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# Rights, Free Trade, and Politics: The Strategic Use of a Rights Discourse in the Negotiation of Free Trade Agreements (FTAs)

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**ABSTRACT:** This article seeks to describe the strategic use of a rights discourse by domestic and international actors involved in the negotiation and ratification processes of free trade agreements between Colombia, the United States, and the European Union. We suggest that some of the differences between both FTAs and the processes leading up to their approval and ratification can be attributed to the ability of relevant actors to build and disseminate rights-based arguments in order to develop like-minded political coalitions, and other institutional and contextual characteristics.

**KEYWORDS:** policy process • human rights • Economic, Social and Cultural Rights (ESCR) • free trade agreements • European Union • United States • Colombia

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## **Derechos, libre comercio y política: el uso estratégico de un discurso de derechos en la negociación de tratados de libre comercio**

RESUMEN: El artículo describe cómo ciertos actores usaron estratégicamente discursos basados en la defensa de los derechos humanos durante la negociación y ratificación de los acuerdos de libre comercio entre Colombia, Estados Unidos y la Unión Europea. Se sugiere que las diferencias entre los dos acuerdos y sus procesos de aprobación y ratificación se pueden atribuir a la capacidad de los actores involucrados para elaborar y socializar argumentos en defensa de los derechos humanos, y a otras características contextuales e institucionales.

PALABRAS CLAVE: procesos normativos • Derechos económicos, sociales y culturales (DESC) • derechos humanos • acuerdos de libre comercio • Unión Europea • Estados Unidos • Colombia

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## **Direitos, livre comércio e política: o uso estratégico de um discurso de direitos na negociação de tratados de livre comércio**

RESUMO: Este artigo descreve como certos atores usaram estrategicamente discursos baseados na defesa dos direitos humanos durante a negociação e a ratificação dos acordos de livre comércio entre a Colômbia, os Estados Unidos da América e a União Europeia. Sugere-se que as diferenças entre os dois acordos e seus processos de aprovação e ratificação podem ser atribuídos à capacidade dos atores envolvidos para elaborar e socializar argumentos em defesa dos direitos humanos e outras características contextuais e institucionais.

PALAVRAS-CHAVE: Processos normativos • Direitos Econômicos, Sociais e Culturais (DESC) • direitos humanos • acordos de livre comércio • União Europeia • Estados Unidos da América • Colômbia

# Introduction<sup>1</sup>

Over the past few years, Colombia has developed free trade agreements (FTAs) with its two main commercial partners: the United States (Colombia-US FTA, which was ratified in 2011) and the European Union (Colombia/Peru-EU FTA, which was provisionally applied in 2013). The process leading up to signature, application and ratification has been marked by heated debates on all ends of the deals. Opponents to the FTAs have argued that FTAs—and the preferential treatment they provide to Colombia’s trading partners—are responsible for many of the problems faced by the country’s growing middle class and impoverished rural sectors (Eslava 2013). In fact, as illustrated in Table 1, much is at stake: together, these trading partners account for over 50 percent of Colombia’s exports, underscoring the highly asymmetric nature of the relationships (Garay, De Lombaerde, and Barberi 2011).

**Table 1.** General Facts on Trade between Colombia-US, and Colombia-EU

Commercial partner	Exports	Imports	Investments
to and from United States	Between 2008 and 2012 Colombian exports to US amounted to USD 17,499 million FOB (38.74% of total, an average annual growth of 10.45%), including coffee, flowers, and other agricultural products. Petroleum and mining products were the main products exported in 2012 (75.5% of total).	Between 2008 and 2012, imports from US represented 26.49% of total imports. These imports grew 12.29% on average in the same period. Machinery, equipment and petroleum were the main products imported in 2012.	US investment in Colombia represented on average a third (24.7%) of total FDI in Colombia between 2001 and 2012.
	In 2012, US exports to Colombia amounted to 0.9% of total US exports.	In 2012, Colombian imports were 1.1 % of total US imports.	

1 We thank Mariana Gutiérrez and Susana Sierra for their support in collecting data for this article. We also thank three anonymous referees for their valuable comments and suggestions.

Commercial partner	Exports	Imports	Investments
To and from European Union	Between 2008 and 2012 Colombian exports to EU amounted to USD 6,485 million FOB (annual) on average (14.06% of total, an average annual growth of 16.73%)	Between 2008 and 2012, imports from EU amounted to 13.6% of total imports, with an average annual growth of 13.5%.	From 2000 to 2012, EU investment in Colombia was USD 10,385.8 million on average, per year; 24% of total FDI.
	Exported products included coal, petroleum, coffee, bananas, ferronickel, crude oil, flowers, food, and several manufactured leather goods. Mining and energy sector accounted for 78.3% of total exports in 2012.	Imports included machinery and communications equipment, planes, medical equipment, chemicals and medicines.	
	In 2011, Colombia was the destination of 0.3% of EU's total exports.	In 2011, 0.4% of EU's total imports came from Colombia.	

(Source: Ministry of Commerce, Industry and Tourism and DANE. Compiled by the authors)

Throughout the negotiation process of both agreements, various economic, social, and cultural rights (ESCR), ranging from intellectual property to health, a safe environment, life and labor, were routinely invoked as being imperiled if FTAs were to be enacted (Silva 2007; Gómez and Gamboa 2010; Vargas 2011; Lizarazo, De Lombaerde, Ortiz, Parra, and Rettberg 2014). Much as has been documented for other trade negotiations (e.g., Thacker 2000; De Lombaerde 2002), the political coalitions both in favor of and opposing FTAs brought together affinity groups across borders, including members of the US Democratic Party and Colombian trade unionists, in opposition to the Colombia-US FTA. Noticeably, however, the debate surrounding trade negotiations was not only led by the “usual suspects,” such as labor unions, environmental groups, patenting companies, and companies prone to being

affected by the distributive impacts of commerce (Silva 2007; Gómez and Gamboa 2010). Rights-based national and international non-governmental organizations also systematically used constitutional norms and rights to question the contents and procedures of Colombian FTAs before courts and to mobilize the support of relevant social groups within Colombia and abroad. On occasions, these groups were joined by other political groups which took advantage of the negotiation context to oppose government policy, aiming to achieve international impact.

The purpose of this article is not to examine or measure the current or future specific effects of FTAs on the Colombian economy and society, nor whether trade improves or hinders political stability and overall respect for human rights. What this article seeks to describe and analyze is the strategic use of a rights discourse—or a set of political arguments addressing different generations of ESCR—by domestic and international actors involved in FTA negotiations in order both to delay the process of the negotiations and to shape the content of the resulting FTAs. We argue that actors involved in free trade negotiations disseminate a rights discourse based both on measurable and expected risks to specific rights and on the need to mobilize and build political, legislative, and judicial support among actors on both sides. In addition to the obvious differences between both trading partners (for example, the contribution of the US to Colombian exports is over two times than that of Colombian exports to Europe), this article thus suggests that some of the differences between the two FTAs and the processes leading up to their approval and ratification can be attributed to the ability of relevant actors to build and disseminate rights-based arguments and develop like-minded political coalitions. Therefore, the central issue of the article is the politics of trade negotiations and the use of a rights discourse therein.

Our research is relevant as it supports the view that trade is much more than the exchange of goods and services and that trade negotiations involve discussions over non-trade issues (Feinberg 2003). The large number of FTAs currently in place (Colombia alone has thirteen FTAs in force and four have been signed, see Ministerio de Comercio, Industria y Turismo 2014a), and the future prospects indicating that FTAs will be the strategy of choice for many

flourishing Latin American economies, requires scholars to examine to what extent and in what way non-trade issues may shape and affect the scope of trade agreements. In this sense, this paper contributes to our knowledge of the politics of trade policy (De Lombaerde 2000; Echavarría 1999; Sáenz-Rovner 1992) in general, and FTA negotiation processes in particular (Silva 2007; Gómez and Gamboa 2010; Vargas, 2011), by centering the analysis on the role played by rights in actor preference formation, on how actors integrate these preferences in specific political strategies, and how they interact with political, institutional, and other contextual variables.

In the following sections we will first briefly lay out an analytical framework based on insights from the fields of political science and economics, and describe the recent evolution of Colombian trade policy and of its main actors. The subsequent sections will describe both FTAs and identify the protagonists and their strategies when faced with these agreements, in order to identify when and how a rights discourse was included, shaping relevant outcomes during the FTA negotiation process.

## **1. Political Economy of Trade Policy: Some Conceptual Insights**

Broad political-economy models of trade policy tend to focus on the domestic and international driving forces of trade relations. In these models, relevant actors or coalitions include national governments, but also political parties, domestic and international civil society organizations, labor unions, environmental groups, and private sector lobbying associations. According to these models, actor capacity is shaped not only by the control of measurable resources such as capital (which explains why, for example, different fractions of the private sector weigh in heavily on the orientation and design of trade policy, both in favor and against) but also by the creative use of intangible sources of power, such as legitimacy or the ability to recruit support from like-minded actors across borders (see, for example, Alt and Giligan 2000; Capling and Low 2010a; Frieden and Lake 2000; Rogowski 2000; Thacker 2000).

Thus, specific outcomes of trade negotiations should reflect the existence of certain institutional opportunities and constraints shaping the emergence of

actors and coalitions and their ability to bring their interests to the agenda, recruit support from strategic partners, and promote the adoption of specific items in trade policy—FTAs in this case. In addition, actors should be considered as being able to “learn” during the negotiation and ratification process of a specific FTA, as well as between the corresponding processes of different FTAs.

In a synthesis of the main contributions that have been made under this perspective, Rodrik (1995) identifies four central elements that should be part of any political economy model designed to analyze trade policy. The first element refers to a description of actors’ preferences regarding the policy instruments under discussion. Each instrument will lead to a specific outcome which, in turn, defines a set of costs and benefits for each actor. Based on these possible scenarios, actors form their preferences and decide their courses of action. Here it is important to note that actors’ preferences are driven both by material and nonmaterial interests—such as the defense of human rights (Capling and Low 2010b). As the second element, the model has to describe “how these preferences are aggregated and channeled through pressure groups, political parties or grass-roots movements into ‘political demands’ for a particular policy or another” (Rodrik 1995, 1459). The third element of the model must specify the policymakers’ (state actors) preferences. Finally, the fourth element refers to the institutional context—especially the role of political<sup>2</sup> and economic institutions—framing interactions among actors. Several elements of recent FTA discussions and contents—described in the paragraphs below—illustrate the main tenets of this model.

Diagram 1 synthesizes the main theoretical elements exposed above and sketches the different possible relations that may develop between the domestic and international levels. Here, international negotiations (Level I), led by national governments, on the process and content of FTAs are influenced by domestic (Level II) and international pressures led by state actors (including national governments and their agencies, courts, and Congress), and non-state actors

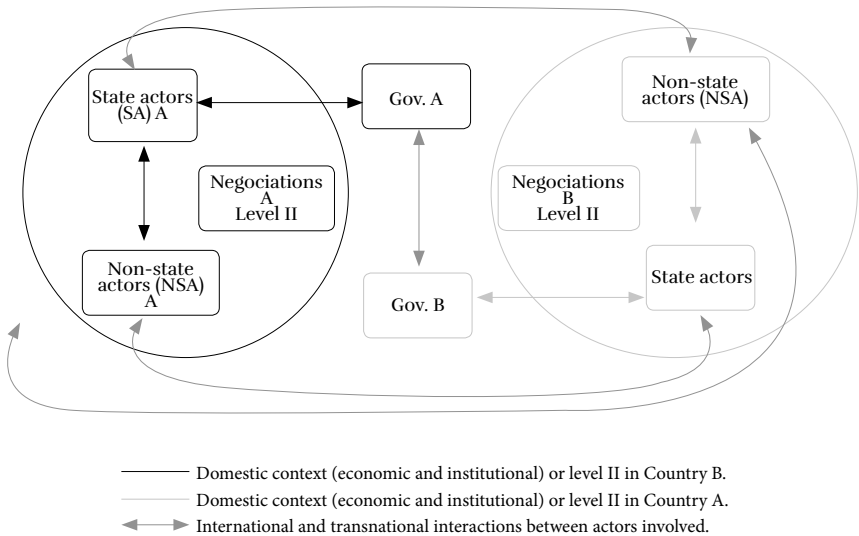
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2 For example, political constitutions define the formal and informal arenas in which actors interact, advance their preferences, and develop tools and strategies. To the extent that constitutions—such as in the Colombian case—define fundamental rights for every citizen, which any citizen could claim are being harmed by FTA implementation, these institutions shape preferences and actions.



(including NGOs, unions, business associations, and other civil society organizations). Interactions among these actors go both ways throughout the whole FTA negotiation process and are based on material and non-material interests.

**Diagram 1.** A General Framework of the Political Economy of Trade Policy



(Source: Based on Silva (2005), adapted by the authors)

Finally, it is important to note that the characteristics of the countries involved in FTA negotiations in terms of their importance as trade partners, the size and the structure of their economies, and the scope of the agreements negotiated will influence the number of actors involved, their preferences, and somehow the distribution of their relative capabilities—i.e., the broader the scope, the larger the number of actors who eventually will feel compelled to participate in the negotiation process (e.g., Dür and De Bièvre 2007). The greater the economic importance of one country for the other's balance of trade, the higher the expected visibility/importance of the agreement at hand.

## 2. Changes in FTA Scope, Institutional Control, and Content

Tariff elimination was a prominent feature of FTAs signed between the 1960s and 1980s, during the wave of “first generation” FTAs<sup>3</sup>. Since then, the scope of FTAs has considerably widened. The introduction and diffusion of the North American Free Trade Agreement (NAFTA)-model for FTAs (De Lombaerde and Garay 2008; Devlin, Estevadeordal, and Jank 2002; Heydon and Woolcock 2009; Woolcock 2006) implied a significant broadening of FTA contents: in addition to tariff elimination, it included provisions such as Harmonized System (HS)-based rules of origin, special rules for the automobile sector, separate agricultural chapters, Sanitary and Phytosanitary (SPS) measures, technical barriers to trade, investment, investor-state dispute settlement, services, temporary entry of business persons, public procurement, intellectual property rights (IPR), anti-dumping/countervailing measures, and dispute settlement; in addition, a number of side agreements covered labor and environmental issues. This broader scope in comparison to “first generation” FTAs, which can be observed in both cases examined here, explains to a large extent why the political-economy of trade agreements has also become more complex. As issues from more areas are covered, more interests and rights are potentially affected.<sup>4</sup>

A second element marking change in the formulation of FTAs refers to institutional transformations that have taken place in many countries. Modern twentieth century Latin-American constitutions contain vast numbers of social guarantees (Schor 2006, 21) and sometimes operate in combination with activist courts and the globalization of constitutional law, the promotion of the balancing method in adjudication, and the expansion of justiciability of human rights (Bomhoff 2008, De Sousa Santos 1998, Tushnet 2008, Schor 2008). This has led

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3 First generation agreements focused on tariff reduction commitments. Subsequent agreements, such as NAFTA, included investment and other commitments, and are therefore described as second generation agreements. Finally, some analysts consider that agreements such as the US-Chile FTA are third generation because they include additional commitments in terms of intellectual property, environment and labor (Pizarro 2006, 32).

4 This aspect of the European case is illustrated in Dür and De Bièvre (2007).

to a growing judicialization of trade policy, or the involvement of judicial bodies in the definition of the scale and scope of countries' trade relations.<sup>5</sup>

A third element refers to how the globalization of the economy has accentuated the ability of international regulations and norms to bind and shape national jurisdictions. FTAs have been incorporated into national legal systems in different ways: they have been considered as a supranational legal framework or as being at the same level as national constitutions (in some cases passing constitutional control before ratification),<sup>6</sup> and they have been incorporated as ordinary laws subordinated to the Constitution (as in the case of Colombia). The latter means that they can be challenged before courts in spite of their previous constitutional control, in case some of their rules or their implementation become unconstitutional. The fact that North-South FTAs include clauses or principles that refer to the protection of rights, such as workers' rights or public health rights (access to medicines) (Alavi 2009), in combination with the growing justiciability of fundamental rights—often supported by international normative frameworks—turns the protection of fundamental rights into a central issue in FTA negotiations and contents, as has been the case in the negotiation of the FTAs examined here.

Given the prevalence of human rights issues in current FTA discussions, the interaction between FTAs and human rights deserves a special discussion. Commonly, this relationship has been presented as a conflictive relation between free trade principles and the justiciability of ESCR, as illustrated, for example, by the tensions between protecting IPR versus protecting public health and biodiversity. From a legal point of view, the interaction between the regulation of international trade, mainly via FTAs, and the enforcement of human rights may occur before or after the agreements enter

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5 The judicialization of trade policy implies that national courts are adjudicating on the scope of international trade agreements when they (could) violate constitutional rights, especially economic, social, and cultural rights (ESCR). This should be distinguished from dispute settlement mechanisms, which refer to the resolution of conflicts between the parties to the agreement that relate to the compliance with or interpretation of its clauses.

6 In many EU member states, European economic integration treaties (which incorporate FTAs), once approved and ratified, cannot be unaccomplished on the basis of reasons based on national constitutions (Besselink, Claes, Imamović, and Reestman 2014).

into force and in different ways (Van Hees 2004, 2): (i) trade sanctions for human rights abuses; (ii) human rights conditionality in trade agreements (Aaronson 2010; Bartels 2008; Ebert 2009); (iii) human rights issues in the WTO framework; or (iv) effects of trade on human rights. How the topic is addressed and solved is also influenced by the parties of the agreement, particularly if one of them is the EU, the US or Canada. Aaronson identified clear patterns in FTAs signed by these countries. While the EU emphasizes universal human rights as well as specific rights, such as labor rights, due procedure, and political participation, the US and Canada FTAs refer mainly to very few specific rights, such as transparency, labor rights, due procedure, political participation, access to medicines, and rights of minorities, among others (2010, 435). The right to public health and labor rights have been more relevant in the negotiation of FTAs with the US.

The combination of these elements explains why today FTAs tend to be more contested and why actual and potential conflict between FTA contents and the constitutional frameworks in the signing countries may, in fact, increase. In particular, the national and international context described in the previous paragraphs illustrates the development of an institutional structure of incentives increasing the likelihood of non-trade issues being addressed in negotiation and implementation processes. These issues are capable of promoting or stalling the discussion and framing of trade policy, and in particular the different types of rights and rights protection instruments gathered here under the general label of “rights discourse.” Combining elements of the political economy model presented in section two with aspects of the transformed social, political, and economic context in which FTAs are currently negotiated, as presented here, we will now proceed to focus on the Colombian case.

### **3. Colombian Trade Policy: Contents and Implications of the Colombia-US FTA and Colombia-EU FTA**

Despite having been engulfed in armed conflict for over four decades, Colombia has experienced a significant decrease in homicides and other manifestations of political violence in recent years. This has provided the background against which foreign and domestic investment has regained

momentum. According to a recent report by the World Bank, “Colombia is a regional leader in narrowing the gap with the world’s most efficient regulatory practice” (World Bank 2013, 26).

For Colombian policymakers, economic adjustment policies adopted since the 1990s have played a central role in promoting and fostering economic expansion (De Lombaerde and Lizarazo 2011; Franco and De Lombaerde 2000; Ochoa 1998; Volpe Martincus 2010). As a part of these policies, a turn to the promotion of “new generation” FTAs is expected to boost the country’s export capacity and to consolidate economic growth. Since the 1990s, the Colombian government has adopted several measures oriented towards trade liberalization. As Colombia’s main trade destinations, the US and the EU have been the preferred partners in this venture (Table 1 presents some general figures regarding these trade relationships).

In addition, institutional change, and more specifically change in the constitutional framework, is important in terms of understanding the present-day political-economy of trade policy in Colombia. The country has been presented as an example of the ambitious constitutional empowerment of high courts as a way of consolidating democracy (Schor 2008, 1-3). In this context, constitutional case law since 1991 has promoted the balancing method of adjudication,<sup>7</sup> by which the Court seeks to actively protect constitutional rights by the active use of the constitutional bloc.<sup>8</sup>

Crucial instruments created by the Colombian constitution to protect fundamental rights include the Action of Protection of Fundamental Rights (*acción de protección de derechos fundamentales*—APFR—, CPC Article 86) and the Popular Action (*acción popular*—PA—, CPC Article 88), as well as the above-mentioned tool of the “constitutional bloc.” The APFR is comparable to the concrete judicial review and has helped the Court broaden the scope of precedent regarding constitutional rights. The PA is a judicial

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7 See Alexy (2002); Bomhoff (2008); and Dworkin (1994). On the application of the balancing method by the Colombian Constitutional Court, see Lizarazo (2011).

8 This refers to constitutional case law developing the Constitution of 1991, which states that international human rights treaties ratified by Congress prevail over national rules and together with the constitutional rules on fundamental right form the “constitutional bloc.”

mechanism for the protection of collective rights and interests related to the homeland, public space, safety and health, the environment, and free economic competition. Constitutional actions such as these allow citizens to present claims and put case law at the center of the public debate, thereby strengthening the law-making role of the judiciary (Cepeda 2004; Landau 2005; López 2000). In this way, the Court has played an active role in the process of rules creation through judicial review sentences but also through APFR sentences.<sup>9</sup>

This section will present the main facts, contents, and expected winners and losers of both FTAs, as well as the processes leading up to the coming into effect of these agreements.

#### **a. The Colombia-US FTA**

Although Colombia first initiated preliminary contact with the US to seek the signature of an FTA in the early 1990s, it was not until May 2004 that the negotiation process formally started. Initially, negotiations began with Colombia, Ecuador and Peru together. However, by the end of 2005 the three countries had opted for different strategies. Colombia and Peru pursued the signing of bilateral agreements, whereas the negotiations between Ecuador and the US were suspended in May 2006. The signature of the agreement on November 22, 2006 took over two years, fourteen rounds of negotiations and sixty regional fora to secure. Law 1143 of 2007 approved the trade agreement. In July 2008, the Colombian Constitutional Court upheld the Colombia-US FTA (Court Rulings C750/08 and C751/08). However, approval of the FTA stalled in the US Congress for five years, until it was finally signed by the Obama administration on October 21, 2011. Over 80 percent of US exports of consumer and industrial products to Colombia became duty free immediately, with the remaining tariffs phased out over ten years.

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9 Supporters of the Colombian court's activism have placed it in the Latin American vanguard of the justiciability of rights, by promoting democracy and deepening its social basis in a country with high inequalities (Schor 2008, 15, 18-19). Critics of the Court have raised concerns that activism may displace legislators as the main guardians of rights by the rejection of legal formalism as method of interpretation (Schor 2008, 8, 14).

One crucial ingredient of the Colombia-US FTA is the parties' explicit commitment to comply with internationally-recognized labor rights standards as promoted by the International Labor Association (ILO). This commitment is reflected in rights such as the right of association and the prohibition of forced labor (as detailed in Chapters XVII, "Labor," and XVIII, "Environment," of the agreement, Ministerio de Comercio, Industria y Turismo, 2014b).

## **b. The Colombia/Peru-EU FTA**

The negotiations of the Colombia/Peru-EU FTA started after the signature of the Colombia-US FTA in 2007. In consistence with the EU's inter-regional negotiation strategy (Santander 2008, 192), the negotiations of an Association Agreement with the Andean Community (CAN, from its Spanish initials) were initially announced in 2006. However, when the CAN negotiation bloc disintegrated in 2008 (as Bolivia and Ecuador abandoned the process), the EU changed its negotiation mandate and accepted the negotiation of bilateral trade agreements (Parra 2010). In this way, the EU moved away from its characteristic inter-regionalist strategy, with a strong region-building component (De Lombaerde, Pietrangeli, and Schulz 2009, Pietrangeli 2010), in the direction of the "new bilateralism" (Heydon and Woolcock 2009). The negotiations were finally concluded at the EU-LAC Summit in Madrid in 2010. The treaty was then signed in June 2012 and approved by the European Parliament (EP) on December 11, 2012. After ratifications by the Colombian Congress in June 5, 2013, the Colombian government issued Decree 1513 of July 18, 2013, in order to temporarily implement the commercial part of the agreement. However, only after examination by the Constitutional Court—still pending—and the approval of each of the 27 EU member states parliaments<sup>10</sup> will this FTA come into full force. The Colombia/Peru-EU FTA will eliminate tariff barriers for all industrial and fishery products, broaden market access for agricultural products, improve access to state contracts, services, and investment markets, reduce technical barriers to trade, and adopt common rules regarding intellectual property, transparency, and competition.

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10 As of December 2013, ten countries had approved the agreement.

The protection of rights figures prominently as part of this FTA. According to the Colombian government, “parties to the agreement must ensure that internationally recognized human rights and democratic principles—including labor rules—are observed and upheld” (Ministerio de Comercio, Industria y Turismo 2014c). This principle was fixed in Chapter IX, Article 267 of the agreement, according to which the parties agree to “strengthen their commitment to the principles and labor rights” in order to improve the contribution of trade to sustainable development (Colombia-EU FTA, Chapter IX, Article 267). In this regard, the FTA was coherent with the general legal mandate of the EU to improve human rights worldwide via its trade policy, and to avoid any harm (Articles 21 of the Treaty on the European Union (TEU) and 205 of the Treaty on the Functioning of the European Union (FTEU)). Since 1995, the EU has included a general “Human Rights Clause” in all political framework agreements. According to this clause, “respect for democratic principles and human rights, as laid down in the Universal Declaration of Human Rights and other relevant international human rights instruments, and for the principle of the rule of law, underpins the internal and international policies of both Parties and constitutes an essential element of this Agreement” (European Parliament 2014, 9). In the words of Karel de Gucht, the European Commissioner for Trade, “we have both carrots and sticks. We offer major economic incentives at the same time as applying strict rules about the conditions to qualify. These are not paper tigers—but tough rules that we have had, occasionally, to put into practice” (2010, 3).

### **c. Projected Winners and Losers: A Balance**

At the beginning of the negotiation process for the Colombia-US FTA, the Colombian government, through its National Planning Office (DNP, from its Spanish initials), estimated that the FTA would help Colombian exports grow by over 6% (DNP 2003), and would attract investment in infrastructure, industry, and rural development. According to several studies conducted during the negotiation process, the expected winners of the Colombia-US FTA would therefore be the informal and unqualified labor intensive sectors (with a growth rate of between 19% and 21% in some sectors, such as the textiles industry), agriculture (which depends on the elimination



of US non-tariff barriers), and informal employment (with a rough growth in income of 5%). Additionally, the tourism sector (Rueda 2004), as well as the auto parts industry, publicly expressed their support of the FTA. According to Botero (2004), both the demand for skilled and unskilled labor would increase, although the latter would take place four times as quickly. Meanwhile, the formal and qualified intensive sectors and capital intensive sectors (Martín and Ramírez 2005) were the expected losers in this process. However, some sectors of the industrial labor industry favored the signing of FTAs, arguing that more investment would mean more jobs and more unionized workers. This version of “new unionism” (Dinero 2008) defended Colombia’s advantage in providing labor in order to stem the pressure from manufacturing based on cheap labor in China and India.<sup>11</sup>

In their analysis of the possible impacts of an FTA between the CAN and the EU, Vanzetti and Laird (2008) predicted some negative impacts on Colombian industry and manufacturing. This has been confirmed by a more recent study commissioned by the EU, predicting net negative growth figures for manufacturing, and positive figures for the agricultural and energy sectors (Francois, Gopalakrishnan, Norberg, Porto, and Walmsley 2012).<sup>12</sup> According to the reference scenario in the same study, overall Colombian exports to the EU are expected to grow by 11%. The expected winners include the sugar, vegetables and fruit sectors (including bananas), while expected losers include textiles, motor vehicles, and machinery and equipment (Francois et al. 2012, 31-32). Real wages for both skilled and unskilled labor are expected to increase, although unskilled wages are expected to increase more significantly (0.45% compared to 0.25%) (Francois et al. 2012, 41), leading to small reductions in levels of poverty and inequality.

The DNP has estimated an increase of 0.25% in qualified labor salaries, 0.53% in unqualified labor, and 0.38% in capital (Vanzetti and Laird 2008). Similarly, the

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11 An initial balance of the Colombia-US FTA after twenty months of operation suggests that Colombian production has benefited from the agreement. However, imports have increased, confirming the fears of some of this FTA’s opponents (Ministerio de Comercio, Industria y Turismo 2014d).

12 The study by Francois et al. (2012) updated the estimates in the previously commissioned Trade Sustainability Impact Assessment (SIA), carried out by Development Solutions (2009).

planning office found that industry will suffer from negative rates of growth due to the implementation of the treaty. However, the Colombian government predicts an increase of half a percentage point in the GDP growth rate, 0.71% in exports, and 1.73% in imports, in addition to wage increases of 0.25% for qualified labor and 0.53% for unqualified labor (Ministerio de Comercio, Industria y Turismo 2010).

NGOs aimed at promoting human rights, such as *Planeta Paz*, several US civil society organizations, and Oxfam, added that the FTA would especially damage peasant populations (Garay Barberi, and Cardona 2006), leading to a decrease of between 16% and 45% in their income, which would push at least 1.8 million into illicit crops, affecting the right to life and to a healthy environment.

#### 4. The Strategic Use of a Rights Discourse: Context, Actors and Strategies

Public discussion on the desirability and content of both FTAs largely revolved around the economic figures and expectations described above. However, non-trade issues also played a prominent role. Overall, the debate demonstrated the strategic use of a rights discourse by the actors involved, who became mobilized in favor of or against FTAs. This section explores this issue further. Special emphasis will go to the growing and preponderant role of labor unions and human rights NGOs, who used constitutional actions, especially the APFR and the AP (see section 4), to influence the processes of FTA negotiation, approval, and/or implementation. In addition, we will analyze the alliances developed between labor unions, human rights organizations, and members of selected political parties involved in the negotiation process of both FTAs in the US, Colombia, and the EU. Central to these coalitions was the strategic use of constitutional tools to bring the discussion before courts seeking a favorable judicial adjudication. The rights discourse not only defined identification and collaboration among actors but was also linked to delays and progress made in negotiations and in the ratification process, as well as to particular elements of FTA content.

In brief, this section should make clear that actors involved in free trade negotiations develop a rights discourse based both on measurable risks to specific rights and on the need to mobilize and build legislative and judicial support for preferred economic conditions and associated rights. It will be further argued that

delays and obstructions of the negotiation process or specific content can be traced to the application of this strategic rights discourse. While the relationship between the countries involved may therefore be profoundly asymmetric in terms of trade volume and capacity (Garay, De Lombaerde, and Barberi 2011), actors involved in negotiations may in fact be able to alter inherent power imbalances leading to outcomes that cannot be read solely based on the economic leverage of the parties.

### **a. Trade and Non-Trade Reasons: Actors in Context**

While FTAs are an important element of the commercial expansion strategies of the US and the EU, non-trade reasons were important for both actors when pursuing FTAs with Colombia. In the case of the Colombia-US FTA, complementing the war on drugs by strengthening the domestic economy in order to provide legal alternatives for generating income to drug-dependent local economies was a prominent policy goal. Although Plan Colombia—a massive US-led cooperation effort to bring peace and fight drugs in Colombia—has been gradually fading out, Colombia is still considered a strategic ally of the US' war on drugs in the Andean region, as reflected in ongoing military cooperation (Tickner 2007). In addition to the war on drugs, the US strategy was also marked by the need to strengthen ties to Colombia in the face of growing efforts by the now deceased president of Venezuela, Hugo Chávez, to consolidate his role as a regional leader, with growing animosity against the US. Finally, the ratification process of the Colombia-US FTA centered on Colombia's unfavorable performance in regards to union safety and on overall labor (rights) conditions: in 2009, Colombia was the country with the largest number of trade unionist homicides (48), ahead of Guatemala, Honduras, and Mexico (Mejía and Uribe 2009). In sum, FTA negotiations between Colombia and the US were part of a larger political and economic agenda aimed at promoting trade as well as developing other political and strategic interests.<sup>13</sup>

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13 See, for example, the statement issued by Senator John McCain: "Colombia is a beacon of hope in a region where others are actively seeking to thwart economic progress and democracy. We must not turn our back on fledgling democracies in this region, and we must not turn our back on American workers when all they want is the right to sell them in other countries" (2011). The expectation that trade liberalization increases overall wealth and supports human rights, such as the right to property, non-discrimination and the right to trade, is also discussed in Dunoff (1999); Lizarazo et al. (2014); Edwards (1998); Sachs and Warner (1995); Sachs (1998); and Warner (1999).

Similarly, the EU has invested significant amounts of human and material resources in peace-building programs, most notably “Peace and Development Laboratories” in over ten Colombian regions (García and Llinás 2012), in addition to numerous programs and organizations promoting respect for human rights. Thus, discussions around the Colombia/Peru-EU FTA brought to the forefront the need to promote sustainable peace and development in order to continue and consolidate the EU’s decade-long engagement as a motivation for deepening and diversifying their investments and commitments in the country. The Colombia/Peru-EU FTA was therefore shaped by the EU’s experience and larger goals in the country and region.<sup>14</sup>

## **b. Opposing FTAs: Actors in Action**

### **The Colombia-US FTA**

As we pointed out in Lizarazo et al. (2014), both the Colombia-US and the Colombia/Peru-EU FTAs met with fierce opposition from groups highlighting the possible negative effects of the implementation of the agreements in several areas (see also Gómez and Gamboa 2010; Olivet and Novo 2011; Silva 2007; Vargas 2011). Human rights organizations and NGOs in Colombia, such as the Red Colombiana de Acción Frente al Libre Comercio y ALCA (RECALCA), and in the US, such as Public Citizen and Oxfam America (Oxfam 2011), argued that any trade agreement with a government linked to ongoing human rights violations should be stopped. A common thread in the opposition to the Colombia-US FTA was the transgression of fundamental rights by the proposed trade agreement, including life, life quality, access to medical care, culture, environment, dignity, privacy, and property, among others, involving different vulnerable groups, such as women and indigenous groups (Buckley and Boulle 2008; GRAIN 2006; Fink and Reichenmiller

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14 As the European Commissioner for Trade, Karel De Gucht, pointed out: “[...] it is important that Parliament know that the protection of human rights is already central to our relationship with Colombia and Peru, precisely because we have long used our cooperation programs to further human rights in the region [...] Human rights is a priority area of focus under the 2007-2013 Country Strategy Paper for Colombia” (2012, 2).

2005; Lizarazo et.al. 2014; Malpani and Bloemen 2009; Médecins sans frontières 2004; Moon 2008; Nasu 2010; Vélez 2005; Zerda 2005).

The discussion of the FTA in the Colombian Congress and in the court hearings unveiled the expected domestic winners (e.g., unqualified and informal labor) and losers (organized labor) (De la Cadena 2008). Although some of the main representatives of the trade unions expressed their opposition to the Colombia-US FTA from the beginning of the negotiations and led some of the main protests (*Semana* 2004a, 2004b), during its initial stages emphasis in Colombia was put on the risks of the FTA for the sovereignty of the Colombian state, for the right to health as a consequence of the increasing cost of drugs, and for the future of Colombian agriculture (Pérez 2007; Suárez 2007). Concerns about labor rights or conditions did not capture public attention in Colombia, reflecting the fact that labor unions have been historically weak (according to Mejía and Uribe (2009), only about 4.1 to 7 percent of the Colombian formal labor force is unionized, and several unions compete for overall spokespersonship). Concerns raised by civil society organizations on prior consultation with indigenous populations also failed to attract much public attention (Gómez and Gamboa 2010).

Most of the Colombian opposition to the agreement was coordinated by the Colombian Network Against the FTA (RECALCA, from its Spanish initials)<sup>15</sup> and focused on exerting pressure on the Colombian courts to declare the agreement unconstitutional—both through APFR, PA, and directly at Constitutional Court hearings—, because it affected the right to life and to a healthy environment (Lizarazo et al. 2014; Pérez and Novoa 2007; Suárez 2007). A glimpse of the actors' statements at the court hearings (which were included in the text of Court Ruling C750 of 2008) provides an overview of central concerns raised. All of the opponents focused on the harm that could be done to specific rights should the FTA be enacted, illustrating the strategic use of a rights discourse. RECALCA led the expressions of interest, arguing against declaring the FTA constitutional. It suggested that a framework

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15 RECALCA includes organizations that represent the interests of small farmers, trade unions, environmentalists, and other non-state actors such as think tanks that clearly opposed the Colombia-US FTA (Suárez 2007).

conducive to promoting investments would curtail the exercise of all rights pertaining to a state of social welfare. In addition, it criticized what it called “insufficient consultation” with vulnerable groups in the months leading up to the design of the framework. The Central Unitaria de Trabajadores (CUT), one of Colombia’s largest trade unions, seconded RECALCA’s observations, adding that FTA dispositions failed to include appropriate control mechanisms to protect labor rights. Senator Jorge Enrique Robledo, a leading Left-wing politician who has championed social causes for years, criticized the agreement because it put at risk national sovereignty, food security, labor rights, the environment, and agriculture. A group of women’s organizations (Corporación Sisma Mujer, Asomujer y Trabajo, Instituto Latinoamericano de Servicios Legales Alternativos (ILSA); Corporación CACTUS; Punto Focal para Colombia de la Red Internacional de Género y Comercio Capítulo Latinoamérica; and Fundación para la Formación de Líderes Afrocolombianos, AFROLIDER) argued that the upcoming FTA gave insufficient consideration to how the norms and practices of international trade would infringe upon women’s rights. The Colombian Commission of Jurists joined the group of opponents and pointed towards risks to sovereignty as well as several risks to ESCR, such as food security, intellectual property, and health. Several health organizations referred to how the FTA would jeopardize the right to health in the country (IFARMA, Misión Salud, and Acción Internacional por la Salud).

Other actors, such as the Health Mission (Alliance for the Defense of Health), sought to influence specific outcomes in the final text of the agreement—specifically the prevention of barriers to access to medicines in trade agreements—instead of rejecting it altogether (Gómez and Gamboa 2010, 80). Similarly, business associations such as the Farmers Society of Colombia (SAC, from its Spanish initials) and FENAVI, which represents the country’s egg and poultry producers, sought to shape the agreement in their favor but abstained from refusing to support the FTA (see Silva 2007; Gómez and Gamboa 2010).

In spite of opposition in Colombia, the Colombian Congress approved the Colombia-US FTA. Next, the Colombian Constitutional Court ruled it constitutional (Court Ruling C -750/08), via the automatic, abstract and preventive

constitutional control. The Court consistently upheld the constitutional nature of FTAs, arguing that FTAs are part of a legitimate development strategy of the Colombian state (Lizarazo et al. 2014). As a result, an eventual but unexpected consequence of an FTA (such as an increased risk to the right to health) could not in itself be deemed unconstitutional. In its ruling, the Court underscored the competence of national authorities in terms of monitoring and protecting fundamental rights in the implementation of FTAs. This was in line with increasing judicial activism and with the argument that courts, in addition to traditional political actors who become mobilized in FTA discussions, have become powerful counterparts in discussions on trade policy.

In contrast with the Colombian situation, discussions in the US were marked by the prominent role of labor unions, a focus on labor rights and violence against labor unionists in Colombia as a central concern (Villarreal 2014). The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the US' largest federation of unions, led opposition to the FTA on the grounds that the agreement is part of the "same flawed trade model that has sent jobs overseas, suppressed wages and provided the benefits of trade to a narrow class of wealthy investors" (AFL-CIO 2014). Specifically in relation to Colombia, the AFL-CIO commissioned a study and stated that "the United States should not, as a matter of principle, commit to deep and more permanent economic integration, by way of a comprehensive trade agreement, with any country with such an atrocious record on trade union and human rights. As reflected in innumerable governmental and non-governmental reports, Colombia is such a case" (AFL-CIO 2008, 2). To further underscore its point of view, the AFL-CIO pointed towards the fifty-one homicides against unionists that took place in 2010 alone, coining the well-known phrase that "Colombia is still the world's most dangerous country for labor unions" (*Portafolio* 2011). This statement became a guiding motive for opposition against the FTA in Washington, both for US- and Colombia-based labor and human rights interest NGOs, and was adopted by Colombian union leaders and human rights organizations during visits to the US Congress.

The position of the AFL-CIO was echoed by members of the US Democratic Party, under the direction of the then Speaker of the House, Nancy Pelosi. The Democratic Party has been historically highly sensitive to and

permeated by trade union interests, linked to a long-standing reticence to support free trade for fear that American unionized labor would then be forced to compete with industries employing labor in unfavorable conditions. Democrat congresswoman Linda Sánchez visited Colombia by invitation of Oxfam's Fair Trade campaign. During her visit, she was adamant about the Colombian government's responsibility to protect human and labor rights, strengthen the judicial system, and collaborate in the war against drugs (US Office on Colombia), in addition to protecting workers and trade unionists.

A meeting between Democratic Party members Harry Reid, Nancy Pelosi, and James McGovern and the Colombian president in 2007 further underscored these concerns: as long as Colombia failed to address questions regarding links between the government and regional political elites and right-wing extremists connected to the killing of unionists, a Colombia-US FTA was not feasible. Representative James McGovern was eloquent when he said "this is not about words, reports, or creating prosecution units, but about results and sentences, real progress" (*Portafolio* 2007). Notably, and underscoring the efficacy of the labor lobby, other manifestations of human rights violations occurring in Colombia were not publicized as widely in FTA discussions, especially during the ratification process.

The strategy carried out by FTA opponents in the US, along with the consolidation of a Democratic Party majority in the US Congress, was effective in stalling congressional FTA approval for five years. As Representative Sánchez had warned, only after further amendments—including in a Bipartisan Trade Agreement referring to obligations related to basic ILO labor rights, multilateral environmental agreements (MEAs), and pharmaceutical IPR—would the FTA be approved (Villarreal 2014). After nearly five years of intense lobbying work on both sides (see *Portafolio* 2007; *Semana* 2009; Vargas 2011; *Semana* 2006, 2007a, 2007b, and 2008), the US government sent the FTA to Congress for discussion and ratification. In April 2011, Presidents Obama (US) and Santos (Colombia) agreed that Colombia would present an "Action Plan on Labor Rights" to improve Colombian labor legislation and the physical conditions of workers (including security concerns). After verifying Colombia's accomplishment on the agreements reached, the US government sent the agreement to Congress, which approved it in both chambers on October 12, 2011. In May 2012, six years after being signed,



FTA implementation began. Alleging ongoing human and labor rights violations, organizations such as the Colombian Labor Union (CUT, from its Spanish initials) and the US labor organization AFL-CIO, continue to question the agreement (CUT and CTC 2014).

### **The Colombia/Peru-EU FTA**

Negotiations with the EU followed a similar pattern. However, one interesting difference was that while US Congress people and organizations were highly involved in the process during its ratification, their European counterparts participated in the process earlier, during the negotiation stage. Whereas the strongest partners for FTA opponents in the US were select members of the Democratic Party, in the case of the EU, Center and Left-wing European political parties and powerful European human rights NGOs played this role. As opposed to the Colombia-US FTA, which focused on labor rights, in the case of the FTA with Europe concerns were centered around ongoing human rights violations in Colombia and the risk that these would continue. The agreement was also criticized for its possible impacts on the environment, indigenous communities and African-Colombians' prior consultation rights, development, and income distribution. Critics also argued that the Colombia/Peru-EU FTA was a means by which Europe would provide legitimacy to human rights violations in Colombia and because of fears that an FTA with Colombia would stimulate conflict over land ownership and other forms of human rights violations amidst the ongoing internal armed conflict.

Numerous statements illustrate these points. By invitation of civil society organizations opposed to the agreement, members of the EP visited Colombia in 2010 to study human rights conditions in the country. Following their visit, they sent letters to European authorities voicing their concerns about Colombia's human rights situation and expressing their opposition to the signing of an agreement that could worsen and legitimate human rights violations (MEPs 2010). In a related policy brief, the TEU human rights clause was referred to as being "little more than window dressing" (Olivet and Novo 2011, 6). The debate extended to the national level: German MPs, for example, called on "the Bundestag to exercise its legislative duty of taking a decision on the ratification of a free-trade agreement between the EU, Colombia and Peru which, rather than dealing exclusively

with trade policy, also deals with issues relating to structural, constitutional and human rights policy” (German Bundestag 2010).

In addition to the EP, several social and human rights organizations took part in the debate. After the conclusion of negotiations in March 2010, a statement signed by over two hundred organizations in Europe and Latin America, including both NGOs and labor unions, asserted that “the agreements, besides from containing decisions which will affect economic, social and cultural rights of Centro American, Peruvian and Colombian peoples, do not include effective mechanisms which should condition commercial preferences to the adequate application of human rights, neither do they comprise functional mechanisms of commercial sanction to face violations. Additionally, it is worth mentioning that the conclusion of the negotiations stood above any consideration in reference with good government or human rights” (Enlazando Alternativas 2010). The statement was echoed by the European Trade Union Confederation and the International Trade Union Confederation (ETUC-ITUC 2010). The different organizations urged the EP to declare the FTA a “mixed agreement” in order to broaden the discussion to EU Member States’ parliaments, and to not allow its provisional enforcement until ratification by all twenty-seven member states (Olivet and Novo 2011).

Based on those criticisms, civil society organizations such as OIDHACO (International Office for Human Rights Action on Colombia, which represents over thirty human rights organizations), CUT, CTC (Confederación de Trabajadores de Colombia), and RECALCA opposed this FTA and demanded additional guarantees to ensure the protection of human rights. Similarly to the case of the Colombia-US FTA, those business associations which felt that the agreement could potentially harm their economic interests opposed specific provisions of the FTA and raised their concerns in the media.<sup>16</sup>

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16 FEDEGAN (National Federation of Cattle Breeders), ANALAC (National Milk Producers’ Association), and ANDEMOS (Colombian Association of Motor Vehicles) opposed specific provisions in the FTA that could harm their interests and preferences (*Portafolio* 2010a; *Semana*, 2010a). Both Colombian Conservative and Liberal Parties were sensitive to those concerns and initially opposed the approval of the FTA with the EU in Congress if no clear solutions were proposed to farmers. In response to these claims, the Colombian government promoted specific compensation programs (*Portafolio* 2010b) and the EU granted 30 million euros to be invested in programs aimed at increasing competitiveness in the dairy sector (*Semana* 2010b).

However, in March 2012 the European Council consented to the provisional implementation of the Colombia/Peru-EU FTA upon approval by the EP and before the approval of the twenty-seven member state parliaments. This was followed by approval of the agreement in September by the European Commission. In December, the majority of the Members of EP (MEPs) had voted favorably on the agreement, demanding specific actions from Colombia and Peru in order to guarantee the protection of the environment and of human and labor rights (European Parliament 2012). As of December 2013, ten countries had approved the Colombia/Peru-EU FTA, which was provisionally enforced in August of the same year. Prior to its approval by the EP's trade committee (INTA) in November and by the whole EP in December, both Colombia and Peru had submitted roadmaps to guarantee significant improvements in human rights in general and labor rights in particular, as well as the environment.

### **c. Analysis and Discussion**

This article began by proposing a political economy model of trade policy, suggesting that actor capacity to exert influence on trade negotiations is shaped not only by the control of measurable resources but also by the creative use of intangible sources of power, such as legitimacy or the ability to recruit support from like-minded actors (within and across borders). In addition, the framework proposed that certain institutional opportunities and constraints condition the emergence of actors and coalitions, as well as their ability to bring their interests to the agenda. Finally, the conceptual framework suggests that actors learn during the negotiation and ratification processes of FTAs and apply those lessons to subsequent processes. The description presented above of the nature and strategies of the actors involved in FTA discussions between Colombia, the US, and the EU supports these claims.

The case illustrates how actors choose multiple strategies to advance their interests, depending on available institutional opportunities and on their own capacity. Groups involved in the FTA debate unleashed their persuasive abilities both domestically and internationally and on different institutional scenarios, including the Colombian Congress, the Colombian judiciary, the US Congress, the EP, the European member state parliaments, civil society fora, and the media. Crucial in their endeavor was the strategic use of a

rights discourse, which actors adapted to different national contexts. This rights discourse served as a catalyst for a broad coalition of actors to advance their material interests—trade unions and small farmers—and nonmaterial interests—civil society organizations with interests in environmental, ethnic, labor, sustainability, and general human rights concerns. The strategic use of a rights discourse was effective in highlighting the non-trade effects and impacts of the FTAs on Colombian society. This mechanism was also facilitated by the broad scope of FTAs and institutional contexts of the countries involved, most importantly the turn towards court activism in Colombia and the ability of the US Congress to influence trade agreements. Ultimately, no major changes in the FTAs' final texts were made in response to rights-based claims raised by the actors studied here. However, structurally weak actors such as Colombian unions were able to influence the FTA negotiation process, thereby overcoming structural power imbalances. In both cases Colombia was requested to ratify ILO conventions and present a roadmap or action plan to secure human rights protection and promotion.

According to the strategy followed, opponents to both FTAs can be classified in two broad groups, which can be distinguished by whether they opposed FTAs altogether or were favorable to incremental change, and by whether they communicated with public officers or not. The first group refers to those actors who opposed specific provisions of the agreements and tried to advance their interests looking for specific adaptations in the final text. Although they raised their concerns in the media, tried to sway public opinion and organized public mobilizations, they preserved institutional (both formal and informal) channels of dialogue with governments on their issues of interest. Actors in this group defended both material—i.e., farmers, cattle breeders, milk, automobiles, egg and poultry producers—and nonmaterial interests—i.e., the Health Mission, defending the right to health—and attempted to advance their concerns through their own associations and with the occasional support of political parties. A second group refers to fierce opponents to any FTA, who gradually abandoned communication with government officials, mobilized people on the streets, raised their concerns in the media, public fora, and meetings, and sought the declaration of unconstitutionality of the agreement by the Colombian Constitutional Court—in

the case of the Colombia-US FTA—, employing the instruments provided by Colombia's constitutional context. These actors found important allies in opposition political parties—both domestic and abroad—and among international NGOs and civil society organizations. Actors in this second group were able to build a unified opposition to both FTAs on the basis of a complete rejection of the agreements and shared concerns about human rights violations—a rights discourse—which resonated across the political and social contexts on both sides of the Atlantic.

In addition, the degree of effectiveness also seems to be mediated by the institutional and political conditions of the countries involved and the actors participating in the negotiation and ratification process. Although rights concerns were raised in both cases, at the end of the day domestic aspects conditioned how effective each strategy was in the context in which it was deployed. For example, while the Democratic Party—sensitive to labor union interests and dominating the US House of Representatives since 2006—was helpful in terms of delaying the approval of the Colombia-US FTA I, the EP and other European authorities such as the European Commission—and to some extent the European Council—have traditionally been open to this kind of trade agreement (Gstöhl 2013), and therefore favored the Colombia/Peru-EU FTA. Thus, the traditional inability of European civil society organizations to effectively influence trade policy-making processes in the EU (Dür and De Bièvre 2007; Vargas 2011) was confirmed anew.

Finally, a few words on learning. Clearly, the two FTA processes described here were linked in that similar issues were raised by, overall, the same actors (Altmann, Rojas, and Beirute 2011, 16). Suggesting some degree of path-dependence for FTA negotiations (North 1990), the transmission of a rights discourse throughout the negotiations, the stability of the actors involved, and their main arguments should be further explored.

## Conclusion

In this article, we sought to include in our analysis of the formation of trade policy the development of a rights discourse as a valuable strategic tool for the actors involved, as well as the constraints and opportunities offered by

understudied actors in trade negotiations and implementation, e.g., courts and constitutional contexts. As revealed by our analysis of two FTAs negotiated between Colombia, the US, and the EU, this turn of events offers new possibilities for analyzing the political economy of trade policy. While the relationship between trade and rights is not a new concept, the framework presented here broadens our scope of actors, power resources, and implications beyond contemplating gains and losses for specific sectors and products. Developed here in order to understand the generation of trade policy, such a framework will also be useful in terms of evaluating the process of implementation over the coming years, and analyzing the connections between both processes under an integral approach to trade policy as a whole and as pursued by the Colombian government in other upcoming trade agreements.

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