



DIRECTORATE-GENERAL FOR EXTERNAL POLICIES  
POLICY DEPARTMENT



# EUROPEAN UNION: TRADE AGREEMENT WITH COLUMBIA AND PERU

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**DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION**

**DIRECTORATE B**

**POLICY DEPARTMENT**

**STUDY**

**EUROPEAN UNION: "TRADE AGREEMENT" WITH  
COLOMBIA AND PERU**

**Abstract**

This study provides a comprehensive assessment of the EU Colombia-Peru Trade Agreement to assist the European Parliament in its deliberations. EU efforts to negotiate a region-to region agreement with the Andean Community (CAN) were not successful due to issues within the CAN. The agreement is in line with EU FTA policy in terms of content. Taken together with other EU agreements with South and Central America the Agreement is also consistent with an EU policy of strengthening trade and investment with regions of potential growth. There are small welfare effects from the agreement and trade benefits for the EU go mostly to the classic EU export sectors of machinery, transport equipment and services. The access to Colombia and Peru matches that and in some areas exceeds that provided in the US and Canadian agreements. The gains for Colombia and Peru are in fruit (especially bananas) and vegetables, but more importantly the Agreement ensures continued duty free access to the EU for Colombian and Peruvian exports. Many of the civil society criticisms of the Agreement have been addressed in the final text. The provisions on sustainable development are equivalent to the current practice in trade agreements. On the issue of human rights the Parliament will need to judge whether its consent for the Agreement is seen as a means of ensuring continued progress towards better implementation in the partner countries, or as condoning existing practices.

This study was requested by the European Parliament's Committee on International Trade.

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## EXECUTIVE SUMMARY

The EU has long supported regional integration in the Andean Community (CAN). The EU's original aim of negotiating a region-to-region agreement became infeasible, at least for the time being, when Bolivia and then Ecuador followed Venezuela and Cuba into the The Bolivarian Alliance for the Peoples of Our America (ALBA). The EU proceeded with so called multi-party trade negotiations that eventually led to an agreement with Colombia and Peru only. The conclusion of the EU Colombia-Peru Trade Agreement (henceforth the Agreement) is unlikely to have made the prospects for integration in the CAN much worse. Ideological differences were already present within CAN and Colombia and Peru had already negotiated bilateral FTAs with the US and Canada (and Peru with China) before the EU finalised the Agreement. The substance of the Agreement also minimises the disruption to CAN production patterns by offering regional cumulation for rules of origin. The rules elements of the Agreement would also promote integration within the region if CAN were to find a consensus on a broadly liberal approach.

In terms of scope and ambition the Agreement is in line with EU FTA policy as articulated in the 'Global Europe' policy of 2006 and affirmed in the 'Trade, Growth and World Affairs' statement of 2010. It is comprehensive in that it removes virtually all tariffs after a transition period, extends services commitments well beyond GATS, includes (largely procedural) WTO – plus provisions on non-tariff barriers (TBTs, SPS) and the four Singapore issues of investment, procurement, competition and trade facilitation, strengthens intellectual property right protection while reflecting the needs of Colombia and Peru, and includes institutional provisions (dispute settlement, monitoring committees and a speedy review mechanism for non-tariff and regulatory barriers). The provisions on human rights and sustainable development are in line with the EU policy adopted in other trade agreements. In other words there is an enforceable but general human rights clause and provisions on sustainable development covering core ILO labour standards and multilateral environmental agreements that are subject to transparent peer review system under a Sub-Committee on Sustainable Development. There is also the option of review by an Expert Group.

Colombia and Peru are however, not major markets and the fact that the EU chose to negotiate with CAN is due to existing political commitments than pursuit of the Global Europe aim of negotiating with countries that have significant growth potential. Colombia and Peru only account for 0.6% of EU exports (with the EU running a trade deficit of Euro 3.6 billion in 2009). However, bilateral trade between the EU and the two trading partners grew by 10% between 2006 and 2010 and if the Agreement proves to be a building bloc for EU trade relations with Latin America, especially if one takes it together with the agreement with Central America, then the Agreement assumes a greater importance than the volume of trade would suggest.

It is the classic EU export sectors that stand to benefit most from enhanced access to the Colombian and Peruvian markets, namely machinery, transport equipment (including in particular automobiles), chemicals and above all services. For the manufacturing sectors the three sectors mentioned account for more than 80% of current EU exports. In the case of services much will as always depend on how the Agreement eases regulatory barriers.

Almost all Colombian and Peruvian exports already enter the EU free of tariffs under the GSP + scheme. But the Agreement is important because Colombia and Peru could lose this access in any future review

of the GSP.<sup>1</sup> Secure access as well as the (lock-in effect) of strengthened trade and investment rules can also be expected to lead to increased EU investment. Procedural rules in the field of SPS should help facilitate Peruvian and Colombian exporters' effective access to the EU market. In addition fruit (especially bananas and grapes) and shrimp will benefit from lower tariffs, so any impact on EU output will come in these sectors. The impact on EU output in other sectors is very unlikely to be significant. The overall welfare gains from the FTA are negligible for the EU. For Colombia and Peru the estimated long term gains are up to 1.3% of GDP for Colombia and 0.7% for Peru. These estimates (from the Sustainability Impact Assessment of an EU CAN agreement) are however based on assumptions concerning MFN tariff rates that may no longer apply. As an aside the estimated welfare gains for Bolivia and Ecuador, had they chosen to negotiate were potentially higher at 2.1% and 1.9%, because of the higher level of protection in these countries.

The Agreement broadly matches the US and Canadian agreements with Colombia and Peru. There are detailed differences that could affect specific sectors, for example, the US has better access for agricultural products and will benefit from a generally faster removal of tariffs on manufactures. On the other hand, key EU exporting interests such as automobiles will benefit from faster tariffs liberalisation, after 8 years compared to 10 for the US for Colombia and after 6 years for larger cars into Peru. The EU offers regional cumulation for rules of origin while the US generally offers only bilateral cumulation. In services the EU appears to have better access than the US in some sectors, but the US agreements use negative listing rather than the hybrid listing used by the EU, which implies a generally more liberal approach with less scope for exclusions. Access and national treatment coverage of investment is pretty much the same, but the US agreements are comprehensive in that they include investment protection. The EU Agreement includes no investment protection provisions, because it was negotiated before the formal extension of exclusive EU competence to foreign direct investment in the Treaty of the Functioning of the European Union. Member State bilateral investment treaties will however remain valid. The coverage of public procurement in the EU Agreement is broader than that in the US agreements and the provisions on intellectual property include specific rules and a register for geographic indications (GIs), which the US agreements do not. Equally the competition provisions in the EU agreement are more substantive. Both the EU and US agreements include provisions on the environment and labour standards so complement each other when it comes to ensuring these are respected. There are however, differences between the EU peer review and active dialogue approach to compliance with environmental and labour standards per se and the US approach which provides for a specific dispute settlement when non-compliance with such standards affects trade. The EU Agreement also matches the Canadian agreements with Colombia and Peru which tend to follow the NAFTA model.

It is also noteworthy that the China – Peru FTA is an ambitious agreement covering virtually all the topics covered by the EU and US agreements, although it falls short of these when it comes to the depth or scope of coverage for most topics (tariff liberalisation and other liberalisation commitments). The China –Peru FTA contains for example, an MFN clause for investment, so that any access or national treatment granted to EU investors will also be extended to the Chinese.

Stakeholder views on the Agreement have tended to be dominated by the advocacy of civil society NGO coalitions (of EU and CAN NGOs), which have adopted critical positions. These have centred on human rights, sustainable development and some trade-related issues such as the asymmetric nature

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<sup>1</sup> The Commission has recently issued a Communication on Trade and Development, which argues for concentrating EU support on those countries that most need it through a graduation of middle income countries out of the GSP(Commission, 2012).

of market opening. Business interests in the EU as well as in Colombia and Peru have been supportive or very supportive of the Agreement, especially the EU services sector. Most if not all of the earlier concerns expressed by civil society have been addressed during the course of negotiations, although perhaps not to their full satisfaction. The provisions on intellectual property provide for flexibility in terms of access to medicines. Liberalisation commitments on services and investment explicitly exclude measures to support socially and economically disadvantaged groups as well as indigenous peoples and cultural patrimony. As Colombia and Peru already have duty free access to the EU market in mineral and agricultural raw materials the Agreement is unlikely to result in a significantly greater competition for land than that which results from national development strategies.

Concerns about the abuse of human rights and persecution and killings of trade unionist remain, but as noted above the Agreement contains a positive human rights clause in Article 1 and the means in the shape of Trade Committee and the Sub-Committee on Sustainable Development of maintaining pressure for further improvement in this field while waiting for the ratification of the Political Dialogue and Cooperation Agreement between the EU and the CAN by the EU. As for all trade agreements the impact of the EU Colombia - Peru Agreement will ultimately depend on how it is implemented. This goes for the market access as well as the human rights provisions. In this regard the Agreement provides various institutional channels through which to promote full compliance.



## **1. GENERAL OVERVIEW AND INTRODUCTION**

### **1.1 EU cooperation with the Andean Community preceded the negotiation of the trade agreement**

The EU support for the Andean Community (CAN) predates the multi-party trade negotiations and the conclusion of the Trade Agreement with Colombia and Peru (hereafter the Agreement) by decades. A Joint European Community – Andean Community (CAN) Committee was established by the Andean Community Cooperation Agreement of 1983. In 1993 The Framework Cooperation Agreement between the European Communities and the CAN was agreed and strengthened by the Rome Joint Declaration of 1996. More recently the Political Cooperation and Dialogue Agreement (PCDA) between the EU and CAN was adopted in 2003 and is currently awaiting final ratification. The PCDA was negotiated with the intention of further promoting cooperation between the EU and CAN on a range of topics relevant to the Agreement. Art 1 (1) of the PCDA states that respect for human rights and the rule of law constitute an essential element of that agreement. Article 2 refers to the desire of the parties to work towards creating the conditions under which a feasible and mutually beneficial Association Agreement, including a free trade agreement, could be negotiated. The PCDA also includes cooperation in a wide range of policy areas including those such as respect for core labour standards, indigenous peoples, sustainable development, sustainable mining etc. that have been subject to debate in the negotiation of the Agreement. In line with the EU policy for all FTAs the Agreement with Colombia and Peru also includes a human rights clause and provisions on sustainable development.

At the Guadalajara Summit in May 2004 it had been agreed that a region-to-region association agreement should be the strategic objective of the EU and the CAN. In 2004 the EU still had a de facto moratorium on new FTA negotiations in order to focus on multilateral negotiations in the Doha Development Agenda (DDA). The EU also argued that the CAN needed to make more progress towards regional integration before a region-to-region negotiation could start. A study in 2005-6 found that there was scope for improvement in regional integration in the Andean region in areas such as services, capital mobility, as well as some aspects of free movement of goods and persons. In 2006 disarray within the CAN due to divergent views on liberalisation or more generally on development policy, led to Venezuela leaving and Bolivia nearly leaving the CAN.

In 2007 the Tarija Declaration of the Andean Community (CAN) (Peru, Colombia, Ecuador and Bolivia) cleared the way for region-to-region negotiations with the EU. Negotiations were started in 2007, but suspended in 2008 due to differences within the Andean Community. Bolivia withdrew due to disagreements over the negotiating objectives. Negotiations were restarted in January 2009 and completed after ten rounds in March 2010. Ecuador suspended its formal participation in the negotiations in July 2009. The final agreement was therefore only signed between the EU and Colombia and Peru. 2 The Agreement includes an accession clause (Art 329) that allows other members of the CAN to join.

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<sup>2</sup> The political agreement on the Trade Agreement was reached at the EU Latin America Summit in Madrid in May 2010, at which the EU Central America Association Agreement also obtained political agreement. See <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/regions/andean/>

## 1.2 EU Strategy vis-à-vis Latin America in the context of the 'Trade, Growth and World Affairs' policy

Building on the trade policy aspects of the 'Global Europe' strategy of 2006, the Trade, Growth and World Affairs' policy favours an active FTA policy, alongside continued efforts at the multilateral level. The EU strategy on FTAs has been to negotiate comprehensive FTAs with markets that have a significant potential for economic growth.

In terms of its content the Agreement is in line with EU FTA policy. Tariff liberalisation covers virtually all tariff lines and therefore comes well within the EU target in terms of covering substantially all trade as required by GATT Art XXIV. The Agreement also covers the full range of non-tariff measures, such as TBT and SPS, the four Singapore issues of investment, competition, government procurement and trade facilitation. Coverage of services and intellectual property rights are also GATS and TRIPs plus.

As tables 1.1 and 1.2 show, Peru and Colombia do not represent major trading partners for the EU. Together they come behind Chile (0.4% of EU exports) and some way behind Mexico (1.7% of EU exports). In this sense therefore there could be a question mark as to whether the Agreement is a good fit with the policy of negotiating with significant markets. On the other hand none of the EU's FTA partners account for very large shares of trade and EU exports to Colombia and Peru have been growing steadily. If one takes a broader view it is also possible to argue that the Agreement sets a precedent for further 'new generation' FTAs with Latin American partners, such as the now restarted negotiations with Mercosur. Taken together with the EU Central American Association Agreement, the EU –CARICOM Agreement and the possibility of including, at some future date, other members of the CAN, the Agreement promises to consolidate EU trade relations with the region and, as chapter 2 below points out, generally matches the access achieved by the US, Canada and China through their respective FTAs.

## 1.3 Trade Patterns

In 2010 the EU ranked second (after the United States (US)) as both a source of Colombian imports and a destination for its exports. For Peru the EU was the third largest source of imports (after US and China) and the main destination for its exports (DG-Trade 2011a). Colombia ranked 44<sup>th</sup> as a source of EU imports and 45<sup>th</sup> as an export destination; Peru ranked 42<sup>nd</sup> as a source of EU imports and outside the top 50 EU export markets (*ibid*). Growth in trade between the EU and Colombia and Peru over the period 2006–10 averaged around 10% in each case. Colombia is the more important partner in terms of the total volume of trade and accounts for a larger share of EU exports than Peru, which in comparison accounts for a larger share of EU imports in value terms (Table 1.1).

The EU's major imports from Colombia over the period 2008–10 consisted of mineral fuels, lubricants and related materials (49%), food and live animals (31%) and other manufactured goods (7%). In the case of Peru, the EU's major imports were crude materials, inedible materials, except fuels (37%), food and live animals (33%) and other manufactured goods (18%). On the export side, the EU's major goods exports to both countries consisted of machinery and transport equipment, chemicals and related products, and other manufactured goods that together account for nearly 83% of EU exports (Table 1.2)

**Table 1.1: EU27: trade with Colombia and Peru, 2006–1st Quarter 2011**

Period	2006	2007	2008	2009	2010	2011 Q1	Avg. annual growth % (2006–10)
<b>Colombia</b>							
Imports (€ mn)	3,576	4,096	5,047	3,994	4,724	1,404	7.2
Variation (% , year-on-year)	9.5	14.6	23.2	-20.9	18.3	32.2	
Share of total EU imports (%)	0.3	0.3	0.3	0.3	0.3	0.3	
Exports	2,766	3,095	3,497	3,310	3,912	1,196	9.1
Variation (% , y-o-y)	11.8	11.9	13.0	-5.4	18.2	46.1	
Share of total EU exports (%)	0.2	0.2	0.3	0.3	0.3	0.3	
Balance (€ mn)	-810	-1,001	-1,549	-684	-813	-209	0.1
Trade (€ mn)	6,341	7,192	8,544	7,304	8,636	2,600	8.0
<b>Peru</b>							
Imports (€ mn)	3,605	4,200	3,872	3,205	5,136	1,476	9.3
Variation (% , y-o-y)	47.7	16.5	-7.8	-17.2	60.3	46.4	
Share of total EU imports (%)	0.3	0.3	0.2	0.3	0.3	0.4	
Exports	1,294	1,613	2,192	1,488	2,285	699	15.3
Variation (% , y-o-y)	19.0	24.7	35.9	-32.2	53.6	46.0	
Share of total EU exports (%)	0.1	0.1	0.2	0.1	0.2	0.2	
Balance (€ mn)	-2,311	-2,587	-1,679	-1,717	-2,851	-776	5.4
Trade (€ mn)	4,899	5,813	6,064	4,692	7,422	2,175	10.9

Source: DG-Trade 2011a.

**Table 1.2: EU27: exports to Colombia and Peru by SITC Section, 2008–10**

SITC Codes	SITC Sections	Value (€ mn)	Share of total exports to country	Share of total exports to Extra-EU
<b>Colombia</b>				
<b>SITC T</b>	<b>Total a</b>	<b>3,583</b>	<b>100.0%</b>	<b>0.3%</b>
SITC 7	Machinery and transport equipment	1,735	48.4%	0.1%
SITC 5	Chemicals and related products	803	22.4%	0.1%
SITC 6	Manufactured goods classified chiefly by material	438	12.2%	0.0%
SITC 8	Miscellaneous manufactured articles	316	8.8%	0.0%
SITC 0	Food and live animals	56	1.6%	0.0%
SITC 9	Commodities and transactions	49	1.4%	0.0%
SITC 2	Crude materials, inedible, except fuels	43	1.2%	0.0%
SITC 1	Beverages and tobacco	35	1.0%	0.0%
SITC 4	Animal and vegetable oils, fats and waxes	12	0.3%	0.0%
SITC 3	Mineral fuels, lubricants and related materials	8	0.2%	0.0%
<b>Peru</b>				
<b>SITC T</b>	<b>Total<sup>a</sup></b>	<b>1,995</b>	<b>100.0%</b>	<b>0.2%</b>
SITC 7	Machinery and transport equipment	975	48.9%	0.1%
SITC 6	Manufactured goods classified chiefly by material	382	19.1%	0.0%
SITC 5	Chemicals and related products	301	15.1%	0.0%
SITC 8	Miscellaneous manufactured articles	157	7.9%	0.0%
SITC 0	Food and live animals	49	2.5%	0.0%
SITC 2	Crude materials, inedible, except fuels	29	1.4%	0.0%
SITC 9	Commodities and transactions	29	1.5%	0.0%
SITC 1	Beverages and tobacco	18	0.9%	0.0%
SITC 3	Mineral fuels, lubricants and related materials	10	0.5%	0.0%
SITC 4	Animal and vegetable oils, fats and waxes	2	0.1%	0.0%

Note: The sum of the individual SITC product categories may be less than the total for reasons of confidentiality.

Source: Calculated from data from Eurostat COMEXT database.

The top individual items imported by the EU from Colombia, and the tariffs imposed on them, are shown in Annex Table 1. Most of these products already enter the EU duty free. The only real exceptions are bananas and frozen shrimp, which under the regime currently applicable to both Colombia and Peru – the Generalised System of Preferences' special incentive arrangement for sustainable development and good governance (the so-called GSP+), – face a tariff of €143/tonne and 3.6% *ad valorem* respectively. In the case of the top imports from Peru, all except bananas and fresh table grapes enter duty free (see Annex Table 2).

The tariffs applied to the EU's top individual export items in the Colombian and Peruvian markets are shown in Annex Tables 3 and 4. These show MFN rates in Colombia ranging from a high of 35% for motor cars and vehicles to a low of 5% on most of the other top EU exports to this market; only in the case of aeroplanes and printed books are Colombia's existing applied MFN rates at zero. In comparison, most of the EU's top exports to Peru are already duty free, whilst motor vehicles, paper products, vaccines and other medicaments face an applied MFN rate of 9%.

## 2. COMPARATIVE ANALYSIS AND REGIONAL ISSUES

### 2.1 Comparison of the EU Agreement with the US-Colombia and US-Peru Trade Promotion Agreements (TPAs)

The US led the EU in negotiating bilateral agreements with Peru and Colombia. Colombia, Ecuador and Peru entered into free trade negotiations with the U.S. in May 2004. Peru and Colombia signed TPAs with the US in 2006. But these agreements then stalled in the US Congress pending ratification. The opening of negotiations between the EU and CAN provided an additional incentive for the US and the US ratified the US-Peru agreement in January 2009 and the U.S.-Colombia in October 2011. As with the EU Agreement the US bilateral TPAs will make permanent the preferences that for the most part already existed under the Andean Trade Promotion and Drug Eradication Act (ATPDEA).<sup>3</sup> US negotiations with Ecuador are stalled as they are between the EU and Ecuador.

In general terms the scope of the US and EU agreements are the same, so that EU exporters have equivalent access to the Colombian and Peruvian markets as US exporters. Both EU and US agreements will, after the respective transition periods, eliminate tariffs on all but a few sensitive tariff lines. Both EU and US agreements tackle technical barriers to trade, as well as labour and environmental standards, and establish dispute settlement procedures. Both sets of agreements secure greater market access for services and government procurement. Regarding investment and cross-border services, they both allow for flexibility by excluding certain sensitive sectors. Differences are therefore in the form of detailed aspects of the agreements, which may of course be important for particular sector. These include:

- better US access in **agricultural products**, with zero tariffs within 15 years for virtually all products. In comparison 85% of EU agricultural exports will be duty-free within 17 years. For wines and spirits there are reduced non-tariff barriers in the EU Agreement, such as the elimination of the alcohol monopolies and the tax discrimination on spirits in Colombia;
- the value of US **manufactured exports** entering Colombia and Peru duty free is at 70% slightly higher than for the EU, but the EU has tariff free access for more tariff lines on entry into force (EIF)

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<sup>3</sup> The U.S. Congress granted, in December 2006, a six-month extension of the ATPDEA for all four countries. Continuation of the preferences thus require further legislation by Congress until the FTAs with Colombia and Peru come into force.

- of the Agreement and more favourable treatment for key EU export sectors such as machinery and motor vehicles (reduction of tariffs from 35% to zero in 8 years compared to 10 years for the US for Colombia);bulleted text
- with regards to **rules of origin**, both agreements use comprehensive and detailed specific rules. Most of the specific rules show 6 digit change of tariff headings (CTH). The US Colombia agreement has special, detailed (more restrictive) rules for textiles and clothing (4 digit CTH) and automobiles (use of net cost i.e. less shipping, marketing and other costs to calculate the regional value content). Both US and EU agreements have 10% *de minimis* provisions. In line with its desire to promote Andean regional integration the EU Agreement allows both bilateral and diagonal cumulation within the whole Andean Community (Chapter II, Art 3). There is also scope for the parties to request cumulation within the wider region to include for example Chile, Mexico or other parties that have preferential agreements with the EU. The US – Colombia agreement offers only bilateral cumulation (Art 4.5) of chapter 4, but there are to be discussions within 6 months of the entry into force on the possibility of regional cumulation for textiles and clothing Art 3.3(13) of chapter 3.
  - with regards to **SPS**, both EU and US agreements are WTO consistent. The EU agreement contains more WTO+ clauses, notably: guidelines for conducting verifications, schedules for reporting and consultation, specific rules on import administration and requirement to exchange information. Both EU and US agreements contain provisions regarding technical assistance programs to help Colombia and Peru comply with SPS standards. Finally, the US resolved the BSE issue and restored beef exports to COL and PER;
  - on **TBT** issues both EU and US Agreements restate obligations and commitments under the WTO TBT Agreement. They also adopt broadly the same approach to promoting greater cooperation between the parties on technical regulations, standards and conformance assessment. If anything the EU Agreement is more extensive and includes specific disciplines on labelling not in the US agreements. The US agreement also covers only technical regulations issued by central government and only has best endeavours wording on transparency for non-governmental bodies, which dominate US standards making;
  - with regard to **cross border services** the EU Agreement is at least as favourable as those concluded by Colombia and Peru with other main FTA partners including the US. Key EU interests were secured through improved access in many services market (financial services, telecommunications, transport, etc.). The EU has national treatment in service concessions and airports (Peru and Colombia), as well as in purchases of engineering and printing services (Colombia);
  - on **investment** or right of establishment the Agreement provides market access and national treatment on a par with the commitments made by Colombia and Peru in their agreements with the US. The one major difference being that the EU Agreement does not cover investment protection (although Member State bilateral investment treaties do) as the US agreement does;
  - in **public procurement** the provisions of the transparency provisions of Government Purchasing Agreements (GPA) of the WTO are effectively extended to Colombia and Peru thus favouring both US and EU suppliers, but the EU Agreement offers coverage of more entities in both parties and thus more potential for reciprocal liberalisation. In particular, the EU obtained access to the procurement of local municipalities. This places EU companies in a privileged position to bid for contracts from public works;

- **IPR protection** in the EU and US agreements is largely comparable, but the EU Agreement provides for very broad GI recognition. As the US treats GIs as part of intellectual property rights and opposes registers of GIs there is no such register in the US agreements;
- both the EU and US agreements cover **labour standards** and measures to help promote labour standards in the parties. The US agreements address non-compliance with labour standards as these affect trade and investment, which appears to be more restrictive than the aim of the EU Agreement to ensure compliance with the core ILO standards per se. On the other hand in the US (and Canadian agreements) the labour provisions are subject to dispute settlement provisions, whereas the EU approach has less immediate remedies for non-compliance;
- both EU and US agreements commit parties to pursue high levels of **environmental protection**, requiring the parties to effectively enforce domestic environmental laws and to adopt, maintain, and implement laws to fulfill obligations under environmental international environmental conventions. Both also include procedural guarantees that ensure fair, equitable, and transparent proceedings for the administration and enforcement of environmental laws. Finally, both EU and US agreements also contain provisions to ensure that views of civil society are appropriately considered through public consultations.

## 2.2 China - Peru FTA in comparison

China is emerging as a major trading partner for Latin America, especially for Peru and is now Peru's second most important trading partner accounting for 9.6% of Peruvian exports and 10.3% of Peruvian imports. Peru sees China as an expanding market that helps diversification and enables it to off-set any decline in exports to its traditional markets due to the economic slowdown in the OECD countries. China is likely to expand investment in Peru, both in extractive industries and infrastructure, in order to guarantee sources of supply of key minerals. China and Peru commenced FTA negotiations in 2007 (September) and an FTA came into force in March 2010.

The China-Peru FTA is a comprehensive agreement and to a large extent matches the ambition of the EU Agreement. It covers tariffs, services, investment, intellectual property rights and environmental issues. In some key topics however, the EU Agreement is more far-reaching. Some 90% of trade between China and Peru will be free of tariffs, rather less than the EU Agreement, and only after long transition periods of up to 17 years. With less coverage more sensitive sectors are excluded, such as agribusiness, fish farming, forestry, tourism, hydrocarbons, services and above all minerals (copper) in the case of Peru. It should be recalled that Peru's average applied tariff is 8 %, with an MFN bound tariff rate of 30%, except for 29 sensitive agricultural goods (e.g. maize, wheat, sugar, sugar substitutes and certain dairy products) which have rates of 68%.

The highlights of the Peru-China agreement are as follows:

- 90 % of **goods trade** between the two countries will eventually enjoy zero tariffs with phase-out periods up to 17 years.
- duty free access for most **agricultural products** exported to Peru. Most fish products, fruits and vegetables are duty free immediately, while bovine meat, dairy products and other sensitive staple crops will become duty-free within 10-15 years;
- Peru removes tariffs on most **manufactured goods** from China, with most chemicals, minerals and metals, and heavy machinery, being duty-free immediately. Most other products will be duty free within 10 years; paper products within 5 years; electrical products between 5-10 years; motor vehicles (of all capacity engines) after 10 years; medicines and cosmetics after 10 years; textiles,



- clothing and footwear are mostly excluded and where they are not there is a complex tariff structure which suggests quite heavy protection. China has only excluded wood and tobacco products;
- the **rules of origin** applied are mostly change of tariff heading (CTH) or regional value content (RVC) and sometimes a combination. Textiles especially natural fibres have restrictive rules of origin, CTH at 2 digit level and 50% RVC. Other restrictive rules correspond to the sectors that retain tariff protection such as pharmaceuticals and cosmetics (Annex 4a China-Peru FTA). The China-Peru agreement only offers bilateral cumulation. De minimis is 10%;
  - the provisions on **TBT and SPS** are broadly in line with the EU Agreement and reaffirm WTO rights and obligations as well as seek to apply the multilateral provisions more effectively. Specialist committees are established to deal with TBT and SPS issues just as in the EU Agreement;
  - the **services** chapter of the China – Peru agreement follows the GATS approach. Peru's schedule limits access under mode 4 (i.e. Chinese workers providing services in Peru). There are also restrictions on accounting, engineering services relating to construction and a number of restrictions in financial services, as well as no liberalisation of postal and courier services or education;
  - the chapter 9 provisions on **investment** offer post establishment national treatment (Art 129), in other words investment protection using standards of protection equivalent to most standard bilateral investment treaties, namely fair and equitable treatment, classic and de facto expropriation and investor-state dispute settlement with recourse to ICSID arbitration. There appears to be no pre-establishment national treatment (i.e. right of establishment) under this chapter, but Art 131 provides for MFN treatment. In other words China benefits from any liberalisation (pre establishment national treatment) granted to the EU, US or any other trading partner under any agreement negotiated by Peru;
  - in **intellectual property rights** the agreement does not appear to be TRIPs plus except with regard to geographic indications (GI) . Peru recognised 22 Chinese GI, while China recognised 4 Peruvian GI.
  - unlike the EU (and US agreements) the China – Peru agreement has nothing substantive on **labour standards or environmental protection**, but these are included in a long list of policy areas in chapter 12 in which there is to be cooperation. Finally the China – Peru FTA establishes a Free Trade Commission, no less than 8 specialist sub-committees and a WTO-type dispute settlement procedure based on a three person panel.

In summary this first Chinese FTA negotiated with a Latin American country offers a comprehensive model, which comes fairly close to matching the range of issues covered by the EU Agreement even if not quite so liberal.

### 2.3 Comparison with Canada-Colombia and Canada-Peru agreements

Finally by way of comparison there are also the Canada-Colombia Free Trade Agreement (CCOFTA), which entered into force in August 2011 and the Canada-Peru Free Trade Agreement (CPOFTA) which entered into force in August 2009. Generally speaking Canada has followed the NAFTA model for its FTAs and this is also reflected in the agreements with Colombia and Peru.



Canada and Colombia are important trading partners. Colombia is Canada's second largest South American export market, after Brazil, with a total value of Canadian exports of CAN (Canadian dollars) 644.3 million in 2010, consisting largely of agricultural goods including wheat, barley and lentils, as well as industrial products, paper products and heavy machinery. Canadian services exported to Colombia in 2010 were valued at CAN102-million. Colombian exports to Canada totalled CAN717.2-million in 2010, including coffee, bananas, coal, fuel and flowers. Two way trade between Canada and Peru is greater (CAN2.8billion in 2008) with Peru having a large surplus thanks to exports of gold, zinc and copper ore.

**The main elements of the Canadian agreements are:**

- the vast majority of Colombian and Peruvian exports will enter Canada duty-free immediately (including textiles, industrial goods and most agricultural products).<sup>4</sup> Nearly all Colombian and Peru tariff lines will be fully liberalised within 15-22 years. Most agricultural tariffs will be removed but over periods ranging from three to 22 years. Some of Canada's most important agricultural exports will be duty-free immediately (these include: wheat, barley, peas, and lentils; although TRQs (Tariff rate quotas) will be maintained for beans and beef products). Eventually, most Canadian agricultural exports will become duty-free (pork, canola oil, other oilseeds, animal fat, frozen French fries and whiskey). Canadian tariffs will be reduced faster with more tariff lines going to zero on entry into force and the remainder phased-out faster over three, seven or 17 years. Canada has also retained tariff rate quotas on important domestic products (including: certain dairy, poultry and refined sugar products). Many non-agricultural products will enter Colombia and Peru duty-free immediately with the vast majority of the rest phased-out within 10 years;
- on rules of origin Canada uses change of tariff heading (HS 2), 10% de minimis percentages, and allows bilateral cumulation only;
- TBT and SPS measures are similar to the US agreement. The Canada – Peru Agreement establishes an SPS Committee;
- in services Canada has GATS plus access in Peru in key service sectors such as mining, energy and professional services, as well as access in financial services; These are similar to the EU and US agreements;
- for investment the Canada - Peru agreement offers investment protection in line with the NAFTA norm and builds on an existing Peru-Canada Foreign Investment Promotion and protection Agreement. There are the same provisions in the Canada –Colombia agreement.

The Canada agreements also include labour and environmental provisions. These require the parties to comply with the 1998 ILO Declaration on Fundamental principles and Rights at Work as in the case of the US agreements. There is specific dispute settlement and non-compliance can result in financial penalties to be paid into a cooperation fund. On the environment the agreements require compliance with certain multilateral environment agreements including the Convention on Biodiversity.

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<sup>4</sup> For details of the Canada- Peru and Canada – Colombia Agreements see DFAT website <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/index.aspx?lang=en&view=d>

**Main Differences with EU FTA:**

- The **agricultural phase-out** is longer for Canada (22 years) than the EU (17years);
- **services sector, public procurement and investment** liberalisation is largely the same as for the EU Agreement. Although the EU obtained special concessions in maritime and air transport services.
- on **SPS**, the EU agreement contains more WTO+ clauses, notably: guidelines for conducting verifications, schedules for reporting and consultation, specific rules on import administration, and requirement to exchange information.
- **on rules of origin**, they both change of tariff heading, but the EU Agreement includes diagonal cumulation across the Central American region.
- the EU Agreement includes reduced **non-tariff barriers** for spirits.
- Canada obtained far less **GI** recognition.

**2.4 Impact on the EU agreement on Andean Community**

It is unlikely that the EU Colombia – Peru Agreement has contributed significantly to the difficulties facing the Andean Community (CAN). Integration within the CAN has been mainly undermined by developments within the region or in the divergent responses of the members of CAN to relations with the United States. Progress towards integration has been affected by an ideological split between Venezuela, Bolivia and to a lesser degree Ecuador on the one hand and Colombia and Peru on the other. Venezuela led the creation of ALBA (The Bolivarian Alliance for the peoples of Our America) (previously the Bolivarian Alternative of the Americas) in 2004. ALBA was motivated by a desire to promote an alternative to the liberal Free Trade Agreement of the Americas promoted primarily by the USA. ALBA envisages integration based on managed economic relations, infant industry protection with selective tariff liberalization, an apparent return to the Calvo doctrine (investment governed by national laws alone) and preferences for local suppliers in public contracts.<sup>5</sup> The policies embodied in ALBA are therefore difficult to reconcile with a broadly liberal trade agreement. Originally formed by Venezuela and Cuba, ALBA was joined by Bolivia in 2006 and Ecuador in 2009. Colombia and Peru opted to negotiate bilateral agreements with the USA.

In terms of substantive issues, one of the main reasons Bolivia gave for not joining the multi-party trade negotiations with the EU was the EU's inclusion of intellectual property right (IPR) protection, which Bolivia claimed would mean commitments on the part of the CAN Members that would be contrary to the Andean rules on IPR in Decision 486 CAN. In practice there was probably little desire on the part of Bolivia to enter negotiations with the EU as these would have been difficult to reconcile with its membership of ALBA. As the multi-party negotiations advanced the EU moved to compromise positions on IPR that provide scope for the CAN parties to protect public health. The Agreement contains extensive provisions setting out the scope to continue to use the flexibilities under existing multilateral intellectual property agreements (Art 197) and to confirm rights under the Convention on Biodiversity (Art 201). The EU also dropped demands for patent extension (Supplementary Protection Certificates) and compromised on five years for data exclusivity relating to pharmaceutical testing,

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<sup>5</sup> See Hurst, J. 'What is the Bolivarian Alternative for the Americas?' [www.americaquarterly.org/Hirst/ARTICLE#hurst](http://www.americaquarterly.org/Hirst/ARTICLE#hurst)

although ten years applies to agricultural applications. The EU had originally sought 10 years also for pharmaceuticals to be in line with EU legislation.<sup>6</sup>

Bolivia also justified its opposition to negotiations with the EU on the grounds that it did not wish to privatize public services. Any assessment of EU policy on FTAs would however, have shown that the EU uses a positive listing for services liberalization, which allows scope for the parties to exclude sensitive sectors, as Colombia and Peru have. The EU Agreement also explicitly states that the parties are not obliged to privatize nationalized sectors or companies (Art 107 in the Agreement). Indeed the Agreement's schedule on services includes a number of general exceptions that provide scope for the parties to pursue key social objectives.

Ecuador absented itself from the multi-party negotiations in July 2009 citing differences with the EU over what was at that time the still unresolved banana dispute. But the previously mentioned political difficulty reconciling joining ALBA (in June 2009) with the multi-party negotiations seem to be at least equally important. Ecuador rejoined the negotiations in February 2010 after the banana dispute had been resolved, but with restrictive negotiating objectives that were clearly unlikely to be achieved and could be seen as reflecting a lack of a genuine desire for an agreement.

As a general principle any bilateral or multi-party preferential agreements with certain members of a region can result in trade diversion and make it harder for that region to achieve a customs union. The Agreement minimizes such adverse effects of tariff preferences by providing for regional cumulation when determining rules of origin and scope for a further extension of regional cumulation to other countries that have or in the future sign agreements with the EU. Finally, the comprehensive nature of the EU FTA (as well as those of Colombia and Peru's other FTA partners) will tend to promote more transparent regulatory practices and standards that will also benefit other members of the CAN.

On balance therefore it seems unlikely that the Agreement will have made the prospects for CAN integration significantly worse than they already were due to the creation of ALBA and the US bilateral negotiations. As the EU Colombia-Peru Agreement shows flexibility in the course of negotiations could have accommodated many of the Andean partners' demands. The decisions of Bolivia and Ecuador (not to mention Venezuela) not to join the negotiations were ideological in nature. Having said this all bilateral agreements negotiated between individual members of a region could be seen to be impediments to regional integration.

## **2.5 Business views on the Agreement**

The balance of business opinion in the EU is strongly in favour of a rapid consent to the Agreement. Business Europe favours a speedy adoption of the EU Agreement with Colombia and Peru.<sup>7</sup> The European services sector as represented by the *European Services Forum* (ESF) strongly supports the early ratification of the EU Agreement. Contrary to arguments that the markets concerned are small, the ESF argues that taken together Colombia, Peru and the Central American parties to the Association Agreement have a combined population of 118 million with a growing demand for services. Services imports by Colombia for example, doubled between 2000 and 2010 to Euro 6.1bn. The services sector

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<sup>6</sup> There has been a general opposition to IPR provisions on the grounds that these prevent developing countries getting essential medicines. To this one must probably add that one of the aims of ALBA is to provide regional health services. This is one area in which Cuba can contribute given the strength of its health sector. So there were probably political reasons for opposing any measure that might be seen to be limiting Cuba's role in ALBA.

<sup>7</sup> See Business Europe comments on the Public Consultation on Future Trade Policy (of the EU), 4<sup>th</sup> August 2010. Accessible at <http://www.buinesseurope.eu/content/default.asp?PageID=659#Library>

also welcomes the significant commitments made by Colombia and Peru in the service sector that go far beyond these countries' binding commitments under GATS and beyond anything the countries have offered to other FTA partners. The main sectors benefiting would be business, telecommunications, construction, distribution and financial services. Beyond the specific commitments in terms of access, the ESF sees the Colombia- Peru Agreement as a positive model for EU trade relations with other countries in the region. Given that the US has now moved to ratify its agreements, a delay on the part of the EU is seen as having negative consequences for EU service exporters. Finally the ESF believes increased trade will also benefit economic development in Colombia and Peru as more efficient services promote greater productivity in the countries.

In Colombia, the business sector has positive view of the Agreement, which is seen as an opportunity to access new markets, to attract foreign investment and to boost employment. According to Santiago Montenegro, the President of ASOFONDOS, the Agreement with the EU will allow national products to access an important market under preferential conditions, promote the creation of new employment, assure a more stable access to the European market and provide efficient mechanisms to resolve any trade disputes. ASOFONDOS wants the international community, and the parliamentary mission of the European Union to acknowledge the efforts that have been made by the Colombian government to protect vulnerable social groups and to guarantee the respect for human rights.

The National Association of Colombian Entrepreneurs (Asociación Nacional de Empresarios de Colombia, ANDI) considers that the Agreement with the EU is vital, as Europe has been the destination of more than USD4 billion in exports for Columbia last year. ANDI estimates that within the first year of implementation the Colombian GDP would increase by one percentage point<sup>8</sup>. It also highlights that the Agreement includes important measures to allow the dairy sector – one of the sectors most vulnerable to European competition - to become competitive vis-à-vis European dairy firms. Therefore the ANDI sees the agreement as an incentive to develop the productive sector, respecting international standards of quality, and thus, gaining competitiveness.<sup>9</sup>

ACOPI (the Colombian Association for medium and Small Firms) has stated that the Small and Medium enterprises will benefit from better access to intermediary goods and machinery. Eugenio Marulanda, the President of the Colombian Confederation of Chambers of Commerce, has encouraged the European Union to accelerate the approval of the treaty.<sup>10</sup>

The business sector in Peru has expressed its satisfaction with the conclusion of the negotiations of the Free Trade Agreement with the European Union. It views the Agreement as an "important opportunity for development"<sup>11</sup>. The President of CONFIEP, Ricardo Briceño, (National Confederation of Private Business Institutions) highlighted that the agreement will be an opportunity to attract investment, promote technological exchange and boost innovation. He further noted that the agreement presents no threat to the Peruvian producers, as the main EU export sectors are capital goods, which are necessary for the Peruvian business sector to capitalize their companies. Therefore, according to Briceño, there is complementarity between Europe's and Peru's export products.<sup>12</sup>

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<sup>8</sup> <http://www.americaeconomia.com/negocios-industrias/empresarios-colombianos-desestiman-reclamos-del-sector-lacteo-por-tlc-con-la-ue>

<sup>9</sup> <http://economia.noticias24.com/noticia/16599/empresarios-colombianos-destacaron-importancia-de-firma-de-tlc-con-la-ue/>

<sup>10</sup> ibid

<sup>11</sup> <http://www.misfinanzasenlinea.com/noticia.php?nid=15264>

<sup>12</sup> ibid

Similarly the President of the Peruvian Exporters' association (Asociación de Exportadores ALDEX) Juan Varilias Velazquez, noted that both economies are complementary. The Chamber of Commerce of Lima has highlighted the benefits the Agreement will bring for the exporting sector, especially in agriculture and fishing. Carlos Durand Chahud, the president of the CCL (Lima's Chamber of Commerce) has noted that the agreement will provide clear rules that will enhance investment and increase exchange in goods and services. According to Durand Chahud, the agreement will encourage the production of goods with a higher value-added and attract foreign direct investment<sup>13</sup>. Furthermore, the Peruvian business sector considers that non-tariff barriers should be identified, in order to take full advantage of the Agreement.

## 2.6 Civil society reaction in the European Union and Colombia and Peru

Most of the criticism of the Agreement within the EU has come from civil society concerned that the Agreement would be seen as condoning human rights abuses, or that it would have a negative impact on sustainable development in Colombia and Peru. This section provides an overview of the main concerns that have been raised. It is divided into two sections. Issues that are related more to the direct trade effects of the Agreement and issues related to human rights and sustainable development (i.e. labour standards and environmental protection). In general the European organizations, such as organized labour, OXFAM, Christian Aid and CAFOD have been mainly concerned with human rights violations and negative environmental impacts, while smaller organizations, mainly Latin American (such as the *Red Colombiana de Acción Contra el Libre Comercio-RECALCA*) have also criticized what they see as asymmetric concessions by Colombia and Peru and the impact on state sovereignty.

On the more directly trade-related points:

- (1) *Red de Acción frente al Libre Comercio* argues that European manufactures, service industries and subsidized agricultural producers will benefit from access to new markets and Colombia and Peruvian producers will not be able to compete, while all that Colombia and Peru get is the legal security of zero tariffs that they largely already benefit from under the GSP + scheme. The provisions on investment and government procurement are seen as reducing policy space and making it difficult for future governments to promote national industries. The provisions on intellectual property rights are criticized as making it more difficult for the production of generics and limiting access to medicines. Key subjects for Colombia and Peru, such as the recognition of the rights of the migrant workers and their families in the EU were not included in the agreement;<sup>14</sup>
- (2) the provisions on capital movements have been criticized as potentially limiting the ability of both countries to regulate the financial services industry and apply preventative measures against speculation and volatility (Van der Stichele and Van Ols, 2010). This criticism is based on the grounds that the Agreement requires that financial regulations under the prudential carve out (see below) should be "no more burdensome than necessary". The provision in the Agreement granting interested parties the opportunity to comment before a new financial law is decided is also seen as providing a direct channel for the financial services industry in EU countries to lobby for liberalisation;
- (3) the Agreement has been criticized for dismantling of the Andean price band system, designed to stabilise the price of imported agricultural products, protect domestic consumers and avoid price distortions caused by subsidies in other countries. According to analysis undertaken by Bouët et al. (2008) the agreement will negatively affect the domestic production of some types of agricultural

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<sup>13</sup> [http://spanish.news.cn/economia/2010-05/20/c\\_13305162.htm](http://spanish.news.cn/economia/2010-05/20/c_13305162.htm)

<sup>14</sup> <http://www.recalca.org.co/>

goods, including dairy production, because of the sectoral shifts anticipated as a result of the agreement;

With regards to the human rights and environmental issues organized labour and other civil society NGOs argue that the ratification of the Agreement will:

- (4) be seen as condoning human rights violations and that the human rights clause has no concrete enforcement provision.<sup>15</sup> The ABColombia, a coalition of EU and Colombian NGOs argues that human rights violations continue despite commitments made by President Santos when he took office in 2010.<sup>16</sup> It is also argued that the Agreement's coverage of human rights and labour conventions is less than that of the existing GSP + and that there are no specific dispute settlement provisions covering the sustainable development provisions in the agreement;
- (5) accentuate the humanitarian crisis of displaced people and legitimize illegally appropriated land and other assets. While it is recognized that the Land Restitution Bill adopted by the Colombian government addresses this problem, it is argued that it has not gone far enough;
- (6) result in increased investment in extractive activities, which although in line with Colombia's economic development strategy, creates competition for land and water, with negative effects in rural areas populated by indigenous groups that have – contrary to the ILO Indigenous and Tribal Peoples Convention C 169 - not been involved in decision-making;
- (7) cause environmental damage by increased output putting pressure on water usage, deforestation and the biodiversity in the region. The position paper of the Central American, Andean and European Organizations, Networks, and Social Movements, argues that the warnings included in the Sustainability Impact Assessment, were disregarded;
- (8) result in lost tariff revenue, especially in the case of Colombia, and thus loss in government revenue that may result in reductions in social expenditures.<sup>17</sup>

## 2.7 A brief assessment of third party criticisms

This section provides a summary of the counter arguments to the criticisms listed above. The issues are then discussed more fully in the following chapters.

- (1) It is correct that existing EU tariffs are mostly zero under the GSP + programme, so that actual tariff reductions will be asymmetrical. But Colombia and Peru will benefit from secure preferential access to the EU market, regardless of any changes in the GSP scheme. The fact that EU tariffs are already zero on most products suggests that concern about the environmental impact of the Agreement on land use is probably overstated. There is also some ambiguity in the data from the SIA study, which has been widely cited in support of the case that the Agreement will lead to greater pressure on land use. (See chapter 4, page 25)

The case for policy space rests on the assumption that promoting national industries (i.e. infant industry protection) is effective. The recent economic growth, including export growth, in Colombia and Peru suggest that the liberal policies pursued by these countries have not been without success. Evidence suggests that infant industry protection requires the right domestic political and economic conditions which have not generally been satisfied in the region to date. It can be equally argued that the more

<sup>15</sup> See International Trade Union Movement presses in Brussels for the EU not to sign FTA with Colombia, 29 April 2009 [www.oidhaco.org/uploaded/content/category/739296349.pdf](http://www.oidhaco.org/uploaded/content/category/739296349.pdf)

<sup>16</sup> ABColombia Christian Aid, CAFOD, Oxfam GB, SCIAF, Trócaire, *EU Trade Agreement with Colombia and Peru*, [http://www.abcolombia.org.uk/downloads/8FE\\_EU\\_trade\\_agreement\\_with\\_Colombia\\_and\\_Peru.pdf](http://www.abcolombia.org.uk/downloads/8FE_EU_trade_agreement_with_Colombia_and_Peru.pdf)

<sup>17</sup> See Olivet and Novo (2011).



transparent provisions on government procurement and predictable conditions for foreign investment envisaged in the Agreement are a more effective means of promoting development. Leaving aside the debate on infant industry protection versus progressive liberalisation, there remains policy space under the agreement. Thresholds for coverage of government procurement mean the supplies of small companies will not fall under the scope of the agreement. Non-discriminatory measures to promote employment or small and medium sized companies are also compatible with the agreement. (See chapter 5 for more details).

(2) With regard to capital movement and the regulation of financial markets, the prudential carve out for financial market regulation (Art 154) means national regulators are not constrained in regulation required to protect investors or the integrity and stability of financial systems. The requirement that this carve out will not be more burdensome than necessary is to ensure that it is not used as a covert form of protection and is therefore perfectly normal and justified in a trade agreement. The service schedules for Colombia and Peru enable the governments or regulators to determine the form of establishment of financial institutions. (See Section 4.4.2) With regards to capital movements there is a safeguard provision (Art 170) that enables the introduction of capital controls when capital movements cause or threaten to cause serious difficulties for exchange rate of monetary policies.

(3) The Agreement explicitly permits the continued use of the Andean price band system (Article 30 of the Agreement) for agricultural goods covered and modifications in the future.<sup>18</sup> On dairy products the Agreement grants the EU tariff rate quotas and progressive liberalisation over 15 years.<sup>19</sup> A safeguard kicks in if imports surpass 20% of the yearly quotas agreed. The EU is also to provide an additional €30 million to be granted over 5 years to help finance the restructuring of small-scale milk production, although this will not be additional funding and will come from the EU's existing development support for Colombia.<sup>20</sup>

(4-6) The concerns under points 4-6 are addressed by Article 1 of the Agreement, which contains a standard human rights clause as did Art I of the 2003 Cooperation and Political Dialogue Agreement between the EU and the Andean Community. This states that 'respect for the Universal Declaration of Human Rights as well as the rule of law underpins the policies of the parties and constitutes an essential element of th(e) Agreement'. This can be interpreted to cover civil, economic and social rights including labour standards. The human rights clause is a positive obligation so that the Parties to the Agreement must ensure the respect of human rights within their jurisdiction. The human rights clause is enforceable in that a violation enables the other party to adopt 'appropriate measures' that are in accordance with international law, proportional and the least disruptive to ensure implementation of the agreement. So the powers are there to act if Colombia or Peru fail to make continued progress on the human rights front. The key issue therefore appears to be not whether there are sufficient powers but how ready the EU will be to use them? In practical terms the issue will be how the various peer review mechanisms and other pressure can be brought to bear to ensure compliance. It is a matter of political judgement as to whether the ratification of the Agreement will be seen as condoning still inadequate protection of human rights or as a means of consolidating the progress that has been made. The EU Member State governments have judged that ratification and engagement is the better option.

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<sup>18</sup> Article 31 permits the EU use of a system of entry prices for the fruit and vegetable sector.

<sup>19</sup> This includes: milk powder (Colombia: 4.500 metric tonnes (MT); Peru: 3.000 MT); cheese (Colombia: 2.300 MT; Peru: 2.500 MT); buttermilk (Colombia: 2.500 MT; Peru: immediate liberalisation). These numbers will increase gradually and steadily at an annual rate of 10%. The EU also agreed to withdraw export subsidies on dairy products that are liberalised under the Agreement.

<sup>20</sup> See: [http://www.gruposur.eu.org/IMG/pdf/ENG- la\\_mala\\_leche\\_def .pdf](http://www.gruposur.eu.org/IMG/pdf/ENG- la_mala_leche_def .pdf)

(7) Title IX of the Agreement on trade and sustainable development contains extensive provisions on labour (Art 269) bio-diversity (Art 272), flexible development mechanisms (Art 271), fisheries (Art 274) and climate change (Art 275). These provisions, for example, require the parties to promote the effective implementation of ILO conventions on core labour standards. There are also similar provisions on environmental agreements. The Title IX coverage of the international conventions is not as wide as the GSP+ scheme, but if one interprets the human rights clause to cover the labour standards not explicitly listed the only conventions not covered concern the interdiction of trade in narcotics. (See section 3.2 below). There is also no specific dispute settlement provision, but there is monitoring and enforcement by means of a Sub-Committee on Trade and Sustainable Development, the possibility of review by an independent Expert Group and obligations on any non-conforming party to present a programme of measures to bring about compliance. There is also provision for the involvement of civil society NGOs.

(8) Tariff reductions will result in reduced revenue, though more for Colombia than Peru. This reduction in revenue will be phased over a number of years so as to facilitate adjustment to alternative forms of revenue raising (i.e. local taxes can be used to compensate). Provided there are efficient tax systems the increase output resulting from the Agreement will result in compensatory increases in tax revenue. Ultimately, whether revenue from tariffs or other forms of taxation are transferred to social projects is a decision of national governments.

### **3. LEGAL ASSESSMENT**

This chapter discusses how the Agreement relates to the EU's approach to 'new generation' free trade agreements', how it compares to the EU's GSP+ scheme for developing countries and how the provisions on trade remedies, including safeguards and dispute settlement compare to WTO rules.

#### **3.1 The EU-Colombia Peru FTA and the new generation of EU FTAs**

The content of the EU Colombia Peru FTA is consistent with the new generation of FTAs being negotiated by the EU. In terms of tariffs it will easily exceed the EU definition of 'substantially all trade' and therefore be consistent with what is generally understood to be the requirements of GATT Art XXIV on this point. On rules of origin it applies diagonal cumulation and scope for an extension of cumulation to all regional partners that have negotiated agreements with the EU. This is consistent with the EU aim of facilitating intra-regional trade among its trading partners.

Beyond tariffs the FTA is comprehensive covering TBT and SPS issues. As for previous EU FTAs the Agreement provides WTO plus procedural rules to help identify and address potential barriers to trade in a speedy fashion through recourse to consultation and cooperation in specialised committees, formal dispute settlement procedures as an ultimate means of redress.

There are significant commitments on services (using combination of positive and negative listing approach) that far exceed the commitments of the EU's partners under the GATS, provisions on intellectual property rights that are broadly TRIPs consistent but TRIPs plus with regard to Geographic Indications, one of the EU's offensive aims.

The Agreement is in line with the EU objective of promoting comprehensive trade agreements in that investment, government procurement and competition, as well as trade facilitation are all included. The provisions on investment are however, more of the 'old' generation of FTAs in that there are provisions on freedom of capital movement and access in the form of establishment, but no investment protection. Comprehensive investment provisions covering liberalisation and protection are currently



being sought in the negotiating mandates for other current FTA negotiations. This limited coverage of investment is due to the fact that the agreements were negotiated before the application of the extension of EU exclusive competence to cover investment in the Treaty of Lisbon.

The provisions on government procurement and competition are in line with the EU approach to new generation FTAs. The procurement chapter effectively extends the GPA rules in terms of transparency to include Colombia and Peru. With regard to 'liberalisation' commitments under the procurement chapter there is coverage at central and sub-central government level. The competition rules set out agreed objectives for competition policy and thus appear to go further than many agreements on competition, which focus on cooperation in enforcement.

The EU Colombia – Peru FTA along with the EU Central America FTA extends the reach of the new generation of FTAs to Latin America and could therefore be seen as the model for further agreements. The previous agreements with Mexico and Chile were of an older generation.

### **3.2 Comparison of the Agreement with the GSP + scheme**

As will be discussed below in more detail the GSP + scheme operated by the EU already provided Colombia and Peru with tariff free access for almost all product lines, so that the FTA mainly provides a legal guarantee for the continuation of such preferences. The GSP + scheme being an autonomous EU measure can be changed at any time and the EU is indeed currently reviewing the GSP scheme with a view to focusing preferential access on least developed and lower middle income countries. This could mean Colombia and Peru could cease to benefit from duty free access to the EU unless the Agreement is ratified. For some products, such as ethanol MFN (Most Favoured Nation) tariffs would be a serious issue for Colombia in particular.

The Agreement does provide for better access in the - form of lower tariffs - to the EU market for a few important products such as bananas. See chapter 4 for details. Apart from tariff reductions in these sectors the Agreement offers Colombia and Peru access to a range of EU markets such as in services and government procurement. Perhaps more important given the structure of Colombian and Peruvian exports, is that the Agreement offers various means for addressing other barriers to market access, notably in the field of sanitary and phytosanitary measures that promise improvements on the existing provisions under the WTO agreement. (See chapter 5 for details) For EU exporters the Agreement is more favourable than the GSP+ in that it provides for the phased removal of tariffs in Colombia and Peru that was not available under the GSP+ scheme.

The GSP+ offers preferential access to the EU market for CAN exports on the condition that the beneficiaries ratify and effectively implement 27 international conventions relating to sustainable development and basic human rights (including agreements on political and economic and social rights, torture, discrimination on grounds of race and gender, women's and children's rights, labour standards and certain conventions relating to environmental protection (e.g. conventions designed to combat trafficking in endangered species and to protect the ozone layer), as well as the various conventions relating to the fight against illegal drugs production and trafficking). The beneficiaries of the GSP+ must provide comprehensive information on the legislation and other measures taken to effect implementation. Failure to comply can result in GSP+ concessions being suspended, as has happened with Sri Lanka.

The Agreement in (Title IX) on Trade and Sustainable Development contains provisions aimed at 'strengthening the relationship trade and labour and environmental policies and practices',

strengthening compliance with commitments deriving from 'international conventions and agreements' in order 'to enhance the contribution of trade to sustainable development', promoting 'the conservation and sustainable use of biological diversity and of natural resources,' and strengthening 'the commitment to labour principles and rights...as an important element to enhance the contribution of trade to sustainable development' (Art 267). The scope of Title IX is narrower than the GSP + and it is not subject to the dispute settlement provisions of the Agreement in Art 298. Under the Agreement cases of non-compliance with the sustainable development provisions in Title IX are subject to an enforcement mechanism based on 'dialogue and effective communication.' Overall monitoring and compliance is covered by a Sub-Committee on Sustainable Development, with the possibility of establishing a Group of Experts to consider the case. The parties addressed in cases of non-compliance would then be obliged to produce an action plan. In cases of non-compliance with the human rights clause a party may take 'any appropriate action', which appears to include the withdrawal of benefits under the Agreement (see chapter 6). Table 3.1 lists the conventions with which compliance is required under the GSP+ that are not explicitly listed in Title IX of the Agreement. However, the general human rights clause in Art 1 of the Agreement can be interpreted as covering core human rights and labour rights and thus the Conventions 1-7 listed below.

**Table 3.1: GSP+ Conventions not mentioned in the FTA Title IX**

<b>Core human and labour rights UN/ILO Conventions</b>	
1.	Convention on the Prevention and Punishment of the Crime of Genocide (1948)
2.	International Convention on the Elimination of All Forms of Racial Discrimination (1965)
3.	International Covenant on Civil and Political Rights (1966)
4.	International Covenant on Economic Social and Cultural Rights (1966)
5.	Convention on the Elimination of All Forms of Discrimination Against Women (1979)
6.	Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
7.	Convention on the Rights of the Child (1989)
<b>Conventions related to the environment and to governance principles</b>	
20.	The United Nations Framework Convention on Climate Change (1992)*
24.	United Nations Single Convention on Narcotic Drugs (1961)
25.	United Nations Convention on Psychotropic Substances (1971)
26.	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
27.	United Nations Convention against Corruption (2004)

\*The Kyoto Protocol of the UN Climate Change Convention is however covered by the Agreement

### 3.3 Trade remedies

Chapter Two of the Agreement covers trade remedies. This section discusses briefly the countervailing duties, the anti-dumping provisions and then the safeguards.

#### 3.3.1 Countervailing and anti-dumping duties

The agreement provides for countervailing duties in compliance with the existing WTO rules. There are also transparency rules regarding the provision of subsidies in Art 293 (general transparency requirements). The latter require that the parties provide detailed information on the level of subsidies starting two years after the entry into force of the agreement. Such information on the subsidy programme will then be reviewed in the Trade Committee.

The EU and the CAN parties to the agreement can also have recourse to anti-dumping actions. Here the agreement again simply refers to the existing WTO rights and obligations as is the practice in almost all bilateral FTAs. So there is no suppression of anti-dumping as has been the case in a minority of (non-EU) FTAs. There are however provisions on 'public interest' in assessing the application of anti-dumping actions in the case of the EU and Colombia, and the Agreement also requires the use of the lesser duty rule (of either the duty to remove the threat of injury or the dumping margin). The dispute settlement provisions in the Agreement do not apply to countervailing or anti-dumping duty actions, so that an aggrieved party would have to have recourse to WTO dispute settlement.

#### 3.3.2 Safeguard actions

The Agreement (in Art 43) reaffirms the party's rights and obligations under the multilateral safeguard provisions in Art XIX of the GATT 1994. Again the dispute settlement provisions of the Agreement do not apply to this section of the agreement except to the prohibition of parallel bilateral and multilateral safeguard actions.

The bilateral safeguard provisions of the Agreement are in line with those adopted in other EU FTAs (Art 48). The criteria for assessing serious injury or threat therefore and causality between the imports and the injury are those of the GATT Art XIX. Bilateral safeguard actions can only be taken during the transition period (as specified in the schedules for tariff liberalisation). Safeguard measures can only be taken after a period of consultation and the measure must not exceed that MFN tariff rate or the base rate of tariff (in other words the tariff before preferential liberalisation began as also set out in the schedules). Bilateral safeguard measures may not exceed two years, but can be extended if injury persists and the industry concerned is undergoing adjustment, up to a maximum of four years. At the end of a safeguard the tariff rate must return to the rate that would have applied had the scheduled reduction been carried through.

The bilateral safeguard measure is essentially the same as in the EU Korea FTA (Chapter 3, Section A, Art 3.1 of the EU – Korea FTA). The one major difference is that under the Agreement a safeguard action may be applied with regard to the outermost regions of the European Union. In other words the injury or threat of injury can be determined for production in the market of an outermost region of the EU (not for the EU market as a whole). This is relevant if exports from Colombia or Peru threaten injury to a sector in, for example, The Azores, Madeira or the Canary Islands.

Agricultural safeguard measures are also available for Colombia and Peru under Art 29. These measures may be applied to products listed in Annex IV and essentially covers a number of sensitive dairy and meat products. All parties retain their rights under Art 5 of the WTO Agreement on Agriculture, but there can be no parallel use of safeguard actions (in other words it is not possible to use bilateral and

multilateral safeguard measures).<sup>21</sup> As noted above Article 30 also allows Colombia and Peru to retain their price band systems and Art 31 allows the EU to retain its entry price band system for fruit and vegetables. Art 32 prohibits the use of export subsidies on agricultural products that have been fully liberalised, but in the event of these being applied compensation can be applied up to the MFN tariff level.

Art. 170 provides for a safeguard in the form of capital controls when capital movements cause or threaten to cause serious difficulties for exchange rate or monetary policies. Such safeguard actions are limited to one year, but can be extended. In the case of the EU and Peru the criteria for such an extension appears to be higher as such measures can only be taken in 'extremely exceptional' circumstances, while for Colombia the criterion is 'exceptional circumstances.' Art 296 provides for trade restrictions in the additional case of a balance of payments crisis. The conditions for such an action are similar to those set out in GATT and IMF rules.

### **3.4 Dispute Settlement Clauses**

The dispute settlement provisions for the agreement in Title VII Art 298 and following are based on the WTO type procedure and are equivalent to provisions in other EU FTAs. There is an emphasis on finding mutually agreed solutions to any dispute before resorting to the arbitral panel. Requests to establish a panel are made to the Trade Committee. The arbitration panel is to consist of 3 members drawn from a list of 25 suitably qualified experts. Each party appoints 5 experts to this list and a further 10 non-national (of any party) experts are appointed by mutual agreement (Art. 303). There is also provision for a further sectoral list of experts to deal with the more technical issues.

Time limits for the various stages or any dispute settlement procedure are set in much the same way as WTO dispute settlement. The panel is to seek a consensus, but if necessary a ruling of the arbitral panel can be made by majority, with no provision for dissenting opinions. Interpretation of the agreement is to be in line with customary international public law. A code of conduct for arbiters is to be adopted by the Trade Committee. Rulings of the panel have no direct effect, i.e. they establish no rights for natural or legal persons under EU law.

As noted above there is a more dialogue based means of dealing with disputes under the Title IX provisions on sustainable development (see section 6 for details) and an alternative and faster, less costly option for companies seeking a remedy exists in the form of the mediator mechanism in Art. 323 for non-tariff barriers to trade, such as in the field of technical barriers to trade.

## **4. OVERALL ECONOMIC AND COMMERCIAL ASSESSMENT**

The EU Colombia and Peru FTA is a comprehensive agreement, covering both trade in goods and services. On entry into force of the agreement 85% of industrial goods trade with Peru, and 65% with Colombia will be duty free<sup>22</sup> and there will be more or less complete liberalisation after the transition period. For those goods not fully liberalised the Agreement provides for increases in quota allowances for goods such as sugar, and reductions in tariffs on other sensitive goods such as bananas. Other products not covered by the current GSP+ regime, which both countries would export on most-

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<sup>21</sup> The agricultural safeguard under Art V AoA can only be used if the products concerned have been included in tariffication and the WTO member concerned has reserved the right to use the safeguard. Colombia has done this for 56 products but not Peru.

<sup>22</sup> ICTSD (2011).

favoured-nation (MFN) terms in the absence of an FTA, and which will benefit from the new agreement include beef, pork, rice and maize.<sup>23</sup>

This chapter summarises the available secondary literature on the potential economic effects of the new agreement, including in particular the results of a Sustainability Impact Assessment (SIA). The SIA was however, carried out for an EU Andean Community agreement, not for an EU Colombia Peru agreement. By analysing the potential impact of the Agreement the chapter also addresses some of the concerns raised by civil society NGOs summarised in chapter 2 in more depth.

#### **4.1 Results of Sustainability Impact Assessment**

The Sustainability Impact Assessment (SIA) for the EU-Andean FTA was undertaken in 2009 before the full details of the Agreement with Colombia and Peru were known, and prior to the definitive departure of Ecuador from the negotiating table.<sup>24</sup> In the more liberal scenario it is assumed that: 97% of tariffs are removed on bilateral trade, which includes sensitive sectors such as bananas and sugar; 75% of services are liberalised; and finally, that trade facilitation is provided up to 3% of the value of total trade. The SIA presents the results of the static and dynamic effects of the agreement expected by 2018, incorporating such factors as capital accumulation and determining overall effects on Gross Domestic Product (GDP). The baseline model used in the scenario included:

- MFN tariffs;
- GSP+ preferences; and
- A post-Doha agreement, which includes agreement on sensitive products such as bananas and sugar.

The assumptions made in relation to services liberalisation include the removal of barriers to trade; these estimates are calculated as a share of overall services trade costs. In the case of the services supplied to the EU by the Andean countries, the estimated cost is 8%. The estimated cost to the EU of supplying services in Colombia is 33%, and 32% in the case of Peru. The following section presents some of the key findings from the SIA, first in terms of overall economic effects and then for specific sectors of interest: agricultural goods, industrial goods and finally, services.

##### **4.1.1 Overall Results**

Under the most ambitious modelling exercise undertaken, the largest immediate static gains as indicated by changes in Gross Domestic Product (GDP) from the EU-Andean agreement were posited to accrue to Ecuador and Bolivia, respectively, followed by Colombia and then Peru (Table 4.1). Ecuador and Bolivia of course opted out of the negotiations. These large potential gains reflect the higher levels of protection in these countries. The gains in all cases are small in terms of changes in GDP. In absolute terms however, the real income effects from the agreement are largest for the EU: from up to €1bn (1 thousand million) in the static short-term scenario and to €4 bn in the dynamic long-term scenario.<sup>25</sup> There is clearly a huge variation in the results of the two scenarios in this instance.

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<sup>23</sup> De Gucht (2010).

<sup>24</sup> The approach towards assessing the impact of the agreement makes use of a GTAP Computable General Equilibrium model.

<sup>25</sup> CEPR and Manchester University (2009) EU-Andean Trade Sustainability Impact Assessment, available at: <http://trade.ec.europa.eu/doclib/html/146014.htm>

In the case of the Andean countries, the real income effects are greatest for Colombia – the largest economy within the region in terms of GDP for which gains are projected of up to €394 million under the modest static short-term scenario and up to €2.76 billion under the dynamic long-term and ambitious scenario. Capital accumulation leverage effects are also shown to be largest in the case of the EU and Colombia.<sup>26</sup> In sum, the real income effects roughly double for all countries when moving from the modest to the ambitious scenario.

**Table 4.1: Results of GTAP modelling**

Country	Static/ short term effects				Dynamic/ long term effects			
	Modest liberalisation		Ambitious liberalisation		Modest liberalisation		Ambitious liberalisation	
	% change GDP	Income effect (€mn)	% change GDP	Income effect (€mn)	% change GDP	Income effect (€mn)	% change GDP	Income effect (€mn)
EU27	0.0	1043	0.0	2754	0.0	1571	0.0	4005
Bolivia	0.5	100	1.0	195	1.1	222	2.1	406
Colombia	0.2	394	0.6	1,229	0.5	1034	1.3	2761
Ecuador	1.2	551	1.2	541	1.8	834	1.9	868
Peru	0.2	277	0.3	436	0.5	696	0.7	940

Source: CEPR and Manchester University (2009)

#### 4.1.2 Agricultural Goods

Both Colombia and Peru are projected to gain the most from potential increases in output in the vegetables, fruits and nuts sector, Colombian potential increases are substantially higher at 11% compared to Peru at 0.7% (see Table 4.2). The EU is projected to experience the largest negative sectoral change in output in the vegetables, fruits and nuts sector (-1.5%) followed by the primary mining sector where a decline of -0.2%.

The sector shifts projected in the category of vegetables, fruits and nuts are almost entirely due to increases in banana production. Because the EU market is heavily protected, the large reduction in tariffs assumed in the SIA under the long-run ambitious scenario would result in a large increase of banana exports. In the case of primary mining, the increases in sector output for Colombia (0.4%) and Peru (0.5%) and decrease in the case of the EU are seen to be a result of expected increases in capital stock through investment under the long-run ambitious scenario.

<sup>26</sup> *Ibid.*

**Table 4.2: Agricultural goods, sectoral changes in output (%) and value added**

Sector	EU27		Colombia		Peru	
	Sectoral changes (%)	Share in total value added	Sectoral changes (%)	Share in total value added	Sectoral changes (%)	Share in total value added
Grains	0.2	0.2	-4.5	0.8	0.2	1.8
Vegetables, fruits and nuts	<b>-1.5</b>	0.5	11.1	2.9	0.7	2.1
Other primary foods	0.1	0.9	<b>-1.5</b>	3.9	0.5	2.8
Other agriculture	0.2	0.6	<b>-5.1</b>	1.8	0.3	3.0
Forestry	0.01	0.2	-1.0	0.3	0.02	0.7
Primary fishing	0.002	0.2	-0.05	0.8	0.09	2.7
Primary mining	-0.2	0.7	0.4	5.9	0.5	3.9
Processed foods, beverages, tobacco	0.07	2.9	-0.8	3.4	0.6	7.4
Total	-1.1	6.2	-1.5	19.8	2.9	24.4

Source: Adapted from CEPR and Manchester University (2009).

Note: Bold denotes large negative change; shaded denotes large positive change.

The SIA refers to an expected increase in palm oil, ethanol and cut flower exports from both Colombia and Peru and discusses some of the negative environmental and social effects of this expansion of production. However, it is not clear what category these products fall under in Table 4.2. An increase in 'other agriculture' which presumably would include these products is projected for Peru (0.3%) but this is a relatively minor increase compared to say processed foods, beverages and tobacco (0.6%). In comparison, Colombia is expected to experience a substantial decline in output from this sector (-5.1%). As noted above the EU also already offers zero tariffs on these exports under the GSP+ scheme so the only increase in output would be that resulting from increased investment attracted by the guarantee of zero tariffs.

#### 4.1.3 Industrial Goods

The SIA estimates Colombia would experience the most growth in industrial output as a result of the implementation of the Agreement (Table 4.3). This is mostly in motor vehicles and parts (25.5%), followed by chemical, rubber and plastic products (8.2%) and textiles (7.2%). In Peru, similar to Colombia increases in output are seen as coming in chemical, rubber and plastic products (5.5%); metals (5.3%) and wearing apparel (3.4%) are also likely to benefit. These increases are seen to result from improvements in market access, again because of increased investment in these industries, including by European multinationals.



**Table 4.3: Manufactured goods, sectoral changes (%) and value added**

Sector	EU27		Colombia		Peru	
	Sectoral change (%)	Share in total value added	Sectoral change (%)	Share in total value added	Sectoral change (%)	Share in total value added
Textiles	-0.02	0.5	7.2	0.4	3.3	2.6
Wearing apparel	<b>-0.06</b>	0.5	2.1	0.7	3.4	1.4
Leather products	<b>-0.06</b>	0.2	<b>-2.0</b>	0.1	0.1	0.8
Wood products	0.02	0.6	<b>-5.8</b>	<b>0.1</b>	-0.5	1.9
Paper products, publishing	0.07	1.6	0.3	1.1	<b>-4.0</b>	1.9
Petroleum, coal products	0.05	0.1	0.3	0.5	0.4	0.1
Chemical, rubber, plastic products	-0.04	2.6	8.2	2.8	5.5	4.5
Mineral products	0.02	0.9	2.2	0.9	0.03	1.3
Ferrous metals	-0.04	0.5	6.0	0.8	0.4	0.0
Metals	-0.2	0.3	6.0	0.5	5.3	2.2
Metal products	0.01	1.6	0.8	0.4	-0.8	0.9
Motor vehicles and parts	0.02	1.7	25.5	0.4	<b>-1.2</b>	1.1
Transport equipment	<b>-0.07</b>	0.5	6.4	0.2	-0.4	0.5
Electronic equipment	-0.05	0.8	6.2	0.1	-0.5	0.7
Machinery and equipment	0.03	3.6	<b>-1.5</b>	0.8	<b>-5.6</b>	2.4
Manufactures	0.08	0.8	<b>-2.6</b>	0.5	<b>-1.1</b>	3.0
Total	-0.24	16.8	59.3	10.3	4.33	25.3

Source: Adapted from CEPR and Manchester University (2009).

Note: Bold denotes large negative change; shaded denotes large positive change.

#### 4.1.4 Services

Table 4.4 presents the estimated changes in the services sector for the EU, Colombia and Peru, respectively. The EU is projected to gain most in terms of increased output for its service providers under the assumed service liberalisation scenario, whilst Colombia and Peru will experience a decline. As discussed in detail in the SIA, the EU is the leading investor in the Andean countries accounting for more than a quarter of total FDI; the opening of services to EU companies is therefore expected to result in an increase in European investment seeking to establish a commercial presence. The gains in services output for the EU are projected to be largest in the maritime, recreation and insurance sectors. The insurance sector is also the one in which Colombia and Peru are both projected to experience the



steepest declines in output under the long-run ambitious scenario, because of increased competition with EU providers.

**Table 4.4: Changes in services output (%) and value added**

Sector	EU27		Colombia		Peru	
	Sectoral change (%)	Share in total value added	Sectoral change (%)	Share in total value added	Sectoral change (%)	Share in total value added
Utilities	<b>-0.01</b>	1.7	6.0	2.0	0.5	1.3
Construction	0.02	6.2	1.8	7.4	0.6	13.6
Distribution	<b>-0.02</b>	13.1	4.5	13.2	0.4	3.2
Other transport	0.04	3.7	1.2	4.1	-0.1	3.2
Maritime	0.06	0.5	0.1	4.1	-1.1	0.2
Air transport	0.1	0.4	-4.3	0.3	<b>-2.3</b>	0.5
Communications	<b>-0.01</b>	2.2	5.3	1.6	-1.0	2.1
Financial services	0.003	2.7	-3.1	2.6	-0.8	2.6
Insurance	0.05	1.0	<b>-19.8</b>	1.1	<b>-10.4</b>	1.1
Business services	0.02	19	<b>-8.5</b>	3.0	<b>-2.3</b>	6.1
Recreation and other services	0.06	3.8	<b>-10.3</b>	1.8	-0.1	7.6
Public services and dwelling	-0.005	22.7	2.0	33.1	0.4	8.9
Total	0.308	77	-25.1	74.3	-16.2	50.4

Source: Adapted from CEPR and Manchester University (2009).

Note: Bold denotes large negative change; shaded denotes large positive change.

## 4.2 Agreement on Trade in Goods

This section provides some of the main highlights of the agreement in terms of where the Agreement goes beyond the market access already available to Colombia and Peru under the EU's GSP+, and to the EU under the MFN regimes of Colombia and Peru. The approach adopted in the analysis as follows:

- first, we analysed those goods currently imported by the EU from the Agreement's partners that are not currently given duty free access in order to see if the new agreement improves their access;
- second, we analysed those goods currently imported by Colombia and Peru from the EU that are not given duty free access in order to see if the Agreement improves their access.

We therefore draw attention to the goods that are already traded and which may experience an increase because there is a tariff cut.

#### 4.2.1 EU-Colombia

Table 4.5 lists duty paying goods imported by the EU from Colombia, which accounted for 19% of total average imports 2008–10 in value terms.<sup>27</sup> As can be seen, the products listed at the EU's Combined Nomenclature (CN) 8-digit level as benefitting from an improvement in market access relative to the *status quo* are quite limited, comprising mainly of bananas (08030019) which will have a reduction in duties, and shrimps (03061350) which will be liberalised upon entry into force (EIF) of the Agreement. For these products that are currently imported we can say that there will be an improvement in market access under the Agreement compared to the *status quo* and an immediate transfer of tariff rents upon implementation of the Agreement.

**Table 4.5: EU imports from Colombia not currently duty-free under GSP+**

CN8	Description	Average 2008-10 (€ mn)	Share of total	GSP+	Treatment by EU in the Agreement
08030019	Bananas, fresh (excl. plantains)	783.9	18.1%	143 €/tonne/net	Reduction in annual stages to reach 75€/1 tonne on 1 Jan. 2020. If a 'trigger volume' (which increases each year) is exceeded during any year before then, the EU may suspend the pref. for up to 3 months during that calendar year and charge the MFN rate. Review due in 2019.
03061350	Frozen shrimps	40.6	0.9%	3.6	Free on EIF

Note: Only those goods which feature at the most disaggregated, national tariff line (NTL), level and which comprise at least 0.5% of total imports are presented.

Sources: Eurostat COMEXT data base; UNCTAD TRAINS data base; EC TARIC Consultation.

#### 4.2.2 EU-Peru

Table 4.6 lists the major imports from Peru that currently do not receive duty free treatment in the EU market. In total these goods accounted for only 1.6% of the total value of EU imports over the period 2008-10 in value terms.<sup>28</sup> Bananas account for a much lower share of these products in the case of Peru just 0.8% compared to 18% in the case of Colombia. Other agricultural goods also feature in the case of Peru that do not feature for Colombia including fresh table grapes, which will benefit from an improvement in market access under the FTA relative to the *status quo*.

<sup>27</sup> The total share of the 154 products currently imported and not duty free under GSP+ being 19.7%.

<sup>28</sup> The total share of the 188 products currently imported and not duty free under GSP+ being 3.9%.

**Table 4.6: EU imports from Peru not currently duty-free under GSP+**

CN8	Description	Average 2008-10 (€ mn)	Share of total	GSP+	Treatment by EU in FTA
08030019	Bananas, fresh (excl. plantains)	33.0	0.8%	143 €/tonne /net	Reduction in annual stages to reach 75€/tonne on 1 Jan. 2020. If a 'trigger volume' (which increases each year) is exceeded during any year before then, the EU may suspend the pref. for up to 3 months during that calendar year and charge MFN rate. Review in 2019. This is an improvement on market access under the GSP+.
08061010	Fresh table grapes	31.6	0.8%	0 tariffs (1.1-20.7 & 21.11-31.12 excl. var. Emperor 1.12-31.12); otherwise as Annex 2	According to entry price. No ad valorem element. This is an improvement on market access under the GSP+. Used to pay AV+EP from 21.7 to 20.11).

Note: Only those goods which feature at the most disaggregated, national tariff line (NTL), level and which comprise at least 0.5% of total imports are presented.

Sources: Eurostat COMEXT database; UNCTAD TRAINS database; EC TARIC Consultation.

#### 4.2.3 Colombia-EU

As has already been pointed out in Section 4.1, many more Colombian imports from the EU are subject to high tariffs – of 20% *ad valorem* or more – than is the case for Peruvian imports. Ninety per cent of total imports from the EU faced positive tariffs, ranging from 5% to 94% (Table 4.7). The products which have an applied MFN rate of 15% or more, and which account for at least 0.5% of total imports, are summarised in Table 4.8.

**Table 4.7: Colombian imports from the EU by tariff band**

	Value, Average 2008–10 (€ mn)	Share	No. of tariff lines	
			Total	Accounting for ≥0.5% of total value
<b>Total in HS 1-97</b>	<b>3,039</b>	<b>100.0%</b>	<b>5,296</b>	<b>19</b>
Tariff 35% or more	114	3.7%	30	1
20%	244	8.0%	1,280	1
15%	624	20.5%	1,295	3
10%	492	16.2%	776	2
5%	1,262	41.5%	1,743	10
Duty-free	304	10.0%	172	2

Source: ITC Trade Map (import data reported by Colombia); UNCTAD TRAINS database (tariffs).

None of the products that feature in Table 4.8 will be liberalised upon entry into force of the agreement. Instead all products will have their tariffs removed over time, ranging from six to eleven years. Whiskies and paper products which will be liberalised in the eleventh, and sixth year, respectively; motor vehicles will be liberalised in the eighth year of EIF of the agreement.

**Table 4.8: High-tariff Colombian imports from the EU**

NTL code	Description	Average 2008-10 (€ mn)	Share	MFN 2010	Treatment in FTA
2208300000	Whiskies	19	0.6%	20	Free 11th yr
4810131900	Paper and paperboard used for writing, printing or other graphic purposes	19	0.6%	15	Free in 6th yr
7306190000	Line pipe of a kind used for oil or gas pipelines, welded, of flat-rolled products of iron or steel	18	0.6%	15	Free in 8th yr
8421299000	Machinery and apparatus for filtering or purifying liquids	20	0.7%	15	Free 11th yr
8703231000	Motor cars and other motor vehicles, with spark-ignition internal combustion reciprocating piston engine of a cylinder capacity > 1.500 cm but ≤ 3.000 cm	14	0.5%	35	Free 8th yr

Note: Only those goods which feature at the most disaggregated, national tariff line (NTL), level and which comprise at least 0.5% of total imports are presented.

Source: ITC Trade Map; UNCTAD TRAINS database.

## 4.2.4 Peru-EU

In the case of Peru, 24% of the value of its imports from the EU faced duties – a much lower share than in Colombia. Of these, 22.9% faced the lower tariff rate of 9% whilst the remaining 0.9 % faced tariffs of 17% (Table 4.9)

**Table 4.9: Peruvian imports from the EU by tariff band**

	Value, Average 2008–10 (€ mn)	Share	No. of tariff lines	
			Total	Accounting for ≥0.5% of total value
<b>Total in HS 1-97</b>	<b>2,202</b>	<b>100.0%</b>	<b>5,090</b>	<b>24</b>
Tariff 17%	20	0.9%	580	-
Tariff 9%	503	22.9%	1,586	5
Duty free	1,679	76.2%	2,924	19

Source: ITC Trade Map (import data reported by Peru); UNCTAD TRAINS database (tariffs).

Of those products that account for 0.5% or more of current imports from the EU, and which could benefit from reductions in tariffs agreed under the Agreement, none are liberalised upon EIF of the agreement. Instead tariffs will be removed in the sixth year in the case of vaccines and medicaments, and in the eleventh year in the case of paper and paperboard, motor vehicles and games (see Table 4.10).

**Table 4.10: High-tariff Peruvian imports from the EU**

NTL code	HS6 description	Average 2008-10 (€ mn)	Share	MFN 2010	Treatment in FTA
3002209000	Vaccines for human medicine	18	0.80 %	9	Duty free 1 Jan Yr 6 (6 equal annual stages)
3004902900	Medicaments consisting of mixed or unmixed products for therapeutic or prophylactic purposes	31	1.40 %	9	Duty free 1 Jan Yr 6 (6 equal annual stages)
4810190000	Paper and paperboard used for writing, printing or other graphic purposes	18	0.80 %	9	Duty free 1 Jan. Yr 11 (11 equal annual stages)
8703239020	Motor cars and other motor vehicles with spark-ignition internal combustion reciprocating piston engine of a cylinder capacity > 1.500 cm but ≤ 3.000 cm	30	1.30 %	9	Duty free 1 Jan. Yr 11 (11 equal annual stages); if cylinder capacity between 1600 & 3000 cc liberalisation in six years
9504301000	Games (e.g. pinball machines)	15	0.70 %	9	Duty free 1 Jan. Yr 11 (11 equal annual stages)

Source: ITC Trade Map; UNCTAD TRAINS database.

Note: Only those goods which feature at the most disaggregated, national tariff line (NTL), level and which comprise at least 0.5% of total imports are presented.

#### 4.2.5 Are the Concerns of Third Party Actors Valid

Chapter 2 in section 2.6 summarizes the concerns expressed by some NGOs. In the previous subsections we have been able to identify those products that are currently imported and exported in sufficient quantity and subject to duties, and which will therefore benefit from the implementation of the Agreement and the immediate removal of duties, or their phased reduction. It is therefore possible to assess the trade-related concerns expressed by NGOs. In some cases these products correspond to those identified in the SIA, but in others they don't. For example, clearly in the case of Colombia its banana exports to the EU market - which account for the vast majority of the value of exports that do not currently receive duty free treatment - will benefit from the Agreement relative to the *status quo*.

In relation to biofuels such as bioethanol, palm oil and cut flowers – since the EU's GSP+ already offers duty-free treatment for these products the Agreement does not improve on the *status quo*. All biofuels exporters to the EU market, including Colombia and Peru, have to comply with formidable sustainability criteria (Wiggins et al. 2011). There are also the provisions of the sustainable development chapter discussed below in Chapter 6 that provide for monitoring of the sustainability of any increase output that might for example occur due to increased investment being attracted by the legal security of zero or lower tariffs on exports to the EU.

Since 90% of the EU's exports to Colombia are currently subject to duties of between 5% and 94%, the major gains for the EU in relation to trade in goods will occur in this market. None of products will be liberalised upon entry into force of the agreement; tariffs for motor vehicles will be removed in the eighth year of implementation of the agreement.

A far lower share of Peru's total exports to the EU is currently subject to duties than in the case of Colombia. Those that are include products such as bananas, which will benefit from improvements in market access under the Agreement compared to the *status quo*, as well as grapes. At present, 24% of EU exports to Peru are subject to duties. Of those that meet a value threshold of 0.5% of total imports, none will be liberalised upon entry into force of the agreement, all will have a phased reduction of tariffs that range from six to eleven years before duty free treatment is granted.

Despite the concerns that have been raised by NGOs regarding the dairy sector, in neither case in the analysis undertaken for Colombia and Peru do these products feature. The Agreement clearly permits the continuation of the Andean price band system for agricultural goods, which would include dairy products (Article 30). Moreover, the Agreement permits the use of agricultural safeguard measures for products listed in Annex IV. As noted above, this includes dairy products. Here both Colombia and Peru have listed import trigger volumes. Under the agricultural safeguard clause (Article 29), a party may apply an agricultural safeguard measure in the form of additional import duties on originating goods provided that the rate does not exceed the MFN applied rate or the base tariff rate. There is no requirement for prior notification or consultation before the imposition of a measure.

#### 4.3 Agreement on Trade in Services, Establishment and Electronic Commerce

The major difference between the *status quo* and the position on entry into force (EIF) of the FTA will be in the services sector and establishment, since the GSP+ relates only to goods

### 4.3.1 Highlights of Services and Establishment<sup>29</sup> Provisions

Table 4.11 summarises the main scope of liberalisation provided for under Title IV Trade in Services, Establishment and Electronic Commerce in relation to the cross-border supply of services (Modes 1 and 2) and the right to establishment (Mode 3). In both cases, a positive listing approach to negotiating modalities has been adopted. This means that only sectors listed are covered by the national treatment obligations of the agreement. The general provisions in the accompanying chapter then list the specific sub-sector exceptions. In this sense, the overall negotiating modality adopted is a mixed or hybrid approach.

**Table 4.11 Approach Towards Services Liberalisation - Cross-Border Supply and Establishment**

Scope	Cross Border Supply of Services (Mode 1 and 2)	Establishment (Mode 3)
<b>Definition</b>	The supply of a service: a) from the territory of another party into the territory of another party (Mode 1); and b) in the territory of a party to the service consumer of another party (Mode 2). Measure affecting cross-border supply includes measures in respect of: a) the purchase, payment or use of a service; and b) the access to and use of, in connection with the cross-border supply of a service, services which are required by that party to be offered to the public generally.	Any type of business or professional through: a) the constitution, acquisition or maintenance of a judicial person; or the creation or maintenance a branch or representative office within the territory of a party for the purpose of performing an economic activity.
<b>Sectoral Coverage</b>	Universal except audio-visual services, national maritime cabotage, and national and international air transport services.	Universal except mining or manufacturing of nuclear materials, production or trade in arms and ammunition, audio-visual services, waterway cabotage transport, processing, disposal and waste of toxic waste, and national and international air transport services.
<b>Negotiating Modality</b>	Positive listing	Positive listing
<b>Most Favoured Nation</b>	No provision	No provision
<b>National Treatment</b>	General provision, Article 120	General Provision, Article 113
<b>Market Access</b>	General provision, Article 119	General Provision, Article 112

<sup>29</sup> Establishment is defined as covering investment in goods and services (Art 110).

<b>Review</b>	No provision	Article 116 is on investment promotion and review which states that with a view to the progressive liberalisation of investments the EU and the signatory Andean countries shall seek to promote an environment attractive for reciprocal investment within their respective spheres of competence. This includes the review of the investment legal framework, environment and flow. This review should take place no later than five years upon EIF of the agreement.
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For sectors covered the following quantitative limitations on market access are NOT permitted, limitations on:<sup>30</sup>

- the number of establishments,' including quotas, monopolies, exclusive rights or other requirements such as economic needs tests;
- the total value of transactions or assets in the form of quotas or economic needs tests;
- the total number of operations or total quantity of output;
- the total number of natural persons that may be employed in a particular economic activity or establishment;
- the participation of foreign capital in terms of a maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; and
- measures which restrict or require specific types of establishment or joint ventures through which an investor of another party may perform an economic activity.

As indicated in table 4.11, parties agree to undertake a review of investment flows and promotion, no later than five years after implementation of the agreement.

Limitations on **establishment** in the Peruvian market are listed for the following sectors:

- fishing and aquaculture;
- mining and quarrying;
- electricity, gas and water supply;
- internal waterway transport (and auxiliary services);
- prisons and security services.

In the case of Colombia limitations on **establishment** are listed for:

- the production, transmission and distribution of electricity;
- the distribution of energy;
- the retail sale of fuel;
- research and development services; and,
- prisons and security services.

<sup>30</sup> See Title IV, Trade in Services, Establishment and Electronic Commerce, Article 112 Market Access.



There are also limitations placed on the ownership of property by foreigners in border regions, national coasts, or insular territories.

On the **cross-border supply of services**, Annex VIII of the agreement lists the sectors covered. Table 4.12 provides a brief comparison of the commitments made by Colombia and Peru in the Agreement compared to those made under the General Agreement on Trade in Services (GATS). A tick against the sector means at least three sub-sectors within it have no restrictions listed. As can be seen in both cases, the commitments listed by Colombia and Peru across all sectors in the Agreement significantly exceed those made under GATS.

Country	Agreement	Mode	Business services	Communication services	Construction and related engineering services	Distributional services	Educational services	Environmental services	Financial services	Health related and social services	Travel related services	Recreational, cultural and sporting services	Transport services	Other transport services	Energy services	Other	Total	
Colombia	EU – Colombia - Peru	Mode 1															10	
		Mode 2																10
	GATS	Mode 1																2
		Mode 2																4
Peru	EU Colombia - Peru	Mode 1																8
		Mode 2																8
	GATS	Mode 1																-
		Mode 2																-

**Note:** A tick has been put next to a sector if it has no restrictions in three or more subsectors in respect of either market access or national treatment under GATS.

Source: GATS schedules; Annex VIII Cross Border Supply Peru; Annex VII Cross Border Supply Colombia

Generally the services sectors liberalised by the EU match its key interests. As noted in section 2 above the commitments offered by Colombia and Peru are at least as good as the ones offered by these countries in other major FTAs and in some cases the EU obtained better concessions regarding: key personnel, maritime and air transport services.

#### 4.3.2 Movement of People

Mode 4 in GATS terminology covers access for natural persons (people) supplying services. The decision by the EU to grant Colombia and Peru preferential market access on sensitive Mode 4 areas, i.e. to contractual service suppliers and independent professionals is in line with the EU policy in other FTA Agreements and negotiations. Chapter 4 on the temporary presence of natural persons for business purposes is applicable to any measure concerning the entry and temporary stay in its territory of key personnel, graduate trainees, business service sellers, contractual services suppliers, independent professionals and short-term visitors for business purposes. These categories of personnel are then in turn linked to sectors committed under Establishment (Mode 3) and the Cross-Border Supply of Services in the case of business services sellers. The EU and Colombia make GATS plus commitments in this area.

Regulatory principles are set in Chapter V specifically for: computer services, postal and courier services, telecommunications, financial services, maritime services and electronic commerce, and so on. In relation to financial services, Art. 154 provides a prudential carve-out enabling the parties to adopt or maintain for prudential reasons measures such as:

- the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; and
- ensuring the integrity and stability of its financial system.

In such cases, all parties are required to provide an opportunity for interested parties to comment in advance of the application of any such measure. A separate chapter liberalises current payments and movements of capital, with Art. 170 providing a safeguard in the form of capital controls in exceptional circumstances for a period of one year. All parties agree to support a stable and secure framework for investment with a view to facilitating the movement of capital and the progressive liberalisation of the capital and financial accounts.

In relation to financial services, including insurance sectors which are specifically mentioned in the SIA as experiencing potentially negative changes in output, there are limitations on the type of suppliers permitted, which must be in the form of affiliated companies or subsidiaries. Moreover, Colombia will only permit the establishment of banks and insurance companies through the establishment of local branches after four years following the entry of force of the agreement. Colombia retains the right to choose how to regulate such forms of establishment, including the capital assigned to such branches and its conversion into local currency. In Peru a number of restrictions are listed that affect the establishment of branches in insurance and banking and the assignment of capital (to branches in Peru).

## 5. ANALYSIS OF VARIOUS SECTORS OR CHAPTERS OF THE AGREEMENT

Chapter 4 has covered the market access commitments in terms of tariff liberalisation, services and establishment commitments under the Agreement. This chapter examines the Agreement as a whole and in particular how the 'rules' provisions address non-tariff and regulatory barriers to trade. Whilst the broad lines of what has been agreed can be identified, much of the detail that will determine how much difference the agreement will make in practice to the ease with which trade can take place depends on

factors outside the text of the agreement. How will parties exercise any discretion that the agreement grants them, are any barriers that will be removed critical to business or peripheral, how do the changes relate to the institutional structure of the markets in each the national markets? How effective will cooperation within the various committees and sub-committees be in tackling non-tariff barriers? Although a high level review such as this cannot respond to all of these questions, the answers to which may be critical for specific businesses, it can set the scene by analysing the principal features of the new agreement.

## **5.1 National Treatment and market access for goods**

National Treatment is relatively uncontroversial in relation to goods (unlike the situation for services) since it is the norm for WTO members. Accordingly, Art. 21 of the Agreement confirms the parties' WTO obligations. It is the application of such commitments as applied to a range of non-tariff barriers that determines the effectiveness of the Agreement in facilitating trade.

In relation to non-tariff measures (NTMs), all parties agree:

- not to adopt or maintain any prohibition or restriction on the importation of any good from another party or on the exportation or sale for export of any good destined for the territory of another party (i.e. quantitative restrictions);
- not adopt or maintain any duty or tax, other than internal charges applied in conformity with national treatment;
- to make available and maintain, preferably through the internet, updated information of all fees and charges imposed in connection with importation or exportation;
- to ensure that import and export licensing procedures must be WTO compliant; and
- to ensure that state trading enterprises do not operate in a manner that creates obstacles to trade.

## **5.2 Technical barriers to Trade and Sanitary and Phytosanitary measures**

Chapters 3 - 5 of Title III (Trade in Goods) of the Agreement cover a wide range of areas where trade can be hindered (deliberately or otherwise) by a country's domestic administrative, legal and institutional requirements. Chapter 3 covers customs related procedures, Chapter 4 deals with technical barriers to trade (TBT) and the subject of Chapter 5 is sanitary and phytosanitary standards (SPS). Further detail is given in Annex V (customs) and Annex VI (SPS).

### **5.2.1 Technical Barriers to Trade**

Chapter IV on TBTs reaffirms rights and obligations under the WTO TBT Agreement, but has the aim of improving upon these through cooperation and stronger procedural measures. This is in line with EU policy in other FTAs. The WTO TBT agreement requires national treatment for technical regulations and conformance assessment and includes a Code of Conduct for standards-making bodies. Improvements over the WTO TBT Agreement will be possible if there is greater cooperation. The substantive measures in the Agreement do not appear to be WTO plus. There are only rendezvous clauses on accreditation or recognition of conformance testing carried out in the other party. The word 'mutual recognition' does not appear. The parties are only required to recommend that private standards-making bodies follow the provisions in Chapter IV. The emphasis on multiple options for conformance assessment is included to accommodate existing differences in approach and is now common in other EU FTAs. The key procedural measures concern prior notification of technical regulations and the obligation to provide

written answers to views submitted by another party (Art 79). There is provision for technical assistance (by the EU) and a Sub-Committee is established to ensure implementation. Compared to the EU – Korea FTA, which includes sector specific arrangements for dealing with TBTs, the Agreement is not very developed, but then TBT barriers were a specific problem for EU exporters in the Korean market. But the Agreement does include specific disciplines on labelling.

### 5.2.2 The SPS Provisions

Chapter V on sanitary and phytosanitary measures also reaffirms rights and obligations under the WTO SPS Agreement. In general the SPS provisions are in line with previous EU FTAs, notably the EU – Chile Agreement, which first developed detailed procedural measures aimed at promoting cooperation, facilitating trade and dealing with any barriers to trade that arise in a swift and pragmatic fashion. Annex VI sets out these detailed procedural measures with regard to the use of verification, recognition of pest and disease free regions etc. The provisions on animal welfare are very general. Art. 102 on Animal Welfare, for example, provides only that 'The SPS Subcommittee shall promote the collaboration on animal welfare matters between the Parties.' As with TBT a Sub Committee is established to ensure the provisions are effectively applied, and Art. 104 includes special provisions for resolving disputes through 'consultations within the SPS Subcommittee' rather than the normal dispute settlement provisions in Art 301 of the Agreement 'unless otherwise agreed by the Parties to the dispute'.

### 5.3 Public procurement

Government procurement is covered by Title VII and Annex XII of the FTA. The main text sets out the general principles and scope (which, for example, excludes development aid and prohibits offset arrangements) whilst the Annex establishes the procuring entities covered, the threshold for the value of contracts above which the provisions apply and any procurement that is excluded (e.g. for agricultural support, social programmes and sensitive defence equipment). The Annex also establishes key features of the process for awarding procurement contracts: where tenders are to be published, documentary requirements, contract awards and time periods.

In broad terms, the agreement opens up a broad swathe of public procurement to companies through the provision of national treatment. But such 'liberalisation' applies only for those purchasing entities listed in the country schedules that exceed the contract value thresholds that apply to each type of procurement. These thresholds are SDR (Special Drawing Rights) 130,000 for goods and services, SDR 5 million for construction and SDR 400 000 for goods/services purchased by utilities (and by local government in Peru). These thresholds are set to maximise the scope of coverage whilst minimising the costs of compliance and conform to those in the WTO Government Purchasing Agreement.

### 5.4 Intellectual property rights and geographical indications

The provisions on intellectual property are covered in Title VII of the Agreement and further detail on the important, specific area of geographical indications (GIs) is provide in Annex XIII. The Agreement reaffirms the parties' commitments to the TRIPS agreement and the Convention on Biodiversity (CBD) and accords both national treatment and most favoured nation (MFN) treatment and reaffirms the parties' commitments to relevant agreements on copyright (the Berne and Rome Conventions and the WIPO copyright and performances and phonograms treaties) and patents (the Budapest Treaty).

But there are only a few specific, enforceable commitments that go beyond these general disciplines. In the case of biodiversity, for example, the parties agree to co-operate 'to ensure that intellectual property rights are supportive of and do not run counter' to the rights of indigenous and local communities, but

this is 'subject to domestic legislation' (Art. 201:6). A similar caveat applies to the commitment to 'respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities...' (Art. 201:30). On Trademarks, the Agreement commits both the EU and Colombia to adhere to the 1989 'Madrid Protocol' within 10 years, but for Peru the requirement is only to make 'all reasonable efforts' to adhere (Art. 202:2).

The provisions on GIs are much more explicit and rigorous. All parties must support the GIs set out in Annex XIII as well as any future agreed additions and refuse to register *in future* trademarks for supplies of the same or like product from another source. In terms of obligations, the commitments are symmetric, but perhaps unsurprisingly, the list of goods subject to GIs is very much longer in the case of the EU than for the Andean signatories. Annex XIII lists 2 items for Colombia and 4 for Peru; the list for the EU runs to 4 ½ pages.

As discussed above in section 2.4 the Agreement includes no extension of patent life, a five year rule on data protection and provides flexibility with regard to access to essential medicines as provided in the 2003 Doha Declaration on Trade and Essential Medicines. The procedures for the enforcement of intellectual property rights are spelled out in some detail (Chapter 4). As with the TRIPS Agreement, however, it will be for each party's courts to adjudicate on any alleged infringement. All that an inter-governmental agreement like the Agreement can achieve is to establish the obligation of governments to ensure that the system for the administration of justice recognises intellectual property rights and that foreign rights' holders have the same access to redress as nationals. But the Agreement does not require any special treatment for intellectual property 'distinct from that for the enforcement of law in general' and nor does it carry any implication for the resources that are provided to the enforcement of law in general or intellectual property law in particular (Art. 234:4).

## **5.5 Competition, anti-competitive practices, state aid and subsidies**

Competition issues are dealt with in Title VIII, which provides a framework for co-operation between the competition authorities in the parties in order to deal with anti-competitive practices that have a bearing on more than one of them. There is provision, for example, for the exchange of information important in allowing the competition authorities in one country to compile a case. There is also provision for one country to request action by a partner. Article 261:5, for example, covers a situation in which one party considers that anti-competitive behaviour in another party has an adverse effect within 'both Parties or on trade relations between those Parties'. It may request the other party to initiate an enforcement action '*established under its legislation.*' The emphasis (added) is important. The Agreement does not require any Party to adopt a particular form of competition policy, but it requires Parties to have a competition policy. However, Art 259 states that the parties agree that cartels, abuse of market dominance and concentrations that impede effective competition are inconsistent with the Agreement.

The Agreement does not prescribe the form of market organisation. It explicitly allows a party to maintain monopolies and state enterprises where this is in accordance with its domestic legislation (Art. 263). There is the proviso, though, that this does not distort 'trade and investment between the Parties' (Art. 263:3). However, this is not subject to the dispute settlement arrangements of the Agreement, but there is instead provision for non-binding consultations (Art. 265). Title III on Trade in Goods (which is subject to dispute settlement) also makes provision on state enterprises. But this, too, is couched in somewhat vague terms. Article 27:2 recognises that they 'should not operate in a manner that creates obstacles to trade' and the parties 'commit to the obligations established under this Article' which reaffirm those of WTO Article XVII and adds that they should comply with the commitments of the FTA.

General (as opposed to company or sector specific) subsidies are allowed in Title X, which aims to ensure transparency in such cases (Art. 293). Remedies in relation to such subsidies are restricted to those available to all WTO members and the Article is explicitly removed from the purview of the FTA dispute settlement provisions. There are restrictions, though, on export subsidies in Title III (Trade in Goods). Parties can retain or impose export subsidies on some agricultural goods traded between them, but not those that are being substantially liberalised under the FTA. These are items which are fully liberalised on entry into force of the agreement or will be fully liberalised after an implementation period but benefit immediately from a duty free quota; or other items that are fully liberalised following the date of the liberalisation (Art. 32).

## 5.6 Investment

Title VI Chapter 2 provides for the liberalisation of investment in the form of market access via establishment and the provision of national treatment, subject to the commitment set out in the (hybrid listing) in Annex VII of the Agreement. There are also a number of general exemptions for Colombia that allow it gear investment policy to the interests and needs of disadvantaged minorities, cultural patrimony and other policy objectives such as employee ownership of companies.

In the case of Colombia the Annex VII list of commitments on establishment clearly specifies that parties have: (a) the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities or ethnic groups, including with respect to communal lands; (b) the right to adopt or maintain any measure according rights or preferences to local communities with respect to the support and development of expressions related to cultural patrimony; and (c) the right to offer ownership in state-owned or part-state-owned enterprises first to current employees.<sup>31</sup>

With regards to taxation, Colombia reserves the right to tax remittances of profit. Specific sectoral commitments are made on energy services, which includes services incidental to mining, in addition to the mining sector in general.

Peru has equally maintained horizontal exemptions for all sectors, such as the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities and ethnic groups. There are no further restrictions on national treatment or market access in its schedule for mining and quarrying services.

The coverage of investment liberalisation is with the exception of these exclusions fairly extensive and broadly compatible with the Colombian and Peruvian commitments vis-à-vis the United States.

There is a footnote to Art. 111 on the scope of application on establishment which states that "for greater certainty and without prejudice to the obligations set out, this chapter does *not* cover provisions on investment protection, such as provisions relating to expropriation and fair and equitable treatment, nor does it cover investor-State dispute settlement provisions." Investment protection is covered by the various bilateral investment treaties negotiated by EU Member States that remain valid under the Lisbon Treaty subject to arrangements for transition to any EU level agreement in the future.

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<sup>31</sup> See Annex VII List of Commitments on Establishment, Section A, Notes on the limitations applied to sectoral specific commitments of establishment in services and non services sectors.



## 5.7 Transparency issues

Questions of transparency are covered in Title X and also in parts of Title III. Like most of the other Titles reviewed in this chapter, the Title X lays down a framework within which willing governments can ensure certain minimum standards and, if agreeable, advance these over time. It establishes the basic requirements for the provision of trade-related information (such as the requirement, for example, that each party publishes promptly information that is relevant to the FTA provisions). Each party must also have in place a forum in which appeals may be made against allegedly opaque behaviour (Art. 292).

The Title also calls for co-operation on increased transparency but does not mandate any changes in this direction. There is phraseology that could allow an unwilling government to keep certain matters opaque. Article 289 excludes from its purview confidential information defined in various ways including cases where a government deems that publication would 'be contrary to the public interest'.

There are several references to transparency in respect of specific areas of action covered by Title III on trade in goods and in Title IV on trade in services, establishment and electronic commerce. Art. 38, for example, specifies that anti-dumping and countervailing duty actions should be transparent and in accordance with WTO rules, and there are similar requirements in Art. 44 on multilateral safeguard measures. But, once again, these requirements are mainly excluded from the dispute settlement mechanism. The information requirements are more specific and enforceable in relation to bilateral safeguards covered in Trade Remedies Section 3 (and described in Chapter 4).

## 5.8 Rules of origin

The rules of origin (RoO) are the critical 'small print' that determine how far the tariff cuts set out in Title III actually translate into greater export opportunities. They have the important function of preventing trade deflection, whereby a third country supplier routes their goods with minimal processing through the territory of a party in order to take advantage of the tariff concessions. The RoO aim to ensure that a good is actually 'produced' within a party by setting out that a certain process must be undertaken domestically, or that a certain value is added to any imported inputs, or that the exported item is clearly distinct from any inputs imported from a non-signatory. However, setting the specific rules at a level that is sufficient to rule out deflection, but does not also exclude legitimate trade is fraught with difficulty, particularly as globalisation has altered very substantially the way in which goods are produced so that many final products are now assemblies of components produced in widely varying locations.

For this reason it is not possible to provide an across-the-board view of whether the RoO in the Agreement (or any other trade regime) are 'good' or 'bad'. The RoO (set out in Annex II of the Agreement) must be examined on a product by product basis – and compared both to what is in other trade agreements affecting the parties and, ideally, to an objective assessment of what is considered to be commercially viable practice in cases where trade deflection is not an issue.<sup>32</sup> A number of general points can however, be made.

The RoO in the Agreement broadly follow the format of the EU's 'traditional rules' rather than the more simplified format foreseen for future GSP rules as set out in the EU's 2010 reform of these rules (EC 2010), but there have been negotiations a product by product basis and in some cases simplified rules have been applied. The Agreement applies a mix of criteria – some based on a change of tariff heading

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<sup>32</sup> See Stevens (2006) on creating development friendly rules of origin.



(CTH), some to the processes that must be undertaken, and some to the share of value or value content (VC) that must be added. Another change from the GSP rules is to shift responsibility for applying and monitoring the system from the Customs Department of the exporting countries to the private sector exporting firms through a system of approved exporters (although obligatory implementation of this change is deferred to 2017). Whilst the Agreement recognizes that a list of approved exporters can be compiled (Art. 21) the role of the customs authorities and the EUR 1 certificate is also retained.

The second general point concerns what is known as 'cumulation'. This allows for cumulation of the value of products brought into the party exporting to a preferential partner when assessing whether these goods meet any RoO threshold for exports. Under the GSP all the Andean and Central American states, including Panama, can cumulate with each other as well as the EU. This provision is known as diagonal cumulation and has been carried into the Agreement (Annex II Article 3:3) subject to certain restrictions despite the fact that at present only to Peru and Colombia among the Andean states have signed the Agreement. There is also provision for diagonal cumulation to be extended to other Latin American states with which the EU has concluded FTA, such as Mexico and Chile (Art. 4).

For most of the main Andean merchandise exports identified in Chapter 4 benefiting from the Agreement (tables 4.6 and 4.7), the rules in both the GSP and the Agreement specify that materials must be 'wholly originating.' So changes in the specific rules have no impact. This is normal for unprocessed primary products (such as bananas and shrimp for Colombia and the same two items plus grapes, citrus, maize, animal hair, wool and zinc for Peru). For other products that are currently imported by the EU from Colombia, though at a much lower value threshold<sup>33</sup> than has been presented in this report, relaxations of RoO have been negotiated. This is the case for maize flour (11022090) and a slight relaxation for various confectionary items (1704). For Peru there is a slight relaxation in relation to zinc (79011000 and 79011230).

## 6. OTHER PROVISIONS

### 6.1 Introduction

The EU-Colombia/Peru agreement is essentially economic in its focus. In contrast, for example, to the EU-Central America Association agreement it does not contain any provisions for political dialogue, or for more general cooperation on non-economic matters.<sup>34</sup> Nonetheless, it does establish enforceable human rights obligations (Title I) and contains a trade and sustainable development title, which despite its name extends beyond trade (Title IX). These provisions are, for the most part, independent of the economic aspects of the agreement. However, the sustainability impact assessment conducted for the European Commission<sup>35</sup> notes that without appropriate flanking measures and safeguards, the implementation of the agreement may have significant impacts on human rights, and labour and environmental standards in Colombia and Peru. These provisions are therefore of importance in

<sup>33</sup> Comprising 0.1% of total imports, compared to 0.5%.

<sup>34</sup> Political dialogue and non-trade cooperation is left to the 2003 EU–Andean Community Political Dialogue and Cooperation Agreement, which awaits ratification by the Andean Community, the EU, Germany, Greece and Venezuela. It would also require the accession of the new 2004 and 2007 EU Member States.

<sup>35</sup> Development Solutions et al, *EU-Andean Trade Sustainability Impact Assessment, Final Report*, October 2009 ('SIA'). The following draws on this SIA, but there is a vast literature, predominantly from non-governmental organizations, detailing the potentially negative impacts of the agreement on human rights and labour and environmental standards. A useful summary of the main concerns is in ALOP, APRODEV, OIDHACO, CIVCA and GRUPO SUR, *EU Trade Agreements with Central America, Colombia and Peru: Roadblocks for Sustainable Development – Briefing for MEPs* (July, 2011), at <http://www.oidhaco.org/uploaded/content/category/888766297.pdf>.

determining whether the Agreement can adequately address the particular challenges human rights and sustainable development in the partner countries.

## 6.2 Human rights and democratic principles

### 6.2.1 Obligations

The agreement contains a human rights clause, of a standard type.<sup>36</sup> Article 1 states that:

As established in Article 1, paragraph 1 of the Political Dialogue and Cooperation Agreement, respect for democratic principles and fundamental human rights, as laid down in the Universal Declaration of Human Rights, and for the principle of the rule of law, underpins the internal and international policies of both Parties. Respect for these principles constitutes an essential element of this Agreement<sup>37</sup>

The human rights and democratic principles referred to in this clause are not further defined. They include all recognized human rights and democratic principles, and would be interpreted in light of other relevant human rights norms binding on the parties. They also cover civil, economic and social rights, including labour standards that come under the Agreement's provisions on sustainable development. Significantly, in this context, it is also clear that these are positive obligations requiring, where necessary, state action for their implementation. Art. 8(1) states that:

Each Party is responsible for the observance of all provisions of this Agreement and shall take any necessary measure to implement the obligations under it, including its observance by central, regional or local governments and authorities, as well as non-governmental bodies in exercise of governmental powers delegated to them by such governments and authorities<sup>38</sup>.

It is not therefore sufficient that the parties do not themselves act in a manner that violates democratic principles and human rights; they must ensure that these are respected within their jurisdiction.<sup>39</sup> In this respect, it is worth noting that the agreement does not provide for any specific cooperation on these 'essential elements'.

### 6.2.2 Monitoring

There is no specific mechanism for monitoring the implementation of the human rights clause, nor a subcommittee dedicated to human rights and democracy issues. Such a subcommittee might later be established, as they have been under certain other EU trade agreements.<sup>40</sup> However, the omission of a dedicated subcommittee on human rights and democratic principles contrasts unfavourably with the market access subcommittees that have been created by the agreement (Art. 15). At the moment, it appears that human rights and democracy issues are to be discussed within the organs established by the agreement. Chief among these is the Trade Committee, which has the power, relevantly, 'to evaluate the results obtained from the application of this Agreement' (Art. 13(1)(b)). Civil society is unrepresented at this level. It is also possible that human rights and democracy issues may be raised in

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<sup>36</sup> Lorand Bartels, *Application of Human Rights Conditionality in the EU's Bilateral Trade Agreements and Other Trade Agreements with Third Countries* (Committee on International Trade, European Parliament, Dec 2008) EXPO/B/INTA/2008/57.

<sup>37</sup> The inclusion of the reference to the 2003 Political Dialogue and Cooperation Agreement shall be maintained provided that such Agreement enters into force before the signature of this Trade Agreement.

<sup>38</sup> The Parties understand that 'governments and central, regional or local authorities' includes all authorities and governmental levels of the Parties.

<sup>39</sup> Lorand Bartels, *Human Rights Conditionality in the EU's International Agreements* (Oxford: OUP, 2005), 147-149.

the context of the organs established under the sustainable development title, in which there is a role for civil society (discussed below).

### 6.2.3 Enforcement

The great strength of the human rights clause lays is the fact that it is so robustly enforceable. A violation of the human right clause entitles the other party to adopt 'appropriate measures' that are in accordance with international law, proportional, and least disruptive to the implementation of the agreement. These measures are undefined, but they certainly extend to the suspension of any measures or action adopted under the agreement, as well as the suspension of any obligations set out in the agreement (Art. 8(3)). It is not clear whether appropriate measures must follow recourse to dispute settlement. The use of the word 'immediate' indicates not. However, under Art. 8(2) a party that considers that another party has failed to fulfil obligations under the agreement 'shall exclusively have recourse to the dispute settlement mechanism established under Title XII (Dispute Settlement)'. There is some ambiguity as to whether dispute settlement is required.

### 6.2.4 Application

The human rights clause in this agreement is of fundamental importance. It applies to all violations of human rights and democratic principles in any of the parties. So a key question is whether the potential use of the human rights clause will encourage the Colombian government in particular to press ahead with its efforts to improve the rights of the child and to implement core labour standards. The EU is not alone in seeking to improve human rights in Colombia. An October 2011 Report from the US Department of Labor found that '[o]verall, ...while violence against trade unionists and the abuse of workers' rights remain significant challenges, the Government of Colombia's recent and proposed reforms on these issues demonstrate a strong and comprehensive commitment to protect workers' rights, to ensure that trade union activists can exercise their fundamental rights without fear of retaliation and that those who commit violence against trade unionists will be prosecuted.'<sup>41</sup>

The human rights clause also applies to such violations if they result from the implementation of the agreement itself. As noted in the SIA and summarized in Chapter 2 of this study there are a number of NGO concerns regarding competition for resources relating to the production of biofuels, hydrocarbon exploration, mining, commercial farming and logging in their territories' as a result of the Peru-US FTA requirements (SIA, p81). Indigenous rights, women's rights, and political unrest (if not properly handled) are all issues which could potentially engage Colombia's or Peru's obligations under the human rights clause. Given this, it is remarkable that the sustainable impact assessment entirely ignores the human rights clause. In its policy recommendations, the SIA refers on numerous occasions to the need for a trade and sustainable development title. There is such a title, discussed below. However, this is only part of the regulatory framework applicable to these issues, and the least enforceable of these parts. Further, it is not only the SIA that misses this aspect; the agreement itself seems to follow this approach. It is self-evidently inappropriate for the main organ of the agreement, entitled 'Trade Committee', to have the primary competence to deal with issues arising under the human rights clause. And yet, until such time as the 2003 Political Dialogue and Cooperation Agreements comes into force, this is the primary institutional mechanism for monitoring this most important of provisions. On the other hand, the problem is one of terminology, and perhaps the

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<sup>40</sup> The first of these was established in the EU-Morocco Association Agreement, by Association Council Decision No 1/2003 [2003] OJ L79/14, Annex 1.

<sup>41</sup> US Department of Labor, *Labor Rights Report – Colombia* (October, 2011), [http://www.dol.gov/ilab/media/reports/usfta/colombia\\_LRR.pdf](http://www.dol.gov/ilab/media/reports/usfta/colombia_LRR.pdf), at 4.

common understanding that is signified by this terminology as to the functions of the Trade Committee. None of this changes its competence with respect to these issues.

### 6.3 Sustainable development

A separate set of provisions on labour and environmental standards is contained in Title IX of the agreement, entitled 'Trade and Sustainable Development'.

#### 6.3.1 Cooperation

As noted above Art. 286 contains a lengthy list of topics for cooperation on labour and environmental protection conducted within the framework of the EU's normal cooperation activities.<sup>42</sup> There are also specific provisions on cooperation on various topics, namely labour (Art. 269), biological diversity (Art. 272), regional fisheries management (Art. 274), and climate change (Art. 276). The parties also agree to 'promote' various interests, such as 'trade and foreign direct investment in environmental goods and services, best business practices related to corporate social responsibility, and flexible pro-sustainable development mechanisms (Art. 271) as well as climate change (Art. 275).

#### 6.3.2 Obligations

Beyond cooperation, parties 'recognize' the Agreement incorporates by reference the ILO fundamental conventions and certain multilateral environmental agreements, making these obligations binding under the Agreement. On labour standards, the Agreement provides:

Each party commits to the promotion and effective implementation in its laws and practice and in its whole territory of internationally recognised core labour standards as contained in the fundamental Conventions of the International Labour Organisation (hereinafter referred to as the "ILO"): (a) the freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation (Art. 269(3)).

Slightly different language is used to incorporate the obligations set out in the multilateral environmental agreements, but the overall effect is the same: the parties 'reaffirm their commitment to effectively implement in their laws and practice a list of multilateral environmental agreements (Art.

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<sup>42</sup> Article 286 mentions (a) activities related to the evaluation of impacts of this Agreement on environment and labour, including activities aimed at improving the methodologies and indicators for such evaluation; (b) activities related to the investigation, monitoring and effective implementation of fundamental ILO Conventions and multilateral environmental agreements, including trade related aspects; (c) studies related to levels and standards of labour and environment protection and mechanisms to monitor such levels; (d) activities related to the adaptation to and mitigation of climate change, including activities related to the reduction of emissions from deforestation and forest degradation ("REDD"); (e) activities related to aspects of the international climate change regime with relevance for trade, including trade and investment activities to contribute to the achievement of the objectives of the UNFCCC; (f) activities related to the conservation and sustainable use of biological diversity, as addressed in this Title; (g) activities related to the determination of the legal origin of forest products, voluntary forestry certification schemes and traceability of different forestry products; (h) activities to encourage best practices for sustainable forest management; (i) activities related to trade in fishery products, as addressed in this Title; (j) exchange of information and experiences related to the promotion and implementation of good practices of corporate social responsibility; and (k) activities related to trade related aspects of the ILO Decent Work Agenda, including on the interlinkages between trade and productive employment, core labour standards, social protection and social dialogue.

270(2)).<sup>43</sup> Other than this, the provisions on matters such as biological diversity and trade in forest and fish products are mainly reiterative of existing obligations or case in 'best endeavours' terms (Art. 272, Article 273 and Art. 274).

Above these baselines, the parties undertake not to lower their levels of protection to encourage trade or investment or to fail to effectively enforce their labour and environmental legislation in a manner affecting trade or investment between the parties (Art. 277(1) and (2)). For labour standards, though not for environmental standards, there is also a clause for the prevention of abuse: 'labour standards should not be used for protectionist trade purposes' and, in addition, that the 'comparative advantage of any Party should in no way be questioned' (Art. 269(5)).

These obligations are similar to those found in other FTAs, but there are omissions. In particular, contrary to the European Parliament's position, the agreement contains only the most limited references to corporate social responsibility (as areas for cooperation).<sup>44</sup> Nor does it make any reference to ILO Convention No 169 on indigenous and tribal rights,<sup>45</sup> to which the sustainability impact assessment makes reference (SIA, p54).

### 6.3.3 Monitoring and enforcement

These sustainable development obligations are monitored and enforced by a dedicated mechanism. The implementation of the agreement is monitored by a joint Subcommittee on Trade and Sustainable Development (Art. 280). Civil society is also involved, both through national committees (Art. 281), and in a bi-regional annual dialogue with civil society organizations and the public at large (Art. 282). As mentioned above, it is conceivable that these organs might also discuss issues relating to human rights and democratic principles. There is scope for the European Parliament to play a role in monitoring compliance with the provisions on sustainable development. For example, a cross-party group of MEPs visited Colombia in 2010, and questioned the progress made by the Government in tackling human rights abuses and uphold the rights of trade union (MEPs 2010).

Consultations on matters arising under the sustainable development obligations are to take place in the Subcommittee (Art. 283). If consultations are not successful, the matter may be referred to a Group of Experts (Art. 284). The Group of Experts has the power to examine whether there has been a failure to comply with the relevant obligations, and publishes a report. The relevant party must then respond with an appropriate action plan, and the implementation of this action plan is then monitored by the Subcommittee on Trade and Sustainable Development (Art. 285). There are no immediate remedies for non-compliance, unlike recent Canadian and US agreements (including with Colombia and Peru).<sup>46</sup> There is also no right of individual petition, as is common in US free trade agreements.

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<sup>43</sup> These are (a) Montreal Protocol on Substances that Deplete the Ozone Layer; (b) Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; (c) Stockholm Convention on Persistent Organic Pollutants; (d) Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); (e) Convention on Biological Diversity; (f) Cartagena Protocol on Biosafety to the Convention on Biological Diversity; and (g) Kyoto Protocol to the United Nations Framework Convention on Climate Change and (h) the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

<sup>44</sup> European Parliament resolution of 25 November 2010 on corporate social responsibility in international trade agreements ([2009/2201\(INI\)](#)), paras 7-8.

<sup>45</sup> This convention has not been ratified by any EU Member State except for Denmark, the Netherlands and Spain, but this does not preclude its obligations from being incorporated into this agreement by reference. The European Parliament has referred to the Convention, for example, in the preamble of its European Parliament resolution of 7 July 2011 on EU external policies in favour of democratisation ([2011/2032\(INI\)](#)).

<sup>46</sup> The Canadian free trade agreements now regularly provide for the possibility of fines of up to USD 15 million annually, to be paid into a cooperation fund to address the issue of non-compliance. See eg Annex 4 of the Canada-Colombia Labour

### 6.3.4 Application

As indicated above, there is a substantial overlap between the human rights clause and the sustainable development title. Core labour rights and certain environmental rights, all fall under the human rights clause, and are enforceable by 'appropriate measures' while at the same time falling under the sustainable development title. The result is that for these issues it is immaterial that the obligations set out in the sustainable development title are essentially unenforceable. On the other hand, the weakness of enforcement makes a difference in the case of social issues that do not rise to the level of human rights violations. These include general environmental issues, as well as certain non-core labour standards, and other social impacts. This would be important if increased output resulting from the Agreement were to result in a loss of biodiversity, due to deforestation.

## 6.4 Implications for the EU

The EU has an obligation, in the development and implementation of its external action, to respect human rights and foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty (Art. 21(2) and (3) TEU and Art. 207 TFEU). As indicated above there are risks that, in certain cases, the agreement may have negative effects contrary to these principles, even if the agreement generates aggregate benefits for all parties. In such instances flanking measures would be necessary to ensure that these effects were addressed. The primary responsibility for such flanking measures will lie with the partner country. But the EU would also have a responsibility for contributing to such effects. The EU's principal means of ensuring that it complies with its own obligations is by enforcing the obligations of all parties under the Agreement. In this respect, there are no difficulties in connection with the human rights clause, although the institutional arrangements for monitoring and implementing this clause do not indicate an appreciation of its significance. However, the nature of the enforcement mechanisms for non-human rights labour and environmental standards may make it difficult for the EU to live up to its own legal responsibilities with respect to human rights and poverty, and the protection of labour and environmental standards in third countries.

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Cooperation Agreement (side agreements to respective FTAs). See also the Chapters 17 (Labor), 18 (Environment) and 22 (Dispute Settlement) of the US-Colombia free trade agreement.



## 7. CONCLUSIONS AND RECOMMENDATIONS

The EU Colombia Peru Trade Agreement is consistent with the EU policy on FTAs pursued since 2006 in that it is comprehensive and thus compatible with the WTO's rules on FTAs as currently understood. The Agreement also follows the model the EU has developed for FTAs. This model in itself provides for flexibility in order to accommodate the interests of the parties, so that key interests of the EU as well as Colombia and Peru have been respected. The choice of negotiating with Colombia and Peru however appears to owe more to previous political commitments by the EU than the size of the markets concerned. Nevertheless when viewed in the broader context of EU trade relations with Central and Latin America as a whole the Agreement is consistent with EU interests.

The EU preference was to negotiate a region-to-region agreement with the Andean Community. That this was not possible due to ideological divergences within the CAN rather than anything related to relations with the EU. Not negotiating with those CAN members willing to do so would not have changed the fact that the USA, Canada and China (with Peru) have already negotiated bilateral agreements. If bilateral agreements have a detrimental effect on integration within the CAN, these were therefore already in place. Delaying ratification of the EU Agreement will therefore have little bearing on CAN integration and will have adverse effects for EU exporters, especially in those sectors where first mover advantages may be important, such as in the service sector.

While the overall economic benefit for the EU is small in relation to the EU GDP, there are potentially important real gains for sectors such as services, machinery, automobiles and chemicals. As Colombia and Peru already have tariff free access to the EU in all but a few sectors (such as bananas in particular) the impact on EU output and employment will be negligible.

European business interests are either very supportive of an early ratification and application of the Agreement or are broadly supportive. The main opposition to the Agreement has come from civil society NGOs and organised labour. For the most part the concerns of the NGOs have been addressed in the final text of the Agreement. Perhaps the key judgement concerns the issue of whether the granting of consent to the Agreement would be seen as condoning continued human rights abuses or as the best means of ensuring that the recent improvements continue. Member States and the Commission appear to have judged that the latter is the case. To ensure improvement continues the Parliament will wish to ensure that the various fora available are used to monitor progress and that the EU is prepared to use the powers available under the Agreement should improvements not continue.

As the success of the Agreement in promoting improved human rights depends on how the Agreement is implemented, the Parliament may wish to review progress a number of years after ratification of the Agreement. If the existing monitoring and implementation provisions are at that time found to be inadequate and the Political Cooperation and Dialogue Agreement (PCDA) is still not ratified the Parliament should then insist on the addition of a specific body to monitor human rights.



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