



High-Level Working Group
on U.S.-Ecuador Relations

United States and
Latin America:
Lessons from Previous
Trade Negotiations





HIGH-LEVEL WORKING GROUP ON U.S.-ECUADOR RELATIONS

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INTRODUCTION

The United States and Ecuador have long been connected. The two countries established diplomatic relations in the 1820s, not long after both nations had won independence from Europe. In subsequent decades, the United States and Ecuador deepened relations on the basis of values enshrined in the Inter-American System, such as democracy, the rule of law, and human rights. Whether culturally or economically, the threads that bind the countries together are many.

Economic ties in particular have contributed to shared prosperity for the people of the United States and Ecuador. Today, the United States is Ecuador's principal trading partner—making Ecuador one of only three countries in South America for which trade with the United States surpasses trade with China.¹ The United States' principal exports to Ecuador include refined petroleum, machinery, computers, fertilizer, and cereals and grains. In return, Ecuador sends crude oil, seafood, bananas, cocoa, and flowers to the United States.²

While Ecuador and the United States sought to deepen economic ties in the early 2000s, extensive negotiations over a trade agreement ended amid political and social upheaval in 2006. The two governments did not resume discussions over trade and investment until the administration of President Lenín Moreno (2017-2021). His successor, President Guillermo Lasso, has emphasized the need for Ecuador to deepen trade relations with the United States, with a particular focus on labor rights, intellectual property, gender equality, and environmental sustainability. Indeed, recent developments in both countries—including the elections of new presidents—offer a unique opportunity to discuss how the two countries might work together to combat the COVID-19 pandemic, spark economic growth, and pursue other priorities.

On June 4, 2021, Global Americans announced the formation of a High-Level Working Group on U.S.-Ecuador Relations, comprised of seasoned current and former policymakers, foreign service professionals, business leaders, and scholars. In collaboration with Global Americans staff, the Working Group has produced a series of working papers, covering a diverse range of topics central to the United States-Ecuador relationship—and, in particular, fundamental to any discussion of deepening commercial and economic relations between the two countries. The High-Level Working Group has served as a forum for nonpartisan and transregional expert analysis, resulting in a series of recommendations regarding the future of United States-Ecuador relations.

¹ *Joe Biden is Determined That China Should Not Displace America*, THE ECONOMIST (July 17, 2021), <https://www.economist.com/briefing/2021/07/17/joe-biden-is-determined-that-china-should-not-displace-america>.

² U.S. Relations with Ecuador: Bilateral Relations Fact Sheet, U.S. State Department, Bureau of Western Hemisphere Affairs (Jan 19, 2021), <https://www.state.gov/u-s-relations-with-ecuador>.

EXECUTIVE SUMMARY

As Ecuador and the United States deepen their engagement on trade and investment, stakeholders in both countries can learn from previous trade accords that the U.S. has struck with its Latin American neighbors. This report takes a close look at the United States' bilateral deals with Chile, Peru, and Colombia, as well as the U.S.-Mexico-Canada Agreement (USMCA) and its precursor, the North American Free Trade Agreement (NAFTA).

In the 1990s and early 2000s, the United States sought to establish a Free Trade Area of the Americas (FTAA)—a bloc of open economies spanning the entire hemisphere. When the FTAA proved untenable, the United States continued to pursue trade and investment liberalization through bilateral and subregional trade accords (Chapter 1).

Chapter 2 examines the 2003 U.S.-Chile Free Trade Agreement, which reduced tariffs in both countries and included strong protections for investors. Supporters of the deal included exporters in both countries. Opponents included U.S. labor and environmental groups, who argued that the FTA's provisions on these topics were more lenient than those in NAFTA.

Chapter 3 explains how the United States launched trade negotiations with the Andean Community (Bolivia, Colombia, Ecuador, and Peru) in 2004, resulting in the U.S.-Peru Trade Promotion Agreement. Colombian negotiators signed a similar agreement with the United States in 2006. Both agreements encountered resistance from agricultural producers, as well as labor and environmental groups. While the U.S. Congress approved the U.S.-Peru agreement in 2007, legislators did not ratify the U.S.-Colombia deal until 2012 (Chapter 4).

In 2017, the United States began renegotiating NAFTA. As Chapter 5 explains, the resulting USMCA increased labor and environmental protections and constrained the ability of investors to rely on investor-state dispute settlements (ISDS).

Chapter 6 documents the empirical evidence on the effect of these trade agreements. The United States' free trade agreements in Latin America have broadly increased trade flows, economic growth, and development. Most of these deals have raised labor conditions, earnings, and employment.

The report concludes with six recommendations. First, there is still a desire for trade in the United States, as the recent, widespread, bipartisan approval of the USMCA demonstrates. Second, Ecuadorean officials can use their ongoing negotiations with other countries to pressure the United States to sign a trade accord. Third, strong labor and environmental protections are important in their own right, as well as to persuade those skeptical of trade. Fourth, Ecuadorean policymakers should consider how to compensate those displaced by trade. Fifth, negotiators should consider not only the market-opening benefits of trade, but also the ability of trade deals to attract investment and lock in reforms. Finally, Ecuadorean policymakers should carefully weigh the provisions they use to attract foreign direct investment, as many of these provisions entail trade-offs.



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1. TRADE AGREEMENTS BETWEEN THE UNITED STATES AND LATIN AMERICA

Trade agreements allow countries to build an inclusive, prosperous economy through greater exports, imports, and foreign direct investment. Over the last few decades, countries in the Americas have recognized this opportunity, negotiating a series of trade agreements with the United States.

As Ecuador and the United States consider whether to adopt their own bilateral trade agreement, the two parties can learn from previous accords in the hemisphere. This paper draws lessons from the United States' bilateral trade agreements with Chile, Peru, and Colombia, as well as from the North American Free Trade Agreement (NAFTA) and its successor, the U.S.-Mexico-Canada Agreement (USMCA). For each trade deal analyzed, we examine how negotiations were launched, the obstacles that stakeholders faced, and the principal economic provisions. We then evaluate the economic consequences of the trade agreements.

The lessons from this report inform six recommendations for policymakers, negotiators, and stakeholders on a potential U.S.-Ecuador trade agreement.

U.S.-Latin America Trade Agreements Over Time

For countries in Latin America and the Caribbean seeking greater trade, the United States is the indispensable nation. In 2019, the last year for

which comprehensive data are available, the U.S. purchased more goods from the region than nearly every other country combined and sourced 32 percent of the region's imports, far surpassing its competitors.³

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Given the major role of the United States in hemispheric trade, the U.S. government played a key role in the 1990s in advocating for regional trade liberalization. In 1992, U.S. President George H.W. Bush (1989-1993), along with his Canadian and Mexican counterparts, signed the North American Free Trade Agreement (NAFTA).

In 1993, the Uruguay Round of negotiations under the General Agreement on Tariffs and Trade (GATT) concluded with the creation of the World Trade Organization. The Uruguay Round had encompassed 123 countries and lasted seven and a half years—almost twice the planned duration. As multilateral discussions became unwieldy, the United States turned toward regional trade talks.

In 1994, the United States held the first Summit of the Americas in Miami, Florida, where leaders from 34 countries across the hemisphere agreed to negotiate a Free Trade Area of the Americas (FTAA) by 2005.

From Regional Negotiations to Bilateral Accords

Just as multilateral trade talks had proven difficult at the Uruguay Round, the Free Trade Area of the

³ World Integrated Trade Solution (WITS), Latin America & Caribbean Trade Balance, Exports and Imports By

Country 2019, World Bank, <https://wits.worldbank.org/CountryProfile/en/Country/LCN/Year/2019/TradeFlow/EXPIMP/Partner/by-country>.

Americas soon became difficult to negotiate and politically untenable. Economic crises in the late 1990s left many voters skeptical of globalization, and they elected leaders who shared their concerns.

By the early 2000s, the United States and its pro-trade partners in the region embarked on a new strategy of bilateral and subregional agreements to liberalize trade barriers.

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Some analysts have described bilateral trade agreements as a “third best” option—after multilateral agreements and regional agreements.⁴ But in the present political context, bilateral agreements are the best way to advance trade openness in the hemisphere.

Between 2000 and 2010, the United States signed bilateral trade agreements with Chile (2003), Peru (2006), Colombia (2006), and Panama (2007). The U.S. also brokered the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR) in 2004. More recently, the U.S., Canada, and Mexico replaced NAFTA with the U.S.-Mexico-Canada Agreement (USMCA), signed in 2018.

This paper analyzes the U.S. agreements with Chile, Peru, and Colombia, as well as NAFTA/USMCA, for lessons that can be applied

to a potential agreement between the United States and Ecuador.

Some analysts have described bilateral trade agreements as a “third best” option—after multilateral agreements and regional agreements. But in the present political context, bilateral agreements are the best way to advance trade openness in the hemisphere.

We do not include the U.S.-Panama Trade Promotion Agreement since the lessons we might draw from this case have limited relevance for Ecuador. Around 40 percent of Panama’s GDP comes from revenue generated by the Panama Canal, and Panama’s economy has a higher ratio of services to goods than do most other countries in the region.⁵ Chile, Peru, Colombia, and Mexico hold more applicable lessons for Ecuador.

We also exclude CAFTA-DR, since the effects of one trade agreement on six countries beyond the United States would overwhelm the analysis of the other countries in our report.

In each of the following sections, we examine the political aspects and provisions of each trade negotiation. We then dedicate a chapter to the economic consequences of the trade agreements analyzed, focusing on trade flows, economic growth, investment, employment, and labor conditions. We end the paper with a set of four recommendations for stakeholders on a potential U.S.-Ecuador Trade Agreement.

⁴ *FTAs Benefit Latin America*, FORBES (Sept. 23, 2008), https://www.forbes.com/2008/09/22/latin-america-trade-cx_0923oxford.html?sh=2a40533371cc.

⁵ *OECD Development Pathways, Multi-Dimensional Review of Panama, Volume 1: Initial Assessment*, OECD

(Oct. 11, 2017), ch. 2, [https://www.oecd-ilibrary.org/sites/9789264278547-7-en/index.html?itemId=/content/component/9789264278547-7-en#:~:text=The%20importance%20of%20the%20Canal.\(5.4%25%20of%20GDP\)](https://www.oecd-ilibrary.org/sites/9789264278547-7-en/index.html?itemId=/content/component/9789264278547-7-en#:~:text=The%20importance%20of%20the%20Canal.(5.4%25%20of%20GDP)).

2. UNITED STATES-CHILE FREE TRADE AGREEMENT

The first bilateral trade deal between the United States and a Latin American country was the U.S.-Chile Free Trade Agreement.

Launch of Negotiations

Trade negotiations between the United States and Chile began on December 6, 2000, eight years after the signing of NAFTA.⁶ In those eight years, the United States had launched free trade agreement (FTA) negotiations with Jordan and Singapore.⁷ Chile was even more prolific, forging 10 agreements with countries and trade blocs throughout the Americas in the 1990s.⁸

For U.S. policymakers, Chile represented an opportunity for a free trade agreement that could serve as a precedent for future FTAs and encourage other countries in the region to make concessions in FTAA negotiations. The White

House was simultaneously engaged in deliberations with Singapore, another country that compensated for its small economic output with an open economy and stable political system.⁹ The administrations of Bill Clinton (1993-2001) and George W. Bush (2001-2009) also sought to encourage the Chilean government's market reforms and democratization.¹⁰

With Mexico receiving preferential tariff rates in the U.S. under NAFTA, Chilean stakeholders felt competitive pressure to forge an FTA.

Chilean policymakers led the country's efforts toward an FTA with the United States, with the governments of Patricio Aylwin (1990-1994), Eduardo Frei Ruiz-Tagle (1994-2000), and Ricardo Lagos (2000-2004) arguing that a free trade agreement would attract greater foreign direct investment from the United States.¹¹ Chilean government officials and businesspeople also sought to preserve market access in the United States; with Mexico already receiving

⁶ CONG. RES. SERV., RL31144, THE U.S.-CHILE FREE TRADE AGREEMENT: ECONOMIC AND TRADE POLICY ISSUES 1 (Sept. 2003), https://www.everycrsreport.com/files/20030910_RL31144_0edc485e9c6d011e315d8c0c30e5f46e6fb6be68.pdf.

⁷ *Economic Impact of Trade Agreements Implemented under Trade Authorities Procedures 2021 Report* 21, U.S. INTERNATIONAL TRADE COMMISSION (Publication Number 5199, June 2021), <https://www.usitc.gov/publications/332/pub5199.pdf>.

⁸ *Impacto de los Tratados de Libre Comercio, Chile*, Subsecretaría de Relaciones Económicas Internacionales (2019), 24, https://www.subrei.gob.cl/docs/default-source/estudios-y-documentos/impactotratadosdelibrecomercio.pdf?sfvrsn=bef839a4_1.

⁹ Sidney Weintraub, *Lessons from the Chile and Singapore Free Trade Agreements*, in *FREE TRADE AGREEMENTS: U.S. STRATEGIES AND PRIORITIES* 79 (Jeffrey J. Schott ed., 2003),

https://books.google.com/books?hl=en&lr=&id=srGxDOAAQBAJ&oi=fnd&pg=PA79&dq=us-chile+free+trade+agreement+economic&ots=I6s7YO-sC4&sig=4QR7scq_aTE6f4oepJWlxJsnXMU#v=onepage&q=us-chile%20free%20trade%20agreement%20economic&f=false

¹⁰ Cintia Quiliconi & Carol Wise, *The US as a Bilateral Player: The Impetus for Asymmetric Free Trade Agreements*, in *COMPETITIVE REGIONALISM – FTA DIFFUSION IN THE PACIFIC RIM*, 97, 115 (Mireya Solís, Barbara Stallings, & Saori N. Katada ed., 2009), <https://link.springer.com/book/10.1057/9780230234239>,

¹¹ Barbara Stallings, *Chile: A Pioneer in Trade Policy*, in *COMPETITIVE REGIONALISM – FTA DIFFUSION IN THE PACIFIC RIM*, 121, 130 (Mireya Solís, Barbara Stallings, & Saori N. Katada ed., 2009), <https://link.springer.com/book/10.1057/9780230234239>; Weintraub, *supra* note 9, at 84.

preferential tariff rates in the U.S. under NAFTA, Chilean stakeholders felt competitive pressure to forge an FTA.¹² Advocates of a U.S.-Chile FTA also included U.S. exporters who faced high tariffs in Chile relative to exporters in countries like Canada, which already had a free trade agreement with the South American country.¹³

In the United States, the constitution gives Congress the power to regulate foreign commerce, while the president has the power to negotiate international agreements. This separation of powers has historically allowed the trade deals that presidents negotiated to be amended by members of U.S. Congress. In 1974, the U.S. Congress granted fast track authority—later known as trade promotion authority (TPA)—to the president, allowing the executive to exempt trade deals from the amendment process and requiring legislators to accept or reject the agreement in a straight up-or-down vote.¹⁴

Advocates of an FTA included U.S. exporters who faced high tariffs in Chile relative to exporters in countries like Canada, which already had a free trade agreement with the South American country.

In 1994, Congress allowed TPA to lapse.¹⁵ The White House chose to move forward with negotiations with Chile on the assumption that Congress would not grant fast track authority, and any preliminary agreement would be subject to Congressional amendments.¹⁶ In August 2002, however, Congress renewed TPA as part of the Trade Act of 2002, making approval of a free trade agreement with Chile more likely.¹⁷

Obstacles to the Agreement

Even with TPA, however, the passage of the U.S.-Chile Free Trade Agreement was still far from guaranteed. In both Chile and the United States, pro-trade leaders faced domestic opposition.

Critics of the potential trade deal included environmental, religious, and labor groups such as the AFL-CIO and Friends of the Earth, who argued that Chile's relatively low standards on these issues compared to the United States would attract businesses looking to cut costs by outsourcing, no matter the social implications.¹⁸ The 2001 Jordan-U.S. Free Trade Agreement had recognized the importance of these issues by subjecting labor and environmental violations to the agreement's dispute resolution process and permitting parties to use trade sanctions if violations went unresolved.¹⁹ However, Chilean negotiators chose not to follow the Jordan-U.S.

¹² Stallings, *supra* note 11, at 129.

¹³ CONG. RES. SERV., U.S.-CHILE FREE TRADE AGREEMENT, *supra* note 6, at 2.

¹⁴ CONG. RES. SERV., IF10038, TRADE PROMOTION AUTHORITY (TPA), IN FOCUS 1 (Dec. 14, 2020), [https://crsreports.congress.gov/product/pdf/IF/IF10038#:~:text=Trade%20Promotion%20Authority%20\(TPA\)%20is,meet%20certain%20statutory%20requirements%20\(see](https://crsreports.congress.gov/product/pdf/IF/IF10038#:~:text=Trade%20Promotion%20Authority%20(TPA)%20is,meet%20certain%20statutory%20requirements%20(see)

¹⁵ *Id.*, 1.

¹⁶ CONG. RES. SERV., U.S.-CHILE FREE TRADE AGREEMENT, *supra* note 6, at 1.

¹⁷ *Id.*

¹⁸ U.S.-Chile Trade Agreement No Model for Future Agreements, Citizens Trade Campaign (2003).

https://www.citizen.org/wp-content/uploads/ctcpressreleasechile_1.pdf, Thea M. Lee, Testimony of the AFL-CIO Before the U.S. House of Representatives Committee on Ways and Means, Subcommittee on Trade on the Implementation of U.S. Bilateral Free Trade Agreements with Singapore and Chile. (June 10, 2003), 2-3.

¹⁹ CONG. RES. SERV., U.S.-CHILE FREE TRADE AGREEMENT, *supra* note 6, at 14.

model, preferring a more lenient set of environmental and labor obligations.²⁰

Another stakeholder that criticized the deal was the Alianza por Chile, a conservative political coalition composed of two major parties: Renovación Nacional and the Unión Demócrata Independiente.²¹ Many conservatives viewed FTAs as inferior to multilateral trade liberalization.²² Within Chile, debates also took place over the government's proposal to eliminate *bandas de precio*—price supports for certain agricultural crops—which the United States perceived as an unfair trade practice.²³

Negotiations lasted for 14 rounds, and on June 6, 2003, U.S. President George W. Bush and Chilean President Ricardo Lagos signed the bilateral accord. The U.S.-Chile Free Trade Implementation Act (H.R. 2738) passed the U.S. House of Representatives by a vote of 270 to 156. Following the Senate's passage by a vote of 66 to 31, President Bush signed the bill into law on September 3, 2003. The agreement took effect on January 1, 2004.²⁴

²⁰ *Id.*, 14.

²¹ Jessica Leight, *The Political Dynamics of Agricultural Liberalisation in the US-Chile Free Trade Agreement* 40 J. LAT. AM. STUD. 2 (2008). <https://www.cambridge.org/core/journals/journal-of-latin-american-studies/article/abs/political-dynamics-of-agricultural-liberalisation-in-the-uschile-free-trade-agreement/AD88D4DF4F8DB547F928C874B3B94FA4>

²² Stallings, *supra* note 11, at 121.

²³ Leight, *supra* note 21, at 40.

²⁴ CONG. RES. SERV., U.S.-CHILE FREE TRADE AGREEMENT, *supra* note 6, at 1.

²⁵ *Id.*, 27.

²⁶ *The U.S.-Chile Free Trade Agreement: An Early Record of Success*, Office of the United States Trade of

Provisions of the Agreement

Prior to the U.S.-Chile FTA, U.S. exports to Chile faced a six percent tariff on average.²⁵ Immediately following the agreement, 90 percent of these products became duty-free.²⁶

Chilean exports to the United States faced varying tariff rates prior to the agreement—with some key exports taxed as high as eight percent.²⁷ The agreement immediately eliminated tariffs for 95 percent of these products.²⁸ Remaining tariffs between the two countries were phased out by 2016.²⁹

The free trade agreement includes strong protections for U.S. investors operating in Chile, including a compromise that allows investors to resort to a dispute resolution process if Chile imposes capital controls.³⁰

Like the Jordan-U.S. FTA, the U.S.-Chile agreement includes labor and environmental standards.³¹ However, it does not allow parties to use the same dispute settlement procedure for commercial complaints and those related to labor and environmental issues.³² Instead, the U.S.-

Representative (2004), <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/archives/2004/june/-us-chile-free-trade-agreement-early-record-suc>.

²⁷ CONG. RES. SERV., U.S.-CHILE FREE TRADE AGREEMENT, *supra* note 6, at 27.

²⁸ *Id.*, 15.

²⁹ *Id.*

³⁰ *Id.*, 18-20.

³¹ For a summary of labor provisions, see Mary Jane Bolle, CONG. RES. SERV., RS21560, FREE TRADE AGREEMENT WITH SINGAPORE AND CHILE: LABOR ISSUES 6 (Sept. 2003), https://www.everycrsreport.com/files/20030813_RS21560_daa58fa9e95f387a89e73ba7bb31d7a5da663d0e.pdf.

³² *Id.*, 4, 6.



Chile FTA offers countries the option of levying a monetary fine in the event of an unsettled labor or environmental dispute.³³

³³ CONG. RES. SERV., U.S.-CHILE FREE TRADE AGREEMENT, *supra* note 6, at 17.

3. UNITED STATES-PERU TRADE PROMOTION AGREEMENT

After implementing the U.S.-Chile Free Trade Agreement, the United States continued to pursue a Free Trade Area of the Americas. These efforts proved unsuccessful, however, and the final hemisphere-wide FTAA discussions took place at the fourth Summit of the Americas in Mar del Plata, Argentina, in November 2005.

An important motivation for Peruvian policymakers was to use an FTA as a commitment device for economic reforms to attract investors.

Having abandoned the FTAA, the United States continued a series of negotiations with smaller regional blocs. Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States negotiated CAFTA-DR in 2004, with the U.S. president acting under the trade promotion authority authorized by the Trade Act of 2002. In May 2004, the United States launched negotiations with Colombia, Ecuador, and Peru (with Bolivia as an observer) for a potential Andean Free Trade Agreement.³⁴ The negotiations would lead to the U.S.-Peru Trade Promotion Agreement (PTPA).

Launch of Negotiations

U.S. efforts toward an Andean Free Trade Agreement have their roots in the 1991 Andean Trade Preference Act (ATPA), a unilateral U.S.

program that extended duty-free privileges for ten years to many imports from Bolivia, Colombia, Ecuador, and Peru.³⁵ ATPA aimed to promote economic development in the four countries, primarily as a means to counter narcotics trafficking. In December 2001, Congress allowed ATPA to lapse. Legislators renewed preferential access to Andean countries in August 2002 through the Andean Trade Promotion and Drug Eradication Act (ATPDEA); however, the new legislation contained a sunset clause of four years. Congress repeatedly extended preferences over the following years—each time with more debate and a shorter term—finally terminating the program on December 31, 2008.³⁶

To persuade investors that he would build on his predecessors' pro-market reforms, and that a future government could not easily reverse these policies, President Alan García pursued a trade agreement with the United States.

Between ATPA, ATPDEA, and other trade preference programs, over 90 percent of Peruvian exports to the United States were duty-free even without a free trade agreement.³⁷ However, Peruvian stakeholders feared that the United States could revoke these benefits at any time, which would pose a threat to Peru's market access.³⁸

An important motivation for Peruvian policymakers—according to pro-trade and trade-skeptical analysts alike—was to use an FTA as a

³⁴ Philip I. Levy, *The United States-Peru Trade Agreement: What Did You Expect?* 12 (Am. Enterprise Inst. Working Paper, July 15, 2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1501243.

³⁵ *Id.*, 11-12.

³⁶ *Id.*, 12.

³⁷ *Id.*, 12.

³⁸ *Id.*, 19-21; M. Angeles Villarreal, CONG. RES. SERV., RL34108, U.S.-PERU ECONOMIC RELATIONS AND THE U.S.-PERU TRADE PROMOTION AGREEMENT 7 (July 2007), <https://sgp.fas.org/crs/row/RL34108.pdf>.

commitment device for economic reforms to attract investors.³⁹

The PTPA locked in Peru's economic reforms by linking them to an enforcement mechanism.

From the 1950s to the 1980s, Peru had swung between laissez-faire economic policies and heavy state intervention in the economy.⁴⁰ President Alan García (1985-1990) had overseen hyperinflation and rising poverty, with average tariff rates above 46 percent.⁴¹ Between the 1990s and early 2000s, successive administrations had implemented pro-market economic reforms.

Alan García returned to the presidency in July 2006, pledging a more orthodox approach to the economy than he had pursued during his first term. To persuade investors that he would build on his predecessors' pro-market reforms, and that a future government could not easily reverse these policies, García pursued a trade agreement with the United States.⁴²

The investor-state dispute resolution process, paired with new obligations required by the agreement and increased certainty about U.S. trade preferences toward Peru, increased investor confidence in the country.

The PTPA locked in Peru's economic reforms by linking them to an enforcement mechanism. If the García administration or a future government

deviated substantially from its obligations under the PTPA, investors could submit claims against the Peruvian government to an international arbiter. If the Peruvian government refused to pay, it would be subject to retaliatory trade barriers from the United States. The investor-state dispute resolution process, paired with new obligations required by the agreement and increased certainty about U.S. trade preferences toward Peru, increased investor confidence in the country. Supporters of the agreement argued that greater investment would lead to higher growth and a reduction in poverty.⁴³

As in the Chilean case, the United States sought to encourage market reforms and democratization.

The United States pursued negotiations with Peru, and other countries in the region, for many of the same reasons that it had approved unilateral trade preferences. Economic development and combatting narco-trafficking were aspects of U.S. national security strategy.⁴⁴ As in the Chilean case, the United States sought to encourage market reforms and democratization—especially as several of Peru's neighbors drifted toward leftist populism.⁴⁵ And from the U.S. point of view, the PTPA improved on unilateral trade preferences because it required reciprocal tariff reductions from Peru, thus increasing market access for U.S. exporters.⁴⁶

³⁹ Bart-Jaap Verbeek, *Globalisation and Exploitation in Peru: Strategic Selectivities and the Defeat of Labour in the US-Peru Trade Promotion Agreement* 213, 5 GLOBAL LABOUR JOURNAL 2 (May 2014), <https://mulpress.mcmaster.ca/globallabour/article/view/1159>.

⁴⁰ *Id.*, 10

⁴¹ *Id.*, 10-11.

⁴² Levy, *supra* note 34, at 16.

⁴³ *Id.*, 15-16.

⁴⁴ *Id.*, 14.

⁴⁵ Quiliconi & Wise, *supra* note 10, at 97, 115.

⁴⁶ Levy, *supra* note 34, at 14.

Obstacles to an Agreement

Commercial relations between the United States and Peru encountered obstacles even before U.S.-Andean negotiations began in May 2004.

President Álvaro Uribe of Colombia had first approached the United States about a potential bilateral trade agreement in 2003. Less than two months before regional negotiations took place, the U.S. Trade Representative released a press release noting that the U.S. and Colombia would meet to discuss a potential FTA, with the possible inclusion of other Andean countries only if Ecuador and Peru took steps to ameliorate labor and investor concerns.⁴⁷ Bolivia participated as an observer, but the USTR noted that its government had “basic stability issues” and did not expect the country to be a party to the agreement.⁴⁸

The White House and Congress reached a framework agreement in May 2007 to incorporate stronger labor and environmental provisions into the PTPA and future trade agreements, as well as to relax enforcement of pharmaceutical-related patent protections.

Thirteen rounds of negotiations took place with all parties between May 2004 and November 2005 with no successful conclusion. At the final round, Ecuador and Colombia withdrew from negotiations, citing U.S. demands for strict patent protections and reductions in agricultural

barriers.⁴⁹ Peru continued bilateral discussions with the United States.

The potential U.S.-Peru agreement encountered resistance in the United States from many of the same labor, religious, and environmental groups that had criticized the U.S.-Chile FTA.⁵⁰ Peruvian opposition to a trade agreement was strongest in the agricultural sector, organized through the National Convention of Peruvian Agriculture (CONVEAGRO) with funding from Oxfam.⁵¹ Urban labor unions differed in their views toward the PTPA, with the largest trade unions—the Peruvian Labor Confederation (CGTP) and Unitary Workers Confederation (CUT)—in opposition and those unions with stronger links to the ruling APRA party in favor.⁵²

Despite this opposition, U.S. and Peruvian negotiators reached an agreement in December 2005 and signed the accord on April 12, 2006.⁵³ On June 28, 2006, the Peruvian Congress voted 79 to 14 to approve the agreement.

The PTPA then stalled in the U.S. Congress. In early 2007, following the election of a Democratic majority in both houses, Democratic members of Congress insisted that they would not pass the PTPA without revisions on labor, environmental, and IP-related issues. The White House and Congress reached a framework agreement in May 2007 to incorporate stronger labor and environmental provisions into the PTPA and future trade agreements, as well as to

⁴⁷ CONG. RES. SERV., RL32770, ANDEAN-U.S. FREE-TRADE AGREEMENT NEGOTIATIONS 3 (2006), https://www.everycrsreport.com/files/20060314_RL32770_3a9d2b85610fc5b97b882c76e61fec9755e9f03f.pdf.

⁴⁸ *Id.*, 4.

⁴⁹ *Id.*, 4.

⁵⁰ *Id.*, 6.

⁵¹ Verbeek, *supra* note 39, at 217.

⁵² *Id.*

⁵³ Villareal, *U.S.-Colombia Free Trade Agreement*, *supra* note 38, at 1.

relax enforcement of pharmaceutical-related patent protections.⁵⁴

In June 2007, the U.S. and Peru amended the trade agreement to satisfy these concerns, and the Peruvian legislature passed the agreement by a margin of 70 to 38.⁵⁵ The U.S. Congress passed the PTPA in December 2007, with the deal coming into force on February 1, 2009.⁵⁶

Provisions of the Agreement

Prior to the agreement, Peru applies tariffs ranging from four to 20 percent on almost all products from the United States, with an average rate of 10 percent.⁵⁷ Upon implementation, the PTPA eliminated tariffs on 80 percent of U.S. consumer and industrial exports to Peru, with remaining duties phasing out over the next ten years.⁵⁸

In exchange, the U.S. government made its duty-free treatment of imports from Peru permanent.⁵⁹

The Peruvian government levied several restrictions on investment prior to the PTPA, requiring foreign workers to comprise no more

than 30 percent of the workforce for local firms and prohibiting foreign ownership in certain sectors.⁶⁰ The PTPA relaxed the restrictions on hiring foreign workers and permitted foreign ownership in more sectors. It also gave investors access to a transparent, binding international arbitration mechanism.⁶¹ The agreement included provisions related to capital controls similar to those found in the U.S.-Chile FTA.⁶²

Labor provisions in the PTPA were stronger than those in the U.S.-Chile FTA, requiring both parties to adhere to the five fundamental labor standards in the 1998 International Labour Organization Declaration.⁶³ U.S. House Democrats stressed that this would require Peruvian legislators to reform their own laws.⁶⁴ The agreement also explicitly mentioned that limited resources or discretionary enforcement was no excuse for failure to comply.⁶⁵ Countries could resolve violations through the agreement's dispute settlement process, and if a party failed to pay a monetary fine for a violation, the other party could suspend trade benefits in retaliation.⁶⁶

⁵⁴ *Id.*, 2.

⁵⁵ *Id.*, 2.

⁵⁶ Levy, *supra* note 34, at 13.

⁵⁷ Villareal, *U.S.-Colombia Free Trade Agreement*, *supra* note 38, at 4.

⁵⁸ *Id.*, 10.

⁵⁹ *Id.*

⁶⁰ *Id.*, 5.

⁶¹ *Id.*, 11.

⁶² Kevin P. Gallagher, *Policy Space to Prevent and Mitigate Financial Crises in Trade and Investment Agreements*, (UN Conf. on Trade and Dev., G-24 Discussion Paper Series No. 58, May 2010), https://unctad.org/system/files/official-document/gdsmdpg2420101_en.pdf.

⁶³ The five fundamental rights are 1) freedom of association; 2) the effective recognition of

the right to collective bargaining; 3) the elimination of all forms of forced or compulsory labor; 4) the effective abolition of child labor and a prohibition on the worst forms of child labor; and 5) the elimination of discrimination in respect of employment and occupation.

International Labour Organization (ILO), *ILO Declaration on Fundamental Principles and Rights at Work*, International Labour Conference 86th Session, Geneva, Switzerland, June 18, 1998, <https://www.ilo.org/declaration/lang--en/index.htm>.

⁶⁴ Pelosi, Hoyer, Rangel, and Levin Statement on Trade, United States, House of Representatives, Ways and Means Committee, July 2, 2007, <https://waysandmeans.house.gov/media-center/press-releases/pelosi-hoyer-rangel-and-levin-statement-trade>.

⁶⁵ Villareal, *U.S.-Colombia Free Trade Agreement*, *supra* note 38, at 13.

⁶⁶ *Id.*, 11-12.

4. UNITED STATES-COLOMBIA TRADE PROMOTION AGREEMENT

Colombia participated in the same series of trade negotiations with the United States as Peru did, and like Peru, its representatives signed an accord in 2006. Unlike the PTPA, however, the U.S.-Colombia Trade Promotion Agreement (CTPA) did not pass the U.S. Congress until 2011. This delay reflects a change in U.S. politics and the alignment of Colombian and U.S. interest groups.

Launch of Negotiations

As described in Chapter 4, Colombia benefited from the same unilateral trade preferences that Peru did in the 1990s and early 2000s under the ATPA and its successor, the ATPDEA.

The U.S.-Colombia Trade Promotion Agreement reduced trade-related uncertainty, allowing firms to allocate resources more effectively.

As in the Peruvian case, Colombian stakeholders sought a free trade agreement with the United States to make trade preferences permanent, thus preserving market access and stimulating investment. The U.S.-Colombia Trade Promotion Agreement reduced trade-related

uncertainty, allowing firms to allocate resources more effectively.

When President Uribe approached the United States in 2003 about a potential FTA, the idea received bipartisan support from several members of Congress, who urged President Bush to give “significant weight” to market size when selecting countries for a free trade agreement.⁶⁷ Andean-U.S. trade negotiations, which began in May 2004, placed Colombia above other partners given its perceived political stability, market size, and the existing compatibility between U.S. laws and those of Colombia (see Chapter 4). U.S. stakeholders also sought to complement Plan Colombia—a program of security assistance to counter guerrilla groups and narcotrafficking—with economic and political ties.⁶⁸

Obstacles to the Agreement

The primary obstacle to a U.S.-Colombia trade agreement from 2003 to 2006 was differences among negotiating parties during Andean-U.S. talks. From 2006 on, however, U.S. domestic politics delayed the ratification and implementation of the agreement.

When Andean-U.S. trade talks dissolved in November 2005 (see Chapter 4), Colombian policymakers’ objections concerned agriculture and patents. During negotiations, the United States refused to discuss its own agricultural subsidies while insisting Colombia drop its system of price bands for certain agricultural imports.⁶⁹ The U.S. also negotiated immediate

⁶⁷ CONG. RES. SERV., ANDEAN-U.S. FREE-TRADE AGREEMENT, *supra* note 47, at 1-2.

⁶⁸ *Fact Sheet: President Bush Signs Letter to Send the United States-Colombia Free Trade Agreement Implementing Legislation to Congress*, United States, White House (2008), <https://georgewbush->

whitehouse.archives.gov/news/releases/2008/04/20080407-5.html.

⁶⁹ Kevin J. Fandl, *Bilateral Agreements and Fair Trade Practices: A Policy Analysis of the Columbia-U.S. Free Trade Agreement* 79, 10 YALE HUM. RTS. & DEV. L. J. 64 (2007),

duty-free access to the Colombian market for its beef, cotton, and wheat industries, as well as liberalization in the rice, poultry, and sugar sectors—three particularly sensitive areas for the Colombian economy. Each of these issues provoked opposition from most agricultural interests in the South American country.⁷⁰ Colombian stakeholders further feared that stringent IP protections would limit access to affordable medications.⁷¹

Peru's decision to continue bilateral negotiations with the United States put pressure on Colombia to resume negotiations as well; if Peru had preferential access to the U.S. market and Colombia did not, Colombian products would be less competitive. Colombia returned to the negotiating table shortly after Peru.

If Peru had preferential access to the U.S. market and Colombia did not, Colombian products would be less competitive. Colombia returned to the negotiating table shortly after Peru.

In February 2006, U.S. and Colombian negotiators concluded an agreement, signing the

accord on November 22, 2006.⁷² The Colombian Congress approved the agreement in June 2007.⁷³

By 2007, however, U.S. domestic politics presented a new obstacle for the U.S.-Colombia trade agreement, with the new Democratic majority in the Senate and House of Representatives pressing for the inclusion of stronger labor, environmental, and human rights provisions.⁷⁴ While the White House and Congress were able to reconcile these differences when it came to the PTPA, they failed to do so on the U.S.-Colombia FTA for the remainder of President Bush's term.

President Barack Obama (2009-2017) entered office having opposed the U.S.-Colombia TPA as a candidate.⁷⁵ In addition, the global financial crisis soon dominated the attention of the president and Congress, preventing them from dedicating time or political capital to the agreement. Over time, however, President Obama changed his position as Colombia implemented labor protections and as the United States' delays in ratifying the TPA weighed on the bilateral relationship.⁷⁶

<https://heinonline.org/HOL/LandingPage?handle=hein.journals/yhurdrv110&div=4&id=&page=>

⁷⁰ *Id.*, 79-80.

⁷¹ JOHANNA VON BRAUN, *THE DOMESTIC POLITICS OF NEGOTIATING INTERNATIONAL TRADE: INTELLECTUAL PROPERTY RIGHTS IN US-COLOMBIA AND US-PERU FREE TRADE AGREEMENTS* 120 (2011), <https://www.taylorfrancis.com/books/mono/10.4324/9780203156360/domestic-politics-negotiating-international-trade-johanna-von-braun>.

⁷² M. Angeles Villareal, CONG. RES. SERV., RL34470, *The U.S.-Colombia Free Trade Agreement: Background and Issues 1* (2014), <https://sgp.fas.org/crs/row/RL34470.pdf>.

⁷³ The Colombian Senate passed the implementing legislation by a margin of 55 to 3, while the Chamber of

Deputies passed the legislation by a margin of 85 to 10. There were a significant number of absent legislators in both instances; the Colombian Senate has 108 members and the Chamber of Deputies has 172 members.

Presidente Uribe Sancionó TLC con Estados Unidos, Colombia, Presidencia (2007), <http://historico.presidencia.gov.co/sne/2007/julio/04/13042007.htm>.

⁷⁴ Margaret M. Commins, *Understanding United States Foreign Policy Towards Latin America: Lessons From A Comparison of NAFTA and the Colombian Trade Agreement* 85, 57 *THE LATIN AMERICANIST* 4 (Dec. 2013), <https://onlinelibrary.wiley.com/doi/abs/10.1111/ta.12010>.

⁷⁵ *Id.*, 89.

⁷⁶ *Id.*

In October 2011, with widespread support from Republican legislators, who now controlled the House of Representatives, the U.S. Colombia Trade Promotion Agreement passed both houses of Congress.⁷⁷ The same month, legislators also ratified the U.S.-Panama TPA, originally signed in 2007, and the U.S.-Korea FTA, originally signed in 2007 and renegotiated in 2010.

Provisions of the Agreement

Like the PTPA, the U.S-Colombia TPA made ATPDEA duty-free access permanent for most Colombian goods. Prior to the agreement, the average Colombian duty on U.S. goods was 12.5 percent.⁷⁸ Following the agreement, Colombia immediately eliminated 80 percent of tariffs on U.S. consumer and industrial exports, with most remaining tariffs phasing out within ten years.⁷⁹

The U.S.-Colombia TPA permits U.S. agricultural products to sell for lower prices than previously allowed under the South American country's price band system.⁸⁰

The agreement includes strong investment protections, as well as labor protections and restrictions on capital controls similar to those included in the U.S.-Chile and U.S.-Peru agreements.⁸¹

The agreement's dispute settlement mechanism permits both monetary penalties and suspension of trade benefits. Labor violations are subject to the same dispute settlement process as trade violations.⁸²

⁷⁷ The implementing legislation passed 262-167 in the House of Representatives and 66-33 in the Senate. Villareal, *U.S.-Colombia Free Trade Agreement*, *supra* note 73, at 1.

⁷⁸ *Id.*, 1.

⁷⁹ *Id.*, 3.

⁸⁰ *Id.*, 3.

⁸¹ *Id.*, 8; Kevin Gallagher, *Trading Away Financial Stability in Colombia: Capital Controls and the*

US-Colombia Trade Agreement 1 (Latin America Trade Network, SerieBrief No. 66, April 2011), https://www.redge.org.pe/sites/default/files/TradingAway_colombia_Gallagher.pdf; Gallagher, *Policy Space to Prevent and Mitigate Financial Crises*, *supra* note 62, at 12.

⁸² Villareal, *U.S.-Colombia Free Trade Agreement*, *supra* note 73, at 7.

5. REGIONAL AGREEMENTS: NAFTA AND USMCA

Since ratifying free trade agreements with Colombia, Panama, and South Korea in 2011, the U.S. Congress has approved only one other FTA: the U.S.-Mexico-Canada Agreement, in 2020.⁸³ U.S. domestic politics largely explains this trend in recent trade policy.

Politics

From 1994 to 2020, the North American Free Trade Agreement (NAFTA) governed trade among the United States, Mexico, and Canada. Given its status as the first U.S. FTA involving a developing country, as well as the size of the Mexican economy and the country's trade flows with the United States, NAFTA provoked substantial debate both before and after its ratification in the United States. Labor groups such as the AFL-CIO strongly opposed the agreement, warning of low labor standards in Mexico and job losses in the United States. Environmental advocates joined in opposition, while business interests favored the accord.⁸⁴ Although NAFTA included certain labor and environmental clauses, these were not as wide-reaching as those in future trade agreements.

By the inauguration of President Obama, U.S. labor and environmental groups had successfully modified or delayed other free trade agreements under negotiation in the hemisphere and around the world.

Besides ratifying the three bilateral FTAs with Colombia, Panama, and South Korea, the Obama administration focused its trade agenda on negotiating a Trans-Pacific Partnership (TPP)—a regional trade agreement with 11 other countries around the Pacific Rim. The U.S. and its partners would sign the TPP on February 4, 2016, but within the United States, the debate over negotiations was fierce.

Although NAFTA included certain labor and environmental clauses, these were not as wide-reaching as those in future trade agreements.

To expedite TPP negotiations, the Obama administration requested a trade promotion authorization from Congress in 2015, which both chambers granted. TPA was originally set to expire in 2018, but Congress later extended its expiration to 2021.⁸⁵

Leading candidates in the 2016 U.S. presidential campaign, including Democrat Bernie Sanders and Republican Donald Trump, criticized the TPP and pledged to revoke the United States' participation in the agreement if elected. For Sanders and others on the left, labor, environmental, and intellectual property issues were of chief concern. For Trump and others on the right, one concern was potential U.S. job losses. Another was a general skepticism of trade

⁸³ *Impact of U.S. Trade Agreements*, U.S. INTERNATIONAL TRADE COMMISSION, *supra* note 7, at 21.

⁸⁴ Commins, *supra* note 75, at 85.

⁸⁵ Patrick Baker, *What Future Does Trade Promotion Authority Have in a Biden Administration? 2* (Yeutter Institute Undergraduate Briefing Paper, 2021), <https://yeutter-institute.unl.edu/student-pdfs/baker-briefingpaper-01142021.pdf>.

deals, which Trump viewed as unfair toward the United States.⁸⁶

This perspective also led Trump to label NAFTA as “the single worst trade deal ever approved in this country,” pledging to renegotiate the agreement or pull out altogether if Canada and Mexico would not offer better terms.⁸⁷

The USMCA constrains the ability of investors to use investor-state dispute settlement (ISDS), a form of binding arbitration in which investors can pursue monetary compensation for alleged harm from states.

On his first day in office, President Trump (2017-2021) withdrew the United States from the TPP.⁸⁸ The White House began renegotiating NAFTA in August 2017.⁸⁹

U.S., Mexican, and Canadian negotiators concluded talks in September 2018 and signed the USMCA in November of the same year. The U.S. House of Representatives approved the agreement on December 19, 2019, in a bipartisan vote of 385-41. The USMCA passed the U.S. Senate on January 16, 2020, in a vote of 89-10.

The agreement entered into force on July 1, 2020.⁹⁰

Provisions of the Agreement

Compared to NAFTA, the USMCA preserves most of the original agreement’s market-opening commitments, while addressing new issues such as digital trade and anticorruption.⁹¹

The USMCA includes new provisions to strengthen labor rights, environmental protection, and access to affordable medicine. Annexes to the agreement identify specific legal reforms that the Mexican government would have to pass and enforce to remain eligible for USMCA, going beyond any previous U.S. FTA in Latin America.

The USMCA constrains the ability of investors to use investor-state dispute settlement (ISDS), a form of binding arbitration in which investors can pursue monetary compensation for alleged harm from states. While ISDS provisions largely deferred to investors in NAFTA, labor and environmental groups had opposed their inclusion in the new agreement.⁹² Apart from

⁸⁶ Robert D. Blackwill & Theodore Rappleye, *Trump’s Five Mistaken Reasons for Withdrawing from the Trans-Pacific Partnership*, FOREIGN POLICY (June 28, 2017), <https://foreignpolicy.com/2017/06/22/trumps-five-mistaken-reasons-for-withdrawing-from-the-trans-pacific-partnership-china-trade-economics/>

⁸⁷ Maggie Severns, *Trump pins NAFTA, ‘worst trade deal ever’*, on CLINTON, POLITICO (Sept. 9, 2016), <https://www.politico.com/story/2016/09/trump-clinton-come-out-swinging-over-nafta-228712>; Tami Luhby, *Yes, ‘President Trump’ really could kill NAFTA - but it wouldn’t be pretty*, CNN (July 6, 2016),

<https://money.cnn.com/2016/07/06/news/economy/trump-nafta/>.

⁸⁸ *The United States Officially Withdraws from the Trans-Pacific Partnership*, Office of the U.S. Trade Representative (Jan. 2017). <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/january/US-Withdraws-From-TPP>.

⁸⁹ M. Angeles Villareal, CONG. RES. SERV., R44981, *The United States-Mexico-Canada Agreement (USMCA)* 10 (2021), <https://sgp.fas.org/crs/row/R44981.pdf>.

⁹⁰ *Id.*, 1.

⁹¹ *Id.*, 10.

⁹² *Id.*, 20.

ISDS, investor protections are largely the same between NAFTA and the USMCA.⁹³

Finally, the USMCA includes new provisions to strengthen labor rights, environmental protection, and access to affordable medicine.⁹⁴ Annexes to the agreement identify specific legal reforms that the Mexican government would have to pass and enforce to remain eligible for USMCA, going beyond any previous U.S. FTA in Latin America.⁹⁵

⁹³ *Id.*, 18-19.

⁹⁴ *Id.*, 25-26, 31-32.

⁹⁵ *Id.*, 29-32.

6. ECONOMIC IMPACT OF U.S.-LATIN AMERICA FREE TRADE AGREEMENTS

The four trade agreements analyzed in this report have had a broadly positive effect on trade flows, economic growth, investment, and labor conditions for both the United States and its Latin American partners.

Trade Flows

FTAs can create trade between signatory countries by lowering tariffs and non-tariff barriers. But they can also divert trade when a signatory switches from importing a good from an efficient, third country, to a less efficient signatory country.⁹⁶ The accumulated evidence shows that trade creation outweighs trade diversion in the cases examined in this report.

Studies have consistently shown that NAFTA had large, positive results on aggregate trade flows among the three signatory countries.

Both U.S. and non-U.S. free trade agreements increase trade flows between signatories. Studies compiled by the U.S. International Trade

Commission estimate that over the ten years after an agreement's entry into force, an average trade agreement increases partners' trade flows between 30 and 114 percent.⁹⁷ The magnitudes of these estimates vary considerably since studies rely on economic modeling to compare real trade flows with a counterfactual scenario with no FTA. However, when several studies using different models come to the same conclusion about the direction of a change, we can be more confident in their results.

Among U.S. FTAs, NAFTA has received the most attention from scholars due to Mexico's importance to the U.S. economy, lingering controversy over the agreement, and data availability. Studies have consistently shown that NAFTA had large, positive results on aggregate trade flows among the three signatory countries, with Zylkin estimating a 78.6 percent increase by 2002 and Baier, Yotov, and Zylkin approximating a rise of 159.6 percent by 2006.⁹⁸

Heo and Doanh (2020) account for both trade creation and diversion, estimating that NAFTA created 58.2 percent more trade among its members but diverted 15.4 percent of trade from other countries from implementation by 2016.⁹⁹

Breaking down NAFTA's effects on trade flows by country, Zylkin calculates that the U.S.

⁹⁶ William H. Cooper, CONG. RES. SERV., RL31356, *Impacts on U.S. Trade and Implications for U.S. Trade Policy* 8 (2014), <https://sgp.fas.org/crs/row/RL31356.pdf>; Jacob Viner, *The Customs Union Issue* 43 (1950).

⁹⁷ *Impact of U.S. Trade Agreements*, U.S. INTERNATIONAL TRADE COMMISSION, *supra* note 7, at 199.

⁹⁸ Thomas Zylkin, *Beyond Tariffs: Quantifying Heterogeneity in the Effects of Free Trade Agreements* 14 (2016), http://www.tomzylkin.com/uploads/4/1/0/4/41048809/beyondtariffs_web_.pdf; *Impact of U.S. Trade Agreements*,

U.S. INTERNATIONAL TRADE COMMISSION, *supra* note 7, at 204; Scott L. Baier, Yoto V. Yotov, & Thomas Zylkin, *On the widely different effects of free trade agreements: Lessons from twenty years of trade integration* 206, 214, 116 J. INT'L ECON., (2019), <https://www.sciencedirect.com/science/article/abs/pii/S0022199618304367?via%3Dihub>.

⁹⁹ Yoon Heo & Nguyen Khanh Doanh, *Is NAFTA Trade-Creating or Trade-Diverting? A System GMM Approach*, 231, 233, 39 ECONOMIC PAPERS 3 (Sept. 2020), <https://onlinelibrary.wiley.com/doi/10.1111/1759-3441.12281>.

experienced 85 percent greater access to the Mexican market. Meanwhile, Mexico experienced a 171 percent increase in access to the U.S. market.¹⁰⁰

Though there are few studies on the trade flow effects of the United States' other FTAs in Latin America, Baier, Yotov, and Zylkin (2019) estimate that the Chile-U.S. Free Trade Agreement was responsible for a 32.7 percent increase in trade flows between the two countries from implementation to 2006.¹⁰¹ Evidence from the U.S. International Trade Commission (ITC) demonstrated that the PTPA, NAFTA, and U.S.-Chile Free Trade Agreement caused significant increases in bilateral trade flows. However, the ITC found no significant effect of the U.S.-Colombia Free Trade Agreement on trade flows at the 10 percent significance level.¹⁰²

Economic Growth

Greater trade can allow countries to concentrate in the goods and services for which they have a comparative advantage. This leads to greater efficiency and higher productivity, which in theory should promote economic growth. Data from the free trade agreements studied in this report corroborate this theory.

The combined effects of the United States' free trade agreements have had a small but positive impact on U.S. output. The ITC estimates that GDP was 0.5 percent higher in 2017 (the most

recent year modeled) thanks to these agreements.¹⁰³ Given the size of the Mexican economy relative to that of other U.S. FTA signatories, the effects of NAFTA overwhelm the effects of other free trade agreements when it comes to U.S. GDP growth. It is also worth noting that the effects of U.S. trade policies on growth far surpass those due to free trade agreements alone. Open trade policies go far beyond FTAs to include membership in the WTO, use of unilateral trade preferences, and a series of multilateral agreements that allow the U.S. to grow faster than more protectionist economies.

The combined effects of the United States' free trade agreements have had a small but positive impact on U.S. output.

Research is limited on the effect that free trade agreements with the United States have had on economic growth in Chile, Colombia, and Peru.

In one meta-analysis, Cabezas (2003) finds that estimates of the direct effect on GDP growth from a U.S. FTA—that is, the effect of lower tariffs and non-tariff barriers—vary from 0.2 to 1.23 percent. Including both indirect and direct effects, she finds that estimates range from 0.5 to 10.0 percent of GDP. These indirect effects include reduced country risk, significant externalities from increased trade (e.g., growth in trade-adjacent sectors such as transportation), and higher foreign direct investment.¹⁰⁴ Cabezas

¹⁰⁰ Zylkin, *supra* note 99, at 14.

¹⁰¹ *Impact of U.S. Trade Agreements*, U.S. INTERNATIONAL TRADE COMMISSION, *supra* note 7, at 204; Baier, Yotov, and Zylkin, *supra* note 99, at 206, 214.

¹⁰² *Impact of U.S. Trade Agreements*, U.S. INTERNATIONAL TRADE COMMISSION, *supra* note 7, at 91-93.

¹⁰³ *Id.*, 15.

¹⁰⁴ Note that at least one of the studies that Cabezas (2003) includes assesses the simultaneous impact of Chilean FTAs with the United States, the European Union, Mercosur, and other countries or trade blocs. It is difficult to disentangle the effects of these agreements from that of the U.S.-Chile FTA. Mabel Cabezas, *Tratado de Libre Comercio entre Chile y Estados Unidos: Revisión de Estudios que Cuantifican su Impacto 2* (Central Bank of Chile Working Paper No. 239, Nov.

concludes that the indirect impact of the U.S.-Chile FTA on growth likely outpaced the direct impact.¹⁰⁵

Investment

The effect of free trade agreements on foreign direct investment is ambiguous. On the one hand, FTAs can increase policy certainty and make countries safer destinations for investors. On the other hand, FTAs can make exports a more attractive option than FDI for those looking to enter a foreign market.¹⁰⁶

FTAs are more likely to stimulate greater foreign direct investment when they are negotiated between developed and developing countries, like those analyzed in this report.¹⁰⁷

Berger et al. (2003) find that between 1978 and 2004, trade agreements that included strong national treatment rules and investor-state dispute settlement provisions increased FDI.¹⁰⁸ Their estimates reveal that if a given country negotiated an FTA with all investment source countries, it could expect a short-run increase of 23 percent and a long-run increase of 50 percent in FDI flows.¹⁰⁹

Both MacDermott (2006) and Feils and Rahman (2008) find that NAFTA—which included the provisions stipulated by Berger et al.—was associated with a rise in FDI.¹¹⁰ MacDermott estimates that Mexico saw an influx of 1.73 percent more FDI per year due to NAFTA, while Canada and the United States received 1.54 percent and 0.96 percent more FDI per year, respectively.¹¹¹ While Feils and Rahman fail to find a significant effect of NAFTA on FDI in Mexico, they do find a significant effect for Canada- and U.S.-bound investment.¹¹²

Wages, Employment, and Labor Conditions

By stimulating trade and investment, trade agreements can have positive impacts on wages and employment. Labor provisions in trade agreements can also improve conditions related to labor, both during negotiations and following the implementation of an agreement.

U.S. trade partners are the most likely to improve labor rights before they sign agreements, when the U.S. government can apply leverage during negotiations.

2003),
http://www.sice.oas.org/TPD/CHL_USA/Studies/BCCTL_C1103_s.pdf.

¹⁰⁵ *Id.*, 1.

¹⁰⁶ *Impact of U.S. Trade Agreements*, U.S.

INTERNATIONAL TRADE COMMISSION, *supra* note 7, at 95-96.

¹⁰⁷ *Id.*, 216.

¹⁰⁸ Axel Berger, Matthias Busse, Peter Nunnenkamp, & Martin Roy, *Do trade and investment agreements lead to more FDI? Accounting for key provisions inside the black box*, 10 INT'L. ECON. AND ECON. POLICY (2013).

<https://link.springer.com/article/10.1007/s10368-012-0207-6>.

¹⁰⁹ *Id.*, 267-268.

¹¹⁰ Raymond MacDermott, *Regional trade agreement and foreign direct investment*, 18 NORTH AM. J. ECON. AND FINANCE 1 (Feb. 2007), <https://www.sciencedirect.com/science/article/abs/pii/S1062940806000453?via%3Dihub>; Dorothee J. Feils & Manzur Rahman, *Regional economic integration and foreign direct investment: The case of NAFTA*, 48 MANAGEMENT INT'L REV. (2008), <https://link.springer.com/article/10.1007/s11575-008-0009-9>.

¹¹¹ MacDermott, *supra* note 111, at 114.

¹¹² Feils & Rahman, *supra* note 111, at 158-160.

The U.S. International Trade Commission estimates the cumulative effect of U.S. free trade agreements on employment at around 500,000 more jobs for U.S. workers in 2017, or 0.3 percent of the labor force.¹¹³ Similarly, the ITC estimates that U.S. FTAs increased real wages by 0.3 percent in 2017, relative to the counterfactual scenario in which the United States had negotiated no trade deals.¹¹⁴ As with the ITC's estimates regarding the impact of FTAs on growth, these estimates understate the impact of U.S. trade policy in general on growth.

In a broader study of 200 U.S. and non-U.S. free trade agreements with labor clauses, Kamata (2014) finds that FTAs have differing effects on wages and labor conditions between 1995 and 2012, depending on countries' income. For high-income countries, Kamata finds that FTAs with labor clauses have no significant impact on labor earnings or other conditions. For middle-income countries, however, FTAs do significantly

increase labor earnings.¹¹⁵ The study classifies Canada, Chile, the United States as high-income countries, while Colombia, Ecuador, and Peru fall within the middle-income category.¹¹⁶

Research by DiCaprio (2004) and Kim (2012) demonstrates that U.S. trade partners are the most likely to improve labor rights before they sign agreements, when the U.S. government can apply leverage during negotiations.¹¹⁷

Finally, Dewan and Ronconi (2018) find that U.S. FTAs have improved labor law enforcement in all Latin American countries that signed an FTA with the United States, except for Mexico.¹¹⁸

¹¹³ *Impact of U.S. Trade Agreements*, U.S.

INTERNATIONAL TRADE COMMISSION, *supra* note 7, at 15.

¹¹⁴ *Id.*

¹¹⁵ Kamata Isao, *Regional Trade Agreements with Labor Clauses: Effects on labor standards and trade* 19 (RIETI Discussion Paper Series 14-E-012, Feb. 2014), <https://www.rieti.go.jp/jp/publications/dp/14e012.pdf>.

¹¹⁶ *Id.*, 37.

¹¹⁷ Alisa DiCaprio, *Are Labor Provisions Protectionist?: Evidence from Nine Labor-Augmented U.S. Trade Arrangements*, 26 COMP. LAB. LAW & POLICY J. 1 (2005),

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=832404;

Kim Moonhawk, *Ex Ante Due Diligence: Formation of PTAs and Protection of Labor Rights*, 56 INT'L STUD. QUA. 4 (2012),

<https://academic.oup.com/isq/article/56/4/704/1830016>

¹¹⁸ Sabina Dewan and Lucas Ronconi, *U.S. Free Trade Agreement and Enforcement of Labor Law in Latin America*, 57 INDUSTRIAL REL. 1 (2017),

<https://onlinelibrary.wiley.com/doi/abs/10.1111/irel.12199>.

7. RECOMMENDATIONS

Stakeholders in a potential U.S.-Ecuador trade agreement can learn from the United States' previous agreements in the region. The examples of Chile, Peru, Colombia, and the USMCA offer lessons on how to launch negotiations, overcome obstacles, and understand the economic impacts of a trade accord. The following recommendations are grouped into these three categories.

Launching Negotiations

- **There is still a desire for trade in the United States.** The lack of new trade accords—other than the USMCA—passed by the U.S. Congress since 2011 at first appears to signal a general lack of interest in deepening trade relations. Trade promotion authority, granted to President Obama in 2015 only after a divisive Congressional debate, lapsed in 2021. Any future trade accord would require Congress to grant a new trade promotion authority to the president or pass a trade deal without granting fast-track authority. The latter would prolong negotiations and require a two-thirds majority in both chambers of Congress. Despite these challenges, the USMCA case study makes it clear that strengthening trade relations is still politically feasible in the current environment. The agreement passed with nearly 90 percent of legislators in favor in both chambers.
- **Ecuador can use its ongoing trade negotiations with other countries to encourage the United States to broker its own trade accord.** During the U.S.-Chile trade negotiations, U.S. exporters feared that they would be at a disadvantage relative to their Canadian counterparts after Canada signed an agreement with Chile. The Chilean government leveraged its existing agreement with Canada toward a new trade accord with the United States. The same dynamic played out with the U.S.-Colombia TPA, when Colombian stakeholders worried about being left behind after Peru reached a deal with the United States. Now that Ecuador is negotiating a trade agreement with China, the government is better positioned to attract the United States to sign a trade accord.¹¹⁹

Overcoming Obstacles

- **Strong labor and environmental provisions can satisfy both U.S. and Ecuadorean stakeholders who are skeptical of trade.** These protections were key to achieving widespread, bipartisan support in the U.S. Congress for the USMCA. When U.S. labor and environmental groups perceived these clauses as insufficient, as with the Chile, Colombia, and Peru agreements, they opposed ratification. In several of the cases analyzed, Latin American labor and environmental groups have similarly opposed U.S. trade deals. A potential U.S.-Ecuador trade

¹¹⁹ Alexandra Valencia, *Ecuador sees trade deal with China at the end of the year, debt talks to begin*, REUTERS (Feb. 6, 2022), <https://www.reuters.com/markets/us/ecuador-sees-trade-deal-with-china-end-year-debt-talks-begin-2022-02-05/>.

accord could satisfy traditional critics of trade by including protections for labor and the environment that meet or exceed the standards of the USMCA.

- **Ecuador should consider how to compensate those who are displaced by trade.** While each of the deals analyzed in this report had positive, aggregate effects on jobs and growth, trade entails disruption. People working in sectors at risk of foreign competition—often agriculture—will often need new job training or other government assistance to help them adjust. Assistance packages can ensure that the benefits of trade are widespread, as well as decrease the risk that sectors vulnerable to competition mobilize against agreements.

Understanding the Economic Impacts

- **Ecuadorean and U.S. stakeholders should consider increased investment and locking in policy reform as objectives on a level playing field with greater market access.** NAFTA increased foreign direct investment in Mexico. In Peru, the U.S. trade agreement locked in economic reforms. As Colombia demonstrates, trade accords can create more certainty for domestic firms. And in Chile, the indirect effects of the U.S. trade deal on the South American country's GDP were greater than the direct effects.¹²⁰ Greater market access is the traditional motivation for trade accords, but as this report demonstrates, it is far from the only reason that leaders must forge a deal.
- **Ecuadorean policymakers should carefully weigh the pros and cons of provisions meant to attract foreign direct investment.** Although Berger et al. (2003) find that between 1978 and 2004, trade accords that included strong national treatment rules and ISDS provisions increased FDI, governments face trade-offs in agreeing to these terms. As the USMCA case study demonstrates, investor-state dispute settlements are a contentious issue with consequences for domestic regulation. However, ISDS can also lock in positive economic reforms, as shown in Peru. Other investment-related provisions involve trade-offs as well. Restrictions on capital controls, such as those included in U.S. trade accords with Chile, Peru, and Colombia, would limit Ecuador's policy options during a financial crisis.

¹²⁰ Cabezas, *supra* note 105, at 1-2.