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# Human development vis-à-vis free trade: Understanding developing countries' positions in trade negotiations on education and intellectual property rights

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## ABSTRACT

Since intellectual property rights (IPRs) and services were introduced to the international trade regime, state regulation on development sensitive issues such as access to education and medicines is directly affected by multilateral and bilateral trade agreements. By adopting a global governance analytical approach to trade politics and a comparative research strategy, the article shows, on the one hand, how national positions on trade in education and IPR have been defined, coordinated and contested in developing contexts and, on the other, the implications of these trade policies on a range of scales. Case studies in Argentina, Peru, Chile and Ecuador will enable us to discuss, on the grounds of extensive primary empirical data, how the apparent conflict between development and liberalization principles is being managed in free trade agreements in Southern countries, and with what outcomes.

## KEYWORDS

GATS; education services; TRIPS; medicines; international development; pluri-scalar politics.

## INTRODUCTION

The Uruguay Round of the General Agreements on Trade and Tariffs (GATT) (1986–1994) meant the creation of the World Trade Organization (WTO) and the incorporation of a new range of themes into the international trade regime, services and intellectual property being the

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most outstanding. The constitution of the General Agreement of Trade in Services (GATS) and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), as independent agreements from the GATT, reflects the relevance acquired by both services and intellectual property in international trade relations. Both GATS and TRIPs are negotiated and administered within the WTO, but their content is being replicated and deepened in a high number of bilateral and regional trade agreements that are mostly promoted by the European Union (EU) and the United States (US). Together, these regional and bilateral agreements push for the continuous liberalization of all kinds of services and for strong IPR regulatory frameworks all over the world, reason why they are often referred to as GATS-plus or TRIPs-plus.

The introduction of services and IPR agreements to the international trade regime, can drastically affect the policy space and human development priorities of the signatory countries (Shadlen, 2005). As acknowledged in the 'Millennium Development Goals', issues such as the provision of education, health or medicines are of vital importance in any development strategy. However, since the WTO was constituted, policy decisions on education and health can be affected by, and even subordinated to, trade disciplines and rules. As a consequence, free trade agreements (FTAs) have generated a passionate debate from the development and human rights perspectives.

In terms of the right to education, the main concern that GATS raises is how *national* education systems could be undermined as a result of the lack of comparative advantage in the trade in education of developing countries. The commercial liberalization of education implies the elimination of state regulatory barriers to cross-border e-learning initiatives and the establishment of branch campuses, and opens the doors to the international takeover of schools and universities (Verger, 2011). The global education market is clearly dominated by richer, and especially, Anglo-Saxon countries and its liberalization may contribute to a further curricular and cultural homogenization. There are also concerns that the education regulatory framework of developing countries is too weak – in terms of quality assurance, access policies, funding – to manage and cope with the effects of the liberalization of education (Robertson *et al.*, 2002).

As for IPR and health, free trade agreements including strong IPR rules, are accused to lead to a 'transfer of wealth' from South to North (Shiva, 2000) by favoring the interests of industrialized countries and their multinational corporations, since they are the owners of most patents (Chang, 2001; Wade, 2003). At the same time, strict patent protection drives prices up and undermines access to medicines or public health more generally, which is something especially sensitive in low-income countries facing health emergencies (Castro-Bernieri, 2006; 't Hoen, 2009).

Meanwhile, free trade advocates consider that most of these concerns are unfounded. Their main arguments are that free trade agreements contain enough flexibilities for countries to subordinate their commitments to their development policies (Sauvé, 2002), and also that the liberalization of services and strong IPR regulations may benefit the economic and social development of countries. For instance, they argue that through the liberalization of the education sector, countries could attract foreign universities and scholars and thus widen and even improve the education offered in their territory (Czinkota, 2006). As for IPR, proponents believe developing countries can benefit from enhanced incentives for innovation and technology transfer, an improved investment climate and attracting more foreign direct investment (Chen and Puttitanun, 2004; Maskus, 2000).

Taking these conflictive ideas and the contested relationship between free trade and development into account, this paper aims to understand how two sensitive human development issues, namely health/IPR and education, are being negotiated by Southern countries in the context of free trade agreements and, more specifically, how their decisions and national strategies regarding these areas are defined. The questions that guide our research are: what are the logic, preferences and other types of ideas constituting the positions of developing countries in the negotiation of education and health/IPR aspects of free trade agreements? Whilst acknowledging the importance of external pressure, how open is the process for the definition of positions to national constituencies and interests? What other factors affect developing countries' behavior when negotiating this type of agreement?

Our arguments are based on a global governance approach to trade politics and on intensive fieldwork in Latin America involving case studies in Argentina and Chile (on trade in education services), and in Ecuador and Peru (on IPR and access to medicines) that will enable us to open the state's black-box when making decisions on such politically sensitive issues. The case studies are analyzed by means of a comparative strategy. The fieldwork includes interviews with trade negotiators and other key stakeholders, such as regulators, businesses and civil society organizations involved in the sectors in question in each country. In total, for this research, 75 interviews were conducted between 2006 and 2008.

The article is structured into four main sections. In the first, we present the theoretical and conceptual approach of our research. In the second section we analyze how countries position themselves in the context of the negotiation of education services (based on the case studies undertaken in Argentina and Chile), and in the third, we analyze countries' positions concerning trade negotiations affecting IPR/health issues (based on the cases of Ecuador and Peru). In the fourth and final section, we discuss our results and conclude the article.

## GLOBAL GOVERNANCE AND TRADE POLITICS

In this article, 'global governance' is understood as a heuristic and analytical device to capture the increasingly complex political landscape in which a range of actors of a different nature interact, coordinate or struggle in processes of agenda setting and decision-taking at a range of scales (Barnett and Duvall, 2005).<sup>1</sup> For the reasons developed below, the global governance approach can be seen as an alternative to rationalist paradigms, especially prevalent in American international political economy (IPE), that privilege state actors in their analytical models and consider actors' preferences as pre-given (Cooley, 2003).

In a global governance scenario, non-state actors operating at a range of scales are gaining presence and even political authority in different policy fields, including international trade institutions. The main source of influence of non-state actors comes from the mobilization of their ideas, scientific and technical information (O'Brien *et al.*, 2000). Thus, in this scenario, the battle around preferences definition, especially in moments of crisis and in relation to themes that generate some levels of uncertainty (Walsh, 2000), is key to understand the outcomes of global politics.

The global governance perspective to political analysis also focuses on the re-scaling dynamics that constitute global politics today. This perspective implies focusing, on the one hand, on how domestic politics and non-state actors influence the outcomes of global institutions and, on the other hand, on how global institutions and rules empower (or disempower) local actors to advocate their particular agendas. IPE literature usually focus on either the effect of domestic politics on international institutions, or the effect of international institutions on domestic politics, but it is very infrequent to see both types of analyses in a single study (Dai, 2007). A global governance approach implies paying attention to how influence in global politics emanates from multiple sources and operates in multiple directions, but also advocates overcoming global-local binaries by arguing that different political scales are mutually embedded and constituted (Robertson *et al.*, 2002).

The adoption of a global governance approach affects the variables that IPE researchers should include into their analytical models (scales, preferences, non-state actors' collective action, etc), but also frames their main research questions and methodological frameworks (Cooley, 2003). In relation to the latter, it should be acknowledged that inquiring about ideas, preferences and agents' strategies usually implies the necessity of adopting qualitative methodological strategies and producing primary data via interviews and similar methods. In the rest of this section, we develop how a global governance approach relates to the way we understand global trade politics at a range of scales, particularly in relation to the study of trade negotiations affecting education and health issues.

### Globalization and agenda setting

Globalization has altered the political architecture and the locus of power in a range of policy domains, trade policy clearly being one of them. The creation of international trade agreements, such as GATS and TRIPS, has represented a milestone in the re-scaling of trade politics, but also in other policy sectors. These international agreements work as supra-national legal conventions that introduce pro-free trade rules, norms and procedures in relation to a range of policy areas that were predominantly regulated within the borders of nation-states. Once liberalization commitments have been undertaken by countries in trade agreements, they are very difficult to reverse. Because of these reasons, GATS and TRIPS are seen by Gill (2003) as 'new constitutionalism' devices, i.e., legal instruments that favor pro-market rules being fixed in the quasi-legal structure of new state spaces and, consequently, the global constitutionalization of neoliberalism.

However, the way globalization is altering the steering capacity of the state is contingent to the different phases of the policy process (i.e., agenda setting, decision-making, policy implementation, etc), as well as to the political power and level of economic development of countries. Thus, on the one hand, the globalization of politics is more intense at the stages of agenda setting and definition of the rules of the game, than at the stages of decision-making and policy formulation (Dale, 2005). And, on the other, in multilateral forums, the most powerful and rich actors have more chances and capacities to impose their preferences and to set the rules of the game than Southern countries do (Jessop, 2003). The process through which the GATS and TRIPS were established is a good example of the validity of these two premises.

During the Uruguay Round, the US, backed by the European representatives, pushed for the creation of two new trade agreements dealing with trade in services and IPR that would increase the global business opportunities for their knowledge intensive industry (May and Sell, 2006). The American services, software and pharmaceutical industry encouraged the creation of these agreements by supporting like-minded epistemic communities and the dissemination of their ideas (Feketekuty, 2005). Meanwhile, Southern countries were aware of their lack of comparative advantage in services (Chanda, 2003) and of the low level of patents they needed to protect internationally (Chang, 2001). Consequently, they initially opposed the introduction of these new topics to the international trade agenda. However, their strong proponents and a lack of sustained opposition (also due to perceived possibilities for future trade-offs) did lead to the adoption of both agreements, although Southern resistance did contribute to rich countries accepting some flexibilities within both agreements (Crystal, 2010; Drake and Nicolaidis, 1992).

Another example of the capacity of richer countries when it comes to setting international agendas and rules can be found in the global spread of bilateral free trade agreements. Since the Doha Round (2001–ongoing), the multilateral trade negotiations hosted by the WTO, in which both GATS and TRIPS are included, is not advancing at the expected path, the US and the EU are reinforcing a parallel trade strategy on the regional/bilateral level. This scalar shift is to a great extent the result of the failure of the multilateral negotiations, but also the consequence of the US and the EU finding it easier to impose their preferences on the bilateral/regional scale than on the global one (Wilkinson, 2004; Wissen, 2009), and that the rules they can introduce there involve further liberalization (Shadlen, 2005). Multilateral agreements are considered the floor from which bilateral power asymmetries can unfold (Wissen, 2009). In fact, both the US and the EU are promoting rules and standards that go beyond those included in GATS and TRIPS in regional trade agreements, and in the context of their particular race to penetrate new markets. To date, there are 159 regional trade agreements in force in the world, and approximately half of them have been promoted by the US and European countries.<sup>2</sup>

Whilst acknowledging, on the one hand, the major capacity of richer economies when it comes to setting the rules of the game in international trade forums and, on the other, the legal power of international trade agreements once they are settled, developing countries do have bargaining capacity at the negotiation stage of such agreements and, specifically, when it comes to taking decisions concerning the adoption of liberalization commitments. They can also establish alliances to campaign to make free trade rules more development-friendly. Thus, we should go beyond the victimization of ‘Southern countries’ and, even more importantly, go beyond the conception of Northern/Southern countries as flat terrains. Both the North and the South are hierarchical spaces constituted through the, often conflictive, interaction between a range of groups, interests and ideas. On occasions, these groups (political elites, business, social movements, etc) establish transnational alliances and loyalties that work against the interests of other groups in their own nations or regions. As developed below, this relational nature of political territories directly affects the behavior and strategies of their political representatives in the context of international trade negotiations.

### **Inquiring into country positions in trade forums**

International organizations and international agreements are neither conceived as static products, nor are they spaces that are simply governed by the logic of *appropriateness* (i.e., member countries simply following the rules and norms of the organization in question). International organizations are rather arenas for campaigning and spaces that are constantly

being negotiated and re-negotiated by member countries in which the logic of expected consequences (or *consequentialism*), which seeks the maximization of particular benefits, coexists with that of appropriateness (March and Olsen, 2005; Weaver, 2008).

In the context of international organizations, most member countries, although within the limits of globally settled rules, try to defend a mandate and a set of preferences that have been defined at the national level (Cox and Jacobson, 1972). At the same time, a global governance approach pushes us beyond methodological nationalism and statism when it comes to understanding 'country positions' in international trade negotiations. 'States', rather than being monolithic actors with a homogeneous voice and a coherent set of interests, need to be seen as arenas for struggle in which trade politics and, in particular, the definition of positions in trade forums are constantly negotiated and contested (Robertson and Dale, 2006; Chernilo, 2007). Consequently, the position of countries in trade negotiations is something that needs to be unraveled and, thus, perceived as a proper object of inquiry by international political economy scholars (Shadlen, 2005; Wissen, 2009).

Free trade agreements involving educational services and IPR are again an example of how these premises work. On the one hand, signatory countries are committed *a priori* to the principles of liberalization and free trade, but at the same time they can negotiate these agreements in a way that fits within their particular developmental strategies and/or economic interests. In the case of GATS, countries are allowed to adopt liberalization commitments in whatever sectors and sub-sectors they like and, when doing so, can establish a number of barriers/limitations. In the case of TRIPS, countries have been able to negotiate new flexibilities, such as those concerning the import of generic medicines in cases of health emergencies. These examples show that negotiating services and IPR issues does not involve a dichotomy (liberalization or not) but rather a major range of policy options.

On the other hand, the definition of countries' positions or, in other words, the mandate that will frame the behavior of countries' representatives (or negotiators) in international trade forums, is usually established at the national scale. It is the result of the more or less tense relationship between state and society and, to add to the complexity, between different factions of the state and different factions of society. In order to define their country's position, trade negotiators are expected to consult the main exporters, the domestic industry, the regulators and other stakeholders that operate in the sector affected by the negotiations (Jara and Dominguez, 2006). The Ministry of Trade (or Foreign Affairs, depending on the country) is usually in charge of the coordination of this consultation process, although it is not necessarily a neutral coordinator. Trade ministries, rather than neutral brokers, are political actors that seek to pursue a specific

political agenda that normally consists of opening markets abroad for the national export industry (Krugman, 1997; Wade, 2003), which is something that does not necessarily match the preferences of some other state regulators (for instance, in our case, ministries of education and health) and stakeholders such as social movements or trade unions. Of course, the capacity of each of these actors to impose their preferences in the country's final position varies and is contingent to the specific strategies they have pursued, but also the way these strategies are inscribed in strategically selective contexts that favor some ideas and social groups over others (Hay, 2002; Wissen, 2009).

This type of analysis, which aims to find out how a range of state and non-state actors mobilize and frame their preferences to push for their particular agendas and interests, requires of a complex understanding of 'ideas'. The concept of ideas covers different categories that go from causal beliefs (which are ideas of a more theoretical nature) to principled beliefs (that are rather normative and value-based ideas) (Goldstein and Keohane 1993). They also include underlying and taken for granted assumptions that reside in the background of policy debates such as 'policy paradigms' or 'public sentiments' (Hall, 1993; Campbell, 2004). Global studies and international relations research are paying increasing attention to how these different types of ideas interact in political deliberation and decision-making processes (Risse, 2000; Blyth, 2002).

By adopting a global governance approach, our research aims to show, on the one hand, how national positions on trade in education and IPR/health have been defined, framed, coordinated and contested in a group of Latin American countries and, on the other, the implications of these trade politics on a range of scales. The case studies will enable us to discuss, on the grounds of primary empirical data, what are the main ideas, actors and strategies affecting countries' positions in free trade agreements and, specifically, how the apparent conflict between development and liberalization principles is being managed by Southern countries in international trade forums, and with what outcomes.

### **TRADE IN EDUCATION NEGOTIATIONS. ARGENTINA AND CHILE WITHIN THE GATS**

In both Argentina and Chile, trade representatives support the introduction of education under the GATS and actively advocate for opening education to trade. First and foremost, offering education – as well as other service sectors – could enable them to obtain concessions from other countries during the current round of WTO negotiations. Second, trade negotiations are skeptical of critical beliefs about GATS ('privatization of education', 'undermining education systems in developing countries', among others)

and even believe that their respective countries could benefit from education exports. In fact, Chilean and Argentinean trade negotiators are convinced that GATS could help improve education quality by introducing more competition within the sector (Interviews Argentina 02 and 03; Chile 01, 02 and 04). However, despite these common preferences, Argentina and Chile have adopted different positions in terms of the liberalization of education in the context of the ongoing Doha Round. To summarize the positions, Argentina will not introduce education to the GATS agreement and, contrarily, Chile is willing to commit education to free trade if the liberalization results of the Doha negotiations are ambitious enough (Interview Chile 01). Moreover, it should be acknowledged that Chile has already liberalized education in the framework of multiple Free Trade Agreements with the main education exporters of the planet, such as the US, the EU and New Zealand. Meanwhile, Argentina has not adopted the liberalization of education within the EU–MERCOSUR<sup>3</sup> agreement, which is the only North–South FTA in which this country is involved.

### Argentina

In the Doha round, the Argentinean Ministry of Trade has organized two consultation meetings with education stakeholders. The *first consultations* took place in 2002, coinciding with the start of the GATS negotiations. The stakeholders summoned were the Public Universities Council, the Private Universities Council and the Higher Education Division of the Ministry of Education. All of them declared their opposition to the establishment of liberalization commitments in education, but for different reasons. The private universities were against GATS in order to avoid competition with foreign universities, fearing a lack of competitiveness in comparison with universities from richer countries (Interview Argentina 17). The public universities maintained a more politically committed position. At the time of the consultation, they had recently signed a public declaration, the *Carta de Porto Alegre*, in the framework of the Ibero–American Summit of Public Universities. Therein, they stated that GATS contradicts the conception of education as a public good and that this trade agreement could have harmful consequences for education. It was added that governments have to be pressurized into avoiding subscription to any kind of commitment in the framework of the WTO. The Argentinean public universities council, guided by the content of the *Carta*, strongly rejected the possibility of introducing education commitments to the GATS. Meanwhile, the Higher Education Division of the Education Ministry, who did not have much information on the topic at the time, decided to support the position of the public and private universities and expressed that they share the conception of education as a public asset and their concerns about GATS (Interview Argentina 07).

The *second consultation* was organized in 2006, in the framework of the impetus in the Doha negotiations after the WTO Ministerial in Hong Kong. By then, Argentina was faced with a plurilateral demand regarding education that was coordinated by New Zealand.<sup>4</sup> The Ministry of Trade decided to make further inquiries to the national education sector on the possibility of offering education. On this occasion, only the ministerial Higher Education Division was invited. Once at the meeting, the education representatives stated that it was not possible to subscribe to liberalization commitments in education because the Minister had stated in public declarations, specifically the Montevideo Declaration and the Brasilia Declaration, that Argentina would not introduce its education services to free trade agreements.<sup>5</sup> As a consequence, they stated that education was 'not negotiable'. This strict stance created some tension between the trade and education representatives. The trade negotiator, who was very keen on obtaining a 'concession' from the education representative, dispatched him by saying that the Trade Minister would 'solve this problem with the Education Minister at the political level' (Interview Argentina 08). However, the position of the Ministry of Education prevailed in the end.

### Chile

The negotiation process in Chile has been very different to the Argentinean one. In Chile, education stakeholders have not been systematically consulted and the definition of preferences has been much more centralized on the Ministry of Trade. The latter has only consulted the representatives of the education quality assurance agencies in the framework of Free Trade Agreements with the EU and the US. Unlike the Argentinean case, the purpose of these consultations was not to ask for permission for the liberalization of education, but to adjust some technical aspects to make the liberalization process smoother. Specifically, far from aiming at making the negotiation process more transparent and inclusive, the factor that unleashed the consultations was the concern expressed by Europe and the US with regard to the 'quality' of Chilean education universities (and, by extension, the certificates they issue). Precisely for this reason, only the country's education quality assurance agency was contacted (Interview Chile 12).

On the other hand, Chile also received the plurilateral demand from New Zealand, but it did not initiate any consultations after that. Currently, the trade negotiators from Chile feel free to offer education in the GATS context and they will do so if the Doha Round is ambitious enough – i.e., in case they can get concessions in exchange for liberalizing education (and other service sectors) from rich countries (Interview Chile 01).

Everything indicates that the Chilean Ministry of Trade has defined the country's preferences in the negotiations behind the education

community's backs. However, we have also observed that there is a significant correlation of ideas between the trade education representatives in the country. In Chile, education stakeholders do not subscribe to the widely established perception about the dangers of GATS within the international education community. The Ministry of Education, the quality assurance agencies, and the education authorities that were interviewed generally see the potential of the liberalization of education and, to some extent, support their country's trade strategy. In fact, Chilean universities, far from the attitude of their Argentinean counterparts, participate in the *University Services Exports Committee* created by the Ministry of Trade in 1998 to promote education exports from the country. The teachers unions are the only key education stakeholders that have raised their voice against free trade agreements and the commodification of education that they favor.

Table 1 summarizes the preferences and interpretations on the topic of the actors involved, more or less actively, in GATS and education negotiations both in Argentina and in Chile.

### Comparison: The role of teachers unions

As Table 1 shows, education stakeholders in Argentina and Chile have a very different opinion of the topic of GATS and education. The only education stakeholders with a common position in both countries are teachers unions. The main teachers union in Chile (*Colegio de Profesores*) and the principal teachers union in Argentina (*Central de Trabajadores de la Educación de la República Argentina*) are highly critical of free trade in education. These actors have been systematically ignored by the trade ministries of their respective countries during the GATS negotiations. Nevertheless, the Argentinean union has had the capacity to indirectly influence the development of preferences and, consequently, the position that the Argentinean trade negotiators have to defend at the global level. The union started its campaign against GATS after attending the Tri-annual Conference of Education International, the world's biggest confederation of teachers, in 2004. The GATS issue constituted an important part of the agenda of that meeting and a final resolution on the topic was adopted. As a consequence, the Argentinean union decided to organize a campaign against GATS at the country level (Interview Argentina 16).

The teachers union has been a key actor in framing the official position of Argentina in the GATS negotiations on the education sector in the Doha Round. This can be shown through counter-factual reasoning (i.e., what might have been different in case the 'x' event had/had not happened). Without the union's action Argentina would most probably have held a critical position in the negotiation of the liberalization of education anyway, given that the public and private universities were also critical of

**Table 1** Chilean and Argentinean stakeholders positions within the education liberalization debate

Actor	Country	Position/Preferences	Interpretative repertoires
Trade Ministry	Argentina	PROGATS: Education as a bargaining chip	GATS respects the regulation capacity of the states Increases the exportation opportunities for the country
	Chile	PROGATS: Education as a bargaining chip Free trade can benefit education	GATS respects the regulation capacity of the States Increases the exportation opportunities for the country Creates more offer and investment in education and favors education quality Alters traditional functions of education
Education Ministry	Argentina	AGAINST GATS: Education is not a commodity	
	Chile	PROGATS: Free trade can benefit education	Liberalization is positive if it has the capacity to assure the quality
Universities	Argentina	AGAINST GATS: Education is not a commodity (public universities) Defensive interests (private universities)	Alters traditional functions of education (public universities) Unequal exchange in education (private universities)
	Chile	PROGATS: Free trade can benefit education	Increases the exportation opportunities for the country and the available resources for universities
Teacher unions	Argentina	AGAINST GATS: Education is not a commodity	Restricts <i>policy space</i> Unequal exchange in education
	Chile		Privatization of education Alters traditional functions of education Damages labor conditions
Quality assurance agencies	Argentina	<i>[Non-defined preferences]</i>	<i>[Non-defined discourse on the topic]</i>
	Chile	PROGATS: Free trade can benefit education	Liberalization is positive if it has the capacity to assure the quality

GATS, but it would not have drawn a red line on the education sector so clearly. The union has been an active promoter of the Brasilia and Montevideo Declarations that were used by the Ministry of Education in the consultations organized by the Ministry of Trade as a veto device. On the other hand, the teachers union was also behind the inclusion of an article in the *Ley de Educación Nacional* (2006) where it is stated that Argentina will not make commitments to education in free trade agreements.

The Chilean teachers union, however, has not been as influential, even though it has promoted similar action repertoires, has invested a similar level of resources and has used a similar discourse on the topic as the Argentinean union.<sup>6</sup> These unequal outcomes are less related to the intrinsic capacities of the unions or their strategy and more to contextual factors. As Colin Hay states, context is strategically selective and favors certain strategies, actors and discourses over others. Subsequently, not all political outcomes are possible for everybody, for every strategy and at every moment (Hay, 2002).

The Argentinean union benefitted from the political conjuncture generated in the country after the major economic crisis that broke out in 2001. The post-crisis government is trying to break from the neoliberal policies of the nineties because they are conceived as the main cause of the crisis. In this context, the government's refusal of GATS fits perfectly into the current governmental strategy of breaking from the policies for the liberalization and privatization of education that prevailed in the nineties. It also coincides with the government's sometimes theatrical attitude against neoliberal international organizations (Önis, 2007). On the other hand, the current Argentinean government has been very active in establishing alliances with progressive social movements as a way of achieving social peace after several years of political instability. Making some concessions to the teachers union, which is a key actor in the socio-political arena, can benefit this civil society–state alliance strategy and make overall policy-making much smoother in the education field, a field that has traditionally been highly contested. Obviously, this political context has opened various windows of political opportunity to the union. Moreover, its power of influence has grown because other actors, such as the public and private universities, have not acted against its interests. Instead, they have pressurized the government in the same direction as the teachers' union.

However, in Chile, the rules of free trade have been hegemonic since the seventies. In this country, trade liberalization policies were introduced by the General Pinochet dictatorship after a long period of economic nationalism (Agosin, 1999), but also in the democratic period initiated in 1990, economic liberalism has guided most of the political decisions in nearly all sectors (Angell, 2002). As one of the interviewed trade negotiators stated:

Chile feels much closer to the free trade model: an open economy, predomination of the private sector, non-state intervention, or a state that intervenes as little as possible, the regulation must be as pro-market as possible . . . These conceptions are deep-rooted and have consensus, a strong consensus . . . you can find coherence between the different public or private institutions; they speak the same language. Some years ago, some public institutions had a different approach to the Treasury or to the Central Bank. But today, there is strong coherence between all the institutions . . . we speak the same language. (Interview Chile 04)

This established ideational consensus in Chile makes it very difficult to establish critical ideas about free trade within the political system. For that reason, the Chilean union, although it has campaigned strongly against free trade agreements, has not been able to succeed at a level comparable to the Argentinean union.

### FREE TRADE, IPR AND HEALTH: EVIDENCE FROM ECUADOR AND PERU

Ecuador and Peru are both signatories of the WTO and TRIPs. Together with Bolivia and Colombia they make up the four members of the regional bloc of the Andean Community (CAN). Former member Venezuela left due to disagreement when Peru and Colombia decided to sign an FTA with the US in 2006 and, specifically, because of the fact that this FTA could work as a 'Trojan horse' for the US to penetrate the Venezuelan market (Sanchez, 2007). The Venezuelans' concerns were not unfounded. In fact, in order to be able to adopt the higher IPR standards that Peru and Colombia committed to in the FTA with the US, the Andean Community IPR charter lost its internal coherence and generated uncertainties among the members. At that time, this adjustment was strongly criticized by the Bolivian government, as well as by civil society organizations in all four CAN member countries (Interviews Peru 01, 11, 13 and Ecuador 08, 12).

At the time of this research, the Andean countries were negotiating an 'association agreement' with the EU, that later became a bilateral FTA. This shift from association agreement to FTA meant that more drastic liberalization measures could be introduced, and that international cooperation and cultural exchange policies would disappear from the agenda. At some point, the negotiations were so tense that Bolivia and Ecuador decided to abandon the negotiations, although Ecuador re-entered them later.<sup>7</sup>

In the context of these negotiations, both in Peru and in Ecuador, the Ministries of Trade were the strongest believers in the benefits of free trade. However, the final positions of the two countries regarding IPR issues were very different. The powerful Peruvian Ministry of Trade was

highly focused on market access for the national export industry to the EU. Despite trade negotiators arguing that Peru is interested in the global strengthening of IPR, they were basically inclined to accept the EU's demands on this issue as a bargaining strategy. The Ecuadorian government, on its part, claimed a more cautious and principled view of the matter, one that conceives health and access to medicines as a human right that should not be subordinated to free trade agreements. However, Ecuador's position on the topic has been ambiguous and conflictive, which is largely a consequence of internal divergences within the government on the topic.

### Peru

In Peru, the first 'big battle' on FTAs and IPR took place during the negotiations with the US, which included strong IPR demands and concessions.<sup>8</sup> Trade negotiations were led by the Ministry of Trade and Tourism, which became the most central actor in the country when it came to defining the country's position in trade negotiations on IPR. Its preferences prevailed over those of other state factions, such as the national institute for intellectual property rights (INDECOPI), which was critical of IPR's inclusion at the time and officially lost negotiation power (Interviews Peru 01, 08; Roca, 2007). Some critical studies on the topic were dismissed by the government, including one by INDECOPI and one by the Ministry of Health (Interviews Peru 09, 16). In fact, to offset the influence of these studies, the government commissioned a report to Pacifico University that was perceived as free-trade friendly and, thus, legitimated the official position on IPR in the country (Interviews Peru 01, 06). The Ministry of Health remained carefully critical of the FTA, but accepted the inclusion of IPR in exchange for compensation measures to provide for medicines under certain circumstances (Interview Peru 05).

The Ministry of Trade was very much in favor of FTAs. It did not share the fears for access to medicine, or felt they could easily be compensated by the gains from increased market access (Interviews Peru 16 and 17). In fact, they were convinced this would help their country grow and develop further, as they claimed the experience with the US FTA had shown. 'IPR is not only useful in facilitating an adequate investment climate, it was also essential for the subscription of the [US] agreement: two themes that we expect to really take us out of poverty' (Interview Peru 8). Despite a relatively well-developed position (that they claimed fully stemmed back from the WTO negotiations) and even declared commercial interests in strong IPR, there was a clear tendency in Peru to treat issues such as IPR in an instrumental way to gain market access (Interviews Peru 12 and 20).

The leading role of the Ministry of Trade therefore led to the fast-tracking of FTA negotiations. Its promotion of market liberalization was strengthened by export-oriented business groups, as well as by mainstream media.

They all directly linked economic growth to the liberalization of trade and tried to shape public opinion in this direction through the constant repetition of this message. In such ideational context, which was strengthened after the negotiations with the US, it was difficult for social organizations to make their criticisms heard, even for specific issues such as the inclusion of IPR.

Whereas during the US negotiations business groups were officially consulted in a business committee called *Consejo Empresarial de Negociaciones Internacionales*, this was not the case for the EU negotiations (Interviews Peru 01, 03, 14, 17). Most negotiation rounds did have a 'side room' for accredited social organizations and businesses, but transparency and consultations had been very limited so far. As business groups generally had stronger informal ties and were considered more capable and like-minded by the Ministry of Trade, their chances of accessing the process were much bigger than those of social organizations (Interviews Peru 01, 10). This was similar for both local and multinational business interests, showing from the battle between local producers of – usually generic – medicines, mainly united under the *Asociación de Industrias Farmacéuticas Nacionales*, and multinational pharmaceutical companies like Pfizer, Roche and Merck represented by the lobby *Asociación Nacional de Laboratorios Farmacéuticos* (ALAFARPE) (Interviews Peru 01, 09, 16). However, most business groups had relatively little interest in IPR issues, and instead focused strongly on market access to the EU, as did the Ministry of Trade.

In contrast, social organizations were highly concerned about the IPR issue. The mobilization of NGOs specializing in health was said to have some influence during the US negotiations, although finally an extension of patent protection, as demanded by the US, was accepted by Peru (García, 2008). They became particularly active in the EU negotiations in late 2009, when the negotiations turned bilateral and European demands on IPR became very strong.<sup>9</sup> In the months that followed, many declarations and letters were written and the Peruvian government apparently became more open to civil society's claims. At least the transnational civil society campaign, the EU–CAN Alliance for Access to Medicines, considers that they might have played a role in preventing a new extensions of patent protection and data exclusivity.<sup>10</sup>

### Ecuador

In Ecuador, the huge protests against the FTA with the US became one of the milestones in the fall of the government of President Gutierrez in 2005 (Interviews Ecuador 02, 08, 16). The protests also meant the abrupt termination of the trade talks with the US. Trade issues affecting IPR and access to health were very present in the agenda of the mobilization. The protests were led by a major social campaign, *Ecuador Decide*, which united

the local (generic) pharmaceutical industry – in particular, the *Asociación de Laboratorios Farmacéuticos de Ecuador* – with social, environmental and indigenous organizations. Under the slogan of ‘Ecuador Decide: no FTA’ they specifically emphasized the danger of IPR inclusion. Their claims included the protection of local production of, and access to, medicines, as well as the prevention of bio-piracy (Interviews Ecuador 10, 12, 16). When President Correa came to power in 2007 he made his criticism clear of FTAs and emphasized the importance of guaranteeing the right to health in the country (Interviews Ecuador 10, 12).

With the passage of time, this official discourse prevailed and some major steps were taken in order to ensure health rights by the government under the leadership of the President himself. This was reflected in the renewed constitution in 2009<sup>11</sup> and in a decree emitted by the President in 2010 for the use of TRIPS flexibilities to generically produce urgently needed medicines.<sup>12</sup> Both initiatives strengthened the legal commitment to health as a human right. At the same time, however, Ecuador’s position in trade negotiations and IPR matters was ambiguous (Interviews Ecuador 12, 16). One example is Ecuador’s decision to support Peru in their demand for flexibility in the Andean IPR charter so they could adopt the high IPR standards agreed upon with the US.<sup>13</sup> The government also transmitted diverging messages on whether to re-start negotiations with the EU. In the fall of 2009, the Ministry of Foreign Affairs announced its willingness to continue bilateral negotiations with the EU in the context of an FTA instead of the more positively perceived ‘Association Agreement’. When the president openly denounced this, the ‘clear difference in view between negotiators and the Ecuadorian government’ (Interview Ecuador 04) became apparent.<sup>14</sup>

In order to understand this policy dissonance within the government, it is important to acknowledge that the Correa government is ideologically very diverse. President Correa and Ministries of Economy, Environment and Development and Planning were considered to be closer to a socialist ideology (at the time of our research). However, other Ministries such as Foreign Affairs and Education had a more conservative and pro-market bias. This ideological divide was generating some policy coherence issues within governmental politics, and even continuous internal conflicts (Lucas, 2008). However, the President himself was also ambiguous concerning trade issues, which could be related to the ongoing electoral processes that meant it was more strategic ‘not to take sides’ (Interviews Ecuador 12 and 16).

During the negotiations with the EU, the Ministry of Foreign Affairs, the Ministry of Health and the National Institute of Intellectual Property Rights (IEPI) claimed to stick to TRIPS as a ceiling for IPR agreements (Interviews Ecuador 03, 07). The latter believed that Ecuador could benefit from a strong international IPR regime, due to its well-established

regulation on biodiversity and IPR. Many civil society organizations in the country were skeptical about this claimed ceiling and felt that the country's negotiators would be willing to make more concessions on the matter. Both the Ministry of Foreign Affairs and the IEPI did indeed appear much more favorable to concluding and signing the FTA than other government factions, including the President. Power distribution is a key determinant to understand the final outcome. Whilst the president has a veto-role, the power of the other two state agencies should not be underestimated. Foreign Affairs was leading the negotiations and whereas IEPI had officially lost its decisional power, its director was still considered to be the key figure on any IPR matter.

Meanwhile, both business and social organizations felt excluded by the centralized way of conducting the negotiations at the governmental level (Interviews Ecuador 01, 10). Through informal contacts these groups gained access, but mainly to the government factions that already shared their views. For instance, social movements had access to the more critical Ministry of Economy, but not to that of Foreign Affairs (Interviews Ecuador 08, 10). For participation and transparency purposes, an official civil society committee ('*Comité Mixto*') was established at the beginning of the EU–CAN negotiations. Social organizations such as *Ecuador Decide* initially joined but were soon disappointed with its way of working and decided to leave it. They considered it to be a form of cooptation, as participants were chosen by the government and there was little transparency and actual room for influence (Interviews Ecuador 10, 16). Interestingly, the remaining members of this committee were much more positive about IPR inclusion and the FTA than the critical social organizations, local pharmaceutical companies and even some former government officials (Interview Ecuador 10).

We also found in Ecuador that business, at least the bigger corporations, had little interest in the specific IPR issue. Instead they were strongly focused on market access and ways to attract direct foreign investment that, incidentally, they felt was in much danger under the current 'socialist' government (Interview Ecuador 01).

Table 2 summarizes the preferences and beliefs of the Peruvian and Ecuadorian actors involved, more or less actively, in the IPR free trade negotiations.

### **Comparison: The role of social organizations and local pharmaceutical companies**

As Table 2 shows, different views on the issue of IPR existed in both countries at the time of the research. A number of groups showed common preferences in the two countries. The first was the associations of larger (multinational) corporations that are favorable of FTAs and either

**Table 2** Stakeholders' positions within the IPR debate in Ecuador and Peru

Actor	Country	Position / Preferences	Interpretative repertoires
Trade Ministry	Peru	Pro FTA and IPR inclusion (IPR largely bargaining chip)	FTA will strongly benefit the country Offensive interests certain aspects IPR, rest can be compensated by gains market access
	Ecuador	Pro FTA and IPR inclusion (but not beyond TRIPS)	FTA/increased market access will benefit our economy (also due to competition Peru) Follow Constitution and President in prevailing right to health above commercial interests: TRIPS ceiling
Ministry of Health	Peru	Critical IPR inclusion but compensation accepted	IPR extension will negatively affect health but could be compensated (not openly critical)
	Ecuador	Pro FTA but critical pharmaceutical patent inclusion	The FTA can also bring benefits to health sector Medical patents should be excluded due to health risks
National institute for intellectual property rights	Peru	Pro FTA; move from critical IPR inclusion to officially 'neutral'	Large gains market access allow for compensation health (and others) There are both offensive and defensive interests
	Ecuador	Pro FTA and IPR inclusion but with caution	FTA can benefit the country No risks will be taken in health matters Offensive interests in biodiversity/traditional knowledge

*(Continued on next page)*

**Table 2** Stakeholders' positions within the IPR debate in Ecuador and Peru (*Continued*)

Actor	Country	Position / Preferences	Interpretative repertoires
President	Peru	Limited role, but pro FTA	—
	Ecuador	Against FTA and IPR inclusion when affecting health	Health rights should always precede commercial interests/ access to medicine should be guaranteed
Civil society*	Peru	Critical (or against) FTA, against IPR inclusion/extension as bargaining chip	Restricts <i>policy space</i> and negatively affects Andean harmonization process
	Ecuador		IPR extension negatively affects health and biodiversity; market access should not precede over all other interests; serving business and North
(Export-oriented) business	Peru	Pro-FTA and IPR inclusion (both offensive and defensive/ bargaining chip)	Market access good for economy/business and therefore whole country
	Ecuador		In addition IPR protection will attract more foreign investment

*Notes:* \*With a clear distinction between more radical indigenous and social movements on the one hand and social/non-governmental organisations and local pharmaceutical industry (especially in Ecuador) on the other.

see IPR inclusion as a bargaining tool or simply as positive for the economy (e.g., strengthening the investment climate). Multinational pharmaceutical companies, including corporations like Pfizer, did have a clear interest in promoting increased IPR protection. For their part, social organizations, as well as local pharmaceutical producers, clearly viewed IPR inclusion as something that could benefit the EU, but not their countries. Their main point of concern was the negative effects of increased patent protection on health, as it would drive up prices and decrease access to medicines. For generic producers there was clearly a protectionist interest in this as well. Indigenous and environmental organizations focused more on the relationship between IPR, biodiversity and traditional knowledge, and were highly critical of the free-trade idea in general.

Social, and in particular indigenous, organizations faced limited transparency and participatory mechanisms in both countries – yet the capacity to influence differed, due to decision-making procedures, the political and historical contexts and the capacities of civil society.

In both countries decision-making on trade negotiation strategies was very much located in the Ministry of Trade. However, in the case of Ecuador, the country's position is mostly defined by a tense relationship between Foreign Affairs and the strong presidency of the country. In Peru, the centralization of decision-making on trade and IPR issues within the Trade Ministry is often justified by the technical complexities of the topic, but also because of the strong support of free trade ideas among government bodies and public opinion.

Whereas most negotiators felt the process was quite inclusive (Interviews Peru 16 and Ecuador 7), we found that none of the countries opened many spaces for official consultations at the time of research, and transparency was highly limited. This means that those groups with informal contacts, mostly businesses, could access trade officials. Trade negotiators considered the views of businesses on the negotiations because they were close to their own, but also because they perceived corporate representatives to possess the necessary technical expertise to engage in trade talks (Interviews Peru 03, 10; Ecuador 06, 17). This was most clear in Peru, where business enjoyed much more access to governmental bodies than social organizations, who were considered less capable and more ideological (Interview Peru 13). 'Their proposals were generally regarded as reflecting a political agenda and [particular] interest, which reduced their relevance and influence in the overall debate' (Garcia, 2008: 5). Some indigenous organizations representing more radical views against the free trade paradigm even felt repressed.

In Ecuador there has been a long history of social movements and a more positive public opinion about social organizations. Governmental authorities provide them with more participation and consultation spaces. However, in the case of the IPR negotiations, the official participation committee

was strongly criticized by some prominent members of civil society due to the limited possibilities to influence it offered (Interview Ecuador 16).

Whereas at the time of research the capacity of social organizations to influence the EU–CAN negotiations was limited in both countries, trade talks with the US offered greater possibilities for mobilization.<sup>15</sup> At that time, public opinion was targeted in both places by social organizations, with low (but acknowledged, see Garcia, 2008) impact in Peru, and strong impact in Ecuador. In the latter, the framing of the FTA and IPR as an urgent health matter is in fact still very central.

Previous experiences with the US created the path through which negotiations with the EU were organized, including the process for the definition of the countries' positions. In fact, Peru was already locked in by the commitments it made to the US and, consequently, had 'less to lose' than other countries such as Ecuador (Interview Peru 02). In Ecuador, it was clear that trade negotiations and IPR inclusion could lead to serious political unrest, which resulted in caution on the issue and attempts to include civil society.

Political opportunity structures have shown to be key factors in Ecuador. There, views of social organizations and local pharmaceutical companies – both in favor of maintaining local production of generic and cheaper medicines – came to fit very well in the political context of criticism of free trade agendas and the promotion of social agendas. Ongoing electoral processes, internal conflict within the government and ambiguities on trade policy provided both opportunities and challenges for these groups. In Peru, on the other hand, business groups benefited from the prevailing neoliberal public sentiments that emphasize the important role of business actors in development. Trade negotiators feel also much closer to business than to social groups because they are considered more capable of engaging in technical discussions (Interview Peru 03 and 10). Windows of political opportunity remained largely closed to social movements in such a context. Only well organized movements that were not too radical in their claims and connected to international networks were occasionally listened to. Framing the campaign as 'FTA, not like this' instead of 'not FTA' was a useful semiotic strategy to deal with this discursively selective context in the country (Interview Peru 01).

Whereas IPR was often emphasized as a key issue and subject of much conflict, the arguments in this debate were barely exposed at the time, especially because IPR was often considered a bargaining tool. Lack of reflexivity is also reflected in the marginal role of impact studies and even in the dismissal of those studies that showed very negative results, as happened in Peru. The fact that, after the US negotiations, in both countries (but especially in Peru) the official intellectual property institute played exclusively a technical advisory role (and lost centrality in decision-making processes) is another indicator of the prevalence of more instrumental approaches to IPR.

However, in the final rounds of the negotiations, we observed that Peru adopted positions that took into account some of the concerns of social organizations and local pharmaceutical companies, such as for instance not accepting extension of patent protection and data exclusivity periods beyond what was conceded to the US.<sup>16</sup> For its part, it has yet to be seen how Ecuador will combine its strong rhetoric and commitments to health as a human right with the restart of free-trade negotiations with the EU (Health Action International, 2011).

## CONCLUSIONS

Services and IPR were introduced to the international trade agenda following the interests and preferences of western countries, under the leadership of the US, in the nineties. Since then, more explicitly than ever, the international trade regime overlapped with the human rights regime and, consequently, development sensitive issues, such as the right to education and access to medicines, became potentially affected by multilateral and bilateral trade agreements.

The outcomes of particular trade negotiations are contingent to political interactions happening at a range of scales (global, regional and national). From the perspective of most world countries, the rules of the current international trade regime have been settled externally. However, southern countries cannot be simply conceived as passive takers within the context of trade talks; a priori, they can subordinate trade decisions to their development strategies, both in relation to education and IPR. To understand the final decisions adopted within trade negotiations we need to pay attention to how countries define their positions at the national level. When doing so, we observe that the behavior of countries, at least when negotiating new trade issues such as services and IPR, cannot be reduced to simplistic North–South schemes, and that domestic politics can lead to very different preferences and results within ‘the South’.

The effects of the liberalization of education and IPR commitments generate uncertainty in developing contexts. Because of this, we could expect trade negotiators to be open to hearing different arguments and specialized opinions before making any decision (Walsh, 2000). However, in the analyzed countries, decisions are not generally made on the basis of an argued and reasoned consensus. Ideas and argumentation on the costs and benefits of trade commitments play a secondary role, basically for two main reasons. First, Ministries of Trade are reluctant to open spaces for deliberation on trade issues to avoid losing control over the negotiation agenda. They are especially reluctant to give a voice to those social organizations that, in their opinion, have a too politicized and non-technical understanding of trade issues, or an excessively ‘protectionist’ approach.

Second, Ministries of Trade tend to conceive both IPR and education services as 'bargaining chips' to get market access to rich countries in a range of economic sectors in which their comparative advantage relies upon. In other words, they are willing to make 'concessions' in services and IPR issues if, in exchange, they get access to markets abroad (especially in the US and Europe) for their national export industry. They hardly open spaces to deliberate about whether education liberalization or stronger IPR regulation would benefit or undermine development processes in their countries because, by doing so, their negotiation approach could be challenged. Consequently, it would be more difficult for them to use certain sectors as 'bargaining tools' to open markets abroad.

However, public awareness and social mobilization can revert this tendency and raise the profile of education and medicines as key development assets and social rights to be guaranteed by the state. The capacity to influence of social organizations depends on the strategies they pursue and the resources they count on, but it is also highly contingent to political opportunity structures, and to the prevailing policy paradigm in the country in question. Political opportunities, and especially key alliances with powerful political actors, have been important in Argentina (specifically, with the Ministry of Education) and in Ecuador (with the Presidency). Under the pressure exerted by social movements' campaigns against free trade, these governmental bodies vetoed the adoption of trade commitments that could mean the restriction of the public control over social issues. Social organizations in both countries also benefited from frame alignment with other influential constituencies: private and public universities in the case of Argentina, and local pharmaceutical companies (producers of generics) in Ecuador. Finally, in Argentina and Ecuador, social organizations' strategic action and discourse against free-trade resonated positively in a structurally selective context in which neoliberal ideas are very much delegitimized and unpopular, both on the governmental and public opinion levels. In contrast, Chilean and Peruvian social organizations were not so successful at affecting national trade priorities because the above-mentioned conditions (access to elites, strategic alliances and a conducive policy paradigm) were not given at the country level.

To conclude, this article has opened the black-box of the definition of preferences in Southern countries in trade negotiations in relation to two development sensitive issues, namely education and IPR. By adopting a global governance approach, the article shows how explicit and implicit rules and norms, state and non-state actors' strategies and global and domestic contingencies complexly interact in the context of international trade negotiations, and with what results. In doing so, our study contributes to unraveling and elaborating on the constantly changing and always opaque 'anatomy of influence' (cf. Cox and Jacobson, 1972) within international trade politics in a globalizing world. However, there is much

more that needs to be done in this terrain. More empirical studies are needed to identify the causal mechanisms that explain the mutual influence between global trade forums and domestic politics and, this way, to strengthen current theories on the topic. Future research should also contribute to improve our understanding of how and why countries are internationally adopting policies that may have decisive, and almost irreversible, effects on their present and future development strategies.

## NOTES

- 1 In the IPE literature, the 'global governance' concept also adopts a more normative meaning (see, for instance, Buchanan and Keohane, 2006).
- 2 See <http://rtais.wto.org/ui/PublicMaintainRTAHome.aspx> (accessed 7 March 2011).
- 3 MERCOSUR (*Common Market of the South*) is an economic and political agreement that includes Argentina, Brazil, Uruguay and Paraguay.
- 4 Within the GATS negotiations, liberalization demands have a bilateral nature (from country to country). However, after the WTO Hong Kong Ministerial Conference (2005), with the objective of boosting the Doha Round, the organization experimented with a new services negotiation modality *via* the so-called 'plurilateral demands' (which go from a group of countries to another group of countries). The first (and unique until now) plurilateral demand on education was coordinated by New Zealand and seconded by Australia, Chinese Taipei, Malaysia and the US in 2006 (Verger, 2010).
- 5 The Brasilia declaration is an anti-GATS statement signed by the Ministers of Education of Argentina and Brazil, together with the heads of the two biggest teachers unions in each country in 2004. The Montevideo declaration has a similar content and signatory constituencies, but was signed at the MERCOSUR level one year after.
- 6 There is one exception that can be found in the FTA between Chile and the US. The Colegio De Profesores, together with other civil society organizations, consider that their lobbying efforts were responsible for the inclusion of a provision that states that Chile reserves the right to regulate all aspects of foreign teachers' activities (cross-border supply of services by natural persons) at all levels of formal education (ACJR, 2004).
- 7 'Uribe and Garcia Break Negotiations Between the EU and the CAN', RECALCA, Bogota, 16 September 2009.
- 8 The most controversial was the inclusion of five years data exclusivity in addition to 20-year patent protection and provisions on traditional knowledge and biodiversity (see <http://www.ustr.gov/trade-agreements/free-trade-agreements/peru-tpa/final-text> (accessed 1 December 2011)).
- 9 'EU, Andean Nations Struggle Forward to Trade Talks', *Bridges Weekly Trade News Digest*, 13(6).
- 10 'Peru no aceptará exigencia de UE sobre medicamentos', in the newsletter *Comunidad Andina*, 11 February 2009. See also Health Action International (2011).
- 11 Constitución 2008, Asamblea constituyente, Ecuador. In particular Article 421, p. 184.
- 12 <http://store.businessmonitor.com/article/345335> (accessed 10 March 2011).

- 13 It is said that international pressure, in particular from Peru, did play a large role in this political decision (Interviews Ecuador 5 and 6).
- 14 Ecuamex, 'Presidente de la República cuestiona a funcionarios de Cancillería', 17 November 2009.
- 15 This is largely due to the fact that the US, for historical reasons, is very unpopular in the region, whereas Europe is perceived as the lesser evil.
- 16 Proposals of the EU in 2009 included the use of Supplementary Protection Certificates which would in effect be similar to patent extension, as well as extending data exclusivity to 10 or 11 years. Both were successfully denied by Peru and Colombia, although some controversy still exists over inclusion of biological products, as well as over some of the enforcement provisions that remained in the text (Health Action International, 2011).

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