provisions such as GATS Article VIII:2, which is coded under the question on delegated entities’ compliance with the party’s commitments.
The distribution of disciplines by income group is shown in Figure 16.19. Considering the distribution of commitments within each group, this figure largely confirms the general pattern that emerges from Figure 16.18, with the same predominance and sequence as the first three types of disciplines (competition, subsidies, non-discrimination). There are, however, a few minor variations with respect to the remaining commitments. In the PTAs concluded between North countries, the fourth-most-common discipline concerns the obligation to comply with commitments, which is always more frequent than the obligation to comply with commercial considerations. In South–South PTAs, by contrast, the sequence is different, though all disciplines have very close scores. The fourth-most-common provision is the obligation to comply with commercial considerations (10), followed by the obligations to afford adequate opportunities to compete (9), to comply with commitments (8), and to accord fair and equitable treatment (8). The less common discipline for South–South and North–North PTAs is the obligation not to distort trade (featuring in respectively only 1 and 2 PTAs). For North–South PTAs the less common discipline is the obligation to accord adequate opportunities to compete (6) and fair and equitable treatment (5). In North–South PTAs, by contrast, non-distortion of trade, adequate opportunities to compete, and commercial considerations all have significant and very close scores (26, 24, 22).

![Figure 16.19: Disciplines by income group](source: Deep Trade Agreements Database)

From another perspective, in North–North PTAs most of the disciplines (in particular, the top four) are evenly spread (with scores between 24 and 34), showing that the regulation of state enterprises is fairly regular. This also occurs in North–South PTAs but only for the first three obligations (with scores between 83 and 96). There is then a significant fall (to 51, obligation to accord fair and equitable treatment, and 40, compliance with commitments) and a stabilization (in the 20s) for the remaining obligations. Interestingly, the difference in recurrence between the top four commitments is very marked for South–South PTAs. The fall from competition provisions (60) to subsidy provisions (38) and non-discrimination (30) is significant, and so is the decrease in compliance with commercial considerations (10).
The distribution of various disciplines within each geographic region is shown in Table 16.4. Most of the regions follow the general pattern outlined in Figure 16.18, with competition, subsidy and non-discrimination provisions as the three most common disciplines regulating state enterprises. In Central Asia the predominance of this triad of provisions over the others is very marked. Four regions depart slightly from this pattern. In Middle East & North Africa and North America PTAs, competition and non-discrimination disciplines share the first position, with subsidy provisions following in the former and, interestingly, commercial considerations and compliance with commitments in the latter. In East Asia & Pacific, the third-most-common disciplines are compliance with commitments, followed by non-discrimination and commercial considerations. In South Asia PTAs, the most common disciplines are compliance with commitments, followed by two of the usual top three: non-discrimination comes first, followed by subsidies and then, with the same score, commercial considerations, adequate opportunities to compete, and fair and equitable treatment, which all precede competition rules. In some regions (EFTA, East Asia & Pacific, Latin America & Caribbean, Sub-Saharan Africa), the various disciplines are evenly spread, with very close scores for most of the disciplines. Interestingly, the EU and Middle East & North Africa PTAs both feature many non-distortion provisions, which thus come fourth in the list of the most common provisions.

### Table 16.4: Disciplines by geographic region

<table>
<thead>
<tr>
<th>(Number of PTAs)</th>
<th>Central Asia</th>
<th>EFTA</th>
<th>East Asia &amp; Pacific</th>
<th>European Union</th>
<th>Latin America &amp; Caribbean</th>
<th>Middle East &amp; North Africa</th>
<th>North America</th>
<th>South Asia</th>
<th>Sub-Saharan Africa</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-discrimination</td>
<td>34</td>
<td>30</td>
<td>35</td>
<td>30</td>
<td>46</td>
<td>27</td>
<td>18</td>
<td>9</td>
<td>5</td>
</tr>
<tr>
<td>Commercial considerations</td>
<td>7</td>
<td>21</td>
<td>24</td>
<td>1</td>
<td>28</td>
<td>8</td>
<td>17</td>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>Subsidization</td>
<td>38</td>
<td>33</td>
<td>45</td>
<td>29</td>
<td>51</td>
<td>21</td>
<td>12</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td>Competition</td>
<td>64</td>
<td>34</td>
<td>53</td>
<td>32</td>
<td>53</td>
<td>27</td>
<td>18</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>Non-distortion of trade</td>
<td>6</td>
<td>4</td>
<td>2</td>
<td>18</td>
<td>6</td>
<td>11</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Compliance with commitments</td>
<td>5</td>
<td>12</td>
<td>43</td>
<td>9</td>
<td>25</td>
<td>9</td>
<td>17</td>
<td>11</td>
<td>5</td>
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<tr>
<td>Adequate opportunities to compete</td>
<td>6</td>
<td>15</td>
<td>13</td>
<td>1</td>
<td>14</td>
<td>2</td>
<td>4</td>
<td>7</td>
<td>2</td>
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<tr>
<td>Fair and equitable treatment</td>
<td>6</td>
<td>17</td>
<td>15</td>
<td>1</td>
<td>16</td>
<td>2</td>
<td>4</td>
<td>7</td>
<td>2</td>
</tr>
</tbody>
</table>

Source: Deep Trade Agreements Database.

### 16.4.3.4 Exceptions

This section discusses the exceptions to the normal application of PTA provisions to state enterprises.\(^{31}\) These types of provisions, and their importance for detecting the depth of

\(^{31}\) These provisions are spread in two parts of the template. Those on “public services” and “strategic sectors” in the section on Coverage (notably, in rows 32 and 33); and those on “exceptions” and “any other specific disciplines” in the Substantive Disciplines section (rows 47 and 48).
integration pursued by the state enterprises chapter of the PTAs, has been outlined above (section 16.3.2.2). In particular, as Figure 16.20 shows, exceptions are by far the most common provision (73), while the three other categories (public services, strategic sectors, any other specific disciplines) lag behind (with scores between 15 and 19).

Figure 16.20: Exceptions

![Figure 16.20: Exceptions](image)

Source: Deep Trade Agreements Database.

Figure 16.21 shows the income group dynamics of these raw data. The large majority of all these provisions can be found in North-South PTAs. Some provisions (public services, any other specific disciplines) score very low or are even non-existent in the other groups. South-South agreements mostly include provisions on strategic sectors, while North-North PTAs have a preference for exceptions provisions (followed by those on strategic sectors). North-North PTAs do not have any provisions on public services or any other specific disciplines.

Figure 16.21: Exceptions by income group

![Figure 16.21: Exceptions by income group](image)

Source: Deep Trade Agreements Database.

The dynamics behind exceptions provisions are further untangled in Table 16.5. While all geographic groups make use of exceptions and (partly) of any other specific disciplines, it is the EU (12), Central Asia (8, once again mostly because of EU links), and Latin America &
Caribbean (6) that include specific provisions on public services.\(^{32}\) While the EU leads for public service provisions, Latin America & Caribbean is ahead in strategic sectors provisions (15). Other regions have these provisions but with a significantly lower occurrence.

### Table 16.5: Exceptions by geographic region/group

<table>
<thead>
<tr>
<th>Region</th>
<th>Public Services</th>
<th>Strategic Sectors</th>
<th>Exceptions</th>
<th>Any other Specific Discipline</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central Asia</td>
<td>8</td>
<td>0</td>
<td>17</td>
<td>3</td>
</tr>
<tr>
<td>EFTA</td>
<td>1</td>
<td>1</td>
<td>22</td>
<td>5</td>
</tr>
<tr>
<td>East Asia &amp; Pacific</td>
<td>0</td>
<td>3</td>
<td>18</td>
<td>1</td>
</tr>
<tr>
<td>European Union</td>
<td>12</td>
<td>0</td>
<td>25</td>
<td>4</td>
</tr>
<tr>
<td>Latin America &amp; Caribbean</td>
<td>6</td>
<td>15</td>
<td>23</td>
<td>7</td>
</tr>
<tr>
<td>Middle East &amp; North Africa</td>
<td>0</td>
<td>1</td>
<td>16</td>
<td>3</td>
</tr>
<tr>
<td>North America</td>
<td>0</td>
<td>4</td>
<td>14</td>
<td>0</td>
</tr>
<tr>
<td>South Asia</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Sub-Saharan Africa</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

*Source:* Deep Trade Agreements Database.

#### 16.4.3.5 Transparency and corporate governance

The questions on transparency and corporate governance are always specific to state enterprises. The three template questions on transparency relate to the key categories of transparency broadly intended as a tool of trade policy.\(^{33}\)

Figure 16.22 shows a high prevalence of basic notification requirements. The relevant template question outlines few examples: notification of the grant of monopoly, of exclusive or special rights, of the operations or conduct of state enterprises, and of goods or services supplied or procured by the state enterprise. These requirements often refer to obligations deriving from GATT/GATS provisions. See, for example, (82) US-Chile (Article 16.3.2(b), (169) Canada-Peru (Article 1305.2), or (163) Australia-Chile (Article 14.4.4(b) and 14.6), which provide for the obligation to notify the designation of monopolies.

Notification requirements are present in 78 PTAs with state enterprise provisions, amounting to a 36 percent share of the total.

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\(^{32}\) (188) Colombia-Mexico, (217) Colombia-Northern Triangle, (230) EU-Central America, (229) EU-Colombia and Peru, (242) Mexico-Uruguay, (204) Peru-Chile.

\(^{33}\) See Collins-Williams and Wolfe 2010.
The second-most-common commitment pertains to any mechanism to ensure transparency of ownership, governance, and financial information. This mechanism includes the obligation to inform PTA bodies, such as Joint Committees, of the measures adopted to comply with the obligation to adjust state monopolies of commercial character. See, for example, (39) Turkey-Israel (Article 13.2) or (40) EU-Tunisia (Article 37). With a score of 36, this commitment is present in only 16.5 percent of the relevant PTAs.

Only 10 PTAs, or 4.6 percent, provide for any form of collaborative transparency, such as discussion of information, or deliberation and assessment of operations or of the conduct of state enterprises.

Corporate governance requirements may relate broadly to the structure of state enterprises or their behavior.34 These commitments feature in only 24 PTAs, or 11 percent of the sample.

There are two main types of corporate governance requirements. First, certain PTAs include specific behavioral and structural requirements in telecommunications chapters. For example, (241) Chile-Nicaragua (Article 13.7.2) provides that:

Each Party shall endeavour to adopt or maintain effective measures to prevent anti-competitive behavior, such as:

(a) accounting requirements;
(b) structural separation requirements,
(c) rules for the monopoly, main supplier or dominant operator to grant its competitors access to and use of their networks or public telecommunications services on terms and conditions no less favourable than those granted to themselves or their subsidiaries; or
(d) rules for timely disclosure of the technical changes of public telecommunications networks and their interfaces. [original language: Spanish, translation into English by the author]

Second, certain PTAs provide for actions to ameliorate any negative impact when a state designates a monopoly. Thus, for example, (167) Panama–Taiwan, China (Article 15.03.2(b)) reads:

If a Party’s law does permit it, where the Party intends to designate a monopoly or a state enterprise, and the designation may affect the interests of persons of the other Party, the Party shall: […]
(b) endeavour to introduce at the time of designation such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits under this Agreement.
(original language: Spanish; translation into English by authors)

Considering now the evolution over time of transparency and corporate governance requirements, the coding has shown a steady increase of notification requirements, while the remaining transparency and corporate governance provisions are stable.

Figure 16.23 and Table 16.6 show the usual breakdown of the data by income group and geographic group. Starting with Figure 16.23, a cross-commitment comparison generally shows a similar pattern with, from highest to lowest, more provisions in North-South, and then North-North, and South-South PTAs. More specifically, the data show a significant variation for transparency of ownership, governance, and financial information, which are more common in North-South PTAs than in South-South agreements. Notification requirements are greatly prevalent among the various transparency requirements in North-South PTAs. A cross-group comparison generally follows the pattern of Figure 16.22. That being said, North-North PTAs have more corporate governance requirements (7) than transparency of ownership, governance, and financial information (5). Notification requirements and transparency of ownership, governance, and financial information have almost the same recurrence (13 and 12) in South-South PTAs.
As shown in Table 16.6, notification requirements are the most common transparency provision in EFTA, East Asia & Pacific, Latin America & Caribbean, North America, and South Asia. By contrast, transparency of ownership, governance, and financial information are prevalent in Central Asia, the EU, and Middle East & North Africa. Quite interestingly, the large majority of corporate governance requirements (20 out of 34) are found in Latin America & Caribbean PTAs. This region also moderately leads for discussion and deliberation provisions, which are evenly spread among all groups (except for Central Asia and the EU, which both score “0”).

Table 16.6: Transparency and corporate governance by geographic group

<table>
<thead>
<tr>
<th>Geographic Group</th>
<th>Notification requirements</th>
<th>Transparency of ownership, governance, financial information</th>
<th>Discussion and deliberation</th>
<th>Corporate governance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central Asia</td>
<td>9</td>
<td>15</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>EFTA</td>
<td>16</td>
<td>5</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>East Asia &amp; Pacific</td>
<td>35</td>
<td>5</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>European Union</td>
<td>4</td>
<td>11</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Latin America &amp; Caribbean</td>
<td>30</td>
<td>6</td>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>Middle East &amp; North Africa</td>
<td>6</td>
<td>18</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>North America</td>
<td>17</td>
<td>7</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>South Asia</td>
<td>10</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Sub-Saharan Africa</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: Deep Trade Agreements Database.

16.4.3.6 Enforcement

The dataset includes a few questions on enforcement mechanisms that PTAs use for state enterprise provisions. The most important information coming out of the statistics is the relatively low legal enforceability of many state enterprise disciplines. We consider both the presence of bodies and committees tasked with the enforcement of the rules, including state enterprise provisions, and dispute settlement applicable to state enterprises.

If one considers the number of PTAs with state enterprise provisions (South-South 72; North-North 36; North-South 110), bodies or committees tasked with the enforcement of the rules are a common feature of most PTAs (85 percent in South-South PTAs, 72 percent in North-North PTAs, and 87 percent in North-South PTAs). However, despite the presence in 183 PTAs (84 percent of the total PTAs with state enterprise provisions) of bodies or committees tasked with the enforcement of the rules, only 143 (65.3 percent) have state enterprise provisions that are enforceable through dispute settlement mechanisms. This is largely due to the frequent exclusion of competition law provisions from the dispute settlement system of the PTA (and the already-mentioned
close link that exists between state enterprise provisions and competition provisions). In a word, flexibility is achieved through exclusion of dispute settlement. But the picture is considered significantly differentiated according to the income group (Figure 16.24). Dispute settlement mechanisms applicable to state enterprises are present in 79 percent of PTAs that are North-South but only in 50 percent of South-South PTAs and 55.5 percent of North-North PTAs.

As Figure 16.26 shows, the pattern of prevalence of institutional enforcement over dispute settlement is mostly followed in all geographical regions. In some cases, the data show close scores between the two systems of enforcement; in others the prevalence of institutional (i.e. bodies or committees) enforcement is more marked, Central Asia being the best example. Interestingly, Sub-Saharan Africa is the only region with a prevalence of dispute settlement.
The goal of the mapping described in this chapter has been to determine the depth of state enterprise provisions in 283 PTAs. This chapter has made a start by providing a few descriptive statistics and some initial analysis.

Despite important variations among different levels of development, geographic groups, and countries, few very broad patterns can be noted. A very large share of PTAs (77 percent) include state enterprise provisions, which therefore represent a common chapter of most PTAs. If one looks, however, at the content of these chapters, some more granular findings emerge. First, the most common disciplines are not specific to state enterprises but refer to competition and subsidy laws. Even the third-most-common group of commitments is constituted of various non-discrimination provisions.

Second, PTAs show a significant recurrence of rules that have an impact on ownership and property regimes, and these rules may embody opposite principles: neutrality (protecting state enterprises), and a level playing field (protecting private competitors). It is fair to conclude that most of the commitments can be subsumed under one or the other of these principles. Exceptions of various types, indicating different goals and integration dynamics, are common.

Third, the picture that emerges is one of relative flexibility. Transparency and corporate governance requirements, which are key in regulating state enterprises, show a modest frequency. Legal enforceability is generally low, with access to dispute settlement in only two-thirds of the agreements and with a significant variation among income groups. Although the desire for flexibility is often a side-effect of the incorporation of state enterprises discipline
within general competition disciplines, the fact that many state enterprises operating in cross-border trade may not be subject to enforceable rules raises concerns.

As noted in Chapter 14 on the regulation of subsidies, these are just the initial sketches of a very preliminary analysis. More could be done to determine the depth of these disciplines, but the great wealth of data and descriptive analysis in this chapter certainly represent a solid starting point for further research.

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