ABSTRACT

Title of Dissertation: FREE TRADE AGREEMENTS BETWEEN PERU, COLOMBIA AND THE UNITED STATES: EFFECTS OF NEGOTIATIONS AND IMPLEMENTATION ON FDI AND NON-TRADITIONAL EXPORTS

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This dissertation uses a mixed methodology that combines interviews and data analysis to evaluate the process of negotiating and implementing the U.S.-Peru and U.S.-Colombia Free Trade Agreements (FTAs) and to provide initial evidence on the impact of the respective agreements on foreign direct investment (FDI) and export diversification in the two Andean Countries. I find that institutional elements in each country impacted the process of negotiation and the outcomes of the two FTAs differently. Colombia had a relative initial advantage in institutional capacity and negotiating expertise, while Peru had a stronger leadership and commitment that made the FTA a reality sooner. At the same time, both Peru and Colombia had in common the continuity of their trade policies through different administrations, their pledge to maintain structured consultation mechanisms with the private sector and non-government agents, and the vision to continue to build their institutional capacity. The signing, ratification and implementation of these FTAs coincide with an expansion of non-traditional exports from the two Andean nations and an increase in inward FDI into sectors outside of commodities such as oil, natural gas and minerals. Although the external shocks and already established economic trends may play a big role in these increases, the extent to which they are related with the FTAs is analyzed in this dissertation.

FREE TRADE AGREEMENTS BETWEEN PERU, COLOMBIA AND THE UNITED STATES: EFFECTS OF NEGOTIATIONS AND IMPLEMENTATION ON FDI AND NON-TRADITIONAL EXPORTS

By

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ALADI	Asociación Latino Americana de Integración
APEC	Asian Pacific Economic Cooperation
ATPA	Andean Trade Preference Act
ATPDEA	Andean Trade Partnership and Drug Eradication Agreement
BIT	Bilateral Investment Treaty
BoP	Balance of Payments
CAFTA-DR	Central American Free Trade Agreement (including Dominican Republic)
CEPAL	Consejo Económico para América Latina (UNECLAC – English acronym)
CIF	Cost Insurance and Freight
DANE	Departamento Administrativo Nacional de Estadística (Colombia)
FARC	Colombian Revolutionary Armed Forces
FDI	Foreign Direct Investment
FOB	Free on Board
FTA	Free Trade Agreement
FTZ	Free Trade Zones
GATT	General Agreement on Trade and Tariffs
GDP	Gross Domestic Product
IADB	Inter-American Development Bank
ILO	International Labor Organization
IMF	International Monetary Fund
ITC	International Trade Centre
NAFTA	North America Free Trade Agreement
OECD	Organization for Economic Cooperation and Development
PPK	Pedro Pablo Kuczynski – Peruanos por el Kambio (political party)
PPP	Purchasing Power Parity
R&D	Research and Development
SUNAT	Superintendencia Nacional de Aduanas y de Administración Tributaria

TPA	Trade Promotion Authority
TPP	Trans Pacific Partnership
TRIPS	Trade-Related Aspects of Intellectual Property Rights (WTO Agreement)
UNECLAC	United Nations Economic Council for Latin America and the Caribbean
UNCTAD	United Nations Commission for Trade and Development
USTR	United States Trade Representative
VAT	Value Added Tax
WB	World Bank
WDI	World Development Indicators
WTO	World Trade Organization

I. INTRODUCTION

ORIGIN AND MOTIVATION: For most emerging market nations obtaining the full economic benefits from FTAs requires broader reforms. Indeed, agreeing to an FTA may be seen as a way for a country to commit to these additional requirements—to make decisions that are politically difficult in a domestic context, but that can be justified for the purposes of signing onto an FTA. In a broader picture, political stability and a stable macroeconomic policy are key factors for U.S. trade partners to benefit from the opportunities arising from bilateral FTAs. A question assessed in this dissertation is whether such political and economic stability is a prerequisite for an agreement or instead whether the completion of an FTA can make a contribution to macroeconomic and political stability. I conclude that while some institutional capacity and political willingness are necessary ex ante, the commitments made in an FTA do propel fundamental changes that result in a more mature and sophisticated economy, as well as greater accountability from political actors.

Abstract and Main Conclusions:

This dissertation uses a mixed methodology that combines interviews and data analysis to evaluate the process of negotiating and implementing the U.S.-Peru and U.S.-Colombia Free Trade Agreements (FTAs) and to provide initial evidence on the impact of the respective agreements on foreign direct investment (FDI) and export diversification in the two Andean Countries. I find that institutional elements in each country impacted the process of negotiation and the outcomes of the two FTAs differently. Colombia had a relative initial advantage in institutional capacity and negotiating expertise, while Peru had a stronger leadership and commitment that made

the FTA a reality sooner. At the same time, both Peru and Colombia had in common the continuity of their trade policies through different administrations, their pledge to maintain structured consultation mechanisms with the private sector and non-government agents, and the vision to continue to build their institutional capacity.

The key lessons of the process of negotiating and implementing the two FTAs include:

- Peru and Colombia both exhibit two elements that made the negotiation and implementation of these FTAs possible: The FTAs were priorities for the Presidency and the Ministries of Commerce and Tourism; and both governments engaged in continuous and structured consultation with private sector and non-government agents. The agreements would have taken much longer (or not have been concluded at all) without both of these factors.
- In the negotiation, Peru had in its favor that it absolutely prioritized the FTA and finished before Colombia. Peru was willing to go along with U.S. requirements sooner than Colombia.
- In the negotiation, Colombia had in its favor the expertise of negotiators, and both during the negotiation and implementation its better institutional capacity compared with Peru
- Both countries learned greatly from this process, but Peru climbed the learning curve faster in a shorter time. As a result, Peru has had faster negotiations of FTAs with other countries
- These FTAs have helped FDI inflows by giving a boost to investors' confidence, and bringing new and more diverse FDI. The confidence impact is just as important—if not more so—as the direct provisions of the FTA. Both countries are seen as open for business, and as gateways to the U.S. market in addition to their own.
- Colombia has had better relative results with FDI because it has received investments in a great variety of economic sectors, in part due to its larger market size and strategic geographical position.
- These FTAs also have been instrumental in increasing non-traditional exports and improving export diversification. This happened because the permanence of the FTA gave domestic and foreign investors the confidence to explore new lines of production, as well as the support to comply with complex technical requirements.
- Peru has had better relative results with Export Diversification because it has been more successful finding new ways to effectively market their products, in particular those from agroindustry.

While Peru and Colombia started the process of negotiating the FTA simultaneously (along with Ecuador at the same time), eventually the negotiations with Colombia were delayed for a variety of reasons, which are explored and analyzed in this dissertation.

A number of factors played a role in the rhythm of the negotiations: the practical necessity for these agreements to replace the Andean Trade Partnership and Drug Eradication Agreement (ATPDEA) which was soon to expire pushed the negotiations to a conclusion; the relative lack of sophistication of the Colombian and Peruvian teams compared to the U.S. team at times held back the negotiations; the commitment of the each country's Executive branches to see these agreements through ensured that the negotiations persevered over inevitable difficulties; the cooperation (or lack thereof) of the Legislative and Judicial branches and other domestic factors in Colombia and Peru such as national elections affected the negotiations, as did in the case of Colombia, the peace talks and eventual peace agreement.

The differential success of the two agreements reflects both the particularities of each country and the global economic situation when they came into force. Though both agreements were largely reached in spring 2006, the Peru FTA was enacted in the U.S. Congress by the end of 2007 and the provisions took effect in February 2009. The Colombia FTA made it through the US Congress only in October 2011 and the treaty took effect in May 2012. The years that passed between these dates coincide with the global financial crisis and onset of the Great Recession in the U.S. Oil and other commodity prices plummeted as a result of the downturn, hindering FDI in these economic areas, and exchange rates became unfavorable for Peruvian and Colombian exporters. Nevertheless, when looking at subsections of investment and exporting, it is evident that there has been a long-term advance in both dimensions as the economies have moved past the crisis.

A final area of analysis is the difference between Peru and Colombia regarding implementation, defined as the removal of tariff and non-tariff barriers, as well as the creation, application and enforcement of the laws required by these FTAs. Colombia is arguably a more mature democracy than Peru in the sense that the Congress and courts can and do oppose the desires of the Executive. Although the demands of the U.S. were met when the FTA came into force, the Constitutional Court in Colombia revoked several of them, making it necessary to retool the laws and present them again to Congress. Their approval and passage has been extremely slow as a result. On the other hand, Peru is still a novice to the process of decentralization and regionalization. The difficulty in Peru has been more decentralized with gaps in applying FTA-related directives at the local level delaying the practical implementation of the agreement.

The signing, ratification and implementation of these FTAs coincide with an expansion of non-traditional exports from the two Andean nations and an increase in inward FDI into sectors outside of commodities such as oil, natural gas and minerals. Although the external shocks and already established economic trends may play a big role in these increases, the extent to which they are related with the FTAs is analyzed in this dissertation.

CONTRIBUTION AND OBJECTIVE: This dissertation contributes to the research literature on the impacts of bilateral and multilateral agreements that liberalize trade and investment, focusing on the impacts of liberalization on developing countries. FTAs are important tools for economic development; through expanded trade and investment, they can stimulate economic growth. FTAs can also enhance national security and promote higher labor and environmental standards. This is especially the case for developing countries, for which FTAs have the potential to put in motion profound changes to remove barriers to growth beyond just formal tariff levels, thereby enhancing productivity and welfare. Despite the potential gains, actually reaching agreements that fulfill this promise has proven extremely difficult.

The purpose of this dissertation is to compare and contrast the agreements from an international development perspective assessing the process by which they were reached and their initial impact, focusing especially on the effects of the agreements on FDI and non-traditional exports (those other than commodities). I assess both the results of the agreements to date and possibilities for future benefits, as well as political, economic and institutional challenges that have arisen. These insights then inform my analysis of implications for future FTAs between the U.S. and other developing countries.

FACTS: The FTAs between the U.S. and Colombia and Peru are two of the most recent FTAs between the U.S. and Latin American countries, effective February 2009 and May 2012.[1] Even though the agreement with Peru was formally signed in April 12, 2006, and ratified by the Peruvian Congress in June 28, 2006, and the Colombian agreement was signed on November 22, 2006 and ratified by the Colombian Congress on June 14, 2007, and the terms of these FTAs were mostly agreed upon by the U.S. since July 1, 2007 during the Bush administration, only the Peruvian agreement was ratified in the U.S. in the same terms negotiated during the Bush administration. For Colombia, the process lingered, and the Obama administration chose to wait until a politically acceptable moment to get it ratified.

[1] The exact effective dates are: Peru, 2/1/09; Colombia, 5/15/12

Regarding the role of these and similar agreements between the U.S. and countries in the region, given that the initiative for the creation of a free trade zone encompassing all of the Americas did not succeed, the next workable strategy seemed to be to sign bilateral treaties among the countries capable and willing to take that step. More importantly, considering that Colombia and Peru were already receiving substantial benefits in their trade with the U.S., these FTAs were necessary to make permanent temporary benefits that had been extended for long periods of time. In addition, one could make the argument that these agreements should also be viewed as a tool signaling to trade and investment partners that these Latin American countries should be regarded as promising and safe destinations. An FTA would then amplify this signal by ensuring a permanent pro-investment regime.

ORGANIZATION: In the following section the research question, the hypotheses to be tested, and the channels by which the FTAs affect development are presented. The history and motivation behind these FTAs then will be examined. Afterwards, the relevant literatures on export diversification, FDI and the effects of bilateral investment agreements (BITs, although in this case it refers particularly to the Investment Chapter in the FTA) on FDI will be reviewed. Finally, I describe three dimensions of analysis, starting with qualitative examination based on interviews and first-person accounts of the negotiation and implementation of these treaties. The second instance of analysis consists of a discussion of the BITs and FTA Investment Chapters signed by the countries under study. The final section presents quantitative testing of the proposed hypotheses for the impact of the FTAs on non-traditional exports and FDI inflows.

A. Research Question:

The purpose of this dissertation is to evaluate how the process of negotiating and implementing of the U.S.-Peru and U.S.-Colombia FTAs had an impact on FDI and export diversification in the two Andean Countries.

B. Economic Impact Hypotheses:

1. For the impact of FTAs on FDI and non-traditional exports, my main hypotheses are as follows:
    - These FTAs are beneficial to Colombia and Peru because their FDI flows/stock will grow as a result of the agreement implementation (when controlling for other factors)
    - These FTAs are beneficial to Colombia and Peru because trade increases (both exports – especially non-traditional exports -- and imports of industrial/complimentary merchandise) as a result of the agreement implementation (when controlling for other factors, including the ATPA)
2. For the impact of FTAs on other macroeconomic indicators:
    - These FTAs are beneficial to Colombia and Peru because their overall economies will grow as a result of the agreement implementation (when controlling for other factors). This comes about both because of the direct liberalization involved in the FTAs and because of the ensuing changes sparked by the FTA. (And of course there are negatives as well, since the FTAs involve broad changes and dislocations within the two countries' economies and societies. Even so, the net is positive – perhaps even vastly so.)

- Among the ways in which these FTAs are beneficial to Colombia and Peru is because unemployment decreases (both skilled and unskilled) and labor productivity increases as a result of the agreement implementation (when controlling for other factors).

C. Channels by which the FTAs affect the economies

The hypotheses above include benefits from a range of channels by which FTAs affect the developing country partner nations. The dissertation looks at these mechanisms by which trade agreements influence domestic economies.

Potential for increased exports of goods: Because Peru and Colombia already received many tariff benefits from temporary agreements, this channel may not be as substantial as with other partner countries. However, the certainty that arises from the FTA may result in a push for long-term investments toward new production destined to exporting. Also, the FTA opens the door to a clearer path for domestic firms to acquire licenses and know-how that may help a successful entrance in new markets.

Potential for increased imports of goods: The effect of these FTAs may be positive for consumers in the developing countries because it improves the variety and the quality of the goods available in their local markets. A positive opportunity created by the FTAs is that it exposes local producers to increased competition and, provided they have access to adequate support to adapt, it may increase productivity. The FTAs may ease the acquisition of equipment needed to adjust to the new economic environment. Nevertheless, on the negative side, the exposure to new competition will result in some firms and businesses exiting the market, creating unemployment and other dislocations, including challenges such as labor retraining.

Potential for increased exports of services: For Colombia and Peru, this is an area in which positive changes are harder to visualize. However, given the growing Hispanic population in the U.S., one example of a potential positive effect is the market for call-centers and other Spanish-spoken services that can be served remotely. Nonetheless, tourism and travel-related services should be a good potential source of additional income.[2]

Potential for increased imports of services: Financial services are an area where the FTAs open brand-new opportunities for U.S. investors. While, Colombia and Peru opened their financial services markets to overseas investment since the 1990s, resulting in significant European investments (especially Spanish), before the bilateral FTAs complete foreign ownership was not permitted in this sector, and there were limits to the opening of branches and day-to-day operations (Haddad and Stephano, 2010). These hurdles disappeared for the U.S. financial firms with the implementation of the FTAs. Additionally, imports of tourism and travel-services from the U.S. could be somewhat enhanced by the agreements, although tourism to the U.S. is already well established. Finally, the higher education market (satellite campuses, executive degrees, test preparation institutes, and such) is another area for increased service opportunities for

[2] According to the WTO, tourism and travel-related services includes services provided by hotels and restaurants (including catering), travel agencies and tour operator services, tourist guide services and other related services. International tourism facilitates for the cross-border movement of consumers. Therefore, even unskilled workers in remote areas, while engaging in the provision of these tourism and travel-related services, may become services exporters (craft items sales, cultural shows and performances, jobs at hotels and restaurants, etc.)

U.S. investors. This increased cross-border service activity would have benefits for both countries.

Potential for higher inward investment: The implementation of the investment chapters of the FTAs should result in greater inward investment—indeed, this is a key motivation with pushing forward for the developing country partner countries. The benefits of such investment could include technology transfers and increased employment.

Potential for higher outward investment: Thanks to the larger Hispanic market and South American immigrant population in the U.S., Peruvian and Colombian investors seeking to fulfill the demands of these immigrant populations could find valuable opportunities in the U.S. So far, other than financial flows in search of tax-free environments, Colombian and Peruvian outward investments have been directed to other Latin American markets (Poveda-Garces, 2011).

Box 1. Beyond Trade and Investment: Labor and Environmental Requirements of FTAs

Labor market improvements: *The U.S.-Peru FTA was the first agreement in force (the FTA with Jordan took force after that with Peru) that includes provisions concerning the protection of the environment and labor rights, following the Bipartisan Agreement on Trade Policy developed by the Bush Administration on May 10, 2007. Nevertheless, Peruvian workers continue to suffer from practical restrictions to unionize, discrimination and child labor issues. In the case of Colombia, a Labor Action Plan*[3] *with the U.S. was conceived in 2011 as a tool that would create structural changes for workers to improve their working conditions, in particular those related to systemic anti-union violence. During its first year of implementation, the Colombian government created a stand-alone Ministry of Labor, hired new labor inspectors, and the number of trade unionists killed went down significantly.*[4] *However, according to critics, progress stalled, especially because of lack of enforcement of fines and criminal penalties.*[5]

Even if the aftermath of the agreement implementation has not been stellar so far, the incorporation of new labor provisions in these FTA agreements, and the efforts to keep track of their application, are a first step in the right direction. It would be useful for future research to assess the outcomes of these provisions over time.

Environmental improvements: *The agreements commit partner countries to effectively enforce their own domestic environmental laws and to adopt, maintain and implement laws, regulations and all other measures to satisfy those responsibilities. The environment chapters include innovative measures for Forest Sector Governance, aimed to control illegal logging and illegal trade in wildlife. Nonetheless, protests denouncing misuse and dangerous exploitation of rainforests continue to be commonplace.*

As with the labor provisions, even if compliance with the environmental provision is not ideal, the mere fact that FTA negotiations bring issues to the table for public examination, and that the provisions' implementation create mechanisms to deal with the problems, should be helpful in the long term—and again, provides a useful avenue for future research.

[3] Intended to address the concerns about labor rights that long stalled the U.S. Congress's approval of the U.S.-Colombia FTA

[4] http://www.huffingtonpost.com/lisa-haugaard/labor-action-plan-colombia_b_5118210.html

[5] http://www.politico.com/story/2014/04/labor-groups-colombia-action-plan-105425.html

II. FREE TRADE AGREEMENTS: HISTORY AND MOTIVATION

Well before the negotiation of these FTAs, both Colombia and Peru were benefiting from the Andean Trade Preference Act of 1991 (ATPA), which granted duty-free access in the U.S. market to a wide range of their products. The purpose of the ATPA was assisting four Andean countries (Bolivia, Colombia, Ecuador, and Peru) in their fight against illegal drug production and trafficking by multiplying their economic possibilities.[6] Colombia and Peru desired to make permanent the trade benefits that they had been receiving from the U.S. on a temporary basis for a number of years. Therefore, in the short run, the incremental trade benefits of their FTAs coming into effect were lower compared to other countries implementing such treaties without pre-existing preferences.

Before entering negotiations for FTAs, the Andean Trade Preference Act, the ATPA (which included Peru, Bolivia, Colombia and Ecuador) was renewed as the Andean Trade Promotion and Drug Eradication Act, the ATPDEA. When the ATPDEA was about to expire for a third time the U.S. decided to negotiate FTAs with these countries. Only Bolivia decided not to negotiate an FTA with the U.S., while Ecuador later was pulled out of the negotiations as its government priorities changed and it nationalized the interests of Occidental Oil Company in this country (for additional details on the ATPA and ATPDEA, please refer to appendix section 1).

[6] The Andean Trade Promotion and Drug Eradication Act (ATPDEA), enacted on August 6, 2002, renewed and amended the ATPA to provide duty-free treatment for certain products previously excluded under the ATPA. The benefits are subject to the countries meeting the program's eligibility criteria. http://www.ustr.gov/trade-topics/trade-development/preference-programs/andean-trade-preference-act-atpa

In addition, the finalization and ratification of these FTAs took place in the aftermath of the failed efforts to achieve an FTA of the Americas (FTAA) that attempted to come to an agreement between 34 countries of the Americas, based on the model of NAFTA. The FTAA would have been ground-breaking as it intended to apply "all the disciplines of the proposed services agreement of the World Trade Organization (WTO) - the General Agreement on Trade in Services (GATS) - with the powers of the failed Multilateral Agreement on Investment (MAI), to create a new trade powerhouse with sweeping new authority over the Americas."[7] Since negotiations toward a FTAA were unsuccessful, the hemisphere is now divided between countries that have FTAs with the U.S. (NAFTA -- Canada and Mexico, CAFTA --Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua-- and the Dominican Republic,[8] Panama, Peru, Colombia, and Chile) and those that do not (most importantly Brazil, Argentina, Bolivia, Ecuador and Venezuela). Given that the U.S. could not achieve a comprehensive FTAA, its best next strategy from the American perspective was to pursue bilateral FTAs. Bilateral FTAs are not optimal in terms of global welfare, because they create trade distortions as some countries are included and others are not, creating a "race-to-the-bottom" scenario. However, FTAs are still attractive from a bilateral perspective because they create short-term gain opportunities for the political actors in each country. As explained by Fandl (2007) and following the original argument by Braybrooke and Lindblom (2009), "the incremental

[7] Public Citizen, Free Trade Agreement of the Americas (Overview), http://www.citizen.org/trade/ftaa/

[8] The agreement entered into force for the United States and El Salvador, Guatemala, Honduras, and Nicaragua during 2006, for the Dominican Republic on March 1, 2007, and for Costa Rica on January 1, 2009.

approach does not see long-term gains as feasible during the political shelf life of most politicians. Rather, it identifies marginal gains loosely directed toward the achievement of some greater goal as the most productive approach, despite the possibility that long term goals might never be achieved."(p.12)

These bilateral agreements concluded with Colombia and Peru have been controversial and remain especially unpopular among significant portions of the general public of the respective Andean countries. In particular, indigenous people, human rights activists, unions and environmentalists believed these agreements would solidify practices such as maquila-like enterprises which would standardize even lower wages and work-safety requirements, low standards for agroindustry, and reckless exploitation of natural resources. These concerns remain notwithstanding the higher standards for labor and the environment in these new FTAs intended to address those issues. Also, as new agricultural products would enter the Peruvian and Colombian markets, there were great fears among the general population for the quality and the market effects of the products coming in (based on an assumption that the availability of low-priced (and perhaps low quality) products would drive local production to bankruptcy—a normal concern for those economic sectors that would compete with new imports resulting from the FTAs. Efforts to educate the public on the notion of comparative advantage helped to quiet some of the fears, putting emphasis on how this was a chance to give a greater market to products that were really unique to the region (such as exotic fruits and vegetables, including sugar cane and bamboo). Still, some profound unease about globalization and about increased trade and investment linkages with the U.S. remains.

Finally, the global financial crisis of 2008 meant a sharp contraction of trade and thus a dip in the rate of economic growth for both countries. It could be that this slowdown, combining with the maturity date for the ATPA, actually provided an impetus for ratification of the FTAs in the sense of fueling a desire to try new alternatives for achieving stronger growth. Even if completing the FTAs with the U.S. was not the most important avenue through which to support stronger domestic growth, it was a readily-available one and thus a natural focus for political and policy efforts. Although there was an economic recovery from 2009 to 2012, by the time agreements came into effect economic conditions had deteriorated again at the end of 2013, this time due to a sharp decline in commodity prices. Therefore, the overall macroeconomic effect of the agreements is still hard to assess by looking solely at macroeconomic indicators.

Colombia:

For Colombia, losing any amount of support from the U.S. has never been an option. Guerrilla war and drug trafficking are still a current issue, as it has been for decades now. There is a widespread belief that if peace could be achieved, once and for all, and the economic consequences of illicit activities could be contained, there would be a real chance for greater long-lasting prosperity. As the dynamics of drug trafficking have changed, cities like Medellin and Cali have had a chance to recover their reputation as good places to live and invest. Nevertheless, prior to the ceasefire accomplished by the peace talks that succeeded in 2017, the countryside remained a battlefield of sorts, limiting the possibilities for more substantial changes in the agroindustry. Also, until the ceasefire, guerrilla operations made their way to the outskirts of big cities just as peasants continued to be displaced from their lands. Population displacement created in turn higher rates of urban criminality. This combination of factors resulted in an increased perceived risk for several types of foreign investments, even into urban areas.

Jeffrey Schott (2006) discussed how the U.S. wanted to show strong support for Colombia's effort in the fight against illegal drug-production and trafficking. At that time, most narcotics production had shifted from Peru and Bolivia to Colombia.[9] Also, at the time, guerrilla problems in Peru were no longer an issue, while the Colombian guerrillas kept growing stronger by getting involved in drug production and trafficking.

This background explains why Colombia was eager to reach a trade and investment agreement with the U.S., both for the potential economic benefits and as a way to affirm an alliance that ensured continued U.S. support in the struggle against drug trafficking and leftist Guerrillas.

Of course, a key piece in this puzzle was the Uribe administration and its accomplishments in regard to regaining control of the countryside, and making Colombia safer for all kinds of investments. Plan Colombia, a multiyear program implemented in 1999 by President Bill Clinton and President Andres Pastrana, Uribe's predecessor, was fundamental for this process. This plan allowed the Colombian government to extend security beyond the main urban areas and into the countryside. The implementation and effect of these policies were particularly successful when President Uribe and his center-

[9] United Nations Colombia crop monitoring report 2016, http://www.unodc.org/documents/crop-monitoring/Colombia/Monitoreo_Cultivos_ilicitos_2015.pdf

right, pro-U.S. administration took office in 2002.[10] Uribe left office in 2010 after completing a second presidential term (the Colombian Constitution was actually modified to permit reelection), just as the last hurdles to the ratification of the U.S-Colombia FTA were surmounted.

Peru:

The success of the negotiation and ratification of the US- Peru FTA was due in great part to the work of the Toledo Administration, as well as the Garcia Administration that followed. Alejandro Toledo was president from 2001 to 2006, and Alan Garcia from 2006 to 2011. Toledo implemented orthodox economic policies that aimed to control public spending and promote economic growth (Peru's GDP rate of growth increased from 0.2% in 2001 to 8.0% in 2006). García then continued the pro-market economic policies of his predecessor.[11]

Despite his defying campaign against Fujimori, Toledo continued many of the trade liberalization policies that were part of the neoliberal, Washington Consensus paradigm adopted by Fujimori. Toledo wanted to make the U.S.-Peru FTA a part of his presidential legacy and declared that the agreement would be signed no matter what ("sí o sí").[12] Garcia, on the other hand, based his electoral campaign on leftist-leaning arguments and an ambiguous rhetoric regarding the future of the FTA with the U.S. However, in practice, he continued to facilitate negotiations and implementation, even adopting in

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[10] James Roberts, April 30, 2008, http://www.heritage.org/trade/report/the-us-colombia-free-trade-agreement-strengthening-good-friend-rough-neighborhood

[11] Villareal, 2007, p. 9

[12] Ferrero, 2010, p. 159

January 2009, a law that effectively created the opportunity for U.S. corporations to patent genes extracted from Peruvian flora while loosening the requirements for attaining a patent.[13]

Philip Levy (2009) argues that the intention of this agreement was not to create new market access, but rather to promote investment by locking in Peru's economic reforms and broader integration in the world economy. Levy came to this perspective by conducting interviews with Peruvian officials.

Overall, and compared to Colombia, Peru has recently had a somewhat more peaceful outlook, having minimized the power of the Shining Path guerrillas many years ago, and reduced the economic incidence of narcotics production at least for some time. Furthermore, Peru covers a slightly bigger portion of the Amazonian region than Colombia (13 percent vs. 10 percent, correspondingly; 60 percent is Brazilian), but in the context of achieving certain economic goals this difference is substantial. A larger Amazonian region means greater possibilities for mining exploration, agroindustry, and tourism.

However, this path has had its own set of challenges. Peru is still the main producer of coca leaves in the world, and saw an increase in production and distribution in the first decade of the 2000s, reaching 62.5 thousand hectares in 2011, as the efforts in Colombia have succeed in diminishing Colombian illegal drug-trafficking profitability. From 2012 to 2016 the Peruvian government implemented an eradication policy that successfully

[13] Council on Hemispheric Affairs "Ramming the Matter Home: Peru-U.S. FTA Rushed, Diluted and Finagled", 2009, http://www.coha.org/ramming-thematter-home-peru-us-fta-rushed-diluted-and-finagled

reduced production to around 40 thousand hectares in 2015.[14] At the same time, even with reduced production of coca leaves, there is some evidence that the Mexican and Brazilian crime cartels have increased their operations in Peru, taking refuge through strategic alliances with local producers.[15]

Another challenging subject for economic policy in Peru is that Peruvian society has a much broader and stronger connection with its indigenous roots than in Colombia, with important consequences for policymaking. Any governmental plan had to address this cultural issue. Ex-President Ollanta Humala, who just stepped down in July 2016, was the FTA's most outspoken opponent. Humala's party won 45 of 120 seats in Congress in 2006, the largest share by a single party, prompting debate on ratification of the agreement before the new legislature was sworn in. Nevertheless, the agreement was ratified by the Peruvian Congress on June 28, 2006.

A controversial issue at the time of ratification concerned land resources, and "Indigenous organizations warn[ed] that this ruling effectively open[ed] up 45 million hectares to foreign investment and timber, oil, and mining exploitation." However, most of the concerns were directed to Peru's agricultural sector. Low-income farming families with scarce technical resources could not yield crops at low enough prices to export. In an effort to alleviate this deficiency, Peru created a Compensation Fund with a budget of

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[14] United Nations Peru Crop Monitoring Report 2016, http://www.unodc.org/documents/crop-monitoring/Peru/Peru_monitoreo_coca_2016.pdf, p. 7

[15] World Policy, "Peru: New King of Cocaine", February 2015, http://www.worldpolicy.org/blog/2015/02/03/peru-new-king-cocaine

$34 million per year to help cotton, maize/corn, and wheat producers for a five-year period, while they adjusted to the new competitive pressures.

Box 2. Colombian and Peruvian Trade Relations with China

At the time the FTA between Colombia and the U.S. entered in force in 2012, Colombia had just started talks with China, concluding a memorandum of understanding (MOU) between both countries and creating a task force to consider next steps for an eventual FTA with China. However, as to this writing a final agreement is still pending. China was Colombia's second trading partner in 2011, demanding significant amounts of oil and coal and offering manufacturing in return, mostly machinery and equipment. In fact, by the time the Colombia-U.S. FTA entered into force, although China was still not a major source of FDI, it had quickly established itself as a primary trading partner (see tables below), surpassed only by the U.S. China is important for Colombia as an export destination (including in its generation of foreign exchange since the trade is largely conducted in dollars), and for channeling of resources to Colombia's government. However, as mentioned above, these exports had been concentrated in the extractive sector; therefore, as oil prices decreased, the share of exports to China also declined.[16]
The China–Peru FTA was signed the agreement in April 2009. The agreement was ratified by both countries governments on December 6, 2009 and came into effect on March 1, 2010. Since China first overtook the U.S. as Peru's biggest trade partner in 2011, thanks mostly to its demand for Peru's metals exports, bilateral trade has surged, and diplomatic ties have tightened. Chinese appetite for commodities is credited with helping Peru survive the financial crisis of 2008. Peru is the leading location for Chinese mineral investment in Latin America, and Chinese firms hold around 30 percent of the country´s total mining investment portfolio. Chinese firms also have an important presence in Peru´s hydrocarbons and commercial fishing sectors.[17] The majority of Chinese mineral investment is concentrated in copper and iron, and since 2007 this has involved primarily green field projects obtained through the takeover of Western-owned junior firms.[18] The signing of a sanitary protocol between Peru and China in December 2017 has been a trigger for a new rush in trade between the two countries. In fact, Peru could substantially move one of its most popular varieties of shrimp exports away from

[16] Glenn Ojeda "Petroleum and Trade between Colombia and China", Farmfolio, October 26th, 2017 https://farmfolio.net/articles/petroleum-trade-colombia-china/

[17] Cynthia Sanborn and Victoria Chonn, "Chinese Investment in Peru's Mining Industry: Blessing or Curse?", BU Global Economic Governance Initiative, Discussion Paper 2015-8, pp.3-4 https://www.bu.edu/pardeeschool/files/2014/12/Peru2.pdf

[18] Ibid. p. 11

the U.S. and towards China as the agreement now allows Peruvian shrimp shipments into Chinese ports.[19]

Table 1. Colombian Exports by Destination, 2006-2013 (% of GDP)

	2006		2007		2008		2009	
1	U.S.A.	5.90%	U.S.A.	5.00%	U.S.A.	5.80%	U.S.A.	5.50%
2	Venezuela	1.70%	Venezuela	2.50%	Venezuela	2.50%	Venezuela	1.70%
3	Ecuador	0.80%	Ecuador	0.60%	Ecuador	0.60%	Netherland	0.60%
4	Peru	0.40%	Netherlands	0.40%	Peru	0.40%	Ecuador	0.50%
5	Dom.Rep	0.40%	Peru	0.40%	Chile	0.30%	Switzerlan	0.40%
6	Mexico	0.40%	China	0.40%	Netherlands	0.30%	China	0.40%
7	Spain	0.30%	Dom.Rep	0.30%	Dom.Rep	0.30%	Peru	0.30%
8	Netherlands	0.30%	Spain	0.30%	U.K.	0.30%	U.K.	0.30%
9	Italy	0.30%	Italy	0.30%	Brazil	0.30%	Chile	0.30%
10	China	0.30%	Germany	0.30%	Germany	0.30%	Brazil	0.20%
	Others	4.30%	Others	4.00%	Others	4.40%	Others	3.70%
	Total	15.00%	Total	14.50%	Total	15.4%	Total	14.0%
	2010		**2011**		**2012**		**2013**	
1	U.S.A.	5.80%	U.S.A.	6.50%	U.S.A.	5.90%	U.S.A.	4.90%
2	Ecuador	0.60%	Netherlands	0.80%	China	0.90%	China	1.30%
3	Netherlands	0.60%	Chile	0.70%	Spain	0.80%	Spain	0.80%
4	China	0.60%	China	0.60%	Venezuela	0.70%	Netherlan.	0.60%
5	Venezuela	0.50%	Ecuador	0.60%	Netherlands	0.70%	Venezuela	0.60%
6	Peru	0.40%	Venezuela	0.50%	Chile	0.60%	Ecuador	0.50%
7	Chile	0.40%	Spain	0.50%	Ecuador	0.50%	Brazil	0.40%
8	Brazil	0.40%	Peru	0.40%	Peru	0.40%	Chile	0.40%
9	Switzerland	0.30%	Brazil	0.40%	Brazil	0.30%	Peru	0.30%
10	U.K.	0.20%	U.K.	0.40%	U.K.	0.30%	U.K.	0.30%
	Others	4.10%	Others	5.80%	Others	5.10%	Others	5.40%
	Total	13.90%	Total	17.10%	Total	16.2%	Total	15.50%

Source: Rudas Lleras and Cabrera Leal 2015 - Author's calculations based on DANE data

Table 2.Colombian Imports by Origin (Annual Avrg, billions USD)

	1995-1999		2000-2004		2005-2009		2010-2013	
1	U.S.A.	4.7	U.S.A.	4.3	U.S.A.	8.5	U.S.A.	13.7
2	Venezuela	1.3	Venezuela	0.9	China	3.1	China	8.5
3	Japan	0.9	Mexico	0.7	Mexico	2.5	Mexico	5.5
4	Germany	0.7	Brazil	0.7	Brazil	2	Brazil	2.6
5	Mexico	0.5	China	0.6	Venezuela	1.2	Germany	2.1
6	Brazil	0.5	Japan	0.6	Germany	1.2	Japan	1.4
7	Spain	0.3	Germany	0.6	Japan	1	Ecuador	1
8	Ecuador	0.3	Ecuador	0.4	Ecuador	0.7	Spain	0.7

[19] https://www.seafoodsource.com/news/supply-trade/peru-shifts-vannemei-hopes-from-us-to-china

9	China	0.2	Spain	0.2	Spain	0.4	Venezuela	0.5
	Others	4.2	Others	4.6	Others	10	Others	18
	Total	13.6	Total	13.6	Total	30.6	Total	53.5

Source: Rudas Lleras and Cabrera Leal 2015 - Author's calculations based on DANE data

Table 3. Peruvian Exports by Destination(millions of US$ FOB)

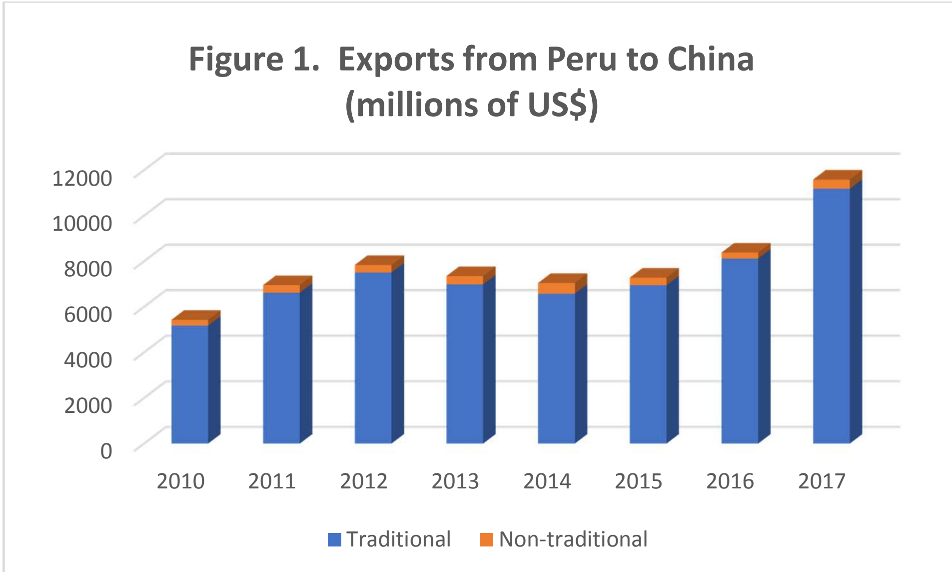
		2016	2017	Variation	% of 2017
1	China	8382.9	11,589.41	38.25%	26.30%
2	U.S.A.	6184.69	6,868.86	11.06%	15.59%
3	Switzerland	2571.11	2,349.38	-8.62%	5.33%
4	South Korea	1387.32	2,086.59	50.40%	4.74%
5	India	924.07	1,954.74	111.54%	4.44%
6	Japan	1260.09	1,878.39	49.07%	4.26%
7	Spain	1210.85	1,849.46	52.74%	4.20%
8	Brazil	1183.78	1,580.51	33.51%	3.59%
9	Canada	1681.12	1,196.19	-28.85%	2.72%
10	Netherlands	986.81	1,078.16	9.26%	2.45%
	Others	10145.92	11,626.45	14.59%	26.39%
	Total	35918.66	44058.14	22.66%	100.00%

Source: Peruvian-Chinese Chamber of Commerce, Capechi

Table 4. Peruvian Imports by Destination (millions of US$ CIF)

		2016	2017	Variation	% of 2017
1	China	8227.79	8,850.10	7.56%	22.28%
2	U.S.A.	7089.19	8,055.18	13.63%	20.28%
3	Brazil	2127.88	2,448.61	15.07%	6.16%
4	Mexico	1675.69	1,771.89	5.74%	4.46%
5	Ecuador	1100.31	1,558.25	41.62%	3.92%
6	Colombia	1178.11	1,477.33	25.40%	3.72%
7	Chile	1152.66	1,200.64	4.16%	3.02%
8	Argentina	909.19	1,170.51	28.74%	2.95%
9	Germany	1121.23	1,062.91	-5.20%	2.68%
10	Spain	644.17	1,054.21	63.65%	2.65%
	Others	10933.72	11,078.75	1.33%	27.89%
	Total	36,159.94	39,728.38	9.87%	100.00%

Source: Peruvian-Chinese Chamber of Commerce,
Capechi



Source: Peruvian-Chinese Chamber of Commerce, Capechi

A. Economic background of partner countries

1) <u>Peru and Colombia</u>

a. Import-substitution

The move toward bilateral FTAs with several countries including the U.S. may be regarded as a final step of sorts in a series of reforms that sought to reverse several decades of development strategy based on import-substitution. These FTAs open the door to a larger variety and lower-cost imports from the U.S. (both goods and services). For Peru and Colombia, issues of competitiveness in agricultural and manufacturing products come into play. Still the import-substitution strategies implemented decades ago have a lingering impact on today's markets.

Many countries around the world implemented different industrialization strategies, in an effort to catchup to the more developed economies. In the Latin American context, the dominant policies were put forward starting in the 1950s, proposed primarily by Argentine economist Raúl Prebisch (*United Nations Economic Council for Latin America* *and the Caribbean*, UNECLAC-CEPAL, Spanish acronym). He believed developing countries needed to build local vertical linkages, in order to create industries that used domestic primary products. Tariffs were supposed to permit domestic infant industries to thrive.

Application of these policies to small economies, such Colombia and Peru, was limited, because their size did not allow for successful development of capital-intensive industries (such as cars and machinery). For these countries UNECLAC proposed a focus on redistributing income through agrarian reform, while expanding markets through limited trade associations (Latin American Free Trade Association - ALALC).

This focus on import-substitution policies may be one of the main reasons proposed regional trade pacts between developing countries often failed.[20] In addition, even as GATT negotiations progressed, until the Uruguay Round, many developing countries continued to protect their own markets. While emerging economies in Latin America were able to obtain improved, even if limited, access to industrial markets, their developed partners still had to accept the maintenance of high trade barriers to their most competitive agricultural and manufacturing exports - indeed, the agricultural provisions were among the most difficult to negotiate aspects of the later FTAs. Furthermore, these minimal contributions to GATT negotiations "did not prompt policy changes in developing countries that would induce adequate flows of investment and transfers of technology."[21]

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[20] Schott, 2004, p.5

[21] Ibid, p. 9

b. The Washington Consensus,[22] Economic Liberalization and Growing Pains

Notwithstanding the theoretical benefits of lowering or abandoning trade barriers, liberalization was often seen by many Latin American countries as surrendering parts of their country's economic opportunities because domestic firms could not compete with those from advanced areas. However, during the early 1990s, and after the so-called "lost decade" of the 1980s, most of the region started to move away from import-substitution strategies. It was then when many liberalization policies were implemented, starting by following the policies frequently listed as the "Washington Consensus",[23] namely:

- Fiscal discipline: maintaining a low public deficit, responsible issuing of public debt (bonds) and borrowing
- A redirection of public expenditure priorities toward fields offering both high economic returns and the potential to improve income distribution, such as primary health care, primary education, and infrastructure
- Tax reform, to lower marginal rates and broaden the tax base
- Interest rate liberalization, intended to promote investment and maintain a healthy inflation rate
- A competitive exchange rate, to support trade and investment objectives
- Trade liberalization
- Liberalization of inflows of foreign direct investment
- Privatization, in order to bring much needed resources to invest in infrastructure and achieve a healthy budget
- Deregulation, to abolish barriers to entry and exit
- Secure property rights
- An export-oriented culture: economic actors should focus on investing in exporting industries, through the implementation of a variety of incentives, as well as export-promotion agencies

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[22] http://www.cid.harvard.edu/cidtrade/issues/washington.html

[23] John Williamson originally coined the phrase Washington Consensus in 1990 "to refer to the lowest common denominator of policy advice being addressed by the Washington-based institutions to Latin American countries as of 1989"

The implementation of these policies in relatively short periods of time and the socioeconomic adjustments that followed gave rise to economic hardship among sectors of the population. Critics put forward as evidence the disappointing rates of growth from nations that followed this prescription. Furthermore, this adjustment period has fueled division within the countries themselves, and among Latin American countries. Some, like Ecuador, Bolivia and Venezuela have decided to step back from these liberal policies, even nationalizing companies that had already been privatized. The benefits of this retreat from the market, however, are dubious, notwithstanding the challenges involved with economic liberalization.

c. FTAs as tools for Sustainable Development

One theoretical framework that looks at sustainable development issues, proposed by Dani Rodrik, argues that trade and export policies can and should be chosen on the basis of their effects in promoting good national and regional development. Rodrik (2011) distinguishes between an "enlightened standard" and his own proposed alternative view. The former recognizes "that integration into the global economy is an essential determinant of economic growth. Successful integration in turn requires both enhanced market access in the advanced industrial countries and a range of institutional reforms at home…to render economic progress viable and growth promoting."[24] In his alternative view, a development-friendly international trade regime would focus not only on enhancing poor countries' access to markets in the advanced industrialized countries (in

[24] Rodrik, Dani, The Global Governance of Trade: As If Development Really Mattered, United Nations Development Program, October 1, 2001 http://www.policyinnovations.org/ideas/policy_library/data/01253

this case, the U.S.), but leaves room for experimentation and divergent solutions (institutionally-wise).

Regarding exports, Beaton et al (2017) argue that "countries with a higher number of trade agreements have more positive growth outcomes. Increasing the number of trade agreements from the 25th percentile to the 75th percentile is associated with a 1.5 percentage point increase in average per capita growth." (p.23) This finding is consistent with results presented by Hannan (2016), which shows how trade agreements may produce considerable increases in export performance (on average, an 80% export rise over ten years). These gains seem to be more substantial for emerging markets, and for trade agreements between emerging markets and advanced economies.

Regarding FDI, there are certain requirements for sustainable development that may be satisfied by foreign investments: energy production, transportation, manufacturing and resource extraction. Therefore, creating a socio-economic environment that is hospitable to FDI should be a priority for developing countries. In this sense, these countries should focus on fulfilling the following prerequisites to attract such investments (Bernasconi-Osterwalder et al., 2011):

- Access to inputs and skilled labor
- Access to markets for the products and services generated by investment
- Existence of reliable infrastructure
- Quality of services—communications, transportation, banking, insurance and government services
- Stability of the economic and political environments
- Offers of financial or fiscal incentives.

In this context, investment treaties are another way, neither necessary nor sufficient, of attracting investment, because they provide an extra measure of legal protection to foreign investors. In other words, investment treaties give FDI legal guaranties and put forward clear procedures to settle disputes, but these treaties by themselves are not enough to attract FDI; the basic requirements listed above take precedence.

It is in this sense that Mayeda (Ch.22 in Cordonier et al. eds., 2011) points to the expectation that investment would be a one-way flow from firms in the wealthy home country to the poorer host country, especially when negotiations over trade and investment treaties begin with a "boiler-plate" text drafted by the home (wealthier) countries. His argument is that the initial text needs to be retailored explicitly toward the goal of sustainable development. (p. 535-536) Some of the great areas of concern are human rights and the environment. After reviewing theories put forward by Amartya Sen, Mayeda concludes that greater efforts should be taken for making treaty negotiators and arbitrators better understand the needs of developing countries. Nevertheless, such standardization of trade and investment agreements has a positive side, because it is precisely the expectation of a high standard of legal rights that gives investors the security and stability necessary for cross-border investment.

Regarding the countries included in this study, David Crocker, from the standpoint of his Capability Approach, points out how "further work is needed to investigate the extent to which lowering trade barriers for producers in the South would lower prices for Northern consumers and enrich large transnational producers but fail to benefit local populations in developing countries."[25] One way of trying to amplify the positive impact of free trade on local populations is through the work of export promotion agencies. These agencies help educate the public and potential local investors about export opportunities, by creating a bridge to the understanding of specific markets and their requirements. A study from the

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[25] Crocker, 2008, p. 256

Inter-American Development Bank analyzed the effectiveness of these export promotion bodies in a group of countries that included Peru and Colombia, from 2000 to 2007. Overall, it found that such entities were relatively successful (see box 3 below).

Box 3. Export and Investment Promotion Agencies
<u>Peru</u>
The Peruvian Export Promotion Agency, PromPeru (http://www.promperu.gob.pe) implements and programs to support exporters and tourism. Two of the most recent strategies are Super Foods Peru and Peru Service Summit. Through its Foods initiative, PromPeru has supported $3.5 billion in exports during 2017, an increase of 8.7% compared with the previous year. Overall, 7,415 businesses (187 more than in 2016) exported to 178 markets (3 more than in 2016).[26] Peru Service Summit started in 2011 and will host its eighth edition in August 2018. It brings together Peruvian service providers with potential customers from all over Latin America and the World. In 2011, this summit aided the creation of $20 million in business commitments, and by 2017 this number had jumped to $95 million, for an overall commitment of $432 during the seven years.[27] In its latest edition, the Summit supported many software and engineering businesses. In comparison, PromPeru planned for 2014 over 114 export promotion activities, in an effort to reach $1.3 billion in new export transactions.[28]
Proinversion is the private investment promotion agency in Peru (www.proinversion.gob.pe). Agribusinesses are by far the most successful story in Peruvian innovation outside of the mining, construction and infrastructure sectors. Demand for a greater variety of fruits and vegetables worldwide, as well as greater attention to how these foods are produced (fair trade, organic), have created a niche market for certain Peruvian products such as asparagus, blueberries, avocados, artichokes, bananas, mangos, cacao and coffee (see Appendix 3). Joint ventures have made possible to harvest, process and package such products at their origin. This includes freezing, canning, pickling and production of different types of jellies and desserts. In an interview, Rosario Bazan, a CEO of one of such ventures highlighted how "having signed and executed the free trade agreements, which have given our country, and in the case of the export-oriented sector, the stability to develop long-term investment. The investment horizon regarding fruit is about 20 years at least; therefore, it

[26] https://www.promperu.gob.pe/Repos/pdf_novedades/133201816351_580.pdf

[27] Exportando.pe, December 2017, p. 21
http://www.siicex.gob.pe/siicex/documentosportal/630078659rad15465.pdf

[28] Ministerio de Comercio exterior y Turismo, Nota de Prensa, Junio 14, 2014, http://www.promperu.gob.pe/Repos/pdf_novedades/462014175349_711.pdfa

is important to be able to make projections over time, based on rules that need to be stable and observed throughout the project."[29]

Colombia

ProColombia is the export, investment and tourism promotion agency in Colombia (http://www.colombiatrade.com.co/). In line with its purpose of facilitating the expansion of new markets, it has followed and aided in the understanding of the dismantling of trade barriers as agreed in FTAs. One of the products that will soon bring more export revenue for Colombia is avocados (Hass variety). This is a promising market. U.S. recently experienced a shortage of avocado as supplies did not respond quickly to surging demand that has led to a sharp increase in its price (as much as 200% in some markets). Overall, in the last five years, the average price per pound has risen 50%. In the last decade, per capita consumption of avocado increased significantly in the U.S.: in 2005, the annual consumption per capita stood at 3.1 pounds and 2015 arrived at 7 pounds. U.S. avocado imports almost doubled between 2012 and 2015, from $860 million to $1,600 million. Mexico, its main producer, has had supply problems, prompting Americans to allow for an increase in imports from other countries, including Colombia, in the very near future. In Colombia it is possible to grow Hass avocado most of the year, with peak production between October and March, which would favor constant supply, unlike other competing producers (this ability relates to biodiversity thermal floors in Colombia). Between 2012 and 2015 the Colombian production of Hass avocado doubled from 29,000 tons in 2012 to 58,581 tons last year.[30] *In 2017, Colombia cleared its phytosanitary permit to export Hass avocado to the U.S.*

On the investment front, within the last 5 years, approximately 200 foreign companies began their operations in Colombia, building new plants, business offices, and subsidiaries – these developments reflect the impetus from the FTA along with a host of positive factors, notably end of conflict between the FARC and the Colombian government. Newcomers include Facebook, Chilean hotel chain Atton, Japanese fiber optics company Furukawa, and Hero MotoCorp from India started the construction of a new motorcycle assembly plant. Common selection factors listed by new investors are Colombia's key strategic location, qualified human talent, and strong sectors including tourism, financial and business services, BPO operations, and agribusiness. Foreign companies also arrived through franchises, private operations, or by purchasing local companies, including the Starbucks Victoria's Secret, Marriott, Versace, Dolce & Gabbana, GAP, Forever 21(U.S.), Itaú Bank (Brazil), Axa Seguros (France), Ripley (Chile), and Jerónimo Martins (Portugal).[31]

"Foreign investment in BPO, Software and IT grew by 28% in the last five years. Starting in 2010, ProColombia's efforts brought 80 new BPO, Software and IT initiatives

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[29] Of Danper Trujillo S.A.C. see: www.investinperu.pe follow links to Attractive sectors>agribusiness>interview

[30] http://www.procolombia.co/tras-esfuerzos-del-gobierno-y-exportadores-colombia-esta-cerca-de-exportar-aguacate-eeuu

[31] http://www.investincolombia.com.co/news/815-more-than-200-foreign-companies-have-arrived-in-colombia-in-the-last-5-years.html

with business operations worth $949 million that, according to entrepreneurs, are expected to create 53,433 new jobs," stated Maria Claudia Lacouture, then President of ProColombia. Spain is the top foreign investor, with 29.5% of the foreign companies operating in the sector, followed by the U.S. with 21.5%, France with 7.4%, and the U.K and Argentina with about 6% each. Success stories about new investors in this sector include IBM, and AIG, companies that installed shared service infrastructures or expanded their data centers, attracted by the quality and qualifications of its professionals, as well as the incentives and costs available in the country. Lacouture also said that Colombia, in addition to its call center capabilities, is creating custom products thanks to its highly qualified work force: "Human talent in Colombia is prepared to provide E-Commerce services, credit management, risk and collection services, helpdesk, back office, telemedicine as well as engineering and market surveys."[32]

In this endeavor, the Colombian Ministry of Information Technology and Communications, in an alliance with ProColombia, has dedicated resources to promote domestic IT and creative digital industries in the international market. Since this collaboration started in 2012, the exports of this sector have grown 371%; in 2017, up to the end of November, IT exports to U.S. alone were $53 million and creative digital industries exports to U.S. were $36 million. Other important markets for these products are México, Central América, Perú, Chile, Spain and Brazil.

According to the most recent statement from ProColombia, 2017 was one of their best years since the agency was created 25 years ago. They believe the shock in the mineral/energy sector gave a boost to export and investment diversification. The agency reports a 27% increase in exports, 22% increase in investments, and 20% increase in tourism for the past year. According to their calculations, in 2017, they facilitated exports valued around $3 billion, and FDI valued in $335 million in agroindustry, $172 million in tourism infrastructure, $147.8 million in metal-mechanics, $143 million in chemicals, and $140 million in other industries.

Both Promperu and Procolombia have offices in Washington D.C., and throughout the U.S., reflecting both Peru's and Colombia's emphasis on a smooth trade relationship with the U.S.

2) Recent U.S. Trade Policy Trends

In its economic relations with developing countries, the U.S. has increasingly turned to bilateral FTAs since NAFTA. For the majority of countries, the Trade and Tariff Act

[32] http://www.investincolombia.com.co/news/816-colombia-received-173-bpo-software-and-it-investment-projects-between-2010-and-2014.html

of 1984[33] required that U.S. trading partners take the initiative, followed by a USTR selection process. This condition was eliminated for most Andean countries with the 2002 act that provided President Bush with Trade Promotion Authority (TPA).

TPA allows U.S. trade agreements to be negotiated under special Congressional authorization that helps bridge the difficulties inherent in the U.S. separation of powers between the executive and legislative branches. The Trade Act of 2002[34] granted the President the so-called "fast track" authority to negotiate trade deals with other countries and allows Congress to only vote up or down on the agreement, without the possibility of amendments; the idea is that this makes it easier for the U.S. President to negotiate treaties. The agreements that resulted from this include the U.S.–Chile FTA, the U.S.–Singapore FTA, the Australia–U.S. FTA, the U.S.–Morocco FTA, the Dominican Republic–Central America FTA, the U.S.–Bahrain FTA, the U.S.–Oman FTA, and the Peru–U.S. FTA. Before 2002, the last time the President was granted this "fast-track authority" was in 1988 to negotiate the Uruguay Round Agreement of the WTO, with the Uruguay Round completed just as fast-track authority expired in 1994. The 2002 trade promotion authority finished for new agreements in July 2007, but it continued to apply to agreements already concluded until they were eventually passed into law in October 2011 (Colombia-U.S. FTA, South Korea–U.S. FTA, and Panama–U.S. FTA). An important part of the delay was the action taken by Speaker Nancy Pelosi in April 10,

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[33] Requires the president to inform the House Ways and Means Committee and the Senate Finance Committee before opening free trade negotiations. Each committee then has 60 legislative days to permit or deny the negotiations.

[34] Enacted August 6, 2002; U.S. Trade Promotion Authority Act, http://www.ustr.gov/trade-topics/trade-promotion-authority

2008 to create a rule that suspended the requirement that the Colombia FTA had to be considered within 60 legislative days in the House – giving Congress the prerogative in scheduling a vote. The rule passed by a vote of 224 to 195.[35]

In 2012, the Obama administration started looking into renewing the fast-track authority, which was granted with bipartisan support in late June 2015. President Obama used this authority to pursue completion of the Trans-Pacific Partnership (TPP)[36] and Trans-Atlantic Trade and Investment Partnership agreements with U.S. trade partners in Asia and Europe. Peru is a member of the TPP, while Colombia is still a hopeful applicant. Labor unions, environmental groups, Internet freedom advocates and the overwhelming majority of congressional Democrats battled Obama over concerns that TPP and other pending trade agreements would aggravate income inequality and allow corporations to bypass important rules and regulations. The fast-track powers last for six years after granted, making them now available to President Trump. President Obama, Republican leaders and corporate interests, including the U.S. Chamber of Commerce, pressed hard for the fast-track bill, arguing that it would lead to trade deals that boost economic growth, even while both political candidates – Clinton and Trump – pledged not to go ahead with the agreement (though presumably Clinton, had she won, would have

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[35] Pelosi Floor Statement on Colombia Free Trade Agreement, April 10, 2008 http://www.democraticleader.gov/newsroom/pelosi-floor-statement-colombia-free-trade-agreement/

[36] The TPP includes 12 countries—Australia, Brunei, Chile, Canada, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam—and, if approved, would replace FTAs with those countries, as well as any other standing trade and investment agreements. Colombia is not considered in the TPP initiative, because, in practice, they would need to become member of the APEC first.

renegotiated and then move forward).[37] A final agreement on the TPP was reached in early October 2015, but President Trump immediately after taking office announced that the U.S. would withdraw from the agreement (which had not yet been submitted to Congress for ratification), calling it "a potential disaster for our country." The remaining members of the TPP negotiated the agreement without the U.S. In April 2018, Trump briefly expressed some interest in re-entering the agreement, with the caveat of wanting new terms more favorable to the U.S. needed to be negotiated. Very soon, it became apparent that a renegotiation was not a possibility. Earlier, in March, President Trump ignited a "trade war" with China, as he pledged to levy tariffs on Chinese products (which began to take effect in July 2018), and on steel and aluminum from a range of global suppliers. In fact, the increased tariff was effective for all countries without a FTA, with temporary exemptions for EU countries, as well as Canada and Mexico (while the renegotiation on NAFTA continues), permanent exemptions for Australia, and special quota conditions for Argentina, South Korea and Brazil.[38] Also, the 2015 TPA is time-limited and was set to expire on July 1, 2018 but it was granted renewal through July 1, 2021.

[37] The Huffington Post, Jun 24 2015, Senate grants Obama Fast Track Authority after Contentious Battle, http://www.huffingtonpost.com/2015/06/24/obama-trade-win_n_7655224.html

[38] In June 1, 2018 the U.S. introduced import quotas for steel from Argentina, Brazil and South Korea to replace tariffs, as well as an import quota for aluminum from Argentina. On this date too, Australia was permanently exempted from the steel and aluminum tariffs. Reuters, "Factbox: Crossfire of tariffs as Trump rattles world trade order", July 6, 2018, https://in.reuters.com/article/usa-trade/factbox-crossfire-of-tariffs-as-trump-rattles-world-trade-order-idINKBN1JW1AE

Although it remains unclear how these measures will affect trade and investment relations with Colombia and Peru, the FTAs with those two countries are complete and being implemented.

Box 4. Efforts Towards New TPA Legislation:
In January 2014 Finance, Ways & Means congressional committee leaders (Baucus, Hatch and Cam) introduced legislation that would establish rules for trade negotiations and Congressional approval of trade pacts. Their aim was "to deliver trade agreements that boost U.S. exports and create American jobs."[39] *Known as the Bipartisan Congressional Trade Priorities Act of 2014 (TPA-2014), this bill dealt with issues key to U.S. challenges in the international trade arena, such as: competition from state-owned enterprises; localization barriers to trade; and restrictions on cross-border data flows. TPA-2014 aimed to update labor and environment provisions to reflect recent trade agreements, as well as set out market access priorities for goods and services. The bill also provided for increased consultation and reporting requirements and harder rules against agreements that permitted the continuation of barriers to U.S. agriculture. Finally, TPA-2014 proposed for the first time a specific guideline on currency manipulation.*
Over a year later, in April 2015, congressional committee leaders (Hatch, Wyden and Ryan for the Senate Finance Committee and the House Ways and Means Committee) and Trans-Atlantic Trade and Investment Partnership agreements *introduced the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA-2015), S.995, which aimed to increase transparency by "requiring that Congress have access to important information surrounding pending trade deals and that the public receive detailed updates and see the full details of trade agreements well before they are signed…[When these conditions are met, it] allows for trade deals to be submitted to Congress for an up-or-down vote…[Also] the bill creates a new mechanism to withdraw TPA procedures and hold the administration accountable should it fail to meet the requirements of TPA."*[40]

[39] https://www.finance.senate.gov/chairmans-news/baucus-hatch-camp-unveil-bill-to-bring-home-job-creating-trade-agreements

[40] https://www.finance.senate.gov/chairmans-news/hatch-wyden-and-ryan-introduce-trade-promotion-authority-legislation

III. LITERATURE REVIEW

A. Bilateral Trade Negotiations and Implementation and their Impact

The literature on the negotiation and implementation trade agreements spans disciplinary lines across economics and political science. Within political science, the studies on trade negotiation by John Odell are especially relevant for this dissertation are those. Odell (2009) argues that much of the research on trade negotiation has centered around the larger states (U.S., EU, China, India and Brazil), and has mostly disregarded the advances made by smaller states. In particular, the literature on negotiation has not thoroughly studied the strategies and advantages used by this group of small countries. This dissertation thus represents a contribution filling in this gap.

The conclusions of this literature review are that many Latin American countries have moved forward in their path to trade liberalization since the 2000s. However, they have done so with different levels of success. Although some have had "lucky breaks" related to resource endowments and timing, most of that success has been linked to increasing levels of commitment to institutional change, transparency, cooperation with the private sector and the civil society, and good leadership.

Odell proposes a menu of ideas and best practices rather than a report on tested hypotheses. He starts by explaining what he calls the "moves away from the table." The first one is building institutional capacity, while the second is to improve the number and quality of possible outcomes (alternative scenarios) in order to increase the small country's bargaining power (the less constricted they seem by the outcome desired by the big country, the more power the small country gains). Odell gives the example of the success of Mexico leaving oil contract commitments outside the reach of NAFTA.

Having these covered by NAFTA rules would have made it more cumbersome to buy futures. Also, before sitting down to these negotiations, Mexico put together contingency plans for a scenario where an oil crisis that would propel Mexico to sell its oil only to the U.S.[41] In other words, Mexico wanted the U.S. to see they could sell their oil freely, regardless of the outcome of NAFTA in that area. Odell explores how coalitions, both with other states and with transnational corporations, provide smaller nations with leverage in negotiating with the larger countries. Among the other "moves away from the table" that can be made by smaller nations is to frame public opinion and offset unfavorable framing.

In considering "moves at the table" made by developing countries, Odell distinguishes between distributive (that is, zero-sum - a win for one part would mean a loss for the other) and integrative (win-win) strategies, explaining that each is the end of a continuum, and most countries should realistically aim to achieve mixed strategy that is in between. He sees Mexico as having used such a mixed strategy during the NAFTA negotiations. According to Odell, "over the past two decades, middle-income developing countries, large and small, have become better prepared technically and better organized politically for trade negotiations than ever before. Despite the realities of power

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[41] John Odell (editor), Negotiating Trade: Developing Countries in the WTO and NAFTA. Cambridge: Cambridge University Press, 2006. In his chapter in this volume, Antonio Ortiz Mena examines how Mexico was able to avoid any significant concessions relating to energy during the NAFTA negotiations. Despite the relentless effort by US negotiators, Mexico was able to avoid foreign participation in the oil industry and energy supply commitments with the US by employing a sequentially mixed strategy and clever framing tactics. Despite power asymmetries, the US was unable to win desired concessions. In the end, it would appear that domestic politics worked against US negotiators as President Bush sought to finalize the agreement in advance of his re-election campaign.

inequality, some weaker players have used a shifting combination of astute moves away from the table and moves at the table."[42] Finally, he points out that small and middle sized countries should invest in training their negotiators in bargaining techniques, just as much as they are trained in economics and other subjects.

In the economics literature, a range of mostly econometric studies seek to assess the effects of potential agreements. These analyses are typically commissioned at the preliminary and negotiating stages as part of the effort to understand the implications of what is being considered. These studies use simulations, scenario analysis, partial and general equilibrium models to attempt to calculate the effect on economic growth (% growth expected on GDP), exports growth, and even jobs expected to be gained or lost. Among this second category, Eduardo Moron (2006) looks at Peru's potential economic outcomes in the context of the U.S.-Peru FTA using statistical models, scenario analysis and simulations. He presents calculations for when the FTA was announced, when it came into force, 1 year later, 5,10 and 20 years later. Overall, Moron's predicted outcomes are positive for Peru – he expects modest but positive (between 1 and 5% depending on the scenario) growth in GDP and exports. Another study on Peru, an effort of University researchers in conjunction with the Ministry of Trade and Tourism and the InterAmerican Development Bank (IADB),[43] concludes that given that most of Peruvian export products were already enjoying very low or no tariffs, then the impact of the FTA

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[42] Odell, 2009, p.13

[43] Mario D. Tello, El Tratado de Libre Comercio entre el Perú y los Estados Unidos: Los Impactos Económicos y Evaluación Ex Ante, Pontificia Universidad Católica del Perú http://www2.congreso.gob.pe/sicr/cendocbib/con2_uibd.nsf/D078AE547FDF6B4F052575C5006474C4/$FILE/02tratado.pdf

with the U.S. would be very small (as the general and partial equilibrium models included in the study suggest), unless there are substantial changes to non-tariff barriers to trade faced by Peru, and there is a real effort to diversify and take advantage of the additional export options opened by the FTA. The same goes for anticipated changes in FDI and efforts to attract new investments. Regarding imports, the report indicates that the ideal from the point of view of Peruvian firms would be that the entrance of new imports would be slow and accompanied by policy efforts to support those who would suffer in the process.

In the case of Colombia, a team of Colombia's Central Bank[44] evaluates the expected effects of the U.S.-Colombia FTA on exports of goods for the period 2007-2010 using a multisectoral general equilibrium model, and on services and FDI using projection methods. The study presents positive and promising projections, and implies that these numbers might be modest because they do not include the possible entrance in new economic activities allowed by the agreement. Toro also summarizes the results of other partial efforts done in this regard,[45] and reports that additional GNP growth is calculated to be between 1 and 4%, and all other authors anticipate an slight trade deficit with the U.S., even if the overall value of trade increases.

There are also studies from those agencies involved in the negotiation and implementation process that intend both to document the progression of events (including

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[44] Jorge Toro (lead researcher) EL IMPACTO DEL TRATADO DE LIBRE COMERCIO CON ESTADOS UNIDOS (TLC) EN LA BALANZA DE PAGOS HASTA 2010, Banco de la Republica de Colombia, 2006 http://www.banrep.gov.co/docum/ftp/borra362.pdf

[45] DNP, "Efectos de un acuerdo bilateral de comercio con EEUU" Dirección de Estudios Económicos, Dirección de Estudios Empresariales. Archivos de Macroeconomía 229, julio 2003

background and relevant data), and to present policy expectations and recommendations. In the case of Colombia, one study performed by the Ministry of Commerce[46] explains how the negotiations were organized from the point of view of the Colombian government. This study details the channels between official organisms and industry groups, Congress, and others. It also discusses the competences of different negotiation "tables," as well as the negotiation scheduled up to date. Finally, the report relates main interests for each big subject area, and details the government's efforts to undertake this mission with the input of the civil society and with full transparency.

From the U.S. perspective, the Congressional Research Service (CRS) produces comprehensive reports on the FTAs negotiated between the U.S. and other countries. The reports on the FTAs with Colombia and Peru have been already mentioned elsewhere in this dissertation and it is important to notice that in these cases, at least the initial reports, look mostly at political and socioeconomic conditions, using an international security perspective (aid packages, border issues, counternarcotic efforts, etc.). A complete and succinct report of this kind, this time on the CAFTA-DR, was produced in 2012 by J. F. Hornbeck.[47] The main policy idea reinforced throughout this report is the correlation between growth and economic stability (and the policies that promote it), private investment in production, public investment in education, infrastructure, logistics, and

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[46] La Negociación del TLC de Colombia con Los Estados Unidos, Equipo Económico, Ministerio de Comercio, Turismo e Inversión & Comfecamaras, 2006 http://www.tlc.gov.co/loader.php?lServicio=Documentos&lFuncion=verPdf&id=60490&name=LA_NEGOCIACION.pdf&prefijo=file

[47] J. F. Hornbeck, The Dominican Republic-Central America United States Free Trade Agreement (CAFTA DR): Developments in Trade and Investment, Congressional Research Service, R42468, April 23, 2012 www.crs.gov

good governance in general. Hornbeck points out how worsening security and governance problems have make it difficult for some countries within CAFTA-DR to benefit from the agreements.

Hornbeck also makes reference to value-added supply chain models, explaining how "the economic rationale rests on preferential access for agricultural and manufactured goods produced in the region. By removing regional barriers to trade, CAFTA-DR encouraged the development of specialized co-production in assembly manufacturing …based on comparative advantage and economies of scale."[48] The author also makes emphasis on productivity improvement though "an important public sector role in creating a solid business environment. Failure to do so may be equivalent to restricting many of the CAFTA-DR countries to a diminished development model of trade in which they are locked into low-level manufacturing and low-value agricultural production, competing with the poorest countries of the world."[49] He then excludes Costa Rica from this generalization. In addition to the analysis of growth rates, exports, and FDI, the report includes the following microeconomic indicators included for evaluation: Logistics Performance Index (LPI) Ranking from World Bank; Economic Freedom (The Heritage Foundation) and Corruption Perceptions (Transparency International); and Doing Business survey from the World Bank.

IADB has produced another series of studies documenting the progression of events and presenting policy expectations and recommendations. Starting with a study on CAFTA,

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[48] Ibid., p. 2

[49] Ibid., p.16

Anabel González produced a report just months after CAFTA was ratified.[50] A good portion of the text is devoted to explaining the countless instances where the agreement was reviewed by legislators, and the creation of the initial legislation required to comply with the commitments included in the agreement. It ends with a chapter on lessons learned for implementation; a focus in this section is on the willingness of policymakers to invest political capital in seeing the agreement through. For Costa Rica this meant the full commitment of President Arias, which contrasted with the lack of direction exhibit by his predecessor. Another lesson is the importance of constant consultations with the legislative and the private sector. Gonzalez also highlights the role of time and timing: as much as drafting and passing laws takes time, it is vital not to let the momentum diminish. Additionally, cooperation with and assistance by the partner country, in this case the U.S., is fundamental during the implementation process; therefore, the channels of communication between the FTA partners must be kept open and nourished. The author also argues countries heading in this process must build institutional capacity and invest in better infrastructure ahead of time. These conclusions are in line with those in this dissertation.

A second IADB reports by Luis Garcia,[51] was also produced within a year after the U.S.-Peru FTA was ratified. Therefore, most of the text is again dedicated to detailing

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[50] Gonzales, Anabel, La Implementación de Acuerdos Comerciales Preferenciales en América Latina: La Experiencia de Implementación del CAFTARD en Costa Rica, Banco Interamericano de Desarrollo Vicepresidencia de Sectores y Conocimiento, Sector de Integración y Comercio DOCUMENTO DE POLÍTICAS #BID-DP-104 Diciembre 2009 https://publications.iadb.org/handle/11319/1276

[51] García, Luis Alonso, Implementación de acuerdos comerciales preferenciales en América Latina La experiencia peruana en su TLC con Estados Unidos, Banco Interamericano de Desarrollo, Sector de Integración y Comercio DOCUMENTO DE

instances in which legislators reviewed the agreement, and to the explanation of the initial legislation required to fulfill with the commitments included in the agreement. In the case of Peru, the legislature granted the executive special powers to smoothly move the legislation forward. This report also closes with a chapter on lessons learned for implementation. Once more the importance of building institutional capacity and the cooperation with different public and private organisms (which Garcia calls "the multisectoral group") is once more highlighted. Additionally, the report advises that the process of implementation must be structured and planned when the negotiation is in the finishing stages. Garcia also makes some closing remarks about clearly configuring the FTAs administration as an important next step. Finally, he observes that both the implementation and administration of the agreement requires cooperation with U.S. agencies.

An IADB report on Chile[52] in this same series was produced after those for CAFTA and Peru and naturally emphasizes in the differences in the Chilean experience compared to the other two FTAs. Given that a longer time has elapsed since the ratification of this FTA, Carlos Furche makes a greater emphasis on the administration of the agreement, and the application and enforcement of the related legislation. The author highlights the work of a permanent bilateral commission and nine permanent working groups or committees; he points out that the creation and continuity of these institutional instance

POLÍTICAS # IDB-PB-108 Abril 2010
https://publications.iadb.org/bitstream/handle/11319/1266

[52] Furche, Carlos, Experiencia de Chile en la implementación y administración de acuerdos comerciales Banco Interamericano de Desarrollo Sector de Integración y Comercio RESUMEN DE POLÍTICAS # BID-PB-131 September 2011

has been instrumental for the success of the FTA. Regarding the lessons learned from implementation, Furche argues that the modernization of Chilean institutions cannot be simply attributed to the FTA. This modernization was part of a broader process of macroeconomic, that included a conscious investment in human resources; the accountability required by the FTA helped this modernization process flourish, making new institutions perform at the highest level. In Chile, there has also been extensive cooperation between the private and public sector throughout the negotiation, implementation and administration stages. Finally, the author emphasizes the ability of the governments and private sector to take advantage of the opportunities provided the agreements, by creating, promoting and enlarging exports markets and new investments, should be kept in mind constantly during the administration stage. Having succeed in reaching commercial agreements with its main commercial partners, Furche points out that the Chilean efforts regarding trade policy should be directed toward regionalization efforts in Latin America and the Pacific.

A final report of this series combines the findings of the Chilean, CAFTA (particularly Costa Rica and El Salvador) and Peruvian reports.[53] Juan Zuñiga and Brian Staples (2011) start by comparing the four countries by their Customs administration and legislation. Portions of this study are already covered in the individual country reports. However, the parts regarding El Salvador are new to this text, as is the comparison among countries. Starting with the adaptation of the Customs system, Zuniga and Staples

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[53] Zuñiga, Juan Luis and Brian Staples, La implementación de acuerdos comerciales preferenciales en América Latina: las experiencias de CH, CR, ES, PE en la implementación de las disposiciones sobre acceso a mercados en el marco de los tratados de libre comercio con Estados Unidos, Banco Interamericano de Desarrollo Sector de Integración y Comercio DOCUMENTO DE POLÍTICAS # IDB-PB-162 September 2011

state that the four countries started their customs' modernization before the FTAs with the U.S. came into force, however, for Peru and El Salvador, however, the agreements gave a much-needed push to those efforts. Overall, Chile is the best adapted to the global customs standards, but all four countries still have ways to go. The authors explain how in CAFTA the process of implementation has been left to each particular country without any regard to uniformity or harmonization. Also, in the cases of Costa Rica and El Salvador the investment in human capital, through training for example, has been insufficient, even with the financial and technical assistance provided by international organisms and the U.S. Therefore, Zuniga and Staples propose there should be a regional effort that provides this training for all the countries with FTAs with the U.S.

Occasionally academics perform these policy studies. Such is the case of Gonzalo Cea Novoa's analysis on the Chilean experience,[54] where he evaluates the impact of the Chilean FTAs with several countries in the Chilean manufacturing sector, analyzing the period between 1991 and 2011. Novoa does so by looking at average growth rates on manufacturing exports, before and after the FTAs came into effect. This study also performs an econometric regression. The author acknowledges the difficulties in isolating the effects of the agreements, and describes very modest positive outcomes.

Finally, once there has been some time to evaluate some of the results, there are works that analyze the agreements' performance. One of these analyses was curiously outsourced by the Dominican Republic government to evaluate the results of CAFTA ten

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[54] Cea Novoa, Gonzalo, Impacto de la suscripción de TLC en la exportación de productos manufacturados de Chile Instituto de Estudios Internacionales, Universidad de Chile, Julio 2012 http://www.iei.uchile.cl/documentos/estudio-de-caso-completo_84803_0_5938.pdf

years after the agreement was signed.[55] This study highlights how textiles lost its leading position in the exports basket to the U.S., as illustrated by the fact that the export value of textiles was about the same in 2005 and 2014. The reports shows that CAFTA has helped with diversification towards agricultural products, agroindustry, and other industrial products, and away from textiles. Of all the CAFTA-DR countries, only the Dominican Republic (DR) experienced negative average annual export growth during the 2005-2013 period. The DR has also improved its rank in published competitiveness scores (particularly the WB, Doing Business Survey). There has also been an increase of trade relations with Haiti, which is taking advantage of its agreement with the DR to reach the U.S. market. Finally, there is some evidence of increased FDI, although not necessarily coming from the U.S. The report makes a series of policy recommendations, including: performing an agricultural census; diversification and assistance programs to farmers; increasing economies of scale; taking better advantage of subsidy mechanisms (not overruled by CAFTA, but still questionable under WTO rules); strengthening trade defense mechanisms (accepted by the WTO, such as compensation mechanisms, and anti-dumping rules); promoting linkages between free trade zones and service and national industries; strengthening production linkages with Haiti.

Another study by the World Bank's Costa Rican office presents a balance five years after CAFTA was signed.[56] This report summarizes the negotiation process step-by-step, from

[55] Evaluación del Desempeño Comercial y Retos Futuros en el DR-CAFTA a los 10 años de su Firma, Ministro de Economía, Planificación y Desarrollo, Dominican Republic, Diciembre 2015 http://www.tlc.estadonacion.or.cr/documentos/pdfs/54MIDEPLAN2015.pdf (DASA consulting produced a 130-page report).

[56] González, A. (2006). El proceso de negociación de un tratado de libre comercio con Estados Unidos: la experiencia del tratado de libre comercio entre Centroamérica,

the moment it was first discussed publicly to its ratification. It details the preliminary seminaries, the formal rounds of negotiation, the closing, and the consecutive evaluations by the legislatives for ratification. The description is very candid about the difficulties these Central American countries experienced in an asymmetric negotiation with the U.S. Also, given that this was not a bilateral negotiation strictly speaking, this study also explains the additional layer of complexity resulting from the necessary coordination between these Central American governments; early on the role of coordination and processing of documents was given to Costa Rica. The author closes with a series of practical lessons for future negotiations of trade agreements with the U.S., which from big-picture items to more mundane matters, such as studying previous FTAs, or establishing a physical presence in Washington D.C. exclusively dedicated to assist the negotiations.

Other analyses of FTAs can be found in compendiums in which several authors offer their views and expertise on different aspects of trade agreements, including labor and poverty effects, and evaluations of their impact on specific economic sectors. This is the case of the volume edited by Moron and Perales (2010). This compilation of chapters by several authors includes a chapter on CAFTA, and chapters authored by Peru's leading negotiators. These texts are compiled from a conference celebrated in Lima in August 2008. Worth highlighting are Chapter 5[57] by Carol Wise y Cintia Quilico and Chapter 6

Estados Unidos y República Dominicana. BID-INTAL, Washington, DC. https://publications.iadb.org/handle/11319/2313

[57] Titled "¿Coalición de voluntades? el impulso estadounidense a los acuerdos de comercio bilaterales con América Latina en la década de 2000", Wise and Quilico are researchers from the University of Southern California

on the Political viability and popular appeal of FTAs in Latin America by Andy Baker.[58] The first of these chapters explains the theory supporting the U.S. change from multilateralism to bilateralism, touching on the theory of competitive liberalization, but primarily criticizing the lack of consistency among those processes. Baker on his part, presents an interesting political psychology perspective regarding the changing perception of the general public regarding FTAs. In short, when the general public regards itself as a consumer they are more likely to agree with liberalization.

There are also volumes that examine the countries' overall liberalization agenda and progress over a longer period of time, going beyond the scope of a particular agreement, but often putting those agreements in a greater policy context. In the case of Colombia, the OECD published a project of this kind in 2014.[59] In this comprehensive study regarding all aspects of Colombia's market openness since the 1990s, the FTAs with the U.S. and the European Union are mentioned in the context of the overall frame of trade reform. Therefore it does not dedicate substantial space to isolating the FTAS effects. This report evaluates and gives the recommendations within the context of the requirements of the OECD. This compendium is a valuable source for detailed and organized information regarding sequences of laws and new entities and processes. Another one of these volumes, this time for Mexico and edited by Beatriz Leycegui Gardoqui (2012), includes not only NAFTA issues, but trade agreements and policy

[58] Department of Political Science in the University of Colorado in Baker

[59] OECD, Market Openness Review of Colombia, Trade and Agriculture Directorate Trade Committee, July 2014 http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/TC(2014)4&docLanguage=En

strategies with other countries. Among the contributors are many high officials and well known academics. Chapter 3 is devoted to the analysis of the relationship with the U.S. and NAFTA. It presents Laycegui's perspective followed by that of others such as Susan Schwab and Francisco Sanchez, former U.S. officials. This chapter presents a positive view of NAFTA and emphasizes the TPP as the next step.

Finally, there is also an extensive literature studying all aspects of NAFTA, both in English and Spanish. One of the most comprehensive evaluations is Hufbauer and Schott's "NAFTA Revisited", published by the Institute for International Economics, and reviewed in a lengthier way in Appendix 2 of this dissertation. Other NAFTA studies include Lederman, Maloney, and Serven (2003) and López-Córdova (2001), both on lessons learned from the Mexican experience, and on a more critical note Weisbrot et al (2017), which compares the performance of the Mexican economy with that of the rest of the region since NAFTA, based on the available economic and social indicators, and with its own past economic performance.

B. Export Diversification and its effects on Economic Growth

Export diversification is a policy strategy that aims to stabilize export earnings in the face of commodity-specific shocks, which might be a particularly useful alternative in developing countries where the share of commodities in its export basket is especially large. Therefore, export instability is often a precursor to export diversification, because policymakers are aware that commodity prices are volatile, discouraging long-term investments and increasing macroeconomic uncertainty. Export diversification may stabilize export income in the long run (Ghosh and Ostry, 1994; Bleaney and Greenaway, 2001).

Also, according to conventional models of economic development, to achieve sustainable growth, countries should diversify from primary exports into manufactured exports (Chenery, 1979; Syrquin, 1989). However, starting in the 2000s the “resource curse” view has been reevaluated. Bonaglia and Fukasaku (2003) argue that resource-rich, low-income countries should diversify into resource-based manufacturing or processing of primary commodities instead of following the conventional path of low-skill manufacturing. According to their framework, for example, both mining and forestry are now knowledge-intense sectors with high technological content and upstream-downstream branches. Also, fresh food production has become both a vertically (food processing) and horizontally diversified field (for example, stepping laterally into the cut flowers and specialty fresh vegetables markets). Therefore, the distinction between vertical and horizontal diversification should be further clarified. Vertical diversification is related to the move between different categories of goods (such as primary commodities to manufactures) through value added mechanisms. Horizontal diversification implies expanding the export basket, by “diversifying into goods within the same broad category of goods” (Agosin 2006, p. 7). The latter would be the case of shifting, for example, from coffee for the mass market to gourmet coffee.

Additionally, export diversification could bring about knowledge spillovers from new production processes, management practices, or marketing techniques, perhaps even reaching other industries (Amin Gutierrez de Pineres and Ferrantino, 2000). Likewise, Van den Berg and Lewer (2007) argue that trade and accompanying activities such as international marketing, market research, product planning, and international travel help knowledge and technology transfers. A similar argument is that international trade can accelerate the economic growth of small economies by facilitating the movement of technology, frequently embodied in products. The logic behind this argument is that it is easier to adopt existing technologies than to create new ones.

While theory is reasonably clear on the relationship between trade and growth, empirical measurement and confirmation is more difficult. Because of possible endogeneity between trade and economic growth, the suitability of many methodologies to control for endogeneity and its substantial impact on the estimated relationship between trade and economic growth has been debated. Rodriguez and Rodrik (2001) and Rodrik, Subramanian, and Trebbi (2004) argue that the effects of trade policy on growth appear to be intertwined with the effects of other policies usually implemented simultaneously finding that institutional endowments also determine this process. Nevertheless, a variety of recent papers tend to support a considerable role for trade in economic growth, such as Dollar and Kraay (2004), Loayza and Fajnzylber (2005), de la Torre et al (2015).

Alternatively, Hausmann and Rodrik (2003), Hausmann, Hwang, and Rodrik (2006), and Hausmann and Klinger (2006) analyze the benefits of export diversification and exports in general for economic growth, both empirically and theoretically, arguing that economic growth is not driven by comparative advantage but by investment diversification into new activities. Entrepreneurial cost-discovery dynamics are key to this process. Hausmann and Rodrik (2003) show how entrepreneurs evaluate uncertain costs while producing new goods: success will result in the socialization of such goods, while losses from failure are private. In this context, there is an important role for public agencies in contributing to industrial growth and structural transformation by promoting entrepreneurship and offering incentives for business owners to engage in a new range of activities.

C. Foreign Direct Investment (FDI)

As mentioned earlier in this study, in the case of Peru and Colombia, given that they already had access to the U.S. markets through a variety of trade preferences (even if not permanent), one area of potential benefits from and FTA was improving their position as recipients of FDI – investment as much as trade (and perhaps more) was seen as the incremental benefit for the two nations. The key determinants of FDI location in the developing world, as analyzed by many researchers, include:

- Market size and quality: usually measured in quantitative studies through Gross Domestic Product –GDP (total, growth rate or per capita) and/or population
- Factor endowments and prices: including natural resources and labor characteristics (wages, and availability of a variety of unskilled and skilled workers)
- Macroeconomic stability: in particular, indicators associated with public debt, exchange rates, and inflation which indicate macro stability (or the lack of it)
- Political stability: Including democratic transitions, peaceful elections and power transitions, effective checks-and-balances
- Policy environment: consisting of trade regimes (tariffs and export-orientation) and investment policies (tax rates, restrictions on capital repatriation, limitations on foreign participation in particular sectors), privatization strategies, and the general business operating environment
- Geographical (distance from major markets) and infrastructural (transportation and communications) determinants.

Increased FDI flows are usually seen as having the potential to increase economic growth, and through increased growth to improve on other dimensions of well-being. The microeconomic understanding of the effects of FDI includes the analysis of positive spillovers. The general argument is that the foreign investment presence creates forward and backward linkages to the domestic economy through supplier networks, and human and technological capital transfer through demonstration effects.

Moran (2006) argues that the so-called "Washington Consensus" promise that FDI is "good" in general for developing countries must be qualified after decades of research. He divides FDI into two categories: investment in manufacturing and assembly, and investment in natural resources and infrastructure. Within the first group:

> Foreign-owned plants that are built to penetrate international markets […] operate with the most advanced technologies and embody the most sophisticated quality control procedures. They pay wages higher than their local counterparts do, and […] seek to attract and keep skilled workers by offering superior working conditions. They generate backward linkages to local firms if the host country business climate and worker training institutions are conducive to the emergence of suppliers. Foreign-owned plants that are built to serve protected host country markets, in contrast, consistently fail to live up to the infant-industry goal of creating internationally competitive operations. (p.2)

FDI in infrastructure and natural resources is more susceptible to be undermined by corruption, and to face higher risk premiums from legal concerns such as breach-of-contract fears. Such factors would dilute the benefits of investment liberalization.

In line with this notion, Shatz (2001) argued that while levels of FDI towards Andean countries had been high in the 1990s, the composition of the activities of the foreign investment firms was heavily biased towards supplying the local market; he predicted that market size would become a major constraint for new manufacturing FDI. He also pointed out how infrastructure-oriented FDI, resulting mostly from privatizations, was a large contributor during this period. He identified trade agreements with developed countries as key to expand market size.

D. Effect of BITs and FTA Investment Chapters on FDI

FDI is generally seen as having a positive effect for economic development, as outlined just above, and the FTAs considered here include measures under their investment chapters to attract more FDI and to make this investment effective in contributing to growth. BITs are the most common form of international investment agreements (IIAs).[60] and the investment chapters in FTAs function in practice as BITs, replacing any existing BIT among the signing countries. BITs establish the terms and conditions for private investment by nationals and companies of one state in another state.[61] BITs put in place actionable standards of conduct that apply to governments in their treatment of investors from other countries, including: fair and equitable treatment (usually national treatment or most favored nation treatment); protection from expropriation; and free transfer of means (refers to the foreign investors right to freely transfer resources associated to the investment into and out of the host country) and full protection and security (guarantees that the host country does everything within its power to preserve the investment's physical and legal security).

A distinctive feature of many BITs is that they allow for an alternative dispute resolution mechanism, providing investors recourse to international arbitration (often through the ICSID - International Center for the Settlement of Investment Disputes), rather than pursuing legal action against the host country in its own courts. The importance of these mechanisms is explained in more detailed in the next section.

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[60] According to the UNCTAD, IIAs are divided into two types: (1) bilateral investment treaties and (2) Other IIAs. The great majority of IIAs are BITs (Total BITs: 2923; Total in force: 2223 -- Total Other IIAs: 345; Total in force: 275).

[61] The first generation of these treaties were Friendship, Commerce and Navigation Treaties (FCNs), which required the host state to treat foreign investments on the same level as investments from any other state, including in some instances treatment that was as favorable as the host nation treated its own investments. FCNs also established the terms of trade and shipping between the parties, and the rights of foreigners to conduct business and own property in the host state. The second generation of these treaties are Bilateral Investment Treaties (BITs)
http://www.law.cornell.edu/wex/bilateral_investment_treaty

Additionally, one of the key issues when considering the effects of BITs on FDI is that in many cases the required insurance for private investments into developing states has become conditional on the presence of an investment treaty covering that investment. Finally, BITs can have positive spill-over effects, because the signing of BITs provides a signal to potential investors of the developing country's determination for protecting foreign investment.

1) General Background

In the 1980s, tight budgets, the debt crisis, and an overall decreased interest in providing traditional development aid led to a decline in official development assistance from the developed world (Newmayer, 2005, p.1568). Since then, private international flows of financial resources, mainly in the form of FDI, have become increasingly important to developing countries as a strategy to achieve higher economic growth. The increased competition among developing countries for FDI from developed countries helps to explain the increased number of BITs. However, from one point of view, it is not necessarily the case that the growing number of investment treaties constitutes the best joint strategy for these countries. Although collectively it could be that each country would be better off not signing any BIT and retaining as much control over their assets as possible by negotiating an investment agreement in a multilateral forum that would capture their combined bargain power, individual countries benefit from being able to deliver credible commitments to investors. Additionally, when a less developed country's neighbor or economic competitor signs such an agreement, they might well feel pressure to sign one as well to remain competitive (thus providing a classic example of the prisoner's dilemma - Newmayer, 2005, p.1570). In a similar fashion, regarding the idea that signing BITs can be explained as a prisoner's dilemma situation, Sasse (2011) describes how a treaty will still be a Pareto-improvement for the two treaty partners but may result in a Pareto-inferior situation for developing countries as a group.

In addition, it is important to note that it was developing countries that vetoed the "multilateral agreement on investment" at the end of the 1990s. In particular, between 1995 and 1997 there was an attempt to negotiate such agreement among the OECD countries, and there was a debate about whether this discussion should be part of the issues introduced to the WTO agenda at the December 1996 Ministerial Conference in Singapore (known as the Singapore issues). Then again, at the WTO Ministerial in Cancun in September 2003, the wealthier WTO members tried to introduce a Multilateral Agreement on Investment (MAI) through the "Singapore" issues. These efforts once again failed, as a group of more than twenty developing countries united to oppose it.[62] As Shawn Donnelly explains, "most OECD member nations seem, explicitly or implicitly, to have accepted the reality that, while multilateralism may be the optimal path, in the investment policy area, it is not, at least for now, a practical way forward."[63]

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[62] Khor, Martin, The "Singapore Issues" in the WTO: Implications and Recent Developments, Third World Network, November 1, 2004 http://www.policyinnovations.org/ideas/policy_library/data/01284

Also: Bhagirath Lal Das, A Critical Analysis of the Proposed Investment Treaty in WTO, July 2003 https://www.globalpolicy.org/component/content/article/209/43724.html

[63] Shawn Donnelly, "Let's get realistic about a multilateral investment agreement", OECD Insights, February 2016 http://oecdinsights.org/2016/02/08/lets-get-realistic-about-a-multilateral-investment-agreement/ Donnelly is a retired U.S. diplomat and trade negotiator, and Vice President for Investment Policy at the US Council for International Business (USCIB)

As the number of investment agreements grows, so does the opportunity to evaluate their motivation and effects. The rest of this section reviews studies on the impacts of bilateral investment agreements. Since the mid-1990s the number of BITs has increased tremendously, as well as their level of sophistication. In the 80s and 90s the risk of expropriation seemed to be the main if not the only concern, and most of the studies that look at this earlier period do not address issues such as intellectual property rights, or environmental or labor standards. One of those studies, by Egger and Pfaffermayr (2004), uses the knowledge capital model of multinationals to test the hypothesis that when investment treaties are implemented, they result in a significant positive effect on outward FDI. They find the expected positive result, for a sample of over 4,000 pairs of OECD and non-OECD countries, with BITs signed from 1982 to 1997. Egger and Pfaffermayr include four types of variables to explain the stock of outward FDI at the bilateral level, namely, country size (GDP), factor endowments (ratio of unskilled to skilled labor), trade and FDI frictions (distinguishing between the anticipation effect and the ratification effect), and interaction terms. This 2004 study also finds that to some extent even just signing a treaty may have positive effects.

Hallward-Driemeier (2003) finds that the existence of a BIT between two countries does not increase the flow of FDI from the developed to the developing signatory country. She looks at bilateral country data from 1980 to 2000 and finds that market size and macroeconomic stability are the key drivers of foreign investment. Interacting the BIT variable with various measures of institutional quality, she finds a positive coefficient of the interaction term that is often statistically significant in explaining the increased FDI flows from the developed to the developing country.

Therefore, her study stresses that BITs are no substitute for domestic institutions and that to the extent that they work to increase investment at all in developing countries, they act as a complement to the existence of strong institutions.

Looking at the period 1970 to 2000, and covering up to 122 countries, Buthe and Miller (2008) find a positive correlation between BITs and subsequent FDI. Evaluating a similar time spam and number of countries, Neumayer and Spess (2005) also provide quantitative evidence that a higher number of BITs raises the FDI that flows to a developing country. They also evaluate if the signature of BITs has indeed a signaling effect, finding positive and significant results, and providing further evidence that BITs are likely to fulfill the dual function of both signaling and commitment. On their part, Tobin and Rose-Ackerman (2005) find that the total number of BITs by a country has no independent significant impact on investment flows into the country, except when such countries are seen to be politically risky. In addition, they look at flows of FDI from the U.S. and BITs with the U.S., but fail to find any statistically significant effect. On the contrary, Salacuse and Sullivan (2005) perform a fixed-effects estimation of the bilateral flow of FDI from the U.S. to 31 developing countries from 1991 to 2000, which finds that a U.S. BIT is significantly correlated with an increase in U.S. FDI.

Desbordes and Vicard (2009) show that the effect of the entry into force of a BIT crucially depends on the quality of political relations between the signatory countries; it increases FDI more between countries with tense relationships than between friendly countries. They also find evidence that BITs and good domestic institutions are complementary. They look at two kinds of risks: systemic domestic risk, which is common to all investors, related to the quality of domestic institutions; and an idiosyncratic risk specific to each pair of home and host countries, resulting from interstate political relations.

Some studies' conclusions are far less promising regarding the positive impact of investment agreements on FDI. In a cross-country comparison of FDI determinants, performed by UNCTAD (Sachs & Sauvant, Ch. 12, 2009) the overall conclusion is that BITs appear to play a minor and secondary role in influencing FDI flows. Also, in a replication of Newmayer and Spass study, Yacke (2007) finds that, after a series of relatively small methodological changes and a different model specification, the seemingly positive effect of BITs on FDI largely falls from statistical significance. In a similar way, looking at correlation vs. causation, Aisbett (2007) finds that the initially strong correlation between BITs and investment flows is not robust controlling for selection into BIT participation. These results highlight the importance of accounting for the endogeneity of adoption when assessing the benefits of investment liberalization policies.

In a seeming twist, Swenson (Sachs & Sauvant, Ch. 16, 2009) examines the correlation between previous foreign investment and the signing of BITs to explore whether there is any evidence that the signing of BITs is investor-driven. She points out that although treaties are viewed as forward-looking tools signed to boost future investments, treaty signing also has a backward-looking element in the sense that established investors may be the ones who push for an investment agreement as a way to protect their current investments and set the stage for future expansion. In particular, countries that had already received larger stocks of foreign investment are more likely to sign BITs than countries that had been less successful in attracting foreign investment.

Furthermore, according to her results, BIT signing did help developing countries attract a larger volume of foreign investment.

Yet other authors have indicated that different kinds of investment agreements should be evaluated differently, according to their specific contents and not as "black boxes." Berger, Busse, Nunnenkamp, and Roy (2013) analyze how liberal investment admission -- one that follows most favored nation clauses and local treatment -- has different impacts when compared to the admission rules provided by agreements with more restrictive levels of investment openness, and also look into the impact of diverse dispute settlement mechanisms in both regional trade agreements (RTAs) and BITs, on bilateral FDI flows between 1978 and 2004. They find that FDI responds positively to RTAs only when they include most favored nation and local treatment rules (which the authors call "liberal admission"). Dispute settlement provisions are found to be much less important. In contrast, the implementation of any kind of BIT seems to be favorably perceived by investors. They recognize several institutional considerations that are especially important: first, whether foreign investors can sue host country governments before a transnational tribunal (for example, the majority of earlier BITs do not allow for strong investor-state dispute settlement-ISDS, before they became commonplace in the late 1980s and in the 1990s[64]); and second, since NAFTA, many RTAs contain investment provisions pre-establishing national treatment (NT), while liberal commitments of that level continue to be the exception in BITs. While both features have become standard in investment agreements with the U.S. and Canada, and among Latin

[64] Many BITs signed in the late 1970s and early 1980s were between Developed and developing countries, or among developed countries. Only since the late 1990s the number of BITs among developing countries increased significantly.

American countries, this is not the case for agreements involving the European Union. This study by Berger et al. is based on a study by Yackee (2009). Yackee differentiates between three types of ISDS provisions (comprehensive, partial and promissory). Berger et al. extend this classification to RTAs. Additionally, they believe that "it is the [investment] provisions to which contracting parties bind themselves what matters most, not the type of agreement in which they are embedded." (p.7) In this way, Berger et al. differentiate their study from those who have discriminated between BITs and investment chapters in bilateral and regional trade agreements.

2) Latin America

Historically, Latin American countries did not adhere to international mechanisms to resolve disputes with foreign investors. They followed what is known as the Calvo Doctrine, which forces foreign investors to rely on local courts in the event of a dispute.[65] During the 1990s, the attitude toward investment arbitration in the region began to change, with the process speeding up especially in the last decade. Nevertheless, this process has been uneven. On one side of the spectrum, while these agreements usually call for the ratification of the ICSID Convention, Bolivia, Ecuador and Venezuela filed notices of renunciation in 2007, 2009 and 2012 respectively. On the other, the FTAs of

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[65] Definition of CALVO DOCTRINE (Black's Law Dictionary): The Calvo Doctrine is a foreign policy doctrine which holds that jurisdiction in international investment disputes lies with the country in which the investment is located. The Calvo Doctrine thus proposed to prohibit diplomatic protection or (armed) intervention before local resources were exhausted. An investor, under this doctrine, has no recourse but to use the local courts, rather than those of their home country. As a policy prescription, Calvo Doctrine is an expression a legal nationalism. The principle, named after Carlos Calvo, an Argentine jurist, has been applied throughout Latin America and other areas of the world (http://thelawdictionary.org/calvo-doctrine/)

the U.S. with Colombia and Peru include arbitration within the investment chapters (though the Trump administration has expressed qualms about this issue in its negotiations over revisions to NAFTA).

A study by Gallagher and Birch (2006) on data from 1980 to 2003 finds that for the countries of Latin America and the Caribbean, market size, trade orientation, and macroeconomic stability are the most important determinants of FDI. While the total number of BITs that a country has signed does have an independent and positive effect on FDI flows, having a BIT with the U.S. does not independently attract U.S. investments. Interestingly, Gallagher and Birch argue that econometric analysis is limited in its ability to capture the relative importance of factors such as political stability and the policy environment. Many of the more qualitative empirical studies where researchers interviewed firm representatives that make actual decisions about firm location found such factors to be very relevant. This suggests a qualitative study that examines the specific importance of an investment agreement would complement the quantitative analysis presented by their study – highlighting a key contribution of this dissertation.

Box 5. The role of Conflict Resolution and Peace Agreements:
Both the Colombian and Peruvian governments have undergone peace processes with their corresponding guerrilla opponents, the FARC (Fuerzas Armadas Revolucionarias de Colombia – Colombian Revolutionary Armed Forces) and the Shining Path (Sendero Luminoso). Peace in Peru was reached about two decades ago. Foreign investment in Peru has grown exponentially since the defeat of the Shining Path guerrilla insurgency. In 1992, when Shining Path's leader Abimael Guzman was captured along with other leaders, net investment cash flows to Peru were negative. By 2012, investment inflows had grown to almost $12 billion.[66] *Nevertheless, the defeat*[67] *of the guerrillas in Peru did*

[66] De la Pedraja, 2016

[67] It has been argued that the Shining Path was never totally defeated, just weakened. There have been attacks linked to remaining the cells of this group, as recent as the last two years. However, its surviving members are calculated to be no more than a couple

not take place in a vacuum. It concurred with a major set of economic reforms was introduced in November 1991 and approved by the congress in the first four months of 1992. Among the most important were measures promoting foreign investment. Controls on foreign investment, including restrictions on profit remittances, were ended and equal treatment for foreign investors was guaranteed. Also, financial-sector reform was introduced.

In the case of Colombia, the government and the FARC reached a ceasefire agreement in June 23, 2016. The actual peace agreement was signed two months later, only to be disqualified by a "no" vote when submitted to popular vote in October 2. As the government continued its campaign to rescue and reframe the peace talks and agreement, Colombian President Juan Manuel Santos was awarded the Nobel Peace Prize in mid-October. However, the momentum was not lost, and the agreement was salvaged and ratified in November 24,2016. To highlight, "one of the areas under negotiation as part of the peace process [was] comprehensive agricultural development. Therefore, a number of large agricultural development projects are planned as part of the government's post-conflict strategy." In this context, "U.S. agricultural equipment and service firms may find new business opportunities…[additionally], more opportunities may open up for businesses that provide value-add technologies to the sector, such as food processing and packaging companies."[68] Furthermore, Colombia's post-peace development agenda includes 1450 "peace contracts", representing an investment of $4.5 billion. Among the opportunities allowed by these contracts are:

**Infrastructure: roads, airports, aqueducts, schools, hospitals, telecommunications infrastructure, and connectivity*

**Tourism: development of rural tourism and ecotourism*

**Logistics: storage centers and regional distribution centers*

**Agriculture: commercialization of family farming, increased agricultural productivity at small scale farms, and development of irrigation districts*

According with Grussendurf and Kurtz:

> *Peace agreements involve not only the termination of armed conflict but also the implementation of broader peace processes that include the reconstruction of the economy and civil society as well as the construction of confidence-building measures and peaceful relations with adversaries. One major reason for such concerted efforts to conclude peace agreements is the economic benefits that derive from them…[including] increased opportunities in the forms of domestic investment in the civilian sector as well as more international trade, aid and investments.*[69]

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hundred, and are believed to have endured by cultivating and commercializing coca in small-scale operations.

[68] Armendiz, 2016

[69] Economics of Peace and Security (Chapter) in the Encyclopedia of Life Support Systems

In addition, Cate finds that there is a delay between the time a conflict ends and when FDI inflows are positively impacted.[70]

[70] Cate, 2016

IV. EVIDENCE ANALYSIS

A. Qualitative Analysis

Interviews and institutional background Peru, Colombia and FTAs

This dissertation follows a mixed methodology. As part of the empirical work, I conducted interviews with the purpose of getting first-person accounts of the negotiation and implementation processes, and, by documenting and analyzing them together, contribute to the literature in trade negotiations. The following is a list of the information sought after during through these interviews:

Negotiations
• Evidence of application of Competitive Liberalization framework (U.S.) • Any deviations from "boilerplate" (template) treaty delivered by the U.S. • Strategic behavior: Interactions with Legislative, Private Sector and Other Actors
Implementation
• Challenges for the creation and application of new laws to implement the FTA • Evidence of capacity-building in new agencies • Enforcement issues • Changes in political actors and consistency throughout the process

These interviews were conducted in person, over the phone and via email, during the period from April 2017 to October 2017. Interviewees were chosen by their participation on the process of negotiating and implementing the FTAs in Peru and Colombia, or by their knowledge of the subject matter because of their research interests and standing in academic settings. The group selected included government officials, researchers at chambers of commerce and export associations, executives from exporting firms, and Economics professors, both in Colombia and Peru. I was able to also get the insights of two U.S. negotiators, who confirmed the perceptions expressed by Colombian and Peruvian interviewees.

Interviewees were contacted first via email, sending them a brief and open questionnaire (see Appendix 6 for English-language version) as a guideline. While several of the responses came via email, a few preferred to have a conversation over the phone, and some agreed to meet in person. The latter took place in Bogota in August 2017 and in Washington D.C. in October 0f 2018. The vast majority of these testimonies were gathered in Spanish and later translated. The following is a list of those who agreed to provide their impressions:

Name	Country	Occupation / Link to trade policy issues
Jaime Dupuy	Peru	Former Ministry official, FTA negotiator Sociedad de Comercio Exterior del Peru (Economic Studies Directors), Promperu (Board of Directors)
Javier Illescas	Peru	Former FTA chief negotiator Foreign Trade Society of Peru (Economic Studies Directors)
Dr. Eduardo Moron	Peru	Has written extensively about the subject Professor - Economics Department – Universidad del Pacifico
Dr. Noelia Bernal	Peru	Former Ministry official, assisted the analysis and negotiation of the Investment Chapter Professor - Economics Department – Universidad del Pacifico
Carlos Gonzales	Peru	ADEX (Exporters Association) Director of Economic Studies
Luz Barreto Montesinos	Peru	ADEX Project Manager, International Cooperation
Paula Carrion	Peru	ADEX Agroexports Director
Gonzalo Bonifaz	Peru	Embassy of Peru in Washington D.C. Head of the Political Department
Nicolas Torres	Colombia	Investment chapter lead negotiator; Director of the International Legal Affairs for the Ministry of Commerce, Industry and Tourism

Dr. Luis Angel Madrid	Colombia	Former Ministry of Commerce, Industry and Tourism officer, Professor PhD Law, Universidad Sergio Arboleda, Bogota
Dr. Gabriel Andre Duque	Colombia	FTA Lead Negotiator. Vice minister of Commerce, Industry and Tourism, Ambassador to Japan and the WTO
Carlos Eduardo Ronderos Torres,	Colombia	Former Foreign Trade Ministry (participated in the negotiation that broadened the Andean Community to Peru, and in the FTAA negotiations); University professor and trade consulting business owner in Bogota
Enrique Millan	Colombia	Colombian Embassy in D.C. Ministry of Commerce and Tourism lead representative
Camilo Ayala	Colombia	Colombian Embassy in D.C. Ministry of Commerce and Tourism, Implementation expert
Isabel Zamorano	Colombia	Colombian Embassy in D.C. Ministry of Commerce and Tourism, Statistics expert
German Martinez	Colombia	Participated in "next room" talks during FTA CEO Ramo Food Industries, Former Financial VP Procafecol, Bavaria (director – merge with SABMiller)
Dr. Marcela Eslava	Colombia	Professor - Economics Department – Universidad de los Andes
Dr. Jairo Parada	Colombia	Professor - Economics Department – Universidad del Norte
Amb. Susan Schwab	U.S.	Former USTR Representative – Peru and Colombia FTA negotiator University of Maryland Professor
Not to be quoted	U.S.	Former Peru and Colombia FTA negotiator, currently at USTR

In this section, first person accounts from official documents, articles, books and other (media) interviews will also be presented. Included in this group are Alfredo Ferrero Diez Canseco. Eduardo Ferreyros, and Pablo de la Flor -- Peruvian negotiators -- and Andres Espinosa Feinwarth, chief agricultural negotiator for Colombia.

Both Colombian and Peruvian officials were very helpful at sharing their expertise. It is evident that promoting the FTAs and supporting mechanisms that aid their evaluation and analysis is a high priority for both countries' Executive branches. They were very candid about their experiences, which complemented quite well their openness about statistics and official documents (just about everything is kept up-to-date online in official websites). As can be expected, ex-negotiators and ex-officials, those who are no longer working in the public sector, were at times more critical of the negotiation process and the FTAs themselves.

INTERVIEW SUMMARY AND FINDINGS:

The interviews supported the idea of benefits along with risks from the FTAs. The interviews confirmed that the FTAs were considered, across the board, as necessary to secure the preferential access granted before by the ATPDEA without risking national output. Also, looking across the interviews, most officials and researchers regard FTAs not only as instruments that promote competitiveness and innovation, but also as tools for providing security to foreign investors; in their view, the commitments made under a FTA lead to new and better ways of doing business internationally. FTAs facilitate imports of capital goods (machinery), raw materials and intermediate goods required to enrich national production and exports. In this regard, Gabriel Duque[71] explains how integration to the World Economy is a long term commitment, a choice for sustainable development that seeks to take advantage of global value chains. However, many interviewees recognize that FTAs may have negative effects if they are not used advantageously and national industries lack the support they require at a time they are vulnerable to an increase in imports.

[71] FTA Lead Negotiator. Vice minister of Commerce, Industry and Tourism, Ambassador to Japan and the WTO

It was surprising to realize how challenging the implementation process has been. As hard as the negotiation and ratification were, the implementation is proving to be the greater task to take advantage of the commitments signed. Finally, virtually all local officials highlight how the capabilities and organization created to negotiate and implement the FTA with the U.S., including negotiating team structures and themes, have been used to negotiate FTAs with other countries. There was a sense that the bureaucratic side of the agreements involved an investment that will have future payoffs.

1. Colombia:

a. Negotiation

The Foreign Trade Ministry of Colombia started negotiations for its first FTA in 1991, when it participated in the negotiations for a FTA with Mexico. During the second stage of this negotiation, the Mexican team, feeling empowered, started to impose the disciplines (model) from NAFTA to the negotiation with Colombia and Venezuela. Colombia wanted to use the G3 ("Group of the 3", Mexico, Colombia and Venezuela, signed in 1994, implemented in 1995, but Venezuela left in 2006) as a bridge to NAFTA (and eventually the U.S.). However, the Mexican economic crisis in 1994 and 1995 closed that possibility.[72]

[72] Nicolas Torres –Colombian investment chapter leader negotiator. Later on, as director of the International Legal Affairs for the Ministry of Commerce, Industry and Tourism, Torres coordinated the implementation of the normative modifications required by the agreement, including tariff reductions/removals, changes in custom controls, commerce instruments and commerce facilitation tools. He also led the normative modifications regarding intellectual property and services, as well as those changing taxes on imported goods.

From an FTA advancement perspective, the Samper Administration (1994-1998) missed the opportunity. During that time, Colombia focused on Mercosur and ALADI (Latin American Integration Association). Subsequently, during the Pastrana Administration (1998-2002), there was little progress. At that time, the focus was on the FTAA (hemispheric negotiations). After that and given the lack of success with a regional approach, the U.S. turned its attention to the "willing countries"[73] with Colombia on the sidelines.

In 2003, then Vice-minister of Commerce, Claudia Uribe, was entrusted with preparing for a FTA negotiation with the U.S. Along with her team, she studied the FTAs between the U.S. and other countries. The U.S.-Chile FTA had just been finalized. Many of the detailed documents for these negotiations were not public, so the ministry performed a "complexity analysis" as best it could. There was some anticipation on what related to pharmaceuticals, but overall there was a sense that there was room to discuss many issues.

In May 2004, U.S. sent the negotiating template, which turned out to be a big surprise for the Colombian negotiating team. In retrospect, the Andean countries were over-confident that their previous history with the ATPDEA would give them preferential treatment when negotiating the FTA. In truth, Colombia aspired to an FTA-light. Colombian officials started preparing their own text as a "counteroffer." This text was prepared along with Peru and Ecuador, in collaboration with the business sector, and different official/public actors.

[73] Dr. Luis Angel Madrid, Former Ministry of Commerce and tourism officer, PhD Law Universidad Sergio Arboleda, Bogota (Current Professor)

The sense of Carlos Ronderos,[74] a former trade ministry official who participated in the negotiations, was that this was a very asymmetric negotiation, with Colombia at the weak end. Ronderos had the chance to speak with USTR chief Robert Zoellick (the U.S. trade representative from 2001 to 2005), and during that meeting he got the sense that the FTA between the U.S. and Colombia would follow the framework set up by the process with Chile, while furthering "new generation" advances including intellectual property issues, biodiversity, and such. Because the U.S. wanted to approach it as a "single undertaking", meaning that all chapters of the agreement were to be ratified at the same time, the negotiation took longer, and in the meanwhile the U.S. government changed.

From an agricultural perspective, the Ministry of Agriculture did not agree with letting the FTA with Chile be the only guideline to follow. It did not make sense at all to compare Colombia's diverse and tropical agriculture to the Chilean agricultural sector, which is more seasonal and opposes the North's in terms of seasonality (meaning that fresh Chilean products competed relatively little with those of U.S. farmers).[75]

One of the main objectives of the negotiation was to achieve the best possible scenario for access to the U.S. markets regarding sanitary and phytosanitary standards, as well as to address any other non-tariff rules that could slow down or hinder the admission of Colombian exports to the U.S. The purpose of these efforts was to achieve real access

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[74] Carlos Eduardo Ronderos Torres – Colombia – Former Foreign Trade Ministry -- participated in the negotiation that broadened the Andean Community to Peru, and in the FTAA negotiations. He is now a university professor and owns a trade consulting business in Bogota.

[75] Andrés Espinosa Fenwarth Laura Pasculli Henao, "Visión agrícola del TLC entre Colombia y Estados Unidos: preparación, negociación, implementación y aprovechamiento", Serie Estudios y Perspectivas, #25, CEPAL Office, Bogota, April 2013, p. 16

to the U.S. Therefore, the Colombian team emphasized that standards and non-tariff matters were to be attended by the U.S. in a timely fashion, not only through the regular agencies in charge of these processes, but by the Special Committee created for this purpose by the agreement. Also, it was expected that the American authorities and agencies were to accept as sufficient the scientific evidence presented by the Colombian authorities for acquiring these certifications, speeding in that way the admissibility of Colombian products. That being said, at that time Colombians were even hopeful that exporters would also take advantage of products that were listed under the ATPDEA but that had never been exported. Nevertheless, analysts pointed out at the time that even with the best mechanisms crafted in the text of the agreement, Colombia had a long road of hard work achieving the technical and scientific capacities to comply with such requirements.[76]

In a similar fashion, Colombia was more thorough than its neighbors when negotiating over Intellectual Property. These were risky issues to discuss, with very low political acceptance in Colombia. Mandatory patents for new uses of pharmaceuticals (countering Andean norms, and potentially affecting Colombian manufacturers), restrictions to mandatory licenses and restrictions to the exhaustion of patent rights (widely used in the U.S., but not internationally) were successfully excluded from the negotiation, because they were issues already included in the wider WTO framework. However, issues related to patent termination due to delays in sanitary permits, and data

[76] Ibid. pp. 40-41

protection remained on the table.[77] Colombian pharmaceutical companies strongly opposed signing the FTA.

Once Ecuador walked away from the negotiation, the Colombian position was more vulnerable. Peru wanted to finish up faster. It was easier for them because their pharmaceutical industry was much less developed, and Peru was somewhat less vulnerable than Colombia in agriculture. Other sensitive issues were access to non-agricultural markets, and norms of origin. But sensitivities in the agricultural sector ultimately determined the pace of the negotiation.

Peru closed its FTA negotiations with the U.S. in 2005. Colombian negotiations were finalized at five in the morning on February 27th, 2006, in a marathon session closing the final packet of negotiations on sugar and tobacco, the two most sensitive products for the U.S. USTR chief Susan Schwab was in charge of the American team. From Colombia, Andrés Felipe Arias, Minister of Agriculture and Rural Development, Jorge Humberto Botero, Minister of Commerce, Industry and Tourism, Hernando José Gómez, Colombian chief negotiator, and Andrés Espinosa Fenwarth, head negotiator from the Ministry of Agriculture and Rural Development, maintained constant communication with the President Álvaro Uribe Vélez and concerted with representatives

[77] Other sensitive IP issues that became part of the FTA included: Extension of patent terms (duration); linkage (common in U.S. from 1984 – orange book); and, non-infringement complaints (U.S. has been trying to bring this issue to the WTO negotiating table. However, it violates the spirit of the treaty). Furthermore, the Investment Chapter defined intellectual property as an asset of FDI (this was not well understood at the moment).

from the private sector, 350 in total, who were waiting patiently in a nearby hotel, close to the Colombian trade office in Washington DC.[78]

In November of 2006, a "Protocol of Amendment" was presented in the U.S., introducing changes in four subjects: Environmental, FDI, Intellectual Property, and Labor. This is where the delay of the Colombians proved costlier. These subjects reflected the priorities of the Democratic Party, which now had the Congressional majority. After President Obama took office in January 2009, it was not politically feasible for him to give the all-clear to the U.S.-Colombia FTA. During his campaign and the beginning of his administration he was very critical of the FTAs. Therefore, the agreement had to wait until October of 2011 after the negotiation of modest changes.

The labor issues demanded by the Democrats were finalized by an agreement signed by Colombian President Juan Manuel Santos de Colombia and U.S. President Barack Obama on April 6th, 2011. Internally, the FTA was incorporated to the Colombian legislation through the Law 1143 of 2007 and complemented by the Constitutional Court decision number C-750/08. The FTA's Modifying Protocol was signed in Washington D.C. on June 28th, 2007 and approved in Colombia by the Law 1166 of 2007, combined by the Constitutional Court decision C-751/08. The U.S. Congress approved the agreement on October 12, 2011, and the legislation was signed into law by President Obama on October 21, 2011.[79]

Colombia had to put in place 58 norms before it could proceed to exchanging diplomatic notes with the U.S. Additionally, Colombia had to approve 11 more

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[78] Op.Cit. Fenwarth, p.48

[79] Ibid. p. 53

instruments, not taking into account the Labor commitments spelled by the Action Plan agreed upon in April 2011. The implementation of these 69 normative instruments required 23 laws, grouped in at least 6 different legislative acts, which were deemed “urgent” at the time.[80]

According to Angel, the negotiation was a clear example of *Realpolitik*[81]. At the end, he estimates, about 90% of the original template was approved. When Peru finished its treaty, all the disciplines the Peruvians accepted were bound to be the same approved by Colombia. In practice, only certain details like the gradual removal of tariffs for sensitive products could be negotiated. Once the FTA was approved, some additional issues have been better understood and have caused much discussion. For example, the agreement on Digital Content Protection (Author rights),[82] which applies to internet service providers, gives them a level of protection similar to the one granted in the U.S. (regarding responsibility limits). Angel explained how, at the time of the negotiation, there was not enough understanding by the Colombians of the limits Digital Content Protection posed to the rights of internet users, or how it could hinder Colombian capacity for technological conversion.

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[80] Ibid, p. 55

[81] From its German origins, it means politics based on practical and material factors rather than on theoretical or ethical objectives. The term is widely used today as a synonym for “power politics” and understood as the realist approach to foreign policy https://www.foreignaffairs.com/reviews/capsule-review/2017-04-14/realpolitik-history

[82] In Colombia, Project Law 241 of 2011 “Lleras Law” (nicknamed by his main proponent), was unsuccessful, but the commitments agreed upon with the U.S. were ultimately approved under the Law 201 of 2012.

b. Implementation:

Implementation of the FTA should not be seen as a simple adaptation of internal norms. An efficient administration of the FTA is essential for taking advantage of all the opportunities it brings forward: increased investment and employment, infrastructure improvement, advances in terms of institutional sophistication, greater legal security for investors and businesses, among others. Part of the administration of the FTA is conducted by the office of the Ministry of Commerce and Tourism in the Colombian embassy in Washington DC. Enrique Millan, a lead representative of the Ministry at the DC embassy,[83] explained the tasks of the DC office:

- To identify barriers and make recommendations. For example: sanitary and phytosanitary certification (can take 4 to 5 years to get for one product), judicial requirements, services (such as requirement for professionals such as engineers and nurses)
- To follow the FTA implementation
- To follow the FTA performance

Millan argues that when one thinks of the FTA as an excuse for modernizing the country, its effect has been very positive and global in the sense that the positive impacts are not limited to exports, but extended to issues such as budgeting and infrastructure. Also, from an export-oriented perspective, there has been a positive effect in non-traditional and new exports, such as building materials, tilapia, body shapers, and dairy products. In fact, more than 500 “new” products have been identified as “booming” because of the FTA. There is a sense in which the agreement opened the horizon for what businesses in Columbia thought was possible.

[83] Colombian Embassy. Ministry of Commerce and Tourism lead representative

Millan also highlights the importance of non-tariff barriers. An interesting case is electronic and electric equipment (transformers). Getting the necessary certifications to export them directly to the U.S. is very hard, but Colombia does have a comparative advantage in these kinds of products. So, the result has been a maquila-like scheme. An example of an opportunity to sell such products came in the context of the USDA's Rural Utilities Services, or RUS. RUS electric program "provides capital and leadership to maintain, expand, upgrade and modernize America's vast rural electric infrastructure. The loans and loan guarantees finance the construction or improvement of electric distribution, transmission and generation facilities in rural areas…Loans are made to cooperatives, corporations, states, territories, subdivisions, municipalities, utility districts and non-profit organizations."[84] Within this program there are opportunities for which smaller amounts of equipment can be imported with fewer restrictions. Colombian firms were selling into this market as a result of the FTA.

Some contingent products –those for which the Colombian negotiators fought the most and maintained some temporary protection—include poultry (back quarters), corn and rice. In the case of rice, Fedearroz (Colombian Federation of Rice Farmers) has been able to modernize and even participate in international auctions through joint ventures.[85] Clothing confections is another relevant case. The industry has managed to recreate itself (to "stay in the game" as Mr. Millan put it). Before the FTA there were exports of certain kinds of products: formal suits, t-shirts, and socks. But the demand for these items has

[84] https://www.rd.usda.gov/about-rd/agencies/rural-utilities-service

[85] USDA Foreign Agriculture Service Gain Report, https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Grain%20and%20Feed%20Annual_Bogota_Colombia_3-15-2017.pdf

shifted and/or has gone to cheaper providers in Central America and Asia. So now, there is a boom in the production of women's undergarments, body shapers, swimsuits, and baby clothing that require higher levels of sophistication in their production or styling.

Even if the FDI literature is not in agreement about the causal relationship between the subscription of FTAs and increases in FDI (noting that the political and economic stability of the country are important as well), my interviews across a wide range of officials in both countries indicated that the presence of the FTA is indeed an element that investors take into account (this would be a natural thing for an official to say since otherwise their efforts were in a sense wasted, but even officials who were critical of various aspects of the negotiations or outcome made this point that the FTA mattered). The FTA should not only have a positive effect on the inflows of capital coming from the partner country, but also on inbound capital from investors in third party countries who would like to use the FTA as an open door to a wider market. In this context, Millan believes there has been an increase in incoming FDI from the U.S. Although the amount for mineral and hydrocarbons (petroleum) has decreased, non-traditional FDI is up. At the same time, there has been some FDI from Colombia to the U.S., notably in the areas of dairy and snack foods. Furthermore, there has been a boom in tourism related investments, with more airlines flying between more city-pairs with greater frequency, and more big chain hotels in Colombia's largest cities. The peace agreement of course plays a part of this, but the officials I interviewed saw the FTA as important as well.

When measuring the performance of the FTA, argues Camilo Ayala, an implementation expert in the Colombia embassy in Washington D.C., it is key to differentiate the direct benefits from the tangential ones. The latter, such as the restructuring of domestic industries and firms, tend to be greater over time. Looking only to the balance of trade and export totals, it sometimes feels like nothing has been achieved. But it is key to take into account context and externalities (as he put it), and global realities such as the trends in commodity prices. When the FTA came into effect in 2011 it was a good economic moment, with exports climbing rapidly. But then, in 2013-2014 the global economy crashed, and exports took a dive.[86]

When comparing Colombia to Peru, Ayala explained, politics play a big role. The strategic vision for the FTAs is an issue. Peru has the conviction of internationalization as a development model, and that was also the case in Chile and Mexico. In Colombia, the executive branch is convinced that this is the right path, but the legislature, the judicial branch (in particular the Constitutional Court, but also the entire overwhelmed judicial system), and special interest groups do not believe so. The challenge at hand is "real access" versus what is written in legal documents such as the FTA text, continued Ayala. There is a need for laws that go smoothly through Congress, and a priority place for modernization issues in budgeting, for example. A case in point is Customs. For exports and imports to flourish the customs system has to be on par with that of the industrialized countries. Ayala considers the customs system is still a "work-in-progress" but has substantially improved because of the implementation of the FTA.

In order to get the FTA approved in the U.S. and ready to enter into force, Colombian Congress passed an "Umbrella Law" that covered all the items required by

[86] Camilo Ayala (Ministry of Commerce, Investments and Tourism, Washington D.C. Office, Implementation expert)

the U.S. However, later on, the Constitutional Court knocked that law down, and so began the process to pass 12 different laws that covered the same commitments, about 4 of these laws remain to be approved. This challenge, in the context of the concurrent Peace Process, is not a small one. And on top of everything else, the presidential election just took place, and the new president, Ivan Duque, will be sworn into office in August 2018.

These trials and impasses highlight that to continue to take advantage of the FTA, the continual implementation of instruments and mechanisms is essential. This progress starts with the development of institutional capacities in the public sector and the creation of mechanisms, legal and technical, to allow for proper implementation. For Colombia, the main areas to move forward in a better implementation of the FTA are obtaining sanitary admissibility for all relevant agricultural exports, diversifying the export supply of non-traditional products (processed foods, clothing, electronics, etc.), increasing the capabilities of service providers so they may be recognized in the U.S. market, and creating and supporting adequate skills within public contracts providers.

Finally, the time elapsed between the signature of the U.S.-Colombia FTA and its actual implementation could have been used better as an opportunity to build capacity and increase competitiveness. Instead, the attitude was to “wait and see.” This in-between period coincided with a boom in mineral exports, which explains but does not justify, the diminished interest in achieving a diversified export basket.[87] To achieve this diversification, the government could have use export promotion agencies proactively to

[87] Op.Cit., Fenwarth, p. 44

create a better understanding of the new rules that at that point were expected to be implemented, for example.

c. Challenges:

Colombia has a compelling and attractive domestic market with a large population and level of sophistication and income that should be attractive to multinational firms. Significant changes already had started within the economy since the FTA with the European Union came into force in 2009. The real challenge, according to the officials I interviewed, is to create an exporting culture among Colombia's business community.[88]

In this regard, Marcela Eslava[89] believes that the FTA would only provide a level playing field if there was a proper export infrastructure and a supportive regulatory framework. Since Colombia lags behind so badly on both dimensions, she explains, it has been and will continue to be difficult for Colombian firms to take advantage of the FTA. On the positive side, Eslava highlights the greater government efforts to provide product-specific regulations to improve competition. By a proper export infrastructure, she means that the government should modernize most of the Colombian highway system, take a better advantage of the exiting railroad system, and invest in world-class port facilities and customs (unfortunately, many of these improvements have been indeed planned but

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[88] Isabel Zamorano (Ministry of Commerce and Tourism, Washington D.C. Office, Statistics expert)

[89] Economics Professor – Universidad de Los Andes - Colombia

stayed on paper or resulted in failed efforts, in great part due to unacceptable levels of corruption).

In her view, and in agreement with the challenges explained by officials in DC, the negative effects of the FTA have been mostly political. There has been an increased opposition to open trade and competition on the basis that Colombian exports to the U.S. have not been growing dramatically. Additionally, Eslava believes that even if the process of negotiation and implementation of the FTA created some expertise to negotiate additional treaties, unless clear positive impacts on exports can be shown, the FTA with the U.S. is unlikely to generate general support for new treaties.

In a similar critical view, Jairo Parada[90] argues that to date, effects of the FTA for Colombia have been poor, with a positive balance for the U.S. (in his argument, the outcome does not need to be zero sum, but if one side comes away with considerably greater benefits than the other, inevitably this will look like a failure). The hoped-for export surge from Colombia to the U.S. has not happened. The main positive effect, for Colombia, has been to facilitate imports of goods from the U.S. – good of course for consumer welfare but not as easily a motivation among the business community for further liberalization. The negative impact remains in the agricultural sector, which continues to struggle regardless of the deadlines established. Such is the case of dairy and some cereals (corn, sorghum and rice), which, in spite of the FTA provision for duty free tariff rate quotas (along with other products such as standard beef, chicken leg quarters, animal feeds and soybean oil) still have long ways to go to be able to compete with the U.S. imports. However, Parada continued to explain, the flood of American products that

[90] Economics Professor – Universidad del Norte - Colombia

some feared has not happened either due to the depreciation of the Colombian peso. Therefore, until growth of trade resumes, the FTA will remain in the realm of expectations. Many businesses keep exploring possibilities to export, but up to the moment the export effect has not been what had been expected. Regarding FDI, Parada believes that this is still moving on the previous trends and responding to internal conditions, rather than having anything changed by the FTA.

Somewhat in agreement with these critical views, Ronderos argues that, as it is being implemented, the FTA has not been very useful from a trade perspective. Overall, Colombia has been more closed than countries like Peru and Chile in its approach to trade policy because it is not truly convinced of the advantages of having an open economy. Colombia does have comparative advantages in the agricultural sector but has not been able to comply with many phytosanitary norms. For example, Colombia got the approval for exporting avocados in 2017,[91] which took too long, but at the same time there is no chance to export beef, pork or lamb due to the "aftosa" fever (hoof-and-mouth disease). Pitaya (a cactus fruit, similar to dragon fruit) is a product that is promising but has not delivered yet, again because of the lack of the required phytosanitary licenses. From Ronderos' perspective, Colombia did not benefit from supply chain linkages such as surging use of local raw material provisions for maquila-like companies that Mexico got in NAFTA, and that makes a big difference.

[91] Furthermore, he considers it is absurd and shameful that even the president makes such a big deal for something as basic as the recent phytosanitary certification for exporting avocados, when it should have been achieved without fanfare so long ago.

Also, the implementation of industrial rules of origin are yet to materialize for the most part. This lack of rules of origin implementation limits the country's use of its logistical advantages. For example, the Caribbean city of Barranquilla port is very close to Florida and yet it has not taken adequate advantage of its already declared Free Trade zone (FTZ) for export-oriented manufacturing. In principle, Colombia's FTZ regime allows for:[92]

- Single 20% income tax rate
- No customs taxes (VAT and custom duties) triggered when raw materials are introduced to the FTZ from abroad
- VAT exemption for raw materials, inputs and finished goods sold from the national customs territory to FTZs
- Exports made from FTZ to foreign countries, may apply the benefits of international trade agreements signed by Colombia
- Possibility of performing partial processing outside of the FTZ for up to 9 months
- Possibility of selling to the national territory the goods or services without restrictions or quotas, paying the applicable custom duties on the imported goods

However, Ronderos explains that these tax provisions are still a sensitive issue and that FTZs are plagued by judicial instability, which explain why they have failed to attract more investors.

In addition, Ronderos once more points to a trade deficit as the result of the FTA. He believes the effect of traditional export product, in particular those of hydrocarbons (Oil), is much too distorting to be ignored. In his opinion, there is a lack of solid long term foreign investment policy, and other countries have designed better investment policies. Ronderos thinks that for this situation to improve, Colombia needs to take seriously commitments such as the phytosanitary required certifications, and subjects

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[92] http://www.investincolombia.com.co/investment-incentives/permanent-free-trade-zone/25-investment-incentives.html

such as judicial validity/security and tax issues. In his view, there is a role for government planning along with business operations, and for better coordination between the two.

Overall, Ronderos believes any additional advantages for Colombia gained through negotiations were small. Finally, he considers the labor obligations as explosive to say the least, and that given the obvious lack of commitment to see them through, they put Colombia in a vulnerable position when and if the U.S. calls for an evaluation of their fulfillment.

From the perspective of the private sector, food industry CEO German Martinez[93] highlights the clear gains from this painful process such as better U.S. market access for both current products and newcomers, even while he is quick to point out to the high cost, in practical terms, and to the mixed results for Colombian companies. Martinez blames internal structural faults within both business (chambers of commerce, industry groups) and government agencies, and the limited and volatile "exports basket" – that is, Colombia's exports relies heavily on commodities and other products with little value added. He believes Colombia did not prepare properly to face this new openness: its policy involved a lack of retraining and conversion programs for uncompetitive sectors, and did not ensure enough promotion of alternative exports with higher value added.

[93] German Martinez – CEO Ramo Food Industries – Colombia -- He was part of the FTA negotiations as a consultant for the food and auto parts industries, working in what was called the "next door room" in several instances. From this parallel space of interaction with the private sector, he had the opportunity to collaborate with the Colombian negotiating team, and, on occasion, have exchanges with the other countries' negotiating officers and consultants.

Nevertheless, he saw it is as promising that micro, small and medium companies have had preferential and equitable access to the new market.

He recognizes this is an ongoing process, and he commends how as a member of the private sector he has had the opportunity to participate in the legal developments related to the FTA implementation, where public officials consult with interest groups looking for comments and opinions. Also, he identifies the positive impact of the FTA commitments on FDI, but worries that public officials might not do enough to harness that capital and bring about real economic and social development at the local level. Even if there is a new institutional framework of security and guaranties, the Colombian government is still lacking in the implementation abilities that would allow the most advantageous use of the incoming resources including technological transfers, and learning from the experiences of individuals and companies to strengthen entrepreneurial competitiveness. This is obviously the perspective of private businesses. He is looking for the government to help business with the necessary adjustments.

Martinez argues that overall there is an imbalance that hinders the chance to take advantage of the inflow of foreign capital, greater job opportunities, and better services and product variety. This is not a shortcoming of the FTA itself, but a product of structural weaknesses not properly addressed by the country. Only by surpassing these limitations will there be a better outlook for the FTA in the next 5 to 10 years. Furthermore, he expresses how Colombia entrepreneurs should get over their fear to invest in the U.S. Some companies have started to do so successfully, but more must follow.

Martinez highlights how the private sector is now an integral part of the process, as it should be. New themes need to be included, such as additional cooperation between the public and private sectors, strengthening of the service sector to better support exporters, and the inclusion of norms that allow for and regulate the transit of individuals among countries. He believes these new themes are the natural next step in economic integration between Colombia and its trade partners, and were not included with enough force in the current FTA. He also stresses the need for lesser rigidity in the negotiation framework, allowing for a deeper inclusion of other sectors in the process.

Box 6A. U.S. Section 301 Report on Intellectual Property:[94] Implications for Colombia

FROM THE USTR REPORT: The 2018 U.S. 301 Report provides a warning for Colombia, which is placed on the Priority Watch List in 2018 with an Out-of-Cycle Review focused on certain provisions of the United States-Colombia Trade Promotion Agreement (CTPA) and monitoring the implementation of Colombia's National Development Plan (NDP). The report states that Colombia's lack of meaningful progress, particularly in relation to its CTPA obligations, warrants its elevation to the Priority Watch List. In 2018, Colombia will be subject to an Out-of-Cycle Review on the same issues to determine whether a change in status to Watch List would be appropriate. In 2017, Colombia took steps toward completing implementation of certain provisions of the CTPA, including by introducing into the legislature copyright law amendments that would address certain provisions of the CTPA. The United States urges Colombia to move quickly to enact the recently introduced copyright law amendments. Colombia also still needs to make other improvements with respect to implementation of significant IP-related commitments under the CTPA, including commitments to address the challenges of online piracy and accession to UPOV 91. The United States urges Colombia to begin working on necessary provisions regarding ISPs. The United States also urges Colombia to increase its IP enforcement efforts. As online piracy, particularly via mobile devices, continues to grow, Colombian law enforcement authorities with relevant jurisdiction, including the National Police and the Attorney General, have yet to conduct meaningful and sustained investigations and prosecutions against the operators of large pirate websites and mobile applications based in Colombia. Colombia has also not been able to reduce significantly the large number of pirated and counterfeit goods crossing the

[94] Includes consultation with the private sector (May of every year by USTR – a checking list of implementation). There are submissions by stakeholders (pharmaceutical companies, business alliance).

border or being sold at Bogota's San Andresitos markets, on the street, and at other distribution hubs around the country. The United States recommends that Colombia increase efforts to address online and mobile piracy, and to focus on disrupting organized trafficking in illicit goods, including at the border and in free trade zone (FTZ) areas. Finally, the United States continues to monitor Colombia's implementation of certain provisions of the NDP that could undermine innovation and IP systems, particularly those that would condition pharmaceutical regulatory approvals on factors other than safety or efficacy. In March 2018, Colombia issued Decree 433 to partially implement NDP Article 72, although questions remain as to whether the decree would condition regulatory approvals on factors other than safety and efficacy. The United States urges Colombia to take necessary steps to clarify such provisions and implement them in such a way as to ensure that they do not undermine innovation and IP systems…Noteworthy [is] Colombia's inclusion of new IP-related provisions in a revised police code that was introduced in January 2017. That code tightened requirements for public performances, requiring event organizers to submit proof of authorization for works to be performed before a permit can be approved.

2. Peru:

The approach to the FTA negotiation and implementation in Peru was different from that in Colombia in ways that have mattered for both reaching the agreement and for garnering its benefits and maintaining support for liberalization. Although both countries had full commitment of the Executive branch to this process, Peru found its legislative requirements easier to navigate. Nevertheless, Peru had a longer learning curve to escalate, and it has done so with remarkable speed. As an anecdote, when this process started, the Ministry of Commerce did not have an office dedicated to U.S. issues, there were some IP specialists, but that was the extent of it.[95] However, as Pablo de la Flor relates, once the FTA was signed and in order to be ratified Peru was ahead than

[95] Eduardo Ferreyros Kuppers, La Economia Politica del Tratado de Libre Comercio entre Peru y Estados Unidos, Chapter 2, 2008, Op. Cit. p. 5

Colombia in legislation regarding trans-border services, financial services, and telecommunications.[96]

a. Negotiation:

The Peruvian negotiating team was very comprehensive and fully backed not only by the Executive branch but by a diverse representation of public and private actors. Alfonso Ferrero, who was a chief Peruvian negotiator, relates how Peruvian unity was represented in the Business Council for International Negotiations (CENI - Consejo Empresarial para las Negociaciones Internacionales). The negotiating team embodied numerous institutions, including 35 regional governments, 12 ministries, 18 public organisms, 38 business associations, 11 universities and graduate schools, 3 labor unions, 4 professional associations, and a diversity of research centers and foundations.[97]

When questioned about the "excessive determination" (meaning the very outspoken commitment to see the FTA come through) portrayed by the Peruvian team, and the role of the Executive, Jaime Dupuy[98] argues it is inaccurate to believe that FTAs are subscribed for electoral reasons. In Peru, the Toledo administration (2001 – 2006)

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[96] Pablo de la Flor, La Economia Politica del Tratado de Libre Comercio entre Peru y Estados Unidos, Chapter 8, 2008, Chapter 8, Op. Cit. p. 67

[97] Alfredo Ferrero Diez Canseco, Historia de un desafío: a la conquista de EE.UU. y el mundo, Planeta, 2010 (p.160).

[98] Jaime Dupuy Ortiz de Zevallos worked at the Ministry of Commerce and Tourism of Peru, in the U.S. Directorate from 2003, participating directly in the negotiations of the FTA with the U.S. Initially seeking the final extension of the ATPDEA, later as a part of the Coordination team, in particular dealing with the Peruvian Congress. As the process advanced, Dupuy was part of the negotiating team at the Investment table. Once negotiations were over, he worked on the FTA juridical revision and eventual implementation, as it became effective in 2009. He continued to work on the FTA administration until 2012, when he retired from the Ministry. Dupuy is now a member of a group entrusted with the FTAs implementation.

started and finished the negotiations and the García administration (2006 – 2011) implemented it. Although the two presidents had different views and agendas, they shared the view that the FTA would favor Peru's economic development. Diaz Canseco narrates the difficult time during the round of negotiations that took place in June 2005 in Washington D.C. During this time, Peruvian vice-president David Waisman stated publicly that the negotiation team had traveled to D.C. "to get on their knees in front of the U.S. and to beg for a softening of their position, and ask for the charity of signing the agreement."

Waisman's declaration put the Peruvian team in a very uncomfortable situation. Their response was to explain that 2006 was an electoral year and that somewhat complicated internal negotiations, but the team continued to declare how "even if the negotiation is difficult in the agricultural products table, we are working to keep the export basket already available with ATPDEA and nothing less will be accepted. Unless this demand is granted, there will not be a FTA." Furthermore, Waisman's statement was unfortunate because it led the U.S. negotiators to wonder if there was a lack of commitment with the FTA as a State policy. To this, the Peruvian team counterargued that "if we were on our knees, we would not have negotiated for ten rounds, defining our points of view and putting forward our disagreements with some North American proposals. One round would suffice someone who is negotiating while kneeling." [99] Perhaps, however, the President's "battle cry" of "we will sign the agreement no matter what" was misunderstood by the public as a directive to the negotiating team to reach an agreement without argument. If that were the case, then "the intense negotiation that took

[99] Diaz Canseco, Op.Cit. p.269

place for 19 months, 14 rounds, issue by issue, table by table, in a constant tug-of-war would have been unnecessary."[100]

Gonzalo Bonifaz explained the FTA as a process rather than a "once-and-done" deal.[101] In his opinion, it is important to consider the political dimension of the FTA as well. These agreements are not signed solely out of economic calculation. Comparative and competitive advantages are important, but are not the decisive elements, if that was the case there would be an agreement with Ecuador already, without regard to their political status, Bonifaz argued.

Regarding the investment Chapter (Chapter 10 of the FTA), Bonifaz explained how there was no lengthy negotiation, so there is not much to find in the minutes. The template was the one in the FTA between Chile and the U.S. This was the first FTA for Peru. Peru did have BITs with a number of countries, starting in the 1990s, but they responded more to political imperatives than anything else, such as the BIT with Cuba. The FTA with the U.S. became the model for all the FTAs to come, with small variations case-by-case.[102] Concerning Intellectual Property, prescription drugs were the main issue to discuss, especially issues relating to generics, patent duration, and ancestral knowledge

[100] Diaz Canseco, Op.Cit. p.274

[101] Gonzalo Bonifaz, Peruvian Embassy in Wahington D.C.– Head of the Political Department

[102] In some, the definition of Investor or Investment could be slightly different. The Investment Chapter with the European Union contains a Democratic Clause (the parties are to remain democratic regimes for the FTA to stand), and the Australian one does not include a Controversies Solution mechanism. There is also variation in things like reparations, environmental provisions, tribunals. These parameters keep evolving with time.

(meaning the recognition of knowledge passed through generations of indigenous people of the medical use of certain plants and other natural elements).

In an ideal world, a country would create an investment regime from the inside out, putting in place the mechanisms and securities that allow for and attract investment by its own initiative. But political circumstances do not allow for this to happen. As Bonifaz argued, attaching an investment regime reform to a FTA was much straightforward, giving a "ready-to-wear" standard that was easier to present to the public. Peru just needed then to adapt its institutions to the commitments spelled by the U.S.—that is, to bring its government up to the American standard.

Finally, the Peruvian Ministry of Commerce did an impressive job trying to bring the message of the benefits of the FTA to all the corners of the country. Ferreyros reports how by 2008, the ministry have well over 700 informational meetings and seminars both in rural and urban areas.[103]

b. Implementation:

According to Javier Illescas,[104] who was on the Technical Committee of the U.S.-Peru FTA negotiation, the two main positive effects the U.S.-Peru FTA have been to

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[103] Ferreyros, 2008, Op.Cit

[104] Javier Illescas – Economic Studies Directors – Foreign Trade Society of Peru. Illescas was Technical negotiator under the direction of Chief Negotiator Pablo de la Flor. Illescas also was Chief Negotiator of the Financial Services table, Coordinator of the State Purchases, Services and Investment tables, and member of the negotiating team in the Industrial Goods and Agriculture Market Access. He additionally served as the General Director for International Economic Issues at the Ministry of Economics and Finance (MEF). In that capacity, he participated in preparing the Law for the State Defense in Investor-State Dispute, and its rule book, anticipating the requirements of this commitment. Similarly, the Annual Budget Law was overhauled to include the thresholds for public contracting by process type established by the FTA. As a General Director, he

consolidate the unilateral preferences granted by the U.S. to Peru through the ATPDEA, and to consolidate the Peruvian unilateral trade liberalization that started in the early 1990s mainly in goods, services, investments, and state purchases. Other reforms were proceeding as well, including with fiscal and monetary policy discipline; trade liberalization, and market rules domination; the FTA with the U.S. was not only consistent with such reforms but also aided in their consolidation. These unilateral reforms and their consolidation have been fundamental for Peruvian prosperity in the last 25 years – even with the slowdown of global economic activity after the FTA took even, which had a less critical impact on Peru than on other countries in the region.

Illescas found it hard to pinpoint strongly negative effects of the FTA. Fears regarding the agricultural sector, for example, never realized. Furthermore, the positive tendencies in agricultural prices starting in 2007 – the FTA took effect in February 2009 – not only stimulated traditional agriculture products such as mangos, grapes, asparagus, and peppers, but also started to replace traditionally protected harvests that did not have comparative advantage such as wheat, rice, and cotton. This change reached the point that the law that provided subsidies to these products was dismantled without great political resistance. Another example is with medication; it was thought that the FTA would result in a massive hikes of medication prices, and that was not the case. It is possible that it happened with a few selected products, but it was not a generalized effect.

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had a role in promoting, along with other areas of MEF and of the Peruvian government, the adaptation of National Laws dealing with financial issues, dismantling of trade barriers, etc.

Unless the American government starts considering a revision to the FTA, as it has expressed regarding NAFTA – although it seems improbable since Peru seems to be off the U.S. radar screen – Illescas thinks that the FTA will allow for a continued trade creation among the two countries in the near future. The possibility for trade diversion attributable to the treaty should be minimal, considering that Peru has signed FTAs with all its main commercial partners. Additionally, the greater dynamism imposed by the U.S. in bilateral trade negotiations has meant that agreements among other countries use the basic structure of U.S. treaties as a guideline, though with some adjustments (e.g. with China there is no government purchase chapter, and there is no liberalization of certain goods).

At the implementation level, and continuing with the explanation of the perceived excessive Executive leadership in Peru, Illescas argues that trade policies and new legislation in Peru were not adopted to favor a particular electoral outcome. These policy changes needed to be permanent and regarded from a long-term commitment. Furthermore, government entities as well as private parties needed to enter, at the point of the negotiation, a learning process and acquire capabilities that would lead to the creation of frameworks that could be reused and adapted in other agreements Peru would sign in the future (for example, data protection of testing for pharmaceutical products, agrochemicals, or the commitments for customs facilitation).

Dupuy explained how the FTA has been a key piece to ignite Peruvian exports, and he reported these numbers to show it: between 2009 and 2016, exports to the U.S. market grew at an average rate of 3.8% annually, becoming the second largest destination for Peruvian exports in 2016 (22% of total exports). Even more, he argues, during the same period, U.S. became the most relevant trade partner for Peru's non-traditional exports, which account for greater value-added and generate the most employment. This increased 97% cumulatively going from US$1,568 million in 2009 to $3,090 million in 2016, an annual average growth rate of 10.2%. Among nontraditional exports, those in agriculture deserve special mention: they represent 49% of all nontraditional exports from Peru to the U.S. and growing steadily. From a mere $580 million in 2009 they increased to $1,541 million in 2016, an annual average growth rate of 14.7%, well above the growth of all nontraditional exports, and a 161.1% cumulative increase for the same period. Additionally, in 2008 – before the treaty came into effect – Peru exported 2101 categories of items, and in 2016 the number of categories reached 2376, of which 2322 are non-traditional exports. Also, 14.3% of capital goods imports destined for industry were coming from the U.S. tariff free due to the FTA.

Furthermore, the FTA allowed thousands of Peruvian businesses to access better technologies to improve their productivity and reduce costs. In its first two years, the FTA reduced Peruvian import customs tariff revenue by 47%. As of 2016, 21.3% of capital goods imports destined to agriculture were coming from the U.S., and between 2009 and 2016 increased from $14.8 million to $42.7 million, growing 189.5%. Similarly, raw material imports from the U.S. grew between 2009 and 2016. As an example, raw materials for industry started at $1.6 billion to $2.3 billion, a cumulative growth rate of 41.7%. In turn, raw materials for agriculture increased 56.3%, from $186 million to $291 million.

Additionally, Dupuy points out, permanent supervision and implementation analysis will ensure that the FTA runs in accordance to its original objectives, providing guidelines for its eventual revision, modification, or amendment. For the FTA between Peru and the U.S., the signing parties agreed to create a "Free Trade Commission" entrusted with the agreement's administration. The Ministry of Commerce and Tourism (on the Peruvian side) and United States Trade Representative are the members of this Commission, with the private sector part of these processes. Legal reforms, new regulations and administrative procedures have been key for this adaptation of the Peruvian economy to the FTA. Government entities are compelled to coordinate their processes, creating specific linkages between parts of the government including notification mechanisms, and norms and procedures that above all highlight their transparency. In Peru, implementation actions were approached from a horizontal perspective, including all the entities directly and indirectly related to the different chapters of the agreements. This was especially the case for those responsible of formulating and applying trade policies. The point is that in Peru, according to Dupuy, policies were designed taking into account not only the recommendations of high-level officials and experts, but also the input of local and regional actors, as well as the private businesses affected by these policies.

Regarding FDI in particular, Dupuy pointed to the increase in FDI flows to Peru starting in 2008 in energy, finance, industry and mining, perhaps indicating a greater vote of confidence by foreign investors in the country's long-term future. In contrast to the ATPDEA, which was unilateral and had a fixed duration, the FTA gives a greater certainty and practicability, because it creates an indefinite judicial framework.

The investment chapter properly is being developed in Peru through the Law 28933, which established a "State Coordination and Response System for International

Investment Controversies" as a complement to the state-wide policy directed at promoting both national and foreign private investments. This law's objective was to regulate the coordination among public entities in case of eventual controversies against foreign investors. This is very important in the case of "concession" (bid-awarded) contracts, which, in the current decentralization framework, increasingly take place between regional or local governments and foreign investors. The law also applies to any contract taking place among a public entity and an investor, foreign or domestic, whenever it calls for international arbitrage mechanisms.

If there is any question of where the arbitration should take place in the event of a dispute, it is important to empower the Peruvian response capabilities ex ante, Dupuy argued, by establishing a coordination system that runs transversally across the three levels of government. The latter would process and formulate strategies to act whenever these disputes take place, centralizing relevant information on government commitments (such as regarding dispute resolution mechanisms) that originated in international treaties or other investment contracts. Such a coordination system would also alert authorities as quickly as possible in case of a dispute. The law named the Ministry of Economy and Finance as coordinator and created a multisector collegial organ within the government called the Special Commission to be part of the Economic and Finance Ministry to represent the State in international investment disputes. The Special Commission would also evaluate options and establish strategies in such cases. The point is that Peru put in place structures within the government to address natural issues that would come up with the FTA.

Years after the FTA ratification, there are areas that are yet to be implemented, such as the legal extent of environmental commitments and the litigation of State-to-state treaty disputes. This reflects that so far there has not been the need to do so. There have been more arbitration cases for contract violations related to particular clauses, but few instances of violations of the treaty itself, such as cases of expropriations. The parties to these disputes have worked out their problems with a direct agreement and compensation without involving the courts. The statistics related to the judicial proceedings and outcomes of contract disputes covered by the FA investment chapter resolution mechanisms are limited. Therefore, according to Bonifaz, it would be hard to perform a complete analysis of the dispute-settlement mechanisms based on judicial statistics that are simply not reliable. This is why the issue of information transparency is so important; the actualization of mechanisms to carry out the agreement is fundamental to an effective implementation of the investment regime. In the case of arbitrations, these are very costly for the State, because of the budgeting consequences, and because it puts into question the prioritizing of social and economic development. Moreover, an arbitration proceeding that seems to allow foreigners to circumvent domestic laws (even if this is just the appearance and not the reality) is difficult to justify politically and socially. It thus takes strong political support to make this mechanism effective.

Regarding FDI and the investment chapter in the FTA, and according to Bonifaz, FDI still comes predominantly and overwhelmingly to the mineral industry. There are long-standing players and some newcomers. Although it is not the deciding factor, having in place all the controversy solution mechanisms may make a difference in the increase in investment since the FTA signing. In particular, having spelled out the conditions for going to the courts or seeking arbitration makes the cost-benefit analysis of a direct solution such as a negotiation even more clear. From 2004 to 2014 there was a boom in the mineral extraction industry, and that, paired with the ever-present internal and social conflicts, gave place to some resounding cases (such as the well-denounced cases of mining wrong-practices in Yanacocha and Tambogrande). There is also investment in agroindustry, tourism, and hydroelectric energy (in the Cajamarca region), all of which also have the potential to raise social concerns given the indigenous populations of those regions and the poverty issues to consider. Once again, having in place well-established arbitration procedures and additional experience make the investment process more transparent and fair to the eyes of the public, while giving an extra level of confidence to investors.

The increase in FDI from China is undeniable since the FTA and bears consideration. These investments are going into a variety of sectors, but mostly into mining. China is making large investments in Peruvian infrastructure too such as ports, piers, and roads.[105] China also became Peru's main export partner in recent years (see statistics above – Box 2); most exports to China were mining products and agricultural items. Historically, most foreign investment came from Spain, such as the privatization of telephone utilities through a purchase by Spanish Telefonica. Traditionally, investment from the U.S. has gone into mining. Although the idea of adding value to their products is becoming a priority to Peruvians, such as in the case of copper, there is a long way to go. Even with increased investment in R&D-related activities than in the past, the reality is that there is a gap in the qualified labor needed to perform the kind of work required to

[105] Curiously, the Chinese contract local services extensively to fulfill their contracts.

move beyond extraction of commodities. According to Bonifaz, accomplishing this objective is not the main realm of the FTA.

Additionally, the process of fiscal regionalization (a particular type of fiscal decentralization) that started within Peru in 2002 has great implications for the implementation of the FTA. Before those efforts started, Peru was even more centralized than Colombia. Regional and local elections are still a novelty (in Colombia they started in the 1980s), and regional and local authorities have now extended jurisdiction over all kinds of economic and social activities. This brings into play the coordination of authorizations, permits, licenses, and similar requirements for investment and production. Such coordination has the potential to become very complex, offsetting or at least complicating gains from the FTA. In this area, an adaptation and evaluation exercise are gravely needed. For example, a local authority might implement an order that ultimately becomes an expropriation without even realizing it and without supervision or even knowledge of the central government – at least, until the foreign investors turns to the dispute resolution mechanism. There is still too much improvisation and catching-up, said Bonifaz.

Also, Peru needs to be tougher regarding compliance with labor and environmental standards, and needs to focus more on the creation of institutional capacities to ensure compliance. Fair and efficient administration of justice is an urgent institutional challenge. One current example is the exploitation of forests for exporting lumber.[106] There is an international standard for sustainable logging, and there is an issue

[106] October 24, 2017, Richard Conniff, "Chasing the illegal loggers looting the amazon forest" https://www.wired.com/story/on-the-trail-of-the-amazonian-lumber-thieves/

in this area: logging happens in very remote zones, often under unsafe circumstances, meaning that there is a need to coordinate with the police and the army. Yet there is a lack of infrastructure to share that sort of information reliably.

Progress with the implementation of the FTA will also affect other multilateral commitments. For example, Peru has been invited to be a member of the OECD. In achieved, entering the OECD would be a further positive signal to global investors that Peru is a mature market. Right now, the nation is in the "Country Program", which is a precursor to full membership into the OECD. The Sustainable Development Objectives (SDOs) are also one of the main national policy focuses right now. In some ways, complying with the FTA makes it possible to reach many SDOs as well. The same with the OECD process of recognition. The essential point is that all these mandates help to reach a better institutional framework – a benefit of the FTA that will appear over time is improvement along such dimensions.

Overall, from 2006 to the present-day things have evolved tremendously. As an anecdote, Bonifaz explained, there were members supporting the original negotiating team that did not even speak English. That is not the case anymore, but there is much way to travel still, he says.

c. Challenges*:*

Luz Barreto[107] strongly believes that the FTA with the U.S. has been very beneficial for Peru because small and medium companies (SMEs) have had an

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April 17, 2014, David Hill, "Illegal logging 'plagues' the Peruvian Amazon, says new research", The Guardian, , https://www.theguardian.com/environment/andes-to-the-amazon/2014/apr/17/illegal-logging-plagues-peruvian-amazon

[107] International Cooperation and Projects Director of the Peruvian Exporting Association, ADEX ADEX implemented the Project "Technical Requirements to U.S. market access"

opportunity to sell their products to one of the largest countries in the world. She argues that while it is true that SMEs have to work very hard to meet the requirements of the U.S. market, pushing themselves to incorporate better processes, to properly label their products, and to innovate in the development of products is a very valuable process. Barreto also believes that U.S. companies have benefited as well from the FTA. They have an interesting market in Peru that can continue to grow, even though it represents a small market for the U.S. Since the implementation of the FTA, Peru has had to implement measures to take care of the environment that would otherwise been delayed. Also, embracing the strict requirements of U.S., SMEs in Peru have started to enter other global markets comfortably.

Nevertheless, Barreto also recognizes that the FTA has affected a group of SMEs. She argues that comparing the size of the countries and their development, FTAs with the U.S. pushed Peru and Colombia to prepare their economies for the modernization of the government (even if at times perhaps at an uncomfortable pace). Also, liberalization of trade and investment has led to decreasing salaries in some sectors—a normal albeit uncomfortable impact of globalization. However, she brings attention to the related actions from the government to increase the inflows of FDI. The restructuration of the Trade offices aimed at changing the scope of their activities, promoting even more exports, imports and promotion of investments.

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funded by Inter-American Development Bank (IADB) to support companies from garment and agribusiness sector in the compliance of the U.S. requirements. Also, with this project her office developed market studies, commercial sheets and the companies participated in trade shows in the U.S.

Finally, Barreto points out how bilateral agreements may be the predominant trend in the future, in the light of events such as the failure of multilateral trade agreements and Brexit. Lastly, discussing a specific example, she explains how Peruvian companies, especially garment and textile sector must innovate in products, processes and trends. Nowadays, there is a relevant problem in the sector, because of the increased presence of competitors from China, Bangladesh, and Vietnam, among others.

Unfortunately, argued Carlos Gonzales,[108] the financial crisis in the U.S. had made it difficult to clearly evaluate the impact of the relevance. Since the agreement came into effect, there has been a decline in the volume of trade Peru and the U.S. However, exports of nontraditional products to the U.S. have grown substantially, especially non-traditional agricultural products. Also, in a positive development, after the FTA, Peruvian public bonds achieved investment grade by Moody's and Standard & Poors (credit rating agencies[109]) because of the normative changes that provide more guaranties to foreign investors.

Nevertheless, Gonzales pointed out that the proliferation of FTAs has made their own agreement with the U.S. less "preferential." Therefore, Gonzales was optimistic in the work in progress to reach a deeper integration with the Pacific Alliance. In this area, and regarding the legacy of the FTA negotiations, he believed their structure served as a good point of reference during the talks for the Transpacific Partnership (TPP). In this

[108] Carlos Gonzales, Director of Economic Studies, ADEX Peru. Gonzales was advisor to the Minister of Production, at the markets' table during the FTA negotiation between Peru and the U.S. Gonzales also worked in the modifications to Customs Law

[109] A bond is considered investment grade if its credit rating is BBB- or higher by Standard & Poor's, or Baa3 or higher by Moody's.

realm, he points out how the CAN (Andean Countries) could not present an integrated front during the TPP meetings, and how even within the Peruvian group not all economic sectors had the same representation. But he considers these to secondary and solvable issues not related to the structure of the negotiations.

Noelia Lobato[110] had an altogether good impression of the negotiation process even while believing that some aspects could have gone better. In her particular area of expertise, Pensions, she has not noticed any improvement since the implementation of the FTA. Overall, she considers all that can be expected is for the implementation of the legislation created to fulfill the FTA obligations to continue and to further diffuse its reach.

According to Dupuy, in the next 5 to 10 years, as the U.S. economy continues to improve, there will be more opportunities for exporters, especially for the Peruvian agricultural sector. Additional, it would be savvy to expand and improve the FTA, to include areas provisions similar to those in the TPP, such as strengthened sanitary and phytosanitary issues, and rules of origin issues.

Box 6B. U.S. Section 301 report on Intellectual Property - Peru:

FROM THE USTR REPORT. Peru remains on the Watch List in 2018. Peru took a number of positive steps relating to IP protection and enforcement in 2017. Peru successfully seized and shuttered several Spanish language websites known to host large volumes of pirated content. Peru has improved interagency coordination with respect to IP enforcement. Peru also established new specialized IP prosecutors in both the Ventanilla and Tumbes regions in 2017, although there are still many areas of the country where this expertise is unavailable. The United States remains concerned about the widespread availability of counterfeit and pirated products in Peru. Rights holders continue to report that Peru is a major source of unauthorized videos of copyrighted

[110] Noelia Bernal Lobato – Economics Professor – Universidad del Pacifico – Peru - She assisted the analysis and negotiation of the Investment Chapter, particularly related to the Pension system in Peru. She worked in this capacity from May to July of 2005. This resolution contains the exact dates: http://spij.minjus.gob.pe/Normas/textos/050605T.pdf.

material (often taken with camcorders) and is the base of administrators of Spanish-language websites that offer or facilitate the use or sale of pirated content and counterfeit goods, although Peru has begun to suspend the domains of some of these sites. The United States urges Peru to devote additional resources for IP enforcement, enhance its border controls, and build the technical IP-related capacity of its law enforcement officials, prosecutors, and judges. The United States also encourages Peru to undertake appropriate legislative reforms, such as by criminalizing camcording in a manner that allows for effective enforcement; to pursue prosecutions under the law that criminalizes the sale of counterfeit medicines; and to increase the imposition of deterrent-level fines and penalties for counterfeiting more broadly. In addition, the United States urges Peru to fully implement its obligations under the United States-Peru Trade Promotion Agreement (PTPA), including by providing statutory damages and establishing limited liability for ISPs within the parameters of the PTPA. Stakeholders have raised concerns about two recent Indecopi decisions that limit the right to collect royalties for the public performance of musical works contained in audiovisual works.

B. Review and Description of Peru and Colombia FTA Investment Chapters and their impact on FDI

As mentioned before, in the case of Colombia and Peru, there are no longer free-standing BITs with the U.S., but rather investment chapters embedded in the FTAs themselves. FTAs appear to have had substantial impacts in terms of increasing FDI flows to the Latin American countries under study. The FTAs established a secure, predictable legal framework for U.S. investors operating in these countries, and many of these benefits are arguably extended to investors from other countries. These results appear to be primary achievements of the FTAs.

Generally, FTAs with the U.S. give investors the right to establish, acquire, and operate investments on an equal footing with local investors and investors of other countries with bilateral investment treaties (BITs) or investment chapters in FTAs with said countries. They also provide U.S. investors abroad safeguards that foreign investors have under the U.S. legal system, including due process and the right to receive fair market value for property in the event of an expropriation. Investor-state arbitration is available for breaches of investment agreements.

Looking into each country's investment regimes in relation with the FTA stipulations (see details in Appendix 4), sectors with additional FDI potential include: financial, fast-food and restaurant chains, education (Satellite higher-education campuses, professional education, tutoring and enrichment, and language and test-preparation centers), clothing manufacturing and retail, courier/delivery services, accounting and tourism (including increased airline transit, number of airlines, and hotels). Investments in media and broadcasting are usually restricted. Telecommunications, transportation, infrastructure, utilities, mining, oil and forestry are usually covered by special investment regimes designed to secure national interests and social needs to certain extent.

Colombia and Peru have enjoyed, until recently, an investment environment with favorable external conditions including significant increases in commodity prices and a sustained fall in real world interest rates. These two countries have achieved growth rates higher than the rest of Latin America and have even been called the "Andean idols" as they have engaged in a growth race of sorts.[111] Overall, Latin America benefited from a commodity price boom in the decade from 2004 to 2013, which was longer than previous episodes, and connected with strong income gains. After the decline suffered during 2014 and 2015, so-called "second-round structural reforms" and public investment in complementary goods and services should now be the main policy tools for jumpstarting

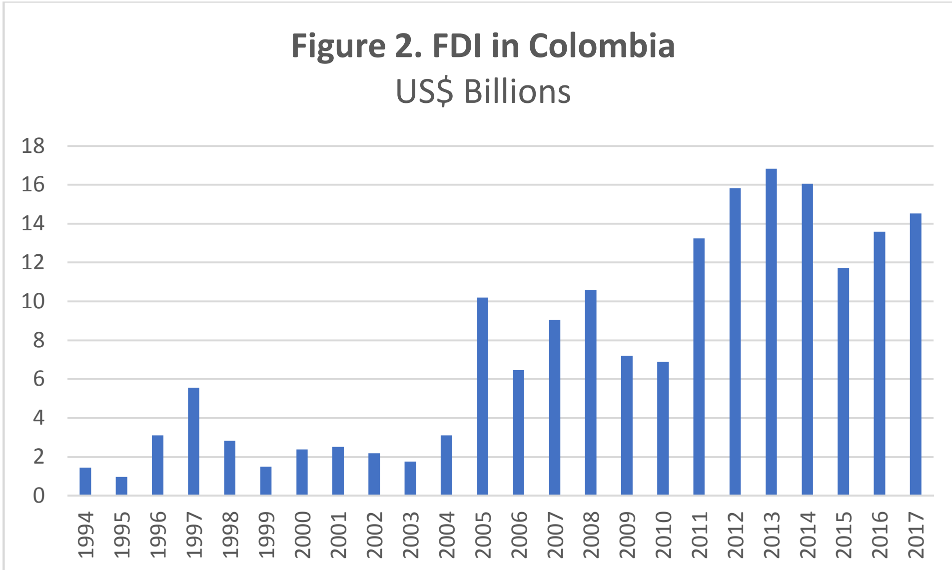
[111]The Economist, "Passing the baton**:** Colombia overtakes Peru to become the region's fastest-growing big economy" August 2, 2014. http://www.economist.com/news/finance-and-economics/21610305-colombia-overtakes-peru-become-regions-fastest-growing-big-economy-passing

private investment. Such second-round reforms include continued export diversification, increases in education and R&D spending, and reduction of bureaucratic red-tape.[112] These reforms would jumpstart investment by moving the economy as a whole from depending on primary/commodity exports to relying on a more diverse export basket of products.

1) Colombia

Colombia has experienced substantial growth in the inflows of FDI during the last decade and a half. The extent to which this is directly the result of the FTA with the U.S. needs to be further evaluated. Overall, FDI in Colombia has grown more than 500 percent between 2001 and 2013, mainly pushed by the rapidly expanding oil and mining industry in the country. In 2001 total FDI was $2.5 billion and in 2013 it totaled $16.8 billion. In turn, U.S. FDI to Colombia jumped from just over $800 million in 2001 to almost $3 billion in 2013. However, FDI inflows have slowed in the last few years, due to lower oil prices (at least until recently) and slower growth prospects. FDI fell to $12.1 billion in 2015 but improved in 2016 partly due to the sale of a state-owned electricity utility company. About $13.6 billion in FDI entered the country in 2016. FDI increased almost 5% in 2017, according to Colombia's central bank. Companies from 46 countries invested a total of $14.5 billion in 2017.

[112] Ibid. p. 15



Source: Banco de la Republica de Colombia

The infrastructure sector is particularly promising as Colombia is undergoing an extensive infrastructure expansion (an investment of about $5.5 billion). Although the greatest recipients of FDI by sector continue to be the oil industry and mining, investments in other sectors including manufacturing, commerce, telecommunications and transportation, and financial services are on the rise.[113] In particular, Colombia experienced relevant developments in other economic areas:[114]

- Retail Trade: Cencosud, Falabella and Parque Arauco, all Chilean groups, are investing to expand and upgrade their facilities in the country
- Hotel Sector: the Spanish group NH acquired 87% of Hoteles Royal for around $96 million
- Transportation (Ports): the Danish firm APM Terminals, the port operator of the Maersk Group, is planning to invest some $200 million in the port of Cartagena, after signing an agreement with the Compañía de Puertos Asociados, Compas S.A. This move shows confidence in a recovery in international trade
- Vehicle Manufacturing: U.S. General Motors announced its intention to invest some $100 million in its Colombian plant in the next few years

[113] Banco de la Republica de Colombia, Central Bank, http://www.banrep.gov.co/en/balance-of-payments

[114] UNECLAC, 2016, p.52

- Construction Materials (Cement): the Spanish firm Cementos Molins and the Colombian group Corona agreed to the joint production of cement in Colombia, announcing investments of $370 million

Colombia is part of thirteen FTAs or agreements of economic cooperation including investment chapters: with the U.S., European Union, Canada, Chile, Mexico, Cuba, Andean Community of Nations (Bolivia, Ecuador, and Peru), European Free Trade Area (Iceland, Liechtenstein, Norway and Switzerland), Mercosur (Brazil, Argentina, Paraguay, Uruguay, and Venezuela), the Northern Triangle (El Salvador, Honduras, and Guatemala), South Korea, Costa Rica, and the Pacific Alliance (Chile, Mexico, and Peru). Colombia signed trade agreements with Israel and Panama in 2013, which are still awaiting final ratification. Additionally, Colombia is in FTA negotiations with Japan and Turkey. Five more agreements are in the early exploration stages: with Australia, China, the Dominican Republic, India, and Singapore. Colombia also is part of stand-alone BITs in force with China, India, Peru, Spain, Switzerland, the United Kingdom, and Japan.[115] Up to 2011, no international arbitral claim had been brought against Colombia under an international investment protection treaty, because:

a. The limited number of international investment agreements in force
b. Most of such agreements were fairly recent (late 2000s or later)
c. Colombia's earlier investment frameworks were limited in scope (not including fair and equitable treatment, for example)

[115] 2017 Investment Climate Statement-Colombia, U.S. Bureau of Economic and Business Affairs, http://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm?year=2017&dlid=270056

d. A number of Colombia's most attractive investing sectors were liberalized only recently (unbundling of state monopolies and privatizations). This is particularly true for the hydrocarbons sector.

However, in October 2012 the new National and International Arbitration Statute (Law 1563 of 2012) entered into force, in an effort to streamline the arbitration process and make the enforcement of awards more reliable. In early 2016, three different cases were brought against Colombia for international arbitration by mining companies (one of them from the U.S.) alleging damages due to expropriation and other issues regarding the definition of national/public territory.[116]

Through the Colombia-U.S. FTA, Colombia allows for substantial market access across its entire services sector. It also agreed to eliminate measures that prevented U.S. firms from hiring U.S. professionals, and will phase out market restrictions in cable television. Colombia will also offer improved access for U.S. suppliers of portfolio management services. The agreement contains some other important regulations, many of them quite more liberal than those included in previous agreements:

- Most-favored nation treatment: Does not encompass dispute resolution mechanisms (Art. 10.4.2 n.2); and limits exemptions, allowing them only for procurement, subsidies and grants, guarantees and insurance (Art.10.13)
- Free transfers of capital: In contrast to other bilateral agreements, the U.S. FTA does not make an exception for macroeconomic or balance of payment difficulties
- Expropriation: In contrast to other bilateral agreements, the U.S. FTA clearly links the definition of public purpose to customary/public international law (Art.10.7.1(a)n.5)

[116] International Institute for Sustainable Development, "Three mining disputes: the first investment disputes against Colombia come to light", Investment Treaty New, May 16, 2016 https://www.iisd.org/itn/2016/05/16/three-mining-disputes-the-first-investment-disputes-against-colombia-come-to-light/

- Performance requirements: although they are included in most of Colombia's international investment agreements, some remarkable exceptions appear in the investment chapter of the U.S.-FTA (Arts. 10.9, 10.10)
- Dispute resolution and "essential security interest": in the Colombia-U.S. FTA, if in an arbitral proceeding, a State party invokes an essential security interest as an exception to its treaty obligations, such exception shall apply (Ch.22.2 n.2)

Finally, the Colombia-U.S. FTA addresses intellectual property right violations that had been flagrant in the past.[117] Enhancements include advanced protections for digital products such as software, music, text, and videos, stronger protection for U.S. patents, trademarks, and test data, including an electronic system for the registration and maintenance of trademarks, and discouragement of piracy and counterfeiting by criminalizing "end-use" piracy (see more details on changes in appendix 4).

Looking forward, as President Juan Manuel Santos leaves office and a new president enters office in August 2018, the continued implementation of the peace agreement that was signed with left-wing rebels of the Revolutionary Armed Forces of Colombia (FARC) -- but not readily accepted by the Colombian people via referendum -- would enable the government to expand the rule of law, deepen rural development, and attract investors worried about security. However, the continuity of this peace treaty implementation remains under question. Depending on the election outcome, political conflicts may destabilize the business environment. The Santos administration and conservative opposition leaders largely agree on economic policy. If the leftist candidate wins the election, however, then important changes for investors are to be expected.

[117] Optical disc piracy of music and film entertainment product is widespread. The publishing industry also suffers from extensive piracy, mainly through the illegal photocopying of academic textbooks in and around university and school campuses. Piracy of both entertainment and business software continues to harm the legitimate industry.

Box 7. Case Study: Cementos Argos
Argos is a Colombian construction materials producer, with the largest share in the cement market in Colombia; it is also the second largest cement producer in the South-East U.S. region and has investments in Panama, Honduras, Haiti and the Dominican Republic. It is the second largest concrete producer in the U.S. and it also exports cement and clinker to 27 countries around the world. While Colombia is where Argos produces the most cement, the U.S. is where Argos has its largest concrete production capacity (8.9 million cubic meters per year). There are 134 concrete production plants and 1,350 mixers. Argos' concrete production capacity in Colombia is only 1.7 million cubic meters per year, with 40 plants and 230 mixers.
Argos is set to benefit from the greatest emphasis in infrastructure investment by the Trump administration. Also, the firm planned to invest at least $120 million during 2017 and 2018 in innovation and technology, in an effort to increase its capacity.[118]
Argos case is a very particular instance where an Andean-based company expands in such magnitude to a Northern market. While Argos strategy was set to be fulfilled in spite of the ups-and-downs of the FTA negotiations, the company recognized the unique opportunity that these new trade agreements opened for cement trade.
http://www.argos.co/ir/en

2) Peru

Peru has also received larger inflows of FDI during most of the last decade. Again, the extent to which this is directly the result of the FTA with the U.S. still needs to be further evaluated. While FDI flows into Peru attained a record level in 2007-2008, they fell in 2009 due to the global recession. FDI inflows then rebounded in 2010 and the following years, reflecting the region's economic growth, reaching close to US$12 billion in 2012 before starting to decline in 2013. According to a study by the IMF and looking at the decade between 2004 and 2013, real GDP growth averaged 6.4 percent, with investment accounting for about 3 percentage points of this growth.[119] Peru enjoyed a cumulative income growth of around 85 percent of GDP since 2003, with a larger portion of this

[118] http://www.portafolio.co/negocios/empresas/cemargos-la-empresa-que-se-beneficiaria-con-las-politicas-de-trump-501825

[119] IMF, 2015, p.4

bonanza allocated to domestic investment than in previous periods of rapid economic growth. Falling real world interest rates combined with Peru's improved credit rating also gave Peruvian firms increased access to inexpensive external financing.[120] However, such external financing often takes the shape of private corporate bonds, are subject to the vulnerabilities of changes in exchange rates, and are not a realistic form of financing for small and medium enterprises in Peru.

Compared to 2015, FDI into Peru dropped by 17% in 2017, totaling US$ 6.9 billion. According to the Peru's Central Bank the FDI inflow in 2017 contracted 1.36% compared to 2016, totaling USD 6.7 billion. Peru's FDI comes primarily from Spain (the largest investor), the rest of the European Union, the United States and Great Britain. Chile, Brazil and the Netherlands are also among the major investors. In general, Peru's best qualities for investors are its attractive legislative and fiscal framework, and a dynamic mining sector. Most FDI goes into the extractive industry sector. Peru is the fifth global destination for exploration of nonferrous metals.[121]

As explained above, FDI inflows towards the mining sector now constitute a somewhat smaller proportion of all FDI inflows. Among the developments in other sectors include:[122]

- Power Generation: A consortium headed by Chilean company Colbún bought power generator Fénix Power for $786 million. This was in one of the biggest cross-border M&A transactions recorded in Latin America and the Caribbean in 2015.

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[120] Ibid, p.5

[121] ECLAC, 2017, p.61

[122] ECLAC, 2016, p.53

- Beverages: At the beginning of 2016, the Mexican firm Arca Continental, Coca Cola's second-largest bottling company in Latin America, completed its purchase of 48% of Corporación Lindley, with a transaction of $760 million.
- Banking: Following its regional expansion policy —focused on Chile, Colombia, Mexico and Peru— Canada's Scotiabank acquired the Peruvian assets of U.S.-based Citibank for $295 million.
- Construction (cement): the Chinese firm Tangshan Jidong Cement Co., the world's sixth-largest cement maker, announced its intention to buy Cementos Interoceánicos.
- Telecommunications: following the acquisition of Nextel in 2013, the Chilean firm Entel has invested around $500 million to upgrade its network. Spain's Telefónica has invested some $8.5 billion in recent years and has announced new investments amounting to $2 billion for the period 2015-2017.
- Tourism (Hotels): According to the Sociedad Hoteles del Perú (SHP), hotel investment in that country should amount to $1.2 billion between 2015 and 2018 (concerning 102 projects adding about 7,676 rooms in 3-, 4- and 5-star hotels). In contrast to the investments of $550 million. made from 2010 to 2014.
- Petroleum (Refinery): the Spanish oil company Repsol invested $215 million in modernizing the La Pampilla refinery.
- Energy: Norway's Statkraft inaugurated the new Cheves hydroelectric plant, after investing $636 million.

A number of copper mines are set to start production between 2015 and 2022, thereby expanding copper production significantly.[123]

A multi-agency commission (the negotiating Commission on Investment Promotion and Mutual Protection Conventions) was created in 2003 with the only purpose of negotiating BITs and investment chapters within FTAs. The commission includes a representative from Proinversion (the private investment promotion agency), the Ministry of Economy and Finance, the Ministry of Foreign Trade and Tourism, and the Ministry of Foreign Affairs. Of the two countries, Peru has the most BITs and FTAs with investment chapters. Additionally, a new Arbitration law passed in 2006 as part of the preparation for the U.S. FTA. Therefore, Peru has already been involved in a number of investment

[123] IMF, 2015, p.6

disputes, a few of which have resulted in granting of awards (mostly partial) requested by the claimant.

The Peru-U.S. FTA compels Peru to respect the ILO-defined core rights of its labor force. On January 15, 2010, Congress approved a new labor procedure law (No. 29497) to advance the efficiency of resolving labor disputes. Also, in January 2010, Peru and the U.S. created the bilateral Labor Affairs Council as mandated in Article 17.5 of the FTA. The agreement also contains requirements to improve IPR protection[124] and government procurement practices (one of several laws passed with the specific intention to implement the FTA was the Government Procurement Law - Legislative Decree No. 1017, DL 1017).

In addition, the agreement, in its investment chapter, contains the following relevant regulations:

- National treatment and most-favored-nation: In the U.S.-FTA a "Non-Conforming Measures" section has been included as an exception (Art.10-13).
- Free Transfer of Capital: The U.S.-FTA establishes that the freedom to transfer funds is limited by the rules on bankruptcy, insolvency, or protection of creditors' rights; transactions with future securities, options, or derivatives; criminal or penal infringements; good faith enforcement of Arbitration awards or Judgments (Art.10.8).
- Performance requirements: The U.S.-FTA prohibits most forms of performance requirements, except in compliance with articles 31 and 39 of the WTO agreement on TRIPS or if ordered by a court to remedy uncompetitive practices (Art.10.9(2)). Additionally, parties are not prohibited from conditioning receipt or continued receipt of an advantage on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out R&D, in its territory (Art.10.9(3)). Furthermore, commitments of such

[124] Improvements include protections for digital products such as U.S. software, music, text, and video; protection for U.S. patents, trademarks and pharmaceutical and agrochemical test data; legal penalties to deter piracy; and an electronic system to register and maintain trademarks.

type are enforceable if necessary to comply with environmental and labor laws, provided that such measures are not applied in an arbitrary or unjustifiable way.

- Dispute resolution: The U.S.-FTA requires a 90-day written notice before any claim can be submitted to arbitration, and only if the dispute is still not resolved after six months have elapsed since the event giving rise to the claim, legal arbitration may be pursued (Art.10.16(2&3)).

Finally, new laws promoting in-house R&D through tax concessions are being implemented (Law 30056, of July 2013).

Box 8. Corporate Governance, M&A, and FDI

As mentioned above, a significant amount of the FDI coming into Colombia and Peru is destined to mergers and acquisitions (M&A). Some researchers have argued that FDI operations involving cross-border M&A have positive spillover effects for the sector in which the target firm operates, regarding corporate governance, market valuation and productivity of rival firms.[125] *At the same time, it has been suggested that international mergers and acquisitions benefit from better corporate governance regimes provided by the local governments. The evidence indicates that the volume of M&A activity is relatively higher in countries with stronger shareholder protection and better accounting standards.*[126]

The Economic Commission of Latin American Countries, ECLAC, developed a benchmark indicator that measures the level of corporate governance in corporate debt issuance, for selected countries[127]*. That benchmark was adapted to analyze the level of a country's regulation over corporate governance in the case of M&As. Interestingly, per this indicator, between 2004 and 2015, Colombia made the greatest number of improvements to its corporate governance regulations (jumping from 0.93 in 2004 to 7.66 in 2015, in a scale from 0 to 10). Also, of the seven countries considered, Peru showed the highest level of corporate governance (7.76 in 2015). In general, between 2013 and 2014 there were significant changes in corporate governance regulations in the four member countries of the Integrated Latin American Market (MILA, which includes Colombia and Peru, along with Mexico and Chile) probably in the context of harmonizing capital markets legislation between the countries that are part of the securities markets integration initiative.*

[125] Albuquerque et al., 2013

[126] Rossi and Volpin, 2004

[127] ECLAC, "Corporate governance in Brazil, Chile, Colombia, Mexico and Peru: The determinants of risk in corporate debt issuance", February 2015, Project Documents, https://www.cepal.org/en/publications/37721-corporate-governance-brazil-chile-colombia-mexico-and-peru-determinants-risk

As this last section on FDI conditions in Peru and Colombia show, both countries are benefiting from a more comprehensive investment regime as imposed by the FTAs. Not only has FDI diversified in a seemingly significant way, both in terms of countries of origin as well as economic sectors, but the guarantees provided for foreign investors are bound to achieve a level similar to OECD countries, once and if the provisions on the FTAs are fully and satisfactorily implemented.

C. Quantitative Analysis:

Methodology:

One of the purposes of this study is to explore the possible impact of these FTAs on non-traditional exports (export diversification) and FDI inflows to the developing countries under study. My goal is to analyze whether the FTAs have had an observable association with exports and FDI, and if it indeed took the expected positive direction. Additionally, looking at social and macroeconomic indicators of the last few decades, I briefly analyze how much the implementation of these FTAs is correlated with outcomes such as economic growth, overall export growth, and employment growth. For this purpose, relevant statistics for Chile (whose FTA with U.S. came into effect in 2004) and Ecuador (without an FTA with the U.S.) are included for comparison purposes.

From a financial market perspective, there are conditions that may ease the process of implementation of investment provisions of an FTA such as the degree of financial sophistication, openness, and accountability. These conditions matter because, as many of the researchers presented in the literature review above believe, FTAs seem to have positive effects on FDI mostly when the macroeconomic policy environment is favorable. And lastly, from an educational point of view, access to skilled labor is also a determinant for increased FDI inflows. In other words, an FTA will have the largest positive impact on the partners of the U.S. if the developing countries already have considerable amounts of skilled labor, and are successful in attracting investments that contribute to increase the percentage of skilled workers.

The quantitative portion of this analysis evaluates the changes in non-traditional exports and FDI inflows occurring before and after the signing and implementation of these FTAs, as well as their correlation with relevant macroeconomic and socioeconomic indicators. To document the increases in FDI that may be attributed to the negotiation and implementation of both FTAs, available data is examined at the industry level whenever possible.

Considering the available sources of data, the following is a detailed list of sources:

- Investment Map: Source from the International Trade Centre. Provides detailed sectoral FDI data (stock and flows) and trade data. Preferential access to this website was granted for a month in 2016 to capture the most detailed available data. http://www.investmentmap.org/prioritySector.aspx
- Trade sources:
  - Trade Map (www.trademap.com): Source from the International Trade Centre. Sectoral data (2-digit group, 99 categories) from 2001 to 2016, at country level
  - ALADI – Asociación Latinoamericana de Integración. Provides detailed trade data for Colombia and Peru, including by sector (8 categories) starting in 2002. http://consultawebv2.aladi.org/sicoexV2/jsf/totales_comercio_exterior.seam?cid=39106
  - World Trade Organization - WTO: Global data, country profiles, overall tariff averages. http://www.wto.org/english/res_e/statis_e/statis_e.htm
- First-hand data from country agencies.
  - Colombia: The National Administrative Department of Statistics -DANE- is the entity responsible for the planning, collection, processing, analysis, and dissemination of Colombia's official statistics. Labor indicators (productivity), trade, balance of payments, social indicators http://dane.gov.co/index.php/about-dane
  - Peru : Instituto Nacional de Estadística e Informática, INEI http://www.inei.gob.pe/estadisticas Banco Central de Reserva del Perú, Statistics (labor, balance of payments, prices)

https://estadisticas.bcrp.gob.pe Superintendencia Nacional de Aduanas y de Administración Tributaria – SUNAT – Foreign trade statistics http://www.sunat.gob.pe/estad-comExt/modelo_web/web_estadistica.htm

- World Bank (http://data.worldbank.org/) for other relevant explanatory and control variables (economic growth, GDP, population, FDI -- country level-bilateral--, foreign aid, educational levels and other social indicators) and for the "Doing Business" survey.
- The Conference Board: Output, Labor and Labor Productivity Data. The Conference Board Total Economy Database (Adjusted version), March 2018, http://www.conference-board.org/data/economydatabase/
- International Monetary Fund, Financial Soundness Indicators (http://data.imf.org). The key FSI indicator is "bank regulatory capital to risk-weighted assets (%)." Other interesting data from the IMF is the Financial Development Indexes, which measure depth, access, and efficiency of the financial institutions and the financial markets.[128] The World Bank also compiles a global financial development database (http://databank.worldbank.org/data/source/global-financial-development/Type/TABLE/preview/on) where similar indicators are available[129]
- Governance Indicators from the World Bank, including the Government Effectiveness indicator[130]

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[128] The financial development index (FD) is a relative ranking of the countries. It is an aggregate of the financial institutions index (FI) and financial markets (FM) index.

FI is an aggregate of Depth (FID – complies data on bank credit to the private sector in GDP%, pension fund assets to GDP, mutual fund assets to GDP, and insurance premiums, life and non-life to GDP), Access (FIA – compiles data on bank branches per 100,000 adults and ATMs per 100,000 adults), and Efficiency (FIE – compiles data on banking sector net margin, lending-deposits spread, non-interest income to total income, overhead costs to total assets, return to assets and return to equity).

FM is an aggregate of Depth (FMD – complies data on stock capitalization to GDP, stocks traded to GDP, international debt securities of government to GDP, and total securities of financial and nonfinancial corporations to GDP), Access (FMA – compiles data on % of market capitalization outside the top 10 largest companies and total number of issuers of debt per 100,000 adults), and Efficiency (FME – compiles data on stock market turnover ratio, which is stocks traded to capitalization).

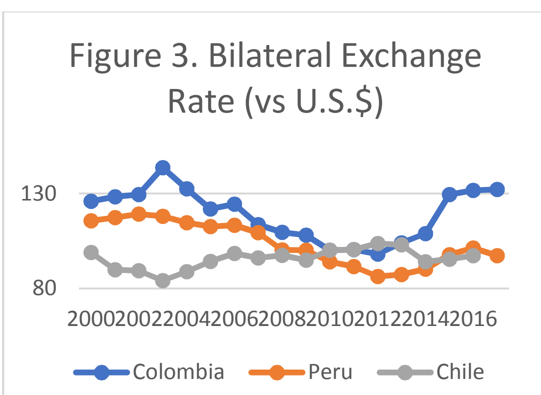
[129] Of particular interest are those provided by Bankscope, Bureau van Dijk. These include 5-bank asset concentration, Bank Z-score (captures the probability of default of a country's banking system), Boone indicator (a measure of degree of competition, calculated as the elasticity of profits to marginal costs; the more negative the Boone indicator, the higher the degree of competition is because the effect of reallocation is stronger), and the Lerner index (a measure of market power in the banking market).

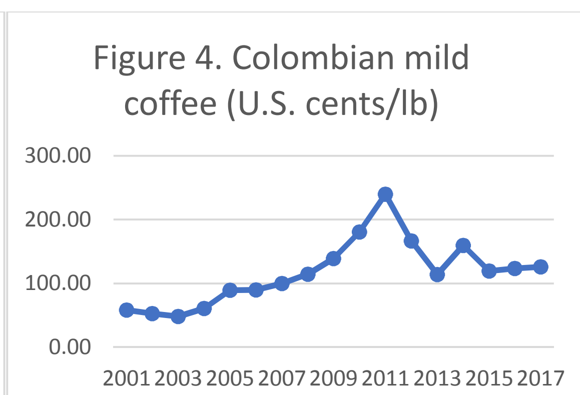
[130] Perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and

Data Analysis:

Data are available for Colombia, Peru, Chile and Ecuador from about 2001 to 2017. I am looking at total FDI inflows to Peru and Colombia from all over the world, and also to sectoral FDI data. For trade data, I am considering three groups of data. The first includes only a simple differentiation between traditional and non-traditional exports. The second includes broad export categories provided by the ALADI. The third is a dataset with exports sectoral data (2-digit trade categories), with about 100 categories for each country.

In order to start this analysis, it is important to have as a reference the evolution of bilateral exchange rate (not included for Ecuador because it is a dollarized economy) and relevant commodity prices during this period. While Peru's and Colombia's currencies appreciated against the U.S. dollar between 2006 and 2014, hurting the prospects of exporters, Chile's currency followed a somewhat opposite pattern. Interestingly, the prices of crude oil, copper, silver, gold and coffee all peaked around 2011, with dips around 2008 that coincide with the global financial crises (except for coffee):





Source: Central Banks, IMF

Source: International Coffee Organization

implementation, and the credibility of the government's commitment to such policies. https://info.worldbank.org/governance/wgi/pdf/ge.pdf

Figure 5.

Figure 6.

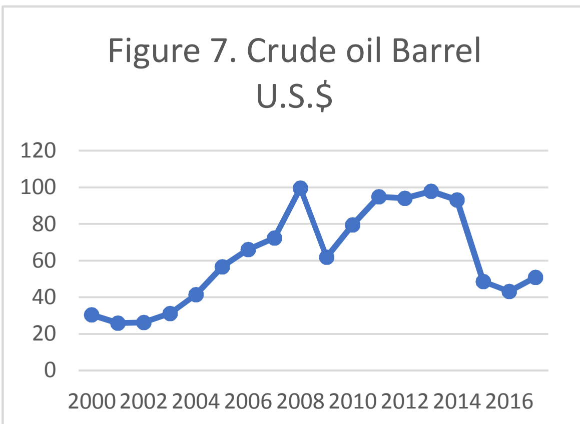


Figure 7. Crude oil Barrel U.S.$

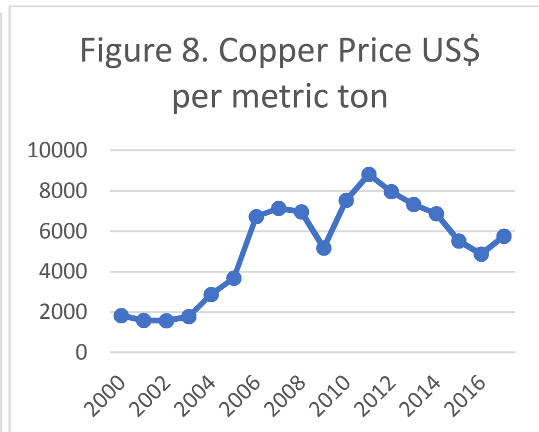
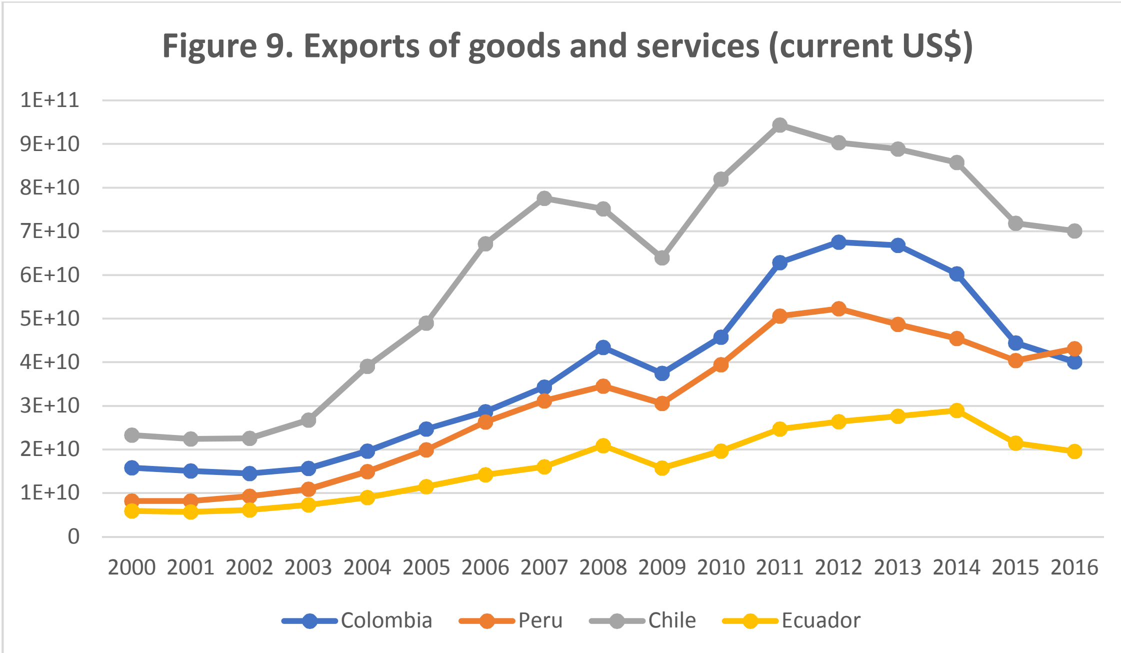


Figure 8. Copper Price US$ per metric ton

Source: Markets.businessinsider.com/commodities

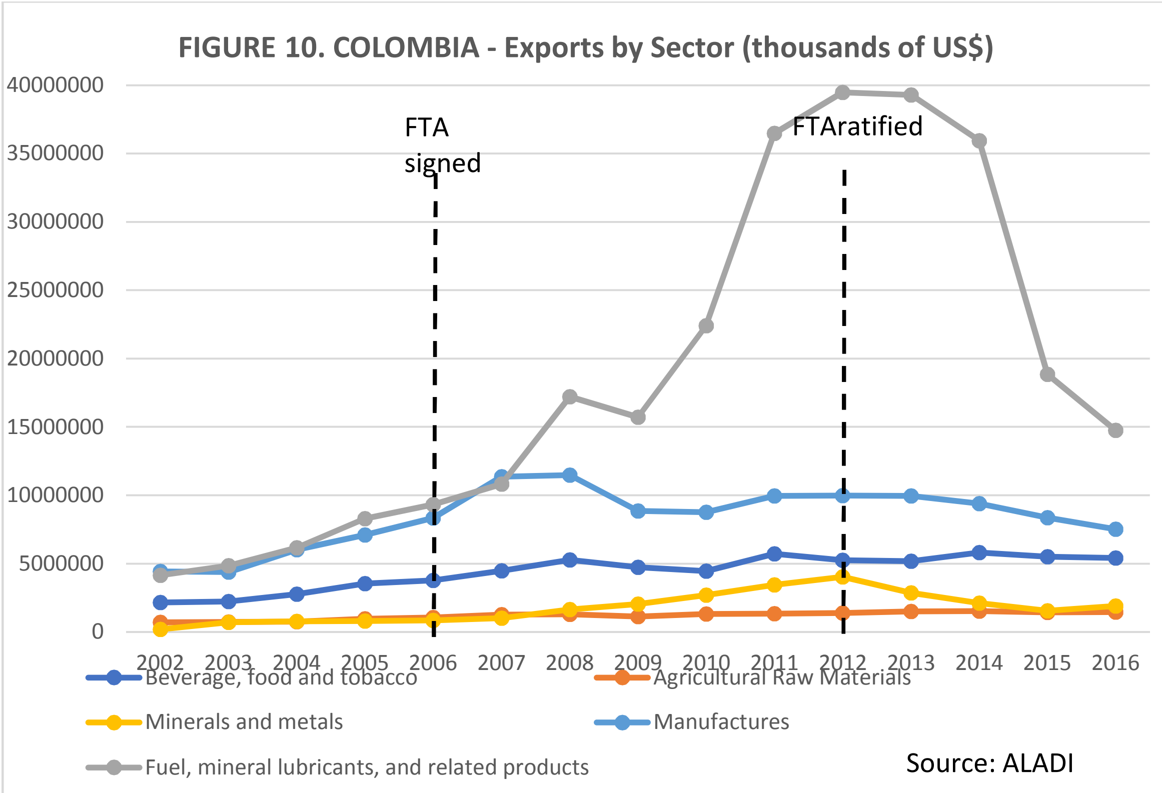
Correlation with Non-traditional Exports

To begin with, looking at the statistics for overall exports of goods and services, it becomes apparent that they follow very similar trends in all four countries (Chile and Ecuador included for comparison purposes):

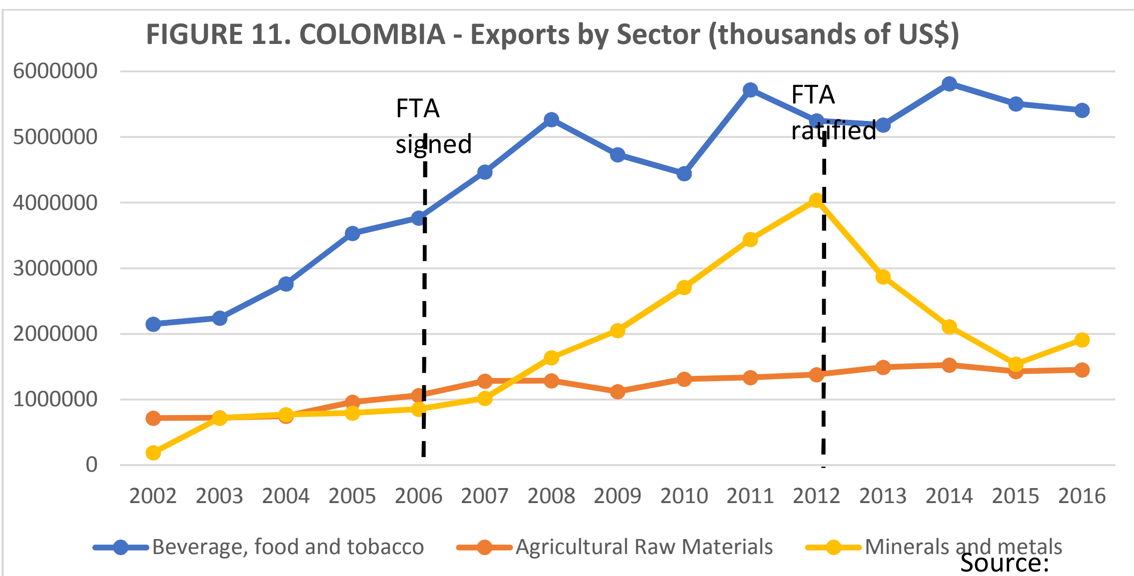


Source: World Bank, WDI

However, looking at exports by category for each country, more particular trends stand out. In the chart below, for Colombia, the weight of fuel exports is very clear. However, it is noticeable how other export categories, manufactures in particular, begin to increase between 2005 and 2007, coinciding with the signature of the FTA. This makes sense because it was a time of high expectations and favorable exchange rates for exporters. Then there is the dip after 2008 that coincides with the global financial crisis and less favorable exchange rates, but in spite of the latter not depreciating until 2014 or so, there is some stability for non-mineral and non-fuel exports that surrounds the year when the FTA was finally ratified:

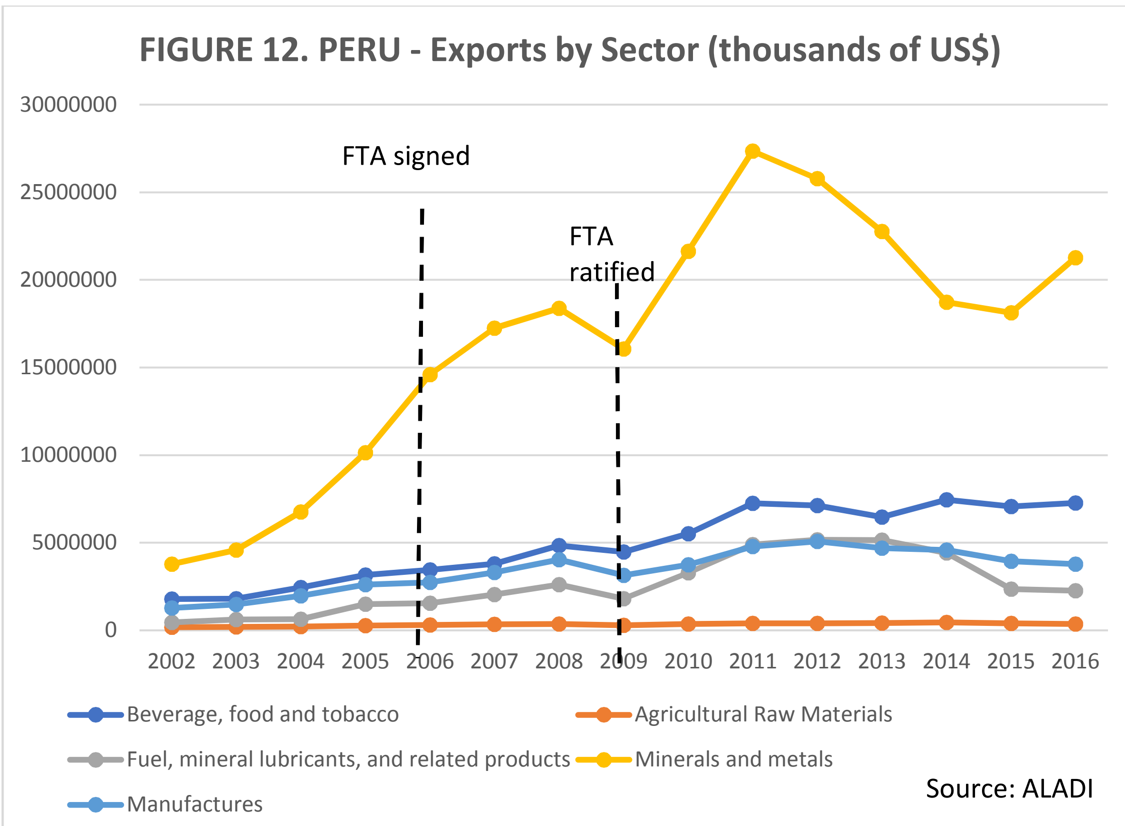


Looking at the bottom three more closely:

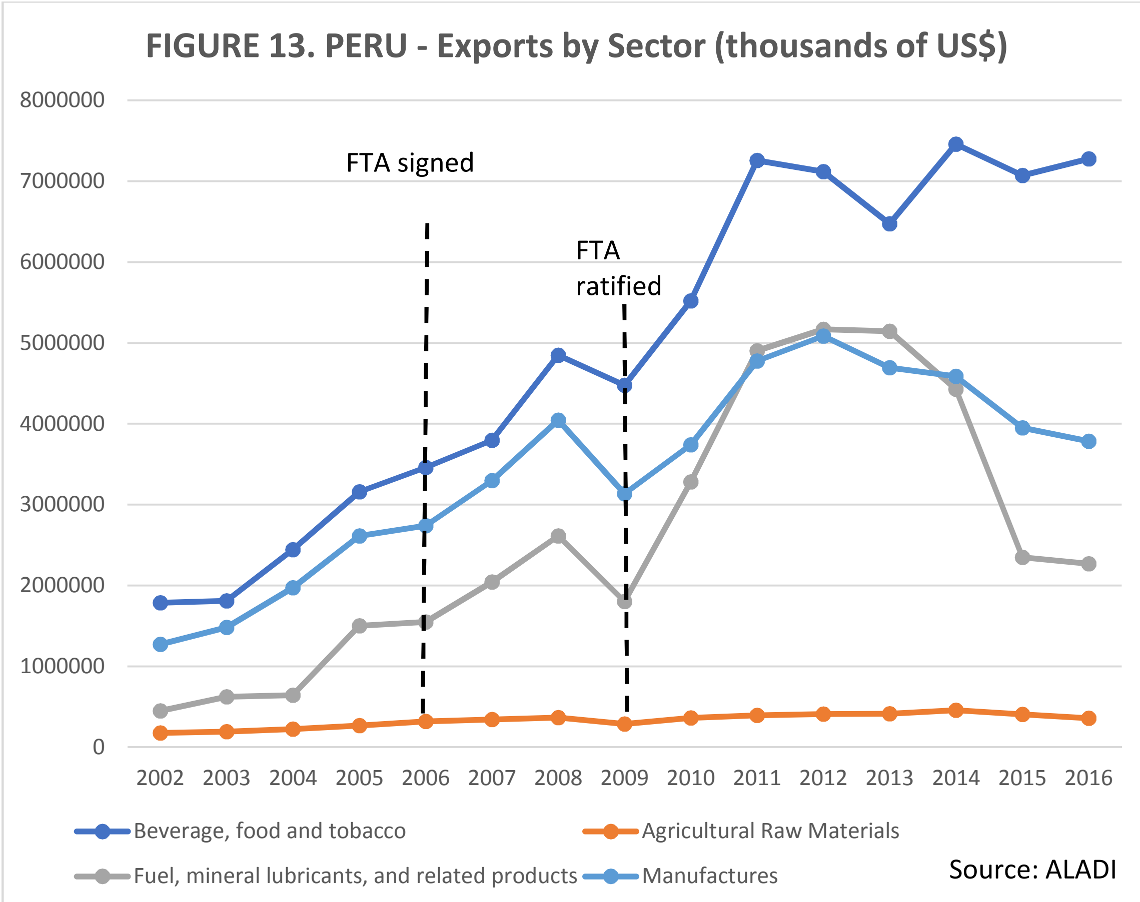


Minerals and metals respond mostly to commodity prices, loosely following the trend of fuels, but also not majorly affected by the 2008 financial crisis. The evolution of beverage, food and tobacco is more interesting and seems to follow the trend of anticipation of the FTA signing and ratification, with the 2008 financial crisis in between. As mentioned in the interviews' portion of this study, there have been successes in snack and dairy industries exporting their products; also included in this category are gourmet coffee products and other fruit-based specialty beverages (counting concentrates and fruit pulps). Agricultural raw materials encompasses traditional exports such as unprocessed coffee and cereals.

In the case of Peru:

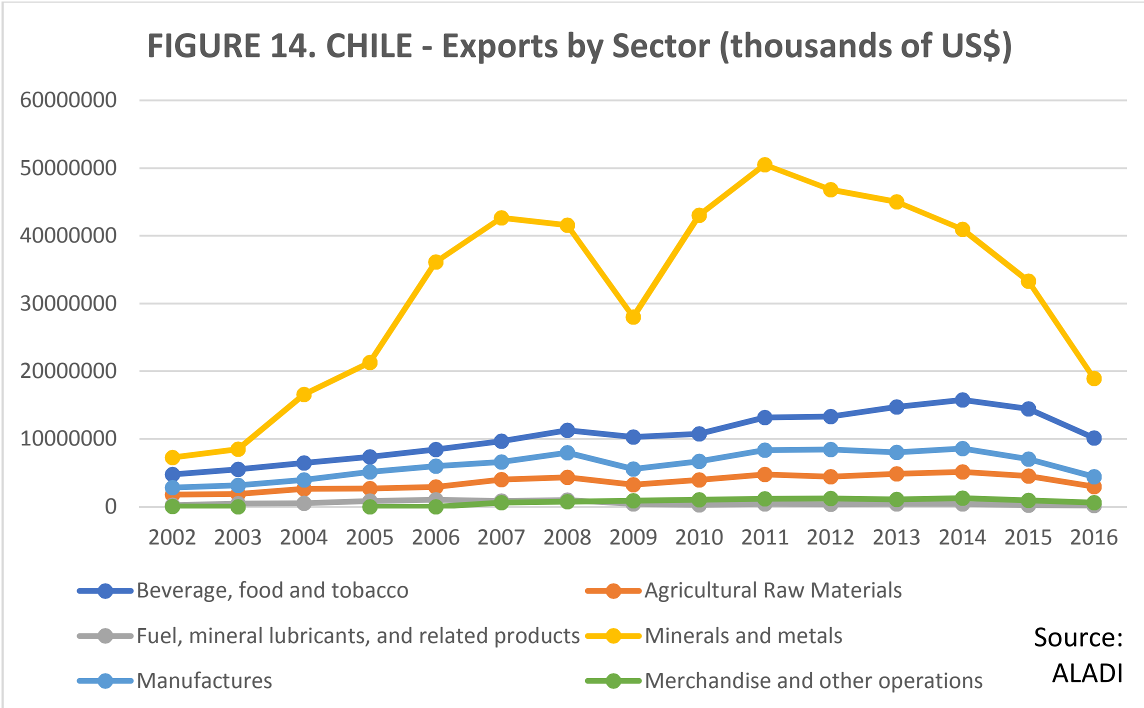


Once again, most categories follow the trend of anticipation of the FTA signing and ratification, with the 2008 financial crisis in between. However, as mentioned before, minerals and metals exports respond to commodity prices and to previously outlined government policies. Therefore, looking only at the bottom four categories:

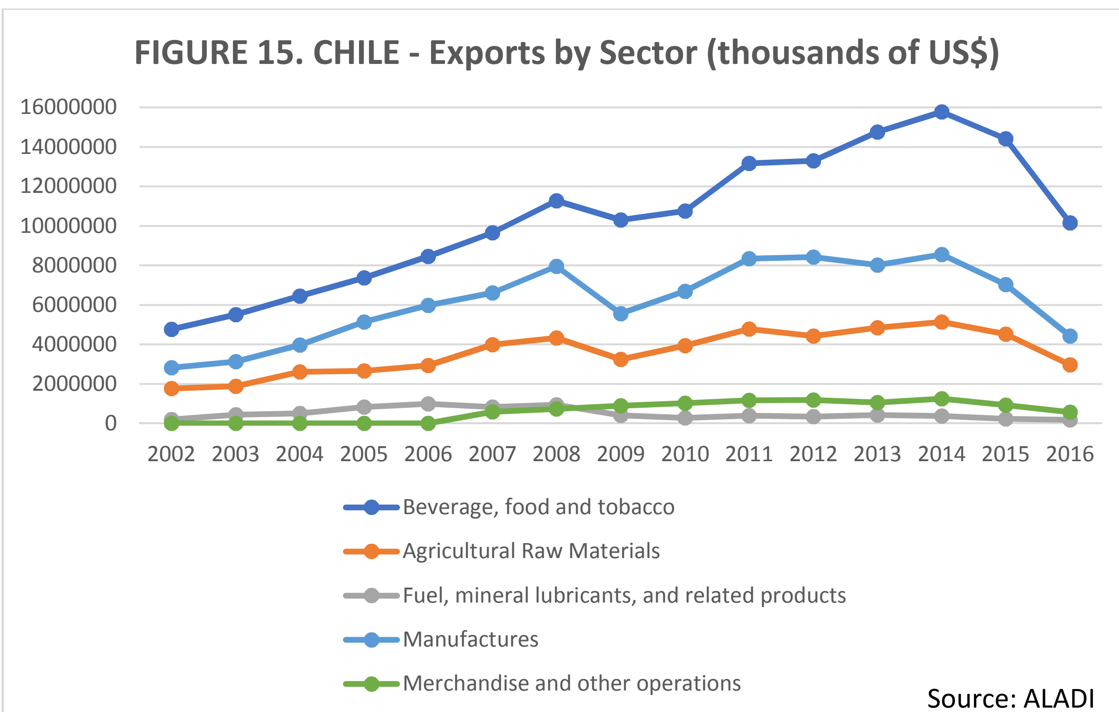


It is interesting how manufactures, and beverages, food and tobacco increase more rapidly starting in 2004 and through 2008, and once the FTA is ratified they take off. Curiously, the fuel category follows a similar trend. Peru is not a vast petroleum producer, but since 2004 it has benefit from natural gas exploitation.

Now, comparing the performance of Peru and Colombia with that of Chile:

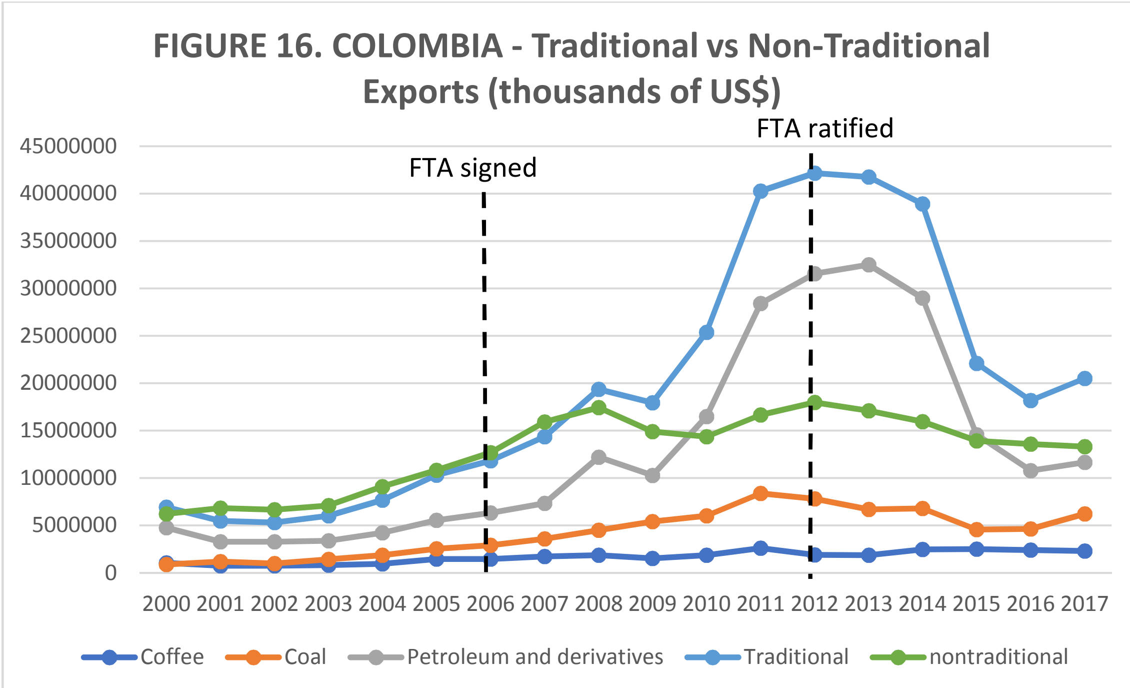


At first glance, the minerals and metals category follows a curve almost identical to Peru's. Therefore, looking only at the remaining categories:



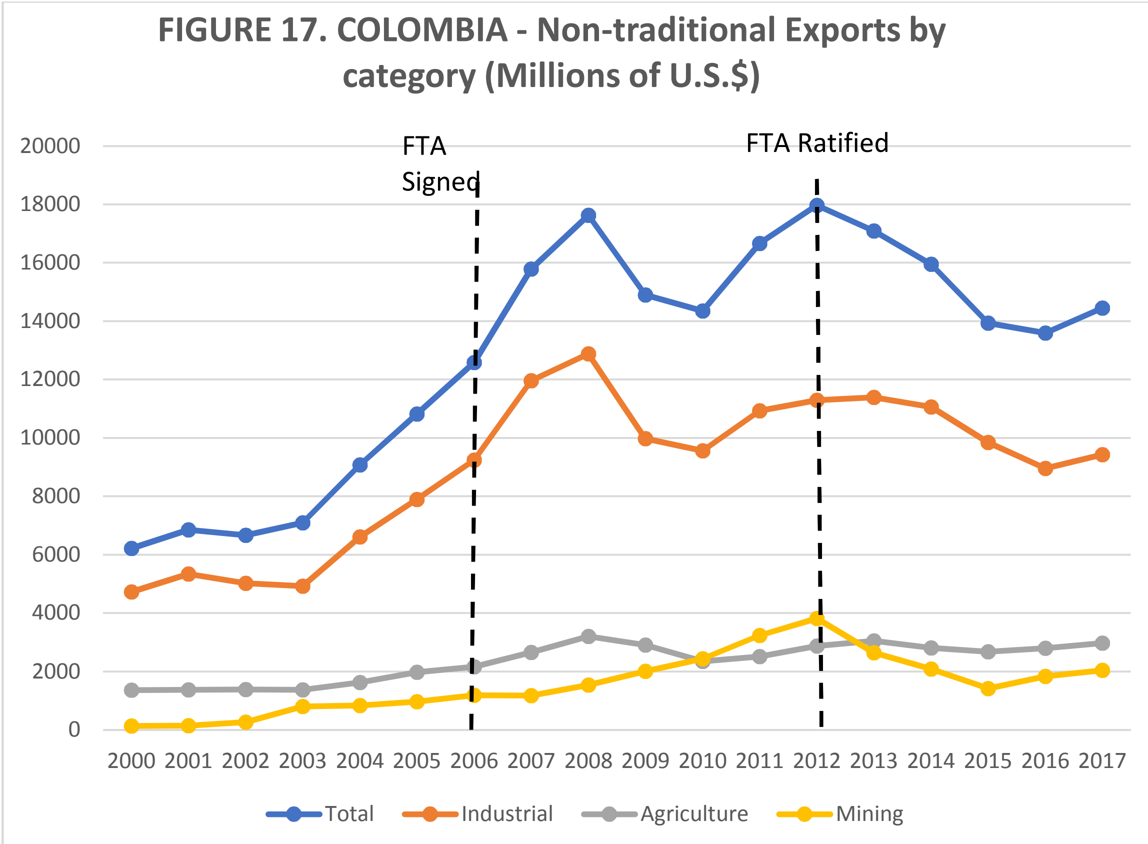
The increases in manufactures, and beverages, food and tobacco seem smoother from 2002 to 2008 than those in Peru and Colombia, with no apparent evidence of accelerated growth in 2006. However, the Chilean peso had appreciated against the U.S.$ around that time, so this fact might explain at least part of the slower growth. Overall, 2009 is a rebound year in most cases, but comparing Chile to Peru the increases from that point forward are also less sharp, even taking into account the exchange rate behavior. Nevertheless, it is interesting how the agricultural raw materials is a more sizable category for Chile, reflecting its focus in agricultural exports of a variety of fruits (taking advantage of its seasonal availability, which is opposite to that of the northern hemisphere). Finally for Chile, the most remarkable increases in exports from 2012 (the year of the Colombia-U.S. FTA) is in the beverage, food and tobacco category, which overall has the most positive trend for Chile, and responds to an export policy that seeks to increase the forward linkages of its agricultural production.

Comparing now traditional versus non-traditional exports exclusively for Peru and Colombia, and looking first at the case of Colombia:



Source: DANE

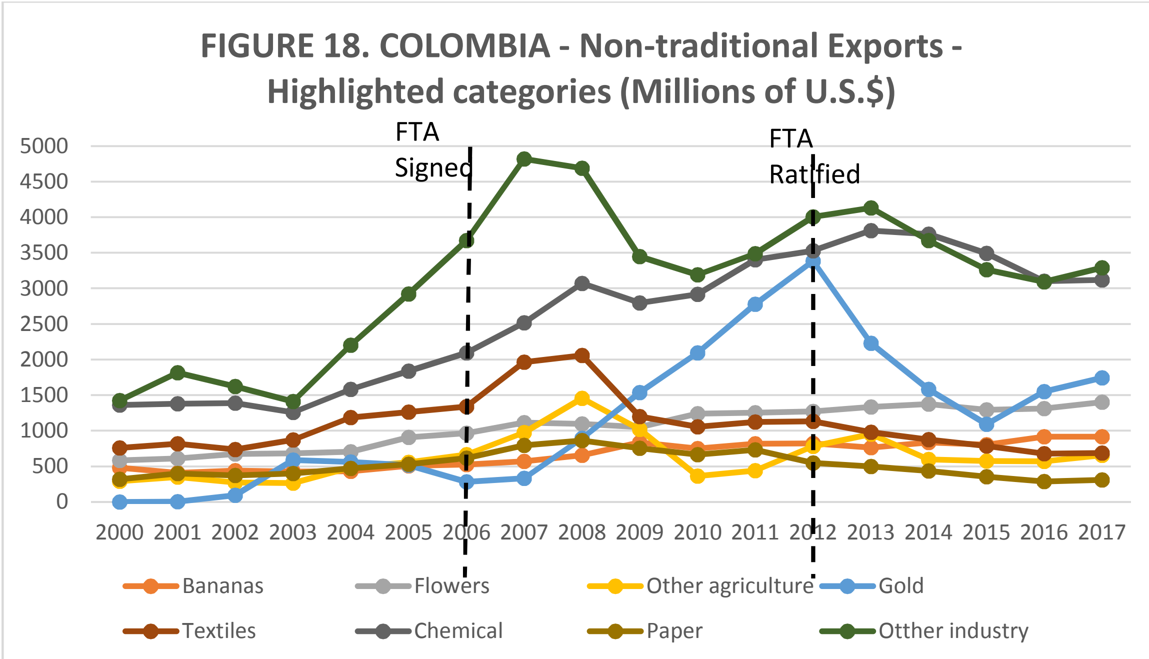
Both traditional and non-traditional exports were slowly climbing at the time the FTA with the U.S. was signed. As mentioned above, traditional exports, mainly consisting of petroleum, kept their momentum and then some all the way to 2013, only with a small dip in 2008. As explained above for the categories other than Petroleum, non-traditional exports did not seem to get a boost after the FTA was ratified, but they have managed to remain at levels higher than those registered before the FTA started being negotiated in 2004. In spite of less favorable exchange rates. Nevertheless, not all non-traditional exports evolved in the same manner. Looking now at categories within non-traditional exports:



Source: DANE

Observe how the trend of overall non-traditional exports follows that of Industrial non-traditional exports. Agriculture by itself has managed to maintain a modest growth and remain at levels higher than those of the early 2000s. This is significant, because, again, the Colombian peso appreciated against the U.S. dollar from about 2008 to 2014, and just recently have exporters started to benefit again form a depreciated exchange rate. This means non-traditional agricultural exports managed to keep their gained ground in spite of adverse external conditions.

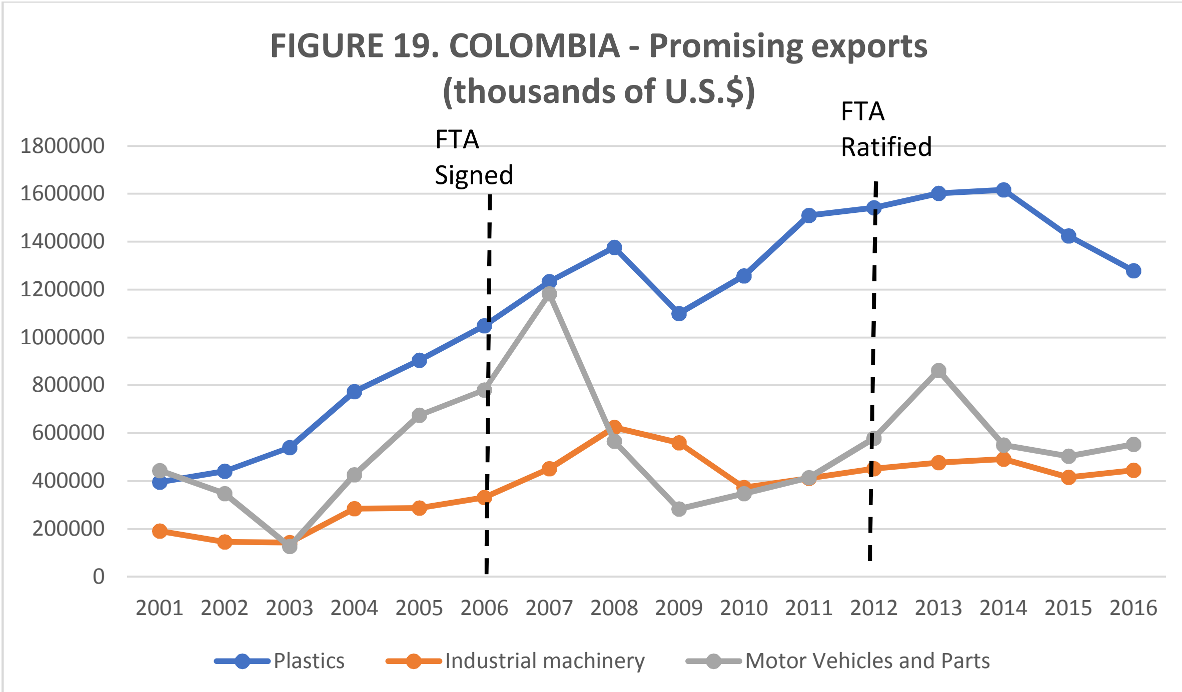
Looking even closely at the different elements within the non-traditional categories:



Source: Banco de la Republica de Colombia

Of the categories above only gold seems to follow an anti-cyclical pattern. Indeed, the price of gold consistently climbed during the year in between the signature and the ratification of the FTA. The chemical industry and other industries show sizable increases both around 2006 and 2012. Of course, as mentioned repeatedly, there was the 2008 financial crisis in between, but the correlation with the ratification of the FTA is apparent because, as stated above, exporters were facing an appreciated exchange rate at the time. Flowers and bananas follow the trend explained earlier for the non-traditional agriculture sector. Interestingly, textiles and paper are categories that exhibited increases right after the signing of the FTA, but not after its ratification, perhaps due to increased competition. Finally, because "other industry" is such a large sub-category, it is worth looking into those HS 2-digit codes that have reached the top ten list of exports in recent years: plastics, motor vehicles and parts, and industrial machinery:[131]

[131] https://globaledge.msu.edu/countries/colombia/tradestats



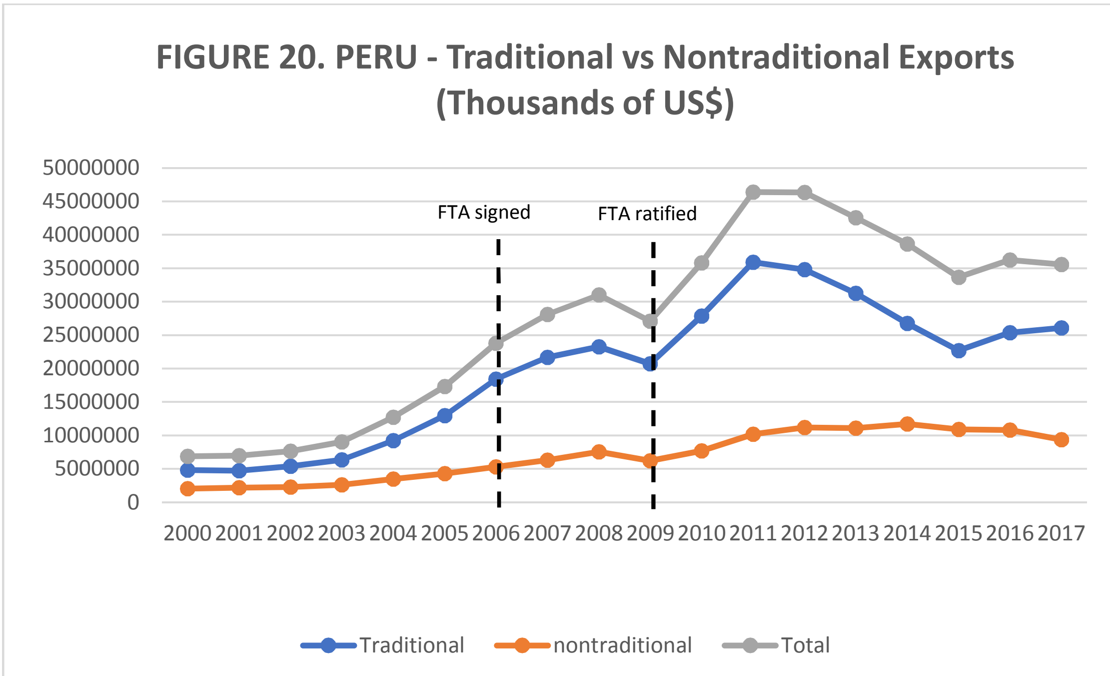
Source; International Trade Centre

Of the three categories, plastics has been evolving particularly well. In particular, production of plastic packages and containers has boomed, with investments from Kimberly-Clark (U.S.), Unilever (U.K.) and Procter and Gamble (U.K). and exports to not only the Andean region and the U.S., but also to Brazil and Chile[132]. Overall, plastics went from exporting about U.S.$400 million in 2001 to over U.S.$1.2 billion, with a peak of U.S.$1.6 billion in 2014, a 400% increase. Motor vehicles and parts is a category that correlates particularly well with the signing and ratification of the FTA. Colombia's motor vehicle industry is not new. During the time of import-substitutions policy, Colombia's motor vehicle assembly industry grew stronger. With the entry of more competition as the economy opened, Colombia specialized in motorcycles, light vehicles, trucks and buses, Investments in this sector come from Renault (France, longest standing

[132] http://www.investincolombia.com.co/sectors/manufacturing/plastic-packages.html

assembling plant in the city of Medellin), Suzuki and Toyota (Japan), Hero (India), Foton (China), and GM and Johnsons Controls (U.S.).[133]

Regarding the case of Peru:

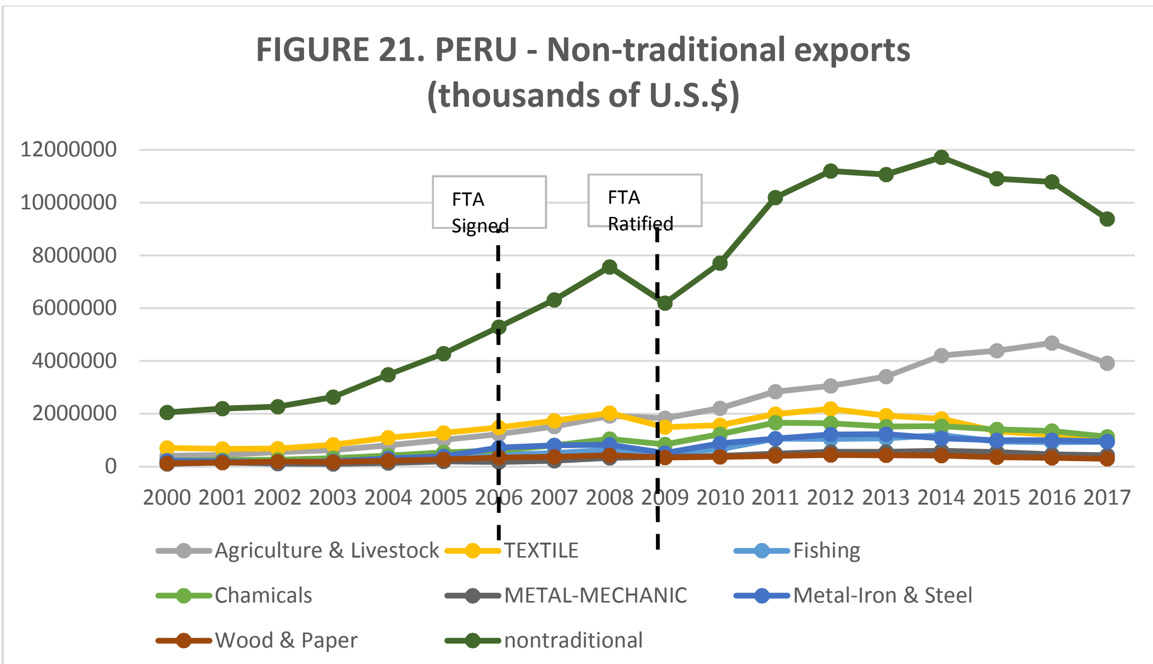


Source: SUNAT (Statistics Division)

Traditional exports are still the largest and follow the trend of total exports (to see the evolution of traditional exports in detail, including all commodities and fish products, go to figures 46 to 48 in Appendix 3). Traditional exports respond to commodity prices and to the effects of the global financial crisis of 2008. Nevertheless, there is a possible effect hard to separate from those overpowering factors: There have been more foreign investments in mining, and natural gas and petroleum exploration. To the extent that these investors feel any additional confidence because of the commitments to the investment chapters in the FTAs, then the increases in traditional exports can also be explained, at least in part, by the signing and ratifying of the FTA.

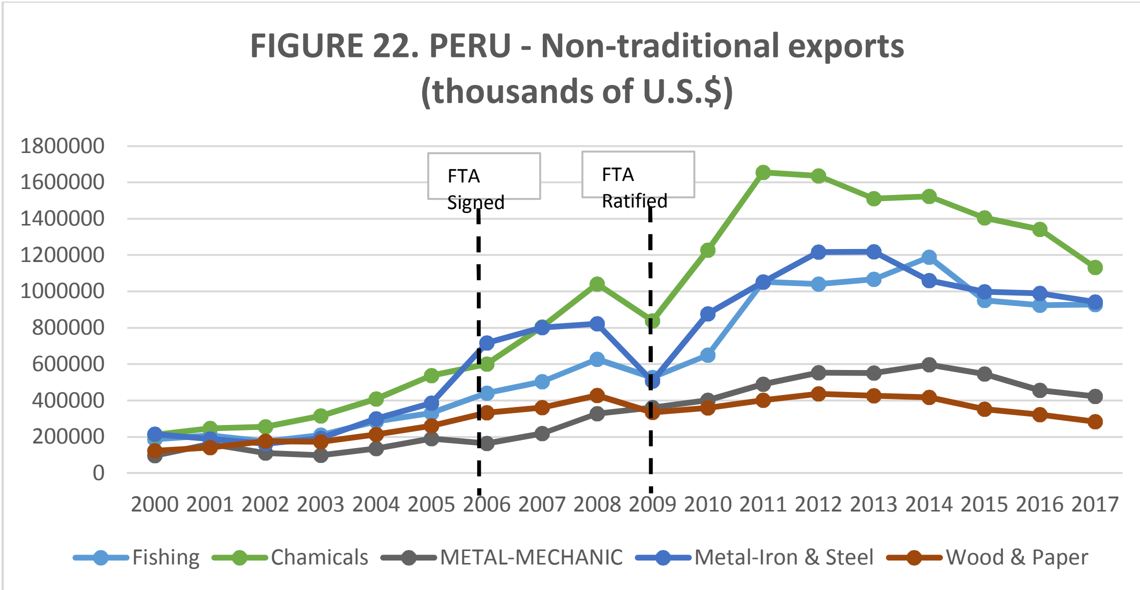
[133] http://www.investincolombia.com.co/sectors/manufacturing/automotive.html

Looking closely now at Peru's non-traditional exports, the top curve in chart below exhibits once again the pattern of fast growing exports in the years surrounding the FTA signing and ratification, with the adjustment in 2008. Textiles and agriculture and livestock are the most salient categories within non-traditional exports. However, while textiles seem to lose momentum after 2012 (perhaps due to increased competition), agriculture and livestock continue to grow consistently (2017 statistics are preliminary and/or might not include all year):



Source: Peru – SUNAT (Statistics Division)

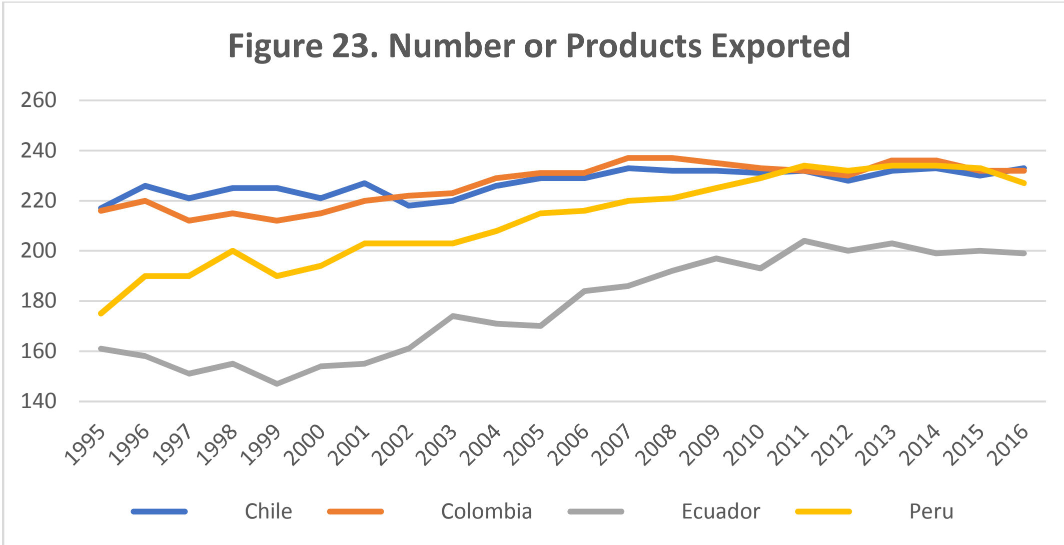
Looking more closely the trend for the bottom five categories:



Source: Peru – SUNAT (Statistics Division)

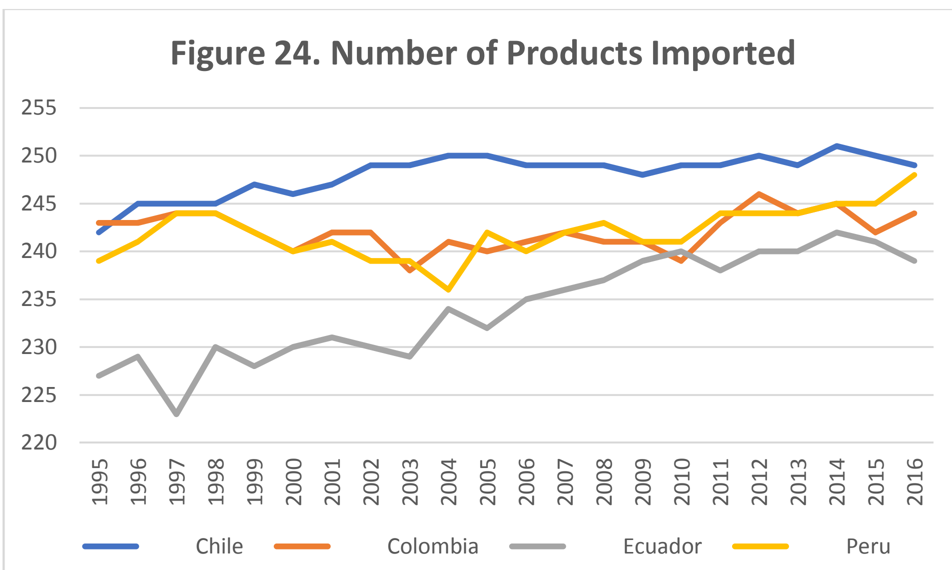
These five subcategories start to grow slowly in the years from 2000 to 2004. Iron and Steel exports grow very rapidly in 2006, but it is unlikely that this spike has too much relation to the FTA; it is more likely related to demand from China. Chemical exports on the other part increase rapidly between 2006 and 2008 and once again between 2009 and 2012. Chemical industry is one of the areas where middle income countries like Peru can take advantage of FTAs benefits. Fishing related products is a category that is particular to Peru in its potential to create additional exports, because Peru is naturally a fishing exporting country, and going further in the value-chain by exported processed fish products makes sense. Although wood and paper grow throughout the period, but they do not do as well as the other non-traditional exports. Finally, metal-mechanic exports exhibit a moderate but constantly growing trend until about 2015; this is another area where Peru can take advantage of adding to value-chains and seems to be doing so.

As an additional approach to analyzing the trade issue quantitatively, the following charts show how merchandise trade concentration changed over the period over study, including statistics for Ecuador and Chile:



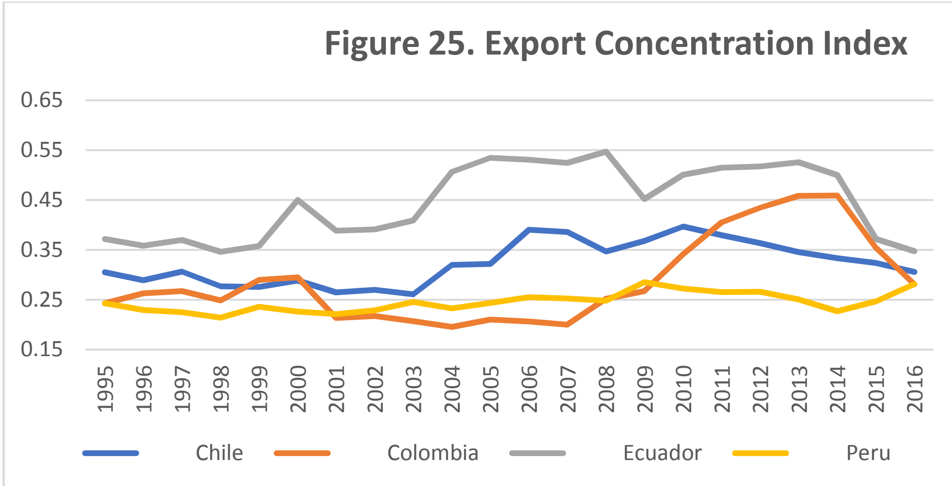
Source: United Nations Conference on Trade and Development

Regarding the number of products exported, notice how Chile, Colombia and Peru, the countries with FTAs and liberalized trade, have reached an almost identical level, closer to 240 products. In particular, while Peru was in a similar starting level with Ecuador in 1995, it climbed very quickly in the 2000s.



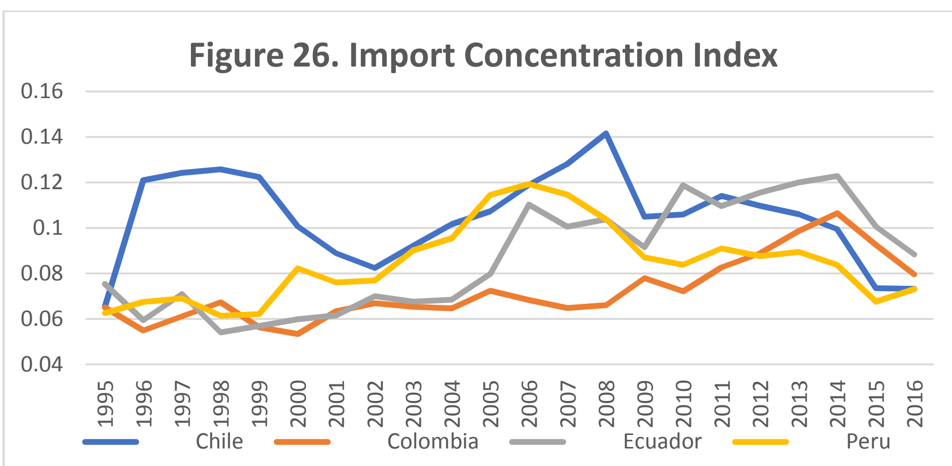
Source: United Nations Conference on Trade and Development

Curiously, for the number of products imported, the levels for Chile, Colombia and Peru, in average, have not changed dramatically, while for Ecuador they are continuously growing.



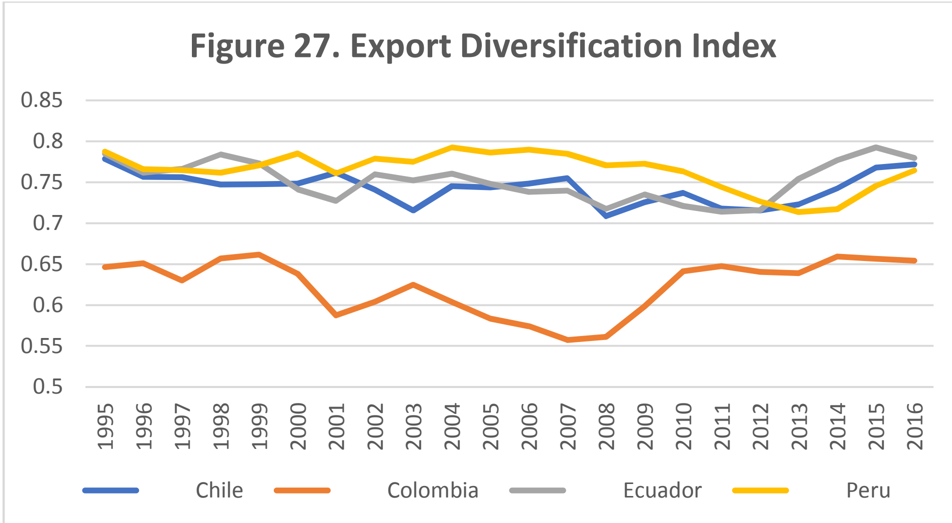
Source: United Nations Conference on Trade and Development

The concentration index, also named Herfindahl-Hirschmann Index (Product HHI), is a measure of the degree of product concentration. An index value closer to 1 indicates a country's exports or imports are highly concentrated in a few products while values closer to 0 reflect more diversified trade. In the graphic above note how overall, Ecuador's index is always above that of Chile, Colombia and Peru. However, during the 20-year period all indexes move up and down, perhaps cyclically following resource price booms and drops, all landing in indexes comparable to the starting ones.



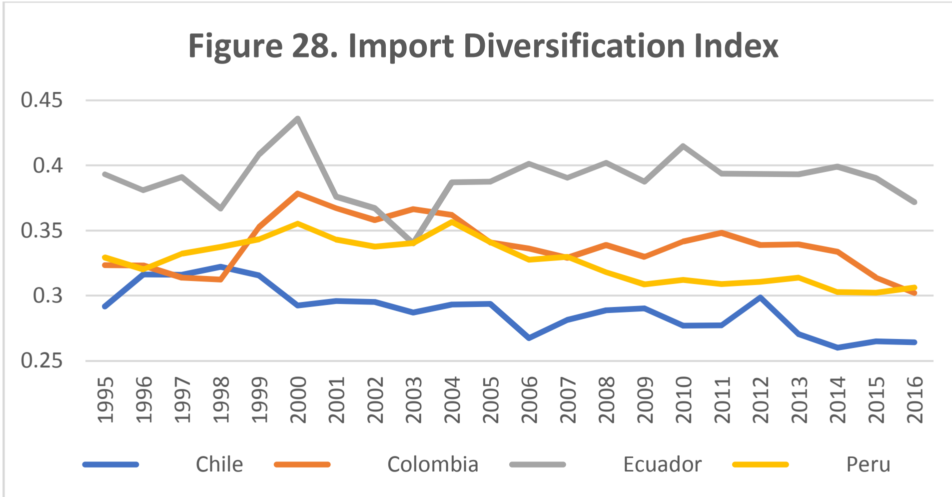
Source: United Nations Conference on Trade and Development

Overall, for all four countries the import concentration index is low. This illustrates the difference between the countries' patterns of imports and exports.



Source: United Nations Conference on Trade and Development

The diversification index is computed by measuring the absolute deviation of the trade structure of a country from world structure, taking values between 0 and 1. A value closer to 1 indicates greater divergence from the world pattern. Looking at this index, Chile, Ecuador and Peru stay at similar higher levels, in the 0.7-0.8 range. Colombia's index remains lower at all times, although above 0.55 at all times, declining particularly swiftly between 2003 and 2008 (the years leading to the when the FTA with the U.S. was first signed). Peru follows a slower yet steadier decline between 2003 and 2014. This difference between the countries may be regarded as evidence that, while in Colombia there was a lot of anticipation for the possibilities of the FTA that came to a halt once it was signed but not ratified, in Peru the same anticipation only gained momentum as the FTA was swiftly ratified and moved to the implementation stage.

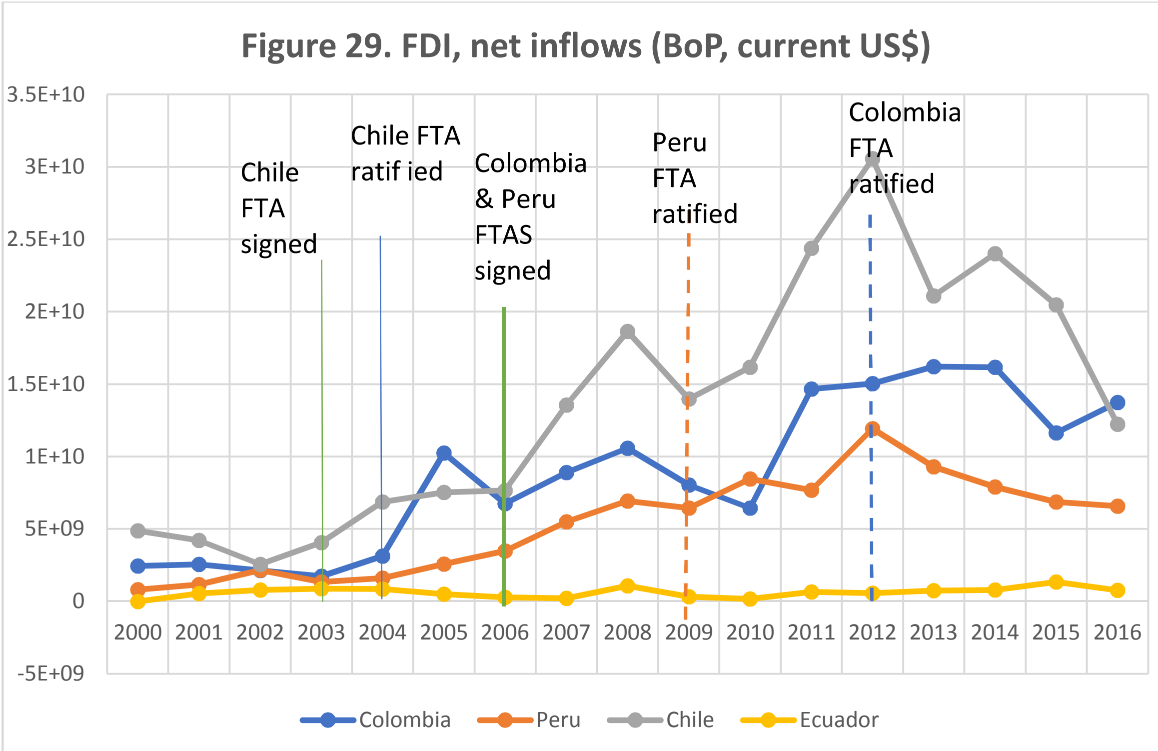


Source: United Nations Conference on Trade and Development

In the graphic above, once again, Ecuador's index is consistently above that of Chile, Colombia and Peru. Chile's is the lowest, perhaps denoting a greater integration with the World economy. Also, notice how the Peruvian and Colombian indexes seem to be in a constant decline all through the 2000s, again signaling their greater trade integration and their commitment to a more open economy.

Correlation with FDI:

Looking at the changes on FDI in total and disaggregated by economic sectors (charts below), it is evident than in the last twelve years or so FDI in tertiary activities has increased significantly. This represents a move from a strong dependence in primary/commodity products to a more diversified and mature economy.



Source: World Bank, WDI

Observing the chart above, Colombia and Peru show positive trends in FDI inflows both at the time the FTAs were signed as well as the time they were ratified. In Peru, however, there was an ongoing positive trend that does not seem to accelerate dramatically between 2002 and 2010. In Colombia, on the other hand, the years before 2006 were only disturbed by a spike in 2005 due to the acquisition of the largest Colombian brewery, Bavaria, by SAB Miller (South Africa),[134] which was a one-time event involving one of Colombia's most successful companies. At the time, Bavaria was the second largest brewery in South America, and had a market share of 99% in Colombia and Peru, 93% in Ecuador and 79% in Panama. In 2007 and 2008, Colombia received an increasing

[134] https://www.marketwatch.com/story/sabmiller-to-buy-colombias-bavaria-for-78-billion

number of greenfield projects, attracting 66 and 73 greenfield projects, respectively.[135] FDI inflows in 2009 reflect the effects of the financial crisis of 2008, with all countries in the chart experiencing decreasing inflows of FDI. The years between 2009 and 2012 exhibit clear positive trends for the three countries with a signed FTA. However, Colombia presents a continuing decline up to 2010, followed by a sharp increase in 2011, which could possibly reflect Obama's commitment towards ratifying the FTA, expressed in April of that year[136]. This positive trend continues in Colombia through 2013, which does not seem apparent in Peru and Chile.

In order to further evaluate the possible factors affecting these trends, I evaluate FDI by sector in the next three charts:

[135] ECLAC, La inversión extranjera directa en América Latina y el Caribe, Santiago de Chile, 2010

[136] https://www.washingtonpost.com/opinions/mr-obamas-free-trade-deal-with-colombia/2011/04/06/AFqoQZrC_story.html

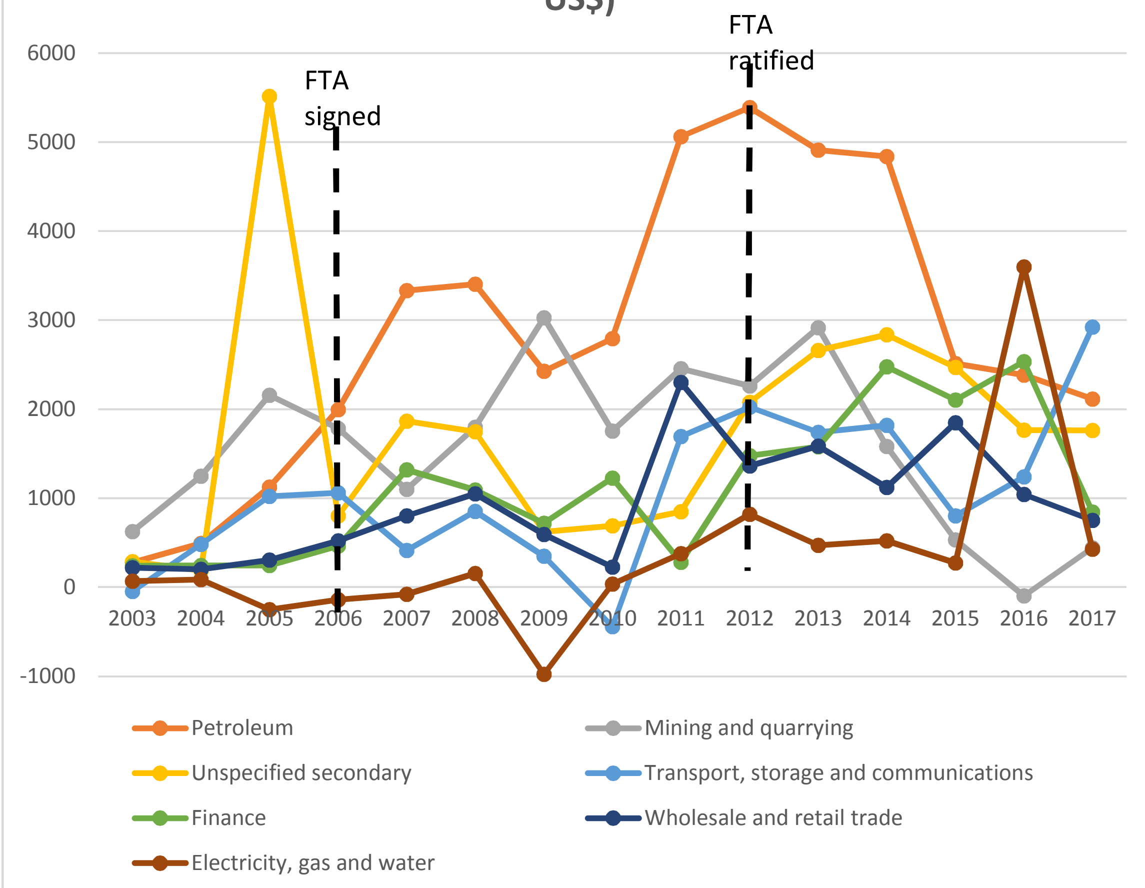
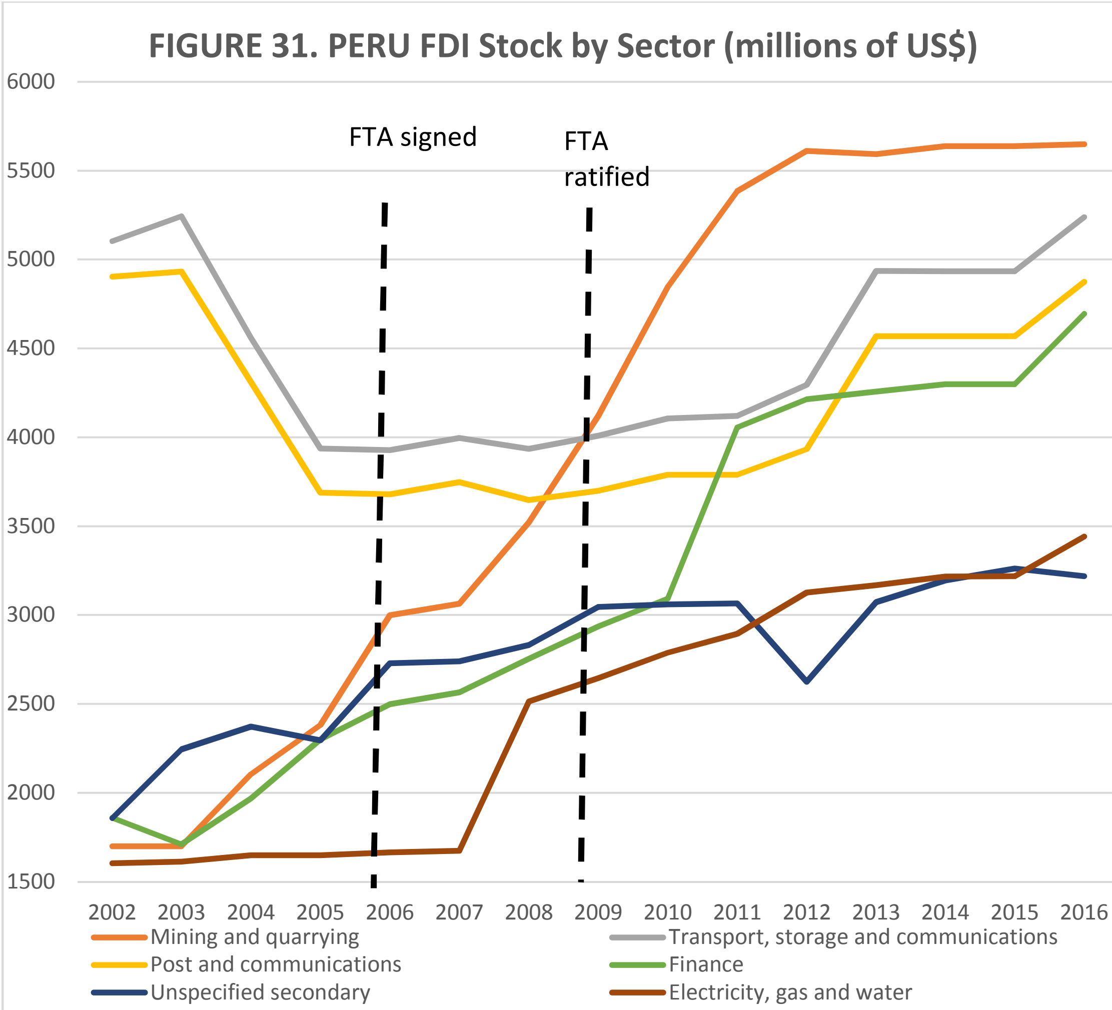


FIGURE 30. COLOMBIA - FDI inflows by sector (millions of US$)

Source: Investment Map, International Trade Centre

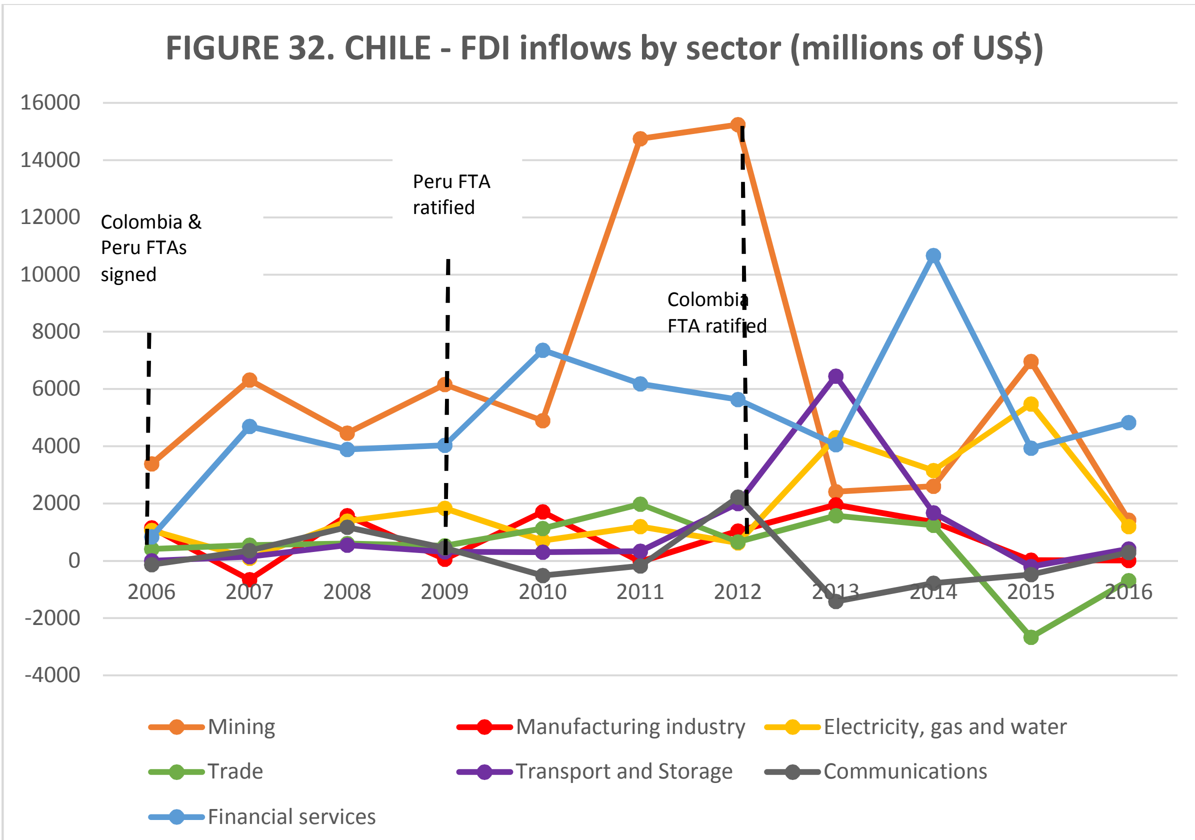
In the chart above, 2017 shows preliminary data. Looking at Petroleum, it is apparent that the positive trend that was already ongoing in 2003 was not changed by the FTA signing in 2006. Also, the increases from 2009 to 2012 coincide with very high oil prices, and as these prices fell, so did FDI in Petroleum. Unspecified secondary (manufacturing and industry) investments, wholesale and retail trade, and finance show trends that seem to be more responding to the signing and ratifying of the FTA. Electricity, gas and water is a category that reflects Colombia's efforts in privatizing its public utilities (including a sharp disinvestment from European countries in 2009 as result of the financial crisis).



Source: Investment Map, International Trade Centre

The chart above shows Peruvian FDI inward stocks. Peruvian authorities do not report FDI inflows by sector. However, to the extent that stocks follow inflow trends, some sectoral trends are apparent in this chart. Until 2009, most of FDI stocks were attracted by the service industries (communications, finance, and transportation). Between 2006 and 2009 investments in mining and also in utilities (electricity, gas and water) took off. This reflects a conscious effort from the government to increase the profile of the extractive industries that started in the later 1990s, and to universalize the access to power, gas and water through public-private partnerships, in which FDI is welcome. Furthermore, these two policies, while benefiting from the FTA's investment chapter provisions, do not support diversified flows of FDI. Nevertheless, from around 2010 the stocks in the service industries mentioned above have been growing, surpassing once again those of extractive industries and utilities.

For comparison purposes, the following chart presents data of sectoral FDI inflows to Chile:



Source: Investment Map, International Trade Centre

Chile's FTA with the U.S. was signed in 2003 and ratified in 2004, inflow data by sector for those years was not available. However, for the sake of trying to identify connections to factors other than the FTAs, this chart shows that 2009 and 2012 were not outstanding years for Chile, if the mining sector is not taken into account. Also, taking into account that this chart does not show all the smaller categories, which for Chile are more sizable than for Peru and Colombia, from 2008 to 2009 investments slowed down in response to the 2008 financial crisis.

Correlation with GDP, Government and Financial Soundness Indicators:

Regarding the evolution of GDP, the following graphs show the evolution of GDP at purchasing power parity, and per capita. Population levels and growth rates for the beginning and end of the period are also present:

FIGURE 33. GDP PPP per capita

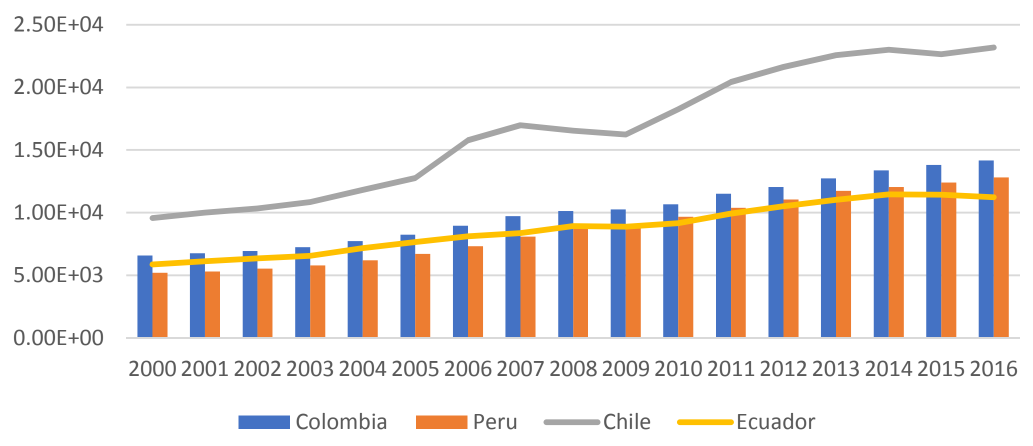
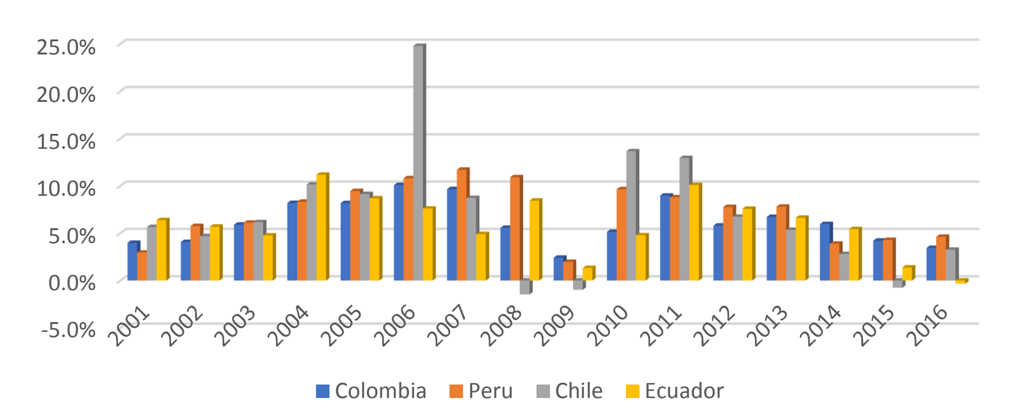


FIGURE 34. GDP PPP growth



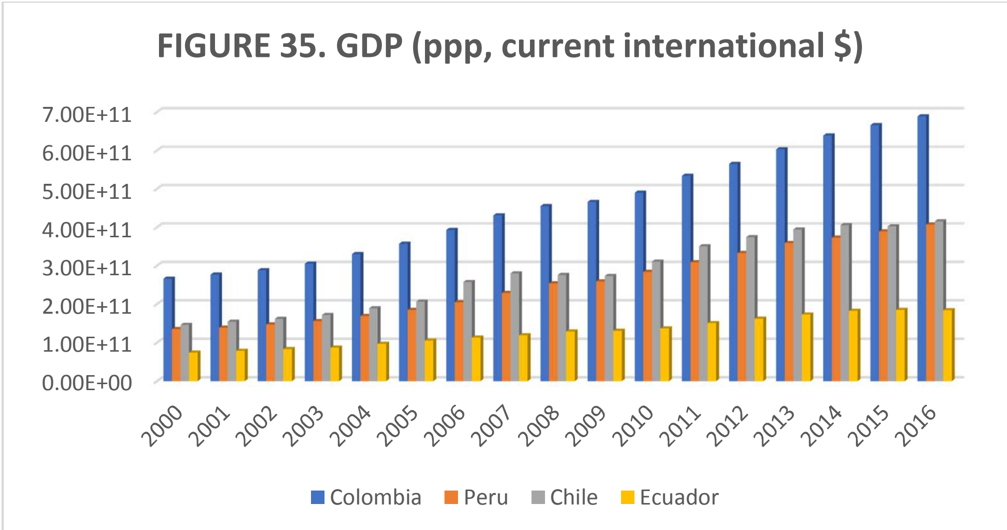


TABLE 5.
POPULATION

	2001	Annual growth	2016	Annual growth
Colombia	40,988,909	1.45%	48,653,419	0.88%
Peru	26,261,363	1.34%	31,773,839	1.27%
Chile	15,444,969	1.19%	17,909,754	0.83%
Ecuador	12,852,755	1.78%	16,385,068	1.49%

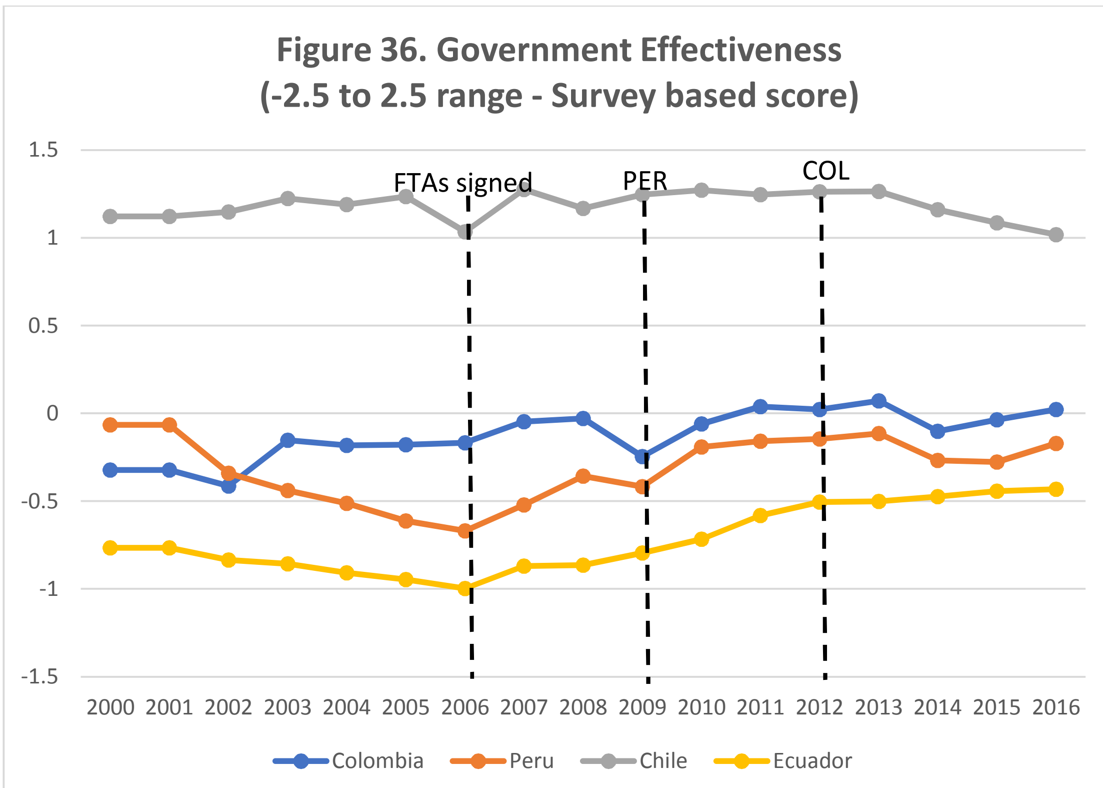
Source: WB and author's calculations

These graphs show how, over the period over study Peru has been able to reach a GDP than in PPP[137] terms is very similar to that of Chile, but has moved further away from that of Ecuador. The later is specially true when measure in per capita terms. Coincidentally, Peru surpasses Ecuador in GDP ppp per capita terms, in 2010, a year after the FTA is

[137] GDP PPP per capita is gross domestic product converted to international dollars using purchasing power parity (PPP) rates and divided by total population. An international dollar has the same purchasing power over GDP as a U.S. dollar has in the U.S.

PPP is measured by finding the values (in U.S. dollars) of an equivalent basket of consumer goods for each country ratified. Looking at growth rates of GDP in PPP terms it is outstanding how Peru and Colombia have been able to keep growing at consistent positive rates, even in 2009 (after the financial crisis). In order to further inform the understanding of the evolution in per capita terms, the table below shows changes in population and population growth.

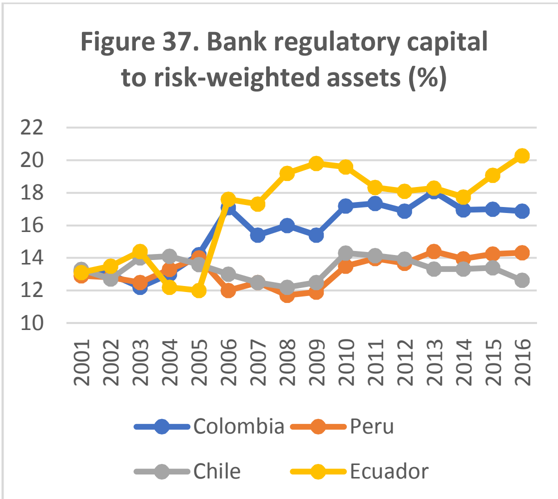
Additionally, a relevant indicator to consider is Government Effectiveness as measured by the World Bank.

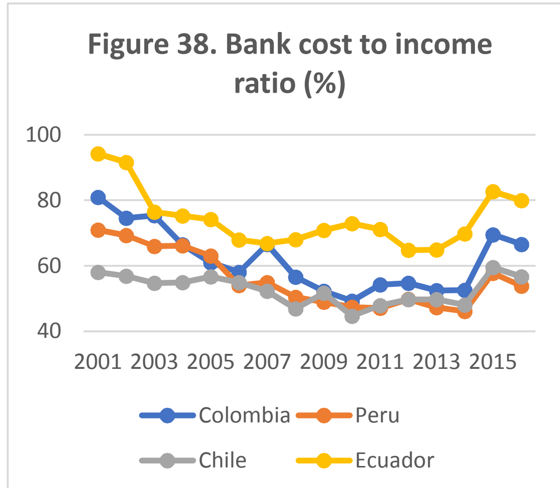


Source: World Bank, Governance Indicators

Here, it is telling how Peru's indicator kept decreasing all the way to 2006, when the FTA was signed. The government performance in the years since then seem to be better perceived, although it does not quite reach the levels of 2000-2001, when the Fujimori era ended, and the Toledo administration began. Colombia's indicator keeps moving to the positive side of the scale. However, to the extent that these years have also been dominated by the peace process negotiations, it would be difficult to infer any correlation with the FTA.

Finally, looking a two of the indicators reported by the IMF for financial soundness:



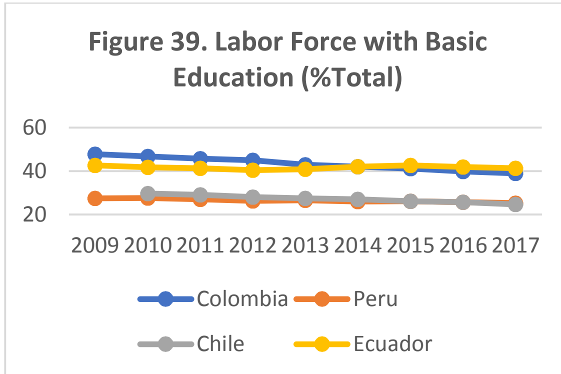


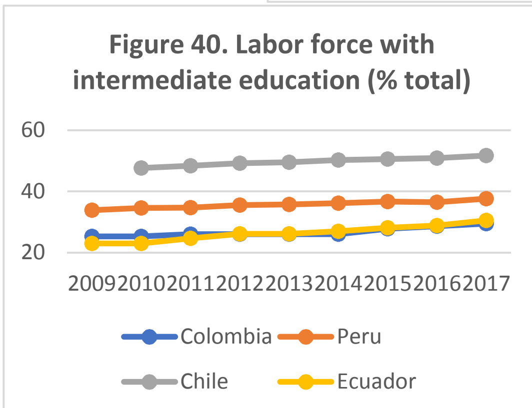
Source: IMF - FSI

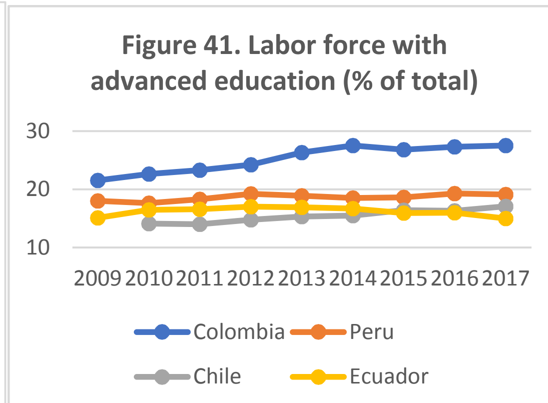
It is clear how Ecuador indices on the charts above are almost always higher than those of the countries with FTAs which includes commitments related to the financial sector. Nevertheless, it is interesting that in the bank cost to income ratio chart all four countries exhibit almost identical trends from about 2012. This may be evidence that even if regulations and participation of FDI in the sector can promote better practices, much of the movements in the financial sector will be related to the global financial environment.

Correlation with Labor Force and technology indicators:

Regarding the level of sophistication of the labor force:







Source: International Labor Organization, ILOSTAT[138]

Overall, the graphs above show that Colombia is moving to a greater level of labor force sophistication in terms of education, while Peru still is somewhat sluggish in improving this human resource factor, key to attracting more varied FDI and furthering moving from a primary to a tertiary export economy. Not included above is lower than basic education, which in the cases of Peru and Ecuador still fluctuated at levels around 10 to 20% of the total labor force during the last decade (for Chile and Colombia this indicator is in the single digits). Also, note how the participation of basic education was much higher at the beginning of the period for Colombia, and has been gradually replaced by higher levels of intermediate and advance education. Meanwhile, Peru's percentages remained stable

[138] Basic education includes primary and lower secondary; Intermediate education includes upper secondary and post-secondary non-tertiary education; and Advanced includes short-cycle tertiary education, bachelors or equivalent, masters or equivalent, and doctorate or equivalent.

during this period. It is interesting to see how Chile seems to have prioritized intermediate education, which include efforts to get students to complete high-school and get some technical education. Indeed, Chile undertook at sweeping educational reform in 2008 (geared to increase the quality of grade school), and after a 2011 student protest, started to seriously consider free tuition for higher education. Such reform was finally implemented in 2016.[139]

Looking at the evolution of unemployment rates, labor productivity and internet connectivity, the charts below show how the labor force has changed by some measurements in this period. For Colombia the decrease in unemployment has been considerable, while both countries have gain ground in labor productivity and internet connectivity. For Peru, there has been a slower pace in the growth of internet users after 2009 (when the FTA was ratified), perhaps reflecting how the implementation process has demanded a different focus in modernization:

[139] Emiliana Vegas "5 lessons from recent educational reforms in Chile" Brookings Institution, March 20, 2018 https://www.brookings.edu/research/5-lessons-from-recent-educational-reforms-in-chile

Jason Delisle and Andrés Bernasconi "Lessons from Chile's Transition to Free College" Evidence Speaks Reports, Vol 2, #43, Brookings Institution, March 15, 2018 https://www.brookings.edu/wp-content/uploads/2018/03/delisle-and-bernasconi-report.pdf

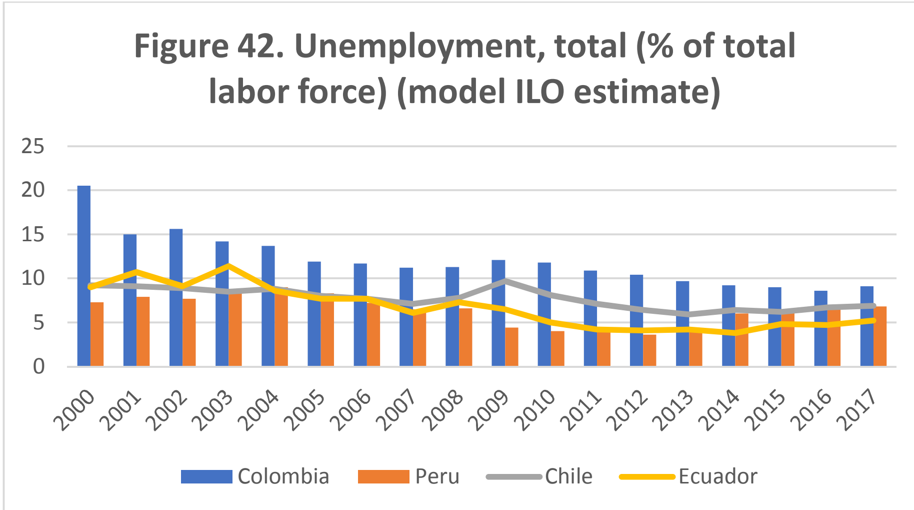


Figure 42. Unemployment, total (% of total labor force) (model ILO estimate)

Source: ILOSTAT

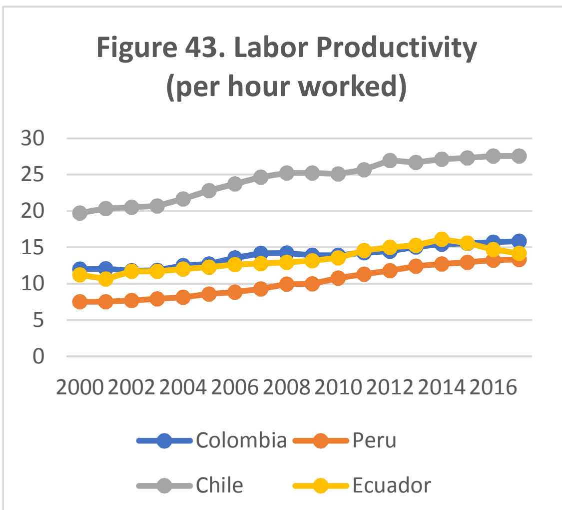


Figure 43. Labor Productivity (per hour worked)

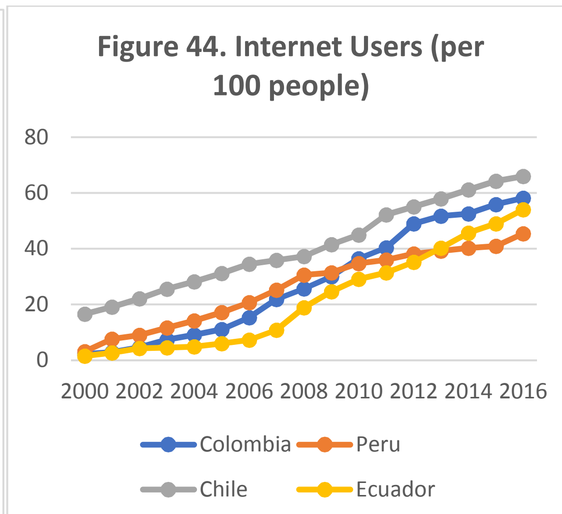


Figure 44. Internet Users (per 100 people)

Source: OECD and World Bank (WDI)

D. Comparative Analysis of Institutional Differences

The FDI effects of both FTAs begin with the negotiations that led to their specific wording and timing. Beyond their geographical proximity, what is interesting about both treaties is the simultaneity of negotiations. These processes did not take place in a vacuum. Context is important, so one should start by understanding the role of political strategy in the timing of the negotiations and implementation.

From an international politics perspective, and in a context where many South American countries are looking at more populist options and have elected leaders who are, to say the least, suspicious of remaining too close to the U.S., it is interesting to analyze why Colombia and Peru decided to follow the open trade path– effectively linking themselves more closely with the U.S. and the market-oriented development paradigm. Arguably, the U.S. maybe turning to these FTAs as a policy tool aimed to get closer to Latin America once again – influencing their electorate to move away from leftist leaders (and providing a counterpoint to populists such as in Venezuela).

Given the magnitude of bilateral trade flows with both countries involved, these FTAs are not especially important for the U.S. economy, even if they resonated heavily among labor leaders and those who believe they will lead to additional trade agreements. Consequently, various sectors within each country and in the U.S. lobbied in favor and against the FTAs, influencing changes in the text along the way. In consequence, these agreements—together with the Korea-U.S. FTA—were all subject to an executive-congressional agreement on labor and environmental provisions that Ambassador Susan Schwab negotiated with the House Ways and Means Committee (the May 10th, 2007 accord). As a result, new provisions regarding adherence to international labor standards and specified environmental policies were added to both FTAs. This step was sufficient to get Peru's FTA approved by a bipartisan congressional majority. However, social conditions in Colombia were still unacceptable to labor leaders in the U.S., and many Democrats were reluctant on going forward because of the persistent assassination of Colombian union leaders. Therefore, the negotiation rolled into the Obama administration, which mediated additional conditions, eventually leading to their approval by October 2011, again by bipartisan majorities.

Beyond the specific political discussions and the technical hurdles faced for their approval, the actual texts of these agreements have a lot in common. In the process of negotiation the U.S. applied a "template", which includes a range of provisions that not only cover free trade in goods but also comprise openness to investment, intellectual property rights (IPR), and labor and environmental protection, among other areas. The U.S. prevailed on many of these issues because of its bargaining power compared to that of its counterparts. As a result, given the abundance of similar provisions in these agreements, any differences are all the worthier of study. The implications for future FTAs are multiple, because the prevalence of investment, IPR, labor and environmental provisions shared by both agreements has become the gold standard on FTA agreements. On the other hand, the pervasiveness of some sectors where these developing countries did not get more access to the U.S. markets is telling of what partner countries currently undergoing negotiations will need to at least try to overcome.

In order to explain the dynamics taking place during the negotiations of both FTAs under study, a couple of relevant theoretical framework could be considered. The first one is *Competitive Liberalization,*[140] which seeks to explain the current trend to pursue preferential/free trade agreements between countries, in the context of Globalization and highly-mobile investments, as a tool for creating incentives for partners. Fred Bergsten developed the concept in 1996, in his analysis of negotiating incentives in the Asian Pacific setting. Since then, the concept took root, was adopted for different regions, and

[140] Evenett, Simon and Meier, Michael, An Interim Assessment of the U.S. Trade Policy of 'Competitive Liberalization' (February 2007). University of St. Gallen Economics Discussion Paper No. 2007-18. https://ssrn.com/abstract=985521 or http://dx.doi.org/10.2139/ssrn.985521

eventually became USTR Robert Zoellick's core strategy of U.S. trade policy.[141] In this context, competitive liberalization includes the following key characteristics:

- Stimulating a competition among trading partners for access to U.S. markets: In the current setting, this can be interpreted as the prisoner's dilemma situation where many developing countries find themselves compelled to pursue bilateral agreements, in the absence of a workable multilateral trade agreement. The latter kind would enhance the bargaining power of developing countries as a group, allowing them to obtain more favorable conditions.

- Inclusion of provisions in trade agreements not directly related to market access: This applies to the investment, IPR, environmental and labor provisions included in both FTAs under study. These conditions are usually accepted by developing countries as necessary when facing U.S. negotiators. These subjects are usually sensitive and politically charged with local constituencies. Nevertheless, in the interconnected context of globalization, developing countries are starting to understand that these provisions are beneficial for their countries in the longer run.

- Compared to past practices, greater role for foreign and security policy in U.S. trade policymaking: This characteristic of competitive Liberalization is relevant to both FTAs under study. As explained above, the agreements with Colombia and Peru emerged from the precedent counter-narcotics policies that granted them trade preferences in the first place. A second theoretical framework to consider in the analysis of the FTAs between U.S. and Colombia and Peru comes from political bargaining theory. From the

[141] Zoellick was in office from 2001 to 2005.

standpoint of the U.S., negotiations take on two levels: domestically with lobbies and Congress, and abroad with the trading partners. Theories of international bargaining and domestic politics (such as two-level politics/games, and strategic behavior) may be useful to explain the dynamics of the negotiation process for each of both agreements.

Starting with the domestic politics perspective, while the U.S. FTAs with Peru and Colombia were signed within months of each other in 2006, the first one could move forward to be ratified by U.S. Congress by the end of the following year and the Colombian had to wait until 2012 to be implemented. For the latter, domestic politics, both within Colombia and the U.S., played a substantial role. In fact, while the Peruvian agreement moved swiftly through their domestic instances, Colombian courts took several months to establish that the agreements conformed to Colombian Political Constitution. Within the U.S., the Colombian agreement was a harder deal to push forward not only because of commercial interests, but also because of the concerns linked to accusations of human rights violations in the context of the warfare with Colombian guerrillas.

From the international politics perspective, both the geostrategic position and the size of both partner countries under study helps to explain why the agreements were signed in the first place. Colombia and Peru have all been essential allies in the U.S. relations with Latin America in general (i.e. protection of hemispheric security), and in the fight against illegal drug trafficking in particular. Also, Genna (2010) analyzed how smaller economies, such as the ones under study, had more to lose by delaying the enactment of this kind of international agreements; in his view this is one the main reasons why such efforts with Mercosur or China have not succeeded.

Corporate attitudes and expectations: From an immediate political perspective, the degree of commitment and efficiency from each country to move the implementation process from paper to practice should be considered. Because of the great difference of scale between the U.S. and the partner countries in these agreements, it is reasonable to believe that the greatest challenge, in terms of adaptation, will fall on the Latin American institutions and societies. Given that implementation of these agreements is often pursued in stages, the incentives to move from one phase to the next might be mixed for the Peruvians and Colombians. On the one hand, given that the elected governments have risked much of their credibility by pursuing these FTAs, and thus they will be greatly invested in seeing through a successful process of implementation. On the other hand, it will be difficult in practice for officials to implement and abide by the new rules. Moreover, to the extent that new officials might be elected on an anti-FTA agenda, then the interest in an efficacious implementation might substantially slow down. This is indeed a cause of uncertainty because, if investors and exporters perceive that the long term business environment is not predictable, they may decide to limit, postpone or even back off their exposure to these Latin American markets.

Colombia and Peru have similar qualities when it comes to analyzing the preparation for and implementation of their U.S. FTAs. Both receive significant investments coming to their oil and mining sectors. Because extraction industries are to large extent controlled by the government (underground natural resources are not considered private goods), these investments are subject to special regimes.

Another similarity between Colombia and Peru is their extensive problems with Intellectual Property (IP) protection. For what is worth, this is an area that affects the entertainment and pharmaceutical industry for the most part, which are more likely to be covered by the trade aspects of the agreements than by the direct investment elements. Nevertheless, other industries such as consumer manufacturing and retail products can be seriously affected by counterfeit and black market practices (examples: brand-clothing and electronics). These a problem area that Colombia and Peru share with many other developing countries. Therefore, how the implementation of the IP commitments is managed by both countries and how the U.S. respond to developments in this area will continue to be very informative for other developing countries seeking FTAs with the U.S. Although the general public in both Colombia and Peru is very tolerant of these practices, it is becoming increasingly clear to the more educated population and to the government that IP must be valued and protected in order to continue to support technological change.

As of 2013,[142] Colombia and Peru were implementing effective policies to attract foreign investment into their countries. Colombia had been granting 10-, 15- and 30-year income-tax exemptions for investment in the forestry, electric generation power (biomass, solar and wind) and construction sectors, respectively. The Colombian congress was also preparing a law that would permit private and foreign investment in both public and private institutions in higher education. Similarly, Peru had been softening its restrictions in the international air passenger sector, by gradually raising the initial percentage allowance for foreign investor from no more than 49 percent of voting shares at the time of incorporation to 70 percent of voting shares after 6 months of incorporation. However,

[142] Regulating Foreign Direct Investment in Latin America, the World Bank, October 2013, http://iab.worldbank.org/~/media/FPDKM/IAB/Documents/Regulating-FDI-in-Latin-America.pdf

Peru was introducing a new bill for a suspension of forestry concessions within the following two years. In the context of this dissertation, these efforts demonstrate that FTA are successful within the context of countries already committed to long term policies for attracting foreign investment. BITs, or the investment chapters of FTAs by themselves, in a vacuum, are not sufficient to improve the investment environment for foreign investors.

E. 2017-18 FTA Recap: Exports and FDI

Colombia:

There are conflicting views regarding the evaluation of the FTA by the government, media and academia. The Ministry of Commerce, Industry and Tourism believes it has been a resounding success, taking into account the shrinkage of the mineral-energy exports that was driven by diving oil prices. In May 2017, then Minister, María Claudia Lacouture, related how in the last five years non-mineral/energy exports to the U.S. grew 12.3%, and the number of businesses selling to the U.S. marked increased 17.5% in the same period. Furthermore, according to the Ministry, between 2012 and 2016 investments from the U.S. have had a key role for employment and new business generation in Colombia. According to the Colombian Central Bank, $11.8 billion have arrived from the U.S. in the last 5 years, through 115 projects, generating 22,518 jobs, a 28% increase when compared to the previous five-year period. Lacouture explained these investments were directed to software and technology services, metal mechanics, agroindustry, pharmaceutics, investment funds, forestry, audiovisual production, engineering and construction materials.[143] Some exports successes are in the shoe industry, make-up industry, and some clothing lines. Also, some processed foods such as yogurt, fresh cheese, dehydrated fruits, conserves, and cacao preparations have had positive changes during this period. In 2017, the five countries that invested the most in Colombia were the U.S. (more than $1.1 billion and 35 projects), Chile (more than $400

[143] Revista Dinero, 5/11/2017, Los sectores económicos mas beneficiados del TLC con EE.UU http://www.dinero.com/edicion-impresa/pais/articulo/beneficios-del-tlc-con-estados-unidos-sectores-colombianos/245148

million and 5 projects), Spain (more than $296 million and 8 projects), Brazil ($236 million and 6 projects) and China ($233 million and 7 projects).[144]

Nevertheless, it is important to note that Oil prices seem to be rebounding, which has translated in more oil-related exports and more hydrocarbon investments for Colombia during the last year or so, which are not related to the implementation of the FTA. The following graph shows the prices in U.S. dollars of a barrel of oil.[145] Although the current prices are still low compared to what they were five years ago (the highest price in the last ten years was in 2008 when it was over $140), they seem to be on some sort of rebound, arguably from an OPEC-led production restriction and a depletion of American reserves. According to some analysts, a steady price of over $60 is required for companies to engage again at exploration and production levels similar to those before the price plummeted.[146] It is very important now that Colombia keeps up their efforts in attracting a variety of FDI sectors, diversifying its exports and implementing the FTA with the U.S.

[144] La Republica, January 4, 2018, "Proyectos de inversión extranjera directa en Colombia aumentaron 15,9% en 2017", https://www.larepublica.co/empresas/proyectos-de-inversion-extranjera-directa-en-colombia-aumentaron-159-en-2017-2586182

[145] http://markets.businessinsider.com/commodities/oil-price?type=wti (accessed July 4, 2018)

[146] January 3, 2018, NASDAQ, "What 2018 may bring for oil and gas exploration", http://www.nasdaq.com/article/what-2018-may-bring-for-oil-gas-exploration-cm899929

Figure 46. Oil Prices Trend 2013-2018

Source: Bussinessinsider.com

In this context, a study published by Rosario University of Bogota in August 2017 indicated that the FTA with the U.S. was far from a success. This study reports that non-mineral/energy export have only increased at an annual rate of 2.95% for the period 2012-2016 (although with a better performance of 6.5% during the first semester of 2017), which does not compensate adequately the sharp decrease of the mineral-energy sector exports in the same period.[147] Furthermore, according to this assessment, the less than impressive export performance occurred with a favorable exchange rate, indicating the weaknesses in structural capacity and competitiveness. The concern is that the efforts for export diversification are not being taken with a deep commitment for a long-term change, which is a challenge that will be even bigger once and if the petroleum income starts coming steadily once more.

[147] Saúl Pineda, Jeimmy García, and Camilo Torres, Una década de TLC: Evolución de exportaciones con países que tienen acuerdos comerciales con Colombia (2006 – 2017), August 2017, CEPEC, Universidad del Rosario, Bogotá, http://www.urosario.edu.co/competitividad/contenido/Publicaciones/Informe-especial-TLCs_17agosto-VF-3.pdf

Also, in October of 2017, the Santos administration approved a law that compelled the government to evaluate all outstanding FTAs yearly, after the Constitutional Court mandated to do so. This development came after the Comptroller General performed an audit of the performance of the FTAs with the U.S. and the European Union, as implemented by the Ministry of Commerce, publishing the results in September or 2017.[148] In particular, this report stated that products that did not comply with the technical specifications and quotas spelled in the FTA were being imported to Colombia, with all the benefits of the FTA. In addition, it found that the organisms created by the agreement to oversee its performance were doing very little, in spite of the efforts of the private sector and the budget allocated to these tasks.

Indeed, according to some non-official reports, the Herfindahl Hirschman index, which measures economic concentration, shows that exports are more concentrated now than before signing the FTA. Several groups, including labor unions and some industry associations have organized to present a united front against the “official interpretation and statistics”, offering an “alternative information system” and denouncing what they see as big losses for the country.[149] This is important because I highlights the fact that Colombia, compared to Peru, is a country where disaccording views might have a better chance to find a voice through a democratic channel. Therefore, some discontented

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[148] Contraloría General de la Republica, comunicado de prensa 144, September 18, 2017 http://www.contraloria.gov.co/contraloria/sala-de-prensa/boletines-de-prensa/-/asset_publisher/y0hcpbxJNnDG/content/resultados-de-auditoria-de-desempeno-al-ministerio-de-comercio-industria-y-turismo-y-procolombia-bajo-y-deficiente-aprovechamiento-de-los-tlc-con-esta?inheritRedirect=false

[149] Such as observatoriotlc.com, which is maintained by Cedetrabajo (cedetrabajo.org), one of the biggest labor unions in Colombia

sectors view the Comptroller's report and the new law mandated by the Constitutional Court as advancement towards a serious discussion of renegotiation of the FTAs.

However, the future of these additional mechanisms is not certain at this point, given the June election of conservative candidate Ivan Duque. He is expected to follow in the steps of ex-President Uribe, under whom the U.S.-Colombia FTA was originally negotiated. Duque, who will take office in August 7, 2018 promised to re-evaluate the commitments contained in Santos Peace Agreement. Nevertheless, from an economic perspective, the elected president will continue in the path of modernization, and openness to trade and investment.

Peru:

In Peru the conditions are somewhat different. 2016 was an electoral year, and the new president, Pedro Pablo Kuczynski (PPK) was a big promoter of the FTA with the U.S. Until very recently, it was accurate to believe that the country will continue in its path of supporting the FTA, led by the Presidency, but, in contrast to Colombia, with the acquiescence of all branches of power and without significant opposition from the private sector and industry groups. The labor unions were the most significant force expressing disagreement. In fact, the U.S. labor unions are pushing for an evaluation of the labor commitments in the Peru-U.S. FTA.

President Pedro Pablo Kuczynski had great challenges ahead of him as he started his 5-year term on July 26, 2016. Mr. Kuczynski defeated former President Fujimori's daughter, Keiko Fujimori, by just 50,000 votes of the 18 million cast in June's election. But her party, Popular Force, now has the power of veto over much of Kuczynski's

policies. It holds 73 of 130 seats in the unicameral legislature.[150] However, Kuczynski, a Wall Street veteran and former finance minister, just three months into his term persuaded the opposition-controlled Parliament to back his economic platform and started to crystalize financing for his infrastructure projects. In fact, Congress agreed on late September, 2016, to grant the administration powers to rule by decree for 90 days.
The Peruvian economy was forecasted to grow 4.1% in 2017, and Kuczynski had vowed to reach 5% in 2018 and subsequent years, "through a combination of more robust private and public infrastructure investment, a lower value-added tax, and tax incentives and bank credits for small businesses—part of a bid to shrink the shadow economy. The administration also is seeking to remove bureaucratic obstacles that have held up work on airports, gas pipelines, and roads."[151] In addition, during a first and exploratory meeting with President Obama in November 19, 2016 both leaders affirmed the environmental and labor commitments under their FTA, highlighted the steps Peru is taking to combat illegal logging, and recognized the need for continued cooperation to strengthen protections for workers' rights.[152] Furthermore, the Peruvian investment promotion

[150] The challenges facing Peru's new president, The Economist, July 29, 2016 http://www.economist.com/news/americas/21703237-pedro-pablo-kuczynski-will-have-work-powerful-opposition-disagreement-over-fate

[151] A Wall Street Veteran Is Revving Up Peru's Economy, Bloomberg Businessweek, October 19, 2016, https://www.bloomberg.com/news/articles/2016-10-20/a-wall-street-veteran-is-revving-up-peru-s-economy

[152] https://www.whitehouse.gov/the-press-office/2016/11/19/readout-presidents-meeting-president-pedro-pablo-kuczynski-peru

agency, ProInversión, will be decentralized to reduce project time frames and make them more adapted to local needs.[153]

In mid-December the Peruvian Congress passed a motion for vacancy against Kuczynski, which did not get enough votes. This was considered a political move promoted by the “Fujimorism”, but it is still a coup attempt of sorts from the Legislative. The reason for this move was his alleged with the Brazilian construction company Odebrecht,[154] all part of the bigger case known as the “Lava Jato” (Car Wash).[155] The accusation is that Westfield Capital, a firm that Kuczynski founded in 1992, contracted with Odebrecht between 2004 and 2007. However, he argues that during that time he had distanced himself from the firm while he has Minister of Economy for Alejandro Toledo, transferring his day-to-day authority in the business to a third party.[156]

In addition, along with Mercedez Araoz, one of the vice-presidents and the premier in Peru, PPK began restructuring his cabinet, calling the “gabinete de la

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[153] Caio Pizetta Torres, Peru’s Pedro Pablo Kuczynski: A new approach for Latin America, Global Risk Insights, August 21, 2016 http://globalriskinsights.com/2016/08/power-broker-kuczynski/

[154] La República, December 16, 2017, http://larepublica.pe/politica/1158790-richard-acuna-pide-que-se-respete-el-derecho-a-la-defensa-de-ppk

[155] Odebrecht is one of the firms that have been caught in Operacao Lava Jato, Brazil's corruption probe into the state oil giant Petrobras. Dozens of companies acknowledged paying bribes to politicians and officials in exchange for contracts with Petrobras: March 7, 2017, Brazil's Odebrecht corruption scandal, http://www.bbc.com/news/business-39194395

[156] December 19, 2017, El Comercio, “Los dos vicepresidentes vamos a defender nuestro mandato”, https://elcomercio.pe/politica/mercedes-araoz-dos-vicepresidentes-defender-nuestro-mandato-noticia-482430

reconciliacion."[157] All this was happening at a time when ex-president Alberto Fujimori was pardoned for humanitarian reasons from his hospital bed (a decision that started in congress but was ultimately PPK's to make, and there have been rumors that it was part of an arrangement to let the vacancy motion go) and restored some of his privileges as ex-president, while his children are trying to rebuild his image and advance their own political ambitions. The International Human Rights community received this news with concern, as Fujimori was involved in lesser humanity actions during his presidency, on top of his well-known corruption scandal.[158]

In March 21st, 2018 PPK resigned from the presidency, a day after the release of videos that showed key allies trying to buy the support of opposition lawmakers, and his first vice president, Martin Vizcarra, became President of Peru in March 22nd. Vizcarra swore in an entirely new Cabinet on April 2nd that was praised by the rightwing opposition as a way to reset the once rocky relations between the executive and legislative branches that helped bring down his predecessor. The new Cabinet, a mix of high-ranking civil servants, politicians and private sector specialists, is led by Prime Minister Cesar Villanueva, an opposition lawmaker who had led efforts to impeach PPK.[159] While Vizcarra is expected to follow the policies set forth by the Kuczynski administration, this

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[157] December 29, 2018 , El Comercio, "Rumores y silencio en torno al gabinete de la reconciliación", https://elcomercio.pe/politica/rumores-silencio-torno-gabinete-reconciliacion-noticia-485033

[158] January 5, 2018, La Republica, "Secretario general de OEA comparte preocupación de CIDH por el indulto a Alberto Fujimori", http://larepublica.pe/politica/1166887-secretario-de-oea-comparte-preocupacion-de-cidh-por-el-indulto-a-alberto-fujimori

[159] https://www.reuters.com/article/us-peru-politics-cabinet/perus-vizcarra-unveils-new-cabinet-wins-praise-from-opposition-idUSKCN1H91RW

development undeniable rocks investors and producers expectations, as it forces Vizcarra to create political alliances outside PPK's already established supporters in order to maintain a sense of stability and continuity.

Nevertheless, from the economic internationalization perspective, the momentum keeps going as Peru is expecting to sign a FTA with Australia this year, and is starting to look into an agreement with India.[160] This is part of the serious commitment Peru has to free trade and a reflection of the lessons learned in the process of negotiating and implementing the FTA with the U.S. While, 2013 and 2014 were "slow years" from a trade policy point of view, the presidency is making its implementation a priority once again. All in all, after eight years of the FTA with the U.S. coming into effect, most Peruvians continue to believe its effects have been undeniably positive, as exports have increased, particularly non-traditional exports (agroindustry being the shining star).[161]

Having looked at these recent developments in Peru and Colombia, the next and last section present the most important conclusions of the comparison between these two countries' negotiation and implementation of the FTAs with the U.S. in regard to the effect on FDI and export diversification.

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[160] January 4, 2018, El Comercio, "Los desafíos de la política comercial en el Perú", https://elcomercio.pe/economia/desafios-politica-comercial-peru-noticia-486268

[161] Jessica Luna, "Comercio Exterior: Balances y Perspectivas", December 14, 2017, Sociedad de Comercio Exterior de Peru, https://www.comexperu.org.pe/articulo/comercio-exterior-balance-y-perspectivas

May 22, 2017, Gestion "TLC Peru-EEUU cumple 8 años: Estos son los resultados conseguidos" https://gestion.pe/economia/tlc-peru-ee-uu-cumple-ocho-anos-son-resultados-conseguidos-128033

CONCLUSION

Peru and Colombia started this process seeking a long-term guarantee of free entry for at least the products covered by the ATPDEA, and by entering these FTAs they succeeded. The FTAs have been instrumental in increasing non-traditional exports and improving export diversification, and have also helped FDI inflows. The later was the result of the FTA's boost to investors' confidence, which results in new and more diverse FDI, because, by committing to the FTA's Investment Chapter and to all other standards and practices demanded by the FTA, investors feel safer and forecast a better return to their investments

In addition, Peru and Colombia exhibit two leadership and strategic behaviors that made the negotiation and implementation of these FTAs possible: The FTAs were priorities for the Presidency and the Ministries of Commerce, Investment and Tourism; and both governments engaged in continuous and structured consultation with the private sector and non-government agents. Regarding differences, while Colombia had in its favor the relative superior expertise of its negotiating team and institutional capacity, Peru was able to go through the process faster, effectively climbing the learning curve in a shorter period of time.

Finally, the overall economic effect is difficult to discern, because of the many distorting factors, such as plummeting commodity prices and unfavorable exchange rates. However, both Peru and Colombia have managed to have positive and even promising economic growth rates. Inflation rates in Peru skyrocketed from the 1970s to the 1990s, but have remained in the single digits in the 2000s. In Colombia, historically, inflation rates have been below 15%, but they also have stayed within single digits in recent years.

Also, unemployment rates for both countries have reached record lows in recent years (in Colombia averaged 11.55% from 2001 until 2017, reaching an all-time high of 17.87% in January of 2002 and a record low of 7.30 percent in November of 2015; in Peru averaged 7.94% from 2001 until 2017, reaching an all-time high of 13% in January of 2005 and a record low of 5.60% in December of 2012). Most social indicators have also improved during the period under study (including poverty levels, infant mortality, death rate, and other indicators of social protection).

The impact of institutional elements particular to each country on these results is undeniable. This is a key finding of this study. Although both countries started in a common path in the negotiation of the FTA (to make permanent the provisions granted by the ATPDEA), their particular circumstances and differences in political commitment had an effect on how the FTA was negotiated and how it is being implemented.

Broadly, Peruvians had more faith in the liberalization process, and even the opposition of indigenous groups and environmental activists was not enough to slow the agreement. For Colombia the process was unhurried and uphill. Among the reasons for the delay were the relative sophistication of the Colombian negotiation team and of the democracy as a whole. These are good for Colombia as a society, but turned out to be impediments in the negotiation. The U.S. had the bargaining power and yet the negotiating team from Colombia sought to make changes such as less restrictive demands in IP terms that were never likely to happen. Minority groups in Colombia seem to be better represented in Congress than in Peru, and the High Courts have more jurisdiction over all kinds of processes. Therefore, Colombia was more careful during the negotiation, while Peru could go faster because they had fewer domestic constituencies to be accountable to during the negotiations.

Colombia has been negatively affected by the downturn in oil prices, especially starting in 2013-2014, which was when the FTA positive effects were expected. If Colombia had had the wisdom of finishing the negotiations concurrently with the Peruvians, then there would have been a possibility for them to build on it, prioritizing implementation, and effectively creating a buffer, supporting the economy in the response to changing oil prices. Especially given the depreciation of the peso, had Colombia been further along in implementing the agreement, it might have seen a greater expansion of non-traditional exports.

For Peruvians, the relatively youth of its decentralized government has proved to be a liability so far. Although the laws supporting the FTA were passed in a timely manner, the practical application of many of them remains rudimentary. Additionally, resources of all kinds are limited and, even if the willingness to see institutional changes is there, the financial resources and human capital required are still restricted. The expectation is that as the economy continues to improve and expand to non-traditional exports, more resources will become available. The FTA might thus have further scope to provide benefits to Peru, or it could be that local governments will be a mechanism by which to give greater voice to opponents of liberalization.

There are, however, many similarities between both countries. The executive branch of these two democratic economies have been highly committed to the liberalization process. Furthermore, Peru and Colombia have a long similar history of fighting illegal drug trafficking along with the U.S. Also, both countries bonds reached investment grade when the FTA were implemented, which supports the argument that FTAs may be highly regarded as a seal of approval. Nevertheless, if a country is looking to attract FDI, FTAs are not a fool-proof tool for doing so, given the costs and impact they may have in the local economies.

Lessons learned:

Implications for other countries contemplating trade agreements are varied. However, they can be summarized as follows:

Importance of Policy Continuity: The negotiation and implementation of FTAs may span longer than one administration, therefore these must be approached as a part of a long-term developmental framework

In spite of all the differences discussed in this study, for both Peru and Colombia the FTAs serve as continuation of liberalization processes that are a priority for the Executive, even after changing administrations. Also, both countries took the experience gained by negotiating their FTAs with the U.S. and applied it to subsequent trade agreements with other countries. So, these cases show that Executive commitment and continued practice-by-doing are a good starting point for countries wanting to successfully open their economies through FTAs, even if the implementation in the cases of Peru and Colombia is ongoing at a rate slower than ideal.

Commitment to Structured Consultation with Private Sector and Non-Government Agents: Starting at the exploratory stages, and all through negotiation and implementation

In addition, both Peruvian and Colombian governments made a point of including a variety of actors in the process (private sector, industry associations, labor unions, Universities, etc.). According to Baccarat et al. “trade policy reforms introduced by Peru in the 1990s have continued over several changes of president, whereas similar reforms in Argentina have been reversed. [This] cannot be explained by economic parameters such as resource endowments or external shocks. The Peruvian case provides examples of successfully managing the politics of reform and the technical aspects of policy so as to establish transparent and participatory processes that weigh accurately the impact of trade policy on all affected domestic parties. The Argentine case demonstrates that the WTO legal system is not an effective restraint on a government that wants to revert to an import substitution regime."

Building of Institutional Capacity: With FTAs in mind, it is more important than ever to focus in the quality of Investment, Trade and Tourism ministries. Also, enhancing judiciary resources to deal with challenges such as arbitrations, as well as technical agencies to start working on meeting export license requirements.

Colombia and Peru should continue to work on full implementation of the FTAs, which would only improve and increase their institutional capacity. Doing so requires a careful balance, because of the undeniable attention that their poverty-stricken populations still need. Keeping the efforts of the commerce and tourism ministries, as well as the export and investment promotion agencies, as top priorities is key. These entities, when properly supported, will keep working on advancing certifications and accreditations such as the phytosanitary licenses needed to export many additional goods. Infrastructure modernization should also be prioritized. It will not only make many export and investment processes simpler (like broader internet availability, needed by supervising officials to do their work efficiently), but would improve the opportunities and the quality of life of the broader population. Continued consulting with the private sector, academia, and other sector of the general public is paramount to maintain transparency and inclusiveness of the process, not to mention the long-term viability of liberalization policies.

Learning-by-doing is a valid strategy if the timing is right, such as it was in the case of Peru. Seize the **opportunity of a politically feasible moment**

In top of the institutional challenges, Peru and Colombia entered the FTAs, and arguably their whole liberalization journey, without a detailed preparation to adequate their industry and a truly viable plan to compensate (and retrain) those who inevitable are hurt by these processes. Having said that, in today's hyperconnected world, any country would be struggling to gain much by keeping its economy closed while hoping to be fully prepared for the challenge at some point.

> Trade Openness is one of several developmental frameworks. FTAs by themselves are only one tool in that kit, **FTAs by themselves are not sufficient**. This is why it is so important to **go back to the basics of creating a solid foundation** through infrastructure and education investments, and a pursue of political stability (including diminished corruption)

Going back to the wider picture, it is always important to keep in mind that trade and investment agreements are only one more element in the toolkit available to developing countries. These agreements cannot take the place of sound economic policies and political stability. However, to the extent that these agreements prompt the governments of the partner countries to make better policy choices and make them accountable to the international public, they should be regarded as desirable tools, worthy of evaluation.

The lessons learned from the Colombian and Peruvian experiences should prove valuable for other developing countries considering bilateral trade and investment agreements. In particular, and at the time of this writing, Sub-Saharan countries are facing the possibility that U.S. Congress will not renew existing Sub-Saharan trade benefits (under the terms of Africa Growth and Opportunity Act - AGOA) in 2025, putting these African countries in a position similar to that of Andean countries in the early 2000s with the ATPDEA.

Appendix 1. Exploring the effects of the ATPA

The ATPA was enacted in 1991 to encourage the Andean countries of Bolivia, Colombia, Ecuador, and Peru to reduce drug-crop cultivation and production by authorizing the U.S. President to grant tariff preferences to qualifying Andean products in order to foster trade. The President's authority to provide preferential treatment was initially provided for a 10-year period, and this authority was extended several times, sometimes retroactively.

Bolivia was suspended as an ATPA beneficiary country effective December 15, 2008, for failure to adhere to its obligations under international counternarcotics agreements. Peru became ineligible for ATPA preferences with the implementation of the U.S.-Peru FTA effective January 1, 2011. The U.S.-Colombia FTA entered into force on May 15, 2012, at which time Colombia lost its ATPA beneficiary status. Ecuador ceased to receive ATPA trade benefits after the President's authority to provide preferential treatment under ATPA expired on July 31, 2013. Close to the end of this period, Ecuador renounced to a possible extension of the ATPA, as it rejected pressures not to give political asylum to National Security Agency leaker Edward Snowden.[162]

From the American Apparel and Footwear Association (2008):[163]

A win-win trade preference agreement, the ATPA stabilizes manufacturing and wholesale employment in all countries involved, while creating import opportunities that deliver a wider variety of goods at more affordable prices for all consumers. About $250 million worth of U.S. cotton and textiles were exported to the four Andean countries of Bolivia, Colombia, Ecuador and Peru last year. The finished products - made with these U.S. yarns, fabrics, fibers, cotton and other textile inputs - are then brought back to the U.S. duty-free under the ATPA.

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[162] http://latino.foxnews.com/latino/money/2013/06/27/ecuador-rennounces-us-trade-pact-for-snowden-claiming-blackmail/

[163]https://www.wewear.org/assets/1/7/022708_House_Approves_10_month_Extension_of_Andean_Nation_Trade_Benefits.pdf

The U.S. cotton, textile and apparel industries are rallying for prompt renewal of the ATPA, as well as for full implementation of the recently approved U.S./ Peru Trade Promotion Agreement (TPA) and speedy approval pending U.S./ Colombia TPA. These two TPAs are urgently needed to transform the current one-way, temporary program into a permanent, comprehensive and reciprocal partnership.

The ATPA did not appear to have had a negative impact on U.S. employment with the possible exception of some sectors of the cut flower industry.[164] Also in 2011, the "Asparagus Revenue Market Loss Program" was implemented in the U.S. to compensate asparagus farmers for lost revenues, a direct result of cheap imported asparagus from the Andes region[165].In fact, annual reports to the Congress by the U.S. Department of Labor (DOL) on the trade and employment effects of ATPA repeatedly concluded that "preferential tariff treatment under the provisions of the original ATPA and its subsequent amendments has neither had an adverse impact on, nor posed a significant threat to, overall levels of U.S. employment,"[166]

As of 2008, the Ecuadorean government estimated that the American trade preferences for products including flowers, broccoli and mangoes supported about 350,000 jobs. Exports to the U.S. under the preferences supported 660,000 jobs in Colombia and 874,000 jobs in Peru. If the benefits had been allowed to expire, hundreds of thousands of people might have lost their jobs and been tempted into the booming narcotics

[164] http://www.mcclatchydc.com/2012/08/30/164345/us-flower-growers-fight-to-survive.html

[165] "War on Peruvian Drugs Takes a Victim: U.S. Asparagus", New York Times, April 25,2004, http://www.nytimes.com/2004/04/25/national/25ASPA.html; and FSA fact sheet: http://www.fsa.usda.gov/Internet/FSA_File/alap_2011_pfs.pdf

[166] TRADE AND EMPLOYMENT EFFECTS OF THE ANDEAN TRADE PREFERENCE ACT, http://www.dol.gov/ilab/reports/pdf/atpa2013.pdf

industry.[167] Some believed these preferences also played a role in cutting illegal immigration to the U. S.[168]

Looking at how ATPA affected different sectors of the partner countries, the effect is not straightforward. Just in 2005, Colombia and Ecuador, the two regional crude oil exporting ATPA countries (allowed since the expansion of the ATPA to the ATPDEA in 2002), together accounted for almost four-fifths of all U.S. imports under ATPA. Crude oil exploration and exploitation is not an economic activity that creates a large amount of direct jobs for local people. There are indeed a series of economic linkages, such as the construction of roads, the sudden prosperity of small towns next to the sites, and the distribution of royalties resulting from oil exploitation, which impact the lives of these rural people. Sometimes the effect is perverse as locals come to rely in this income, which eventually disappear as the source of oil dries up, abandoning whatever productive endeavors they pursued before.

Under the ATPA Peru was a leading exporter of copper, naphtha and gold jewelry. Both mining of copper, and exploitation of naphtha are activities performed by large corporations, often foreign. Therefore are subject to many of the same conditions and results than crude oil related activities, explained above. Gold jewelry production is more of a niche activity, subject in practice to many of the same conditions than apparel, discussed below.

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[167] New York Times editorial March 2, 2008, "Game of Chicken in the Andes", http://www.nytimes.com/2008/03/02/opinion/02sun3.html?_r=0

[168] Letter from Eliot L. Engel, chairman of the House Foreign Affairs Subcommittee on the Western Hemisphere, to the New York Times, March 3, 2008 http://query.nytimes.com/gst/fullpage.html?res=9D0DE2D81E30F935A35750C0A96E9C8B63

Also since 2002, textiles and apparel was another big source of income for local populations under the ATPA. This is an urban activity, which loosely followed the well-known maquiladora model. The level of skill required for sewing trousers, t-shirts, shirts and underwear is low, and the conditions under which the work is completed can be less than ideal. Peru's additional advantage was its exclusivity in sewing fabrics made locally of vicuña and alpaca, both exotic, and time-consuming and labor-intensive. Wages are meant to remain low, otherwise competitiveness is lost. However, to the extent that this job opportunity gave displaced populations a source of income that kept them out of harm's way, it was likely welcomed and contested upon. Two key developments shaped the outlook of U.S.-ATPA country textile trade:[169] (1) Andean firms' continued efforts to expand full package production programs to enhance their competitiveness with China and other Asian suppliers since the elimination of quotas on January 1, 2005, and (2) the implementation of additional competitive strategies to take advantage of then-prospective U.S. free trade agreements with Peru [and] Colombia.

Flowers were another big component of ATPA benefits, once again enjoyed mostly by Ecuador and Colombia. Growing and cutting flowers, as beautiful as they are, is far from a glamorous activity. The work conditions are harsh: greenhouses are hot and filled with chemicals that have ill health-effects. Payment for cutting flowers is low and often linked to the amount of flowers cut and the quality of the cut (bloom and stem length are strictly monitored, flowers that are not export-quality are not valued the same, often destined to the local market or discarded). Flower cultivation is limited to certain locations were

[169] Andean Trade Preference Act: Impact on U.S. Industries and Consumers and on Drug Crop Eradication and Crop Substitution, Twelfth Report, 2005, http://www.usitc.gov/publications/332/pub3888.pdf, p. 43

conditions are ideal (volcanic soils, plenty of snowmelt from the Andes, and 12 hours a day of sunshine year-round). In addition to weather and soil quality, cut flowers need to be transported fast, so proximity to a major airport is key. In Colombia, this occurs in the savannah just outside the capital city, Bogota. Therefore, it would be wrong to consider it a widespread rural activity that reaches large population numbers. But again, it is a valued source of income for people who have few other choices.

Under the ATPA, there were also investments of some fruits and vegetables, including asparagus (mentioned above) and avocados. Asparagus is a perennial crop requiring a major long-term investment, with the spears generally harvested in significant amounts three years after the original planting, and the plants remaining in production for many years thereafter. Peru, the only major asparagus producer in the region, is one of only a few countries in the world with the climatic advantage of being able to harvest fresh asparagus nearly all year long. Shifting large growing areas away from sugar cane to asparagus has resulted in the dramatic development of Peru's asparagus industry in the past two decades.[170] Avocados consumed in the U.S. have their origin in Mexico for the most part. The avocado produced in the Andean region is of a different kind, less oily and nutty, its flesh more firm and sweet (less ideal for guacamole, but with a great yield for salads and sandwiches).

Finally, under the ATPA, Ecuador was a leading exporter of tuna, both in loins and airtight containers (including cans and pouches). Packing in flexible containers became a competitive advantage under the ATPA.

[170] Ibid, p. 44

Appendix 2. Exploring NAFTA

As a mirror of what might happen with the agreements with Colombia and Peru, it could be helpful to look at the NAFTA experience. NAFTA was the first free trade agreement with the U.S. to include a comprehensive investment chapter, as well as provisions on labor and the environment. When making comparisons, one should have in mind relevant issues of scale and longevity: NAFTA economies are larger, and the agreement was in place for much longer before comprehensive evaluations were published. With this caveat in mind, this literature might help as a template to figure out what is important and what direction to follow. Perhaps one of the most comprehensive evaluations is Hufbauer and Schott's "NAFTA Revisited", published by the Institute for International Economics. NAFTA created the world's largest free trade area, measured both by population and economic output. It decreased tariffs, which not only reduces inflation by decreasing the costs of imports, but also increases productivity by simplifying exchanges. As a result, NAFTA has boosted trade between the U.S., Mexico and Canada, resulting in larger economic gains for all the parties involved. In particular, it has allowed for U.S.–Mexico industrial integration, most notably in automobile manufacturing. Through the application of the provisions in its investment chapter, NAFTA grants the ability for firms in member countries to bid on government contracts, which increases competition and frees up government resources. Furthermore, its investment provisions promote FDI, because investor rights are protected by international law, reducing investors' risk and guaranteeing the same legal rights of local investors. Above all, investors can make legal claims against local governments in cases of nationalization of their property and other contract failures. In general, additional FDI has been positive for U.S. and Canadian investors because it gives them access to new opportunities and new markets, and good for the Mexican economy because of the creation of direct and indirect jobs, and technological spillovers.

Nevertheless, NAFTA has remained controversial, both within certain sectors in the U.S. as well as from the stand of some who look at the agreement as providing insight into the impacts of future FTAs. Among the issues cited by those who see a “failed” NAFTA are: increased illegal immigration into the U.S., slow progress on environmental issues, growing income disparities (particularly within Mexico), weak growth in real wages in all three countries, and increased trafficking of illegal drugs from Mexico to the U.S. and Canada.[171] It is possible that some of these issues would be the result of higher economic integration and not the result of how the agreement was crafted in particular. Nevertheless, understanding these shortcomings is relevant for analyzing the FTAs between the U.S. and Peru and Colombia. Even is the geographical distance is greater and the size of the partner economies is much smaller, the environmental and labor issues have been at the center of the discussion of both agreements, and immigration and drug trafficking issues continue to be crucial in the security dealings between both countries and the U.S.

Hufbauer and Schott use an evaluation of the objectives set out in the NAFTA agreement itself as the standard to assess its successes and shortcomings. The four “yardsticks” relevant to this analysis comprise the following areas: trade and investment, employment and wages, dispute settlement, and labor and environment. In the subsequent paragraphs, each of these areas is presented, not necessarily citing the specific findings cited by

[171] Hufbauer and Schott, p.4

Hufbauer and Schott, but rather highlighting what might be important for the analysis of the FTAs between the U.S. and Colombia and Peru.

a. Trade and Investment

Both trade and investment provisions are at the center of the analysis of both FTAs under study. As it has been explained in other sections, it is possible that the key benefits from these FTAs come from the FDI inflows resulting from the improved business condition within the partner countries. Nonetheless, even if many of the goods exported from these two developing economies to the U.S. already enjoyed tariffs that were quite low, some trade flows covered by these agreements were still the subject of high tariffs and considerable non-tariff barriers - agriculture in particular. In fact, because agriculture remains a very sensitive issue to this day, NAFTA did not have a unified text on the subject, and in the case of both FTAs under study some goods were still excluded or subject to special schedules.

Next on the list for the analysis of the FTAs are the effects of increased trade and trade diversion (rules of origin are considered a precursor of trade deflection).

Analysis of Issues of Trade diversion - Regional impact:
Both FTAs are expected to have economic impact in their neighboring countries. If the trade provisions implemented in these agreements affect the markets of other countries in the region, it may be possible that the affected parties may react against any perverse effects and hinder the economic and political relationships between Colombia and Peru on one side and other Latin American countries on the other side (Venezuela, Ecuador and Bolivia, in particular).
In general, trade diversion means that a free trade area diverts trade, away from a more efficient supplier outside the FTA, towards a less efficient supplier within the FTA. In the context of the Andean Pact and other regional and bilateral agreements, one should ask how these agreements affect the economies of their neighbors. If the effect is considerable, then its economic efficiency should be considered.[172]

Moving away from the goods' trade, the NAFTA experience shows that the liberalization of services should be considered on a case-by-case basis. Telecommunications and financial services are the two big service sectors that are relevant in the evaluation of both FTAs understudy. In both countries, Colombia and Peru, telecommunications contracts are still subject to special regimes, even if the access to outsiders has been greatly improved. Nevertheless, access to the Peruvian and Colombian financial markets by U.S. financial firms is one of the great opportunities provided by these FTAs. To what extent this is a positive outcome for the Peruvians and the Colombians remains to be seen. For sure, the general public will benefit for increased competition and a better quality of service. However, if a significant portion of the revenues generated by the financial sector no longer stays in the local economies, then the overall economic effect is mixed.

[172] Although an extensive application of economic theory would be beyond the scope of the proposed dissertation topic, the theory of the second-best is worth mentioning at this point. According to it, in the presence of distortions or imperfections in a market, then the addition of another distortion (in this case the FTA) could actually raise welfare, or economic efficiency.

Furthermore, from the investment perspective, NAFTA seems to have achieved its objective regarding the increase of FDI flows. As it has been explained in other sections, this was without a doubt one of the main objectives of both FTAs under study. It would be interesting to consider how the improvements in the investment provisions (from NAFTA to the new FTAs) have aided the chances of increased FDI flows from the U.S. to Colombia and Peru.

Lastly, another less obvious consequence of NAFTA has been the increase in remittances from Mexicans in the U.S. to their families in Mexico. Although this was directly the effect of increased migration of Mexican workers to the U.S., and no necessarily the effect of the NAFTA terms, the implementation of the agreement did have an indirect effect through the financial services liberalization, which made it commonplace to send electronic funds, in small and personal amounts, between the two countries. In the cases of Colombia and Peru the effect on remittances of the FTAs with the U.S. might be more substantial. In 2013, Colombia was the third ranked Latin American recipient of total remittances (Mexico was first, Guatemala was second), and Peru was the sixth after El Salvador and the Dominican Republic[173].

b. *Employment & Wages*

Trade agreements do have meaningful impacts on labor markets. However, in practical terms, isolating the effects of one particular trade agreement on employment or even GDP growth is extremely difficult. How many jobs are created and/or lost by the terms of the agreement is always a big point of debate on both sides, so often ballpark numbers are thrown around in the discussion, mostly to persuade the public to lean towards one

[173] Pew Research Center, http://www.pewhispanic.org/topics/remittances/

outcome or the other. From an economic perspective, the level of employment is determined by macroeconomic policy in the short run, and supply-side factors such as population growth, and labor skills combined with workforce flexibility in the long run. Business cycles and technological change also play a role. That said, trade agreements do accelerate the process of "sifting and sorting" within affected economic sectors, manufacturing in particular. This occurs when the less productive agents are forced out of the market, freeing resources for the more productive ones.

In the context of the negotiations of both FTAs under study, the resulting effect on U.S. jobs can be considered miniscule. Nonetheless, to the extent that these agreements impact some sectors more than others, jobs become an issue that shows up in lobbying activity. FTA opponents in the U.S. argue that competition from low-cost unskilled labor in the developing country will reduce real wages of unskilled American workers, and broaden the gap between skilled and unskilled workers.

According to trade theory, for trade to be the explanation for changing relative wages, either between industries or between skill categories, relative product prices in the U.S. should fall in import-competing sectors, especially those that employ large numbers of low-skilled labor.[174] The contending view points out that the higher productivity of U.S. workers should offset the nominal cost advantage of cheap labor.[175]Labor productivity is the most important determinant of the national standard of living. From a bilateral trade perspective, Convergence theory states that FTAs should promote productivity in both

[174] Hufbauer and Schott, p. 86. See the complete Stolper-Samuelson theorem explanation in their 1941 article "Protection and Real Wages"

[175] Ibid., pp. 84-85

countries, but especially in the smaller less productive country. When productivity grows, real wages follow. As a result of the rate of convergence of both countries, per capita income should increase.

In the case of Colombia and Peru, because their unskilled workers tend to be mostly employed in the agricultural sector, and small farms in particular, it is possible that a significant amount of these workers could face unemployment in the short run, as cheaper agricultural products from the U.S. enter these markets

A final issue of concern in employment effects comparison with NAFTA is the effect of "maquiladoras" on the local and U.S. economies. Strictly speaking, a maquiladora is a manufacturing operation in a free trade zone (FTZ), where factories import material and equipment on a duty-free and tariff-free basis for assembly, processing, or manufacturing and then export the assembled, processed and/or manufactured goods, sometimes back to the raw materials' country of origin. Although this was an area of debate for NAFTA, its importance has diminished since 2000, around the time much of this production moved to Asia, in particular to China.[176] Nevertheless, in the case of both FTAs under study there was hope that a redesigned form of the maquiladora scheme (known now as "full-package"[177]) could be implemented, particularly in Colombia, generating employment opportunities, predominantly in the textiles sector.

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[176] Critics of NAFTA contended that in the absence of maquiladoras the entire production process would take place in the U.S., generating or keeping more American jobs. The reality is that the entire process can always take place somewhere else and the final product can be imported, if the costs are low enough, which is exactly why these manufacturing operations moved to Asia.

[177] According to the United Nations Industrial Development Organization (UNIDO), the paradigm change from the simple assembling of garments to "full package" services (design, fabric sourcing, trims and logistics) requires additional skills and knowledge and therefore specialized training. Moreover, existing trade barriers are likely to be replaced

c. *Dispute Settlement*

Ideally, FTAs will result in increased trade, and with that growth is almost certain that the number of trade disputes between the partner countries rises. Therefore, starting with NAFTA, FTAs with the U.S. include dispute resolution mechanisms. In the context of these FTAs, the following are the dimensions of dispute settlement to consider: investor-state disputes over property rights; disputes in the financial sector; antidumping (AD) and countervailing duty (CVD) decisions; and, government-to-government consultation to resolve high-level disputes.

Because the governments involved in both FTAs under study were not interested in creating dispute resolution mechanisms at the supranational level, which is considered by international law experts to be the ideal setting for effectiveness and credibility, rules about how decision-makers are chosen and for how long they serve, as well as questions of funding must be addressed. If the arbitrators are the same private law firms that represent the U.S. firms in similar instances, then there is a conflict of interest to consider. Also, the law of the place where these settlements take place is primordial for their outcome, so developing countries have much to gain if they can develop the institutions and infrastructure to be the hosts of such procedures.

d. *Labor and the Environment*

Opponents to FTAs in the U.S. often cite the exacerbation of already bad labor and environmental practices in developing countries as a reason to halt the agreements. This was not different with the cases of the FTAs with Colombia and Peru. They believe that

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by demands that producers adhere to quality and environmental norms, such as ISO9000 and eco-labeling.

these pacts" will eventually translate into a convergence of labor practices towards the lower common denominator,"[178] In NAFTA, one approach to dealing with controversial areas such as labor and environmental issues was by creating side pacts between the countries, parallel to the main agreement. Because these side pacts were not binding to the same extent the FTA was, some critics argue that this was a less-than-ideal strategy. However, due to the political weight of labor-related issues compared to environmental matters, NAFTA signers were more averse to concede authority over labor concerns to a supranational institution.

For labor issues, the key areas of concern are freedom of association (labor unions), child labor, and migrant worker protection. Because of its poor record of worker rights protection, to pass the agreement through the U.S. Congress the Colombian government agreed to a Labor Action Plan (LAP), which includes a number of initial steps as well as yearly milestones to be reached and monitoring mechanisms. Although the application of the LAP was satisfactory on its initial stages, the Colombian efforts diminished as time went by. In the case of Peru, child labor issues were more problematic, but labor issues in general were not a cause for delaying the implementation of the agreement, and general provisions included within the text of the FTA itself were considered to be sufficient.

Regarding the environmental side agreements, from a political perspective, the NAFTA side agreements were a big achievement, bringing discordant proposals together into one that included supranational institutions. Even if environmentalists believe the agreement fail to include tougher clauses, the fact remains that "without NAFTA, the Mexican government would have had less incentive to pass environmental legislation or to

[178] Hufbauer & Schott, p. 90

improve its enforcement efforts."[179] Something very similar is happening with both FTAs under study. However, in these new agreements environmental clauses were mostly included directly into the text of the FTAs themselves. Nevertheless, one significant difference between these two countries and Mexico is that, because of their geographical position, Colombia and Peru have sizable tropical rain forests. Advocates of the Darien and Amazonian regions, and of their corresponding indigenous populations, denounce to this day what they see as environmental policy deficiencies of both trade agreements. Overall, Hufbauer and Schott found that "important NAFTA institutions lacked adequate mandates and funding; consequently they fall short of aspirations."[180] To what extent this will also be the case with the two cases under study shall be explored in more detail.

[179] Ibid, p.177

[180] Ibid. p. 5

Appendix 3. Economic Profiles and Analysis of the last two decades of trade relations

Table 6. Colombian Total Exports (thousands of U.S. Dollars)

Category	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Food, beverages and Tobacco	2,149,927	2,240,516	2,763,964	3,533,486	3,766,380	4,467,277	5,266,913	4,731,892	4,446,709	5,722,109	5,250,767	5,186,607	5,814,520	5,505,452	5,411,292
Agricultural Raw Materials	714,991	724,339	748,695	960,072	1,060,787	1,280,197	1,287,822	1,120,472	1,309,958	1,337,210	1,378,053	1,493,735	1,528,531	1,429,195	1,453,465
Fuel, mineral lubricants & similar products	4,159,873	4,847,013	6,162,812	8,295,896	9,330,709	10,820,494	17,221,504	15,713,983	22,407,189	36,481,786	39,463,151	39,277,978	35,931,144	18,839,864	14,745,528
Metals and minerals	188,897	718,630	769,693	796,350	854,005	1,021,088	1,635,940	2,051,290	2,708,599	3,441,197	4,038,697	2,871,527	2,113,280	1,541,280	1,912,014
Manufacturing	4,429,429	4,377,171	6,023,093	7,095,633	8,335,749	11,355,242	11,476,535	8,857,805	8,753,929	9,949,021	9,966,791	9,955,071	9,393,544	8,363,794	7,529,142
Merchandise and unclassified operations	682	6,974	14,595	50,249	532,572	402,722	114,597	22,743	27,990	12,957	18,737	29,658	4,809	991	10,592
TOTAL	11,643,799	12,914,643	16,482,852	20,731,686	23,880,202	29,347,020	37,003,311	32,498,185	39,654,374	56,944,280	60,116,196	58,814,576	54,785,828	35,680,576	31,062,033

Table 7. Colombian Total Imports (thousands of U.S. Dollars)

Category	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Food, beverages and Tobacco	1,518,662	1,526,708	1,783,076	1,822,927	2,244,885	2,967,273	3,947,919	3,302,252	3,922,435	5,060,887	5,999,362	5,834,504	5,980,498	5,548,105	5,836,216
Agricultural Raw Materials	290,278	336,909	338,178	342,909	424,065	454,071	518,573	403,036	551,007	648,432	530,263	504,441	516,681	453,130	416,471
Fuel, mineral lubricants & similar products	193,071	242,550	267,840	547,495	682,635	909,898	1,806,500	1,235,370	2,078,852	3,852,472	5,676,494	6,384,142	7,544,769	5,131,811	3,831,140
Metals and minerals	263,364	288,085	415,029	557,286	878,712	1,067,499	1,044,282	606,961	842,317	985,683	986,866	966,452	999,180	883,654	744,101
Manufacturing	9,824,708	11,046,629	13,339,972	17,087,251	21,025,276	26,460,378	31,012,970	26,236,216	33,176,324	44,009,199	45,732,286	45,576,095	48,864,253	41,911,401	33,905,120
Merchandise and unclassified operations	2	-	7	1	3	-	11	5	197	1,597	17	27	1,281	22,070	58,250
TOTAL	12,090,085	13,440,881	16,144,102	20,357,869	25,255,576	31,859,119	38,330,255	31,783,840	40,571,132	54,558,270	58,925,288	59,265,661	63,906,662	53,950,171	44,791,298

Table 8. Peruvian Total Exports (thousands of U.S. Dollars)

Category	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Food, beverages and Tobacco	1,784,853	1,809,203	2,441,143	3,158,752	3,458,103	3,794,358	4,847,457	4,476,151	5,519,743	7,258,257	7,118,572	6,474,385	7,456,856	7,070,071	7,278,445
Agricultural Raw Materials	176,998	193,499	225,860	265,776	318,107	341,700	367,444	287,602	362,687	396,204	408,233	414,486	459,100	405,886	360,589
Fuel, mineral lubricants & similar products	451,338	625,092	643,276	1,500,828	1,550,282	2,043,322	2,611,349	1,801,090	3,281,467	4,902,390	5,168,627	5,143,267	4,427,961	2,348,074	2,270,246
Metals and minerals	3,782,725	4,593,367	6,753,808	10,146,201	14,597,815	17,244,108	18,376,568	16,049,421	21,629,864	27,352,047	25,782,808	22,772,143	18,728,711	18,129,710	21,259,708
Manufacturing	1,272,757	1,483,603	1,970,504	2,614,639	2,739,521	3,296,698	4,043,550	3,133,764	3,741,697	4,778,013	5,084,216	4,694,269	4,587,542	3,949,978	3,782,081
Merchandise and unclassified operations	27	18	6	3	1	4	57	34	10	93	81	40	12	4	3
TOTAL	7,468,698	8,704,782	12,034,597	17,686,199	22,663,829	26,720,190	30,246,425	25,748,062	34,535,468	44,687,004	43,562,537	39,498,590	35,660,182	31,903,723	34,951,072

Table 9. Peruvian Total Imports (thousands of U.S. Dollars)

Category	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Food, beverages and Tobacco	1,010,032	1,059,010	1,291,716	1,430,527	1,567,302	2,133,345	2,987,206	2,398,010	3,096,907	3,843,821	4,220,915	4,268,467	4,439,489	4,218,291	3,869,814
Agricultural Raw Materials	138,025	154,461	198,264	223,013	230,961	330,809	430,174	299,224	500,334	656,074	578,568	542,047	523,316	453,705	373,952
Fuel, mineral lubricants & similar products	1,033,587	1,457,423	1,856,359	2,437,988	2,914,540	3,753,806	5,476,839	3,052,220	4,256,122	5,989,667	6,086,829	6,687,477	5,995,212	3,919,977	3,599,574
Metals and minerals	49,833	62,194	105,289	121,341	159,078	189,661	357,491	257,593	395,738	435,827	428,690	462,979	544,572	401,685	351,099
Manufacturing	5,261,008	5,679,997	6,640,192	8,265,932	10,420,407	13,984,267	20,616,912	15,780,203	21,664,668	26,918,076	30,880,840	31,367,286	30,670,792	28,804,489	24,773,064
Merchandise and unclassified operations	-	78	44	86	28	16,950	3,517	100	74	68	88	163	54	133	63
TOTAL	7,492,485	8,413,163	10,091,864	12,478,887	15,292,316	20,408,838	29,872,139	21,787,350	29,913,843	37,843,533	42,195,930	43,328,419	42,173,435	37,798,280	32,967,566

Source: ALADI

2012 International Trade Statistics[181]	Import	Export	Balance
Colombia	58,633	59,573	941
Peru	41,089	45,600	4,510

2015 International Trade Statistics	Import	Export	Balance
Colombia	54,058	35,606	-18,451
Peru	37,014	34,236	-2,778

Imports CIF, exports FOB and balance: million U.S. dollars

[181] http://comtrade.un.org/pb/

Note that these amounts, when compared with total trade of the U.S. with all countries are extremely small. However, for Peru and Colombia, the U.S is their top trade partner.

a. COLOMBIA[182]

Top 5 Products exported by Colombia	Crude Petroleum (38%), Coal Briquettes (17%), Refined Petroleum (7.3%),Gold (4.6%), and Coffee (4.6%)
Top 5 Products imported by Colombia	Refined Petroleum (7.1%), Planes, Helicopters, and/or Spacecraft (4.9%),Cars (3.9%), Delivery Trucks (2.7%), and Computers (2.6%)
Top 5 Export destinations of Colombia	United States (36%), Netherlands (5.3%), Chile (3.6%), China (3.3%), and Panama (3.3%)
Top 5 Import origins of Colombia	United States (25%), China (15%), Mexico (11%), Brazil (5.1%), and Germany(4.1%)

Data from 2011

Top 5 Products exported by Colombia	Crude Petroleum (45.5%), Coal Briquettes (13.4%), Refined Petroleum (4.9%),Coffee (4.7%), and Gold (3.1%)
Top 5 Products imported by Colombia	Refined Petroleum (11.7%), Planes, Helicopters, and/or Spacecraft (4.2%),Cars (3.2%),Computers (3.2%), and Broadcasting Equipment (2.8%)
Top 5 Export destinations of Colombia	United States (26%), China (10%), Panama (6.4%),Spain (5.9%), and India (4.9%)
Top 5 Import origins of Colombia	United States (29%), China (19%), Mexico (8.5%), Germany(4.5%), and Brazil (4%)

Data for 2014

Colombia was the United States' 20th largest goods export market in 2015. Exports to Colombia were $17 billion (decreasing 18% from 2014, but a total increase of 15.1% from 2011 -- pre-FTA – and 202% from 2005). Imports from Colombia totaled $14 billion in 2015 (a 23% decrease from 2014, but up 59% from 2005, and down 39.2% since 2011 -- pre-FTA).[183]

[182] Hausmann, Hidalgo et al., The Atlas of Economic Complexity: Mapping Paths to Prosperity http://atlas.media.mit.edu/profile/country

[183] https://ustr.gov/countries-regions/americas/colombia

U.S. exports to Colombia include mineral fuels, machinery, agricultural products (including corn, soybeans, wheat and rice), and organic chemicals. U.S. imports from Colombia include crude oil, gold, coffee, cut flowers, textiles, and bananas. Approximately 250 U.S. businesses conduct at least some operations in Colombia. U.S. direct investment stock in Colombia ($7.1 billion in 2014, a 3.9% decrease from 2013) is primarily concentrated in the mining, manufacturing, and finance/insurance sectors.

b. PERU

Top 5 Products exported by Peru	Gold (21%), Copper Ore (16%), Refined Petroleum (6.0%), Refined Copper(5.9%), and Animal Meal and Pellets (4.0%)
Top 5 Products imported by Peru	Crude Petroleum (8.8%), Refined Petroleum (5.3%), Cars (3.3%), Delivery Trucks (3.1%), and Large Construction Vehicles (2.0%)
Top 5 Export destinations of Peru	China (15%), United States (13%), Switzerland (12%), Canada (9.1%), and Japan (4.6%)
Top 5 Import origins of Peru	United States (19%), China (16%), Brazil (6.2%), Argentina (4.9%), and Ecuador(4.6%)

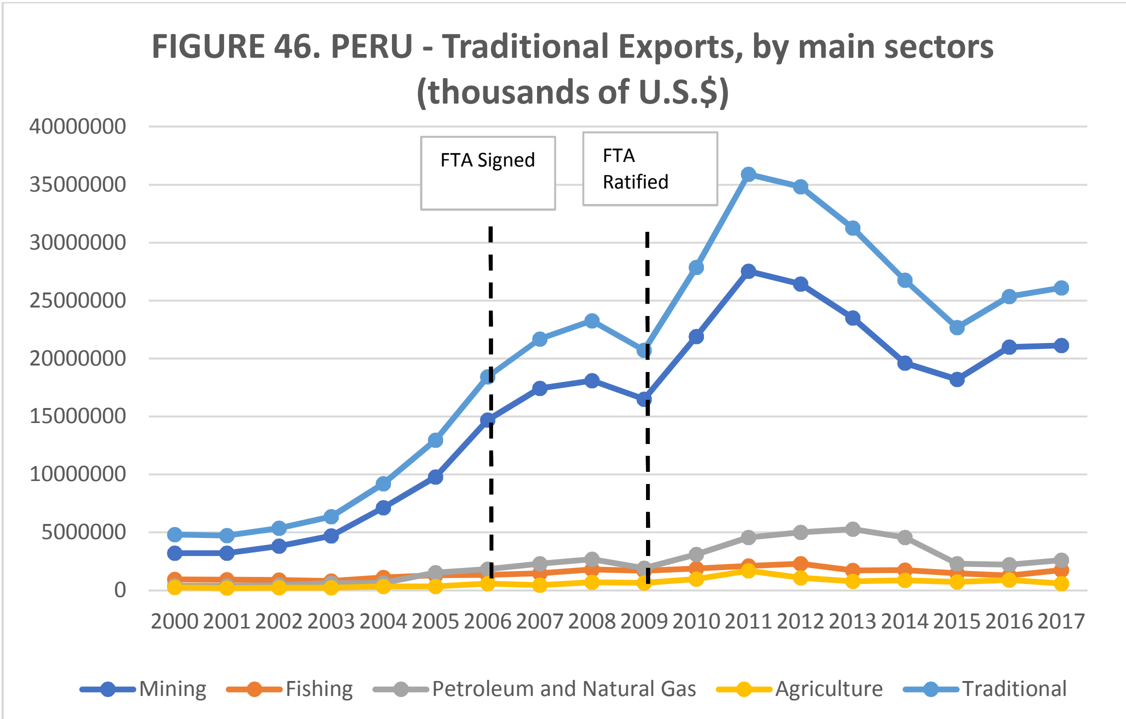
Data from 2011

Top 5 Products exported by Peru	Copper Ore (17.4%), Gold (14.6%), Refined Petroleum (7.8%), Refined Copper(4.6%), and Animal Meal and Pellets (1.41%)
Top 5 Products imported by Peru	Refined Petroleum (7.1%), Crude Petroleum (6.5%), Cars (4.2%), Broadcasting Equipment (2.7%), and Computers (2.3%)
Top 5 Export destinations of Peru	China (17.8%),United States(16%), Switzerland (7.2%), Canada (6.6%), and Brazil (4.1%)
Top 5 Import origins of Peru	China (20.9%), United States (20.8%), Brazil (4.6%), Mexico (4.6%), and Ecuador(4.0%)

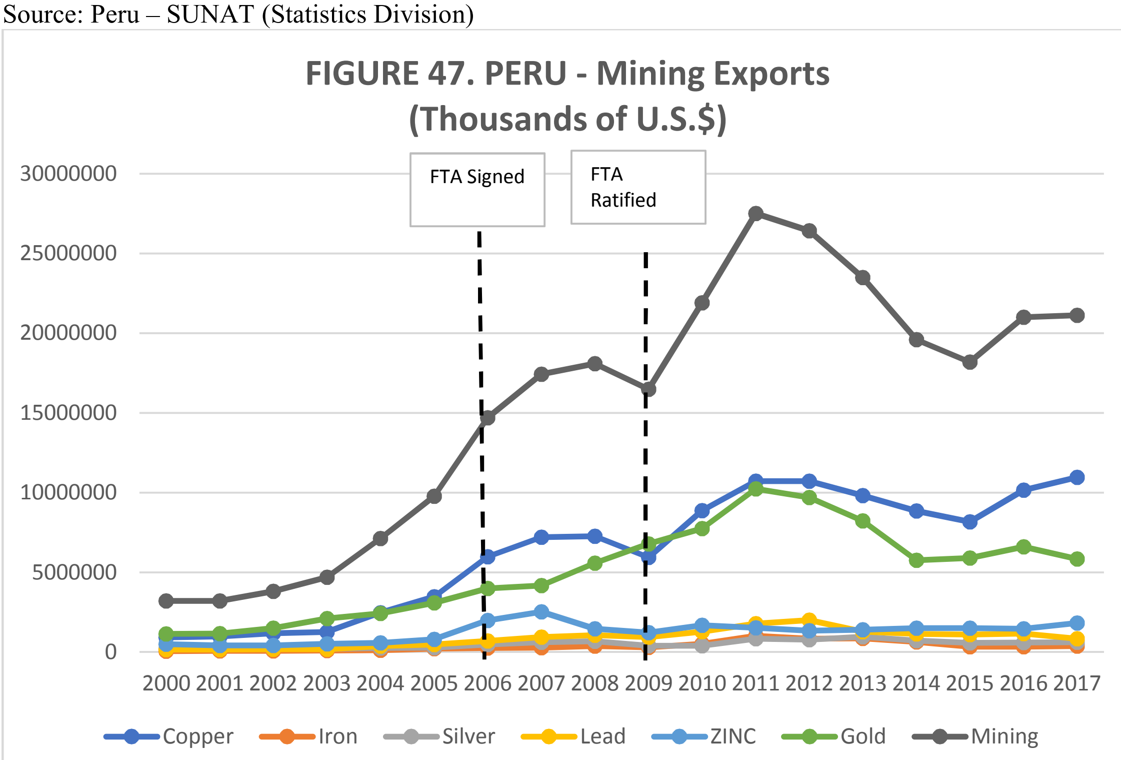
Data from 2014

During 2015, goods exports from the U.S. to Peru totaled $8.8 billion (an decrease of 12% from 2014, but a increase of 282%, from 2005, and 42.5% from 2008 -- Pre-FTA), while imports amounted to $5.1 billion (a 17% decrease from 2014, also a decrease of 12.8% from 2008 -- Pre-FTA). The top export categories were: Mineral fuel, machinery, electrical machinery, plastic and cereals (corn). The five largest import categories were: Precious metal and stones (gold), edible fruit and nuts (grapes, avocados), mineral fuels, knit apparel, and vegetables (asparagus), and U.S. foreign direct investment (FDI) in Peru (stock) was $6.5 billion in 2014, a 20.9% increase from 2013. Most of it directed primarily to mining, manufacturing and nonbank holding companies.

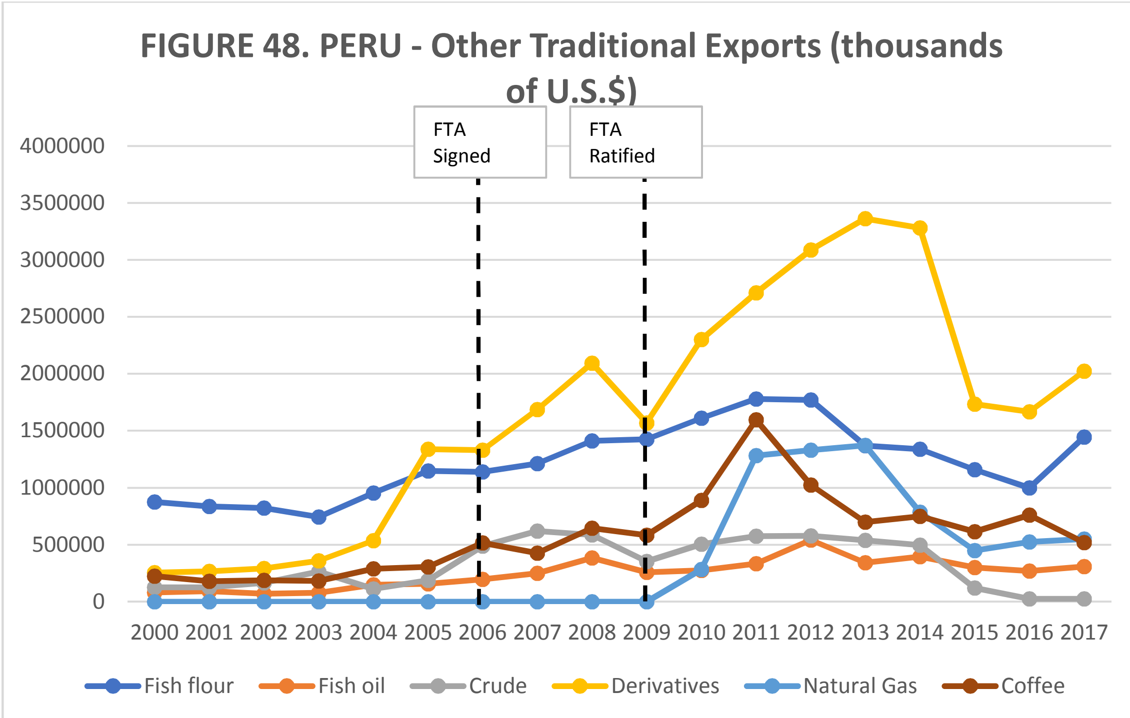
Traditional Exports by Sector and sub-categories:



Source: Peru – SUNAT (Statistics Division)



Source: Peru – SUNAT (Statistics Division)

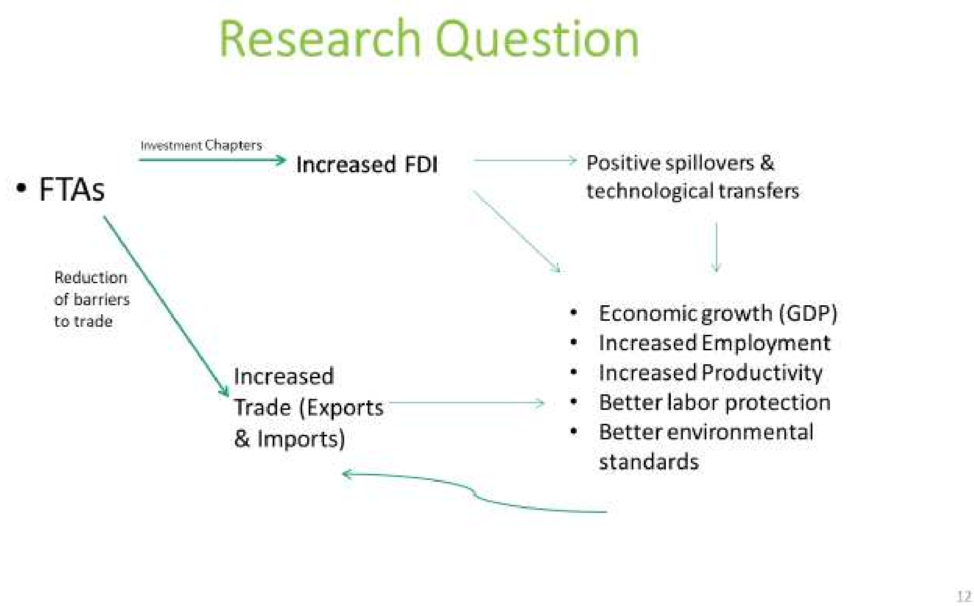


Source: Peru – SUNAT (Statistics Division)

Appendix 4. Foreign Investment Law Comparisons

	Colombia	Peru
Legal Stability Contracts	(Law 963 of 2005): Covers FDI from a threshold amount (7500 x monthly minimum wage) in the following sectors: tourism, industry, agriculture, forestry for export, mining, export processing zones, free zones for commercial and oil production, telecommunications, construction, infrastructure relating to ports and railways, electricity generation, irrigation, and efficient use of water resources. While it leaves the option open for other investments as a proved by a special committee, it expressly excludes portfolio investments. The time frame for such contracts is between 3 and 20 years, and a yearly fee equal to 1% of the value of the investment is required. Also, these contracts may provide for national arbitration under Colombia Law.	Called the "Agreement with Contract-Law Status", and within it the "Legal Stability Agreement"
Exceptions to National Treatment	Exceptions and restrictions in: television concessions and nationwide private television operators, radio broadcasting, movie production, maritime agencies, national airlines, and shipping. Colombian law regulates the number of foreign personnel in several professional areas, including architecture, engineering, law, and construction. For firms with more than 10 employees, no more than 10 percent of the general workforce and 20 percent of specialists can be foreign nationals.	Mass media, air and land transportation services, and private security and surveillance. Investments in border regions (within 50 kms) require special authorization
Intellectual Property	In August 2012, Colombia joined the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol). The Colombian government joined the World Intellectual Property Organization (WIPO) Trademark Law Treaty on January 13, 2012, which entered into force on April 12, 2013. The Office of the Superintendent of Industry and Commerce (SIC) and the National Copyright Directorate were granted new authorities in 2012 to adjudicate IPR cases previously handled by courts	Recent legal code amendments creating stricter penalties for some types of IP theft

Appendix 5. Visual Presentation of Research Question



Appendix 6. Dissertation Survey

Subject: Free Trade Agreements (FTAs) between the U.S. and Colombia and Peru: Effects of Investment Chapters on Foreign Direct Investment (FDI)

Instrument provided by: Monica Lombana – PhD Candidate School of Public Policy University of Maryland

Respondent: PLEASE ENTER NAME

1. Were you a participant during the negotiation process of either of these agreements? If yes, could you share your role and dates of your participation?

2. What is your general impression of the outcome of the negotiation of the FTA(s)?

3. Have you had a role in the implementation of either of these agreements? If yes, could you share some details?

4. From your personal perspective, what positive effect(s) in Colombia/Peru have taken place because of the FTA?

5. From your personal perspective, what negative effect(s) in Colombia/Peru have taken place because of the FTA(s)?

6. Are you aware of any relationship between the negotiation/implementation of the FTA(s) and the inflows of FDI to Colombia/Peru? If so, please elaborate.

7. From your point of view, what is the future of the FTA(s) in the next 5-10 years?

8. How do you feel the framework put forward by the negotiation/implementation of the FTA(s) influenced similar agreements between Colombia/Peru and other countries?

9. How do you feel the framework put forward by the negotiation/implementation of the FTA(s) influenced similar agreements between other countries and the U.S.?

10. Any other comments/ideas would you like to share at this time?

Thank you very much for taking the time to complete this survey. I am looking forward to share with you the complete findings of my dissertation in a near future.

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