

The Presence of the World Trade Organization within Preferential Trade Agreements

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Abstract:

Conventional wisdom holds that preferential trade agreements (PTAs) are at odds with the multilateral trading system and present a major challenge to the pre-eminence of the World Trade Organization (WTO). Little empirical research, however, has explored the relationship between the two. In this paper, we study the extent to which the WTO is “present” in PTAs by systematically comparing similarities in treaty obligations administered by the WTO and those inserted in PTAs. In particular, we examine two ways in which PTA negotiators might incorporate WTO obligations: 1) by explicitly making references to the WTO and its administered treaties, and 2) by copying language directly from WTO agreements. Perhaps surprisingly, we find that across several trade issues PTAs incorporate a substantial part of WTO law. Across most major trade issues, more than half, and often more than three-quarters, of PTAs make reference to the prevailing WTO agreement on the same issue. Furthermore, several PTAs take a substantial amount, sometimes even a majority, of their language directly from WTO agreements. Although these patterns vary across issues and countries, on the whole these unique findings illustrate a significant and underappreciated role for the WTO within the vast web of PTAs and suggests that perceived tensions between PTAs and the WTO could be somewhat overstated.

A. Introduction

The increase in venues to regulate economic exchange in the global trading system has spurred debates on the fragmentation of international economic law and challenges brought about by regime overlap (*e.g.*, Busch 2007, Alter and Meunier 2009). Most notably, the rise of preferential trade agreements (PTAs) has been accompanied by a vigorous discussion of how this ascendancy affects the multilateral trading system that has the World Trade Organization (WTO) at its core. The early debate was WTO-centric, as the question actively debated was whether PTAs represent a stepping stone or a stumbling block for the Geneva-based organization (*e.g.*, Srinivasan 1998, Bhagwati and Panagariya 2006). Studies on the economic effects of PTAs eased the criticism somewhat, as they showed substantial positive impact of PTAs on trade flows (*e.g.*, Baier and Bergstrand 2007, Dür et al. 2014).

Yet the concerns continue. As most major developments in trade cooperation continue to occur at the bilateral and regional levels, scholars have begun to search for ways to reconcile this trend with the multilateral system. In order to address possible frictions, new ideas have been developed as to how to “multilateralize regionalism” (Baldwin 2006). Recent legal work has hinted further at a dialectical relationship between PTAs and the WTO system (Cottier et al. 2015). On the one hand, specific regulatory approaches developed over time within the multilateral system can be introduced into PTAs. On the other hand, regulatory innovation may be debated first in the framework of a PTA (*e.g.*, NAFTA) and then partially or fully adopted in the multilateral negotiations. Anecdotal evidence suggests a multi-directional relationship. However, what is lacking in this debate is more systematic evidence – at the level of treaty contents – to show exactly how much WTO law is already embedded in PTA law.

This paper answers this question, but from a different angle and with unique empirical insights. From the vantage point of PTAs, we assess the amount of overlap with WTO law and showcase both the nature and extent to which PTAs incorporate WTO treaty obligations. By doing so, we aim to shed light on the long-standing debate about the actual presence of the WTO in today’s negotiations over the contents of PTAs. This allows us to get a better handle on measuring the fragmentation or coherence of WTO and PTA obligations.

We analyse the texts of hundreds of PTAs in two novel ways, building on the ongoing work of two different projects. The first is based on a comprehensive, manual approach to coding PTAs (Dür et al. 2014). The second is the calculation of text similarities using textual-analysis software (Allee and Elsig 2015a). The former looks at explicit references to the WTO found in PTAs and their sub-areas, and the latter provides percentage scores for WTO-PTA text overlap within a given issue area.

Our analyses, particularly using the first approach, reveal that the WTO has a significant “presence” in PTAs. For seven of the ten trade issues we examine, about half or more of PTAs refer to the prevailing WTO agreement in some form. Additionally, some PTAs consistently make reference to the WTO across all provisions contained in the agreement. We find that PTAs actually do copy-and-paste language verbatim from WTO agreements, but this finding is less consistent. Nevertheless, we uncover dozens of PTAs that take 60% or 70% (or more) of their text from a parallel WTO agreement. It also seems that the two methods – references and copy-pasting – tend to be positively associated and thus reinforce one another. Overall, then, we uncover a strong presence for the WTO within PTAs, which suggests that the two venues are perhaps more compatible than is often suggested.

B. The presence of the WTO in other trade agreements

Why would we expect the WTO to be “present” in preferential trade agreements? If PTAs give preferences to PTA partners, why should we assume that these agreements take into account WTO rights and obligations?

WTO law might be important for various reasons. First, WTO treaties are well established. Some of WTO law is based on a very long history, with the origins of some agreements going back to 1947. They have been negotiated and implemented over many years and have become prominent instruments of international economic law. Second, active use of available dispute settlement mechanisms throughout the history of the GATT/WTO regime has helped to clarify rules and therefore to complete to a significant degree the existing incomplete contracts. This increasingly clearer meaning of legal terms and obligations means that drawing directly upon WTO texts and agreements should entail less uncertainty as compared to crafting new phrasings, the meaning of

which could be more ambiguous. Third, the WTO today enjoys nearly universal applicability. It has 161 official members and 22 observers that are in accession talks. It no longer is perceived as a club of OECD states, and its laws are binding on the nearly-complete universe of participating Members. Fourth, trade negotiators for PTAs are also well-versed in WTO law. They are trained in, and exposed to, the WTO rulebook in their respective areas of expertise; they tend to follow developments in Geneva quite closely and are part of a wider trade law community. Overall, these factors lead to the development of shared expectations and acceptance of WTO trade rules, providing the foundational elements for the global trading system. This suggests that we should observe a significant presence of the WTO within PTAs.

Perhaps unsurprisingly, research on the relationship between the WTO and PTAs has proceeded largely according to the assumption of WTO centrism noted above. Some have looked more selectively at PTA provisions that go beyond WTO existing obligations (WTO Plus) or that cover areas that the WTO is not engaged in (WTO Extra). For instance, Horn et al. (2009) compare these elements within 14 EC and 14 US agreements. For the WTO Plus category they find that “the EC and US sets of agreements have a large number of legally enforceable obligations with significant undertakings in areas covered by the current WTO mandate, such as tariff cuts in goods, Customs Administration, Antidumping, Countervailing Measures, Agriculture, and TRIPs (Horn et al. 2009: 23).” Although they provide useful examples of additional trade commitments that are legally binding, their analysis does not explicitly capture the degree to which these go beyond the status quo and also does not allow for generalization beyond the US and EC. In addition, some contributions focus on selected areas, such as services commitments that surpass GATS commitments and existing service offers tabled in the Doha Round (Roy 2011). This research, however, does not provide explicit evidence of WTO presence in the first place, but focuses directly on additional commitments.

In terms of measuring actual treaty overlap, some research already has established that PTAs are far from unique and that copy-pasting from other PTAs is widespread (Allee and Elsig 2015a). In fact, for the majority of PTAs, more than 60% of text is lifted from another PTA – with this figure often reaching 90% or more. An important predictor for the most heavily-borrowed texts is whether a common country is present across agreements, thus providing an obvious past “source” for language used in a future treaty. For PTA partners, then, their earlier PTAs constitute a direct

channel from which they might borrow.¹ Yet we also believe there may be indirect channels of borrowing. Most notably, GATT and WTO treaty texts may serve as important sources for copy-pasting. Our goal, then, is to systematically explore the various ways in which the WTO obligations could be incorporated into PTAs, including but not limited to this type of copy-pasting.

C. Instruments of WTO presence

How can we measure the presence of the WTO in PTAs? We pursue two different approaches.

A first approach considers that PTAs may refer explicitly to other international economic law, namely WTO law. This is an often-used approach in international treaty-making and may be witnessed in the PTA's preamble and/or in the body text. By making a reference to the WTO body of law, negotiators: a) show that they are aware of important linkages to other international agreements, and b) attempt to describe to the degree possible the relationship to these agreements.

As an illustration of the different possible forms, consider the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), one of the pillars of the multilateral system. The most comprehensive approach may be to defer fully the TRIPS agreement and incorporate it completely, including its future evolution. For instance, Art. 9.1 of the Canada-Israel trade agreement states that "the rights and obligations of the Parties relating to intellectual property rights shall be governed by the Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C of the WTO Agreement, and any subsequent amendments to that Agreement."²

Other agreements go in a similar, although not quite as extensive, direction. Some state that the PTA obligations will not contradict WTO law. The US-Chile agreement, for example, states in Art. 17.1 that "nothing in this Chapter concerning intellectual property rights shall derogate from

¹ Interesting in this context is the question of which of the PTA partners' earlier PTAs serves as the template from which to borrow and which texts is utilized in cases of disagreement? Also, some PTAs might borrow from landmark PTAs to which their members are not a party (*e.g.* from NAFTA).

² In this respect Valdes and McCann write that "reaffirmation... may be seen as an acceptance of TRIPS Agreement provisions, including substantive standards and public policy safeguards and flexibilities, and thus recognition that it may serve as a kind of benchmark for a balanced and comprehensive IP system (2014: 14)."

the obligations and rights of one Party with respect to the other by virtue of the TRIPS Agreement.” Other agreements might focus on specific TRIPS obligations.³

Beyond these references, all of which suggest a full respect for WTO law, other references are more prospective. One example is the suggestion for PTA partners in the Cotonou Agreement between the EC and African, Caribbean and Pacific (ACP) Group of States to adhere to the WTO TRIPS Agreement.⁴ Although this reference is phrased in a non-binding way, its impact could turn out to be very significant because it invites non-WTO members to accept WTO and other international obligations to which they have not been subject in the past.⁵

As the example on TRIPS references suggest, the identification of WTO “presence” could involve the counting of references to the WTO and the categorization of different types of references for different sub-sections of PTAs. For instance, Valdes and McCann (2014) find that reaffirmations of WTO TRIPS obligations occur in 61% of PTAs involving intellectual property rights provisions. Their findings, generated in an approach similar to ours, suggest that specifically mentioning the WTO in PTA provisions could be an often-applied negotiation instrument. We probe more broadly for such mentions, across ten different PTA provisions.

A second way to identify “presence” is by assessing for each provision of a PTA the amount of treaty overlap with the GATT or WTO agreement that provides the multilateral rules for each area. By incorporating existing GATT/WTO texts, PTA negotiators signal that the contracting parties base their bilateral treaty obligations on the multilateral system. Borrowing text from the GATT/WTO can occur on the full range of relevant trade issues, ranging from market access commitments and behind the border rules, to the use of escape-clause measures and procedures for dispute settlement. Substantively, these texts can borrow core obligations of the WTO system, such as MFN or national treatment commitments, as well as certain procedural rules.

³ For instance in the Canada-Chile agreement (in the section on Geographical Indications) the treaty states that “as set out in Annex C-11 and taking into account the TRIPS Agreement, the Parties shall protect the geographical indications for the products specified in that Annex”.

⁴ Article 46 of this agreement on the protection of intellectual property rights states that both parties “underline the importance, in this context, of adherence to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)” (...) and “they also agree on the need to accede to all relevant international conventions on intellectual, industrial and commercial property as referred to in Part I of the TRIPS Agreement, in line with their level of development.”

⁵ This leads to other potential problems, as Valdes and McCann (2014) point out.

As an illustration of a core WTO value that is copied, we focus briefly on Art. 3 of the WTO Government Procurement Agreement (GPA) which refers to national treatment and non-discrimination. It states that:

1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall provide immediately and unconditionally to the products, services and suppliers of other Parties offering products or services of the Parties, treatment no less favourable than:

(a) that accorded to domestic products, services and suppliers; (...)

2. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall ensure:

(a) that its entities shall not treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership; and

(b) that its entities shall not discriminate against locally-established suppliers on the basis of the country of production of the good or service being supplied, provided that the country of production is a Party to the Agreement in accordance with the provisions of Article IV.

If we compare this wording with the Government Procurement provisions in the Japan-Mexico PTA of 2004, we find nearly identical wording for the section on national treatment. For example, Art. 120 on National Treatment reads (underlined words are exactly the same):

1. With respect to any measures regarding government procurement covered by this Chapter, each Party shall provide immediately and unconditionally to the goods, services and suppliers of the other Party offering goods or services of the other Party, treatment no less favorable than that accorded to domestic goods, services and suppliers.

2. With respect to any measures regarding government procurement covered by this Chapter, each Party shall ensure:

(a) that its entities shall not treat a locally-established supplier less favorably than another locally-established supplier on the basis of the degree of affiliation to, or ownership by, a person of the other Party; and

(b) that its entities shall not discriminate against locally-established suppliers on the basis of the country of production of the goods or service being supplied, provided that the country of production is the other Party in accordance with the provisions of Article 121.

We can expand to all WTO sub-areas to find additional sources for copy-pasting. Because the WTO also has attracted attention in the area of dispute settlement, some elements of the Agreement on Dispute Settlement (DSU: Understanding on Rules and Procedures Governing the Settlement of Dispute) also could be taken up in PTAs. For instance, we observe that the WTO approach (retaliatory measures) to inducing compliance in case of non-implementation as described in Art. 22 of the DSU is often replicated in some way in PTAs.⁶ To illustrate the overlap in wording, consider first the WTO article which states that:

“ (a) the general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment;
(c) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under the same agreement, and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under another covered agreement”

If we compare this article with Art. 21.12 of the Australia-Chile agreement of 2008 we find following text (underlined words are exactly the same):

(a) the complaining Party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the report of the arbitral panel referred to in Article 21.10 has found a failure to comply with the obligations under this Agreement, or nullification or impairment of benefits in the sense of Article 21.1(c); and
(b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may suspend concessions or other obligations with respect to other sectors.

This example, and perhaps many others, illustrates that there could be significant copy-pasting occurring from WTO agreements to PTAs. Next we examine whether such copy-pasting is rampant and whether it occurs alongside potentially widespread references in the text to WTO agreements and their associated obligations.

⁶ This article is titled “Compensation and the Suspension of Concessions” and it gives the right to the complainant party to suspend concessions in the same sector where non-compliance has occurred, potentially followed by similar steps in another area/sector (cross-sector).

D. Methodology

We utilize two very different methodologies to produce two distinct indicators for possible WTO presence. Both approaches, however, share a few common features. Both organize PTAs by trade issue, which mirrors the article-based structure of the agreements and also maps directly onto the way in which WTO agreements are negotiated by sector or measure. Accordingly, for both methods of analysis we study only those PTAs signed during or after 1994, when the final WTO (Uruguay Round) agreements were concluded and became publically known – and therefore could have been referenced or served as a type of template.⁷

The first method involves coding the PTAs manually for references to the relevant WTO agreement (and then tabulating the number of such references and percentage of PTAs that include them). To do this, we utilize the Design of Trade Agreements (DESTA) data set (Dür et al. 2014), which codes numerous design-feature variables for post-war PTAs, including variables on whether each trade issue addressed in the PTA includes some type of reference to the prevailing WTO agreement.⁸ Using this approach, we identify ten trade issues within PTAs that frequently have their own provision or article, each of which maps to a parallel WTO agreement. This approach captures the fact that a necessary condition for the PTA being able to evoke the WTO (on a given trade issue) is that the PTA actually addresses the issue (*i.e.*, contains the provision) on which the WTO has an existing agreement. The ten issues we examine for such references include: antidumping, general services, subsidies, technical barriers to trade (TBTs), sanitary and phytosanitary measures (SPS), public procurement, intellectual property, safeguards, dispute settlement, and investment.

The second method, used to examine text similarity between WTO agreements and PTAs, is more novel and requires a bit more elaboration. Once again, we subdivide the PTAs according to issue – this time identifying eleven important and distinct trade issues on which the WTO has a specific agreement(s).⁹ This delineation captures the fact that each WTO agreement could serve as a

⁷ In a few instances we also explore patterns for post-GATT (1947) or post-Tokyo Round (1979) agreements, although given the focus of the conference/volume we do not emphasize these findings here.

⁸ For coding details on how the WTO typically is referenced in each area, see Dür et al. (2014) and the associated codebook.

⁹ Nine of these are the same issues on which the DESTA data codes for WTO references.

template from which text is copied-and-pasted into the corresponding sections of PTAs.¹⁰ Accordingly, for each PTA, we extract the PTA text that addresses each of these eleven areas for comparison to each parallel WTO agreement.¹¹ Table 1 lists the eleven issues for which we compare WTO agreements to PTA text on the same issue.

Table 1: Trade Issues for Text Comparison, along with corresponding WTO Agreement

Trade Issue	Corresponding WTO Agreement
Financial Services	Understanding and Annexes on Financial Services (1995)
General Services	General Agreement on Trade in Services (GATS) (1994)
Telecom	Telecommunications Reference Paper and Annex (1996)
Safeguards	Agreement on Safeguards (1994)
Antidumping	Article VI and Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (1994)
Intellectual Property	Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) (1994)
Procurement	Agreement on Government Procurement (1994)
TBT	Agreement on Technical Barriers to Trade (1994)
SPS	Agreement on the Application of Sanitary and Phytosanitary Measures (1994)
Dispute Settlement	Understanding on Rules and Procedures Governing the Settlement of Disputes (Dispute Settlement Understanding) (1994)
Investment	Agreement on Trade-Related Investment Measures (TRIMs) (1994)

Now that the appropriate WTO agreements and PTA texts have been identified, we proceed to systematically compare how much of the WTO language has been appropriated directly into each

¹⁰ Note that a PTA might not include language on all eleven issues.

¹¹ For most trade issues, and for the overwhelming majority of PTAs, the relevant information is clearly delineated and contained in one (or more) articles in the PTA. Nevertheless, for situations in which the relevant information on a trade topic is spread across articles or found in multiple places in the PTA, we develop a set of detailed coding rules for compiling all of the relevant PTA text on that issue. These coding guidelines are available from the authors by request.

PTA. First we standardize the texts of all agreements to prepare them for analysis. Since nearly all PTA texts (and WTO agreements) are in .pdf format, we first convert those texts to Microsoft Word before ultimately converting them to plain text format.¹² To analyse the amount of text in each PTA sub-section that matches language in corresponding WTO agreement, we utilize DupeFreePro, a text-comparison software whose “Bulk Compare” feature allows one to compare hundreds of texts to all other texts (or in our case, hundreds of PTA subsets to the corresponding WTO agreement) and calculates the percentage of content that is shared among (or unique to) all pairings of treaties. It also allows for the visual, side-by-side comparison of any two texts and highlights areas of text overlap. Also helpful is the fact that DupeFreePro allows one to specify different parameters for matching and comparison. Most notably, we specify seven words to constitute a match (consistent with industry standards)¹³ and take a number of steps to enhance the validity of our comparisons, which on the whole are probably somewhat conservative.¹⁴

E. Findings on the Presence of the WTO in PTAs

Findings for both sets of results, along with several follow-up analyses, are presented throughout this section in Tables 2-6b. Overall the findings indicate a sizeable presence for the WTO in PTAs, particularly in terms of PTAs including references to the WTO within their key provisions. Some PTAs, in fact, reference the WTO across all nine or ten major provisions they contain. We also uncover some, albeit less widespread, support for the conjecture that PTAs might copy language directly from WTO agreements. Such dynamics are most visible in less developed trade areas, and we observe dozens of cases in which a majority of the text in a PTA subsection is taken verbatim from a WTO agreement. The evidence also suggests that references to the WTO and

¹² In a handful of situations in a treaty text was damaged and we could not repair it or identify an undamaged alternative.

¹³ Several studies that compare the text of opinions written by U.S. Supreme Court justices to various written briefs submitted by the parties involved or interested in the case match on six words, which is the default setting for the software used in those studies (*e.g.*, Collins et.al. 2013; Corley et.al. 2011; Feldman 2015).

¹⁴ We include common words in our matches, because theoretically we expect large passages of texts to be copied, and all words should be part of the copy-pasting process. Excluding common words would break strings of copied text and generate false mismatches. In order to further calibrate matching, we identify a series of words that might be spelled differently across treaties (with or without hyphens, US vs. UK spellings) so that these minor differences do not disrupt matches. We ignore numbers and Roman numerals (and accompanying punctuation) that are used in headings and lists, since these vary from treaty to treaty in idiosyncratic ways. Notwithstanding the aforementioned rules, some remaining text simply will not be matched properly due to minor differences associated with proper nouns, punctuation, spelling, and spacing that we cannot address systematically. In general, we believe these parameters constitute a relatively conservative approach to identifying “matching” text between WTO agreements and PTAs.

copy-pasting of WTO text tend to serve as complements instead of substitutes. Finally, some initial exploration of which PTAs tend to incorporate a strong WTO presence indicate that a diverse set of actors evoke the WTO, including some of the most notable state (United States, China, Japan, Australia) and regional (ASEAN, EFTA) actors in the global trading system.

Table 2 presents the findings for the first method of comparison – the one that probes for some form of reference to the WTO with a given PTA provision. Overall we find that PTAs systematically do include references to the WTO across important provisions, with particularly high rates of inclusion on notable trade topics. For six of the ten trade issues, more than half of PTAs reference the WTO in some way. In fact, more than four-fifths of PTAs make such references with regard to antidumping, and approximately 70% do so with regard to subsidies and services. In general, we view the findings reported in Table 2 as broad and fairly sweeping evidence for a strong, general presence for the WTO within PTAs.

Table 2: References to the WTO in PTAs

Trade Issue	Percentage of PTAs (containing the relevant provision) that reference the WTO	N
Antidumping	82.1%	392
Subsidies	70.4%	371
Services	68.7%	280
TBT	64.4%	292
SPS	58.1%	320
Procurement	52.7%	226
Intellectual Property	47.7%	260
Safeguards	38.1%	458
Dispute Settlement	23.2%	483
Investment	2.3%	304

Nevertheless, we observe wide variation in terms of the issues in PTAs that make reference to the WTO. As noted above, antidumping is an area in which we see widespread acknowledgment of

WTO obligations and standards. This is perhaps not surprising, since AD is an issue that is highly-developed within the WTO regime. Multiple AD agreements have been negotiated over the GATT/WTO regime's lifetime, and AD is an issue that has been addressed vigorously within the WTO dispute settlement process. Moreover, national antidumping procedures governing the use of antidumping tend to flow from the well-specified multilateral rules.

By contrast, references to the WTO are quite rare on issues such as investment and dispute settlement. For investment, the infrequent references likely reflect the fact that the TRIMS agreement plays a less central role in global investment than bilateral investment treaties (BITs) and the investor-state arbitration proceedings that often emerge from BITs. The story for dispute settlement is somewhat different. Nearly all PTAs specify some procedures for dispute settlement, but they are quite heterogeneous in terms of their length and the modes of settlement they allow (Allee and Elsig 2015b). States that create preferential trade arrangement tend to want to establish their own dispute settlement institutions instead of simply importing multilateral ones, perhaps due to the high costs associated with the highly institutionalized WTO dispute settlement system. Moreover, only selected PTA with strong aspirations beyond economic integration (*e.g.*, Mercosur) are likely to model their dispute settlement mechanisms after the WTO's DSU (Arnold and Rittberger 2013).

The findings thus far are based on a coding standard that looks for any type of reference to the WTO across trade issues, without distinguishing the nature of that reference. Next we take some preliminary steps to uncover the different types of references to the WTO that are made. We explore PTA provisions on intellectual property – an area in which WTO references occur in just under half of PTAs – as an illustrative example that could guide future coding. Our survey of 125 intellectual property provisions in PTAs reveals seven ways that the WTO TRIPS agreement is evoked: i) affirmation of WTO rights and obligations, ii) national treatment exceptions in line with TRIPS, iii) no derogation from TRIPS, iv) geographical indications protections under TRIPS, v) statements on the importance of adherence to TRIPS, vi) cooperation based on TRIPS, and vii) miscellaneous citations of the TRIPS agreement. The first one is the most prevalent: we identify 88 PTAs (out of the 125) in which the parties affirm their rights and obligations under TRIPS. This language typically occurs at the very outset of the PTA's intellectual property provision. Next we uncover 12 instances in which the PTA states that any national treatment exceptions must

be in accordance with Articles 3 and/or 5 of the TRIPS agreement. Several of the other types of references occur in between 5 and 10 PTAs. On the whole, then, the references to the WTO in PTA IPR provisions take both general and specific forms, and tend to tie the PTA signatories more closely to WTO law.

Next we turn to our second methodology, which probes whether language from WTO agreements is incorporated by states directly into their PTAs. In sum, we find some support for this type of WTO presence, but the results are less systematic and more nuanced. The second column in Table 3 displays the average overlap across issue areas in terms of how much text is copy-pasted from the relevant WTO agreement into the corresponding provision in a PTA.

Table 3: Amount of Text from WTO Agreements that is Copied-and-Pasted into PTAs

Trade Issue	% of text that is copied directly from relevant WTO agreement (average across all PTAs that contain relevant provision)	# of PTAs that copy 25% or more of their text from relevant WTO agreement	# of PTAs that copy 50% or more of their text from relevant WTO agreement	N
Financial Services	19.0%	9	3	39
General Services	14.4%	31	13	131
Telecom	11.4%	9	0	30
Safeguards	5.1%	6	1	219
Antidumping	4.8%	6	2	181
Intellectual Property	4.8%	3	0	170
Procurement	4.0%	8	1	149
TBT	3.8%	6	0	174
SPS	2.8%	2	1	167
Dispute Settlement	2.5%	4	0	243
Investment	.4%	0	0	121

At first glance these numbers in the second column might seem low – particularly compared to the percentages returned by the other method of comparison. Yet a few important caveats are in order, which we discuss in more detail below. First, *ex ante* we would expect these “percentage” numbers to be relatively modest. One reason is because of the nature of this type of WTO presence; according to conventional wisdom on international negotiations and bargaining, one should expect trade negotiators to carefully negotiate important PTA provisions instead of copying a substantial amount of language verbatim from a separate, multilateral agreement. Second, the overlap percentages in general are likely to be conservative, for all of the reasons noted earlier. Third, the numbers in the second column of Table 3 are averages across all PTAs. Some PTAs actually take more than half of their text directly from the respective WTO agreement, whereas others copy nothing from related WTO documents.

In fact, if we turn our attention to columns 3 and 4 of Table 3 the picture shifts toward one where there appears to be a much stronger presence for the WTO, and WTO language, in particular, in certain PTAs. Column 3 indicates the number of provisions across PTAs in which at least one-quarter of the language is copied directly from a WTO agreement. Some 84 PTA-provisions borrow at least 25% or more of their text word-for-word from the WTO. Perhaps more notably, 21 PTAs copy-and-paste 50% or more of their provision directly from the corresponding WTO agreement (see Table 3, column 4). Clearly, then, there are some situations in which trade negotiators borrow heavily from WTO law in putting together a PTA. Furthermore, general services provisions comprise approximately three-eighths and five-eighths of these totals, respectively, suggesting some further potential differences in the WTO’s presence across issues areas.

Returning to the second column in Table 3, we do indeed observe notable variation in WTO-based copy-pasting across issue areas. Within some provisions, such as those on financial services, general services, and telecom, the average PTA will copy between 10-20% of its text from the corresponding WTO agreement. By contrast, in other areas a PTA on average will copy less than 5% of its text from parallel WTO agreements, with investment provisions copying virtually nothing from TRIMS.¹⁵ Our primary conjecture to explain this pattern is the difference between

¹⁵ We suspect the low results for investment can be explained by the same reasons we discussed previously for references to the WTO.

new vs. old trade areas. Today’s regulatory challenges demand modern solutions. In these newer areas, where there is perhaps less guidance on what to specify in trade agreements and where rules are not well-established, the WTO agreement may serve as a focal point from which negotiators may draw language. In more established areas, by contrast, trade negotiators should be less apt to lean so heavily on WTO language.

This also raises the issue of whether our two indicators of WTO presence – the first of which captures WTO references and the second of which assesses the amount WTO-derived copy-and-pasting – serve as complements or substitutes. That is, does evidence for one type of WTO presence in a PTA make the other type of WTO presence more or less likely to emerge? Or put differently, does including a reference to the WTO serve as a shortcut (replacement) for incorporating WTO language directly? In sum, although the evidence is not fully definitive, we certainly interpret it as suggesting that the two indicators are complementary.

Table 4: Complementarity of WTO-Reference and Copied-WTO-Text Variables

Trade Issue	Correlation between WTO Reference variable and Text Overlap variable	Ranking in terms of Frequency of References to WTO	Ranking in terms of Percentage of Text taken from Relevant WTO Agreement
Antidumping	-.264	1	5
Services	.153	2	2
TBT	-.043	3	8
SPS	-.050	4	9
Procurement	-.068	5	7
Intellectual Property	.349	6	6
Safeguards	.461	7	4
Dispute Settlement	.433	8	10
Investment	.324	9	11

NOTE: Lower ranking numbers indicate greater presence of the WTO.

Table 4 presents two types of evidence for the potential complementarity of the two WTO presence indicators. The first type, shown in the second column of the table, depicts the correlations across all PTA provisions between the WTO reference variable and the variable indicating the amount of text taken from the corresponding WTO agreement. The majority of the correlations are positive, indicating that the two variables tend to work in the same direction. Although four of the cross-variable correlations are negative, the comparative magnitude of the positive vs. negative correlations nudges us closer to a conclusion of complementarity. Three of the four negative correlations depicted in column 2 are very low, below -.10. By contrast, all but one of the positive correlations across variables are sizable, in the range of +.3 and +.5. The second type of evidence is shown in columns 3 and 4 of Table 4, which depict and compare the relative ranking of how much WTO presence is found in each issue area according to each variable. Notably, both dispute settlement and investment rank at the very bottom (lowest WTO presence) for both the WTO-reference variable and the text-copying variable. Intellectual property is similarly consistent, falling in the middle (ranked 6th) for both indicators. Although there are more “gaps” between the two rankings on other issues, the patterns there are somewhat ambiguous. Lastly, we identify general services as an issue in which the rankings across the two indicators of presence are consistently high (ranked 2nd for both). Indeed, we had identified general services previously as a topic that reflected a strong WTO presence, according to both methods of analysis. Overall, then, the evidence suggests that the two indicators of WTO presence work more in tandem than they do as alternatives.

Finally, we reveal some patterns in terms of which PTAs and which actors are more likely to evoke the WTO in their agreements. Although a comprehensive treatment of this issue is beyond the scope of this paper, some preliminary patterns are suggestive. Sticking with the second method that compares text overlap, Table 5 shows the PTAs, and the provisions within them, that copy-paste the greatest percentage of their text from a WTO agreement. Initially one is struck by the diversity in Table 5 across actors, geographic regions, and time. Upon closer examination, however, a few patterns are evident. Most obviously, some of the overlap percentages are very high. Several PTAs copy between 60% and 80% of their language directly from a WTO agreement – which means they are relying almost completely upon what is specified under WTO law. Our side-by-side comparison of these PTA provisions to their WTO parallel indicates a typical pattern, which is that the PTA provisions tend to be reasonably long in these cases. They tend to copy a

few entire paragraphs (articles) from the WTO agreement, and then also to copy selected sentences from other articles. Another pattern revealed is that certain issues continue to be most amenable to a strong WTO presence. General services, for instance, is the locus of many instances of the greatest copy-pasting from WTO agreements, followed by government procurement.

Table 5: PTAs that Copy the Most Text Language from a WTO Agreement

PTA	Year	Amount of Text Copied from relevant WTO Agreement	Trade Issue
Israel-Mexico	2000	77%	Procurement
Baltic Free Trade Area	1997	74%	SPS
Brunei-Japan	2007	71%	Financial Services
Japan-Singapore	2002	67%	General Services
Colombia-EFTA	2008	65%	General Services
GCC-Singapore	2008	64%	General Services
Australia-Singapore	2003	62%	Procurement
EFTA-Singapore	2002	62%	General Services
China-Singapore	2008	61%	General Services
Japan-Switzerland	2009	57%	General Services
SADC	1996	57%	Safeguards
Australia-Singapore	2003	55%	General Services
Iran-Syria	2006	54%	Antidumping
EU-Serbia	2008	53%	Procurement
India-South Korea	2009	52%	General Services
Japan-Philippines	2006	52%	General Services
China-New Zealand	2008	52%	General Services
Japan-Vietnam	2005	52%	General Services
Iran-Pakistan	2004	51%	Antidumping
India-Singapore	2005	51%	General Services
Brunei-Japan	2007	50%	General Services

Turning now to the actors and their resulting agreements, within Table 5 we see many bilateral PTAs, but also broader regional groupings (such as the Baltic Free Trade Area and the Southern African Development Community) as well as regional-state combinations. Asia appears to be well-represented among the countries who borrow most heavily from WTO language. Japan and Singapore, for instance, appear multiple times on the list in Table 5. More broadly, major actors in the region such as India and China also copy relatively heavily from the WTO in at least some agreements, as do smaller states such as Brunei. Other WTO-language-borrowers include global players such as the EU as well as the EFTA countries, as a group and individually (Switzerland), along with Mexico.

Table 6a: PTAs with the Greatest Number of Issue Areas that Reference to the WTO

PTA	Year	Number of Issue Areas that Reference the WTO
South Korea-Singapore	2005	10
CARIFORUM-EU	2008	9
CAFTA-DR	2004	9
Chile-South Korea	2003	9
EFTA-South Korea	2005	9
EFTA-Singapore	2002	9
South Korea-United States	2007	9
Malaysia-New Zealand	2009	9
Malaysia-Pakistan	2007	9
Morocco-United States	2004	9
Peru-Singapore	2008	9

Turning lastly to the original method of identifying references to the WTO in PTAs, Table 6a and 6b indicate the countries that include the greatest number of WTO references across their PTA provisions (6a) as well as the highest percentage of provisions that reference the WTO (6b). Once

again, a certain amount of heterogeneity is evident, but familiar patterns also emerge in terms of who most frequently includes such references. In this pair of tables we see notable multi-actor PTAs (like DR-CAFTA) along with several agreements between regional actors and individual states (Mercosur and ASEAN with various partners). Geographically, Asia and the Pacific Rim are well represented. The two tables include countries that span from India to Malaysia to Korea, and down to New Zealand across to Peru. Also striking is the inclusion on the list of major trade actors. The United States and the EU make the list multiple times, as do India and South Korea, continuing a pattern seen in Table 5.

Table 6b: PTAs with the Highest Percentage of Issue Areas that Reference the WTO

PTA	Year	% of Issue Areas that Reference the WTO *
Afghanistan-India	2003	100%
ASEAN-India	2009	100%
ASEAN-South Korea	2006	100%
Chile-India	2006	100%
Honduras-Mexico	1984	100%
India-MERCOSUR	1984	100%
South Korea-Singapore	2005	100%
Malaysia-New Zealand	2009	100%
Malaysia-Pakistan	2007	100%
MERCOSUR-SACU	2004	100%
Peru-Singapore	2008	100%
Peru-Thailand	2005	100%
CARIFORUM-EU	2008	90%
CAFTA-DR	2004	90%
Chile-South Korea	2003	90%

EFTA-South Korea	2005	90%
EFTA-Singapore	2002	90%
South Korea-United States	2007	90%
Morocco-United States	2004	90%

* At least two issue areas required.

F. Conclusion

In this paper we pursued a two-pronged approach toward systematically testing for the “presence” of the WTO within PTAs, looking to see whether and how various Uruguay Round agreements have made their way into modern PTAs. Based on our first and more conventional analyses, it is clear that the WTO is indeed present within many provisions in many PTAs. We find widespread references to the WTO across PTAs, on some of the most important trade issues. Moreover, further investigation reveals that these references often explicitly and strongly tie PTA signatories to WTO law. Our second, more novel, analyses reveal another type of WTO presence: selected PTAs copy a sizeable amount of text directly from WTO agreements. This is particularly true in newer trade areas, such as services. Moreover, these two forms of WTO presence often exist simultaneously, and major trade actors appear to be most likely to include WTO rights, obligations, and language in their PTAs.

Two avenues are ripe for future research. One is to probe more deeply into the types of references to the WTO that are made and what they entail. A “pilot” investigation of intellectual property revealed that many different types of references are made, and some are surprisingly strong in binding PTA signatories to their WTO-based obligations. Likewise, across the range of issues covered in our study we hope to showcase the spectrum of WTO references that are made and how strongly they harmonize WTO and PTA obligations. A second pathway is to more systematically test which PTAs, and which actors, are more likely to link their PTAs to WTO law through either of the pathways we identify. Some PTAs clearly evoke the WTO more strongly than others. It certainly appears that prominent state and regional actors, as well as those in Asia, are perhaps more likely to do so, which if true would portend well for the future of the WTO. Yet another

class of explanations might expect less-developed or experienced actors to lean more explicitly on WTO agreements. In any event, we believe it is important for various policy debates to show the conditions under PTAs will be more closely linked to WTO agreements. Moreover, other variation that we uncovered, such as that across issue areas, also warrants further investigation.

Our goal has been to present novel and much-needed empirical insights on an often-debated topic. Some questions have been answered, while new ones have arisen. The relationship between PTAs of various types and the WTO is an important one, and we hope that we have shed light on some interesting aspects of this relationship. It seems safe to assume that the WTO-PTA debate is likely to continue, if not intensify, in the face of mega-regionals and ongoing bilateral agreement-making, coupled with lingering uncertainty about the next steps for the WTO. There are important debates to be had, yet we believe they require more careful and unique empirical investigations, such as the one we have undertaken. Twenty years on we can say that the WTO has contributed much to the global trading system. The conclusion we reach is that the Uruguay Round agreements are much more “present” in the constellation of PTAs that has been realized.

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