



Beyond the WTO? An Anatomy of EU and US Preferential Trade Agreements

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Motivation for the study

- Growing **number** and **scope** of PTAs
- Effect on the multilateral trading system. Two views:
 - Worry about discrimination and other negative effects
 - Multilateralising PTAs will solve the problem
- But what are the precise facts about PTAs?
 - We concentrate on EU and US PTAs, because systemic effects
 - We analyze their substantive content
 - An essential step before we discuss their effect



How we proceed

- Examine all 14 EU and 14 US PTAs with WTO members
- Divide the agreements into 52 policy areas falling into
 - 14 **WTO+**: areas already covered by the WTO Agreement
 - 38 **WTO-X**: new areas, 'beyond the WTO'
- For each agreement, identify which areas are covered
- For each agreement and each area covered, identify whether obligations are legally enforceable

The 28 PTAs

(trade in goods AND services in **red**)

	Concluded and in force	Concluded only	
EU	Turkey ('95) Mexico ('01) Tunisia ('95) FYRoM ('01) Israel ('95) Egypt ('01) Morocco ('96) Croatia ('01) Jordan ('97) Chile ('02) South Africa ('99) Albania ('06)		
	EEA ('92)	CARIFORUM ('08)	
US	Israel ('85) Morocco ('04) Jordan ('00) Bahrain ('04) Singapore ('03) Chile ('03) Australia ('04)	Peru ('06) Oman ('06) Colombia ('06) Panama ('07) Korea ('07)	
	NAFTA ('92)	CAFTA-DR ('04)	



The 14 WTO+ areas

- FTA Industrial goods
- FTA Agricultural goods
- Customs Administration
- Export Taxes
- SPS Measures
- State Trading Enterprises
- Technic. Barriers to Trade
- Antidumping
- Countervailing Meas.
- State Aid
- Public Procurement
- TRIMS Measures
- GATS
- TRIPs



The 38 WTO-X areas

- Competition policy
- Investment Measures (not covered by TRIMS or GATS)
- IPR (not covered by TRIPs)
- Free Movement of Capital
- Labor Laws
- Environmental Laws
- Social Matters
- Human Rights
- Political Dialogue
- Culture
- Audiovisual
- Statistics
- Energy
- Terrorism
- Drug Enforcement
- Taxation
- Money Laundering
- Illegal Migration
- SMEs
- Corruption
- Etc.



Defining legal enforceability

Test 1: Is the language sufficiently precise and committing to confer rights that could be enforced before a dispute court?

- “The parties shall allow the free movement of capital ...”
- “Neither party may impose performance requirements...”

vs

- “The parties shall cooperate to ...”
- “The parties shall strive (aim) to ...”.

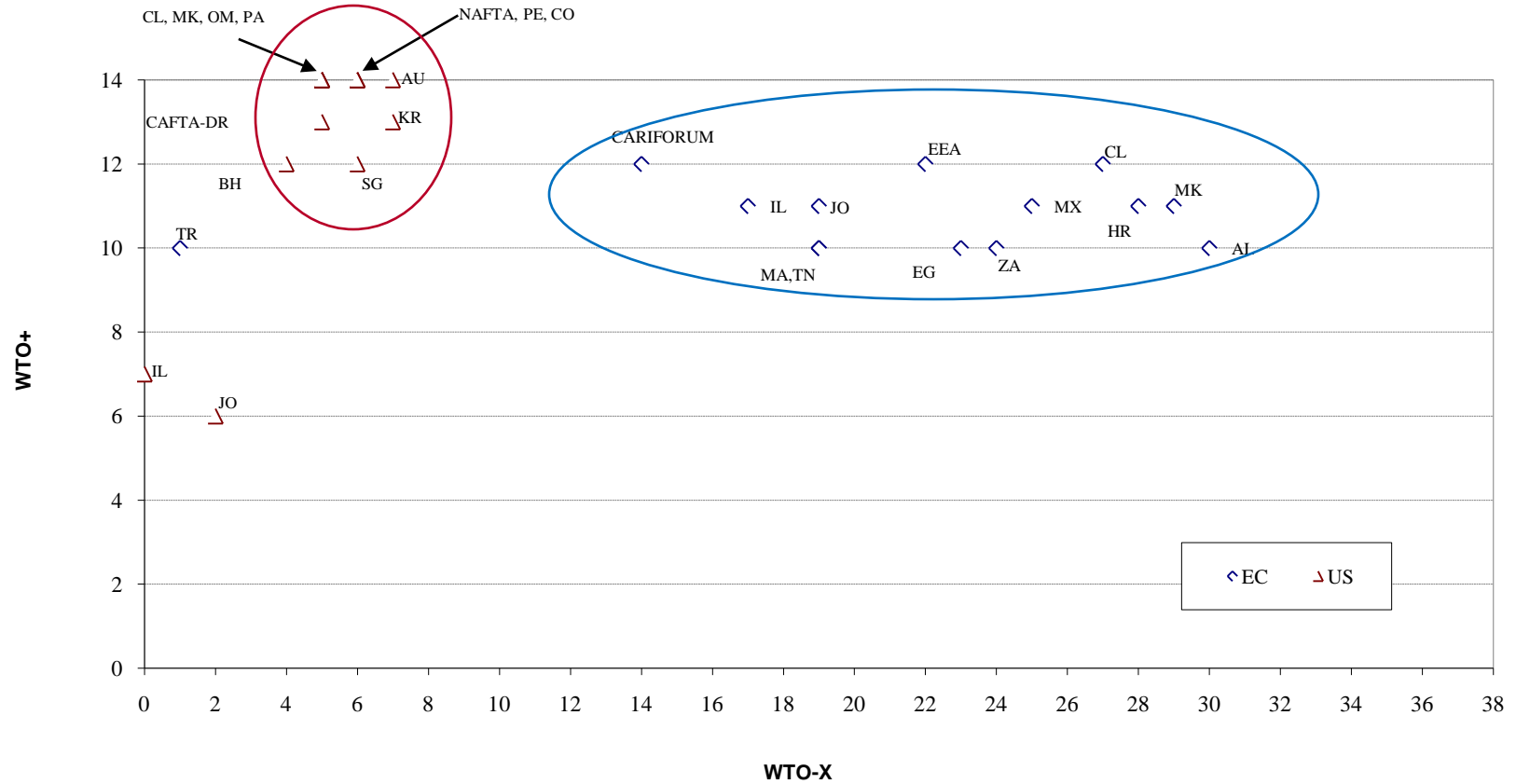
Test 2: Does the agreement allow dispute settlement for a particular area?



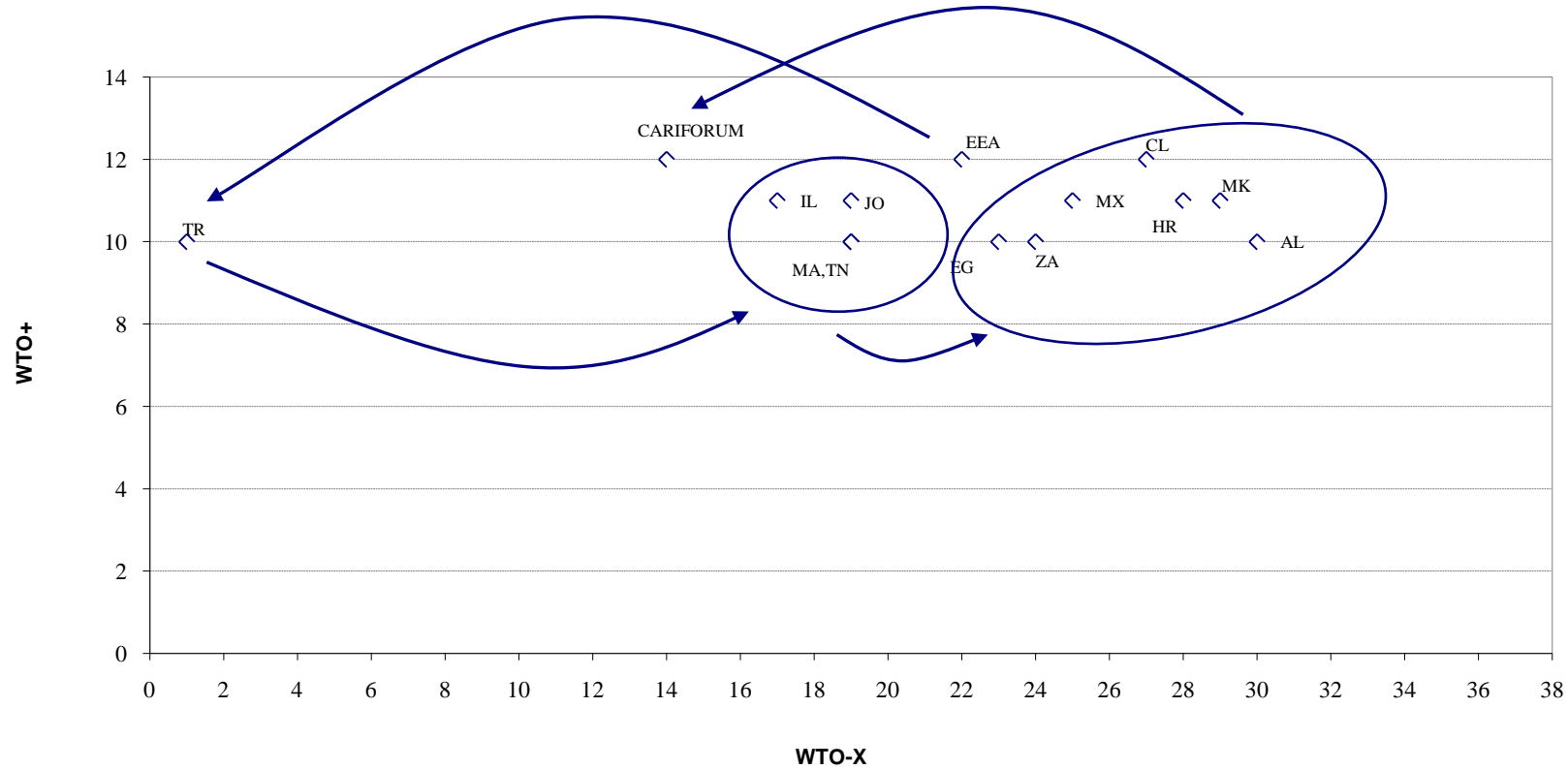
Caveats

- We examine only the texts of the PTAs, not their actual implementation or effects
- No evaluation of the “depth” of the undertakings
- Some degree of arbitrariness in classifications is inevitable, but the main results should be robust
- No claim that non-enforceable provisions are unimportant

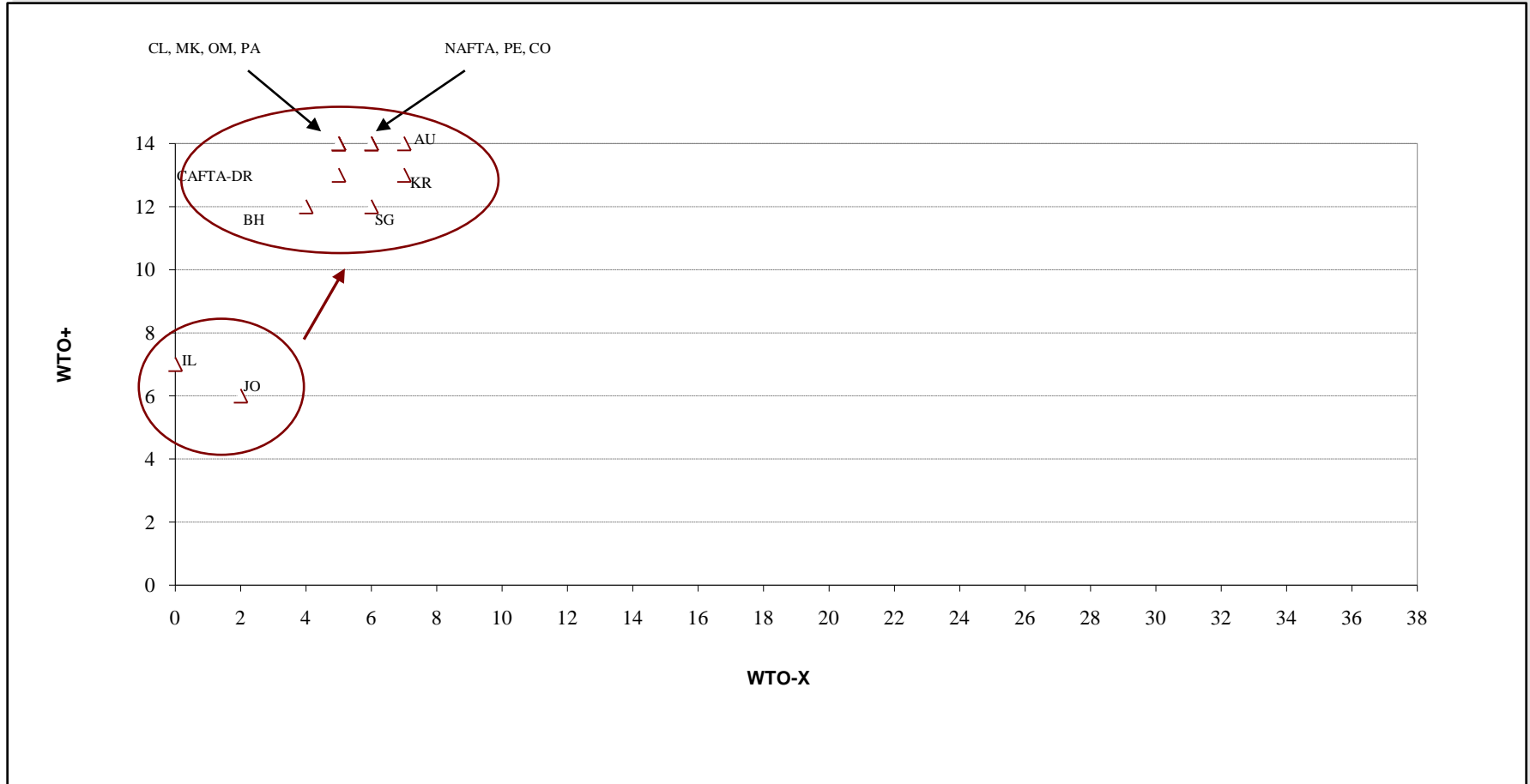
Areas covered in EC and US PTAs



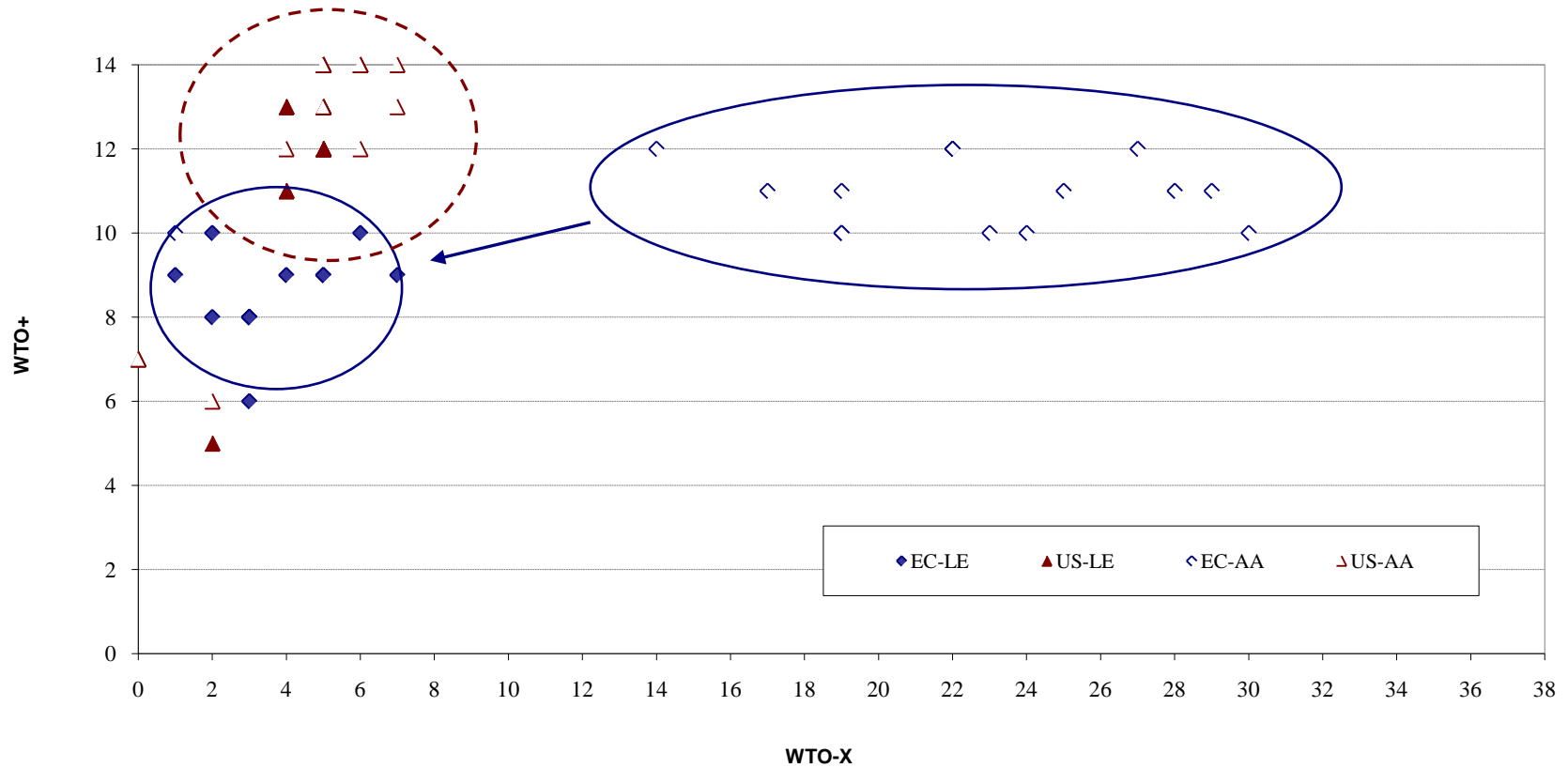
Evolution of coverage of EC PTAs



Evolution of coverage of US PTAs



Areas covered with enforceable obligations in EC and US PTAs





WTO+ areas with enforceable obligations

	Number of PTAs		Percentage	
	EU (14)	US (14)	EU	US
FTA Industrial	14	14	100	100
FTA Agriculture	14	14	100	100
Customs Admin.	13	13	93	93
TRIPs	13	14	93	100
AD	12	12	86	86
Countervailing Meas.	12	12	86	86
State Aid	12	11	86	79
State Trading	12	7	86	50
Public Procurement	7	13	50	93
TBT	5	11	36	79
GATS	4	13	28	93
SPS	3	2	21	14
Export Taxes	0	12	0	86
TRIMs	0	12	0	86



Results for WTO+ areas

- 50% of areas covered + LE in almost all EU and US PTAs
 - FTA, industrial and agricultural products
 - Customs administration
 - TRIPs
 - AD and CVD
 - State aid and state trading
- Other half are mostly or exclusively present in US PTAs
 - Public procurement
 - TBT
 - GATS
 - Export taxes
 - TRIMs



WTO-X areas with 7+ enforceable obligations

	Number of PTAs		Percentage	
	EU (14)	US (14)	EU	US
Movement of capital	13	12	93	86
Competition	13	0	93	0
IPR (non-TRIPs)	11	13	79	93
Investment	8	11	57	79
Social matters	7	0	50	0
Environment	2	13	14	93
Labor laws	2	13	14	93
Anti-corruption	0	8	0	57



Results for WTO-X areas

- Only 8/38 areas contain LE obligations in 7 PTAs or more
 - 3 areas concern both EU and US PTAs:
IPR, Investment, Capital Movement
 - 3 areas concern only or mainly US PTAs:
Anti-Corruption, Environment, Labour
 - 2 areas concern only EU PTAs:
Competition, Social Security

Legal inflation, by groups of areas

	EU PTAs			US PTAs		
	AC	LE	% L Infl.	AC	LE	% L Infl.
1. Trade/Investment (9)	95	86	9%	112	112	0%
2. GATS/TRIPs/IPR (3)	32	28	13%	40	40	0%
3. Migration/Social Reg (3)	23	10	57%	0	0	-
4. DomTrade-rel. Reg (11)	103	60	42%	103	78	24%
Trade and Regul. (26)	253	184	27%	255	230	10%
5. Other (26)	206	17	92%	1	1	0%
All areas (52)	459	201	56%	256	231	10%



Results for legal inflation

- Overall there is much more of it in EU than US PTAs
- Most of the EU legal inflation is outside the hard core areas of trade and regulations
- Nonetheless even in hard core areas, the EU displays more legal inflation than the US
- In Trade/Investment and GATS/TRIPS/IPR (12 areas)
 - The US has a bigger coverage than the EC (152 vs. 127)
 - And less legal inflation (0 vs. 10%)



Conclusions – 1

FINDINGS:

1. Both EU and the US PTAs cover a significant number of WTO+ and WTO-X areas. But EU PTAs cover many more WTO-X areas than do US PTAS
2. Significantly more legal inflation in EU than US PTAs, especially concerning WTO-X areas. Adjusting for legal inflation, US PTAs contain more WTO+ and nearly as many WTO-X obligations as EC PTAs.

WHY LEGAL INFLATION IN EU PTAS? Hard to believe it is unintentional. But can only speculate about reasons.



Conclusions – 2

FINDING:

3. Adjusting for legal inflation, both EU and US PTAs, contain a significant number of WTO+ obligations and some important WTO-X obligations

CONCLUSION:

Compared to the WTO, these PTAs are

- neither 'mainly more of the same' (mainly WTO+)
- nor 'mainly ventures into new territory' (mainly WTO-X)

even though emphasis still seems to lie in the WTO+ areas



Conclusions – 3

FINDING:

4. Many of LE obligations concern regulatory matters:

- investment, capital movement, intellectual property: EU & US
- environment, labour standards: US
- Competition policy: EU

CONCLUSION:

The PTAs effectively serve as a means for the two hubs to export their own regulatory approaches to their PTA partners

Since the EU and the US have pushed, and developing countries have generally resisted, to get these areas on the multilateral agenda, the PTAs in this respect seem to mainly benefit the EU and the US