

# NON-TARIFF MEASURES WEEK

## NTMs: The Good, the Bad, and the Ugly

14-15 October 2019

### NTMs in PTAs

by

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# **NTMs in PTAs**

**Manfred Elsig**

**Panel on Trade Tensions: Wars Beyond Tariffs  
NTM Week, UNCTAD, 15 October 2019**

# NTMs in PTAs

- General observations
- PTA models, boilerplate and diffusion
- USMCA – changing preferences in terms of NTMs?
- Which NTMs most likely affected by emerging economic nationalism?

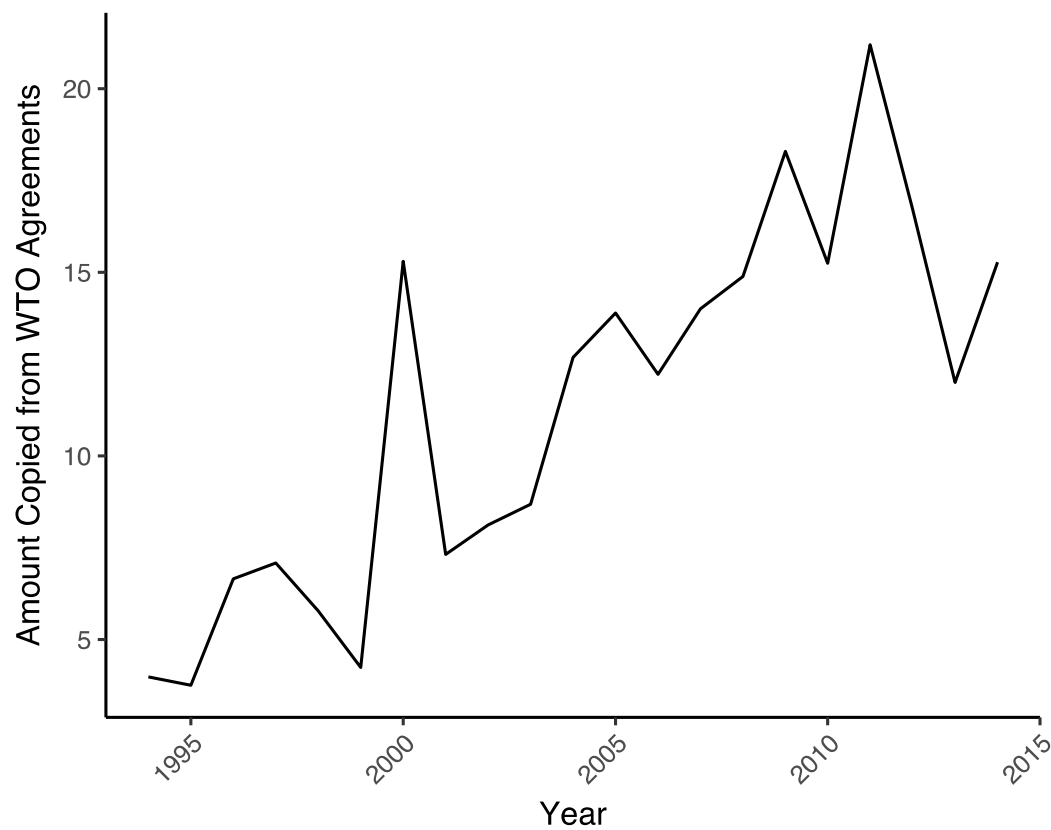
## General observations

- What we thought to know:
- Tariffs go down, interests in NTMs go up
- NTMs are preferred to tariffs in democracies (Kono's optimal obfuscation)
- NTMs (positive integration), more difficult to find agreements (coordination game, battle of sexes)
- And now:
- Tariffs currently preferred instrument for US  $u^b$  Administration

# NTMs in PTAs

- Potential for WTO Plus / Extra
- Often de facto MFN (e.g. IPRs)
- WTO «presence» in PTAs is substantial (referencing and copy-pasting)

## Yearly Average Copied Text Across 11 WTO Agreements 1994 – 2015.



## Percentage of Text in PTAs that is Copied-and-Pasted from WTO Agreements

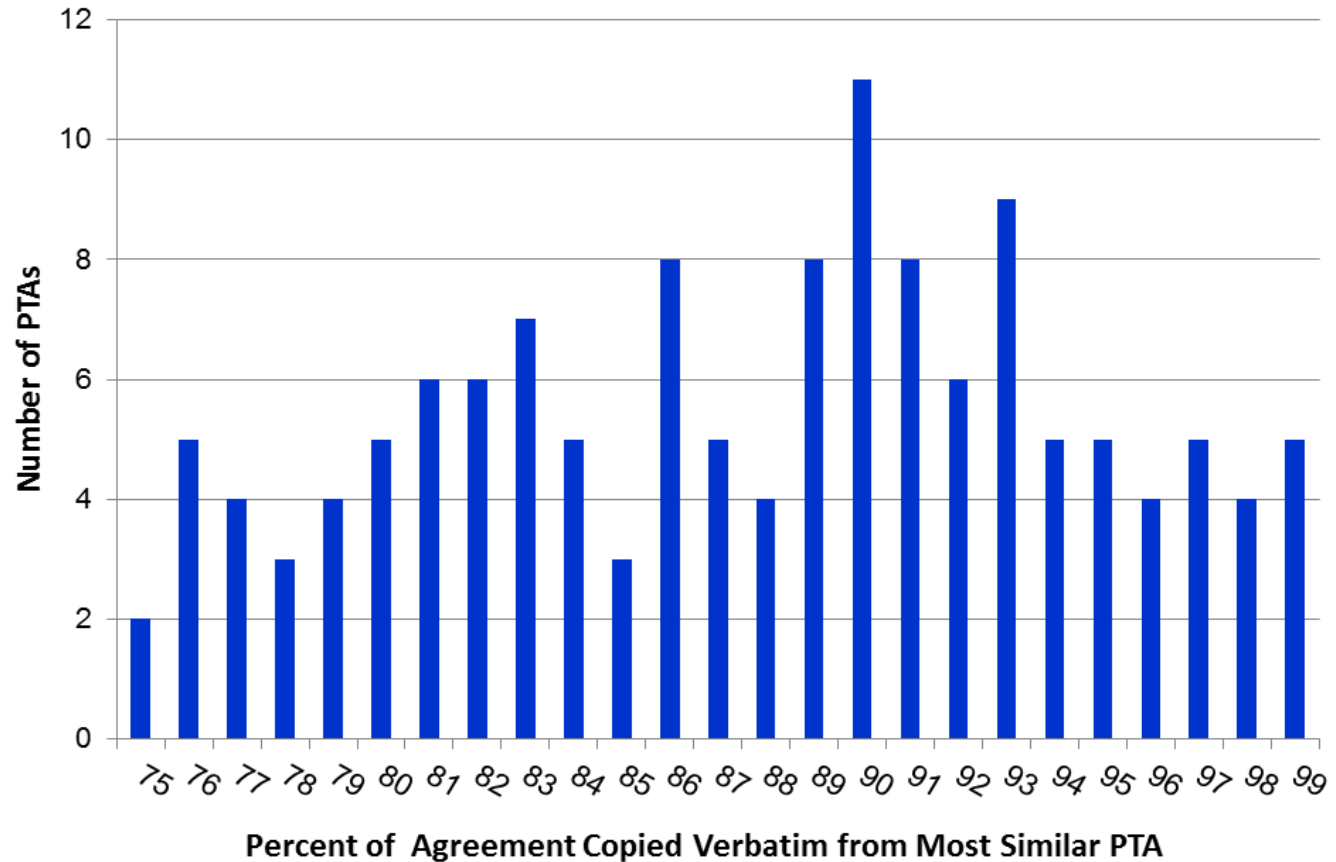
Trade Issue	Average Percentage Copied across all PTAs (that contain the relevant provision)	Maximum percentage copied by any single PTA	No. of PTAs that copy 25% or more of their text from relevant WTO agreement
<b>General Services</b>	23.0	76 (3,678 words)	69
<b>Telecom</b>	19.6	63 (1,380 words)	16
<b>Antidumping</b>	15.6	54 (1,374 words)	32
<b>Procurement</b>	11.7	80 (6,169 words)	19
<b>TBT</b>	11.3	60 (409 words)	15
<b>SPS</b>	10.7	51 (558 words)	22
<b>Safeguards</b>	10.5	64 (703 words)	29
<b>Intellectual Property</b>	10.1	32 (1,822 words)	10
<b>Dispute Settlement</b>	5.6	40 (1,677 words)	10
<b>Financial Services</b>	3.5	17 (322 words)	0
<b>Investment</b>	0.3	4 (80 words)	0

## Percentage of PTAs that Reference the WTO, by Issue Area

Trade Issue	Percentage of PTAs (containing the relevant provision) that reference the WTO	Maximum number of WTO References
Antidumping	90.3 (289/320)	8
Services	83.7 (206/246)	3
TBT	74.2 (216/291)	13
SPS	73.0 (216/296)	7
Intellectual Property	61.1 (154/252)	4
Safeguards	60.4 (201/333)	9
Procurement	50.7 (109/215)	5
Dispute Settlement	38.0 (134/353)	9
Investment	4.4 (11/251)	4



**Figure 2: Distribution of Agreements that Copy the Most Text from another Agreement**



## Median and Maximum Amount of Text Shared with Closest Treaty Match by Trade Topic

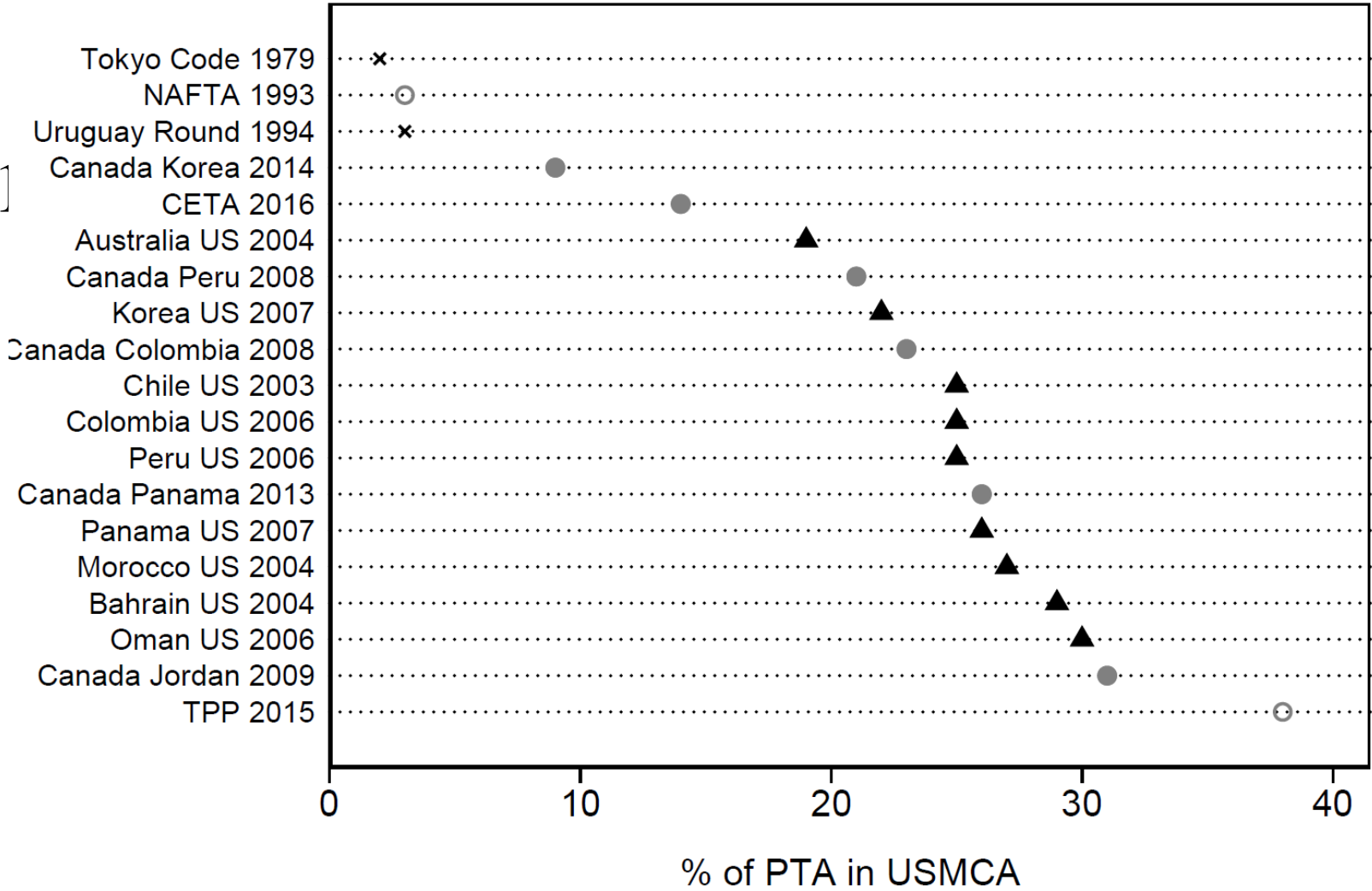
<i>Part of PTA that is being Compared</i>	<b>Median Overlap</b>	<b>Max Overlap</b>	<b>n</b>
<b>Complete Text</b>	<b>56%</b>	<b>99%</b>	378
<b>Antidumping</b>	88%	100%	261
<b>Procurement</b>	86%	100%	194
<b>Safeguards</b>	80%	100%	327
<b>Services</b>	77%	100%	184
<b>Labor</b>	74%	99%	24
<b>Intellectual Property</b>	72%	100%	218
<b>Sanitary and Phyto-Sanitary</b>	71%	100%	217
<b>Financial Services</b>	70%	100%	61
<b>Technical Barriers</b>	68%	100%	221
<b>E-Commerce</b>	67%	100%	45
<b>Dispute Settlement</b>	66%	100%	366
<b>Investment</b>	65%	100%	177
<b>Telecommunications</b>	64%	100%	64
<b>Movement</b>	50%	97%	82
<b>Environment</b>	50%	100%	56
<b>Average across all fifteen sub-issues</b>	<b>70%</b>	-	378

## US turn in NTMs? What does USMCA tell us

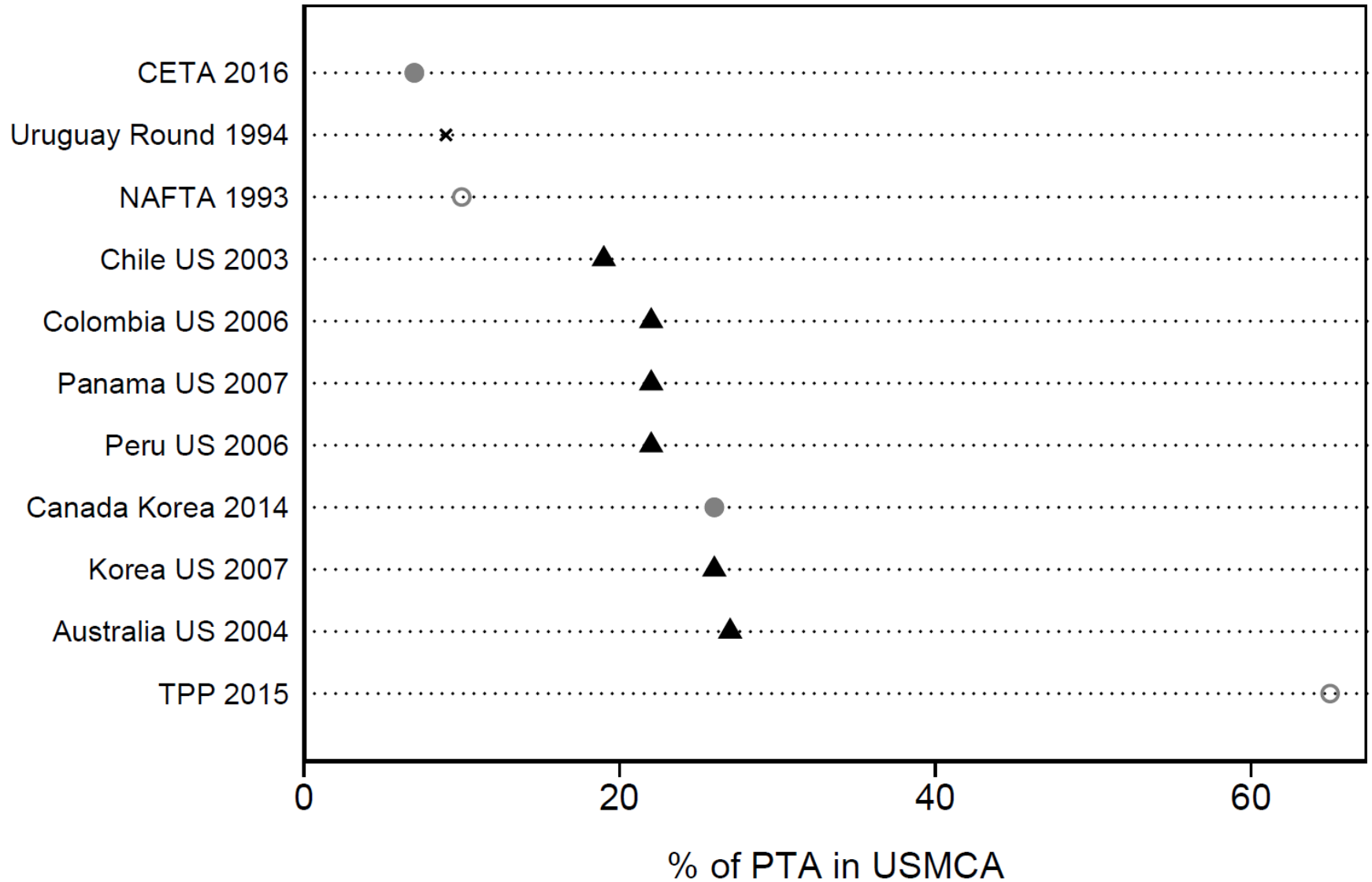
- A focus on SPS and TBT (text analysis)
- Which areas mostly affected by move away from SQ in NTMs..

# US turn in NTMs? TBT

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# US turn in NTMs? SPS



Elsig and Klotz 2019

x WTO    ▲ US    ● Canada    ○ US-Canada

## USMCA: NTM focus is on

- RoO (Automotive, Textiles and Apparel)
- IPR (Biologics and Copyright extension)
- TF
- Data

## Are NTMs the next battleground in PTAs?

- Tariffs will lose attraction – voters will react
- Back to optimal obfuscation - governments can use NTMs «creatively»
- NTMs to pursue economic nationalism (US, China, others?) – focus also on who controls key value chains (e.g. weaponized interdependence)
- Power asymmetry to become more important (coercive diffusion) – many treaty modernizations are waiting...
- Weakening of legal obligations (as backbone WTO enforcement weakens)

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# Thank you for your attention

Allee, T. and Elsig M. 2019. “Are the Contents of International Treaties Copied and Pasted? Evidence from Preferential Trade Agreements”, *International Studies Quarterly*, 63(3):603-13.

Allee, T. Elsig, M. and Lugg A. 2017. “The Ties between the World Trade Organization and Preferential Trade Agreements: A Textual Analysis”, *Journal of International Economic Law*, 20(2):333-63.

Elsig M. and Klotz, S. forthcoming. “Behind-the-Border Measures and the New Generation of Trade Agreements. Technical Barriers to Trade and Sanitary and Phytosanitary Measures Compared”, in *Behind-the-Borders Policies*, edited by Hoekman B. and Francois J., CUP.

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