Beyond the WTO? An anatomy of EU and US preferential trade agreements

BY HENRIK HORN, PETROS C. MAVROIDIS AND ANDRÉ SAPIR

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Henrik Horn, Petros C. Mavroidis and André Sapir

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Executive summary

Since the WTO was founded in 1995, its members have notified to it more than 250 new preferential trade agreements (PTAs), the number of arrangements active in 2008 being about 200. A large part of these notifications involves agreements where the European Community (EC) or the United States (US) is a partner.

The primary purpose of this study is to analyse the precise content of the EC and US preferential trade agreements, dividing the areas covered by these agreements into:

- 'WTO plus' (WTO+): commitments building on those already agreed to at the multilateral level, eg a further reduction in tariffs.
- 'WTO extra' (WTO-X): commitments dealing with issues going beyond the current WTO mandate altogether, eg on labour standards.

The study covers all the provisions in all 14 EC and 14 US agreements with WTO partners signed by the parties and, generally, notified to the WTO as of October 2008. It examines to what extent these provisions are legally enforceable. It then compares and contrasts the EC and US approaches to PTAs and draws conclusions.

Main findings and conclusions:

- The EC and the US have chosen markedly different strategies for including provisions in their PTAs that go beyond the WTO agreements: the 14 EC agreements contain almost four times as many instances of WTO-X provisions as the 14 US agreements but the EC agreements evidence a very significant amount of 'legal inflation', ie they contain – for whatever reason – many obligations that are not legally enforceable.
- Legally enforceable WTO-X provisions contained in the EC and US PTAs are in fact quite few. Provisions that can be viewed as ground-breaking compared to existing WTO agreements are even fewer: environment and labour standards for the US agreements, and competition policy for the EC agreements. The major part of the enforceable provisions deal with areas related to existing WTO agreements, such

as investment, capital movement and intellectual property.
- However, the legally enforceable WTO-X provisions in the ground-breaking areas clearly all deal with regulatory issues. This suggests that the EC and US agreements effectively serve as a means for the two hubs to export their own regulatory approaches to their PTA partners.

1. Introduction

There is growing concern about preferential trade agreements (PTAs) and the role they should play within the multilateral trading system. This concern stems both from their increasing number and their ever-broader scope.

During the period 1948-1994, the General Agreement on Tariffs and Trade (GATT) received 124 notifications of PTAs, of which about 50 were active at the creation of the World Trade Organisation (WTO) in 1995. Since then, more than 250 new arrangements have been notified to the WTO, and the number of arrangements active in 2008 was about 200. A large part of this expansion involves agreements where the European Community (EC)[1] or the United States (US) is a partner. As a result, the EC and the US have become the two main 'hubs' in the pattern of PTAs, with the 'spokes' represented by agreements with the various partner countries.

Modern PTAs exhibit features that earlier PTAs did not possess. In particular, PTAs formed before 1995 concerned only trade in goods and took the form of (mostly) free-trade areas (FTAs) or (more rarely) customs unions (CUs), involving mainly tariff liberalisation. Since the creation of the WTO and the extension of multilateral trade agreements to trade in services and trade-related aspects of intellectual property rights, new PTAs also tend to cover these two subjects, which revolve chiefly around regulatory issues. Besides, there are claims that the new preferential agreements signed by the EC or the US go even further in the coverage of regulatory issues, by including provisions in areas that are not currently covered by the WTO agreements at all, such as investment protection, competition policy, labour standards and protection of the environment.

This claim has potential systemic implications because, although they jointly account for no more than 40 percent of world GDP (at PPP) and world trade, the EC and the US are sometimes viewed as the 'regulators of the world'. It is estimated

1. We will generally use the term European Community (EC), which is the legally correct expression in the WTO context. However, we will also sometime use the term European Union (EU) where appropriate.

indeed that, together, they account for around 80 percent of the rules that regulate the functioning of world markets[2].

The relatively broad scope of PTAs involving the EC and the US is reflected in the policy debate, and to a lesser extent in the academic literature. Economic scholars have

2. See Sapir (2007).
3. See, in particular, Bhagwati (2008).
4. See, for instance, Baldwin (2006).

5. This view can be found, for instance, in Baldwin (2006).
6. Our work bears some resemblance to the study by Bourgeois *et al.* (2007), which characterises the form, content and implementation of certain provisions contained in 27 PTAs. Nevertheless, the two differ in several respects. First, we cover all EC and US PTAs with WTO members, whereas Bourgeois *et al.* covers only one EC PTA, 10 US PTAs and 16 other PTAs. Second, we cover all the provisions contained in EC and US PTAs, whereas Bourgeois *et al.* focuses on five types of provisions: social and labour standards, environmental policies, government procurement, five specific non-tariff barriers, and competition and state aid policies. Finally, and most importantly, the purpose of the Bourgeois et al. study is totally different from ours, reflecting the fact that it w7.8(s)12E(o)15.1(n)17.1(t)44(ain20(16.

substantially beyond the WTO agreements, we divide the (52) identified policy areas into two groups as already indicated. The first, labelled WTO+, contains 14 areas, whereas the second, labelled WTO-X contains 38 areas.

Applying the WTO+/ WTO-X distinction to the EC and the US sets of agreements, our main findings are as follows.

First, we observe that while both sets cover both WTO+ and WTO-X types of provisions, the 14 EC agreements contain almost four times as many instances of WTO-X provisions as the 14 US agreements do. This would suggest that EC PTAs extend much more frequently beyond the WTO agreements than US PTAs.

However, second, the picture changes dramatically once the nature of the obligations is taken into account. The EC agreements evidence a very significant amount of 'legal inflation', in particular in the parts dealing with development policy. US agreements actually prove to contain more legally enforceable WTO-X provisions than the EC agreements. Hence the latter contain many obligations that have no legal standing.

Third, we also find that both the EC and the US PTAs contain a significant number of legally enforceable, substantive undertakings in WTO+ areas. Fewer obligations contained in EC agreements tend to be enforceable than those of US agreements, but the difference is not as pronounced as for the WTO-X areas.

Finally, we find that there is a difference in the nature of the legally enforceable obligations contained in EC and US agreements, with the latter putting more emphasis on regulatory areas.

We draw three conclusions from these findings.

First, although the EC and US preferential trade agreements do go significantly beyond the WTO agreements, the number of legally enforceable WTO-X provisions contained in the EC and US PTAs is in fact quite small. Provisions that can be regarded as really breaking new ground compared to existing WTO agreements are few and far between: environment and labour standards for the US agreements, and competition policy for the EC agreements. The other enforceable WTO-X provisions found in EC and US PTAs concern domains that more or less relate to existing WTO agreements, such as investment, capital movement and intellectual property.

Second, the new, legally enforceable WTO-X provisions clearly all deal with regulatory

issues. This suggests that the EC and US agreements effectively serve as a means for the two hubs to export their own regulatory approaches to their PTA partners. This study does not permit us to draw conclusions about the costs and benefits of this situation for the hubs and the spokes, but our impression is that it primarily serves the interests of the two 'regulators of the world'. This impression is based on the fact that the legally enforceable WTO-X provisions included in EC and US agreements have all been the subject of earlier, but failed, attempts by the EU and/or the US to incorporate them into WTO rules, against the wishes of developing countries. To the extent that our conclusion is correct, it supports the above-mentioned view that PTAs are breeding concern about unfairness in trade relations.

Third, the EC and the US have chosen markedly different strategies for including provisions in their PTAs that go beyond the WTO agreements. In particular, EC agreements viepoar

2. Methodological issues

The purpose of this section is to describe the set of PTAs under study, to set out how we classify the coverage of these agreements, and how we evaluate whether a covered policy contains legally enforceable obligations.

2.1 PTAs and the WTO

According to WTO rules, members may enter into PTAs with other WTO members either concerning trade in goods, or trade in services, or both. With respect to trade in goods, WTO members that satisfy the requirements included in Article XXIV GATT can legally treat products originating in some WTO Members (those with which they have formed a PTA) more favourably than like products originating in the other WTO member countries. Article XXIV GATT distinguishes between two forms of PTA: free trade areas (FTAs) and customs unions (CUs). For an FTA to be GATT-consistent, its members must liberalise trade between them; for a CU to be GATT-consistent, its members must, beyond liberalising trade between them, agree on a common trade policy vis-à-vis the rest of the WTO membership. All the PTAs that will be considered here are FTAs, with the exception of the EC-Turkey agreement, which is a CU.

In the WTO, it is also possible to form PTAs under a separate legal instrument – the 'Enabling Clause'. But since this possibility is only available where all members of the PTA are developing countries, such agreements are not relevant to this study.

The specific conditions for satisfying consistency with the multilateral rules concerning goods trade are laid down in Article XXIV.5-8 GATT. Apart from requesting the PTA to encompass substantially all trade between its members, and not to raise the overall level of protection vis-à-vis the rest of the WTO membership, these provisions oblige WTO members wishing to enter into a PTA to show that they have complied with the relevant multilateral rules.

With respect to trade in services, Article V GATS mentions only one form of preferential scheme, entitled economic integration. It is akin to a GATT FTA since its members are

entitled to retain their own trade policies vis-à-vis third countries, although there are also some differences between the two schemes. The disciplines of economic integration echo those preferential schemes which apply to trade in goods: Article V.1 GATS requires that a PTA has substantial sectoral coverage, and Article V.4 GATS requires PTA members not to raise the overall level of barriers against non-participants.

2.2 The agreements under study

Table 2.1, overleaf, lists the set of agreements that are scrutinised in this study, which consists of all PTAs signed between the EC and the US, respectively, and other WTO members as of October 2008. The list includes agreements signed before and after the creation of the WTO, but excludes those where the partner is not a WTO member. It also includes agreements signed by the parties but not yet ratified, and therefore not yet notified to the WTO or actually in force. Of the 28 listed agreements 14 are EC PTAs and 14 are US PTAs, counting the EC agreements with individual EFTA partners (Liechtenstein and Switzerland counting as one owing to their economic union) and the European Economic Area agreement (between the EC and the EFTA countries, except Switzerland) as one PTA.

Several noteworthy features stand out from Table 2.1. First, all 14 EC PTAs are currently in force, except the EC-CARIFORUM, which was signed in October 2008 but still awaits ratification by the parties. By contrast, five of the 14 US PTAs are yet to enter into force, although two have already been ratified by the US Congress (Peru and Oman). 12 of the 14 US PTAs were signed in 2000 or later, whereas this is only the case for seven of the 14 EC PTAs.

Second, the geographical spread of US partners is far greater than for the EC (see Map 1, overleaf), in the sense that, out of the 14 US agreements, eight are with countries/blocs outside the Americas: Australia, Bahrain, Israel, Jordan, Morocco, Oman, Singapore, and South Korea. By contrast, the majority of EC agreements are with neighbouring countries. The only EC partners from further afield are the CARIFORUM (Caribbean), Chile, Mexico and South Africa. It should be noted, however, that the EC in 2007 launched negotiations with several partners in the Asia/Pacific reg1(e)14.2(g)14.2(o)7

Table 2.1: EC and US PTAs with other WTO members, signed as of October 2008*

A	Da b a	Da a **	Da a	WTO a GATT A . XXIV	GATS A . V
EC – Norway	11/11/1970	-	01/07/1973	13/07/1973	*not applicable*
EC – Iceland	22/07/1972	-	01/04/1973	24/11/1972	*not applicable*
EC – Switzerland and Liechtenstein	22/07/1972	-	01/01/1973	27/10/1972	*not applicable*
EEA†	02/05/1992	-	01/01/1994	*not applicable*	13/09/1996
EC – Turkey	06/03/1995	-	31/12/1995	22/12/1995	*not applicable*
EC – Tunisia	17/05/1995	-	01/03/1998	15/01/1999	*not applicable*
EC – Israel	20/11/1995	-	01/06/2000	20/09/2000	*not applicable*
EC – Morocco	26/02/1996	-	01/03/2000	13/10/2000	*not applicable*
EC – Jordan	24/11/1997	-	01/05/2002	17/12/2002	*not applicable*
EC – South Africa	11/10/1999	-	01/01/2000	02/11/2000	*not applicable*
EC – Mexico	23/03/2000	-	01/07/2000	25/07/2000	*not applicable*
	27/02/2001	-	01/03/2001	*not applicable*	21/06/2002
EC – FYRoM	09/04/2001	01/06/2001	01/04/2004	23/10/2001	*not applicable*
EC – Egypt	25/06/2001	-	01/06/2004	03/09/2004	*not applicable*
EC – Croatia	29/10/2001	01/03/2002	01/02/2005	17/12/2002	*not applicable*
EC – Chile	18/11/2002	01/02/2003	01/03/2005	03/02/2004	28/10/2005
EC – Albania	12/06/2006	01/12/2006	-	07/03/2007	*not applicable*
EC – CARIFORUM	15/10/2008	-	01/11/2008	16/10/2008	16/10/2008
US – Israel	22/04/1985	-	19/08/1985	13/09/1985	*not applicable*
NAFTA	17/12/1992	-	01/01/1994	29/01/1993	*not applicable*
		-	01/04/1994	*not applicable*	01/03/1995
US – Jordan	24/11/2000	-	17/12/2001	15/02/2002	15/01/2002
US – Singapore	06/05/2003	-	01/01/2004	17/12/2003	
US – Chile	06/06/2003	-	01/01/2004	16/12/2003	
US – Australia	18/05/2004	-	01/01/2005	22/12/2004	
US – Morocco	15/06/2004	-	01/01/2006	30/12/2005	
US – CAFTA-DR	05/08/2004	-	01/03/2006	17/03/2006	
US – Bahrain	14/09/2004	-	01/08/2006	08/09/2006	
US – Peru	12/04/2006	-	-	-	
US – Oman	19/01/2006	-	-	-	
US – Colombia	22/11/2006	-	-	-	
US – Panama	28/06/2007	-	-	-	
US – South Korea	30/06/2007	-	-	-	

Source: World Trade Organisation (WTO), European Commission (DG External Relations) and Office of the US Trade Representative.
Notes: * The EC also has reciprocal PTAs with several non-WTO members: Algeria, Andorra, Faroe Islands, Lebanon, Overseas Countries and Territories (OTCs), the Palestinian Authority, San Marino, and Syria. ** Interim agreement refers to the part of the agreement that is devoted to trade and trade-related issues. † The EEA was signed between the European Community and the EFTA countries, except Switzerland. Some EFTA countries later joined the European Community (now Union). The remaining EFTA countries which belong to the EEA are Iceland, Liechtenstein and Norway. Switzerland has signed separate bilateral agreements with the European Community that also cover both trade in goods and in services. When we refer to the EEA, we will use the term loosely to cover all agreements that have been concluded between EFTA countries, including Switzerland, and the EC.

Finally, there is a striking overlap between the EC and US partners. Five countries have agreements with both the EC and the US: Israel, Morocco, Jordan, Mexico and Chile. Five others will also have agreements with both hubs in the future if current EC negotiations with ASEAN (which includes Singapore), with the Gulf Cooperation Council (which includes Bahrain and Oman), and with South Korea, as well as US negotiations with the Southern African Customs Union (which includes South Africa),

A WTO-X designation is, on the other hand, meant to capture an obligation in an area that is 'qualitatively new', relating to a policy instrument that has not previously been

Numbers computed in this way must obviously be interpreted with great care. For

Table 2.3: Brief description of WTO-X areas identified in the 28 agreements

AREA COVERED	CONTENT
Anti-corruption	Regulations concerning criminal offence measures in matters affecting international trade and investment.
Competition policy	Maintenance of measures to proscribe anticompetitive business conduct; harmonisation of competition laws; Establishment or maintenance of an independent competition authority.
Consumer protection	Harmonisation of consumer protection laws; exchange of information and experts; training.
Data protection	Exchange of information and experts; joint projects.
Environmental laws	Development of environmental standards; enforcement of national environmental laws; establishment of sanctions for violation of environmental laws; publications of laws and regulations.
Investment	Information exchange; Development of legal frameworks; Harmonisation and simplification of procedures; National treatment; Establishment of mechanisms for the settlement of disputes.
Movement of capital	Liberalisation of capital movement; prohibition of new restrictions.
Labour market regulations	Regulation of the national labour market; affirmation of International Labour Organisation (ILO) commitments; enforcement.
Intellectual Property Rights (IPR)	Accession to international treaties not referenced in the TRIPs Agreement.
Agriculture	Technical assistance to conduct modernisation projects; exchange of information.
Approximation of legislation	Application of EC legislation in national legislation.
Audio visual	Promotion of the industry; encouragement of co-production.
Civil protection	Implementation of harmonised rules.

2.4 The legal enforceability of identified areas

In order to determine the impact of the EC and US preferential trade agreements, it is important not only to identify the areas in which the agreements contain provisions, but also to determine the extent to which these provisions are legally enforceable. Unclearly specified undertakings, and undertakings that parties are only weakly committed to undertake, and that can be seemingly fulfilled with some token measure, are not likely to be successfully invoked by a complainant in a dispute settlement proceeding, and would presumably therefore also have little impact. In order to shed light on the extent to which this is an issue in practice, we have evaluated each provision in each agreement for the extent to which it specifies at least some obliga-

has not been devoted to an issue?

- *"Measures necessary for development and promotion of ..."*. It is likely to be very hard for a complainant in a dispute to prove either that that a measure is necessary or that it is not necessary for development.
- *"Parties may conclude ..."*. This phrase does not impose any restriction on the parties.
- *"Parties shall strive (aim) to ..."*. It would be difficult to prove absence of best endeavours.

Distinguishing the degree of legal enforceability in this way cannot only be defended from the point of view of practical experience, but also from the point of view of the principles of international law. One of the requirements in Article 2 of the Vienna

We have so far discussed how vague and non-committal language makes it difficult to enforce a provision in a formal dispute settlement process. Another and more obvious reason is that the agreement explicitly states that dispute settlement is not available for the provision. When evaluating the enforceability of the various provisions, we naturally also take such carve-outs into account, and classify as non-enforceable any undertaking for which dispute settlement is expressly ruled out under the agreement.

The Bruegel website (www.bruegel.org) contains more detailed information on the

Table 3.1: Classification of WTO+ areas in EC agreements

	EEA		EC-Turkey		EC-Tunisia		EC-Israel		EC-Morocco		EC-Jordan		EC-South Africa		EC-Mexico		EC-FYRoM		EC-Egypt		EC-Croatia		EC-Chile		EC-Albania		EC-CARIFORUM		Total	
	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE
FTA Ind																													14	14
FTA Agr																													14	14
Customs																													14	13
Export taxes																													0	0
SPS																													8	3
TBT																													14	5
STE																													13	12
AD																													14	12
CVM																													14	12
State aid																													13	12
Public proc.																													13	7
TRIMs																													0	0
GATS																													4	4
TRIPs																													14	13
WTO+ Total:	12	12	10	9	10	8	11	8	10	8	10	8	9	7	11	6	11	9	10	8	11	9	12	10	10	9	12	10	149	121

	US-Israel		NAFTA		US-Jordan		US-Singapore		US-Chile		US-Australia		US-Morocco		US-CAFTA-DR		US-Bahrain		US-Peru		US-Oman		US-Colombia		US-Panama		US-South Korea		Total	
	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE	AC	LE
FTA Ind																													14	14
FTA Agr																													14	14
Customs																													13	13
Export taxes																													12	12
SPS14 149																														

obligations regulating export taxes, but none of the EC agreements includes provisions in this area.

3.2 The enforceability of WTO+ obligations

So far we have discussed the areas that appear in the two sets of agreements. We next seek to identify those obligations that are legally enforceable. The 'LE' in tables 3.1 and 3.2 shows the areas where undertakings are legally enforceable.

A dark box indicates that the language is sufficiently precise or committing to provide a legally enforceable obligation. A cross-hatched box indicates that the language is sufficiently precise or committing, but that it is non-enforceable due to an explicit statement that dispute settlement is not available.

Let us start by pointing to the areas that are exempt from dispute settlement. As can be seen, the EC agreement with Mexico has four such exemptions, for SPS, Antidumping, Countervailing Measures, and TRIPs; the EC agreement with CARIFORUM has exemptions for the latter two areas, and the EC-Chile agreement has exemptions for State Trading Enterprises and State Aid. The US agreements contain exemptions from dispute settlement only in the context of SPS, but do so for 10 agreements, allowing dispute settlement regarding SPS measures only in the agreement with Israel and in NAFTA.

Turning to areas that are non-enforceable due to imprecise language, we note that, with respect to the EC agreements, in six of the 13 agreements Public Procurement undertakings are not enforceable; in nine out of the 14 agreements TBT undertakings are not enforceable; and in 10 out of 12 agreements SPS undertakings are not enforceable. The US agreements, on the other hand, contain relatively speaking substantially fewer areas where legally non-enforceable language has been included, both in absolute numbers and relative to the number of covered areas.

Turning to the areas with enforceable obligations, we observe that both sets of agreements include such obligations for all their agreements with regard to tariff liberalisation (FTAs) for both industrial and agricultural products, and with respect to 12 out of the 14 agreements in the areas of Customs Administration, Antidumping, Countervailing Measures, State Aid, and TRIPs.

3.3 The 'depth' of the commitments in enforceable WTO+ areas

We have so far identified the areas in which there are legally enforceable provisions. We have thus established the *existence* of such legal obligations, but nothing has been said so far about the *magnitude* of the undertakings involved. We believe that it is not warranted to describe in detail the obligations in *all* areas covered; the literature contains extensive studies dealing with just a single area, such as investment provisions, tariff reductions, technical standards, or competition policy. What we do instead in Appendix A is to describe very briefly those areas in which at least one of the hubs has legally enforceable obligations in at least five agreements. We also rely partly on external sources.

Although the analysis in Appendix A is insufficient to determine the exact magnitude of the undertakings in the relevant areas, it clearly shows that they are far from being trivial.

(o)8.49 efollowin TD0.016 Tw[(Al e)TiD011(f)0(t1.)-312(Bs)11.2(e ar)1(e)]TJ-17.1(e h)17.1(u)19.E.9(t)4C. fr U2(c)11S. ferm. Wheements. Whha.2(a)]TJ27.1(s3.9(g.2(e)22(e)22(umlie)12.2(v)1r. f))23.9(h)17.2(g)32.2(all)16.1(y e)22(n)0(f)16.1(o)15.2(r)14.2(c)11.2(e)33.2(a)21(b)22(l)17.1(e o)16.1(b)22TD0.1

4. WTO-X areas

We now turn our attention to the WTO-X areas, which refer to provisions regarding

with Turkey, which contains commitments in only two areas: Competition and Intellectual Property Rights.

4.2 The enforceability of WTO-X obligations

While the EC agreements contain a larger number of WTO-X areas, it is the US agreements that contain the (proportionately speaking) higher number of legally enforceable obligations in these areas.

The US agreements contain few areas with non-enforceable provisions:

1. The main source of non-enforceability is the exemption of Competition-related disciplines from dispute settlement (illustrated by a light blue box under the heading LE in Table 4.2); all seven agreements that include a Competition provision explicitly exclude the commitments from dispute settlement.
2. There are four further instances of non-enforceability: two regarding Anti-Corruption and two concerning Consumer Protection. In total, only 13 percent (11 out of 82) of the covered provisions are deemed to be non-enforceable.

By contrast, nearly 75 percent (230 out of 310) of the provisions included in the EC agreements are non-enforceable. The EC agreements contain enforceable obligations in only five WTO-X areas in a significant number of agreements:

1. Competition (in 13 out of the 14 agreements that contain commitments in this area);
2. IPR (11 out of 14);
3. Movement of Capital (13 out of 13);
4. Investment (8 out of 12); and
5. Social Matters (7 out of 13).

For each of the remaining 33 areas, there are no legally enforceable obligations in more than three agreements signed by the EC. Most obligations are not enforceable at all. One agreement represents an outlier, the EEA, an agreement that involves the EC and some of its western European trading partners with whom there is a long tradition of multi-level cooperation.

Table 4.1: Classification of WTO-X areas in EC agreements

	EEA	EC-Turkey	EC-Tunisia	EC-Israel	EC-Morocco	EC-Jordan

4.3 The depth of legally binding commitments in WTO-X areas

In Appendix B we focus on the eight areas that contain legally enforceable commitments in at least five EC and/or US agreements, and describe the nature of these commitments.

Although the analysis in Appendix B is insufficient to determine the exact magnitude of the undertakings in the relevant areas, it clearly shows that they are far from being trivial.

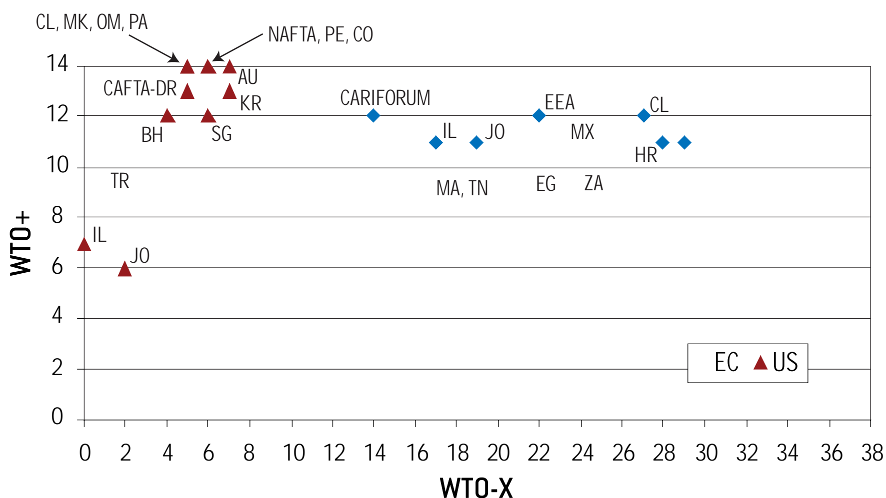
4.4 Main observations concerning WTO-X undertakings

Our initial conclusions concerning the WTO-X parts of the agreements are as follows:

1. Whereas the US agreements typically contain few areas where enforceable obligations have been agreed, the EC agreements contain a smaller (proportional to the overall) number of areas with enforceable obligations, and a much larger number of areas where exhortatory language has been agreed. It thus seems that, whereas the US has adopted a rather 'functionalist' approach (ensuring legal enforceability of the selected areas), the EC has opted for 'legal inflation', whereby a large number of areas are included in the agreement, but very few of them are coupled with legally enforceable obligations.
2. Altogether, only eight of the 38 WTO-X areas involve legally enforceable obligations in a significant number of agreements.
3. Three of these eight areas concern both EC and US agreements: Intellectual Property Rightspis.2(t)32.2(e)22(r)-8.8(y)0(u632.2(e)22(e2(e)i.'l)17)42'loootte2(m)19.1(e)2

greater proportion of WTO-X areas (reaching around 30 in recent agreements, out of a maximum of 38) than US agreements (with less than ten areas covered, even in the most recent agreements).

Figure 5.1: The balance between WTO+ and WTO-X undertakings in terms of coverage



Source: Own calculations based on Table 3.1, Table 3.2, Table 4.1 and Table 4.2.

It is interesting to note that the EC dominance with regard to the coverage of WTO-X areas has tended to increase over time. The evolution of the centre of gravity of the EC and the US agreements is depicted in Figures 5.2 and 5.3, where the arrows illustrate the sequence in which agreements have entered into force.

Figure 5.2 shows that there has been a pronounced tendency for the EC agreements to expand the number of WTO-X areas covered: the number has increased from two in the EC-Turkey PTA (dating from 1995) to 30 in the EC-Albania PTA (dating from 2006)[12]. Admittedly, this development has not been completely smooth. The EEA was agreed upon before the EC-Turkey agreement, but contains more WTO-X areas, and the recent EC-CARIFORUM PTA (signed only in October 2008, and not yet ratified or notified to the WTO) marks another interesting departure from this trend, with only 14 WTO-X areas covered. We will come back to this case later. These two instances do not change the overall picture, however. It is also interesting to contrast the WTO-X

Figure 5.3: The evolution of the coverage of US PTAs

Source: Own calculations based on Table 2.1, Table 3.2 and Table 4.2.

5.2 Centre of gravity of EC and US PTAs adjusted for legal enforceability

Discarding non-enforceable obligations, the picture which emerged above changes dramatically. As shown in Figure 5.4, while the number of WTO+ areas remains slightly larger for US agreements (ranging between 11 and 13) compared to EC agreements (ranging between 8 and 10), the number of WTO-X areas with legally enforceable provisions is now slightly higher for US (ranging between 5 and 6) compared to EC (ranging mostly between 3 and 5) agreements[14]. The EC agreements thus evidence a very considerable degree of 'legal inflation' in WTO-X areas, a phenomenon which is much less prevalent in the EC agreements for WTO+ areas, or in the WTO+ and WTO-X areas of the US PTAs.

It should be noted that the two latest EC agreements, with Albania and the CARIFORUM, contain slightly more legally enforceable WTO-X provisions than do the US agreements. In this respect, the EC-CARIFORUM agreement resembles more the US PTAs than any other EC PTA: it covers relatively few WTO-X areas, of which many contain legally enforceable provisions[15]

mainly contains development-related provisions from EC agreements. Although this grouping of areas is heuristic, we believe that it is informative in that it reflects sharp differences in legal inflation across groups as the discussion below indicates.

Table 5.1 gives, group by group, the number of times in EU or US agreements each area within a group occurs; it then gives, group by group, the number of instances each area within that group occurs with enforceable obligations. In addition, it calculates an Index of Legal Inflation, which is defined as the number of instances of legally non-enforceable obligations in a group of areas relative to the total number of times that group of areas occurs.

Table 5.1: Legal inflation by groups of areas

	EU PTAs			US PTAs		
	AC	LE	Legal inflation	AC	LE	Legal inflation
1. Trade and investment related obligations	95	86	9%	112	112	0%
2. GATS/TRIPs/IPR	32	28	13%	40	40	0%
3. Migration-related regulations	23	10	57%	-	-	-
4. Domestic trade-related regulations	103	60	42%	103	78	24%
Total trade and regulations	253	184	27%	255	230	10%
5. Other	206	17	92%	1	1	0%
Total all areas	459	201	56%	256	231	10%

Source: Own calculations based on Table A.5.1 and Table A.5.2 in the Appendix tables.

There are two main findings that emerge from the table. First, and once again, there is a striking difference between the EC and the US agreements. Taking all areas together, the inflation rate is 56 percent for the EC PTAs compared to only 10 percent for the US agreements. Second, there are significant differences across areas. Distinguishing between the Trade and Regulations areas (ie groups 1-4) on the one

Money Laundering – which can also be said to address domestic regulation – are kept under the 'Other' label. It is also for this reason that the Environment and Labour areas are classified as potentially affecting trade. Taking the US-Chile agreement as

ways in which such a transfer occurs. For instance, the formation of the PTAs may affect domestic policy discussions concerning the choice of regulatory regime. However, for these agreements to effect such a transfer by legally binding the partner countries to a hub's regulatory regime, they must *contain enforceable provisions*. As we have seen, the picture seems to be mixed in this regard.

5.4 Is EU legal inflation designed in?

The analysis in the preceding section leads to the obvious question why there is such pervasive legal inflation, particularly in the EC agreements.

One possible (although admittedly not very plausible) explanation for legal inflation is that it reflects negligent drafting. If this were the case, the observed proportion of legally enforceable obligations should be the same across all areas, regardless of whether they occur in one, several or all agreements. Figure 5.5 investigates the extent to which this is the case. The horizontal axis in these figures measures the number of agreements that the various areas occur in. The vertical axis plots the average inflation rates for each of these numbers. Hence, the left-most observation in Figure 5.5 shows that for those areas that only occur in one EC agreement, the average inflation rate is 50 percent. The next observation moving to the right says that for those areas occurring in two EC agreements, the average inflation rate is 50 percent, and so on up to those areas occurring in all 14 EC agreements. For this calculation, we omit the areas which occur in no agreement at all, since if there is no provision in an area, the measure of legal inflation is irrelevant. If legal inflation were a random phenomenon that occurred in en esn i(es)11thT*0.1257 T*-0.0219.97h6(n)-12(as t)23a.1(c)

Figure 5.5: Average legal inflation rate vs. coverage in EC PTAs

While our hypothesis suggests reasons why there should be relatively little legal inflation at the two ends of the scale, it does not by itself explain why there will be more inflation for areas that are covered in an intermediate number of agreements, since we have not yet provided any reason why there should be legal inflation in *any* agreement or area. It seems likely, however, that lack of enforceability of specific provisions may benefit one of the parties to an agreement, since many provisions involve benefits for one party and costs to the other.

Two opposing hypotheses for why the areas in the intermediate range tend to be less enforceable could be that either (i) the EC sees itself as being on the 'paying' end in these areas, and manages to ensure that it will more easily escape enforceable obligations in these areas; or (ii) the partners have less of an interest in these areas, and manage to ensure softer legal language in return for accepting the enforcement possibilities that the EC insists on in the areas at the upper end of the scale in terms of coverage. We leave it to the reader to decide which of these explanations seems more plausible, if any.

5.5 Closing remarks

The general picture that emerges from comparing the undertakings in the WTO+ and WTO-X areas for the two sets of PTAs is the following:

1. The EC agreements go much further than the US agreements in covering areas outside the scope of the WTO agreements. There has also been an increasing tendency to this effect.
2. When adjusting for non-enforceable language, one observes significant 'legal inflation' in non-WTO parts of the EC agreements. In fact, the EC agreements are similar to the US agreements in that much of the emphasis of enforeceable language is on existing WTO areas.
3. Both EC and US PTAs contain non-WTO areas with substantial undertakings. An important aspect of both sets of agreements is thus that they combine substantial undertakings in WTO areas and in non-WTO areas.
4. A significant proportion of the substantial, legally enforceable obligations is in areas where domestic or international regulations are important, but the specific regulatory areas differ for the two hubs.

17. It should also be said that, for the reasons discussed above, the downward-sloping part of the curve is statistically more reliable than the upward-sloping part, due to the small number of areas that occur in only one or two agreements.

5. There is a tendency for enforceable obligations to appear in particular in areas that occur in many agreements, and to some extent also in areas that occur in very few agreements.

6. Conclusion

There is growing concern about preferential trading agreements and the role they

Second, although EC and US preferential trade agreements do go significantly beyond the WTO agreements, the number of legally enforceable WTO-X provisions contained in EC and US PTAs is still in fact quite small. Provisions that can be regarded as really breaking new ground compared to existing WTO agreements are few and far between: environment and labour standards for US agreements, and competition policy for EC agreements. These provisions clearly all deal with regulatory issues. The other enforceable WTO-X provisions found in EC and US PTAs concern domains that more or less relate to existing WTO agreements, such as investment, capital movement and intellectual property, which also concern regulatory matters.

The fact that the new, legally enforceable WTO-X provisions all deal with regulatory issues suggests that EC and US agreements 21i0(s)of l0-X pr7.1.1s0-h r16.0lr74(al m)19io agre

T4.2(e)7c2(14.4)(1n10-9)3kUi1sm,9a2 3r.9)1e2(U).2642(3)-97Ah03(0b2)0m4c4r.2)(74U14(.e,B)7c6116.d(,ww)44)14.

References

BALDWIN, R. E. 2006. Multilateralising Regionalism, Spaghetti Bowls as Building Blocs on the Path to Global Free Trade, World Economy, 29: 1451–518

BARTELS, L. 2008. Social Issues: Labour, Environment and Human Rights, in Bilateral and Regional Trade Agreements: Commentary, Analysis and Case Studies, ed. by Lester S. and Mercurio B., Cambridge: Cambridge University Press

BHAGWATI, J. 2008. Termites in the Trading System: How Preferential Agreements Undermine Free Trade, Oxford: Oxford University Press

BOURGEOIS, J., K. DAWAR and S.J. EVENETT. 2007. A Comparative Analysis of Selected Provisions in Free Trade Agreements, Study commissioned by DG Trade, Brussels: European Commission, mimeo

CORDONIER SEGGER, J.M. 2007. Sustainable Development in RTAs, in Regional Trade Agreements and the WTO Legal System, ed. by Bartels L. and Ortino F., Oxford: Oxford University Press

DAWAR, K. 2008. Assessing Labour and Environmental Regimes in Regional Trading Arrangements, Society of International Economic Law (SIEL), Inaugural Conference, Working Paper No. 55/08

DESTA, M. and N. BARNES. 2007. Competition Law in Regional Trade Agreements: an Overview, in Regional Trade Agreements and the WTO Legal System, ed. by Bartels L. and Ortino F., Oxford: Oxford University Press

ELLIOTT, K.A. 2006. Labor Standards, in Trade Relations Between Colombia and the United States, ed. by Schott J.J., Policy Analyses for International Economics, no. 79/2006, Washington, D.C.: Peterson Institute for International Economics

KRAJEWSKI, M. 2007. Services Liberalization in Regional Trade Agreements: Lessons for GATS 'Unfinished Business', in Regional Trade Agreements and the WTO Legal System, ed. by Bartels L. and Ortino F., Oxford: Oxford University Press

LESSER, C. 2007. Do Bilateral and Regional Approaches for Reducing Technical Barriers to Trade Converge Towards the Multilateral Trading System?, OECD Trade Policy Working Papers, No. 58

MAVROIDIS, P. C. 2007. Trade in Goods, Oxford: Oxford University Press

MCCAFFERY, S. 2006. Understanding International Law, Newark: LexisNexis

MERCURIO, B. 2007. TRIPs-Plus Provisions in FTAs: Recent Trends, in Regional Trade Agreements and the WTO Legal System, ed. by Bartels L. and Ortino F., Oxford: Oxford University Press

ORTINO, F. 2008. Regional Trade Agreements and Trade in Services, in Bilateral and Regional Trade Agreements: Commentary, Analysis and Case Studies, ed. Lester S. and Mercurio B., Cambridge: Cambridge University Press

PUGATCH, M.P. 2007. A Transatlantic Divide? The US and EU's Approach to the International Regulation of Intellectual Property Trade-Related Agreements, ECIPE Working Paper 02/2007

REUTER, P. 1989. Introduction to the Law of Treaties, London: Pinter Publishers

ROY, M., J. MARCHETTI and H. LIM. 2006. Services Liberalisation in the New Generation of Preferential Trade Agreements: How Much Further than GATS?, WTO Staff Working Paper ERSD-2006-07

SAPIR, A. 2007. Europe and the Global Economy, in Fragmented Power: Europe and the Global Economy, ed. by Sapir A., Brussels: Bruegel

Appendix A

The attitude of the US in this respect is almost identical to that of the EC: staged liberalisation within brief transitional periods[21].

(3) Customs Administration

The more recent of the agreements examined in this study were negotiated in parallel with the (ongoing) WTO negotiation on trade facilitation: many of the concerns that

extent contrary to the Parties' interests and that such enterprises shall be subject to the rules of competition insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them."

This is a typical provision that can be found in many other agreements signed by the EC; it is also a hybrid between a WTO+ and a WTO-X obligation since, on the one hand, STEs are covered by Article XVII GATT but, on the other, this provision does not call upon WTO members to ensure that their STEs will abide by national competition laws. All Article XVII GATT requests from WTO members is to guarantee that their STEs will behave in a non-discriminatory manner, an obligation that has been interpreted as obliging them to act in accordance with commercial considerations.

On the other hand, the coverage of STEs in the GATT-context extends to operators which usually import or export, that is, re-sell goods. Some of the EC agreements also extend to STEs that produce goods. We read, for example, in Art. 35 of the EC-Israel agreement:

"...shall progressively adjust any state monopoly so as to ensure that by the end of the fifth year no discrimination regarding the conditions under which goods are produced and marketed..."

The US attitude is not linear: only a few PTAs signed by the US include language on the behaviour of STEs, and the language is not the same across agreements. Whereas the US-Morocco FTA, for example, simply underscores the multilateral obligations of the two preferential partners, the US-Chile FTA seems to go further: Art. 16.4, which we reproduce in full below, suggests that the obligations imposed on STEs go beyond the GATT-framework, since the parties have accepted obligations with respect to activities (such as expropriation) not covered by the GATT mandate:

"Nothing in this Agreement shall be construed to prevent a Party from establishing or maintaining a state enterprise.

2. Each Party shall ensure that any state enterprise that it establishes or maintains acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such enterprise exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.

3. Each Party shall ensure that any state enterprise that it establishes or

clauses in all its PTAs. No such vetting clause exists in GATS, where Article III imposes a general transparency obligation, and the possibility for cross-notifications.

(13) TRIPs

No major deviations from the multilateral agreement are observed as far as EC practice is concerned[32].

The US agreements often include provisions whereby the spoke will be asked to adhere to international conventions that are not covered by the TRIPs[33].

(14) Competition

We classify competition under WTO-X, since the WTO has no competence on this score. It is true, Article XXIX GATT calls upon all WTO members to observe ('best endeavours') Chapter V of the Havana Charter, which deals with restrictive business practices (RBPs). So, in principle, there is some measure of competition discipline in

Appendix B
The ‘depth’ of commitments in WTO-X areas

(1) Anti-Corruption

None of the 14 EC agreements contains an Anti-Corruption clause. By contrast, all eight US agreements signed since the US-Morocco agreement contain such a clause, usually under a chapter entitled ‘Transparency’. In the US agreements, the parties will typically discuss Anti-Corruption in two stages: first comes a statement of principle, whereby the parties affirm their resolve to eliminate bribery and corruption in international trade and investment; then, a legally enforceable obligation is included, which requires from each party to ‘adopt or maintain the necessary legislative or other measures to establish that it is a criminal offense under its law’ for a person to engage in bribery and corruption ‘in matters affecting international trade or investment’. It also requires from each party to ‘adopt or maintain penalties and procedures to enforce the criminal measures’ adopted or maintained against bribery and corruption.

(2) Competition

All but one EC agreements contain Competition-related provisions that are legally enforceable; these provisions are explicitly excluded from dispute settlement in the EC-Chile agreement. By contrast only half the US agreements contain Competition provisions, and none is legally enforceable.

The extent of legal enforceability varies across EC agreements. Most prohibit all agreements between undertakings ‘which have as their object or effect the prevention, restriction or distortion of cy varief4y1(e)12.’23(a)0(wr)16.1(e)12n01(e)12.2(v)12.2(e)22

agreements also prohibit 'any public aid which distorts, or threatens to distort, competition by favouring certain undertakings or the production of certain goods'. These prohibitions mirror precisely the disciplines contained in the EC treaty, which apply to intra-EC trade (Articles 81ff. of the EC Treaty).

As we alluded to above, the level of legal enforceability varies across agreements signed by the EC. The EC agreements with Latin American countries contain less far-reaching obligations than those signed with other countries. For example, the agreement with Mexico uses softer language and does not refer to prohibitions, as some other agreements do: Article 11.1 of this agreement simply mandates that 'the Parties shall agree on the appropriate measures in order to prevent distortions or restrictions of competition that may significantly affect trade between Mexico and the Community. To this end, the Joint Council shall establish mechanisms of cooperation and coordination among their authorities with responsibility for the implementation of competition rules. Such cooperation shall include mutual legal assistance, notification, consultation and exchange of information in order to ensure transparency relating to the 7.1(e E)29.8(C)0(T)70.8(r)16.1(e)33.2((g)0(rio)15.2(n an)l9c43(e (

agreement, the main legal text concerning environmental rules, comprises approximately 120 words. It appears in the cooperation part of the agreement, and is essentially development-related. On the other hand, the US-Chile agreement devotes the entire Chapter 19 to the matter, and comprises some 3,100 words. Part of the text also deals with cooperation, as in the EC-Chile agreement. However, the text of the US agreement also states that 'recognizing the right of each Party to establish its own

repatriation of these capitals and of any profit stemming there from.' The link between movement of capital and investment is even more explicit in US agreements, where the obligation of free capital movement is inserted in the chapter on investment. For instance, Art. 10.8 of the US-Chile agreement,is iner

Appendix tables

Table A.3.1 Commitments on intellectual property under both WTO-covered and non-covered agreements, EC PTAs
Table A.3.2 Commitments on intellectual property under both WTO-covered and non-covered agreements, US PTAs
Table A.5.1: Legal inflation by groups of areas
Table A.5.2: Legal inflation by groups of areas

Table A.3.1 Commitments on intellectual property under both WTO-covered and non-covered agreements, EC PTAs

	EC-Turkey	EC-Tunisia	EC-Israel	EC-Morocco	EC-Jordan	EC-South Africa	EC-Mexico*	EC-FYRoM	EC-Egypt	EC-Croatia	EC-Chile	EC-Albania	EC-CARIFORUM
Agreements covered under WTO													
International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 1961)	LE	LE	LE	LE	LE	AC	AC	AC	0	AC	AC	AC	AC
Paris Convention for the Protection of Industrial Property in the 1967 Act of Stockholm (Paris Union)	LE	AC	AC	AC	AC	AC	AC	AC	AC	AC	AC	AC	0
Bern Convention for the Protection of Literary and Artistic Works in the Act of Paris of 24 July 1971	LE	AC	LE	AC	LE	AC	AC	AC	AC	AC	AC	AC	0
Washington Treaty on Intellectual Property in Respect of Integrated Circuits (1989)	0	0	0	0	0	0	0	0	0	0	0	0	0
Agreements not covered under WTO													
Locarno Agreement establishing an International Classification for Industrial Designs (Locarno Union 1968, amended in 1979)	0	0	0	0	0	0	0	0	0	0	LE	0	0
Madrid Agreement concerning the International Registration of Marks in the 1969 Act of Stockholm (Madrid Union)	0	0	LE	AC	LE	0	0	AC	AC	AC	AC	AC	0
Patent Cooperation Treaty (Washington 1970, amended in 1979 and modified in 1984)	LE	LE	LE	LE	LE	AC	AC	AC	LE	AC	LE	AC	LE
Convention for the Protection of Producers of Phonograms against Unauthorised Duplications of their Phonograms (Geneva 1971)	0	0	0	0	0	0	0	AC	LE	AC	LE	LE	0
Strasbourg Agreement Concerning the International Patent Classification (Strasbourg 1971, amended in 1979);	0	0	0	0	0	0	0	0	0	0	LE	0	0
European Patent Convention (1973)	0	0	0	0	0	0	0	0	0	0	0	AC	0
Vienna Agreement establishing an International Classification of Figurative Elements of Marks (Vienna 1973, and amended in 1985)	0	0	0	0	0	0	0	0	0	0	AC	0	0

	EC-Turkey	EC-Tunisia	EC-Israel	EC-Morocco	EC-Jordan	EC-South Africa	EC-Mexico*	EC-FYRoM	EC-Egypt	EC-Croatia

Table A.3.2 Commitments on intellectual property under both WTO-covered and non-covered agreements, US PTAs

	NAFTA	US-Jordan	US-Singapore	US-Chile	US-Australia	US-Morocco	US-CAFTA-DR	US-Bahrain	US-Peru	US-Oman	US-Colombia	US-Panama	US-South Korea
Agreements covered under WTO													
International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 1961)	0	0	0	0	0	0	0	0	0	0	0	0	0
Paris Convention for the Protection of Industrial Property in the 1967 Act of Stockholm (Paris Union)	AC	0	0	0	LE	0	0	0	0	0	0	0	LE
Bern Convention for the Protection of Literary and Artistic Works in the Act of Paris of 24 July 1971	AC	0	0	0	LE	0	0	0	0	0	0	0	LE
Washington Treaty on Intellectual Property in Respect of Integrated Circuits (1989)	AC	0	0	0	0	0	0	0	0	0	0	0	0
Agreements not covered under WTO													
Locarno Agreement establishing an International Classification for Industrial Designs (Locarno Union 1968, amended in 1979)	0	0	0	0	0	0	0	0	0	0	0	0	0
Madrid Agreement concerning the International Registration of Marks in the 1969 Act of Stockholm (Madrid Union)	0	AC	0	0	0	0	0	0	0	0	0	0	0
Patent Cooperation Treaty (Washington 1970, amended in 1979 and modified in 1984)	0	AC	LE	LE	LE	LE	LE	LE	LE	LE	LE	LE	LE

rning the

	NAFTA	US-Jordan	US-Singapore	US-Chile	US-Australia	US-Morocco	US-CAFTA-DR	US-Bahrain	US-Peru	US-Oman	US-Colombia	US-Panama	US-South Korea
Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974)	0	0	LE	LE	LE	LE	LE	LE	LE	LE	LE	LE	LE
Budapest Treaty on the International Recognition of the Deposit of Micro-													

Table A.5.1: Legal inflation by groups of areas

	EU PTAs			US PTAs		
	AC	LE	Legal inflation	AC	LE	Legal inflation
Group 1: trade and investment related obligations						
FTA ind	14	14	0%	14	14	0%
FTA ag	14	14	0%	14	14	0%
AD	14	12	14%	12	12	0%
Customs administration	14	13	7%	13	13	0%
CVM	14	12	14%	12	12	0%
Export taxes	0	-	-	12	12	0%
Investment	12	8	33%	11	11	0%
Movement of capital	13	13	0%	12	12	0%
TRIMs	0	-	-	12	12	0%
Total (1):	95	86	9%	112	112	0%
Group 2: GATS/TRIPs						
GATS*	4	4	0%	13	13	0%
TRIPs	14	13	7%	14	14	0%
IP	14	11	21%	13	40	0%
Total (2)	32	28	13%	40	40	0%
Group 3: Migration-related regulations						
Illegal immigration	6	3	50%	0	-	-
Social matters	13	7	46%	0	-	-
Visa and asylum	4	0	100%	0	-	-
Total (3)	23	10	57%	0	-	-
Group 4: Domestic trade-related regulations						
Anti-corruption	0	-	-	10	8	20%
Competition	14	13	7%	7	0	100%
Consumer protection	7	1	86%	2	0	100%
Data protection	6	3	50%	0	-	-
Environment	13	2	85%	13	13	0%
Labour	2	2	0%	13	13	0%
Public procurement	13	7	46%	14	13	7%
SPS	8	3	63%	12	2	83%
State aid	13	12	8%	11	11	0%
STE	13	12	8%	9	7	22%
TBT	14	5	64%	12	11	8%
Total (4)	103	60	42%	103	78	24%

	EU PTAs			US PTAs		
	AC	LE	Legal inflation	AC	LE	Legal inflation
Group 5: other						
Approximation of legislation	9	2	78%	0	-	-
Audiovisual	9	1	89%	0	-	-
Civil protection	1	1	0%	0	-	-

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Beyond the WTO?
An anatomy of EU and US preferential trade agreements

There is growing concern about preferential trading agreements (PTAs) and the role they should play in the multilateral trading system. Not only are they becoming increasingly prevalent, there is also a perception that many recent PTAs, especially those centred on the EC and the US, go far beyond the scope of the current WTO agreements and may be creating unfair trade relations.

In an attempt to shed light on whether the above concern is justified, this study for the first time looks in detail at all the provisions of all the PTAs signed by the EC or the US and other WTO members, especially those provisions which are legally enforceable. The study finds that the EC and the US have adopted very different approaches in their respective PTAs. The study also hints that both powers may be seeking, through their PTAs, to project their regulatory priorities globally.

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