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EU trade relations with Latin America: Results and challenges in implementing the EU-Colombia/Peru Trade Agreement

INTA



STUDY

EU trade relations with Latin America: Results and challenges in implementing the EU-Colombia/Peru Trade Agreement

ABSTRACT

The Trade Agreement between the EU and Peru and Colombia has been provisionally implemented since the middle of 2013. However, based on limited secondary data available to date on its effects, this report shows that trade profiles have not been substantially altered. EU exports to Latin America are dominated by pharmaceuticals, machinery and vehicles, and have experienced very slight increases. Colombian exports to the EU have benefitted more than Peruvian exports from improved access, but oil and minerals remain the top exports. Fruit, vegetables, flowers and above all sugar cane and confectionaries have been the greatest beneficiaries of the tariff eliminations and reductions. Despite this lack of substantial change, the institutional arrangements and sub-committees created by the Agreement have been implemented. Civil society has also been involved in meetings of the Trade and Sustainability sub-committee, but resource and capacity constraints preclude smaller organisations from full participation in the process. Sadly, reports of the human rights situation in Colombia, in particular the plight of trade unionists, continue to be negative. Although the Government has made progress in legislative terms, the full implementation of measures at the local level remains incomplete and challenging.

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Author: Dr Maria J Garcia, Center for Social and Economic Research (CASE) and Associate Professor in International Political Economy, University of Bath

Official Responsible: Susana MENDONCA

Editorial Assistant: Elina STERGATOU

Feedback of all kind is welcome. Please write to: susana.mendonca@europarl.europa.eu.

To obtain copies, please send a request to: poldep-expo@europarl.europa.eu

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EXECUTIVE SUMMARY

The European Union is Latin America's top investor and second major trading partner. Over the last fifteen years, the EU has negotiated a series of agreements with Latin American partners (Global Agreement with Mexico, Association Agreements with Chile and Central America, Economic Partnership Agreement with Cariforum,¹ and Trade Agreement with Peru/Colombia), which include comprehensive preferential trade agreements. These have been in response to mainly competitiveness motivations and a desire to match the access the United States has thanks to the agreements it concluded with these countries in the early 2000s.

The European Union, always a supporter of Latin American regional integration initiatives, has attempted to use its trade agreement negotiations to further regional integration. Success has been mixed, although the EU did negotiate and sign agreements with Cariforum and Central America as blocs. The Multiparty Trade Agreement with Peru/Colombia is designed to eventually incorporate the other Andean Community member states. In December 2014 the EU and Ecuador initialled an agreement for the accession of Ecuador to this agreement.

Based on the limited secondary data available to date on the effects of the Trade Agreements between the EU and Peru/Colombia, which have been provisionally implemented since the middle of 2013, this report shows that trade profiles have not been altered substantially. EU exports to Latin America are dominated by pharmaceuticals, machinery and vehicles, and have experienced very slight increases. Colombian exports to the EU have benefitted more than Peruvian exports from improved access, but oil and minerals remain the top exports. Fruit, vegetables, flowers and above all sugar cane and confectionaries have been the greatest beneficiaries of the tariff eliminations and reductions. Trade irritants in the relationship relate mainly to discriminatory practices against EU exports of spirits to Peru and Colombia. In both cases domestic vested interests in the spirits industry make the necessary legislative advances by the governments challenging.

All the institutional arrangements and sub-committees created by the agreement have been implemented and are proceeding with their work accordingly. The Colombian and Peruvian governments are passing legislation to implement the agreement, and subscribing to international labour and environmental regimes as required under the Trade and Sustainability Chapter of the Agreement. Civil society has been involved in meetings of the Trade and Sustainability sub-committee; however, resource and capacity constraints preclude smaller organisations from full participation in the process.

Mining and resource extraction are important export sectors in both Peru and Colombia. These are sectors with strong impacts on the environment. The civil society meetings have revealed that more monitoring is required in this sector, and that the legacy of governments' past agreements with multinational corporations to attract investment remains a hindrance to fully embracing higher environmental and labour standards in the sector.

Sadly, reports of the human rights situation in Colombia, in particular, the plight of trade unionists, continue to be negative. Although the Government has made progress in legislative terms, the full implementation of measures at the local level remains incomplete and challenging.

¹ Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Suriname, Saint Lucia, St. Christopher and Nevis, St. Vincent and the Grenadine, Suriname, Trinidad and Tobago.

1 Preferential trade relations between the EU and Latin America

1.1 Background

The European Union's (EU) economic relations with Latin America are rich in diversity and scope.² Since the 1990s, the EU is Latin America's top investor, second trading partner and main provider of development funds. EU trade and investment ties are especially significant with the largest economies in the region, Mexico and Brazil, with which the EU has established broad Strategic Partnerships. Relations with other South American states have also been characterised by strong trade and investment ties.³ EU foreign direct investment stocks outstrip EU investment in other emerging economies like China and India. Central American states⁴ are recipients of EU aid, and their smaller economic size and higher trade dependence on the United States means they have a different relationship with the EU (Cuenca García 2002, ECLAC 2008).

Closer engagement with Latin America has been institutionalised over the past decades in the area of political, economic and social cooperation through the development of various dialogues, high level meetings and summits. Bi-regional summits between the EU and Latin American and the Caribbean started in 1999. These summits were superseded by the EU-CELAC Summit following the creation of the Community of Latin American and Caribbean States (CELAC) in 2010. Two EU-CELAC summits have taken place (Santiago 2013 and Brussels 2015), and both have been accompanied by business dialogues, meetings of trade unions, academics, youth groups, the EU-CELAC civil society forum, and Foreign Ministers' meetings. Various economic, political and social groups have thus been integrated into bi-regional summitry, including meetings of the Euro-Latin American Parliamentary Assembly (EuroLat).

Additionally, the EU maintains structured dialogues and regular meetings with the various regional groupings in Latin America (Andean Community,⁵ Mercosur,⁶ SICA⁷). These dialogues as well as political and economic cooperation between the EU and these regional groupings reflect the European desire to support regional integration per se. Numerous regional groupings have emerged in Latin America, and some have explicitly taken the European experience as their model (e.g. Mercosur). The EU has actively supported regional integration in Latin America through interregional dialogues, funding for the development of institutions.⁸ Arranging relations with Latin America through interregional cooperation between the EU and regional groupings has served to bolster the legitimacy of these integration projects and their international recognition. It has also been argued that in pursuing an interregional approach the EU has also sought to enhance its own legitimacy as an international actor. It has been described as a

² Latin America includes Mexico, Central American states, South American states and Caribbean states.

³ Colombia, Ecuador, Venezuela, Peru, Chile, Argentina, Brazil are the EU's major economic partners in South America.

⁴ Panama, Costa Rica, Nicaragua, Honduras, El Salvador, Guatemala, Belize

⁵ Peru, Ecuador, Colombia, Bolivia

⁶ Argentina, Brazil, Paraguay, Uruguay, Venezuela

⁷ Sistema de la Integración Centroamericana is made up of Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, Panama

⁸ EU programmes for Mercosur fund projects to strengthen the intergovernmental institutions of the group and support customs cooperation (European Commission 2002b, 20), including €50 million to prepare Mercosur for the implementation of the Association Agreement (European Commission 2007a). Projects include staff exchanges and the provision of EU experts on harmonization of internal markets. The EU has also facilitated the creation of infrastructure necessary for economic integration, for instance the Hidrovía project and Montevideo-Buenos Aires roads, which were financed with European Investment Bank (EIB) loans (European Commission 1994, 9). Seventy per cent of EU funds in 2002-2006, and 40 per cent in 2007-2013 were devoted to regional integration (García 2012, 12).

'vehicle to gain international acceptance of (the EU's) own model of integration' (Söderbaum *et al.* 2005, 372). In this case interregionalism results from the 'need to forge a common European identity among the people of its constituent nations and by a belief in the utility of regions as unit for organizing the global economy' (Aggarwal & Fogarty 2004, 14).

Integration projects in Latin America have fared differently, and they are still a long way from reaching the level of integration attained in the EU. Consequently, EU attempts to negotiate interregional association and trade agreements by engaging in bloc-to-bloc negotiations have been far more challenging than anticipated. As will be highlighted in the following section, negotiations between the EU and Mercosur have been ongoing since 1999, and although there is a renewed impetus to finalise a deal, this has yet to materialise. Bloc-to-bloc negotiations with the Andean Community also faltered⁹ and were replaced with negotiations with individual states under multi-party Trade Agreement. Central American states did sign one agreement with the EU, although with differentiated commitments in the liberalisation schedules, as did the Caribbean states when signing the Economic Partnership Agreement.

The EU's focus, especially in the 1990s and early 2000s, on fostering regional integration, has not precluded the establishment of close relationships with individual Latin American states. In the cases of Chile and Mexico, the Association Agreement and the Global Agreement respectively, created a series of regular institutional, political and social exchanges at the bilateral level, as well as preferential trade links. Through the Strategic Partnerships with Brazil (since 2007) and Mexico (since 2008), the EU has developed a further set of bilateral institutional cooperation initiatives on economic, political, social and geopolitical issues. The EU, thus, engages Latin America at multiple levels: continental, regional groupings, and bilateral, creating a network of overlapping dialogues, negotiations and cooperation initiatives.¹⁰

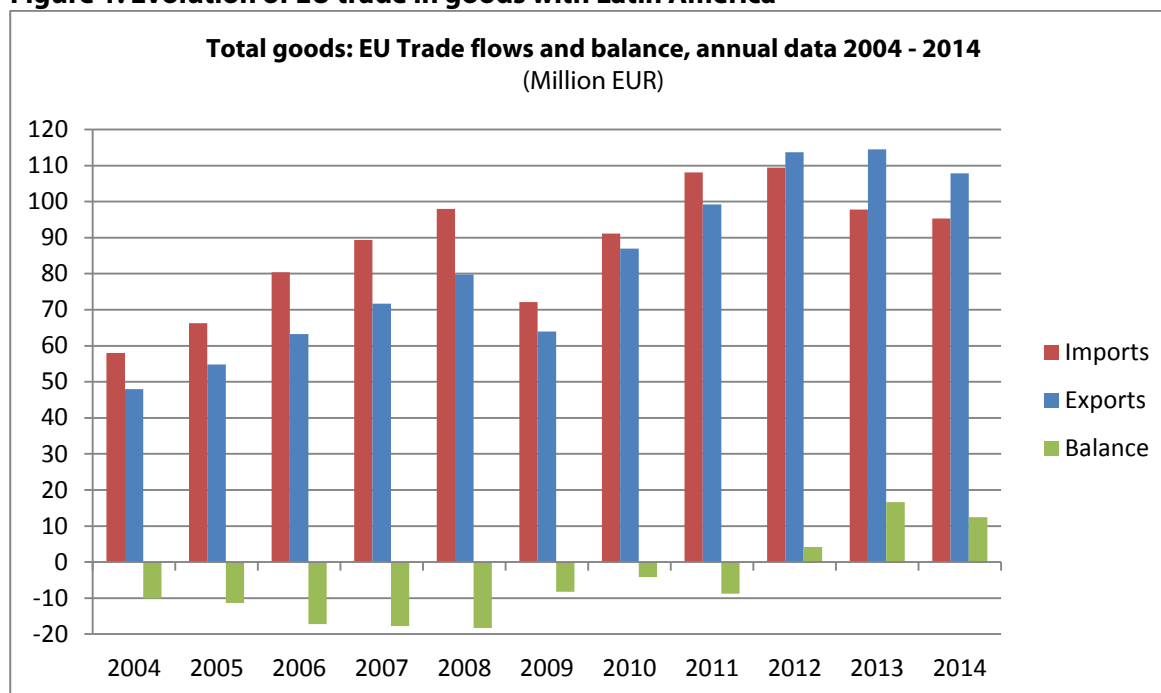
Increased economic relations since the 1990s, and competition with the United States (US) for market shares and access in Latin America's emerging markets in the last decade, have shaped EU-Latin American relations. There has been an emphasis on the economic character of the relationship, which has intensified through the negotiation in the last decade of a series of trade agreements.¹¹

The EU is the second trading partner for Latin American states, behind the United States, whilst trade in goods with Latin America accounts for 6.2 percent of total EU world trade. In terms of value, trade between the EU and Latin America doubled between 2004 and 2014, with the EU increasing its share of exports to Latin America by 1 percentage point to 6.5, whilst the total share of Latin American imports into the EU remained stable at around 5.9 percent of total EU imports. Despite a dip in trade in 2009 as a consequence of the financial crisis, exports and imports between the parties have recovered subsequently (see Figure 1).

⁹ See Section 1.4 Mapping of the Trade Agreements.

¹⁰Hänggi (2000) has created a typology of interregional relationships, where he describes interactions between large scale broad based associations of states in different geographical regions as *transregionalism* (e.g. CELAC-EU Summits), interactions between two custom unions as *pure interregionalism* (EU-Mercosur).

¹¹ The EU is linked to non-EU Caribbean countries through an Economic Partnership Agreements. Free trade agreements have been fully in force with Mexico and Chile since 2001 and 2003 respectively. Efforts are underway to update and modernise these. The trade agreement between the EU and Colombia and Peru has been provisionally applied since 2013. Ecuador initialled its accession protocol to this Agreement in December 2014. Central America and EU countries are provisionally applying a free trade agreement since 2013. Negotiations for a free trade agreement continue with Mercosur.

Figure 1: Evolution of EU trade in goods with Latin America

Source: Eurostat Comext

Brazil and Mexico are the most significant trade partners (with trade worth EUR58.2 billion and EUR22.6 billion respectively in 2013), followed by Chile, Argentina, Colombia and Peru. The EU remains the top source of foreign investment in Latin America, with foreign direct investment (FDI) stocks of EUR 505.7 billion in 2013. This outstrips total EU FDI stocks in China, India and Russia combined.¹² This represented 35 percent of FDI stocks in Latin America, and 10.3 percent of EU FDI stocks abroad. Companies from the largest Latin American economies have also invested in the EU, and in 2013 they held 3.6 percent of EU FDI inward stock (EUR135.5 billion), 42.9 percent and 16.7 percent of which came from Brazil and Mexico respectively (EU-CELAC 2015).

1.2 Motivations for trade agreements

Since the establishment of the Common Commercial Policy (CCP) in the Treaty of Rome, the European Union (and European Communities before that) trade policy has been a powerful tool for EU foreign policy (Smith 2001). Preferential trade arrangements (e.g. the Yaoundé and Lomé Conventions and the Generalised System of Preferences) gradually emerged to reflect special relations with states around the globe, and to pursue trade facilitation as a means to foster development. Before the Directorate-General for Trade was established within the European Commission in 1999, commercial relations were the remit of geographically-determined Directorate Generals in the European Commission. This resulted in the emergence of a network of varied preferential trade agreements focused on different parts of the world and following a variety of rationales. Most of the early agreements (until the late 1990s) signed with developing states, like the asymmetric preferential trade regimes established under the Lomé Conventions, encapsulated developmental concerns. Their aim was to facilitate trade flows on the premise that trade would generate economic growth and development. Agreements with neighbouring states also included a

¹² The accumulation of FDI stocks has been gradual and to a large extent independent of the EU's trade agreements. As Latin American states pursued privatisation policies (of public utilities, banks, telecommunications sectors) EU firms, and in particular Spanish firms, purchased numerous Latin American firms at this time (See Cuenca García 2002, ECLAC 2008, and for some examples see Tables in Appendix).

developmental/security dimension (especially in agreements with North African states, and Eastern Europe)¹³, which aimed to generate stability in the EU's neighbourhood.¹⁴

EU trade agreements with Latin America, answered to a different set of trade policy priorities from the outset. Following the return of democratic governments to the region in the 1980s and 1990s, the EU¹⁵ signed numerous Framework Cooperation Agreements with Latin American states that set the legal basis for bilateral and interregional relationships (see Table 1), and engrained the multiple Dialogues mentioned in the previous section. These Dialogues aimed to strengthen democratisation in the region, and also to facilitate trade and development support.

Table 1: EU agreements with Latin America in the 1990s-early 2000s

Partner	Signed [in force]	Agreement Name
Argentina	1990 [1991]	Framework Trade & Economic Cooperation Agreement
Brazil	1992 [1995]	Framework Cooperation Agreement
Uruguay	1992 [1994]	Framework Cooperation Agreement
Paraguay	1992 [1992]	Framework Cooperation Agreement
Mercosur	1995 [1999]	Framework Cooperation Agreement
Chile	1996 [1999] ¹⁶	Framework Cooperation Agreement
Andean Community	1996	Political Dialogue
	2003 ¹⁷	Political Dialogue & Cooperation Agreement
Central America	1993 [1999]	Cooperation Agreement ¹⁸
	2003 [2014]	Political Dialogue & Cooperation Agreement
Caribbean	1975	Lomé Convention
	2000 [2003]	Cotonou Convention

1.2.1 Competitiveness

By the mid to late 1990s, the EU sought to upgrade its relationships with the most significant emerging economies in the region. A key trigger was the United States' leading role in the establishment, firstly, of the North American Free Trade Area (NAFTA)¹⁹ and, secondly, in the Clinton Administration's ill-fated project to construct a Free Trade Area of the Americas (FTAA)²⁰. NAFTA, which led to EU exporter's losing market

¹³ The Barcelona Process (1995) aimed to create preferential trade agreements with North Africa, in the hope of extending some of the internal market aspects to the area and enhancing cooperation in migration flows, improving stability and furthering the security aims of the Common Foreign and Security Policy (Gómez 2003).

¹⁴The Europe Agreements of the early 1990s paved the path for Central and Eastern European states' accession to the EU.

¹⁵ For simplicity the term EU is used, although, prior to 1993 it was the European Community that was entering into various Framework agreements and engaging in rapprochement to Latin America.

¹⁶ In 1990 the European Community and Chile signed an initial Cooperation Agreement that was superseded by the 1996 Framework Cooperation Agreement.

¹⁷ This agreement has yet to enter into force. Relations between the parties are still based on the Political Dialogue begun in 1996 with the Rome Declaration (see http://eeas.europa.eu/andean/index_en.htm).

¹⁸ Prior to this, the EU engaged Central America through the San José Dialogue, which represented the European contribution to peace processes in Central America and the beginning of a concerted European rapprochement to Latin America and is not an agreement but a process (see Smith 1995).

¹⁹ NAFTA encompasses Canada, the United States and Mexico, and came into force in 1994.

²⁰ FTAA was first announced in 1994 by President Clinton. The aim was to integrate the Western Hemisphere into one continental trade agreement by 2005. With the exception of Cuba, all countries in the Americas participated in the project. Under Hugo Chavez, Venezuela, objected to US leadership in the negotiations, as did Bolivia's Evo

share in Mexico (Barrau 1999), and the FTAA project acted as a 'wake-up call' for the EU to take Latin America seriously (Barahona de Brito, 2000: 5; also Briceño Ruiz, 2001; Estevadeordal & Krivonos, 2000; Valladao, 1999). In the aftermath of NAFTA, the EU negotiated an interim preferential trade agreement with Mexico in just a year (between 1996 and 1997) to allay some of those losses. A final agreement was concluded in 1999 and implemented in 2000 (goods) and 2001 (services).

The negotiation of this preferential trade agreement with Mexico responded to the common patterns identified in the literature on free trade agreements for the formation of trade agreements. Domestic coalitions of interest groups, typically exporters, pressure governments to negotiate preferential trade arrangements to ensure competitors from other states have no advantage over them in a given market (Dür 2008, Mansfield & Milner 2010). This generates a kind of 'domino effect' that multiplies the number of trade agreements (Baldwin 1993). Whilst the launch of negotiation agreements with Mercosur member states and Chile in 1999 was not preceded by agreements with the United States, the threat of a potential Free Trade Area of the Americas (FTAA) stimulated the European Commission to seek negotiation mandates and initiate negotiations to pre-empt potential losses from a FTAA (García 2011).

In this respect, EU Trade Agreements with Latin America responded to commercial logic: to recover market share, in the case of Mexico, and to prevent a loss in subsequent cases. It is worth noting the importance of competition with the United States as a main motivational factor. Impact assessments for agreements with Mercosur, Andean states and Central America all expected meagre outcomes in terms of extra welfare effects for the EU.²¹ EU investment and trade with Latin America had in fact already prospered in the absence of any free trade agreements as these states liberalised their economies during the 1990s (see Tables V, VI, and VII in Appendix reflecting the breadth of EU investments in Latin America even before the trade agreements were in place). The competitiveness motif was nevertheless heightened in the aftermath of Commissioner Mandelson's 2006 'Global Europe' trade strategy. This strategy was drafted at a time when the Doha Round negotiations at the WTO were proving challenging and as a response to moves by the United States and Asian states to negotiate improved market access and regulatory conditions for their economies through bilateral free trade agreements (FTAs).

'Global Europe' gave a green light to a renewed pursuit of bilateral trade negotiations by the European Commission, by lifting Pascal Lamy's moratorium on bilateral free trade agreement negotiations (García 2011).²² 'Global Europe' signalled, as key rationales for the shift to bilateral trade negotiations, the levelling of the playing field for EU businesses in global markets and access to emerging and growing markets. Significantly, the strategy also stated the need to 'take account of our potential partners' negotiations with EU competitors, and their impact on EU markets and economies' when determining suitable partners for comprehensive trade agreement negotiations (DG Trade 2006, 11). The Strategy gave way to the negotiation of a new generation of EU trade agreements, more comprehensive in scope and depth, than those that preceded it. These agreements specifically sought to incorporate controversial matters that had been watered down or rejected in the WTO negotiations (e.g. further liberalisation of services, tighter

Morales, who sided with Chavez's proposals for a Bolivarian Alternative for the Americas. By 2003 negotiations faltered and the project has been sidestepped by US bilateral free trade agreements with selected Latin American states, which have been willing to agree to the trade agreement conditions set by the US.

²¹ The Trade Sustainability Impact Assessment (SIA) for the Negotiations of the EU-Mercosur Association Agreement (2010) estimated a welfare effect of 0.1% of additional GDP for the EU, with losses in the agricultural sector. The SIA for negotiations with the Andean Community (2009) projected a welfare effect on the EU of less than 0.1% of GDP, and no significant effect on EU trade flows. The SIA for the negotiations with Central America (2009) estimated positive gains for Central America, and absolute gains of EUR 2.3 billion per annum for the EU, which the study represented in relative terms as an additional 0.0% to the European income.

²² Pascal Lamy introduced a moratorium on new bilateral trade negotiations to focus the EU's efforts on achieving a successful outcome to the WTO Doha Round.

intellectual property rights protection, greater access to market procurement markets, tackling regulatory behind the borders barriers to trade, competition policy).

Following this trade strategy, the European Commission gained mandates to open trade negotiations with Central America and the Andean Community. These negotiations prioritised states and regions that had already negotiated, or were in the process of negotiating, free trade agreements with the United States. Although the FTAA failed to crystallise, in the early 2000s, the United States embarked on a purposeful strategy to rally support for its ambitious liberalisation agenda through bilateral trade agreements. Its initial agreements were with countries in the Western Hemisphere heavily dependent on interactions with the United States economy (Central American states and Dominican Republic). The economic impetus to create a 'level playing field' for European businesses therefore explains the EU's eventual pursuit of bilateral negotiations with Latin American countries. This was true even though the initial approach to post-Global Europe trade negotiations with Latin America, did seek to continue the EU's commitment to regional integration, and combine it with the new competitiveness agenda, as will be apparent in the following section (García 2012).

1.2.2 Regional integration and trade agreements

As highlighted in Section 1.1, the EU has organised its relations with Latin America within a context of 'complex interregionalism' (Hardacre & Smith 2009). Its trade negotiation strategy has also followed this logic, and wherever regional groupings exist in Latin America, the EU has been keen to pursue interregional trade negotiations on a 'bloc-to-bloc' basis. Predating the 'Global Europe' strategy, the EU has been negotiating an Association Agreement with Mercosur since 1999.²³ Following the 'Global Europe' trade strategy the European Commission sought and gained mandates to open negotiations with the Andean Community and Central American states in 2007.

Bloc-to-bloc negotiations with Central America, achieved a degree of regional integration (Panama's participation in the negotiations led to its joining the SIECA, Sistema de Integración Económica de Centro-América). Also in the pre-'Global Europe' trade strategy years, Central American and Andean states had made requests to the EU to open trade negotiations, and the European response had been to make these contingent of greater regional integration. What changed with the arrival of 'Global Europe' was the relative weight given to economic competitiveness and maintaining market access parity with the United States as far as possible. Between 2003 and 2008 Central American states (and the Dominican Republic) negotiated and signed new trade agreements with the United States, making the EU keener to pursue negotiations with these states, even if the degree of regional integration fell short of EU expectations. At the signing of the agreement between the EU and Central America in May 2010, Commission President Barroso emphasised that the EU still expected more regional integration, when he stated that '[w]e hope this

²³ The successful negotiation of the Association Agreement with Chile was in part a reflection of the fact that at the time negotiations commenced, Chile, an Associate Member of Mercosur was considering full membership. It was also hoped that the negotiation process (which until 2001 was linked to the Mercosur negotiations) would afford the final inducement for Chile to fully join Mercosur, therefore furthering regional integration in the South America. However, Chile opted to remain an Associate Member (García 2011).

Negotiations with Mercosur have stumbled over differences in expectations regarding agricultural market access, and the absence of a unified position on the part of Mercosur. However, Mercosur member states, like EU member states, cannot negotiate trade agreements independently. Moreover, the absence of Mercosur (or Mercosur member states) agreements with the United States, limits possible losses for the EU, and therefore reduces the urgency of negotiating bilateral deals. The Strategic Partnership with Brazil includes the aim of fostering greater contact on trade and investment facilitation and unblocking EU-Mercosur negotiations (European Commission 2007b).

agreement between the regions will also contribute to strengthening Central American integration and institutional government there' (cited in Welcome Europe, 19/5/2010).

Interregional negotiations with the Andean Community faltered soon after their launch in 2007. Bolivia objected to the inclusion in the negotiations of stronger intellectual property rights protection of the kind that developing states had rejected within the WTO Doha Round, and did not take part in negotiations (Grey Molina 2013, 10). Ecuador initially engaged in negotiations but withdrew in 2008, again due to the contentious matter of intellectual property rights. The EU opted to proceed with negotiations with only Peru and Colombia, states which by 2008 had already negotiated and signed trade agreements with the United States.

Whilst fostering regional integration has been an important motivation behind these agreements, gaining and retaining competitiveness vis-à-vis the United States, and increasingly China, in key Latin American markets, has been a more important factor. When interregional negotiations have not looked likely to match the access the EU's major competitors were seeking, they have been replaced by a bilateral approach. Notwithstanding this, the agreements negotiated have been mindful of the ultimate goal of fostering greater regional integration, and have left an open door for other members of the Andean Community to accede to the agreement. In 2014, faced with a less competitive position in the EU market than neighbouring Colombia and Peru, and with preferential access to the EU market about to expire at the end of 2014 due to the EU's reform of the Generalised System of Preferences²⁴, the Ecuadorian government returned to the negotiation table. In December 2014 the EU and Ecuador agreed on the accession of Ecuador to the EU-Peru/Colombia Trade Agreement. The European Union also approved an extension of preferences granted under the GSP to Ecuador in the interim²⁵. The final Andean Community member state, Bolivia, is the least developed of the group and continues to qualify for the EU's GSP system even after its reform. It therefore faces less pressure than Ecuador did to accede to the Trade Agreement. However, the Bolivian government and EU authorities are discussing plans for Bolivia to join the Agreement. If this happens an interregional Trade Agreement will have been achieved through a multi-speed approach, thus fulfilling the EU's regional integration ambitions, and simultaneously staying on a par with the EU competitors in third countries in terms of market access.

The Economic Partnership Agreement (EPA) with Cariforum stands apart from the rest of EU trade agreements with Latin American states. Caribbean states' relationships with the European Union have been governed, primarily, by the EU's development policy. The EU's development policy has created various frameworks for cooperation with developing states in Africa, Caribbean and Pacific (ACP) regions. These initial frameworks (Lomé Conventions) granted ACP exports from ACP states preferential access to the European market place, as a way of supporting ACP production, employment and development. The other side of the relationship is the distribution of development aid funds to ACP states. Trade preferences under Lomé were asymmetrical, i.e. ACP states were not required to grant preferential market access to EU exports. Developing states outside of the ACP framework protested that these arrangements were discriminatory and against the principle of non-discrimination at the WTO.

²⁴ Through the Generalised System of Preferences the EU grants unilateral tariff free access to certain imports from developing states. States signing up to the GSP Plus system can gain further market access privileges on the condition of joining and implementing international environmental and labour standard regimes. Regulation No 978/2012 of 2012 started a reform process of the GSP system, whereby upper-middle income states (classified as such for three years running by the World Bank) have 'graduated' out of the system and are no longer eligible for preferences (see reforms at http://trade.ec.europa.eu/doclib/docs/2015/august/tradoc_153732.pdf).

²⁵ Regulation on the tariff treatment for goods originating in Ecuador: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R1384&from=EN>

Because of the developmental nature of the preferences, the EU had a waiver from the most favoured nation provisions of WTO allowing it to maintain the system. In 2000, as the waiver came to an end, a new framework was created to encompass EU-ACP relations, through the Cotonou Agreement. Cotonou sparked the negotiation of reciprocal (with special and differentiated treatment for the developing states) Economic Partnership Agreements (EPA) between the EU and subgroups of states within the ACP group.²⁶ Predating 'Global Europe', a key aim of EPAs was developing cohesive regions, in keeping with European ideas regarding the developmental effects of greater regional trading and integration. Thus, rather than negotiating EPAs with individual states, these were negotiated with groups of states. However, this proved successful only when negotiations involved pre-existing regional groupings (Börzel & Risse 2009, 16). In 2008, the EU concluded its first EPA with the Cariforum states in the Caribbean. As will become apparent in Section 2, the EPA differs from other EU Trade Agreements in Latin America, given the fact that this agreement falls under the scope of the EU's development's policy rather than merely a trade initiative. Although the general template is consistent with other trade agreements.

1.2.3 Regulatory preferences

All EU agreements, particularly those negotiated since 2006, aim to extend the EU's preferred model of economic liberalisation and regulation, hence the degree of similarity between them. In this they are similar to the US agreements, which seek to further the US approach. At the WTO Doha Round Hong Kong Ministerial Meeting in 2005, some of the key offensive objectives of the EU and United States were shelved due to opposition from other WTO partners²⁷. These included: tighter rules on intellectual property rights protection, provisions on government procurement, and the liberalisation of services markets. In their respective free trade agreements, the EU and United States have sought to satisfy these goals. Indeed, as will be seen in Section 2, the EU preferential agreements incorporate EU offensive economic goals that proved controversial at the WTO Doha Round. As various commentators have pointed out, through its trade agreements the EU also extends its own market, its own rules, its own standards and regulations, which constitute an integral part of its normative export and its trade strategy (Damro 2012, García 2013, Khorana and Orbie, 2015). This regulatory expansion is another important motive behind trade agreement negotiations, and is especially important in reducing business costs for European firms if other states accept its standards and procedures. Extending a preferred regulatory and economic model, fostering integration, and retaining or enhancing economic competitiveness and market access have been the key motives behind the EU's trade agreements and negotiations with Latin America, as summarised in Table 2, overleaf.

²⁶ More information on Cotonou and the EPA framework can be found at <http://ec.europa.eu/trade/policy/countries-and-regions/regions/africa-caribbean-pacific/>. The Economic Partnership Agreements (EPAs) have also been critiqued for enforcing neoliberal liberalization on the developing world (Hinkle & Schiff 2004, Stevens 2006).

²⁷ Developing states, spearheaded by a group of emerging states including India and Brazil, actively lobbied during WTO negotiations to remove the following from the negotiations agenda: a binding commitment on opening government procurement markets to foreign firms (as this is linked to domestic industrial and development strategies), tighter intellectual property rights protection including lengthening patents for medicine that would be detrimental to their generic medicine industries and programmes to fight diseases, extending services liberalisation beyond commitments at WTO. (See Jensen & Gibbon 2007, Gallagher 2007).

Table 2: Rationales for EU trade agreements with Latin America

Agreement	Mexico	Chile	Mercosur	Andean Peru/ Colombia	Central America	Cariforum
Rationale						
Developmental					‡	X
Economic	X	‡	X	X	‡	
Competitiveness	X		X	X	X	
Market share loss to USA	X					
Fear of market share loss to USA		‡	X	X		
Access to emerging market	‡		X	‡		
Staying on a par with USA post-Global Europe			‡	X	X	
Expansion of liberalisation and regulatory model	‡	‡	‡	‡	‡	‡
Regional integration		‡	X	‡	X	‡

Note: Boldface **X** represents the EU's most pressing rationale at the time of choosing to engage in particular negotiations, X represents important, but not the most pressing, motivations at the time negotiations were launched, ‡ represents other reasons common to all FTAs or broader EU strategies.

1.3 Type of agreement, coverage and regional scope

EU trade agreements have evolved over time to gradually include more policy areas. This is the result of international trade trends, and internal dynamics within the EU. As the WTO, and the General Agreement on Tariffs and Trade (GATT) and General Agreement on Trade in Services (GATS) before it, have included lowered of tariffs, dismantled of quotas and barriers to trade in a growing number of goods and services, so bilateral trade agreements have become more ambitious in their scope and coverage. WTO rules under GATT Article XXIV allow for preferential trade agreements provided they liberalise substantially all trade between the partners and they should extend greater liberalisation than under the WTO. Moreover, as tariffs have been lowered through the WTO, the focus of trade liberalisation negotiations has shifted to 'behind the border' non-tariff barriers (e.g. sanitary and phytosanitary measures, vehicle tests), which have proven challenging matters to tackle in the multilateral forum of the WTO. As mentioned in previous sections, EU trade agreements have increasingly expanded their scope to incorporate those matters that have fallen off the WTO agenda (public procurement, services, competition policy, and intellectual property rights). Over time, new technologies also create trade opportunities, therefore these are gradually incorporated into trade agreements. For instance, e-commerce provisions are absent in the Mexico and Chile agreements, and electronic trade facilitation only appears in the most recent of the Latin American agreements (that with Peru/Colombia). Similarly, provisions for cross-border services provision (and rules on short-term establishment) are absent from the older agreements with Mexico and Chile, but present in the more recent agreements. It is for this reason that plans are underway to negotiate a revised version of the Mexico Global Agreement and the Association Agreement with Chile.

As international trade negotiations have expanded their scope, so has the EU trade policy and the ability of the European Commission to negotiate a broader scope of issues on behalf of the EU and its member states. The Treaty of Lisbon granted the European Commission the prerogative to negotiate investment agreements on behalf of the EU. As all the mandates for the agreements under discussion predate Lisbon, these agreements lack investment commitments, although they all contain clauses to encourage and facilitate investment. This is in contrast to United States trade agreements that do include investment chapters. Likewise, the cultural exception means that the European Commission has not been entrusted

with powers to negotiate liberalisation of audiovisual and cultural services at the international level. Therefore, EU trade agreements also exclude audiovisual services from service liberalisation.

The Treaty of Lisbon enhanced the role of the European Parliament in trade agreements. This institution has been vocal in advocating a stronger position on labour and environmental standards in trade agreements. Recent EU trade agreements (South Korea, Singapore, Central America, Peru/Colombia, Canada) include a novel chapter on trade sustainability (discussed in Section 3.3), which aims at ensuring states maintain their own labour and environmental legislation, and ratify and comply with international standards as expressed in the International Labour Organisation (ILO) core conventions and international environmental treaties. The aims are to prevent liberalisation from affording firms an opportunity to engage in standards arbitrage, as well as following a normative commitment to social and environmental rights.

An important aspect of the EU's approach to trade agreements, is that whilst it builds on a model (often using the latest and most comprehensive agreement negotiated), the approach is flexible, allowing for particular concerns of partners to be taken on board. By contrast, the United States uses a template model and attempts to gain acquiescence from partners for its specified template. This flexibility is especially apparent in the schedules for liberalisation, where partners' level of development is taken into account in individual lists of commitments with tailored phasing-in periods. In the EU-Peru/Colombia Trade Agreement, Peru and Colombia have different phasing-in periods, and these are longer than those for the EU, thus enabling sectors in these states that may be disadvantaged by competition with EU products a longer period to adapt. The same can be observed in the EPA with Cariforum. Although the commitments and schedules are the most significant area of flexibility and tailoring to partners in the agreements, some of the areas for cooperation are also shaped specifically to cater for the interests or particular needs of the partner (e.g. inclusion of clauses on the impact of tourism on sustainable development in the Cariforum EPA, given the environmental vulnerability of small islands and their economic reliance on tourism, and not in the other agreements).

A crucial characteristic of EU trade agreements is that they create a linkage between trade preferences and respect for democracy and human rights. Agreements do this through the essential elements clause at the beginning, which establishes the legal possibility of suspending trade preferences if human rights are breached. Other states tend to separate these matters from trade, and have been reluctant to accept the EU's approach.²⁸ Since the agreement with Chile, respect for the rule of law has also become an essential element. These essential elements are a crucial way for the EU to leverage its market power to pursue normative foreign policy objectives. EU trade agreements are also accompanied by a political and cooperation agreement that sets the broader legal framework for the relationship and often contains the essential element clause.

The Trade Agreement with Peru/Colombia focuses exclusively on trade liberalisation and commitments. Its essential elements clauses are in the EU-Andean Community Political Dialogue and Cooperation Agreement of 2003, which establishes the overarching relationship between the parties.²⁹ The Association Agreements with Chile and Central America encompass the Political Cooperation and the Trade Agreements in one single document and were negotiated as a package, as does the Global Agreement with Mexico. The EPA with Cariforum includes these essential elements, but as will be clear in the tables in section 2.1, aspects of the political dialogue are not covered by the EPA. This is because these matters are governed by the broader political cooperation dialogues under the Cotonou framework between the EU and ACP states. Since the 1990s EU agreements incorporate legally binding commitments on human rights

²⁸ Australia did not sign a Framework Agreement with the EU over this. India has argued that trade is a separate issue from rights and normative treaties. Mexico also showed reluctance to this linkage, although it signed the agreement in the end (Smymanzki & Smith 2005).

²⁹ Despite being concluded 13 years ago, this Agreement has not yet entered into force.

and democracy, although the extent of coverage seems to have evolved over time depending on the a range of factors, such as advances at the WTO, internal changes within the EU and the interests and sensitivities of the EU's trade partners.

1.4 Mapping of trade agreements

As noted above the timing and tempo of EU negotiations with Latin American states has been heavily influenced by US foreign policy in the region. Agricultural market access proved especially controversial in the negotiations with Mercosur, as the EU wanted to avoid granting too many concessions in the regional negotiations. In fact, from the beginning tariff reductions, especially for agricultural products, were made contingent on agricultural tariff reductions negotiated at the WTO, and were initially postponed until 2001. The hope was to have had some idea of what concessions the EU would have to make at the WTO. WTO negotiations turned out to be more prolonged and controversial than had been envisaged, so the EU and Mercosur drafted their market access and tariff reduction proposals without knowing what the WTO agreements would be. Mercosur remained dissatisfied with the EU's market access proposals for agriculture. The EU gave Mercosur an ultimatum to accept the offer by October 2004, which Mercosur rejected. By late 2004, FTAA negotiations were already faltering, and in 2005 meetings ceased altogether, thus eliminating the immediate concerns over possible market share losses to the USA.

The lack of unity within Mercosur, the Brazilian crisis of 1999 and the subsequent Argentine default of 2001 further complicated Mercosur's ability to negotiate as a block and impeded successful negotiations. Various attempts have been made since to re-ignite and finalise the negotiations. Increased Chinese presence in Latin America over the last decade (as an investor and as a trade partner) has re-kindled the parties interest in negotiating an agreement that would ensure Europe's position in a key emerging economy as is Brazil, and would enable Brazil to diversify trade partnerships and export profiles.³⁰ Currently, Brazil is bound by the Mercosur charter in terms of the negotiation of trade agreements, hence, the continuation of negotiations with Mercosur as a bloc. However, since the admission of Venezuela to the group in 2006, with its more protectionist stance, negotiations with third parties have become even more complicated. Uruguay and Paraguay have expressed an interest (currently forbidden by the rules) to negotiate bilateral trade agreements with the United States (Klonsky *et al.* 2012).

Negotiations with individual states in Latin America have been more successful for various reasons. Firstly, the fact that other partners were simultaneously negotiating with the USA (Chile) or had already concluded trade agreements with the USA (Peru, Colombia, Central American states) increased the pressure on EU negotiators to conclude such agreement. Secondly, this signified that Latin American states had accepted those issues deemed 'controversial' at the WTO level (intellectual property protection, competition policy, opening services markets and public procurement markets) in their agreements with the USA, facilitating a mutual understanding in the negotiations with the EU. Thirdly, it was easier to negotiate on agriculture with these states, as their agricultural exporting capacity is far more limited than Mercosur's, and many of their agricultural exports (tropical fruit, counter-seasonal fruits, specialist grains) are not in direct competition with the EU agricultural sector (as are sugar, beef, lamb, poultry exports from Mercosur).

In the case of the negotiations with the Andean Community, as argued in the previous section, an interregional bloc-to-bloc negotiation was precluded when Bolivia rejected joining negotiations over the inclusion of stronger intellectual property rights. Ecuador withdrew from the negotiations in 2008, as it had done from the negotiations with the USA, over the government's rejection of increased intellectual

³⁰ In recent months, Brazil has once again experienced a sharp currency devaluation, recession, and political crisis in the midst of corruption scandals, which again cast a doubt over the possibility of a rapid end to negotiations. As Latin American exports to China rose in the last decade, coinciding with high commodity prices, many in Brazil expressed concern over the de-industrialisation in the country in favour of agricultural exports to China.

property rights legislation, which it saw as in contradiction with internal market rules of the Andean Community. The Ecuadorian government also voiced its disappointment with Peru and Colombia's decision to ignore Andean Community commitments to negotiate as an entity and to proceed with their own negotiations with the EU. Colombia and Peru finalised their Trade Agreement in 2012, and this has been provisionally implemented since 2013. As noted above once this agreement came into effect, Ecuador's government shifted its policy on the EU Trade Agreement. Its neighbouring countries were benefitting from better access to the EU market, and in true 'domino effect' (Baldwin 1993) style, Ecuador's government opted to join the Trade Agreement rather than lose out to competitors. Moreover, Ecuador experienced a rise in imports of EU products, which were being sourced in neighbouring Andean Community countries thus bypassing the government's ability to impose duties on these. Finally, the afore-mentioned reform of the EU's Generalised System of Preferences (GSP) meant that from the start of 2015, Ecuador was due to lose its preferential access to the EU market. These factors combined to bring the Ecuadorian government back to the negotiating table in 2014. Throughout that year Ecuador and the EU negotiated a text for the accession of Ecuador to the EU-Peru/Colombia Trade Agreement.

The agreement with Cariforum represents an exception. The logic for the negotiation stems back to the 2000 Cotonou Agreement, as explained in Section 1.2, which re-defined the EU's relationship with developing states in Africa, Pacific and Caribbean. It also set in motion the negotiation of Economic Partnership Agreements with groups of states within the Cotonou framework. The start of negotiations, therefore, predates the 'Global Europe' trade agenda for trade agreements, and are not motivated by market share losses, or fears of losses to the United States, in the way other negotiations with Latin American states have been.

Table 3 summarises the various trade agreement negotiation processes between the EU and Latin American states.

Table 3: Mapping of stages of EU-Latin American trade agreements

Partner	Agreement Name	Mandate	Launch of Negotiations	Evolution	Conclusion of Negotiations	Signature of Agreement	Provisional Implementation	Implementation	Review
Mexico	Global Agreement	1996	1996	Interim agreement signed in 1997 and implemented in 1998	1999			2000 (goods) 2001 (services)	Since 2013 exploring upgrade options 2015 public consultation
Chile	Association Agreement	1999	2000	De-linked from Mercosur negotiation in 2001	2002	2002	Feb 2003	Oct 2003 (FTA pillar) 2005 (full AA)	
Mercosur	Association Agreement	1999	2000	2004 Ultimatum lapsed. Negotiations relaunched in May 2010. Last round held Oct 2012. March 2014 announcement to exchange offers. Plan was to exchange offers by end of 2015. Macri's election (Nov 2015) in Argentine might facilitate continued negotiations.					
Central America	Association Agreement	2007	2007			June 2012		Honduras, Nicaragua, Panama (Aug 2013), Costa Rica, El Salvador (Oct 2013), Guatemala (Dec 2013)	
Cariforum	Economic Partnership Agreement	2002				2008 Haiti signed in 2009		Not currently implemented in Haiti – pending ratification	
Peru*	Trade Agreement	2007	2007			June 2012		Mar 2013	
Colombia*	Trade Agreement	2007	2007			June 2012		Aug 2013	
Ecuador*	Trade Agreement	2007	2007	Withdrew from EU-Andean negotiations in 2009. Re-opened negotiations in 2014.	July 2014	Dec 2014		Not yet implemented	
Bolivia	Contacts taking place to explore possibility of Bolivia (Andean Community member) also joining the Andean Trade Agreement								

Notes:

1. Where available months have been specified. 2. Central America (Panama, Nicaragua, Honduras, El Salvador, Costa Rica, Guatemala), Cariforum (Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St Lucia, St Vincent and the Grenadines, St Kitts and Nevis, Suriname, Trinidad and Tobago). 3.* These countries initially negotiated as bloc with the EU.

2 Scope of EU trade agreements with Latin American Partners

2.1 Comparison of the scope of the agreements

EU agreements, as mentioned in Section 3.1 include various pillars: essential human rights and democracy elements, political cooperation, and a trade agreement. These can sometimes appear in a single document (Association Agreement) or as two agreements, but linked through an essential elements clause. In the cases of Chile and Central America the EU has signed Association Agreements which include a trade agreement pillar and a political dialogue and cooperation pillar. Although not an Association Agreement, a similar situation occurs with Mexico. In the case of Cariforum political dialogue and cooperation is covered under the Cotonou Agreement, whilst the Economic Partnership Agreement deals more specifically with trade matters. In the case of Peru and Colombia, the Trade Agreement, as the name suggests, deals with trade, whilst the cooperation pillar of the relationship is covered by the earlier Political Cooperation Agreement between the EU and the Andean Community. A series of supporting tables have been created to facilitate the visualisation of clauses included in the various agreements and how these have evolved over time. Table 5 assigns a short name to each of the relevant agreements, which will be used in subsequent tables to refer to each given agreement.

Table 5: Trade Agreements and their Abbreviations

Partner Country	Name of Agreement	Short Name (incl. year signed)
Mexico	Economic Partnership, Political Coordination and Cooperation Agreement	MX-EP97
Chile	Association Agreement	CL-AA02
Cariforum	Cotonou Agreement	CF-CA00
Cariforum	Economic Partnership Agreement	CF-EPA08
Central America	Association Agreement	CA-AA12
Peru / Colombia (also Ecuador and Bolivia)	EU-Andean Community Political Cooperation Agreement ³¹	AC-PCA03
Peru / Colombia	Trade Agreement	PECO-TA12

There are two key observations to be made with regards to EU agreements with Latin American states. Firstly, over time, the scope and issue coverage of the agreements has expanded gradually. Secondly, although broadly following a generic schema, there is a degree of differentiation in the agreements to take into consideration partner states' sensitivities, and also varying levels of development. Thus, less developed states are allowed longer transition periods to reduce their tariffs and are offered more support through the cooperation parts of the agreements.

A key characteristic of EU agreements since the 1990s is the inclusion of essential clauses, which in international law signify that the agreement or other agreements associated to it (a trade agreement) can be suspended if those essential clauses are breached. EU essential clauses cover democracy and respect for

³¹ This agreement is still pending implementation.

human rights in all cases. Since the Chile Association Agreement they also include respect for the rule of law (see Table 6). Over time the key principles underpinning the agreements have also expanded to reflect Treaty changes within the EU, to include non-proliferation of weapons of mass destruction, good governance and sustainable development (the Lisbon Treaty extended the list of values of the EU, and mandated their incorporation into all EU external actions through Article 21). EU agreements are also underpinned by a set of principles that the parties agree to respect and work towards, which often reiterate commitments the signatories have already signed up in international multilateral treaties (e.g. sustainable development), and which are not directly legally binding in the way the essential elements are.

Table 6: Essential elements and principles in agreements with Latin America

Agreement	MX-EP97	CL-AA02	CF-CA00	CA-AA12	AC-PCA03
Topic					
Essential Elements					
Respect for democracy	x	x	x	x	x
Respect for human rights & UN Declaration of Fundamental Human Rights	x	x	x	x	x
Respect for rule of law		x	x	x	x
Principles					
Respect for internal and international policies of parties					x
Disarmament and non-proliferation of Weapons of Mass Destruction					x
Sustainable Development		x	x	x	x
Good governance			x		

Political dialogue pillars in the agreements are an important aspect of EU agreements, as they involve dialogues, support and a set of 'soft' power tools that can build trust and knowledge between the partners. Political cooperation is aimed at the promotion of foreign policy objectives (e.g. democracy promotion, combatting terrorism or drug trafficking) particularly in areas where international cooperation is required to achieve successful outcomes. As EU priorities have changed over time, so the areas covered under political cooperation in agreements have been expanded to include non-nuclear proliferation, combatting climate change, gender equality (see Table I in Appendix).

Cooperation pillars include political, social, and economic cooperation, and show a certain degree of adaptation to partners' situations. Cooperation is important as it can facilitate the implementation of the trade pillars of agreements. For instance, cooperation in human rights, democracy and good governance includes collaboration to improve public administration (capacity building, training, staff exchanges). A more capable public administration will be better able to set up simplified systems for customs procedures for instance, and will be better placed to monitor respect for human rights within its territory. (See Table II in Appendix for a list of cooperation topics in Democracy and Human Rights). Social cooperation on environmental legislation and potentially joint projects to protect the environment, and mechanisms to facilitate civil society participation in bilateral relations, or on how to apply the ILO's decent work agenda in practice, is an important commitment that the parties undertake. They commit to cooperate, although the methods or outcomes of the cooperation are not legally binding. Social cooperation is closely related to aspects of the trade pillars of the agreement, in particular the new Trade and Sustainability chapters in the

Agreements with Central America and Peru/Colombia. (Table III in the Appendix lists social cooperation areas).

The cooperation pillars in the Agreements reveal evolution over time with the move to include novel categories (e.g. technology transfer which was not contemplated in the Mexico and Chile agreements). Adaptation to partners' priorities is also evident in the inclusion of cooperation in indigenous and ethnic matters in the Cooperation pillar of the Association Agreement with Central America and in the Political Cooperation Agreement between the EU and Andean Community.³²

As highlighted in Section 1.2 promoting regional integration has been an important motivation for the EU in these agreements. Cooperation in regional integration features in all the cooperation pillars. The trade pillars, in particular in the Peru/Colombia agreement facilitates regional integration through the incorporation of diagonal cumulation mechanisms in the rules of origin, allowing some products that derive from regional production chains to qualify under the rules of origin as originating in the partner country, therefore qualifying for preferential access to the EU market under the terms of the Trade Agreement.

Cooperation pillars include numerous sectors and areas that have not even been discussed at the WTO, and which have been categorised as WTO plus matters by researchers comparing trade agreements (Horn et al. 2010). An important aspect of these is that unlike the trade pillar, these issues are not legally enforceable. Parties commit to cooperate, exchange information and discuss avenues to improve policies in these areas. However, as the list of areas covered under the economic cooperation (see Tables 7 and 8) reveals, many of these areas are crucial for the implementation of the trade pillars (e.g. cooperation in customs procedures, in statistics, in promotion of SMEs, standards, technical conformity, intellectual property rights, technology transfer, and so on).

Table 7: Economic cooperation topics in agreements with Latin America

Topic	Agreement	MX-EP97	CL-AA02	CF-CA00	CA-AA12	AC-PCA03
Economic Cooperation						
Industrial cooperation		x	x		X	x
SME		x	x	x	x	x
Microcredit & microfinance					x	
Investment promotion		x	x			x
Agriculture and rural		x	x	x		x
Customs		x	x	x	x	x
Fisheries & aquaculture		x	x	x	x	x
Energy		x	x		x	x
Transport		x	x		x	x
Statistics		x	x		x	x

³² Some items appear under different headings in different agreements. They have been listed under the original headings. Terrorism and migration cooperation appear in most agreements but under different titles for cooperation, e.g. cooperation in justice and security as opposed to political dialogue. Although cooperation is not legally binding it does suggest a stronger commitment to working together than merely holding a political dialogue on the matter.

Table 8: Economic cooperation topics in agreements with Latin America Cont.

Topic \ Agreement	MX-EP97	CL-AA02	CF-CA00	CA-AA12	AC-PCA03
Economic Cooperation					
Industrial cooperation	x	x		x	x
SME	x	x	x	x	x
Microcredit & microfinance				x	
Investment promotion	x	x			x
Agriculture and rural	x	x	x		x
Customs	x	x	x	x	x
Fisheries & aquaculture	x	x	x	x	x
Energy	x	x		x	x
Transport	x	x		x	x
Statistics	x	x		x	x
Financial services	x				
Mining	x	x		x	x
Tourism	x	x	x		x
Consumer protection	x	x		x	x
Data protection	x	x		x	x
Intellectual Property rights	x	x		x	x
Technology transfer			x	x	
Public procurement	x	x	x	x	x
Macroeconomic dialogue		x			x

The economic cooperation section of the agreements with Cariforum reflects the developmental nature of the agreement with the inclusion of cooperation in development, innovation dialogues and exchanges, and the provision of support to promote Cariforum export diversification (away from reliance on cash crops and tourism) and the focus on renewable energy, to support cleaner development. Likewise, the Association Agreement with Central America includes cooperation in a series of sectors like artisanal products and organic products that are increasingly being developed in Central America, but which require initial set-up and certification costs, and which have been identified as areas where these states would gain from cooperation and support from the EU (see Table IV in Appendix).

The Trade Agreements, and trade pillars of Association Agreements, all cover trade in goods and services, following nomenclatures and commitments undertaken at the WTO (under GATT and GATS). They also go beyond signatory states' commitments at the WTO by reducing more tariffs in trade in goods, extending the coverage of services liberalisation, and, crucially incorporating tighter intellectual property norms, access to government procurement markets which states have not committed to at the WTO, as will be analysed in section 2.2.

2.2 Content and level of ambition of the provisions of trade agreements

This section deals specifically with the trade pillars of Association Agreements and Trade Agreements. A crucial difference between the Political Cooperation Agreements and Trade Agreements is that the Trade Agreements are legally enforceable, and include a dispute resolution mechanism to resolve breaches of the commitments. Typically the parties will first resort to consultations, they can then request arbitration in the dispute, and can finally demand the creation of a panel of experts to decide and adjudicate on the matter (either within the trade agreement or in the WTO). In the case of Association Agreements, the dispute settlement mechanism also applies just to the trade commitments, as the political and cooperation parts of the association are not legally binding, but merely create a framework of dialogues for exchange of information, best practice and cooperation on a wide range of matters. As with most other trade agreements, the dispute settlement mechanisms established mirror the wording and processes of the WTO.

Coverage of disciplines in trade in goods follows WTO terminology and scope, and the parties will benefit from lowering of tariffs in the specific schedules as determined in the annexes to the agreements. The parties adhere to national treatment and non-discrimination principles as per WTO commitments. As required by the WTO, the tariff liberalisation schedules in all agreements further reduce tariffs and quotas so that once the agreements are fully implemented substantially all trade will be liberalised between the parties. For instance, in the Peru/Colombia agreement, by the end of its implementation period in 2023 the EU will fully liberalise 95.8 percent and 97 percent of its tariff lines for Colombia and Peru, respectively. By the end of its implementation period in 2028, Colombia will fully liberalise 96.1 percent of tariff lines, and by the end of its implementation period in 2028, Peru will fully liberalise 98 percent of tariff lines. In all cases the implementation periods are longer for partners, particularly in more sensitive sectors, so as to allow time for sectoral adaptation to greater competition. In agreements subscribed with more than one state simultaneously (Peru/Colombia, Central America, Cariforum), the tariff liberalisation schedules and timelines for each individual state vary slightly, thus taking into account the different levels of development of partner states. In the Cariforum EPA, intra-Cariforum tariffs are allowed to continue for a ten year period, and the period of liberalisation for Cariforum states extends for 25 years, although tariffs that exceed 20 percent will be reduced in an interim period of between 5 to 15 years (Woolcock 2014, 40). Cariforum states have excluded sensitive sectors like chemicals, food and animals from their liberalisation schedule. By contrast, the EU has committed to rapid liberalisation of 98 percent of its tariff lines, and to duty free and quota free access to the EU for products from Cariforum. This is in line with the developmental logic behind this agreement and with pre-existing preferential access to the EU market under the Lomé Conventions, as well as the GSP system. In the case of the Peru/Colombia agreement, prior to the agreement most products from these states also benefitted from duty free access to the EU through the GSP scheme. The Trade Agreement retains this and grants improved access to sectors like bananas (see Section 3.6), flowers, fruits and sugar, but preferences are not duty free quota free as in the case of Cariforum, reflecting these states' middle-income status. The transition periods for tariff liberalisation in this Agreement are shorter (up to 11 years). In terms of market access, the agreement with Peru/Colombia liberalises 85% of EU agricultural imports by 2020. Although bananas will not be duty free, these states have been granted better access than under the Banana agreement (see Section 4.5). The EU benefits from improved access for key exports such as motor vehicles and machinery (with all duties eliminated within eight years).

An important aspect of the new agreements (Peru/Colombia Trade Agreement, Central America AA, and also the trade agreement with Singapore)³³ is that in the Rules of Origin the EU agreement allows bilateral

³³ The Comprehensive Economic Cooperation Agreement with Canada (CETA)'s provisional text allows for cumulation with states with which both parties also have a preferential agreement (i.e. Mexico, or the United States

and regional cumulation. This means that, for example, Peruvian products made with Ecuadorian inputs can still qualify for preferential access to the EU. This reflects the commitment to the facilitation of regional integration, and it is envisaged that diagonal cumulation can be eventually applied to the whole of the Andean Community.³⁴

Technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) measures have grown in significance as trade irritants, as tariffs have been gradually dismantled through the WTO. Preferential trade agreements (especially those negotiated by the EU and United States) aim to tackle these matters. Recent EU agreements with developed states (Korea, Canada, Singapore) and middle-income states (Peru/Colombia) establish strong procedural measures to promote cooperation in sub-committees on TBT and SPS, to promote the application of principles set out in the WTO (e.g. recognition of pest free products) and to monitor progress (Woolcock 2014,42).³⁵ As mentioned in Section 2.1, through the cooperation pillar the EU also engages partners in increasing their capacity to comply with TBT and SPS requirements, as these are areas where states, especially non-OECD states struggle more. This is recognised in the creation of channels for technical assistance on a permanent basis in the Cariforum agreement.

Following GATT rules (Art. XIX and VI), all EU agreements provide scope for the use of safeguard measures and anti-dumping measures. These measures are only permitted when a hike in imports threatens serious injury to an existing industry and measures are restricted to a maximum of four years. In recognition of lower levels of development the Cariforum agreement allows for Cariforum states to establish safeguard measures where EU imports can cause disturbance to an infant industry.

In terms of liberalisation of services, a crucial area for the EU, as it is a net exporter of services, all of the EU's recent agreements can be described in Mavroidis *et al.*'s (2010) terminology as 'WTO plus'. These matters are incorporated in a legally binding way into the agreements. They all include commitments to grant foreigners national treatment in various service sectors and they all accept foreign bidders for public procurement processes. They all commit the parties to grant protection to intellectual property rights and to apply their domestic competition laws and ensure that no company, state owned or monopoly holder, exerts its control in such a way that results in discrimination of other parties. In the EU-Peru/Colombia agreement, Peru and Colombia extend the coverage of service sectors beyond their commitments at GATS (Colombia had only committed 4 sectors in GATS and Peru none), although they excluded sensitive sectors (gas, water, national air and sea transportation). The new provisions also covered regulation of sectors like postal and courier services, financial services, computer and telecommunications and electronic commerce (see Table 9). Mode 4 services (temporary movement of people to provide a service) remains limited to temporary presence of key personnel (up to three years), graduate trainees (up to one year) and business people (multiple entries in a year) across the agreements.

if TTIP is completed). This reflects attempts at making the various overlapping and criss-crossing trade agreements the parties have signed with other parties, into a more coherent and uniform set of rules.

³⁴ The same applies to the agreement with Singapore, which is expected to eventually interact with EU future agreements with other ASEAN member states.

³⁵ The EU-Korea agreement set a precedent by establishing sector specific committees to monitor the application of national treatment and non-discrimination obligations of Korea for automobiles, machinery and chemicals (Woolcock 2014, 42).

Table 9: Regulatory framework in agreements with Latin America

Agreement	MX-EP97	CL-AA02	CF-EPA08	CA-AA12	PECO-TA12
Commitment					
Regulatory Framework					
Joint Council to negotiate mutual recognition of qualifications, licensing...	x				
Professional bodies to develop mutual recognition of qualifications			x	x	x
Telecommunications- preventing major supplier from anti-competitive practices				x	x
Authorisation to provide telecommunication licenses		x	x	x	x
Telecommunication interconnection obligation		x		x	x
Prevention anti-competitive practices in courier services			x	x	x

The provisions on services are summarised in Tables 9, 10, and 11, overleaf. As negotiations for these agreements pre-date the Treaty of Lisbon there is no investment chapter. A chapter on investment has been included in agreements with Singapore and Canada (pending ECJ resolution and ratification), so investment chapters may be negotiated in the future, although Peru and Colombia have not expressed an interest in this at the moment. It is worth noting that investment relations between Peru and Colombia, and indeed most other Latin American states (with the notable exception of Brazil) and individual EU member states are regulated by Bilateral Investment Treaties (BITs). Thus, there already exists a legal framework for investments, although the BITs vary in scope and coverage.

Table 10: Trade commitments in agreements with Latin America

Agreement	MX-EP97	CL-AA02	CF-EPA08	CA-AA12	PECO-TA12
Commitment					
Trade in Services & E-Commerce					
Enter investment & services negotiations within 5 years of entry into force			x		
Market access	x	x	x	x	x
Commercial presence	x	x		x	x
Exclusions	x		x	x	x
Mining, processing nuclear weapons			x	x	x
Processing arms			x	x	x
National maritime cabotage	x	x	x	x	x
Audio-visual	x	x	x	x	x
Air transport & related services	x	x	x	x	x
Processing and disposal of toxic waste					x
National Treatment	x	x	x		x
Most Favoured Nation Treatment	x		x	x	x
Investors to act in line with ILO			x		
Banning bribes for contracts			x		
Cross-border supply of services				x	x
Key personnel (3 years)			x	x	x
Graduate trainees (1 year)			x	x	x
Business people (90 days)			x	x	x
Contractual services & independent professionals (GATS commitments)			x	x	x

Table 11: Trade commitments in agreements with Latin America Contd.

Commitment	Agreement	MX-EP97	CL-AA02	CF-EPA08	CA-AA12	PECO-TA12
Trade in Services & E-Commerce						
Financial services		x	x	x	x	x
Prudential carve-out		x	x	x	x	x
Effective and transparent regulation		x	x	x	x	x
Allow new services that local firms are allowed to offer		x		x	x	x
International Maritime Services		x	x	x	x	x
Tourism				x		
Environment and quality standards				x		
Impacts of tourism on sustainable development				x		
Computer Services					x	x
E-commerce				x	x	x
Trade administration electronically						x
Current payments and capital movements		x	x	x	x	x
Competition (apply domestic laws)			x	x	x	x
Public enterprises with exclusive rights allowed but cannot distort trade				x	x	x

The EU's public procurement market is one of the most open in the world. Firms from around the globe can compete for government and EU contracts (provided certain threshold levels are met in the tender). At the WTO there is no binding commitment on the liberalisation of public procurement, merely a voluntary Government Procurement Agreement (GPA) that establishes a set of rules regarding how to announce tenders, transparency in bidding processes, timeframes for making information available to bidders, and the establishment of appeals procedures. The EU is a key signatory of the GPA, and actively pursues procurement liberalisation through its trade agreements. It has succeeded in including this in recent agreements with Latin American states. Given that these states have not acceded to the GPA, this represents an important success and a clear example of WTO-Plus commitments. In the case of Korea, which has signed the GPA, the agreement extended coverage beyond GPA commitments to cover build-to-operate contracts. In all the agreements the chapter on public procurement closely follows the language and procedures established by the GPA (see Table 12).³⁶

³⁶ An important caveat is that all these states had previously included public procurement in their trade agreements with the United States, again following GPA wording and procedures, so it was the United States that convinced or coerced these states to agree to procurement liberalisation. The level of coverage of entities differs (Korea granted the EU access to 25 percent more entities than it did the United States), given the fact the EU's market is more liberal than that of the United States, so it can offer better terms for reciprocity.

Table 12: Trade commitments in agreements with Latin America Contd.

Agreement	MX-EP97	CL-AA02	CF-EPA08	CA-AA12	PECO-TA12
Commitment					
Public Procurement					
National treatment and non-discrimination	x	x		x	x
Follows WTO GPA structure and methods		x	x	x	x
Electronic means for tenders		x		x	x
Use international standards			x		
Uphold levels of protection			x		
Facilitation of labelling and accreditation schemes			x		
Regional integration facilitation (Customs procedures)				x	
Dispute Settlement Mechanism					
Consultations and mediation	x	x	x	x	x
Arbitration panel	x	x	x	x	x
Compliance with arbitration panel ruling	x	x	x	x	x
Possibility of compensatory measures	x	x	x	x	x
Choice of venue- FTA or WTO Dispute Settlement	x	x	x	x	x
Trade and Sustainability Chapter					
Trade and Sustainability Chapter				x	x

A major novelty in EU post-2006 free trade agreements, first introduced in the EU-Korea trade agreement, is the inclusion, within the Trade part of the agreements, of a chapter on trade and sustainability focusing on environmental and labour conditions (discussed in more detail in section 3.4). These commit the parties to comply with ILO core labour standards and Fundamental Conventions and numerous international environmental treaties. Although this is an integral part of the trade agreements, it is not subject to the agreement's dispute settlement mechanism. Instead, the chapter creates its own rules for dispute settlement and the resolution of breaches, whereby the Parties are not mandated to implement the recommendations in the arbitrators' report (as is the case under the trade agreements' dispute settlement mechanism). As such, these measures are promotional rather than legally-binding.

2.3 Institutional structures

All the agreements negotiated between the EU and Latin American partners create a series of joint bodies, charged with monitoring the implementation of the agreement and further developing cooperation and trade. The Association Agreement with Chile started a trend by the institutionalisation of the participation of civil society within the text of the agreement. In the EU non-government bodies are encouraged to participate in discussion and meetings relating to all of EU's trade agreements, as well as multilateral initiatives and bilateral trade policies. This has been the case since the early 2000s, through the European Commission's Civil Society Dialogues and various other initiatives. The Association Agreements with Chile, Cariforum and Central America all establish Parliamentary Committees linking the European Parliament to

representatives of Latin American chambers. These are tasked with monitoring the implementation of these agreements. The Trade Agreement with Peru/Colombia does not include the same inter-parliamentary structure, although under the 2003 EU-Andean Community Political Cooperation Agreement, the Andean Community delegation of the European Parliament should meet with colleagues of the Parlandino (Andean Community assembly).³⁷ They also meet under the aegis of the broader EuroLat Parliamentary Assembly. The institutional structures are summarised in Table 13.

Table 13: Institutional arrangements created by the agreements

Mexico	Chile	Cariforum	Central America	Peru/Colombia
Joint Council (Ministerial level-supervises implementation)	Association Council (Ministerial level)	Joint Cariforum-EC Council (Ministerial level)	Association Council (EU Representatives & CA States) (decisions, makes recommendations)	Trade Committee (supervises, evaluates agreement)
Joint Committee (Senior officials-supervises implementation, assists Joint Council)	Association Committee (Senior officials)	Cariforum-EC Trade & Development Committee (senior officials-supervises implementation)	Association Committee (senior officials-implementation)	Specialised Sub-committees: Market access, agriculture, technical barriers to trade, customs, Government Procurement, Intellectual Property, SPS
Special Committees	Special Committees		Sub-committees (incl. Cooperation Pillar Sub-Committee)	Coordinators (prepare agenda for Trade Committee)
	Joint Parliamentary Committee	Cariforum-EC Parliamentary Committee	Joint Parliamentary Committee (PARLACEN-EP)	
	Joint Consultative Committee (economic and social organisations)	Cariforum-EC Consultative Committee (promote dialogue civil society)	Joint Consultative Committee EESC & Comité Consultivo Sistema de Integración Centro-América & Comité Consultivo de Integración Económica)	
	Civil Society Meetings		Civil Society Meetings	

NB: The Sustainability Chapter in the Peru/Colombia FTA establishes a mechanism for civil society participations.

³⁷ This agreement is still pending implementation, and as such, the joint parliamentary committee has yet to be established.

3 Early outcomes and challenges in the implementation of the EU-Colombia/Peru trade agreement

3.1 Initial impacts on trade flows: Colombia

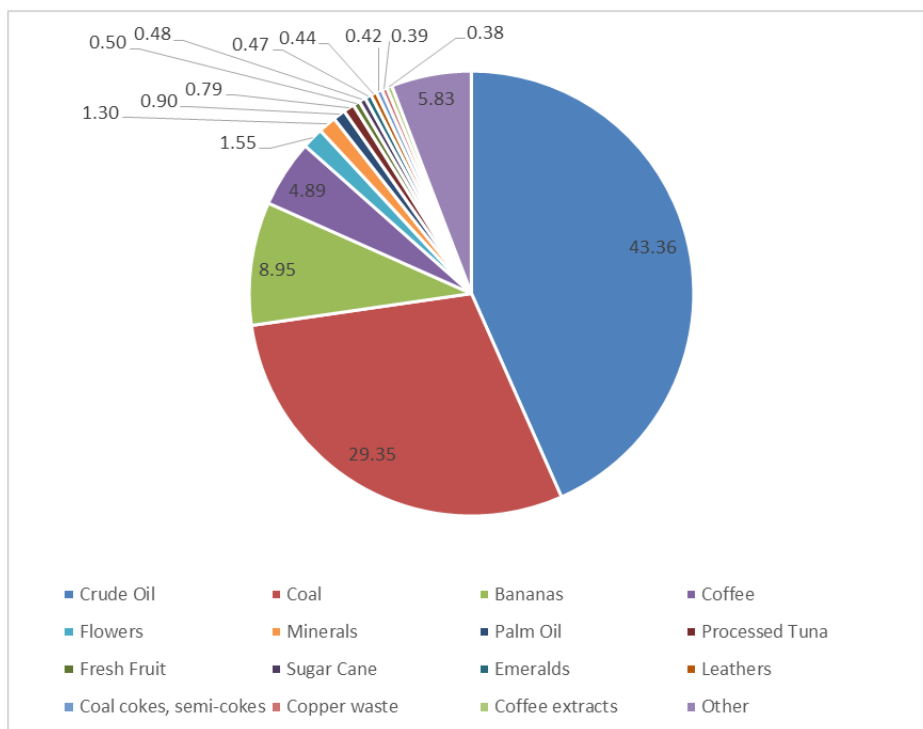
The full impact of free trade agreements will materialise over time as tariff and trade barrier reduction schedules take effect. Exact effects are challenging to calculate and fully differentiate from the impact of structural changes or global market trends and influences. Initial available data from the first year since the implementation of the EU-Peru/Colombia Trade Agreement, refers to trade in goods only, and reveals mixed results. The EU remains a major trade partner for Colombia accounting for 17 percent of Colombia's imports of goods, 15 percent of its exports of goods (in 2014) and 27 percent of imports of services and 28.8 percent of exports in services (in 2013).³⁸

Colombia's goods exports to the EU have benefited from the agreement with a 10.21 % rise (worth EUR 8,292.7 million) from 2013 to 2014. Exports to the EU have continued to be led by traditional Colombian export sectors, with crude petrol and coal accounting for 74.46% of total exports, bananas for 8.95%, and coffee for 4.98%. Also mineral fuels, coffee and coffee products, plants and flowers, prepared tuna, leathers, jewels and precious stones and copper products have experienced increased exports. These are sectors where the implementation of the agreement has eliminated tariffs for Colombian exports to the EU (EU tariffs in these sectors in the absence of preferential treatment range between 6-15 percent). However, the largest percentage rises in exports to the EU were in the sugar and confectionary sector (+205.04% rise in exports worth EUR 44.7 million), cocoa (+52.26% worth EUR 11.8 million), tobacco (+14.10%, EUR 20 million) and fruit preparations (+39.18%, EUR 14 million). These are sensitive sectors (sugar) with special treatment within the EU, and subject to the higher EU market access tariffs (e.g. EUR 41.9 per 100 kg/net of white sugar imported). The entry into force of the Trade Agreement, allowed Colombian exporters to enjoy import quotas into the EU of these sensitive products exempt from tariffs (exports beyond the quota are subject to the tariff), as these were the sectors that saw previous tariffs for entry into the EU reduced to 0 with the agreement.

Since the entry into force of the agreement, EU exports to Colombia have continued the steady growth of the last decade. If EU imports of Colombian products (mostly raw materials and agricultural products) reflect the profile for EU imports from the world, the same pattern is discernible in EU exports to Colombia. These are dominated by manufactures, equipment, pharmaceuticals and chemicals. EU aircraft and parts sales to Colombia experienced a contraction of 28.10 % in 2014. Exports in other sectors, however, experienced important increases: boats (+126.31% EUR 76.6 million), steel and iron manufactures (+189.18% EUR 61.3 million), beverages (+6.14% EUR 59.5 million), food preparations (+20.08% EUR 40.5 million), rubber products (+7.94% EUR 84.2 million). The Agreement provides for an annual reduction in tariffs for these products. Therefore, provided that demand for these products remain, as the tariff improves these exports are likely to benefit from continued growth in coming years.

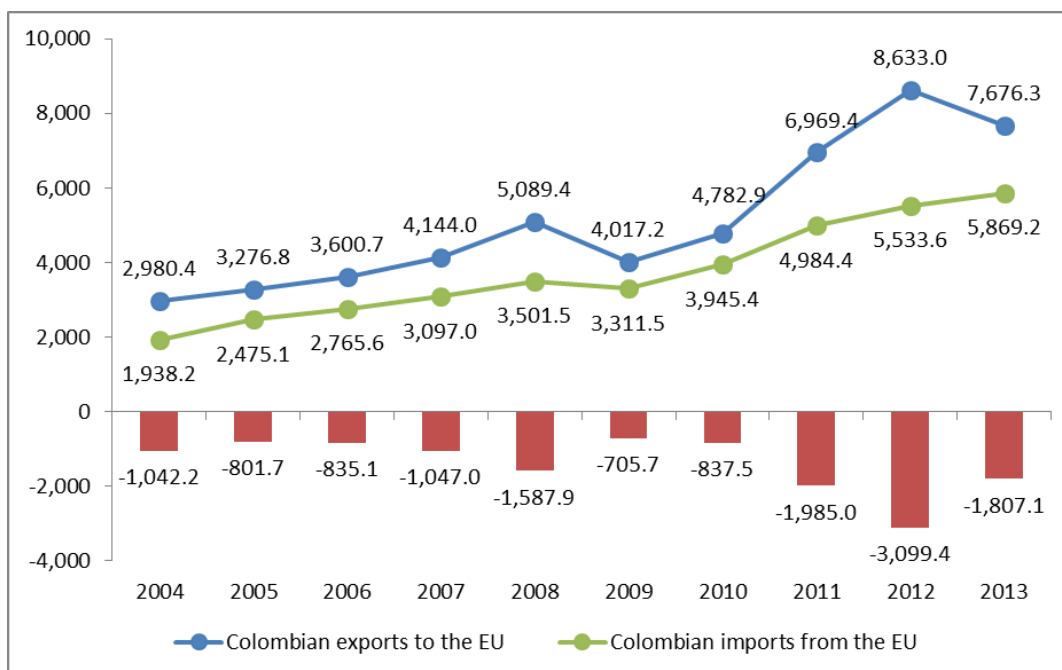
³⁸ Author calculations based on data from EUROSTAT found in http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_111556.pdf.

Figure 2: Colombian exports to EU (in percentage share) (Aug 2013-Jul 2014)



Source: EU Delegation to Colombia, 2015

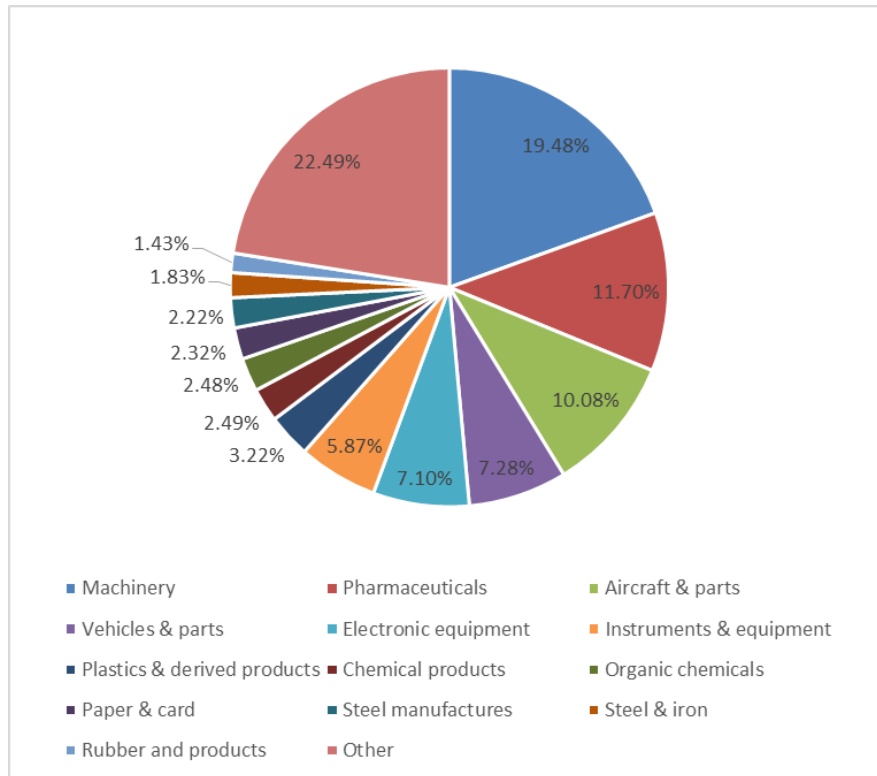
Figure 3: Evolution of bilateral trade between EU and Colombia (Million EUR)³⁹



Source: EU Delegation to Colombia, 2015

³⁹ Source data does not include 2014 data, in addition it does not contain volume data. Data downloaded from the Eurostat Comtext database for trade in goods does not contain 2014 figures for trade with Colombia.

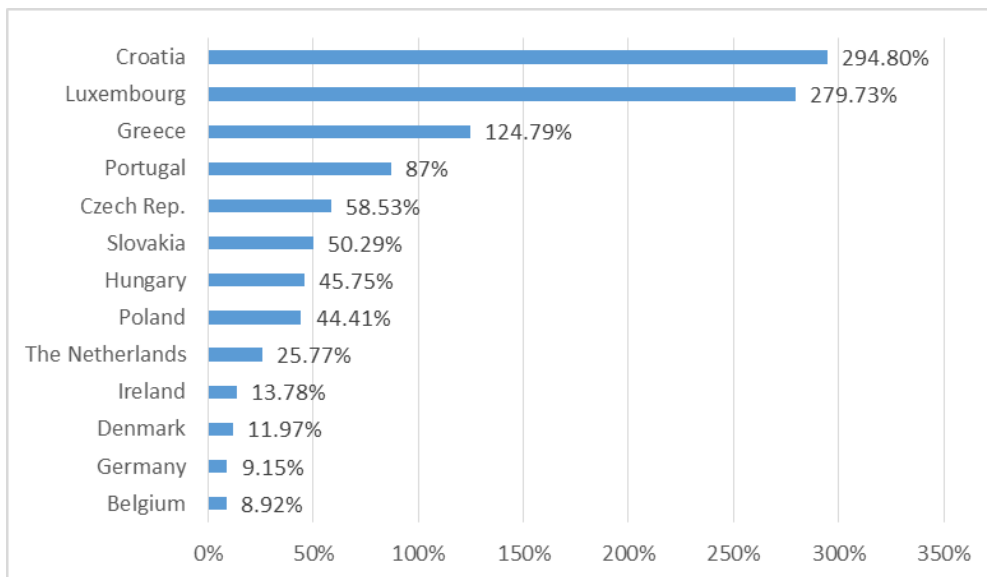
Figure 4: EU exports to Colombia (in percentage share) (Aug 2013-Jul 2014)



Source: EU Delegation to Colombia, 2015

In terms of EU member states, Germany accounts for the greatest proportion of exports in terms of value to Colombia (27.73%), followed by France (14.25%), Spain (12.25%), Italy (11.01%), Belgium (8.79%) and the UK (6.64%) in 2013-2014. In the first year of implementation of the Trade Agreement the less traditional exporters to the region are those that have experienced the greatest rate of year-on-year growth in value of their exports to Colombia, although their share in total exports remains very modest (see Figure 5).

Figure 5: Year-on-Year EU export value growth rates to Colombia (Aug 2013- Jul 2014)

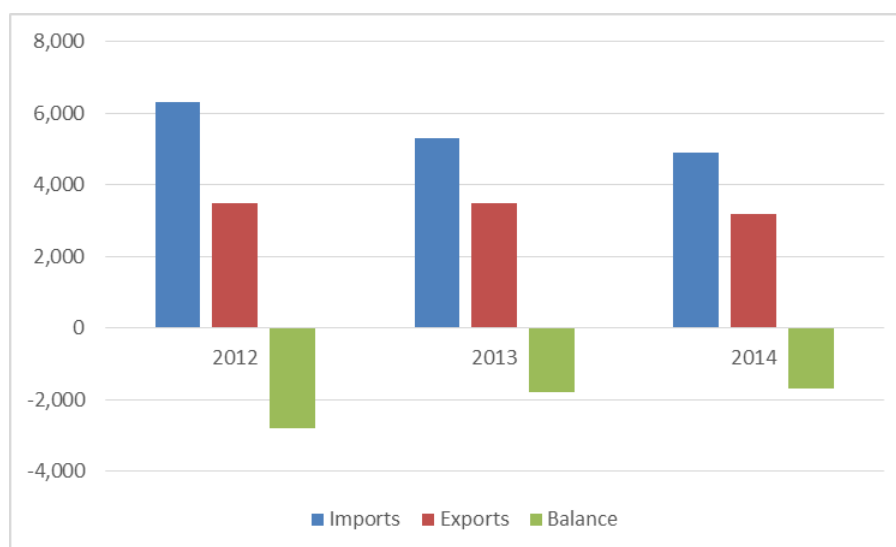


Source: EU Delegation to Colombia, 2015

3.2 Initial impacts on trade flows: Peru

Peru's initial performance within the Trade Agreement, has not been as expansive as Colombia's, in large part due to international factors beyond the remit of the Trade Agreement (commodity price fluctuations, industrial requirements, etc.). Thus, over the last two years, including the first year of the implementation of the Trade Agreement (2013-2014), overall trade flows between the EU and Peru have experienced a contraction. This notwithstanding, the EU remains a critical trade partner for Peru. The EU accounts for 17% of Peruvian total exports in goods and was the source of 9.1 percent of Peru's imports in 2014. In 2013, 20.6 percent of Peru's imports of services originated in the EU, and the EU received 18.2 percent of Peru's exports of services.⁴⁰ Peru exports a wide range of products to the EU, and since the implementation of the Trade Agreement some areas have experienced a significant rise in exports thanks to improved access to the EU's markets. Sectors benefitting from the agreement include: agro-food sector (exports rose by almost 6%), chemicals (exports increased by 24.9%) and fisheries (up by 4%). The Peruvian sectors that have experienced the greatest rise in exports are bananas (+39.3%), which exceeded the quotas agreed in the Banana Agreement (see section 3.6) and triggered a trade investigation. Fruits and nuts (with avocados and grapes as star performers) also saw solid growth in exports (+29.2%), as did the sugar and confectionery (+187.5%) and beverages and spirits (+61.4%) sectors. EU exports to Peru that have experienced the greatest growth are cereals, vehicles and pharmaceutical products.

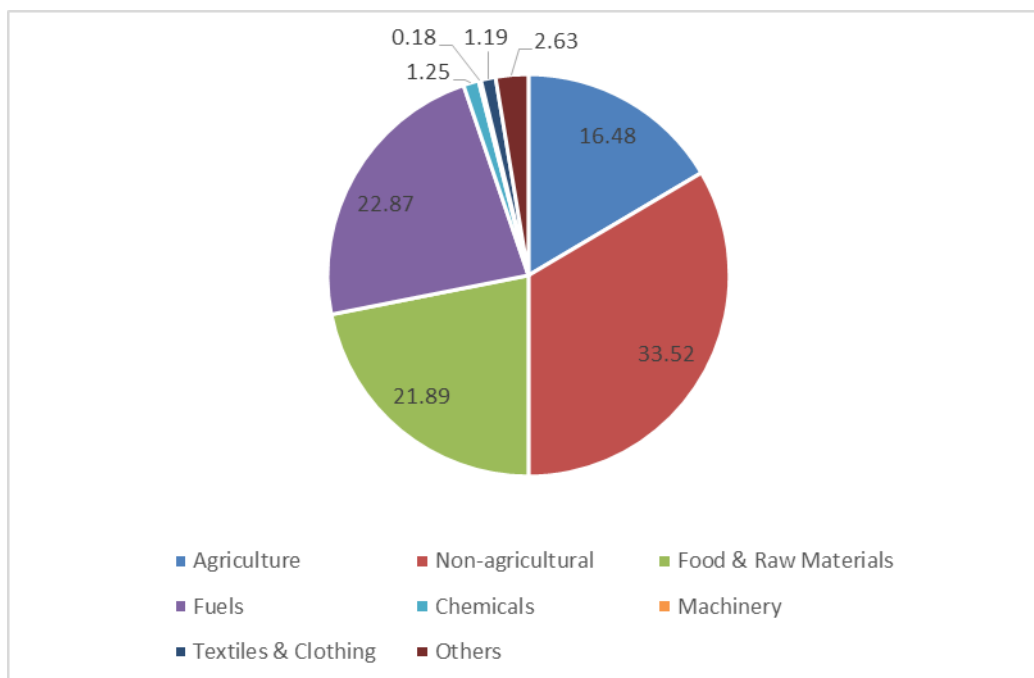
Figure 6: Trade in goods between the EU and Peru (EUR Million)



Source: Eurostat, European Commission, DG Trade, EU-Peru Trade

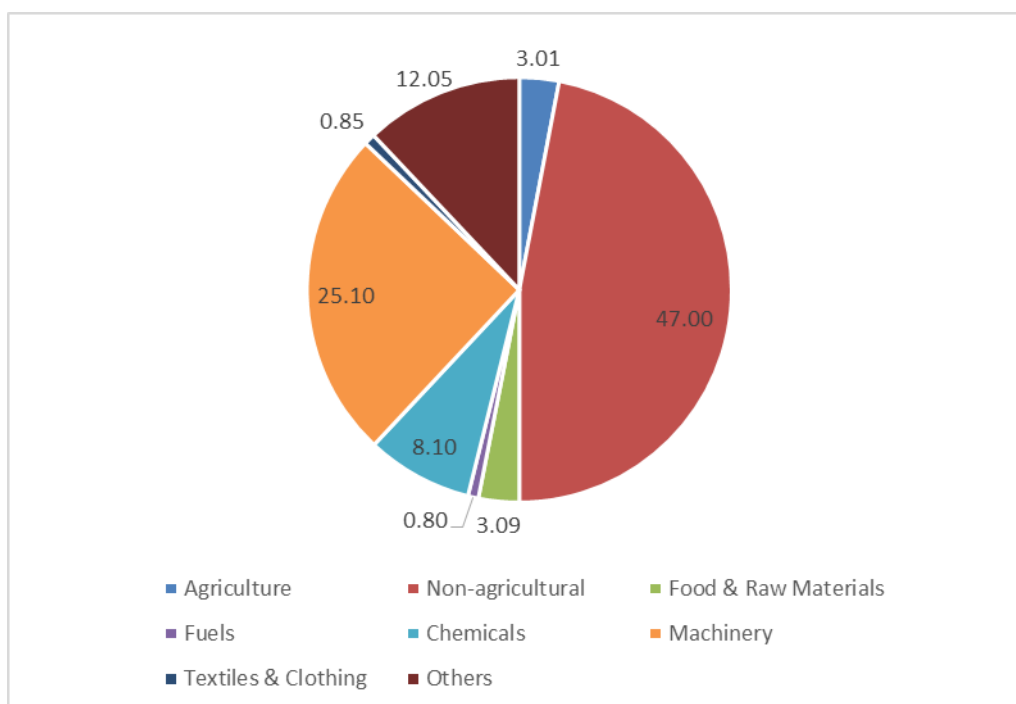
⁴⁰ Author calculations based on data from EUROSTAT found in http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_111556.pdf.

Figure 7: Peruvian exports to EU (in percentage share) (2014)



Source : Eurostat, European Commission, DG Trade, EU-Peru Trade

Figure 8: EU Exports to Peru (in percentage share) (2014)



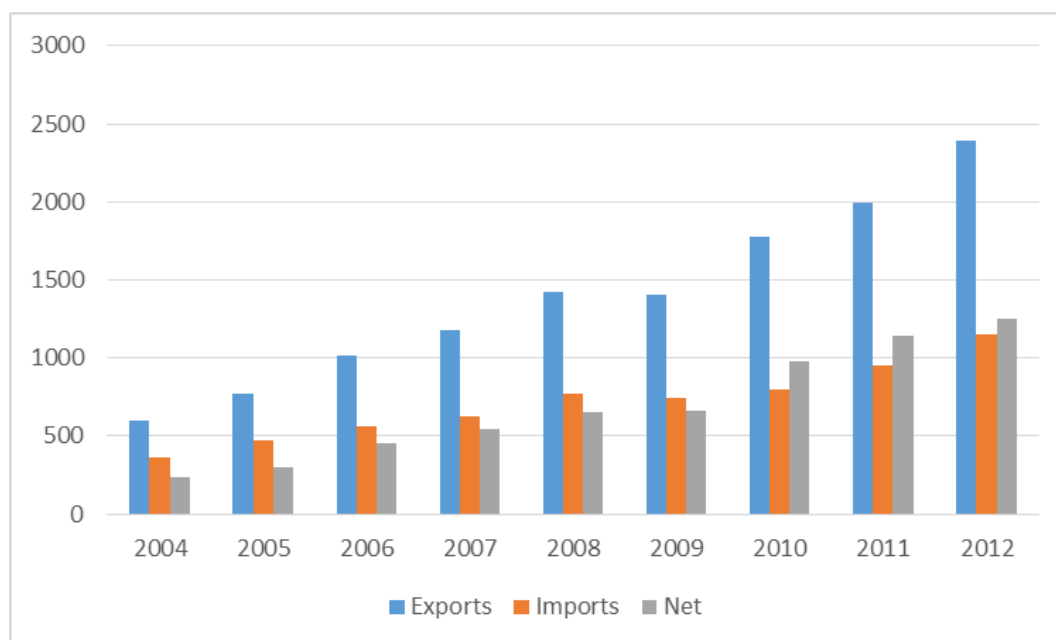
Source : Eurostat, European Commission, DG Trade, EU-Peru Trade

3.3 Initial impacts on trade flows: Overall assessment

Most of the Colombian and Peruvian exports that have experienced the greatest growth rates have been those that have benefitted from the tariff rate quotas (TRQ) established in the Trade Agreement (cocoa, sugar and confectionery). The most used were the TRQs for sugar and maize. EU exporters, on the other hand, have so far failed to fill Peru's and Colombia's TRQs for milk- products and vegetables and fruits. This led the European Commission (2014, 6) to claim in its annual report on the implementation of the treaties, that the 'modest utilisation of the TRQs indicates that a disturbance in the respective internal markets for sensitive products as a consequence of the Agreement is unlikely.'

Prior to the entry into force of the Trade Agreement, EU exports of services to Colombia had been increasing steadily. Colombian exports of services to the EU, although much lower in absolute values, had also been experiencing continued growth (see Figure 9). A similar situation can be observed in the case of Peru (see Figure 10). Germany, the UK and Spain have continuously been the EU's top service traders with Colombia (see Figure 11). In the case of Peru in 2012, Spain accounted for 61 percent of EU exports in services, and together with Germany and the UK for 82 percent of EU exports of services (calculated from data in Eurostat, *bop_its_tot* database).⁴¹

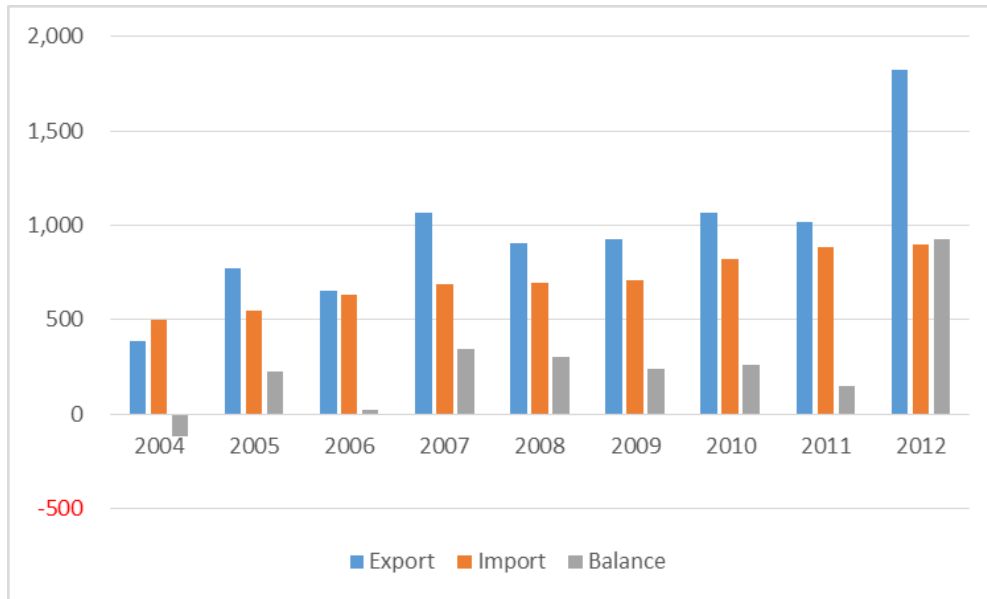
Figure 9: EU trade in services with Colombia (EUR Million)



Source: Compiled from data in Eurostat *bop_its_det* database

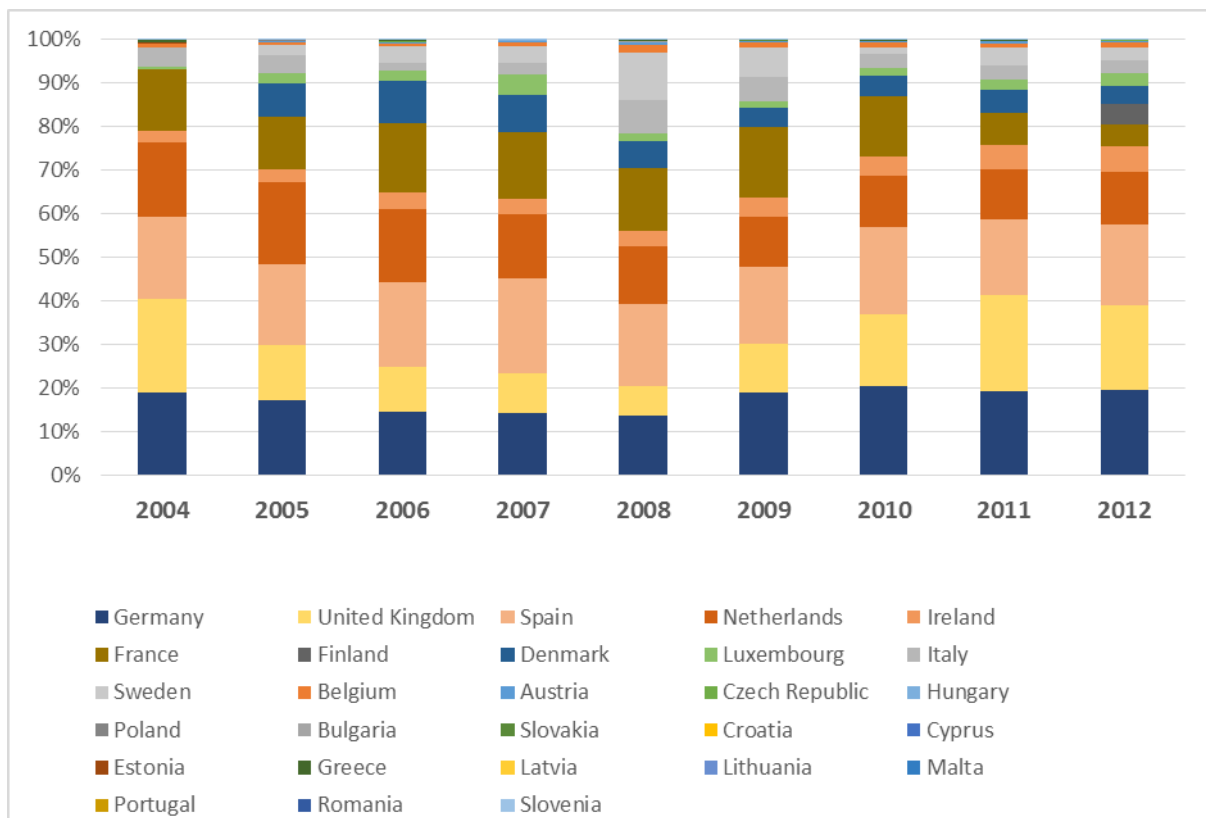
⁴¹ The *bop_its_det* database which contains sectoral information is missing data for Peru. It does contain data from some member states only regarding their services exports and imports from Colombia, and these are largely transportation services (mainly air passenger transportation and sea freight transport), and personal travel and business travel representing the most important service category. Data for Peru in the *bop_its_tot* database, which does not include sectoral information was also sketchy for some years.

Figure 10: EU trade in services with Peru (EUR Million)



Source: Compiled with data from Eurostat *bop_its_tot*

Figure 11: Member States' share in total EU services exports to Colombia



Source: Compiled from data in Eurostat *bop_its_det* database

EU service exports to Peru and Colombia were flourishing before the Trade Agreement, and the Agreement, especially increased access to public procurement contracts is expected to have a positive effect on EU services exports. Unfortunately, databases with trade in services data are incomplete. Eurostat's various databases only have data for Colombia and Peru until 2012, as does the OECD Database on Trade in Services. The WTO Trade Statistics database and World Bank data present exports in aggregate terms for

each state (i.e. there is no breakdown by destination or sector). National sources also lack the granularity to analyse recent fluctuations in trade in services.⁴² However, informal interviews with diplomatic representatives indicate that they have received no complaints from firms regarding access to services markets (whereas they have regarding tariffs on spirits or the export of trucks), and that the longstanding relationship of the past decades is likely to continue.

In terms of investment, European companies have been major investors in Peru and Colombia and in Latin America, more broadly (see Figures 9 and 10). The key sectors that have received the bulk of EU investment are services (utilities, banking especially) and manufacturing (especially food and beverages), although there have also been investments in the primary sector (especially oil) (UNCTAD 2015). The wave of privatisations of the early 1990s were key in establishing these ties (especially regarding Spanish investment in Latin America), and many of the largest European investments in these countries and the broader region pre-date the Trade Agreement (see Tables I and II in the Appendix). The Trade Agreement is likely to have an impact on investment. The potential long-term effects of improved transparency of regulatory measures (and possible convergence) as well as the more secure legal framework created by the Agreement may well result in smaller enterprises embarking on foreign investment.⁴³

Figure 12: Announced Greenfield foreign direct investment projects by country/region 2013-2014 (USD Million)

Partner	Latin America Caribbean as Destination		Latin America Caribbean as Source	
	2013	2014	2013	2014
World	153 023	89 446	20 499	8 689
Developed economies	81 987	71 167	1 539	1 760
Europe	39 167	30 526	684	551
United States	26 304	26 190	805	1 151
Developing economies	70 071	18 170	18 864	6 651
China	3 258	8 154	377	282
Latin America and the Caribbean	17 737	6 084	17 737	6 084

Source: UNCTAD, *World Investment Report 2015*, 59

⁴² The Peruvian and Colombian governments' publicly available trade statistics are aggregate of the countries' overall monthly exports and imports, with no sector or destination differentiation. Eurostat data also fails to capture more recent data for these trade partners. National embassies, and Chambers of Commerce do not appear to be making this data available either (or only to members), and rather display their mechanisms for export and investment support (trade fairs/consultancy services etc.).

⁴³ As with trade in services, databases on investments are missing data for Peru and Colombia for the last years. The World Investment Report which does include 2014 data lacks a breakdown by country and sector.

Figure 13: Cross-border mergers and acquisitions by region 2013-2014 (USD Million)

Partner	Latin America Caribbean as Destination		Latin America Caribbean as Source	
	2013	2014	2013	2014
World	34 797	25 457	16 239	8 440
Developed economies	19 678	17 949	5 118	8 131
Europe	11 870	- 1 269	2 913	4 214
North America	6 792	10 899	2 092	3 916
Developing economies	14 401	6 797	11 134	309
Latin America and the Caribbean	10 731	-251	10 731	-251

Source: UNCTAD, *World Investment Report 2015*, 59

3.4 Trade and sustainability chapter

EU free trade agreements (FTAs) now address labour and environmental sustainability through a new mechanism, incorporated into the main text of the trade agreements. Under the sustainability chapter of the EU's new FTAs (Korea, Central America, Peru, Colombia, Singapore, Canada), the parties agree to cooperate in labour and environmental matters (information and expertise exchanges, joint training, technical assistance etc.). This reflects the EU's aim of promoting these standards. Parties also committed themselves to not lower domestic labour and environmental legislation, and:

Reaffirm(ed) their commitments to respect, promote and realise internationally recognised labour and social standards, as laid down in particular in the ILO Declaration on Fundamental Rights and Principles at Work (European Union 2011, p.36).

The cooperative nature of the sustainability chapter is reinforced by the fact that it is not subject to the general FTA dispute settlement mechanism, which includes monetary compensation for breaches, but to its own dispute settlement regime. Whilst the inclusion of its own dispute settlement mechanism brings additional importance to the matter and upgrades the mere cooperation of older generation agreements, the system remains 'soft' and legally non-binding. The dispute mechanism determines that complaints regarding breaches of the clause can be notified to the FTA's implementation Joint Council by civil society, businesses or government representatives of the signatory parties. The Joint Council will then appoint a three member expert panel to investigate and produce a report with non-binding recommendations for action. The expectation is that through benchmarking processes and a dispute mechanism based on naming and shaming, voluntary measures will be adopted to ensure high standards. To date no complaints have been brought forward under these mechanisms, thus, it is impossible to assess their effectiveness.

This chapter creates a 'Sub-Committee on Trade and Sustainable Development' tasked with monitoring progress, exchanging information and sharing best practice. An important aspect of these endeavours is the fact that the chapters specifically call for the involvement of civil society groups in these deliberations. Since its creation, in fact, the 'Sub-Committee on Trade and Sustainable Development' has also organised open sessions with civil society.

As mandated by the Chapter, Colombia reported on the existing and future policies from the Ministry of Environment and Sustainable Development, and the steps the Ministry is taking with regards to the implementation of multilateral environmental agreements such as the Basel Convention, the Convention on International Trade in Endangered Species (CITES), the Montreal Protocol, the Convention on Biological Diversity, the Cartagena Protocol, and the United Nations Framework Convention on Climate Change (UNFCCC).

At these meetings, Peru also reported on the Legal and Political Framework for Environmental Issues, the Strategic Axis of Environmental Management in Peru, the National Agenda, and the National System for Environmental Action. Peru further reported on the National System for Environmental Impact Evaluation and the National Service of Environmental Certification for Sustainable Investments.

For its part, the EU discussed the liberalisation of environmental goods, highlighting the green goods initiative at the WTO of which the EU and 13 other states are part, and encouraged Colombia and Peru to join the initiative. The EU outlined its resource efficiency roadmap and environmental footprint methodologies, with 17 products selected for pilot testing, and offered Colombian and Peruvian stakeholders and opportunity to participate in the pilot programme.

In terms of the social and labour commitments under the Chapter on Trade and Sustainability, the EU reported on progress on member states' ratification of various ILO conventions (maritime workers). Peru provided an update on its reinforcement of Labour Inspections, regulations for registry of labour unions in construction, action plans against child and forced labour, ratification of ILO conventions, and regulations for equal opportunities for persons with disabilities. Colombia informed counterparts on the new structure of the Ministry of Labour, mechanisms for social dialogue, the implementation of freedom of association, its surveillance systems, legislation adopted against illegal labour intermediation, and the situation regarding the implementation of the ILO conventions.

The Parties agreed to further the implementation of labour-related provisions of Title IX, including the ratification and implementation of ILO conventions (*i.e.*, the Domestic Workers Convention of 2011, later ratified by Colombia on 9 May 2014), and agreed to continue exchanging information, in particular with respect to measures against child and forced labour, and the promotion of freedom of association and collective bargaining. Colombia also highlighted the need to consider social and environmental mechanisms in the gold market to tackle illegal mining. Civil society groups, such as Agua Viva-Amigos de la Tierra de Colombia have also expressed concerns about the distribution of the economic gains from the agreements, especially in terms of increased mining for export.

Thus, far, disputes have not been brought forward within the context of the trade and sustainability chapter dispute settlement mechanism.⁴⁴ The main problem identified thus far is that when the Dialogue with Civil Society took place in Peru only Peruvian civil society organisation attended, and when it took place in Bogotá only Colombian organisations were present. This indicates that financial constraints may be hampering the viability of the Dialogue. European Commission Delegations on the ground are exploring means to fund these meetings. Civil society organisations from the EU, Peru and Colombia expressed an interest in forming a tri-partite meeting where they can coordinate their positions and elaborate joint positions ahead of the formal Dialogue within the remit of the trade and sustainability chapter. Participants in the Dialogue have commented positively on the level of engagement and enthusiasm displayed by Colombian civil society. Peruvian civil society is engaged but less dynamic, this may be in part due to historical distrust between trade unions and the government in Peru. This has not been improved by the fact that although the Peruvian government has established a mechanism for domestic consultation as mandated in the trade and sustainability chapter, it has been reluctant to inform the Sub-Committee on Trade and Sustainability of the actual operation of the mechanism. The chapter mandates the

⁴⁴ Non-governmental organisations (NGOs) in Peru have expressed concerns about labour rights and gender equality, which are currently being examined in Brussels for representativeness and severity, and to assess whether the complaints fall under the remit of the Chapter. Given the on-going nature of the investigation, interviewees were unable to offer further details on the matter at this time.

establishment of a mechanism, but does not specify its nature nor does it oblige the parties to inform each other on its operation.

3.4.1 Roadmaps on human rights

During the negotiations of the EU-Colombia/Peru Trade Agreement, the European Parliament voiced concerns about the human rights situations in both of these countries. It was especially concerned about Colombia, where after a prolonged internal armed conflict, the mistreatment of trade unionists was a special cause for concern. In an attempt to bolster the positive impact of the Trade Agreement on human rights and labour rights in Colombia and Peru, the European Parliament passed Resolution 2628, also known as Roadmap of the EU-Colombia/Peru FTA (hereafter 'Roadmap'), on 13 June 2012. Peru and Colombia both have presented plans of action regarding institutional and legislative measures they would undertake to ensure the protection of human and labour rights. In Peru's case the main concerns, as pointed out by Human Rights Watch (2015), include use of force against protestors (including 34 civilian deaths in 2014). Protests were linked to proposed gas pipeline projects. Through the trade and sustainability chapter civil society concerns have been raised regarding the environmental assessments of mining and large infrastructure projects.⁴⁵

Mining is also a problematic in Colombia, where the Ministry of the Environment is attempting to lead changes in an environment that still favours investment in the mining sector. It is significant that both these states negotiated exclusion of these sectors from full liberalisation in the Trade Agreement with the EU. These sectors still carry a past legacy of facilitating investment by multinational corporations and on occasion these firms have been suspected of skirting labour legislation through the use of contractors or various forms of alternative employment contracts. The mining sector represents a particular challenge as it is an important source of export revenue, but also a sector with high environmental externalities and harsh working conditions. An alternative avenue to support improvements in these countries could be the use of multilateral and international fora to encourage multinational corporations to join the Clean Mining Initiative and other certification programmes.

In Colombia's case, the Roadmap represented a reinforcement of the 'Plan de Acción Laboral Obama-Santos' (PAL) (Labour Action Plan) signed by US President Obama and Colombian President Santos at the time of the US-Colombia Free Trade Agreement to safeguard labour standards in Colombia. The Roadmap's ambition is to ensure the application of core conventions on labour standards and human rights.

A Report by the Colombian Escuela Nacional Sindical (National Trade Unions School) from March 2015 strongly criticises the Colombian Government's inadequate implementation of the Roadmap. Their criticisms concentrate in the following areas:

1. Labour coordination bodies that are not independent trade unions;
2. Lack of transition from informal to formal contracted labour;
3. Violence against trade unionists;
4. Limited civil society involvement;
5. Implementation and legal deficiencies.

Between 2012 and 2013, thirty-six agreements were signed that changed the status of 12,030 workers from informal labour to contracted labour. However, this only represents 0.05 percent of the country's total workforce. Trade unions criticise the fact that these agreements were signed between the Labour Ministry and companies, with no participation of workers or their representatives. They also criticise the lack of

⁴⁵ From interview with participant at meetings.

transparency in publishing details of the beneficiaries. They cite the former Labour Minister Pardo as stating that 'contracted' only means that there is a contract in place, and does not differentiate between 'fixed-term' and 'indefinite' contracts, or between a contract with the company or with a sub-contractor (ENS 2015).

Most worryingly, the report notes continued violence against trade unionists, included 20 murders in 2014, 22 attacks, 12 arrests, and 181 threats. Although this represents a decline in overall numbers, it reveals a serious problem. Trade unions have identified the complains about the reactive rather than preventative character of the trade unionist protection programme, which provides body guards for trade unionists who have been subjected to threats, rather than focusing on the creation of a violence-free environment. Within the framework of the 'Plan de Acción Laboral' (PAL) the Colombian Government agreed to a series of measures to enhance trade unionists' protection: increasing protection of more people, emergency measures for special cases, changes in the Committee for Risk Evaluation and strengthening of the protection programme, strengthening the protection programme for teachers.⁴⁶

The EU's own Roadmap for the involvement with civil society in Colombia (Hoja de Ruta de la UE para el compromiso con la sociedad civil en los países socios 2014-2017) reinforces the EU commitment to create more inclusive civil society participation, not just within the Trade Agreements, but also within domestic public policy processes. The Roadmap highlights the EU Delegations, and member states' (especially Spain, Sweden, and UK) actions in Colombia to bolster civil society. Whilst highlighting progress in the inclusion of civil society in public policy, especially in the peace dialogues, the Roadmap identifies clear deficiencies in applying Colombia's legal framework for civil society representation at the local level. Key challenges facing civil society when dealing with local level authorities include the asymmetric dialogue, where officials have expertise and civil society struggles to understand technical documentation on public policy, and, of course, the lack of safety at the local level for numerous civil society leaders.

3.5 Progress in institutional bodies

The Trade Agreement establishes a Trade Committee at the Ministerial level with oversight of the implementation process and eight specialised sub-committees of senior officials to monitor progress in each relevant area.⁴⁷ The various bodies have commenced their annual meetings with exchanges of information and updates.

In the 'Sub-Committee on Agriculture', participants discussed the evolution of trade and the usage of tariff rate quotas (TRQs) -namely aspects related to internal procedures. The stabilisation mechanism for bananas was also discussed due to the increase of Peruvian exports. Other topics included the taxation of spirits (Peru and Colombia), and a cooperation agreement on dairy products (Colombia). The EU finds Colombia's spirits regime discriminatory and has been pressing Colombia to fulfil its commitments. At meetings in July 2015 between the Colombian Ministry of Trade, Industry and Tourism and the European Commission, the Commission reiterated its concerns over this issue and over the Colombian Parliament's rejection of amendments to the spirits regime

⁴⁶ Concerns over human rights in Colombia surfaced during the negotiations and ratifications processes. In January 2015, although the agreement was ratified by the Irish Parliament, the Parliament held a debate on human rights in Colombia and various organisations pressured MPs to vote against ratification as the additional mechanisms have not yet managed to fully guarantee human rights.

⁴⁷ This information is based on the Commission's annual report on implementation, and Minutes of 2nd meeting of the sub-committee on Customs and Trade Facilitation. A search of the Council and EP register of documents has not produced the minutes of the 2nd meetings of the other sub-committees.

Within the 'Sub-Committee on Technical Barriers to Trade', the Parties exchanged information on their quality infrastructure systems. The EU presented a number of concerns to Colombia (technical regulations for the automotive sector, conformity assessment procedures, labelling of textiles, technical regulations of alcoholic drinks, and biofuels policy) and Peru ('Law for the Promotion of Healthy Eating', delays in the registration of pharmaceutical products and dietary supplements). Colombia and Peru voiced concerns about the EU requirement for origin certificates for fish exports and the restriction of the use of palm oil in some Member States.

The main trade irritant that has arisen with Colombia regards discrimination against the importation of spirits. In the Trade Agreement, Colombia committed to remove discriminatory tariffs within two years of implementation, but has failed to do so (the same situation has arisen within Colombia's free trade agreements with the United States and Canada). Government attempts to change the legislation that protects domestic spirit producers has been blocked by Congress and regional Governors despite the Executive's commitment to fulfilling the Trade Agreement requirements. The problem lies in the fact that the Colombian constitution grants regional authorities a monopoly over regional rum and spirits production and the collection of taxes on these products, giving them a strong economic incentive to maintain the status quo⁴⁸.

Likewise, spirits taxation has been a controversial issue in the Technical Barriers to Trade Sub-committee with Peru. Here the trade irritant lies in the fact that local *pisco* is considered a cultural good and is exempt from taxes on alcoholic beverages. All imported spirits are however, subject to high taxes, and foreign exporters consider this differentiated treatment for *pisco* to be against the spirit and letter of non-discrimination principles at the WTO. European whiskey producers, in particular, have complained about this situation through the Europe Active lobby. Although the European Commission Delegation in Peru is in constant contact with the Peruvian government over this matter, given the special status of *pisco* (including issues related to national identity) and vested business interests it is likely that a full resolution of this matter will take time.⁴⁹

The 'Sub-Committee on Trade and Development' agreed on the names of external experts for the list of experts. These experts can be called up in the future to make recommendations in cases of disputes arising under this Chapter that may not be satisfactorily addressed through governmental consultations. They also shared their experiences on domestic mechanisms to promote the participation of civil society.

The 'Sub-Committee on Intellectual Property' focused on discussed geographical indications (GIs), with the EU expressing its interest for simplified recognition procedures. Peru and Colombia have not granted automatic protection to the EU's GI list. In both countries Andean Community Decision 428 of 2000 represents the basis for domestic procedures for GI protection, and require an application for the protection, which is followed a period of 30 working days when interested parties can express their opposition to the GI.⁵⁰ Colombia presented a full set of certificates of protection of EU GIs under the Agreement and submitted a list of 18 new GIs, nine of them for agricultural products, which the EU will

⁴⁸ On 13 January the EU has filed a request for consultations with Colombia on discriminatory measures on spirits: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1432>

⁴⁹ From interviews with Sub-Committee members.

⁵⁰ The Trade Agreement with Singapore will create a Singaporean register of GIs, but GI holders will have to apply to join the register. This is common with states like Peru, Colombia, Singapore that have previously signed and implemented preferential trade agreements with the United States, as in those agreements they have agreed to apply a US-based trademark system for the protection of GIs, therefore they need to afford an opportunity for a trademark holder to contest a GI that could contravene their trademark. A resolution of these matters between the EU and USA under TTIP negotiations would facilitate speedier processes in other agreements.

evaluate in accordance with the Agreement. For the remaining non-agricultural GIs, the EU clarified how their protection might be achieved. Peru submitted a list of four new GIs. Protection of artists and medicines were other issues discussed.⁵¹

At the 'Sub-Committee on Public Procurement', Peru and Colombia updated the EU on the list of government entities covered. The Parties agreed to exchange information on the participation of SMEs in foreign procurement markets.

The 'Sub-Committee on Sanitary and Phytosanitary Measures' discussions included: import requirements, verifications, measures linked to animal and plant health, equivalence, and technical assistance. Progress on sanitary and phytosanitary measures also remains protracted, particularly in Colombia, which only published rules for a unified procedure for certification of SPS for vegetable and animal products in June 2015. Overlapping authorities (Instituto Colombiano Agropecuario, Instituto Nacional de Medicamentos y Alimentos) complicate the implementation of the Agreement.⁵²

At the meetings of the 'Sub-Committee on Customs Procedures, Trade Facilitation, and Rules of Origin', the Parties updated each other on the evolution of their legislation and procedures, and FTA negotiations. The EU emphasised the importance of creating a paperless customs environment. The Parties exchanged their experience on Authorised Economic Operators and Mutual Recognition Agreements. On rules of origin,⁵³ the Parties addressed the certification and verification of preferential origin, and the issue of direct transport.⁵⁴ Colombia requested Spain's assistance regarding the Authorised Exporter System.⁵⁵

⁵¹ These are on-going discussions, and resolutions are likely to happen in future meetings. The minutes of these meetings did not record any agreements, but merely exchanges of information.

⁵² Even during the negotiation stage, negotiators sensed that SPS implementation would be complicated in Colombia (interview).

⁵³ Rules of Origin (RoO) refers to the laws, regulations and administrative procedures which determine a product's country of origin. A decision by a customs authority on origin can determine whether a shipment falls within a quota limitation, qualifies for a tariff preference or is affected by an anti-dumping duty. Rules of Origin determine how much transformation of a product must take place in the originating country to qualify as a good from that state, or how much of the content (materials) need to have been sourced in that country or how much of the value of the product is derived from transformations and processes undertaken in said country. With the advent of regional and global supply chains, RoO have become increasingly complex, and have adapted to the realities of cross-border production by tending to shift away from determination by content rules to value rules. Increasingly RoOs that take account of cumulation (allowing for cross-border sourcing and production) are becoming more commonplace. Full EU Rules of Origin can be found at http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/preferential/article_774_en.htm#originating_status.

⁵⁴ Direct transport rule: Preferential arrangements contain rules concerning the transportation of preferential goods from one party's territory to another. The purpose of direct transport is to ensure that the goods arriving in the country of import are the same as those which left the country of export. However, if for any reason the goods pass through or stop-over in, the territory of a third country provided that they stay under customs supervision, the conditions of direct transport are considered to have been fulfilled. Proof of compliance with the direct transport rule may be given by a single transport document covering the passage of the goods through the country of transit or, for example, a "non-manipulation certificate" issued by the authorities of that country. Under the agreement (Article 13) goods originating in one party and temporarily stored in a third country under customs supervision that are only subject to unloading, reloading or keeping goods in good condition, can continue to qualify for preferential treatment under the agreement.

⁵⁵ An approved exporter is an exporter who has met certain conditions imposed by the customs authorities and who is allowed to make out invoice declarations. Just as the customs authorities can grant that status, they can also

The 'Sub-Committee on Market Access' exchanged information on the evolution of trade flows, noting the lack of reliable statistics over a prolonged period of time. The parties discussed bilateral issues such as GSP+ (Peru). Peru remains a beneficiary of the EU's GSP system, which grants preferential market access to the EU to goods from low and middle income states (as defined by the World Bank). The Trade Agreement will supersede those preferences, and as of January 2016, the GSP system will cease to apply to Peruvian exports. As such Peruvian exporters will make use exclusively of the preferences granted under the Trade Agreement. Being a beneficiary of GSP is a pre-requisite to qualify for GSP+ status (additional preferential access contingent on commitments to sustainable development and respect for the rule of law, which is monitored via a dialogue between the EU and the beneficiary state). These procedures and dialogues will be replaced by the dialogues under the Trade and Sustainability chapter of the Trade Agreement. The GSP+ monitoring mechanisms are more robust than those established under Trade Agreements (Van der Putte et al 2015, 3). Given some of the weaknesses in the Trade and Sustainability chapter dialogue mechanisms, prolonging GSP+ monitoring mechanism through the Trade and Sustainability Sub-Committee could be an interesting approach, although this is not mandated by the Trade Agreement. In relation to Colombia, domestic policies on biofuels and truck scrapping were explained.⁵⁶ The latter remains a contentious issue from the EU's perspective as trucks must be scrapped before another one can be imported, breaching market access rules, and preventing EU truck manufactures from taking full advantage of the opportunities created by the agreement.

The Trade Committee reviewed the activities of the specialised bodies and discussed topics related to trade in services. The EU expressed concerns about deadlines for the issuance of work visas in Peru, which could negatively affect Peru's commitments under the trade in services part of the Agreement. The Parties also discussed topics pertaining to the WTO and the Trade Facilitation Agreement, exchanging information on their current respective negotiations with other countries or regions.

3.6 The banana stabilisation mechanism

Bananas represent the world's most popular fruit, and a significant cash crop for many developing states. The world's top banana producers can be found in Latin America: Ecuador accounted for 22.4 percent of the total value of world banana exports in 2014, Costa Rica for 7.4 percent, Colombia for 7.1, the Dominican Republic for 3.4, Honduras for 1.9 and Mexico for 1.5, Peru for 1.1 (Banana Export, 2015). The European Union, for its part, constitutes the world's top market for bananas, accounting for a 29 percent share of global imports in 2013, followed by the United States with a share of 26 percent (FAO 2015, 3). For decades banana trade has been a contentious issue in EU-Latin American relations. When the EU adopted the Common Organisation of the Market (COM) in Bananas in February 1993 as part of its commitment to an internal market, various banana tariff regimes that had existed in the member states disappeared and a single system was put into place.⁵⁷ The regime established by the Common Organisation of the Market paid

withdraw it if the exporter misuses or abuses the authorisation. The procedures attached to granting "approved exporter" status depend on national provisions. Under certain conditions, a 'single authorisation' may be granted to an approved exporter, who is established in one Member State, where he keeps his records containing the evidence of origin, but whose products are exported from other Member States (see Article 8 of Council Regulation (EC) N° 1207/2001 of 11 June 2001).

⁵⁶ The minutes of these meetings did not provide additional context.

⁵⁷ Many EU members states granted preferential tariff or no tariff access to bananas from ACP countries, as they had traditionally sourced bananas from their former colonies and had established special ties with those states. Germany, the largest consumer, maintained a duty free market for bananas and imported mostly from Latin America. Belgium, Denmark, Ireland, Luxembourg and The Netherlands imposed 20 percent tariffs on non-ACP bananas.

heed to commitments undertaken by the EU towards developing states in ACP states under the Lomé Convention, which prevented placing ACP banana exporters in a worse position than they had been in the past. Under the regime, bananas originating in ACP states have tariff free access to the EU market. Meanwhile bananas from non-ACP states face a combination of licenses, tariffs and quotas. Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela asked the GATT⁵⁸ to consider whether this regime violated GATT principles of non-discrimination. In 1996, the United States joined as a party to the complaints against the EU.⁵⁹ A year later the WTO panel found that the EU banana regime violated WTO principles, and EU arguments against the decision were rejected by the WTO's Appellate Body. Suits and cases at the WTO continuing over the next decade, as the United States and others argued that EU changes to its relationship with ACP countries under the Cotonou Agreement, and changes to the banana regime⁶⁰ remained discriminatory.

The longstanding banana trade dispute at the WTO between Latin American countries and the USA against the EU, came to an end with the signing of the Agreement on Trade in Bananas between the EU and Latin American states in December 2009 and the USA-EU deal in June 2010. In exchange for settling pending legal disputes at the WTO and not demanding further preferences on bananas at the WTO Doha Round, the EU agreed to gradually cut its import tariffs on bananas. In light of the agreement reached, with effect as from 15 December 2009, the EU reduced its import tariff to EUR 148/tonne and from the 1 January 2011, seven annual reductions in the tariff (EUR143, EUR136, EUR132, EUR127, EUR122, EUR117, EUR114) are scheduled. In addition, the EU created an additional aid budget of EUR 200 million for the Africa, Caribbean and Pacific states to help them adapt to the increased competition in the EU market that would result from the gradual decrease in tariffs on bananas from these non-ACP sources. The EU also increased its annual funding for EU banana producers to EUR 279 million.

The Trade Agreements negotiated with Central American states and Peru/Colombia offer better conditions. These provide for a gradual reduction of the import duty for bananas from these countries down to 75 EUR/tonne as of 1 January 2020.⁶¹

A Stabilisation Mechanism for Bananas was created within the Trade Agreement with Peru/Colombia to ensure competitive imports from the Andean states making use of the preferential access granted in the Agreement would not destabilise the European banana market and depress prices. Regulation (EU) No 19/2013⁶² implements this mechanism and establishes a defined volume of imports for each state for each

An account of how the 1993 banana regime came about and of the subsequent dispute between the EU and United States and Central American states can be found in Fattore and Allison 2013.

⁵⁸ General Agreement on Trade and Tariffs and precursor to the World Trade Organisation (WTO) set up in 1995.

⁵⁹ Fattore and Allison (2013) argue that the United States' involvement in the dispute resulted from the lobbying efforts, and close relations between Chiquita banana's CEO and United States politicians. The United States is not an important producer of bananas, however some of the largest companies in the banana business are American multinationals (Chiquita, former United Fruits, Dole, Fresh Del Monte) and they grow bananas in Latin America.

⁶⁰ Changes included the elimination of national quotas for ACP countries and the replacement of import licenses based on historic trade volumes by a 'first-come, first-serve' system, and the dismantling of the COM in 2006, removing quotas and 'decoupling' support to EU banana producers making them compete in the market (see Anania 2015).

⁶¹ Africa, Caribbean and Pacific states once they sign an EPA, as Cariforum has done, continue to have tariff and quota free access to the EU's banana market.

⁶² A proposal from the European Commission (26.5.2015) (COM (2015) 220) for a Regulation updating Regulation (EU) 19/2013 to take into account Ecuador's accession to the Trade Agreement, and changes in Combined Nomenclature Code for bananas is currently awaiting a vote by the European Parliament scheduled for February 2016, and a decision by the Council.

12-month period until 2020, when the quotas disappear. If banana imports from a country exceed this annual 'trigger import volume', the European Commission will activate the Stabilisation Mechanism and initiate an investigation to determine whether the higher imports of bananas are affecting banana prices within the EU market and having a detrimental effect for European producers. If the investigation concludes that this is the case,⁶³ the Mechanism allows for the introduction of safeguard measures to be imposed. These include: 'a suspension of a further reduction of the rate of customs duty provided in the Agreement's Tariff Elimination Schedule'; or 'an increase in the rate of customs duty to a level which does not exceed the lesser of the base rate as specified in the Tariff Elimination Schedule or the most-favoured-nation rate applied to other producers in the absence of preferential trade agreements' (European Parliament and Council, 2013, 4). Central American and Colombian exports of bananas to the EU have increased, but have remained well below the 'trigger import volumes' that would instigate an investigation under the Stabilisation Mechanism.⁶⁴ However, as Table 16 reveals, Peru's banana imports exceeded the trigger volume by 24,695 tonnes in 2014.⁶⁵ The European Commission, therefore, opened an investigation into the case and the banana market in Europe.

Table 16: Andean states' banana exports to EU

	Exported Quantity (tonnes)		Trigger Import Volume 2014 (tonnes)	Percentage Change 2013-2014
	2013	2014		
Colombia	1,161,570	1,275,224	1,620,000	9.8
Peru	91,828	107,195	82,500	16.7
Ecuador	1,454,689	1,805,657	‡	24.1

Source: Author's calculations based on UN COMTRADE Data, and Regulation 19/2013 European Parliament and Council.

‡As Ecuador was not yet party to the Agreement its banana exports to the EU were not regulated by this mechanism.

In a Decision of 17 December 2014 the European Commission determined, after an investigation, that the rise in Peruvian banana exports to the EU over 2014 had not affected the average wholesale banana price in the EU market, nor had it been to the detriment of EU producers. Consequently no temporary suspension of the preferential custom duty was put in place. The procedure operated according to established rules. Banana imports from all other states under the Banana Stabilisation mechanism remained well below the threshold levels. In December 2015 the European Commission has concluded its investigation into Peru's and Guatemala's banana exports for the year (using monthly data to project the possible annual imports) and again concluded that despite exceeding trigger import volumes, their imports have not affected the market. Peruvian banana imports account for less than 2 percent of total imports into the EU, and their prices in the first nine months of the year averaged EUR 670/tonne (4 percent higher than average from other imports). Guatemalan banana imports have almost doubled in absolute terms with respect to 2014,

⁶³ Article 7 of Regulation (EU) 19/2013 states that an investigation should precede the application of any safeguard measure, subject to the Commission being allowed to apply provisional safeguard measures in critical circumstances. Paragraph 16, highlights the particular case of the EU's outermost regions where an increased influx of bananas could deteriorate the economic situation.

⁶⁴ Trigger import volumes for Andean countries from 2015 onwards can be found in Table III in the Appendix.

⁶⁵ The FAO (2015) explains rises in Peruvian banana exports to the EU to an increased demand for organic bananas. These production practices are in line with requirements under the Trade and Sustainability Chapter of the Trade Agreement.

but still represent around 1.5 percent of total EU imports. Average prices for Guatemalan bananas in the first nine months of 2015 have been EUR 621/tonne (3.5 percent below average prices for other banana imports). However, given the low share of total imports the European Commission has determined that there is no case to impose safeguards (European Commission 2015c).

Even though the threshold rises yearly until its elimination in 2020, Peru and Guatemala's rises in exports may continue to pose problems and trigger more investigations in years to come, unless importers shift to other suppliers. Ecuador, too, may present a challenge once the Agreement is implemented with Ecuador. As the undisputed top banana producer and exporter, Ecuador supplies large quantities of bananas to the EU, which could trigger the application of the stabilisation mechanism. The Stabilisation Mechanism, although time-consuming and, should an investigation be triggered, a potential irritant to counterparties,⁶⁶ is designed to prevent sudden hikes in exports resulting from new preferential tariffs from depressing EU market prices to the detriment of ACP exporters and EU banana producers.

⁶⁶ Exporters and importers will prefer to operate in a system where they have certainty about the rules applied at a given moment, and not have to await outcomes of investigations.

4 Conclusions and recommendations

Overall, the EU's agreements with Latin American states have secured the EU's position as a major trade partner and main source of investment in the region. They will help to maintain strong ties in the future, at a time when China is becoming an increasingly important economic actor in Latin America. The agreements the EU has signed take into account the varying levels of development of Latin American states, particularly through the tailored and differentiated tariff reduction schedules.

As all the agreements signed with Latin America were negotiated under mandates obtained prior to the Lisbon Treaty, these agreements do not cover investment protection. More recent agreements with Singapore and with Canada⁶⁷ do include such provisions. The ratification of the agreement with Singapore has been put on hold pending a decision by the European Court of Justice to interpret the exact nature of the European Commission's negotiation authority on investment matters. This will also potentially delay the ratification of the Canada agreement. The absence of such a chapter has facilitated the ratification and implementation of the agreements with Latin America. United States trade agreements (including those with Latin American states) do, however, include investor chapters. Once the ECJ determines the matter, it is likely that the upgrading of the Global Agreement with Mexico will include investment, and that in the future the other agreements with Latin American states (especially with Chile) will open negotiations on investment. The impacts of the Trade Agreements are, for now, within expectations. The full effects of trade agreements can only be observed following a considerable time lag (around a decade). In the first years of implementation, the institutional structures have been successfully set-up, dialogues and sub-committee meetings are taking place regularly. They are working within their remits, and governments are making the necessary legislation changes to fully implement the agreement.

The effects of trade agreements accrue over time and are difficult to extricate from other broader trends. Notwithstanding this, initial data shows Colombia has benefitted more than Peru from increased access to the EU market (especially in terms of cocoa, flowers, sugar and confectionery). The Agreement has expanded exports of non-traditional products, but exports remain dominated by oil and mineral exports to the EU. Civil society groups have expressed concerns about the social and environmental effects of these increased exports. EU exports to Peru and Colombia have experienced very moderate growth and remain concentrated in machinery, vehicles, pharmaceuticals and chemicals.

In terms of the institutional arrangements created by the Agreement, all the sub-committees have been established and are exchanging information and working appropriately. The Sub-Committee for the Trade and Sustainability Chapter provided opportunities for civil society to participate in the process, and reported good progress in legal transposition of ILO and environmental conventions.

Although there has been significant progress made in terms of legal and policy initiatives within the context of the Roadmaps on Human Rights, civil society organisations have pointed to a lack of action on the ground, especially at local authority level, and the last year deaths, attacks, and threats against labour union activists have continued.

The Banana Stabilisation Mechanism has already been activated in the case of Peru. It resulted in no action, but if similar export figures are reached next year, it will be activated again. The implementation of the Agreement with Ecuador may also trigger the mechanism, and will need to be monitored carefully. The predominance of American multinational corporations in the Ecuadorian banana industry, means this is the world's largest banana exporter. The banana industry in Colombia is dominated by cooperatives, and has

⁶⁷ The agreement negotiated with Canada, the Comprehensive Economic and Trade Agreement (CETA), although concluded in August 2014, is still undergoing legal review.

seen a growth in fair trade certification. This is one of the post-conflict success stories in the country and it would be disappointing if their exports suffered as a result of Ecuador's accession to the Trade Agreement.⁶⁸ One option could be to continue encouraging the development of social and environmentally responsible banana plantations, and supporting certification of such production methods, for instance, increases in the trigger level could be offered if certain percentage of the quota is made up of certified bananas.

Recommendations:

- *Certification mechanisms and Corporate Social Responsibility have been identified by the Sub-Committee on Sustainability as areas for further discussions and exchanges. Progress in this area can facilitate implementation of the goals set out in the Trade and Sustainability Chapter.*

Although these mechanisms for certification are expensive, in areas such as food and textiles, they are becoming increasingly important in global value chains. As European retailers (large supermarkets) increasingly purchase organic or fair trade products they could be a more effective way of promoting compliance with labour or environmental standards than government mandated rules. Applying this to an industrial setting, where the final product undergoes a greater transformation before reaching the consumer is more challenging, but producers could benefit from the publicity of using raw materials certified to have been mined in a responsible manner. Using multilateral venues (e.g. WTO) to promote certification schemes and the promotion of the Clean Mining Initiative could support positive changes in this sector. Tighter legislation in the area of Corporate Social Responsibility (CSR) could be a mechanism for multinational corporations to be more mindful of these matters, however, currently EU provisions on CSR are non-binding and vague, and apply in Europe and to European firms. American or Chinese multinationals operating in Colombia and Peru would not be beholden by this, even if there were tougher laws. A multilateral forum would therefore be a more suitable to pursue these aims. EU negotiators, currently negotiating a Transatlantic Trade and Investment Partnership (TTIP) agreement with the United States, could explore the possibility of finding common ground with the United States on this matter, as United States firms would have to be included in any such initiative.

- Closer cooperation with ILO and with private sector

Van der Putte et al (2015) have argued that the Sustainability Compact concluded with Bangladesh in the aftermath of the Rana Plaza tragedy is an innovative mechanism to enhance labour rights in third parties, given the legitimacy the process entails by being co-created by the EU, ILO and the Bangladeshi government, and backed by the United States and private sectors. Its success also hinges on the designation of funds to finance projects. Under the GSP+ scheme Peru already complied with EU and ILO monitoring, so some of these mechanisms could be incorporated into the functioning of the Trade and Sustainability Chapter. A key problem is ownership. The process must be the result of cooperation and not an imposition from the EU. Setting aside finance to support initiatives on labour and environmental legislation and implementation that come from the partner states may be a way towards more efficient implementation on the ground.

- Capacity building for export diversification, especially for small and medium enterprises.

This is one of the aims of the Trade Agreements, and one that has thus far received little attention. The EU has created very useful resources for the promotion of exports, and SME exports (e.g. SME Centre in China), which could serve as a model for markets. SMEs often lack time and resources to investigate export opportunities. Online training packages, developed jointly by EU and Latin American experts could ameliorate this shortcoming.

⁶⁸ This may not happen as they compete in slightly different sectors (Fair Trade).

- Create an anonymous ‘whistle-blowing’ facility.

Implementation problems in terms of human and labour rights appear to be mostly at the local level, where intimidation of activists is more likely. An anonymous ‘whistle-blowing’ facility could support the activists’ safety. However it is contingent on the availability of technologies and cannot guarantee that individuals suspected of ‘whistle-blowing’ will not suffer retaliation. Such a system could, however, encourage more individuals to denounce abuses and malfeasance.

- *Financial support, in particular, for the Colombian government’s implementation programme and activist protection programme* so as to expand its reach could also help to stabilise the situation.
- *Reinforcement of the judicial system:* to bring to trial aggressors and illegal labour intermediaries to serve as a measure to dissuade such behaviour.
- *Joint efforts by the EU Delegations and EU member states* to engage with civil society organisations on the ground to identify mechanisms to reach smaller, less well-resourced organisations.
- Lack of capabilities and knowledge has been identified as an impediment to fruitful participation of civil society at the local level in policy processes. Within cooperation on administrative modernisation, the EU could encourage Colombian officials to *create simpler documentation*, and could share some of its own practice in creating official documentation for its own civil society dialogues. Supporting the training of local civil society representatives to enable them to fully participate in the dialogues would also be a helpful initiative, and could be achieved through special roving trainers/outreach officers.

Through these recommendations, we believe the implementation of the EU agreement will be improved.

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Appendix

Table I: Issue coverage of political dialogue in EU agreements with Latin America

Topic \ Agreement	MX-EP97	CL-AA02	CF-CA00	CA-AA12	AC-PCA03
Political Dialogue					
Promotion human rights, democracy, rule of law		x		x	x
Dialogue on matters of mutual interest	x	x		x	x
Areas of Cooperation					
Foreign & Security policy		x			
Terrorism		x		x	
Disarmament				x	
Non-proliferation WMD				x	
International Criminal Court				x	
Finance for Development				x	
Migration				x	
Environment				x	
Citizen security				x	
Good governance in the tax area				x	
Common Economic-Financial Credit Fund (with European Investment Bank and Latin American Investment Facility)				x	

Table II: Coverage of Issues under cooperation pillars of EU-Latin America agreements

Topic	Agreement	MX-EP97	CL-AA02	CF-CA00	CA-AA12	AC-PCA03
Scientific & Cultural Cooperation						
Science & Technology		x	x		x	x
Communications, IT, Information society		x	x			
Education and Training		x	x	x	x	x
Audio-visual		x	x		x	x
Culture		x	x		x	
Information society					x	x
Democracy, Human Rights, Governance Cooperation						
Human rights		x		x	x	x
Democracy		x		x	x	x
Good Governance				x	x	x
State modernisation and public administration			x	x	x	x
Conflict prevention and resolution			x		x	x
Public Administration			x			
Inter-institutional cooperation			x			

Table III: Coverage of issues under cooperation pillars of EU-Latin America Agreements Cont.

Topic	Agreement	MX-EP97	CL-AA02	CF-CA00	CA-AA12	AC-PCA03
Justice, Freedom and Security Cooperation						
Drugs		x	x		x	x
Organised crime			x		x	x
Illicit small arms trafficking					x	
Fight terrorism (with respect of human rights)					x	x
Fight Corruption					x	
Money laundering & Finance Terrorism					x	
Regional cooperation and integration		x	x			
Social Cooperation						
Millennium Development Goals				x	x	
Decent work					x	
Social affairs and poverty		x		x		
Health		x		x	x	x
Triangular and bi-lateral cooperation			x			
Participation of civil society			x		x	x
Gender			x	x	x	x
Social dialogue			x			x
Indigenous and ethnic groups					x	x
Vulnerable groups					x	
Youth				x	x	
Refugees		x				
Migration			illegal		x	x
Environment		x	x	x	x	x
Natural disasters and climate change					x	x
Regional Integration						
Regional cooperation and cooperation in regional integration		x	x	x		x
Commitment to re-examine parts of agreement to further regional integration (at pace dictated by LAC)						x

Table IV: Economic cooperation topics in agreements with Latin America Cont.

Topic	Agreement	MX-EP97	CL-AA02	CF-CA00	CA-AA12	AC-PCA03
Economic Cooperation						
Technical cooperation in competition policy		x			x	
Establishment and trade services					x	
E-commerce					x	
Barriers to trade					x	
Artisanal goods					x	
Organic goods					x	
Food safety					x	
Phytosanitary measures		x			x	
Animal welfare					x	
Good governance in tax area					x	
Development				x		
Export diversification				x		
Support for trade				x		
Enhancing technical and research capabilities				x		
Capacity and institution building				x		
Promote partnerships for innovation				x		
Eco-innovation and renewable energy				x		

Table V: Latin America and the Caribbean: European transnational firms

Sector	Positive effects				Challenges and difficulties	Countries	
	Exports	Linkages	Greenfield FDI	Innovation and R&D			Systemic competitiveness
Natural resources							
Oil and gas	High		High			Environmental pollution, waste management	Brazil, Ecuador, Venezuela Argentina, Colombia
Mining	High		High			Low-processing enclave activities. Environmental pollution. Problems with local communities	Brazil, Chile, Colombia, Peru
Manufacturing							
Food		High	Moderate				Argentina, Brazil, Chile, Mexico, Colombia
Motor vehicles (1)		High	High	High		Trade balance in deficit	Brazil, Argentina
Electronics (1)			Moderate	Moderate		No strong science and technology base being created	Brazil, Argentina
Iron and steel	Moderate		Moderate			Few non-labour intensive activities or linkages being created. Environmental pollution	Brazil, Mexico
Chemicals		Moderate	Moderate	Moderate		Environmental pollution	Brazil, Mexico
Motor vehicles (2)	High	High	Moderate	Moderate		Domestic market has not complemented exports. Dependence on imported components	Mexico
Electronics (2)	High		Moderate			Low value added, preponderance of static advantages, dependence on imported components	Mexico

Table VI: Latin America and the Caribbean: European transnational firms

Sector	Positive effects				Challenges and difficulties	Countries
	Exports	Linkages	Greenfield FDI	Innovation and R&D		
Services						
Banking		Moderate	Moderate		Moderate	Crowding-out effect on domestic banks and development banks. Mexico, Argentina, Chile, Colombia
Electricity			Moderate		High	Inadequate frameworks, problems regulatory environmental Chile, Argentina, Peru
Unconventional renewable energies			High		High	Inadequate frameworks regulatory Brazil, Mexico, Panama, Uruguay
Telecommunications			High	Moderate	High	Problems of scale for transfer of technological advances and tariff reductions Latin America and the Caribbean
Tourism		Moderate	High			Large environmental impact Mexico, Brazil, Central America and the Caribbean
Retail		High	High			Problems with suppliers, complaints about working conditions Mexico, Brazil, Argentina, Colombia

Source: Economic Commission for Latin America and the Caribbean (ECLAC) 2012, 92

Table VII: Latin America and the Caribbean: largest cross-border acquisitions by European Union firms, 2005-2012

(Million of dollars)

Rank	Year	Firm/asset acquired	Country	Sector	Acquirer	Country	Value
1	2012	GrupoModelo	Mexico	Beverages	Anheuser-Busch	Belgium	20 100
2	2010	FEMSA-Operacióncervecera	Mexico	Beverages/Liquors	Heineken	Netherlands	7 325
3	2005	Bavaria	Colombia	Food/Beverages	SABMiller	United Kingdom	4 716
4	2011	Telemar (25%)	Brazil	Telecommunications	Portugal Telecom	Portugal	3 786
5	2009	GVT	Brazil	Telecommunications	Vivendi SA	France	3 372
6	2008	IronXMineração	Brazil	Mining	Anglo American PLC	United Kingdom	3 492
7	2007	Colombia Telecomunicaciones	Colombia	Telecommunications	Telefónica SA	Spain	2 627
8	2007	Sistema-Minas Rio	Brazil	Mining	Anglo American PLC	United Kingdom	2 451
9	2009	Metsa-Botnia-Uruguay	Uruguay	Pulp and Cellulose	UPM-Kymmene	Finland	2 404
10	2008	GrupoFinancieroInbursa SA	Mexico	Banking	LaCaixa	Spain	2 222
11	2006	GrupoBanistmo SA	Panama	Banking	HSBC Holding	United Kingdom	1 780
12	2008	Electricity and gas assets	Mexico	Energy	Gas Natural SDG	Spain	1 448
13	2006	SiderúgicaLázaro Cárdenas	Mexico	Iron and Steel	Arcelor	Luxembourg	1 440
14	2005	Ambev	Brazil	Beverages/Liquors	Interbrew SA	Belgium	1 273
15	2009	Santelisa Vale Bioenergía	Brazil	Sugar Cane	Louis Dreyfus	France	1 270

Source: Economic Commission for Latin America and the Caribbean (ECLAC) 2012. 87, on the basis of information from Thomson Reuters.

Table VIII: Trigger Import Volumes under Banana Stabilisation Mechanism (in tonnes)

Year	Colombia	Peru	Ecuador
1 Jan - 31 Dec 2015	1 687 500	86 250	1 645 111
1 Jan- 31 Dec 2016	1 755 000	90 000	1 723 449
1 Jan - 31 Dec 2017	1 822 500	93 750	1 801 788
1 Jan - 31 Dec 2018	1 890 000	97 500	1 800 127
1 Jan - 31 Dec 2019	1 957 500	101 250	1 957 500
As of 1 Jan 2020	Not applicable	Not applicable	Not applicable

Source: Regulation 19/2013 European Parliament and Council & COM (2015)

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