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Templates for Trade

Change, Persistence and Path Dependence in U. S. and EU Preferential Trade Agreements

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Templates for Trade

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Ali Arbia

Abstract

Over the last two decades, Preferential Trade Agreements (PTAs) proliferated through the international trading system. PTAs created a web of rules paralleling and extending the system of the World Trade Organization (WTO). PTAs are an increasingly dominant feature of the international trading system, adding to a steadily increasing complexity. Their content is rarely studied systematically across agreements, and the mechanisms leading to their genesis are little understood. It is typically assumed that actors like the European Union (EU) and the United States (U. S.) work off a template when negotiating PTAs. Some argue that this allows them, amongst others, to impose a regulatory regime. This working paper attempts to put this claim to the test. Using diffusion theory as framework, it analyzes PTAs signed by the EU, the U. S. and their regional trading partners. Understanding the use of templates will help negotiating parties to assess the margin of maneuver when negotiating PTAs with the EU and the U. S. as well as the rigidity of their mandate. The analysis is conducted on a regional and a domestic level using aggregated data on PTA content and a qualitative assessment of selected PTA provisions (anti-corruption, environment and cultural cooperation). The study finds that the flexibility of these mandates is considerable and that templates, if used at all, can change substantially over time.

The Author

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1. Introduction[1]

Since the creation of the World Trade Organization (WTO) in 1995, international trade relations became dominated by a new phenomenon: the rise of Preferential Trade Agreements (PTAs). PTAs have become a dominant element of the international trading system and their number is steadily increasing. The WTO lists 379 PTAs in force in 2013.[2] These agreements have fundamentally altered the international trade regime. For years, there has been a debate raging amongst economists if PTAs constitute "building blocks" (Baldwin 1993, 1997, 2006; Baldwin/Thornton 2008) or "stumbling blocks" (Bhagwati 1991, 1996; Bhagwati/Pangariya 1996; Bhagwati et al. 1998; Bhagwati et al. 1999) on the way to true trade liberalization. The dust kicked up by this controversy has often clouded other more immediate issues in relation to PTAs.

PTAs create a very complex, multi-layered web of rules, regulations, and tariffs. These complexities and their roots are little understood. The focus of most studies is determined by relatively narrow disciplinary boundaries. Economists focus on evaluating the trade impact of PTAs and if they are a hindrance or a boon to trade liberalization. Legal experts typically concentrate on specific agreements, clauses and rulings. There are almost no studies looking at the content of PTAs on an aggregated level. Few studies look at 'how the sausages are made' and if they do, they are almost exclusively case studies of a single specific agreement or negotiation process.

In this working paper, I explore one way to fill this gap. It is often argued that actors follow templates when negotiating PTAs (Baldwin 2006: 1469; Baldwin/Thornton 2008: 49; Destler 2007: 7; Weintraub 2004: 89) or that newer agreements are based on templates of previous ones (Davis 2009: 27). Focusing on the nature of these templates offers a way to study the persistence and flexibility of PTA content from one agreement to the next. This, in turn, will shed some light on how much of these agreements stems from purely rational design (based on their economic purpose) and to which extent factors like path dependency come into play. I conduct an aggregated analysis of PTA content and of selected provisions of the two biggest actors in global trade and their regional partners. The analysis is situated on a global, regional and domestic level.

Before we begin, the nomenclature has to be clarified in order to avoid misunderstandings. There is a certain level of confusion on how to label these agreements and how to distinguish between Free Trade Agreements (FTA), Preferential Trade Agreements (PTA) or Regional Trade Agreements (RTA). The WTO uses RTA as an umbrella term and distinguishes between PTAs (i.e., agreements signed under the so-called enabling clause) and FTAs. In the literature different terms are used.

As RTAs become more frequently cross-regional, the geographic definition has increasingly lost its rationale. Thus the WTO's 'R' for 'Regional' in RTA becomes almost nonsensical. In this working paper, I will therefore follow the common practice in academic literature to label all agreements as "preferential," distinguishing among them between regular FTAs and Customs Unions (CU). It is important to note that the term 'preferential' is not intended to be normative, but simply reflects the fact that these agreements usually offer a preferential market access to a specific trading partner.

1 This Working Paper is to a large extent based on the research I conducted as a Fellow at the Kolleg-Forschergruppe "The Transformative Power of Europe" (KFG). I owe thanks to my colleagues at the KFG for many insightful comments throughout the various stages of the manuscript. All remaining errors are entirely my own.

2 WTO website, http://rtais.wto.org/UI/publicsummarytable.aspx, retrieved 15 July 2013.

2. Colliding Templates: Change and Persistence

2.1 Templates and Diffusion

The generation of PTAs' content is rarely studied. Typically, a functional view is adopted and little attention is given to other possibilities. At the same time, the claim that signatories of PTAs follow a national template is very common among practitioners and scholars. To analyze the use and spread of templates, I will use some of the existing literature on PTAs. In view of the abundant literature on the topic, I will focus on studies at the aggregated level on the one hand. On the other hand, I will use diffusion as an analytical framework. The latter promises to illuminate the issue from a new angle.

Simmons, Dobbin and Garrett observe that "[i]nternational policy diffusion occurs when government policy decisions in a given country are systematically conditioned by prior policy choices made in other countries" (2006: 787). We can expect policy diffusion in cases where templates are used in PTA negotiations. The rapid rise of PTAs per se could already be considered a form of diffusion because "[d]iffusion research is motivated by the observation that nation-states, or some other jurisdictional unit, choose similar institutions within a fairly circumscribed period of time" (Elkins/Simmons 2005: 34). Elkins and Simmons see a need for bringing in the international level when studying the diffusion of policy choices (2004: 187). The international trading system and the WTO are interesting cases to do so.

Simmons, Dobbin and Garrett identify four distinct mechanisms of diffusion: coercion, competition, learning and emulation (2006: 782). All four are plausible mechanisms when it comes to trade agreements. Although I will come back to this, I am not primarily interested in the precise role played by the various mechanisms in this working paper. Its focus rather lies on the extent to which specific ideas can be tracked across PTAs. Diffusion can be studied as a process, but also as an outcome (Elkins/Simmons 2005: 37) what this working paper will do: Can we observe diffusion as an outcome in PTA provisions?

Börzel and Risse define diffusion in a similar, though slightly more general way as a "process through which ideas are spread across time and space" (Börzel/Risse 2009: 5; based on Strang/Meyer 1993). This is a good starting point for this study as the concept of templates fits perfectly into this definition. I will look at the establishing process of PTAs across time but also across geographic areas. Although the change from one agreement to the next typically would not be considered as a form of diffusion, it still merits attention, as these are the rules that will diffuse across borders at a later stage.

There is some literature touching upon diffusion, specifically in the realm of the global economy. Simmons and Elkins look at policy diffusion in international political economy. Their focus is relatively abstract and serves as a starting point for more specific studies of diffusion in trade. Their point of departure are the shortcomings of purely domestic explanations when studying globalization of liberalization. "Temporal and regional clustering" leads to the conclusion that "something systematic must be driving states' policies" (2004: 186). Unlike this working paper, they use PTAs as explanatory variables among others.

Some authors make an argument based on diffusion by competition without adopting an explicit diffusion frame. Among these authors is the economist Richard Baldwin, whose "Domino Theory" could be

considered a form of diffusion by competition (Baldwin 1993, 2006; Baldwin/Jaimovich 2010; Baldwin/Thornton 2008). He argues that an initial shock sets a process in motion that motivates previously indifferent actors on the outside to push for additional trade liberalization. For the Americas, Baldwin argues, this event was the conclusion of the Mexico-U.S. Free Trade Agreement (MUSFTA), and for Europe the completion of the Single Market (Baldwin 1997: 27, 2006: 1482). According to this argument, competition leads to the horizontal adoption of provisions from the template.

In a similar vein, but based on a political and not economic logic, Ravenhill writes of a "political domino effect" (2010). Drezner studied "globalization and policy convergence" (2001). If PTAs are indeed not independent of each other in such ways (i.e., domino effect and/or convergence), we can logically expect PTAs to show some consistency over time and within regional clusters in both cases, a tell-tale sign of diffusion.

Finally, there is a small number of studies about PTAs and specific diffusion effects. They appear to treat specific questions (e.g., North-South relations) or limited geographic areas (e.g., "Pacific Rim") and are, therefore, only of limited value for this study (see for example Manger 2009; Nakagawa 2009). However, all of them share the assumption that a template exists at some point in time.

The claim that countries use a template when negotiating trade agreements is common in the literature on PTAs (Baldwin 2006: 1469). Several interviewees from the Office of the United States Trade Representative (USTR) have mentioned the U.S. template. Negotiators of the European Free Trade Association (EFTA) asserted the same (author's interviews Washington DC 2009, Geneva and Bern 2010[3]). The USTR itself mentions a template in some documents (for example in USTR 2007). Some authors argue that there are geographical clusters that follow (or should follow) a regional template (Baldwin/Thornton 2008: 49). There is no consensus on/about how modifiable this template is and when or how often it changes. Some see it as almost immutable (author's interviews Washington DC 2009[4]), others link it to specific agreements (e.g., Weintraub (2004: 89) names Singapore and Chile; Singapore was also mentioned in author's interview Washington DC 2009), and some others think change is instigated by domestic politics (Destler 2007: 7; USTR 2007). The minimalist view in contrast to assuming templates to be almost immutable is that "[e]ach PTA acts as a template for future agreements - indeed, there is considerable path dependency as most agreements closely follow the text of previous agreements" (Davis 2009: 27).

In the literature, there are few examples of authors trying to study rules laid down in PTAs on an aggregate level. One attempt to do so is a 2012 article by Raymond Hicks and Soo Yeon Kim. They studied PTAs in Asia basing their analysis on the concept of credible commitment. The other notable exception is an article published by a legal scholar and two economists on the "Anatomy of EU and U.S. preferential trade agreements" (Horn et al. 2010). Their approach will be instrumental in this paper, not at least because of their case selection.

3 Unstructured interviews with former US trade negotiators and high ranking trade officials in Washington DC on 10, 12, 16 and 23 November 2009, with EFTA negotiators in Geneva on 3 June and 3 May 2010 and with high ranking Swiss trade officials in Bern 2 and 8 June 2010.

4 Unstructured interviews with former US trade negotiators 4 November 2009 and an USTR official 24 November 2009 in Washington DC.

Here lies the potential for an important contribution by political science to research in law and economics on PTAs. John Ravenhill, for example, questions that the main driving force behind PTAs is primarily an economic rationale. In a case study on the "New East Asian Regionalism," he challenges the idea that the New Regionalism is a response to greater interdependencies: most agreements in East Asia are concluded outside the region (2010: 185). Therefore, he argues that it is hard to see why states would not push for multilateral liberalization, if domestic lobbying was at the source of the search for new markets. For businesses, the cost of compliance is often superior to the benefits of these agreements (Ravenhill 2010: 200). The same observation about the Asia-Pacific Economic Cooperation's (APEC) PTAs is made by Cédric Dupont and David Huang (2008: 116).

If the signing of such agreements is not driven by an economic logic in the first place, if they are not a result of rational design, the question arises how this is reflected in their content. If concluding PTAs is more about political and diplomatic goodwill on the international scene than about opening markets for domestic actors, the political economy of PTAs might be very different from what is usually assumed. If these agreements follow a political rationale and their existence *per se* is more important than their actual content, the way we study the latter needs to be re-thought.

I assume the existence of some sort of template as a starting point of this study. I will verify if this claim is correct and if there is a measurable effect that can be observed. If the template hypothesis is confirmed, the next question is how templates are used (if at all). How often and how easily are these templates modified and under what circumstances can we observe changes? I will use the 'template' concept in the largest possible sense for this study in order to cover the different ways it can be conceptualized. The meaning of 'template' can be situated anywhere on the spectrum from an almost immutable 'ready-made' treaty to the idea that every agreement is loosely based on a previous one as a template (Davis 2009: 27).

There is an analytical problem that needs to be addressed first. If all negotiating parties use their own template and we assume them to be rigid, then the conclusion of an agreement would obviously be very unlikely – except in cases of an almost perfect match of preferences. I suggest to understand the process similar to the ones guiding the laws of Mendelian inheritance: If a new PTA is negotiated, the negotiation mandate is at least in parts based on this country's previous agreements (Arbia 2011; Davis 2009: 27; Weintraub 2004: 89). Like chromosomes, 'PTA DNA' will recombine. Analogously to the aforementioned laws of inheritance, some of these provisions will be 'dominant.' Powerful countries will impose certain provisions and preferences based on their template. Weaker parties might insist on some and try to compromise on others. Some provisions will be 'recessive.' They will not be part of the final agreement because they are not accepted by the other party or have to be traded in for another preference. Finally, some provisions will merge and represent aspects of the preferences of each of the two parties (or, to stick with the metaphor, 'parents'). They will show characteristics of ancestor agreements of all parties involved.

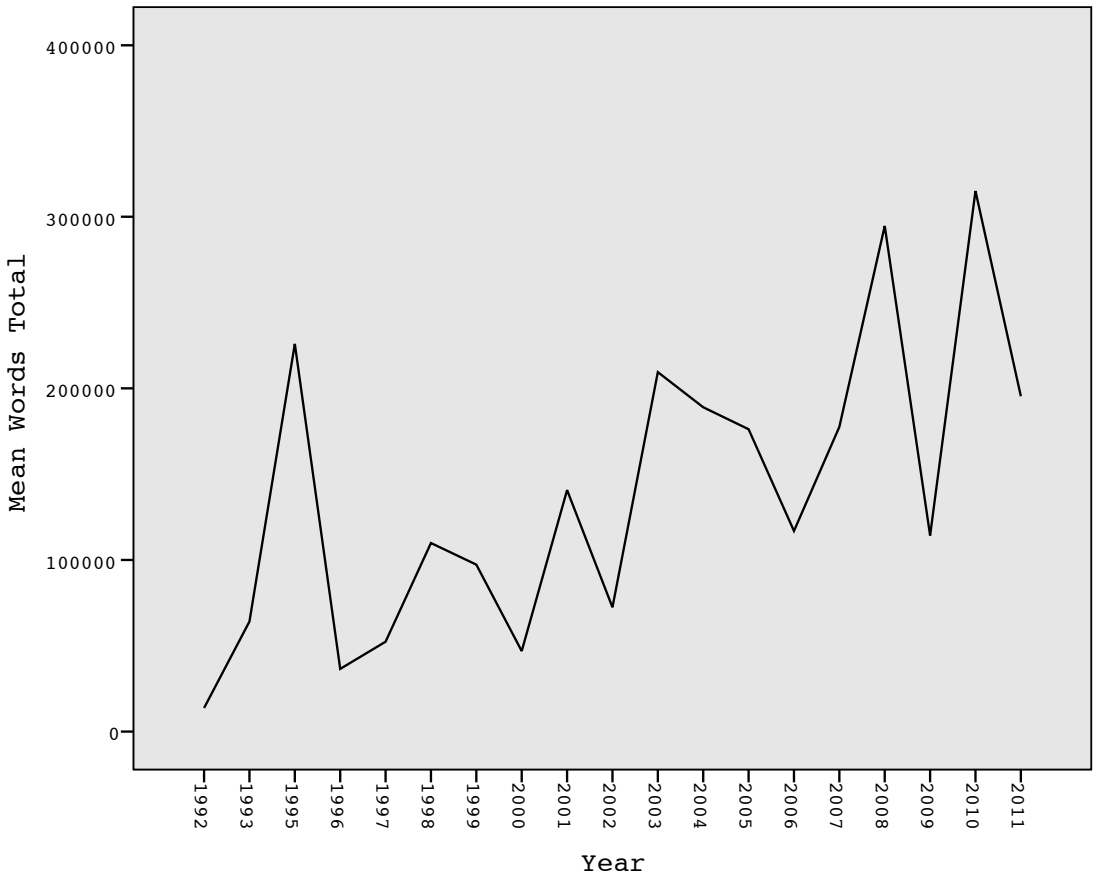
2.2 Templates and Global Trends

Why should we be interested in the global dynamic of PTAs? My argument for relevance rests on the fact that PTAs are not only an increasingly dominant element of international trade relations, but also that they

create an environment that frequently overwhelms the capacities of most, if not all, actors. It is therefore crucial to understand how this situation came about. Studying the role of templates in the genesis of this system is a way to start studying the phenomenon. In this subsection, I will investigate if there is evidence for the use of templates on a global level. For this purpose, some general trends of the PTA frenzy of the last two decades have to be reviewed.

Fiorentino, Verdeja and Toqueboeuf observe what they call an "increasing level of sophistication" (2007: 2) of PTAs. A proxy measure confirming this empirically is the length of PTAs. Figure 1 shows the development of the mean number of words for all agreements signed by the top eight PTAs signatories until 2011.[5] There is a clear upward trend and also evidence that the scope is broadening (Arbia 2011; Horn et al. 2010) what is overall consistent with the use of templates. These templates seem to be extended regularly, but rarely or never reduced. Amending them appears to be a one way street.

Figure 1: Mean Total Words in PTAs

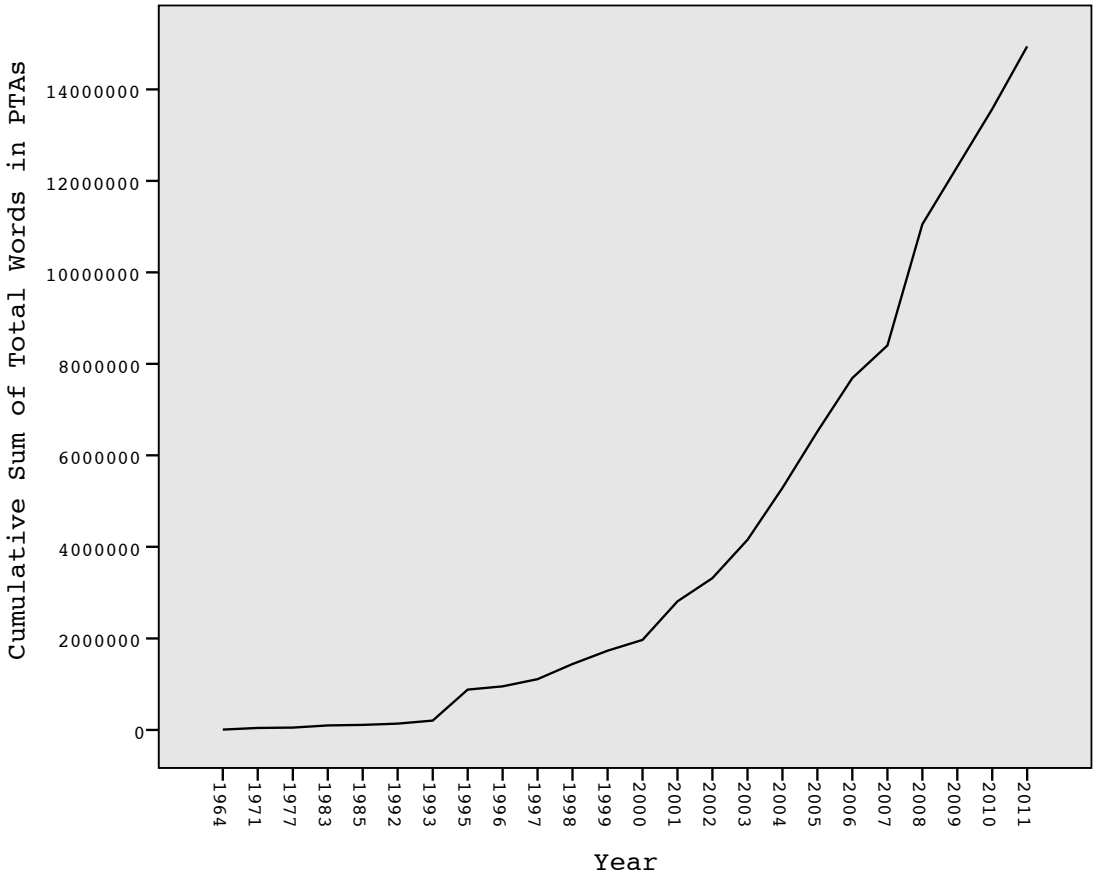


Source: author's own research.

5 For its compilation, the same database was used on which the results presented later in this section are based upon. For details see Arbia 2011.

Another noteworthy aspect is that there is hardly ever an agreement that is cancelled. All the rules, regulations and norms that are put into place with its ratification continue to exist. While the number of agreements is growing, a typical current agreement is increasingly longer, more sophisticated, and includes a broader agenda than older ones. This is consistent with Davis' view that every agreement serves as template for the next one (2009: 27), with the caveat that they are only extended. It also appears consistent with what we would expect from a diffusion phenomenon. If there is indeed such a horizontal use of templates, these effects might reinforce each other. The consequence of this dynamic is illustrated by Figure 2 showing the *accumulated* total number of words of all PTAs signed by the top eight signatories in force. All these words represent some form of obligation, a point of reference and a specific aspect of a trade relationship between two countries. All these rules stack up and affect the system. The use of templates could be a possible explanation for this quasi exponential trend.

Figure 2: Accumulation of PTA Legalization



Source: author's own research.

The challenge lies in analyzing how flexible these templates are and what role they play exactly in PTA creation. This will contribute to existing research in three ways: First, it will allow rendering some previously obscured mechanisms of PTA genesis visible. How many of the negotiated rules are created *sui generis* in contrast to the number of more or less set rules? Second, by focusing on templates, a comparison of different countries and PTAs on an aggregated level becomes possible. Third, a better understanding of

how provisions and topics in PTAs 'jump' from one agreement to another (horizontally and vertically) will add a detailed study of PTAs to the literature on diffusion. This will allow for a better understanding of the systemic, regional and domestic impact these dynamics have on the international trading system.

2.3 The World Trade Organization

There is an aspect on the international level that merits specific attention. In contrast to the domestic template hypothesis, the WTO is an international organization that preceded the PTA explosion and that might influence PTAs similar to a template on a multilateral level. But before reviewing the evidence, we need to briefly clarify the legal and economic interconnections between the WTO and PTAs, the multilateral and the bi- or plurilateral ways of trade liberalization.

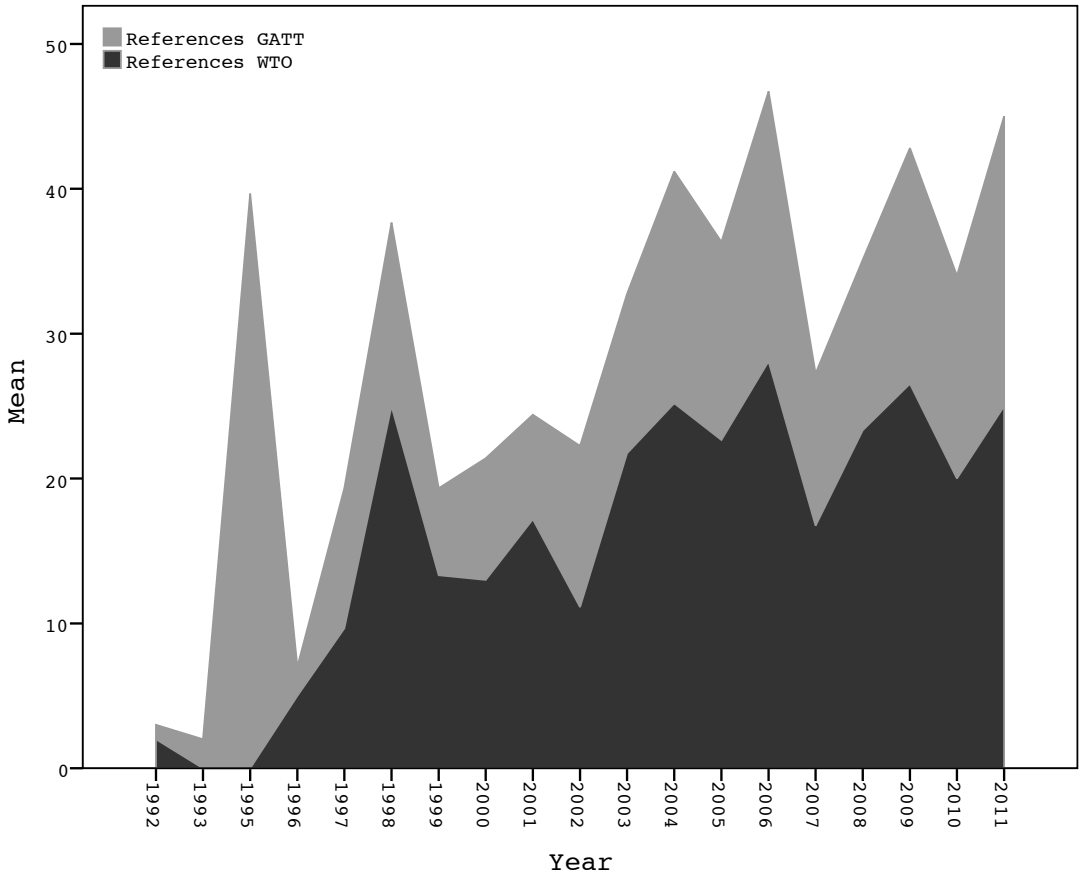
From an economist's and a purely theoretical perspective, global free trade is always a superior solution to only regional free trade (except for few very specific circumstances). Bi- or plurilateral agreements are suboptimal outcomes in this view. Within this debate, a fundamental disagreement concerning the assessment of the dynamic developing from this 'inferior' PTA solution and its significance for future trade regimes exists: On the one side, PTAs are regarded as conflicting with the goal of global elimination of trade barriers. On the other side, PTAs are believed to be complementary and a welcome intermediate step to global free trade.

When the WTO agreements were negotiated, the state parties were very well aware of this tension between multilateral trade liberalization and regional trade agreements. However, the legal context is not entirely clear and many experts assume that at least some PTAs are illegal under WTO rules. But all member states have signed PTAs (or are at least negotiating PTAs) and, therefore, everyone prefers to let sleeping dogs lie. The WTO's Committee on Regional Trade Agreements (CRTA) is responsible for reviewing the compatibility of PTAs with the WTO treaty, but for political reasons it never functioned as intended. Within the WTO framework, PTAs are supposed to be an exception and not the rule. In theory, PTAs are seen as a departure from core principles of the WTO and are therefore only permitted under specific circumstances. An exemption must be requested and justified under one of three clauses of the treaty. These are Article XXIV of the General Agreement on Tariffs and Trade (GATT) for agreements covering trade in goods, Article V of the General Agreement on Trade in Services (GATS) for services, and the so called Enabling Clause, which serves as an exemption for non-reciprocal agreements with developing countries.

Independently from how legal experts position themselves vis-à-vis the question of legality of PTAs, few would contest that the rules in PTAs are closely linked to trade rules established by the WTO. This way, the WTO indeed affects the design of PTAs. I stipulate three main ways how the WTO shapes PTAs and the legal regime that comes with them: First, it provides legal limits (e.g., comprehensiveness, "substantially all trade"). Second, the WTO acts as a model (e.g., Dispute Settlement Mechanism (DSM), Harmonization, WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), Agreement on Technical Barriers to Trade (TBT)). Third, it provides a point of reference for new agreements (e.g., no-contradiction, other agreements). None of these factors will prevent a state from using templates. Nevertheless, they are intervening variables that might shape or alter a template.

A good proxy measure for the existence of this connection is to verify how the WTO is referenced in PTAs. Almost all agreements make explicit references to the WTO. The number of references has been increasing over time and growing with the number of agreements (see figure 3 for the top ten signatories). In addition, these agreements typically have an introductory WTO disclaimer, in which the parties reaffirm their "rights and obligations under the WTO agreement" and that nothing in the treaty should "impair their WTO/GATT obligations." Only 14 out of 102 agreements by the top eight signatories (7.5 per cent) did not have such a "disclaimer" and 5 out of the 14 went into force before 1990 (Arbia 2011). Today, such clauses seem to be standard practice and are omnipresent in PTAs. Clearly, the WTO is a legal point of reference. Although there is a dispute to which extent PTAs are compatible with WTO rules, trade negotiators make an undeniable effort to render them at least partially compatible with the WTO agreements.

Figure 3: GATT and WTO References



Source: author's own research.

On the systemic level, we see that the typical PTA appears to follow some pattern of development consistent with the idea of templates being used: it gets longer and broader over time. This is consistent with the minimal definition of templates by Davis presented earlier in this paper. The WTO is an intervening variable with some (but probably little) influence on the domestic templates. However, it is indeed a point of reference that is likely to influence the design of the templates. This shows that PTAs cannot be studied in isolation. In the following sections, I will deepen the analysis by narrowing the view from the system to the regional and, later, domestic level.

3. Data and Method

The research question of this paper is how templates for PTAs are used and how they are modified (if at all). After having discussed the systemic level in the previous section, I will move one level down. The focus of this section will be on what I earlier called the horizontal use of templates in PTAs, corresponding to a standard diffusion argument. Before I begin with the analysis, I will first give some indications about the data and the method used. I will also discuss the case selection and its limits.

To make sure that the patterns detected can be really traced back to a template of one actor, I will focus on the EU and the U.S. It is quite safe to assume that these two actors are most likely able to impose such a template on other trading partners because of their size and market power. Almost independently of which diffusion mechanism we are looking at, they are likely to be a starting point. Some authors have gone so far as to claim that the EU and the U.S. are explicitly trying to impose a regulatory regime (Horn et al. 2010) or at least that they are setting up a hub and spoke system with themselves at the center (Augier et al. 2005: 578; Baldwin 2006: 1483; Baldwin/Thornton 2008: 9; UNDP 2007: 152).

My assumption is that the EU and the U.S. work from a template while negotiating PTAs. This template is imposed on their trading partners. I use the term 'imposed' loosely in the sense of some form of transmission including those described in the diffusion literature (coercion, competition, learning or emulation; Simmons et al. 2006: 782). The precise nature of the mechanism is secondary for this study because I am interested in the outcome and not the specific mechanism of transmission. Due to the overwhelming economic power of the U.S. and the EU it is plausible that these two actors are using coercion as one of the tools. Competition is likely to be another factor as third countries struggle to remain economically attractive by adopting the regulations of the biggest markets, which in turn creates a self-reinforcing feedback loop the more countries adopt these standards. With the EU and the U.S. dominating the world of international trade, simple emulation is another plausible mechanism. To a lesser extent, we might observe some learning effects, even though the EU and the U.S. would not be at a particular advantage there. If they manage to lead the way, then it is reasonable to expect their trading partners to use the same rules when signing their own PTAs with third parties. Therefore, I will compare PTAs signed by selected regional actors and PTAs signed by the EU and the U.S..

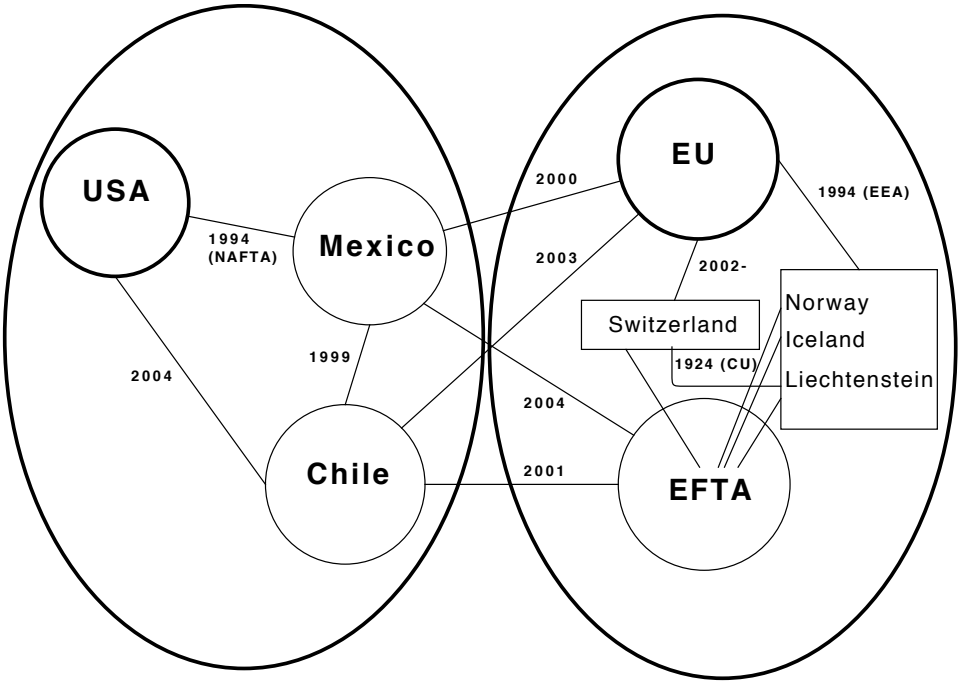
The U.S. and the EU are obviously not the only ones signing PTAs despite their central role in PTA proliferation. The EU has notified 37 agreements that are in force, EFTA 21, and the U.S. 17. In 2007 and according to the WTO, these three combined represented more than 70 per cent of all agreements signed among countries from the North and the existing North-South agreements. According to the same figures, 29.7 per cent were signed by the EU, 23.4 per cent by the EFTA, and 17.0 per cent by the U.S.. Obviously, this also reflects their market size.

To analyze the horizontal use of a template, I will compare a subset of actors in two separate regions. One region is formed by the EU and EFTA, the other 'region' consists of the U.S., Mexico and Chile. Although the first pairing covers a big part of a whole continent and a geographically contiguous area, I am aware that the second one does not. Nevertheless, I have chosen these two countries as, on the one hand, Mexico has a very close and early ties with the U.S. through the North American Free Trade Agreement (NAFTA), while,

on the other, Chile is likely to be more peripheral. Thus, it will act as a form of control case. The absence of Canada in the analysis is due to the lack of available data. Canada is not as fervent a signer of PTAs as the other three countries. In addition, it has signed agreements with Chile, EFTA and the U.S. and is consequently represented indirectly in the data analyzed with several of its PTAs.

The case of EFTA is also difficult with its history reaching back to 1960 and its many mutations in membership. Nevertheless, with the accession of Austria, Finland and Sweden to the EU in 1995, EFTA's rump membership was in place. This coincides approximately with the beginning of the surge of PTAs and it seems to be an acceptable comparison in the end. However, the number of possible cases in Western and Central Europe are very limited anyway.

Figure 4: Intra- and Cross-Regional Agreements Analyzed Sample



Source: author's own research

Figure 4 shows all agreements signed by these five actors amongst themselves. One can see that the complication of conflicting templates is evident, for example, in the case of Chile and Mexico. Both have signed agreements with the EU and EFTA at different points in time. The agreements I will analyze form a bigger set containing all agreements for these five countries (also with third parties) available from the WTO database as a point of departure. Table 1 shows a summary of the agreements in the sample. A detailed list can be found in the appendix.

The list of agreements used contains 86 PTAs signed by the EU (27), EFTA (22), the U.S. (12), Chile (14) and Mexico (11). The data are extracted from a database I created for a previous research project. The coding can be found in the appendix (additional details on the coding and methodology can be found in Arbia

2011). The overwhelming majority of all agreements were signed in 1995 or later. However, I also included older agreements if they were available and notified to the WTO.

Table 1 Agreements Included

	notified	not notified	total
EU	26	1	27
Chile	12	2	14
EFTA	17	5	22
Mexico	9	2	11
United States	10	2	12

Source: author's own research.

I have hinted at some limitations due to particular circumstances. For some of the cases, they need to be emphasized again. On a general note, there is a problem of interconnectedness on a global level that cannot be avoided. With PTAs being a global and universal phenomenon, there is no isolated test case available. In my set of cases, Chile and Mexico have signed PTAs with EFTA and the EU and are thus also under a transatlantic influence. In the case of Chile, the agreements with the EU and EFTA came about even earlier (2000 and 2001, respectively) than the one with the U.S. (2004). It is still reasonable to expect geographic proximity to foster closer ties. Mexico and Chile have a PTA dating back to 1999. All countries analyzed are founding members of the WTO and encountered each other for trade negotiations before.

The timing of agreements might be a factor helping us to disentangle different PTAs and to distinguish phases of development. Such an undertaking faces two major problems: First, the duration from initiation to actual coming into force of PTAs varies greatly. This might distort such a distinction considerably. For this work, I follow common practices and use the date of entry into force. The second big challenge is that the number of agreements for a particular time period is very small, a problem that cannot be resolved.

Two of the earlier agreements are NAFTA that links U.S. and Mexico, on the one hand, and the European Economic Area (EEA) on the other, which in turn connect several former and current EFTA members to the EU. The EEA entails stronger legal implications for its members than NAFTA. Not without reason the EEA was often considered as a 'waiting room' for EU membership as it imposes similar obligations as on its members (but gives them no political voice). This limits the observations that can be made when comparing EFTA to other agreements. All EFTA members except for Switzerland are members of the EEA. Switzerland has signed her own extensive association agreements with the EU. The links between the EU and EFTA are probably more 'political' in nature.

In addition, the EU and EFTA have a competitive relationship. Historically, EFTA was meant to be a counter-project to the European Communities built around the UK. As far as PTAs are concerned, EFTA was pursuing a policy of following the EU's agreements concerning content and the choice of partners for many years. Between 1999 and 2006, the EU had a de facto moratorium in place on bilateral negotiations (Elsig 2007a,

2007b; Evenett 2007; Meunier 2007). The EU took a stance in favor of the multilateral venue for international trade relations. This allowed EFTA to become more independent in its choice of partners and the content of its agreements.

As far as Chile and Mexico are concerned, they pursued very different policies of international trade liberalization. Both countries had faced severe economic shocks in the 1980s and conducted important trade policy reforms as a reaction to these crises (Sáez 2005: 8). They both switched from an import substitution strategy to an export-focused approach (Fischer/Meller 1999: 2). Although Chile has the reputation of having opened up much faster and more thoroughly, its unilateral liberalization did not lead to as much trade openness as it is usually credited for (Fischer/Meller 1999: 12). While Chile completed many trade reforms already in 1979, Mexico maintained considerable levels of protection at least until 1985 (Bergoeing et al. 2002: 10) and it only caught up economically with Chile in the mid-1990s (Bergoeing et al. 2002: 4). Chile is of special interest here since it pursued a policy of unilateral trade liberalization under the influence of a group of U.S. trained economists during the military rule (often colloquially referred to as the 'Chicago Boys'). This strongly limited Chile's option for further liberalizations for the period we are interested in.

For the comparison and analysis in this section, the point of departure will be the comparative study by Horn, Mavroidis and Sapir. In their article, they compare the content of PTAs signed by the U.S. and by the EU. First, I will look briefly at their findings. Then I will add to their analysis and expand the original question asked by the authors: To which extent do we see the same pattern reflected with trading partners of the two trade giants? If they use a template, we would expect to see similar patterns in PTAs of their regional competitors or trading partners.

In order to compare the results across regions, there is the need for some form of 'calibration,' an anchor which can be used to contrast the content of a series of PTAs that are heterogeneous in their content. Luckily, there is a point of reference which all the PTAs have and that intrinsically links them: the WTO agreements. In the following paragraphs, I will explain how I will use the WTO as a point of reference and how this approach can be grounded in existing research.

Horn, Mavroidis and Sapir have used the WTO as a point of reference in order to analyze the content of PTAs in their study. The relation to WTO rules is the center of gravity around which they build their analysis. Their content analysis of PTAs covers 14 agreements signed by the EU and 14 U.S. agreements. They distinguish two different categories based on this WTO connection: One type of commitments is classified as WTO Plus ("obligations relating to policy areas that are already subject to some form of commitment in the WTO agreements") and the other as WTO X (short for WTO Extra) topics ("an obligation in an area [...] relating to a policy instrument that has not previously been regulated by the WTO;" Horn et al. 2010: 1571). Their observations will form the bases for the explorations in this working paper.

They note several similarities and some differences between the PTAs of the EU and the U.S.. I want to underline three of them because of their relevance for this analysis. The first claim they make in their comparison is that the EU uses many more WTO X provisions than the U.S. (Horn et al. 2010: 1581). In other words, in a typical EU PTA one will find many more topics that are not covered by the WTO according to these authors. Second, they argue that WTO X provisions of EU agreements suffer from what they call

"legal inflation" (Horn et al. 2010: 1584). This applies for the agreements in the geographic vicinity of the EU (as one might argue a PTA with the EU is just a stepping stone for later membership) as well as agreements signed by the EU outside the continent (Horn et al. 2010: 1584). Third, once stripped of this "legal inflation," the agreements appear to be very similar according to the authors. They speculate that the EU and the U.S. use these agreements "as a means of transferring [their] regulatory regimes [...] to other countries." However, they admit that the evidence for this argument is ambiguous (Horn et al. 2010: 1585).

Using the WTO as a point of reference will facilitate comparability and help to avoid some of the inherent problems when focusing solely on the two big players. It also provides us with a methodological shortcut for coding agreements for an automated search by distinguishing between WTO X and WTO Plus provisions (a list of the search terms can be found in the appendix). Armed with these definitions, we will be able to move to the next question. The insights from this section concerning WTO X and WTO Plus provisions should also pave the way to how to tackle the concept of *vertical* templates best later.

Using the topics Horn, Mavroidis and Sapir have identified as WTO Plus (deepening WTO agreements) and WTO X (extending WTO agreements), I ran this search on the 86 agreements with a content analysis software. This method is obviously less precise than the qualitative assessment by a trained trade lawyer as done by Mavroidis (the only lawyer among the three authors). It is also a slightly different measure as it reports the frequency of such provisions rather than a dichotomous variable signaling if a topic has been covered or not in the agreement. However, I re-ran the search verifying for the presence or absence of a topic and my results remained unchanged.

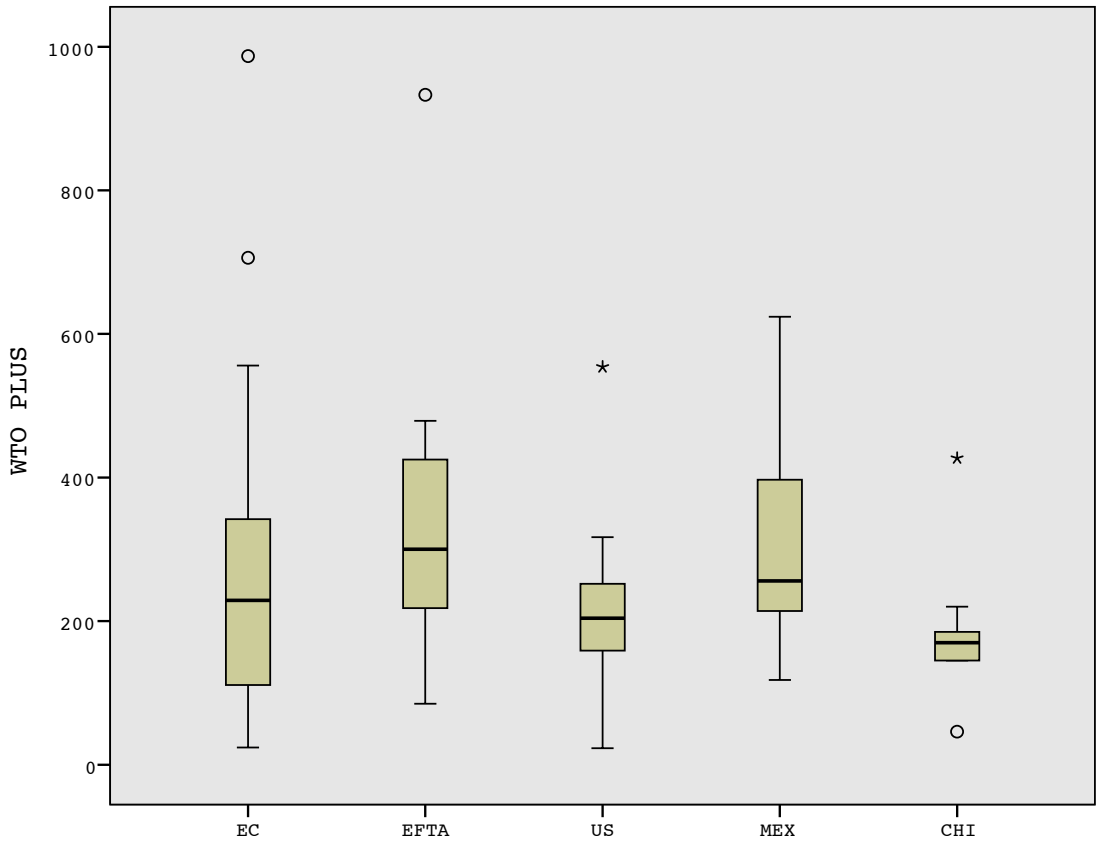
4. Horizontal Templates: A Tale of Two Regions

As mentioned, I expect the EU and the U.S. to be extensively more successful in passing on the 'genetics' of their agreements due to their size and their preferences being 'dominant.' To assess horizontal templates, I will use the data in two different ways to begin with: First, I compare the agreements of the five countries across the board. Second, I will look at how these topic areas developed over time in the two regions and if there is a detectable pattern.

I start with a general summary of the various agreements of the EU, the U.S., EFTA, Chile and Mexico. In Figure 5 and Figure 6 we see two boxplots. One summarizes WTO X provisions (i.e., topics not covered by the WTO in the agreements) for the five countries. The second shows the same for WTO Plus areas (i.e., extensions of topics already part of the WTO agreements). As far as WTO Plus provisions are concerned, no meaningful pattern seems to emerge, neither intra- nor cross-regional. The WTO X plot is less straightforward. The three cases from the Americas all have a higher median of WTO X provisions. EFTA and the EU have a similar pattern.

One could argue that in Figure 5 Chile seems to be a case that is situated somewhere in-between the EU and the U.S. pattern. This might be explained by the fact that Chile's trade liberalization policy followed a special trajectory. This can also be detected in the WTO Plus plot. The very narrow band of WTO Plus concessions and their low level is likely to be explained by the extensive unilateral trade liberalization that was pursued by Chile earlier. When negotiating with far less liberalized countries bilaterally or multilaterally in the WTO, Chile did not have much left to put on the negotiation table. In that view it seems plausible that there are only a few WTO Plus concessions that were left for Chile to agree upon in their PTA negotiations. This traditional trade openness and a greater geographic distance could also explain a higher level of autonomy from PTA provisions emanating from the U.S.. Because we have only Mexico to compare to, this remains speculative.

Figure 5: WTO Plus Provision Overview

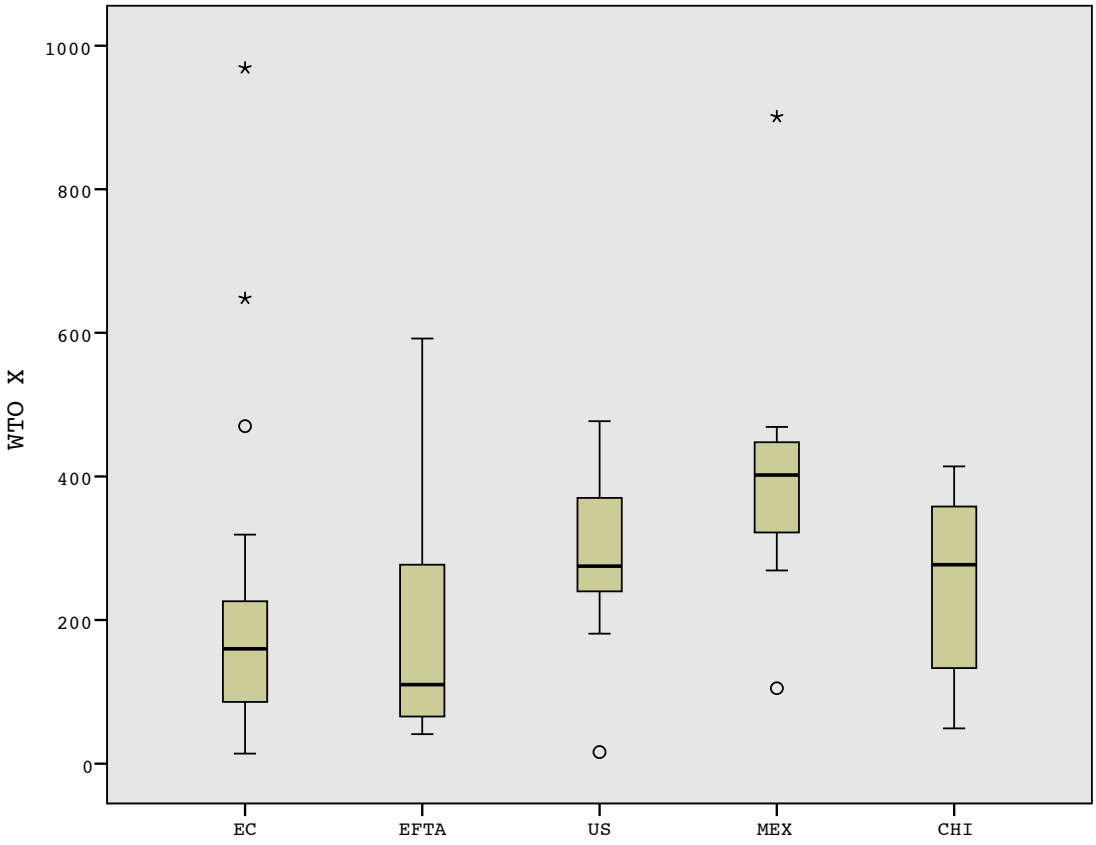


Source: author's own research.

This first en bloc view shows no indication of the systematic use of a generalized and fixed horizontal template for WTO Plus provisions and suggests some effects for WTO X provisions. However, what has been left out of this analysis is the temporal dimension. There is a good chance that a gradual change over time is obscured in the aggregated data. PTAs gradually increase in legal density, complexity and issue areas covered (Arbia 2011). Newly introduced topics typically re-appear in subsequent agreements. PTAs steadily increase in average size. So, it is possible that an effect over time is not captured by this overall

view. To widen the perspective, I will look at the agreements chronologically and study relative change for individual countries in the Americas and Europe.

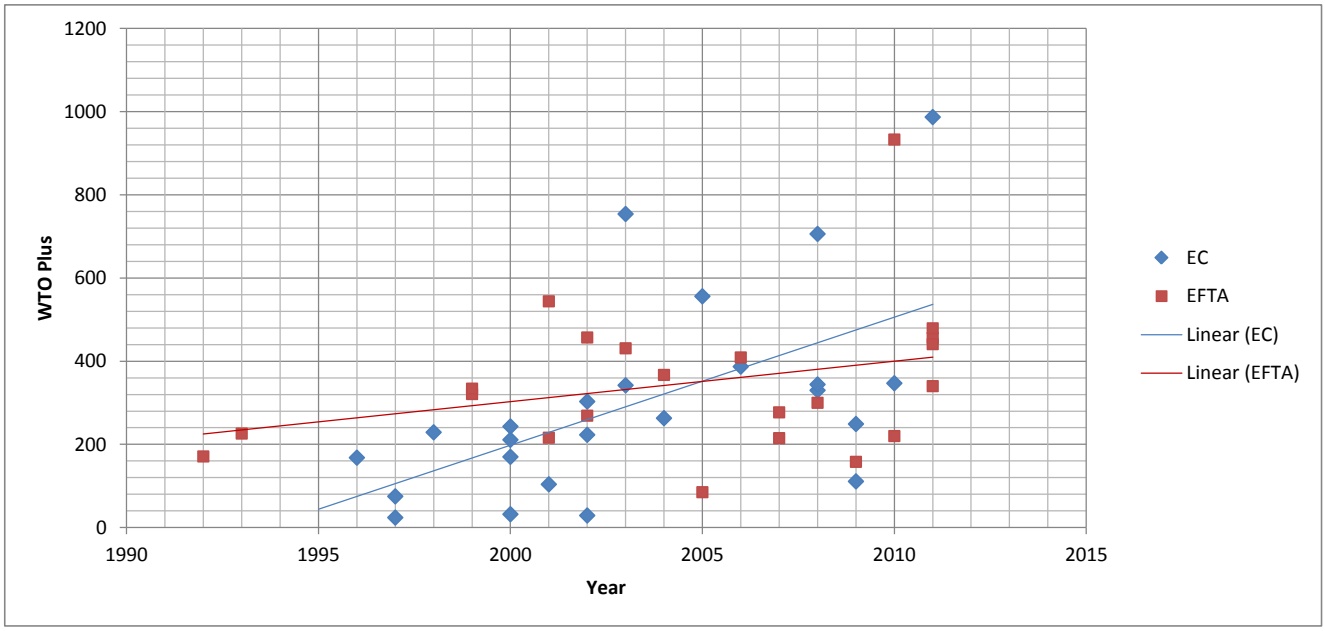
Figure 6: WTO X Provisions Overview



Source: author's own research.

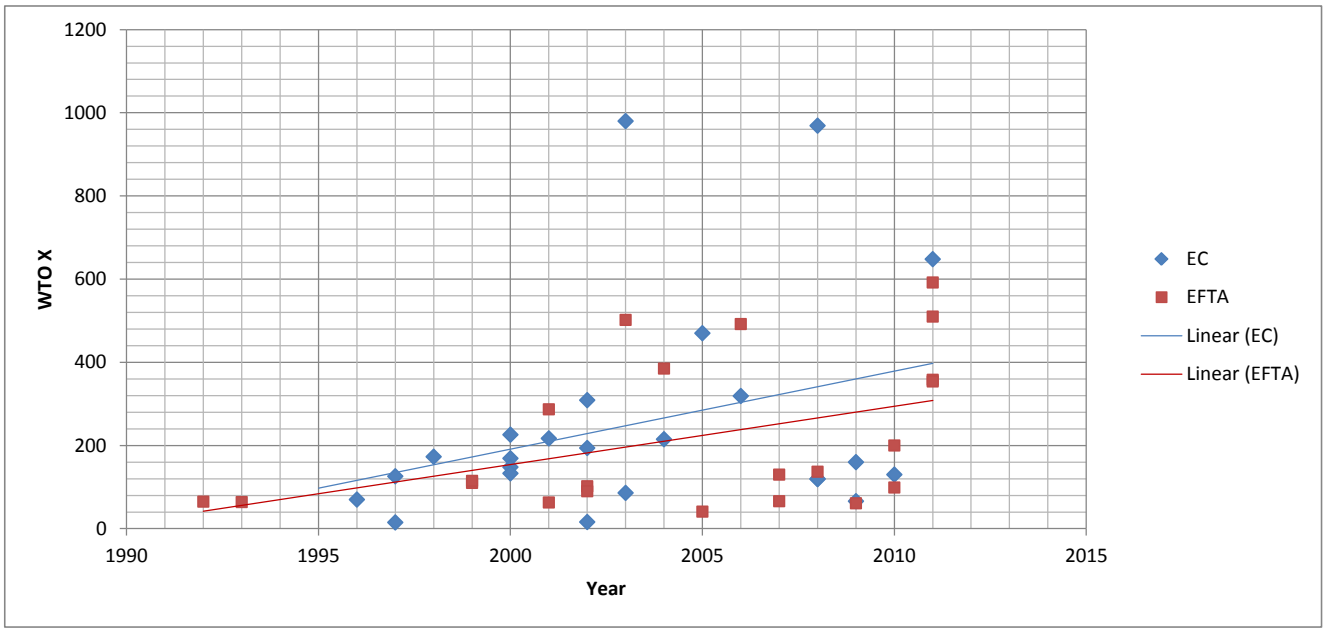
Figure 7 and Figure 8 show a comparison of the number of WTO X and WTO Plus, respectively, provisions in agreements signed by the EU and by EFTA. For WTO X provisions, an upward trend is visible. This means that the number of instances representing a broadening of the WTO agenda (i.e., WTO X provisions) has been increasing over time. It also appears as if this happens at quite a similar pace for the EU and for EFTA. For WTO Plus provision, the effect is much less clear. The overall trend seems to be an increase as well, but the evidence is ambiguous at best. The variation for WTO Plus provisions is much bigger than for WTO X provision. Therefore, it is unclear if there is a general trend of copying for WTO Plus provisions. If a trend can be established, then it is an increase in WTO Plus topics over the years. This trend is marked more clearly for the EU than it is for EFTA.

Figure 7: WTO Plus Chronology Europe



Source: author's own research.

Figure 8: WTO X Chronology Europe

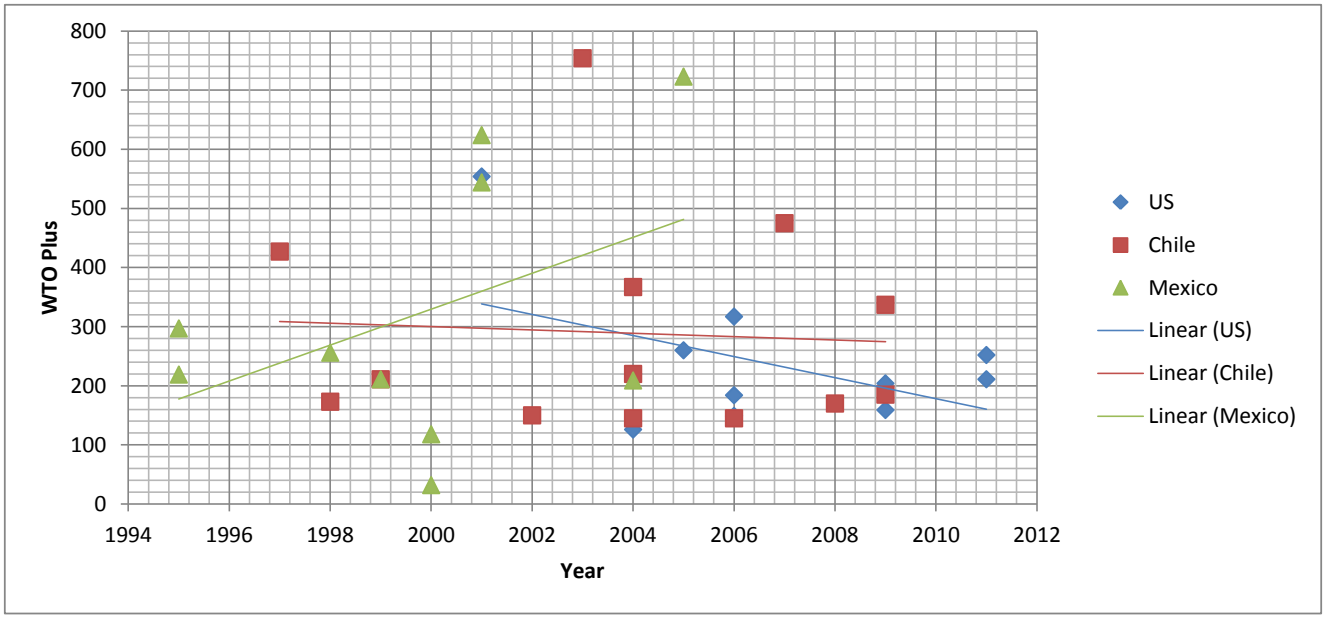


Source: author's own research.

The same comparison for the Americas is provided in Figure 9 and 10. The resulting picture is similar. As far as WTO X topic areas are concerned, all three countries used them in similar ways. A difference to the European case is that no clear upward or downward trend can be seen. For WTO X provisions, the data

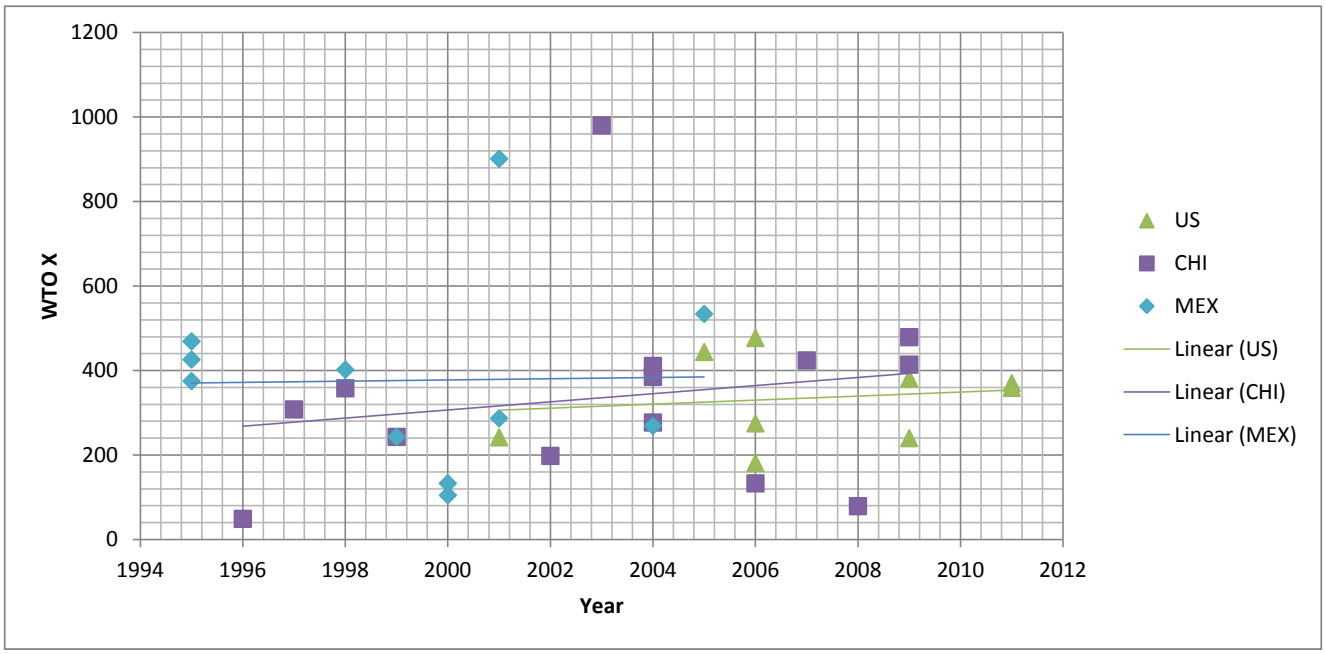
points and accordingly the trend lines are much more dispersed. They clearly do not permit to draw any conclusions on a general trend.

Figure 9: WTO Plus Chronology Americas



Source: author's own research.

Figure 10: WTO X Chronology Americas



Source: author's own research.

The observations made so far are the following: The way WTO X provisions are added to PTAs shows some resemblance for different signatories in the same region. This is true for Europe and there is some indication for the Americas, too. This hints at a process based on templates. Interestingly, this appears not to be the case for WTO Plus provisions. In Europe, we also see a general tendency towards an ever expanding trade agenda vis-à-vis the WTO (i.e., WTO X provisions), whereas for the Americas this is not the case. Although these are interesting preliminary results, a general word of caution about any inference from the trend lines in Figures 7 to 10 needs to be voiced: They are all very rough interpolations with a slightly better (but still relatively weak) fit for Europe. Although they give an interesting glimpse of what could be a genuine phenomenon, a more in-depth analysis is necessary to confirm any generalization based on these graphs.

It appears intuitive that WTO X provisions are more likely to follow a regional template than WTO Plus provisions. For WTO Plus provisions, there is another obvious actor to look at (i.e., the WTO) that offers itself as an alternative guiding light. The margin of maneuver is also more restricted. There might be disagreements what is permissible to put into a PTA. With quasi-universal membership, WTO topics are also more 'globalized' in that sense and were already subject to multilateral negotiations.

The greater consistency between EU and EFTA agreements comes not as a surprise. EFTA did closely follow EU agreements up to the end of the 1990s. When the de facto moratorium on PTAs was put into place by the Commission in 1999, EFTA became more independent with its agreements and especially its choice of partners (author's interviews 2010[6]). This de facto moratorium was kept in place until 2006, while exempting the good neighborhood policy (Elsig 2001, 2007; Evenett 2007; Meunier 2007). Interestingly, there is little change detectable before and after the moratorium. It is difficult to come to firm conclusions because of the small number of cases and, even more importantly, the varying time lag between the negotiation and conclusion of PTAs.

5. Vertical Templates: Environment, Anti-Corruption and Social Cooperation

The previous section attempted to study regional effects while searching for horizontal template transfer using aggregated data. The results bear important hints but are at best only indicators of what might be going on under the hood. This section is an attempt to lift up that hood and have a peek at the engine that is beneath. This will also help to confirm or falsify the findings from the previous section. It will also be a first step of mapping PTA provisions more detailed. Although it is beyond the scope of this working paper to do so on a large scale for many countries, we might nevertheless gain some insights when focusing on specific WTO X provisions for the EU and the U.S..

The focus of this closer look at PTA provisions is in part determined by the findings of the previous section. The results suggest that WTO X provisions are more likely to follow a specific pattern. Therefore, I will focus

6 Unstructured interviews with EFTA negotiators in Geneva 3 May and 3 June 2010 and a Swiss trade official in Bern 19 May 2010.

on three areas that are WTO X issues. For the U.S., there is only a limited amount of WTO X provisions that can be studied and the overlap with the EU is even smaller (based on the list of Horn et al. 2010). The first topic I want to look at is *Environment*. Both the U.S. and the EU often have environmental provisions in their PTAs whereas environmental issues are not systematically and formally addressed by the WTO agreements (although some disputes led to controversial rulings concerning environmental issues). Horn, Mavroidis and Sapir also qualify environmental provisions as a WTO X issue (2010).

The issues for the second and third topic are only found in U.S. or EU PTAs, respectively. This will allow comparing the evolution of provisions that are unlikely to suffer from 'cross-contamination' from other agreements. The two areas in question are *Anti-Corruption Measures*, which are unique to U.S. PTAs and *Cultural Cooperation*, which can only be found in EU agreements. Both issues are clearly not part of the WTO agreements and hence fall into the WTO X category (Abott 2001; Horn et al. 2010).

In order to analyze these topic areas, I will use a more general quantitative proxy followed by a qualitative analysis. I will start by looking at rough quantifications of provisions about the environment in EU and U.S. PTAs. Methodologically, this approach is based on and extends the previous analysis. The first (quantitative) measure is the size of these specific provisions. It is plausible to assume that a template would leave a track that is detectable in such a cursory view. In a second step, I will turn to the actual content of environmental provisions. Finally, I will repeat the same analysis for anti-corruption provisions in U.S. PTAs and provisions on cultural cooperation in EU agreements.

I base this analysis on the same subset of agreements as previously, but this time I will focus only on agreements that were signed by the EU or the U.S. (see the appendix for a full list of the agreements used in this part of the analysis). In total, I included 37 PTAs. 13 were signed by the U.S. and 24 by the EU. They stretch over a time span from 1963 to 2012 (1963 to 2010 for the EU and 1985 to 2012 for the U.S.), but almost all of them were signed in the first decade of the 21st century. This accurately reflects the proliferation that only started in that period (Aggarwal 2013: 90). 12 out of 13 U.S. agreements contained a specific environmental provision and 13 out of 24 EU agreements did so as well. Some of the early agreements are obviously not part of the surge in PTAs discussed in this study (notably the U.S. agreement with Israel from 1985 and an agreement between Turkey and the EU from 1963) and are therefore not included in the graphics. Although they are notified to the WTO as PTAs, I did not include the various enlargement agreements by the EU in order to avoid a bias through agreements that are much more political in nature than the standard PTA. I also excluded NAFTA because of its timing (1994) and its much more comprehensive scope.

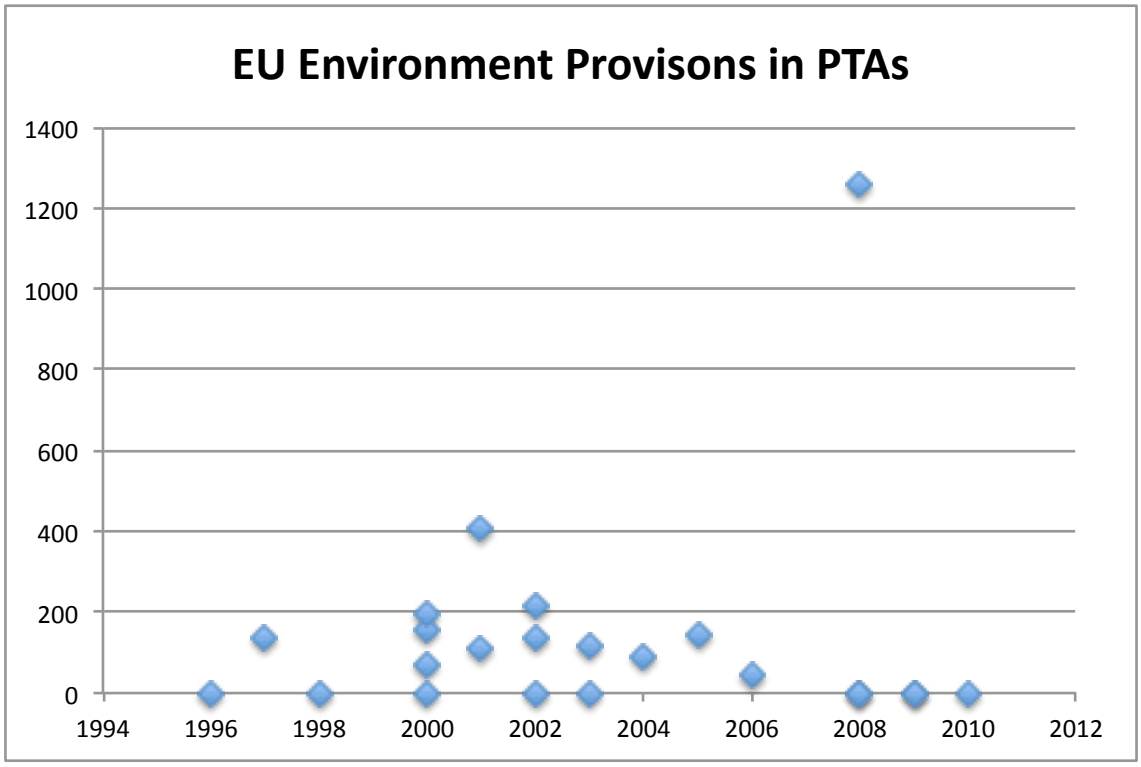
If we compare the environmental provisions in EU and U.S. PTAs on their most basic level, we can already see a differentiating pattern. Figure 11 and Figure 12 show the length (measured in words) of these provisions plotted across time. Length is a good proxy for similarity as typically the same wording is used and provisions with the same number of words are usually very similar. This was also confirmed by the in-depth analysis that will follow for each provision. I decided against conducting a normalization of numbers relative to the length of the agreements although such a weighting could be suggested since, first, the focus is on the content of the provision. It would not make sense to say the length of the respective provisions followed the length of the agreement, but it is rather the other way round. Even if the template gets longer because the agreements get longer, it is still the template changing which is the focus of this study. Second,

the in-depth analysis of the actual text will show if random non-template additions are made. So there is a built-in safeguard. Third, as we will see, the only doubts which will remain after the qualitative analysis are on the EU provisions (due to the lack of detectable pattern). However, since this trend can be found in both cases, provisions in question were not used in the latest EU agreements, and no other pattern could be detected, weights are unlikely to change the results.

While the EU appears to produce provisions quite erratically as far as their length is concerned, the U.S. seems to have steadily expanded the content over the years. At best one could argue that the EU used these provisions between 2000 and 2005 and then (with the notable exception of one big outlier) stopped using them. However, this argument is not very convincing as several agreements were signed by the EU during that period without any environmental provisions. Admittedly, the number of cases for the U.S. is relatively small and this rough visual approach can only be indicative for a general trend again. At the same time, the level of variation shows that the U.S. is not necessarily working off a template how it is usually claimed. If the U.S. does, the template evolves over time and it is very malleable, closer to Davis' minimalist understanding of templates (Davis 2009: 27).

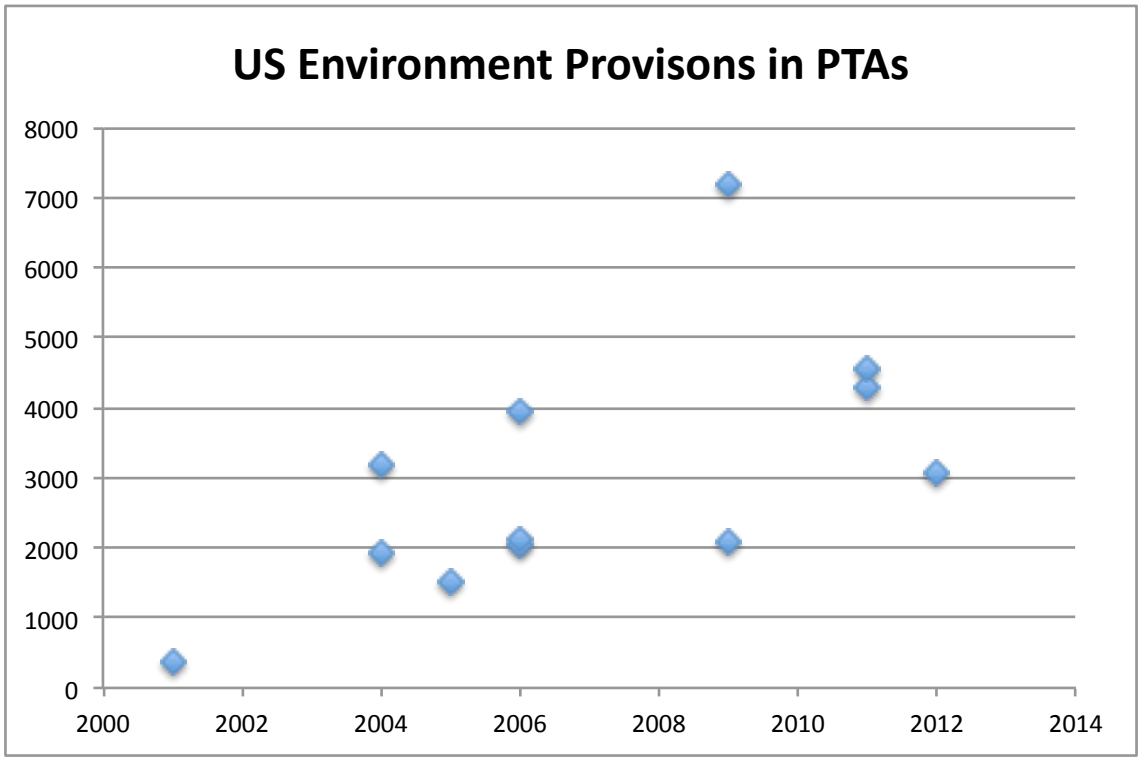
In order to confirm these findings, it is useful to look more closely at the changes over time, comparing agreements with their immediate predecessors. It is slightly problematic to look at specific years of coming into force and to assume a clean-cut chronology. Agreements have widely varying exploration phases and negotiation cycles. A direct and specific content comparison is likely to reveal if this distorts the results too much. It is also reasonable to assume that in most cases these provisions still reflect at least somehow the mood of the involved capitals during the last years of negotiation.

Figure 11: Size of Environmental Provisions in EU PTAs



Source: author's own research.

Figure 12: Size of Environmental Provisions in U.S. PTAs



Source: author's own research.

When looking at the environmental provisions of the EU, the findings of the rough analysis are confirmed. With one exception, these provisions are stating quite general principles. They often contain a list of specific environmental questions to be addressed, but some provisions never reach that level of specificity. Chronologically, there is no clearly detectable pattern. The enumeration of areas covered (e.g., water management, nuclear safety etc.) appears to be rewritten from case to case. There are similar topics that come up, but not in a systematic way over time. Sometimes the list of topics does not make it into the agreement at all. Only the agreement of the Forum of the Caribbean Group of African, Caribbean and Pacific States (CARIFORUM agreement), contains precise rules, procedures and definitions on environmental protection (the 2008 outlier). If there is a pattern, it has not been developing over time. The EU seems to follow a case by case approach. A comparison of the agreements signed with Middle Eastern and North African countries shows many overlaps, for example. However, even there is a non-neglectable variation. At best, we could argue that concerning the EU, there are some regional patterns that emerge, but these provisions are re-negotiated for every partner on a case-by-case basis.

In U.S. agreements very few changes of environmental provisions were undertaken up to the agreement with Singapore in 2004. Most changes are 'diplomatic cosmetics.' They might have meaning to diplomats, but would probably not be considered by a lawyer as making the difference between a fluffy wish-list and a hard and enforceable provision (e.g., replacing 'strive for' with 'ensure that' or the addition or the removal of a section on 'objectives,' respectively). In the Singapore agreement, a set of new subparagraphs were added: Institutional Arrangements, Opportunities for Public Participation, Environmental Cooperation and Consultations. Most of them remained in subsequent agreements. In later agreements, some additional

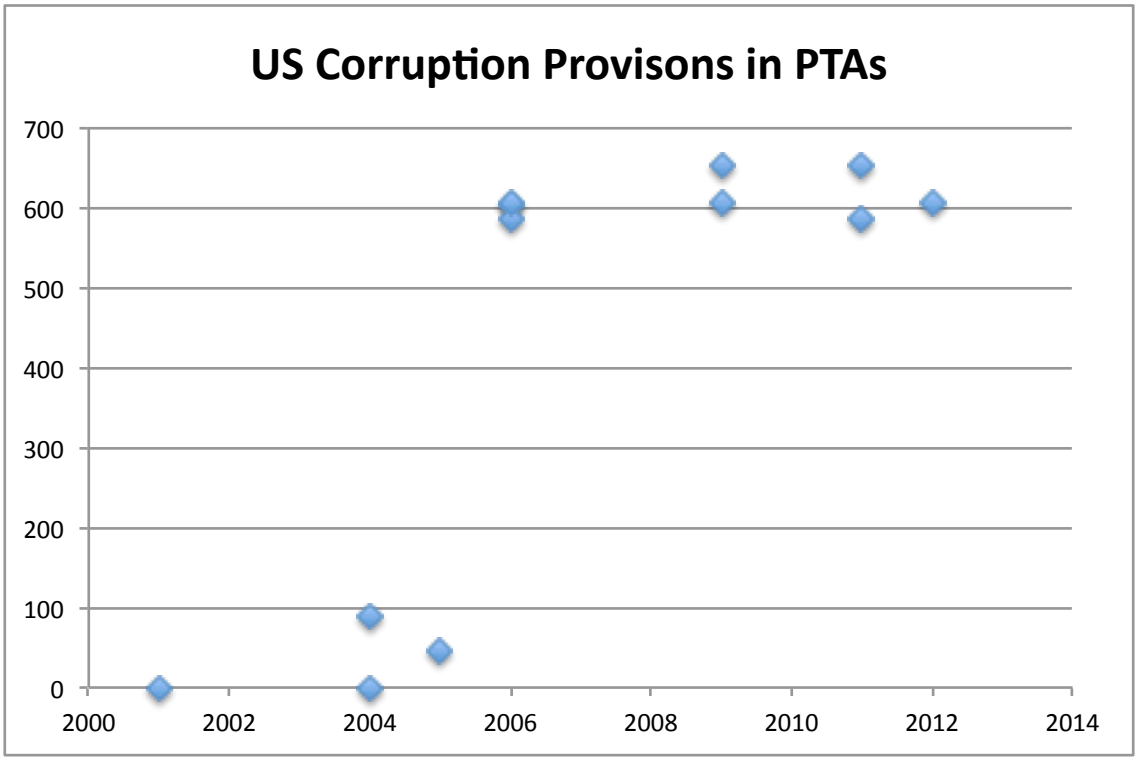
provisions on enforcement were added, some of the previous ones dropped (and taken up again later), but most remained. In 2009, the agreement with the most extensive environmental clause was signed with Peru. It includes the creation of an environmental affairs council, the clauses on biodiversity and an extended annex. Two nearly identical agreements (except for the appendices) with Colombia and Panama followed in 2011, whereas the most recent agreement studied (with South Korea) appears to be a slightly slimmed down version of them.

The Singapore agreement has a special place in the list of U.S. PTAs. It was considered to be a template for future agreements as it was seen as the first one in a series of new agreements (author's interviews Washington DC 2009;[7] Weintraub 2004: 89). A second event probably spurred WTO X provisions in the U.S. template, especially concerning the environment. In 2007, a deadlock was overcome in the U.S. Congress with the so-called "May 10 compromise" (USTR 2007) what is also an excellent example to illustrate the Congress' role in introducing these *prima facie* non-trade issues into trade agreements and on how the trade agenda (and the template) were extended. When the Democrats took over control in Congress in 2007, the Bush administration was facing a legislative that was much more critical towards free trade than the previous one. In fact, the electoral base favoring FTAs started to crumble already earlier (Destler 2007: 2). Four months of negotiations with the USTR ensued, resulting in the May 10 agreement. With this compromise, labor standards and environmental provisions were to be introduced into trade agreements (namely for the negotiations with South Korea, Colombia and Panama, which were ongoing at that time). According to the New York Times (2007), "officials in Washington predicted that the agreements effect [...] could be a template for all trade deals, including a possible worldwide accord." The May 10 Agreement is neither a drastic rupture, nor came it as a surprise. The Chile and Singapore PTAs already saw the introduction of non-trade measures that proved to be sticky. As Weintraub argues, this "reinforced the certainty that once non-trade issues enter into U.S. trade agreements, they take on a life of their own in later agreements" (Weintraub 2004: 90).

When studying environmental provisions there is a 'contamination' issue. There is a flurry of international agreements that regulate environmental questions (see, e.g., Marceau 2001 on so-called Multilateral Environment Agreements (MEA)). Therefore, I looked for a WTO X topic area that is unique to each of the two actors. The only good candidate for the U.S. was found in anti-corruption provisions. These provisions cannot be found in EU agreements (Horn et al. 2010). They are not part of the WTO corpus of laws (Abott 2001). Traditionally, the U.S. was a driving force behind the push to make anti-corruption legislation an international issue during the 1990s and, moreover, this topic has already been of domestic importance in the U.S. since the late 1970s. Anti-corruption is one WTO X topic that is covered systematically by the U.S., but not at all by the EU in PTAs (Horn et al. 2010:1578). 10 out of the 13 U.S. agreements included in this analysis contained a specific chapter or paragraph on anti-corruption measures. The only agreement that did not was the one signed with Israel in 1985 – a special case, not least because it preceded the next one by almost 30 years.

7 Unstructured interview with former US trade negotiator Washington DC, 4 November 2009.

Figure 13: Size of Anti-Corruption Provisions in U.S. PTAs



Source: author's own research.

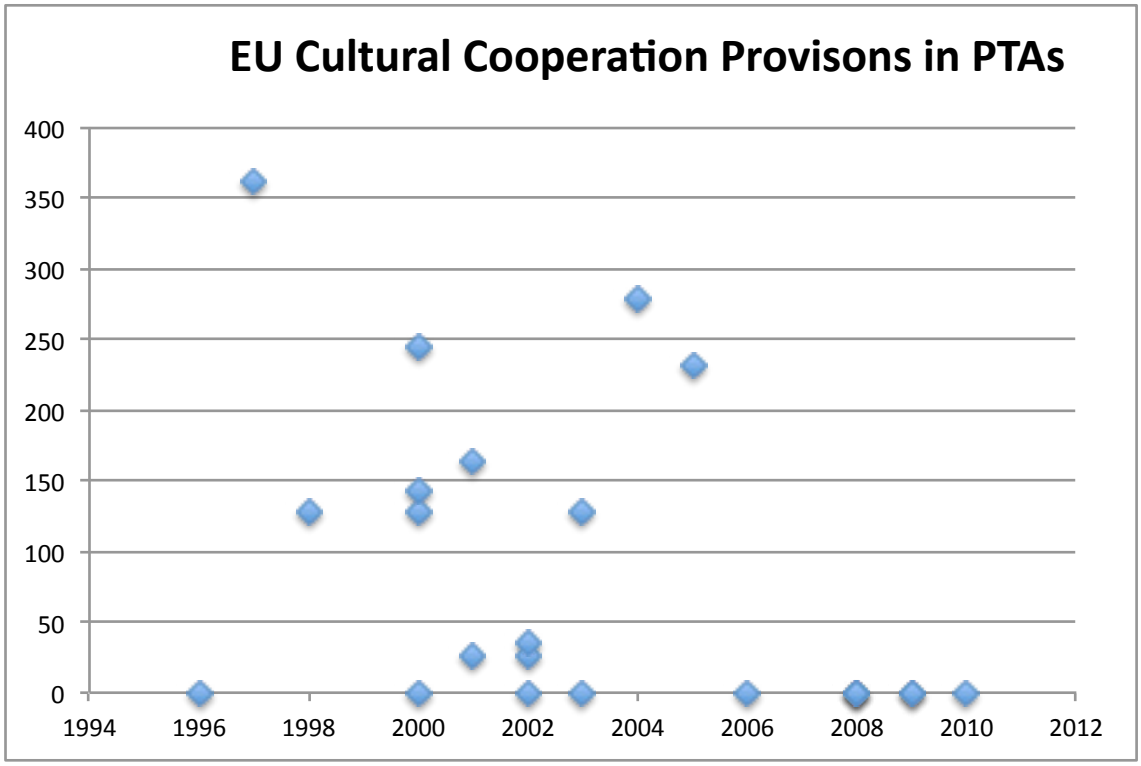
Again, I will start by looking at the development on an abstract level by comparing the length of the provisions in question. Consistent with the previous findings we find the first anti-corruption provision in the PTA with Singapore. An agreement with Chile that came into force the same year (2004) did not contain such a provision. However, in 2006, the length of the anti-corruption provisions jumps up to a level where it appears to remain the subsequent years. In order to see what this pattern means for the content of these provisions, we need to zoom in again on the actual wording.

When it comes to content, the anti-corruption provisions in the first pre-2006 U.S. agreements are very general and vague. They appear to be declarations of principles in the first place. The new element that has been introduced in 2006 was a precise language, defining what under what circumstances is to be considered corruption. It is reminiscent of the legal language of domestic judicial rules. On top of that, an article is added that offers general definitions of the key terms. From 2006 onwards, the changes are to a large extent what I previously called 'diplomatic cosmetics.' There are some one-off additions and eliminations like, for example, a list of reference agreements.

To conduct the same analysis for an issue that is unique to EU PTAs, I will look at provisions on cultural cooperation. This issue area is not ideal for a comparison as it is probably the one with the weakest link to

trade.[8] The problem is to find a WTO X topic that is not covered by U.S. PTAs and that is present in a large number of EU PTAs, but this issue area is the best available option. Figure 12 shows a similar pattern to EU environmental provisions, or more precisely, the absence of any pattern. The most remarkable aspect is probably that none of the agreements signed after 2005 included provisions on cultural cooperation.

Figure 14: Size of Anti-Corruption Provisions in U.S. PTAs



Source: author's own research.

If we look at the actual provision, the previous findings are reproduced for the EU. There is no pattern over time. One gets the impression that even provisions of little value in terms of bindingness and enforceability are tailored to each case. Sometimes articles on cultural cooperation include audiovisual arts, sometimes they do not. Some articles are very similar without being identical (e.g., Israel and Palestine) and some geographic groups have cultural cooperation clauses built around a common core (e.g., North Africa, Balkans). If there are templates, they are limited to specific regions or groups of countries. In general, these clauses are very generic, do not contain enforceable rules and appear to be to at large extent declarations of intent and of a symbolic nature.

From the study of the three WTO X areas (Environment, Anti-Corruption and Cultural Cooperation), it appears as if there are three potential patterns of how templates are used vertically and developed over time. The first is the European way: EU provisions are tailor-made for partners. If some kind of template exists

8 Cultural cooperation in EU PTAs are very soft provisions. They should not be confused with more trade relevant aspects of trade in audio-visual and cultural goods.

at all, it is within specific groups of countries. The U.S., on the other hand, appears to work off a template. However, this template is very flexible and there are two ways how this template changes and evolves. Its environmental provisions have changed incrementally and grown organically (i.e., in small steps, one addition building on the previous one). For the anti-corruption provisions, on the other hand, changes happened disruptively at one point in time. It is important to note that for the U.S., even the existence of an allegedly 'rigid' template did not prevent new additions and their persistence in subsequent agreements. It should be equally emphasized that I did not notice a similar pattern for the EU for all its agreements over time, but that similar processes can be observed for groups of countries. Generalizations, however, are difficult because of the small number of cases.

6. Conclusion

This conclusion has two main parts. In the first part, I will summarize the results from the previous sections in order to provide an overview of the various findings and to put them into a coherent context. In the second part, I will speculate about possible explanations, how differences can be explained, what we have learned about the use of templates and what all this means for a potential future research agenda on the content of PTAs.

The various approaches I have used led to some new insights on the distinct ways provisions in PTAs evolve and diffuse. First, there is the distinction between WTO X rules and WTO Plus rules. They appear to be integrated into PTAs in different ways and their inclusion is subject to different patterns. The different nature of WTO X and WTO Plus provisions does not come as a surprise. It is reasonable to assume that the WTO is still seen as the best venue to deepen its own agenda. Second, PTAs, on the other hand, offer a possibility to liberalize in new areas, where negotiations would have to start from zero within the WTO. The EU and the U.S. approach WTO X and WTO Plus provisions differently. These results appear to partially contradict Horn, Mavroidis and Sapir (2010). Third, we see signs of regional patterns that could be the echo of a diffusion process (i.e., horizontal use of templates), however, due to the method used in this working paper there is a lot of noise. If there is a diffusion process it is clearer for the EU than for the U.S. Fourth, at least for the provisions analyzed in this paperm we find different evolutive patterns for the vertical use (i.e., for one signatory across time) of templates. While the EU has a case by case approach, the U.S. seems to be more systematic. Environmental provisions grew gradually in size and extent while anti-corruption provisions jumped to a more sophisticated level. Fifth, despite the claim that the U.S. uses a simple template with little leeway in negotiations, the template clearly changes over time. These findings are summarized in Table 2.

Equally interesting is the fact that the findings in this paper appear to contradict some claims by Horn, Mavroidis and Sapir (2010). This points in the direction of future analyses to explain the differences between the U.S. and the EU. As a rough general rule, the U.S. appears to use about the same amount of WTO Plus rules as the EU. However, it has a tendency to use more WTO X provisions than the EU in its PTAs (although this seems to contradict conventional wisdom). One possible explanation is that the language of U.S. agreements is more legally precise and that they are more likely to mention issues, even if they do not necessarily include a specific article for this issue. If this is the case, they would show up in an automated analysis, but not in a more qualitative assessment as done by Mavroidis in his legal analysis. This would

The level to which templates are used remains somehow unclear. Too many confounding variables are present. There are indications that PTA provisions in EFTA agreements are modeled after the EU agreements. However, even here evidence is not very strong so far. For the U.S., Chile and Mexico, the result is at best ambiguous. WTO X provisions appear to be transmitted regionally more easily. Again, this is not surprising, as we would expect the margin of maneuver for WTO Plus provisions to be much more restricted legally. Moreover, the 'easier' parts were already negotiated within the WTO, so only more contentious and often more technical questions are left on the table (the 'Plus' part). Topics apparently evolve and new ideas are added, but the extent to which this happens across borders needs to be investigated further.

The most interesting findings are perhaps the different patterns of how these provisions evolve. They seem to confirm that there is a vertical template, but that the template is quite modular. The three distinctive patterns are gradual (U.S. for environment), jumps (U.S. for anti-corruption) and case by case (EU for environment and cultural cooperation). These patterns are confirmed by a chronological in-depth comparison of these provisions. Further research could look into possible reasons for this. One initial speculation is that the EU as an aggregation of various national interests has different priorities. These priorities will be bubbling to the surface at the negotiation table, depending on the partner sitting on the other side. The U.S. might pursue a much more targeted strategy. The difference we see between the way anti-corruption and environmental provisions developed suggests that the U.S. is still prone to external influence (anti-corruption would be the U.S.' own topic, environment is much more internationalized).

Last but not least, it is interesting that particularly the U.S. appears to be very flexible on PTA provisions despite the claim that it is just following a template. That means that the partners at the negotiation table have more room for deals than is typically admitted. This in turn opens the door for influence even when facing a considerable power imbalance.

The nature of legalization and complexification of PTAs can take different pathways. The final result remains the same. It also shows that it is almost inherent to the system. Different actors with different approaches end up at a similar point. Power imbalances appear only to explain a limited part of these developments. The process seems to be neither conscious nor directed. Meanwhile, the system continues to become more complex and legalized.

Table 2 Summary of Findings

	European Union	**United States**
WTO X	Uses more, but legally inflated (qualitative assessment Horn et al. 2010) Uses slightly less than U.S. (quantitative assessment author's own data)	Few provisions (qualitative assessment Horn et al. 2010) More WTO X provisions than EU (quantitative assessment author's own data)
Trend WTO X	Increase	Ambiguous/Absent
Regional templates WTO X (horizontal)	EU template used EFTA	Ambiguous if U.S. agreement is used in Americas/Not used
WTO Plus (vertical)	Uses less than U.S. (qualitative assessment Horn et al. 2010) Uses slightly more than U.S.	Uses more (qualitative assessment Horn et al. 2010) Uses slightly less than U.S.
Trend WTO Plus (vertical)	Ambiguous	No
Regional template WTO Plus (horizontal)	Ambiguous	No
Internal consistency (vertical)	Low	High
Over all evolution (vertical)	Random or regional patterns only	Steady, consistent
Environment (vertical)	Every case different	Expanding agenda, consistent
Anti-corruption (vertical)	Not available	Expanding agenda, consistent
Cultural cooperation (vertical)	Every case different	Not available

Source: author's own research.

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Appendix: Agreements

Chile	Australia	06 Mar 2009
Chile	Peru	01 Jul 1998
Chile	Mercosur	01 Oct 1996
Chile	Central America	15 Feb 2002
Chile	Korea	01 Apr 2004
Chile	Canada	05 Jul 1997
Chile	Mexico	01 Aug 1999
Chile	Costa Rica	15 Feb 2002
Chile	El Salvador	01 Jun 2002
Chile	China	01 Oct 2006
Chile	Japan	03 Sep 2007
Chile	Panama	07 Mar 2008
Chile	Colombia	08 May 2009
EU	OCTs	01 Jan 1971
EU	Serbia	08 Jan 2010
EU	San Marino	10 Mar 2006
EU	Syrian Arab Republic	01 Jul 1977
EU	Andorra	01 Jul 1991
EU	Turkey	01 Jan 1996
EU	Faeroe Islands	01 Jan 1997
EU	Palestinian Authority	01 Jul 1997
EU	Tunisia	01 Mar 1998
EU	South Africa	01 Jan 2000
EU	Morocco	01 Mar 2000
EU	Israel	01 Jun 2000
EU	Mexico	01 Jul 2000
EU	Macedonia, FYR	01 Jun 2001
EU	Croatia	01 Mar 2002
EU	Jordan	01 May 2002
EU	Chile	01 Feb 2003
EU	Lebanon	01 Mar 2003
EU	Egypt, Arab Rep.	01 Jun 2004
EU	Chile	01 Mar 2005
EU	Algeria	01 Sep 2005
EU	Albania	01 Dec 2006
EU	Cote d'Ivoire	01 Jan 2009
EU	Cameroon	01 Oct 2009
EU	Montenegro	01 Jan 2008
EU	Bosnia and Herzegovina	01 Jul 2008
EU	CARIFORUM	01 Nov 2008
EFTA	Canada	01 Jul 2009
EFTA	Turkey	01 Apr 1992
EFTA	Israel	01 Jan 1993
EFTA	Palestinian Authority	01 Jul 1999
EFTA	Morocco	01 Dec 1999

EFTA	Mexico	01 Jul 2000
EFTA	Macedonia, FYR	01 Jan 2001
EFTA	Croatia	01 Jan 2002
EFTA	Jordan	01 Jan 2002
EFTA	Singapore	01 Jan 2003
EFTA	Chile	01 Dec 2004
EFTA	Tunisia	01 Jun 2005
EFTA	Korea, Rep.	01 Sep 2006
EFTA	Lebanon	01 Jan 2007
EFTA	Egypt, Arab Rep.	01 Aug 2007
EFTA	SACU	01 May 2008
Mexico	Nicaragua	01 Jul 1998
Mexico	Bolivia	07 Jun 2010
Mexico	Columbia	15 Aug 2011
Mexico	Costa Rica	01 Jan 1995
Mexico	El Salvador/Guatemala	15 Mar/01 Jun 2001
Mexico	Israel	01 Jun 2000
Mexico	Japan	01 Apr 2005
Mexico	Uruguay	15 Jul 2004
United States	Israel	19 Aug 1985
United States	Jordan	17 Dec 2001
United States	Chile	01 Jan 2004
United States	Singapore	01 Jan 2004
United States	Australia	01 Jan 2005
United States	Morocco	01 Jan 2006
United States	Bahrain	01 Aug 2006
United States	Oman	01 Jan 2009
United States	Peru	01 Feb 2009
United States	CAFTA	01 Mar 2006 (+later)
United States	Korea	15 Mar 2012
United States	Panama	31 Oct 2012

Source: author's own research.

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