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## Coercion through graduation: Explaining the EU-Ecuador Free Trade Agreement

**\*Very first draft, please do not quote.\***

*“The nation can be certain that what we negotiated is a commercial agreement and not a Free Trade Agreement (...), with absolute accountability, without stepping over any red lines, protecting our small businesses, our industry, [as well as] protecting our farmers” (Rafael Correa in La República 2014, translation mine).*

*“[T]he possibility that our country may be excluded from GSP+ is an element of pressure by the European Commission [...] so that Ecuador shall join the FTA concluded by the EU, Colombia and Peru as the only alternative [...]” (Yépez Lasso 2011a, translation mine).*

### **Introduction**

The above quote from Ecuador’s president Rafael Correa stands in stark contrast to the one below. Correa’s statement was made in public on October 4<sup>th</sup> 2014 during his weekly Saturday broadcast to the nation, reaching a large part of the Ecuadorean population through its diffusion across a wide array of media outlets. The second one on the other hand is an excerpt from a leaked diplomatic cable to Ecuador’s Deputy Foreign Minister Kintto Lucas. In the cable dated 22 November 2011, Ecuador’s ambassador to the EU Fernando Yépez Lasso draws rather strong conclusions from a meeting with Peter Thompson, DG Trade’s director of Trade and Development.

It is clear from the outset that the contents of both messages are incompatible, with one emphasizing the consensual and equitable nature of a “commercial” agreement between the EU and Ecuador, with the other one outlining a situation which left Ecuador with little choice but to enter into a Free Trade Agreement (FTA) with the EU.

The EU’s negotiations with Ecuador need to be seen in the context of the EU’s wider relations with Latin America. When the European Union began its negotiations for a so called Interregional Association Agreement (AA) with the Andean Community of Nations (CAN), a regional grouping of Bolivia, Colombia, Ecuador and Peru in the Andean region, the initiative was applauded by policy-makers and researchers alike as a way to support regional integration schemes. After all, the EU was advocating for the spread of its own model of integration through the support of existing regional organisations in Latin America.

Indeed, such an Association Agreement would have strengthened the EU’s ties with the region in a number of policy areas, and not just in the realm of trade. The ultimate outcome of the above negotiation with the regional grouping, however, was a mere FTA with Colombia and Peru only. Both Bolivia and Ecuador, CAN’s two other members had decided to end the negotiations, and the consideration of other policy areas was dropped from the agreement. By covering only one policy and some of CAN’s member states, the negotiation outcome hence diverged quite considerably from the EU’s initial aim for the support of regional integration.

This outcome can be attributed mainly to an ideological divide within CAN, with the organisation’s other two members, Bolivia and Ecuador being ideologically opposed to economic liberalism as exemplified by FTAs. Ecuador’s president Rafael Correa—with the support of many of the country’s civil society actors—declared as late as January 2014 that he would not support an FTA with the EU. It is hence puzzling that little less than half a year later, in the fall of 2014, such an agreement for Ecuador’s accession to the existing agreement with Peru and Colombia was

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reached. In fact, preliminary talks had already started in 2013, with the official beginning in January 2014 taking place in parallel to Correa's claims that he would not agree to an FTA with the EU. Ultimately negotiations were successfully concluded by July 17<sup>th</sup> of 2014 (European Commission 2014b).

While Correa has decided to describe the negotiations process as well as the deal reached as being for a "commercial" agreement, rather than an FTA, a press statement from the European Commission's DG Trade on the successful conclusion of negotiations comes to an entirely different conclusion:

*"A number of limited adjustments to the text of the agreement were agreed to cater for Ecuador's accession but without resulting in any significant change of the ambition and scope of the Agreement between the EU and Colombia/Peru." (European Commission 2014b)*

Indeed, the deal reached between the EU and Ecuador ultimately mainly provides for cosmetic changes to the existing treaty that will allow for Ecuador's accession to it. Given that Ecuador will only be joining an existing agreement, rather than being part of the original negotiations, its position to demand changes has arguably worsened considerably.

It hence has to be stated that Ecuador has, in fact, joined an FTA, rather than some other kind of international agreement. This is further corroborated by the fact that the agreement has since been a major factor in the social unrest that has shaken the country over the past year (Hill 2015), with protesters fearing the negative economic effects of the FTA.

Given the country's previous opposition to the negotiations for the very same agreement that it has now agreed to join, and the worse negotiation position that it has found itself in, it becomes primordial to understand the reasons behind the country's decision to do so. The paper is hence concerned with the question as to how one can explain the conclusion of an FTA between the EU and Ecuador, despite the on-going ideological opposition of the country's government to free trade with the European Union. While a perspective that focuses on the dynamics within Ecuador's politics and bureaucracy can be taken, this paper will mainly be concerned with external reasons that have led to Ecuador's change of opinion on the matter.

It is in this context that the power of the EU in the realm of trade needs to be considered in detail. Given the importance of the European market, the EU can have an important influence on the trade policy of other states, and can be considered as a "trade power" (Meunier and Nicolaïdis 2011). Departing from this perspective, the EU's influence through trade on Ecuador will be analysed in this paper.

It will be argued overall that Ecuador's imminent graduation from the EU's Generalised System of preferences (GSP) scheme as of January 1<sup>st</sup> 2015 left the country in a difficult situation with little choice but to concede to the EU's previous demand to sign on to the existing agreement. In essence, it was the possibility of Ecuador's loss of EU market access that opened a policy space for the Commission's negotiators to put Ecuador's unconditional accession to the previous FTA with Colombia and Peru back on the table.

By de facto extending Ecuador's GSP+ preferences until the new agreement would enter into force, the EU furthermore demonstrated the use of a tactic of "carrots and sticks", as well as illustrating that its reformed GSP scheme is not as technical in nature as often times portrayed.

The paper hence aims to contribute to our understanding of the political consequences of the reformed GSP programme, as well as to a broader conceptualisation of the EU's trade power vis-à-vis third countries. Lastly, it weakens the widely-held view of the purely technical nature of the EU's GSP scheme.

The remainder of this paper is organised as follows: The next section considers some of the relevant literature on the EU as a normative or trade power. The following section of the paper then describes the broader context of the EU's interregionalism and trade policy in Latin America, before discussing the EU's influence on Ecuador's decision to join the existing FTA with Colombia and Peru. Lastly, alternative explanations will be considered.

### **The EU as a normative or trade power**

The discussion of the EU's ties with Latin America regional organisations has been anchored in two different strands of literature, one emphasizing the EU's role as a normative actor aiming to promote its own model of regional integration, while another one emphasizes the EU's role as a trade power aiming to primarily achieve its economic preferences.

Tanja Börzel and Thomas Risse (2015; 2009) discuss the EU's role as a proponent of regional integration schemes, thereby seeking "to diffuse its own model of democracy, social welfare and regional integration through partnership agreements and political dialogue" (2009, 22). While being more cautious as to the importance of regionalism for the EU, Frederik Söderbaum *et al.* (2005) have argued that in an attempt to develop its distinct identity as an international actor, the EU has aimed to spread its own model of development. In this sense, the EU has hence aimed to legitimize its own existence by bolstering similar organisations across the globe through engagement with them. Looking at one particular such interaction, Alfredo Valladão asserts that with regards to the EU's policy towards one of Latin America's regional blocs, Mercosur, the "EU had an almost missionary drive to diffuse its own 'unique experience'" (2015, 121).

These accounts depart from a normative assertion as to the superiority of the EU's model of integration and development, the spread of which will not only allow other regions to prosper, but equally bolster the standing of the EU itself as a superior form of cooperation amongst states. From this perspective it is the prospective strengthening of regionalism in itself that has driven the EU's engagement with regional organisations across the globe.

However, other scholars have made a different case as to the primary driving force of the EU's policy towards the regions under scrutiny. This is mainly anchored in the EU's unique position as a commercial superpower, being the world's biggest market. Whereas the EU has often times been described as being an inadvertent power through the sheer size of its economy, Meunier and Nikolaïdis stipulated in 2006 that the EU was not only a trade power by accident, but could equally be conceptualised as "power *through* trade" (Meunier and Nikolaïdis 2006, 907). This is due to it being able to use its trade policy to influence domestic policies of its trade partners. The same authors describe the EU as being "conflicted" when it comes to the exercise of this power, on the one hand defending its genuine economic interests, while equally attempting to use this power to spread certain norms.

Such debates have recently been revived with the likes of the TTIP and similar trade negotiations. The EU's trade policy has hence seen more scrutiny over past years than has ever been the case. Research critical of the EU's trade policy precedes these debates, however, and has increasingly been concerned with issues of social justice or sustainability that arise out of the promotion of the EU's commercial interests abroad (see for instance Ford 2013).

When trying to assess whether it is the normative drive to strengthen regionalism, or the exercise of the EU's genuine economic interests that have driven the EU's policy towards regions in general and those in Latin America in particular, authors have come to be increasingly critical of the normative perspective outlined above.

This is primarily due to the EU's increasing development of bilateral ties as can be seen in the case of the FTA with Colombia and Peru. While Hardacre and Smith (2009) argue that the EU hasn't given up its promotion of interregionalism overall, it is the weaknesses of regional organisations outside of Europe have nevertheless forced the EU to revert to bilateral approaches if it is to fulfil any of its policy goals. While Sébastien Santander (2010) has noted that the weakness of the EU's interregionalism policy in Latin America is at least partially due to external factors, he also points to EU-internal divisions that have weakened the effectiveness of the EU's policy in the case of Mercosur. Offering a more general assessment of the EU's interregional policy for Latin America as a whole, María García has argued that with respect to the EU's negotiations in Latin America, "its transformative aspirations fell short of its hopes" and that "the reality of its prevailing economic interests and a changing world curtailed its ambitions" (García 2012, 16).

By looking at the specific case of the EU's negotiations with Ecuador, this paper will further elaborate on the fact that the EU's pursuit of an interregionalist agenda are not necessarily at odds with the promotion of its economic interests. Rather, much like Meunier and Nicolaïdis have argued, it will provide further evidence for the EU's active role, making use of its power *through* trade.

### **The Ecuador-EU FTA in context**

Ecuador's negotiations for a Free Trade Agreement with the EU need to be seen in the larger context of the EU's interregionalism policy towards Latin America. The region has generally been lower on the EU's foreign policy agenda than other areas such as its immediate neighbourhood. However, the return of political stability and economic growth across the continent during the 1990s, alongside Latin American attempts for regional integration sparked European interest in the region. Since the mid-1990s the EU has aimed to deepen the relationship with the region, focusing on the development of interregional ties. Developing a "one-size fits all approach" (T. Börzel and Risse 2009, 10), the EU has aimed at applying this goal uniformly across the different subregional organizations by progressively updating its ties with such actors.

In the 2000s LAC's economic boom, the growing importance of Brazil, as well as the failure of the Doha Development Round have created further incentives for establishing a closer trade integration between the EU and the continent. This led the EU to open negotiations for comprehensive Association Agreements with a number of Latin American partners. Such agreements, aside from an important Free Trade Agreement component equally serve to restructure development cooperation, as well as the political dialogues between the partner entities. At the same time the EU has rhetorically established two "strategic partnerships" with Mexico and Brazil, further illustrating the continued European economic and political interest in the region. Negotiations for Association Agreements began with a first agreement with Mexico at the end of the 1990s, followed by a bilateral agreement with Chile and a so far unsuccessful negotiation with Mercosur<sup>2</sup>.

In a second wave the EU began negotiating with both the Andean Community of Nations, of which Ecuador is a part, as well as the Central American Common Market. Ultimately a full-blown Association Agreement was only reached in the latter case, while the process to reach a Free Trade Agreement with some of CAN's members was nevertheless maintained in parallel even moving into the EU's ratification phase. Before outlining the negotiations with the Andean Community that provide the background for the EU's negotiations with Ecuador, I will briefly outline those with Central America. The success of the latter can largely be attributed to the EU's continued insistence on bloc-to-bloc, rather than bilateral negotiations.

#### *Successful EU-Central America negotiations*

As is the case in any major international negotiations, were many small obstacles and disagreements arising from bargaining over elements from the trade chapter of the proposed agreement (the political and development provisions contained in any Association Agreement have never been significant source of disagreement). However, three developments were particularly susceptible to derail the negotiations: Nicaragua's decision to walk away from the negotiation table, Costa Rican insistence for bilateral negotiations, as well as the Honduran coup d'état in June 2009.

In office since January 2007, the Nicaraguan *sandinista* president Daniel Ortega chose to align himself closely with other Left-wing governed countries in the region and formally joined the Venezuelan-sponsored *Bolivarian Alliance for the Peoples of Our America* (ALBA), as was the case for Bolivia and Ecuador in the Andean region. However, EU negotiations only became concerned in

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<sup>2</sup> Its membership consists of Argentina, Brazil, Paraguay, Uruguay, as well as Venezuela (which still has not fully joined).

late 2008 when the country undertook a number of steps to deepen its ties with Russia. At the same time there were concerns over the government's human rights and political freedoms record (Caroit 2008).

However, in the end it was Nicaragua—rather than the European side—that left the negotiations in April 2009. The EU then decided to suspend future talks and made it clear that negotiations would only continue on a region-to-region basis (Gutiérrez Wa-chong 2009) and not bilaterally as some Central American countries envisaged.

The Honduran coup d'état was another important period in the negotiations; and the EU's immediate reaction was to cancel a negotiation round foreseen for July 2009 and to end political contacts to the country (Agence Europe 2009b), as made evident by a withdrawal of the EU's ambassadors to the country. In any case, when a political settlement based on the upcoming elections in November of 2009 was found, the EU was quick to embrace the agreement (Agence Europe 2009a) and slowly returned to *realpolitik* with the country and in negotiations for the Association Agreement. Despite some on-going concerns negotiations officially resumed in early 2010, with their conclusion announced at the EU-Latin America summit of May in that year.

Credit for the success of these negotiations goes to the EU's continued insistence on an interregional, rather than bilateral approach, despite calls for special treatment by countries like Costa Rica (Gutiérrez Wa-chong 2008, 2009), as well as the diplomatic skills of the Spanish Council presidency in the first half of 2010 (Trueb 2012).

#### *The different experience of the Andean region*

This experience contrasts with larger difficulties to reach an agreement in the case of the Andean Community that can ultimately be attributed to insurmountable internal political differences amongst the two groups of member states.

The election of Evo Morales in Bolivia in 2006 and that of Rafael Correa in Ecuador in 2007, after which both countries have furthermore joined ALBA, led to a significant reorientation of these countries policies. This set up a significant division with Colombia and Peru, which have seen a succession of governments whose positions are much closer to liberal agendas. Economically speaking, these countries have advocated for Washington-consensus style reforms and have actively promoted aggressive free trade agendas. With such important political divisions present within the Andean region the coherence of the Andean Community weakened considerably.

While initial negotiations with the organisation were somewhat successful, by the time that negotiations on the Association Agreement were scheduled to enter their 4th round in 2008, these had become increasingly difficult (European Commission 2009), and EU officials started to become impatient (Haubrich Seco 2011, 13) due to the limited progress. Colombia and Peru had remained sceptical of the possibility for a regional deal throughout, with Peruvian president Alan García publicly asking the EU for bilateral negotiations (Noriega 2007) so as not to punish the country for the political position of some other Andean countries.

The EU's initial response was to offer a somewhat more flexible format of negotiations, that would take into account some of the economic (and indirectly political) differences between the different Andean Community countries. This was done primarily to alleviate concerns in ALBA-affiliated Bolivia and Ecuador over opening up their economies to the European market (Phillips 2008b). The new approach would have enabled a differentiated treatment of the different CAN member states, in what could be called a two-speed trade agreement.

In June of 2008, however, several Latin American countries voiced their concerns over the so-called EU returns directive, fearing a massive expulsion of their citizens from the EU. Of the CAN members, Bolivia and Ecuador used the issue to threaten to bloc the new round of CAN

negotiations with the EU (Phillips 2008a, 2008c)<sup>3</sup>. In the end, however, the scheduled negotiation round was cancelled by the EU's External Relations Commissioner Benita Ferrero-Waldner on June 30 2008, specifically citing the internal conflicts within the Andean Community (Fritz 2010).

The EU's decision to suspend negotiations could be interpreted at the time as a move to force CAN's Member States to come to an internal agreement so as to support the region's political and economic integration in line with the EU's goals. When Benita Ferrero-Waldner announced that the negotiations would continue in November 2008, however, a major policy change on the European side began to become apparent. The EU announced that negotiations for a Free Trade Agreement would go ahead with Ecuador, Peru and Colombia only, dropping the aim of reaching a region-to-region agreement, and eliminating the additional dialogue and cooperation components to be found in Association Agreements (Fritz 2010). This is in stark contrast to declarations from May of that year, arguing that the EU would not give in to pressure from Peru and Colombia to negotiate bilaterally (Reuters 2008).

Officially the decision was presented as being compatible with the EU's aim of regional integration, offering an "opportunity to conclude a trade agreement with a regional perspective" (European Commission 2009, 4) upon request of Colombia and Peru. A study commissioned by the European Parliament prior to the ratification of the two FTAs (Stevens et al. 2012) acknowledges the potential to weaken CAN integration, while underlining the importance of political disagreements within CAN for this decision. Contrary to the European Commission's official position, the bilateral FTA negotiations with Colombia and Peru have to be interpreted as an important precedent in which trade concerns became more important than the political goals of the EU's interregionalism policy.

This can perhaps best be understood when taking into account that the United States had negotiated FTAs with both countries in parallel, the entry of which would have left European companies facing worse terms of trade than their American counterparts. Before the return to negotiations, Colombia and Peru furthermore heavily lobbied the European Commission to continue FTA negotiations with them bilaterally (Agence Europe 2008; as well as several interviews). As mentioned above, both countries had concluded FTAs with the United States beforehand that were due to come into force in 2009 and 2012 respectively. Some interviewees cautioned that these countries could hence use the EU's fear to lose market access to their advantage, hence contributing to the EU's change of position.

Ultimately it was Jorge Valdez, Peru's Ambassador to the EU who managed to convince the Commission that under the Andean Community's decision 598<sup>4</sup> it was perfectly permissible for its member states to negotiate Free Trade Agreements bilaterally, hence at least publically alleviating the Commission's fears of negatively impacting integration in the Andean region.

While Bolivia did not participate in the process from that point on, the country was nevertheless officially invited to the FTA negotiations by the EU (Willis 2009). The Bolivian government stated later that it had never voluntarily withdrawn from the negotiations, then trying to bloc the resumed negotiation process with an unsuccessful CAN-internal judicial measure (Fritz 2010).

Ecuador only withdrew later on in the process, in July 2009 citing the on-going WTO banana dispute with the EU (Fritz 2010). While this was the official answer, its withdrawal was mainly related to its growing unease about FTAs and the country's on-going rapprochement with Venezuela and ALBA.

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<sup>3</sup> An interviewee cautions, this was merely an excuse for the Bolivian side to slow down negotiations as the government under Evo Morales was still unsure as to its own preferences in these negotiations.

<sup>4</sup> The decision that allowed for bilateral rather than Andean Community negotiations with the United States.

Despite continuing European concerns over the human rights situation in Colombia (Willis 2010), the remaining bilateral negotiations led to the eventual conclusion of the joint FTA with Colombia and Peru, albeit with the symbolic introduction of a “human rights roadmap” for Colombia by the European Parliament. At the same time in 2010 the Association Agreement with Central America was concluded, with these agreements coming into provisional effect in 2013.

The negotiations with Central America have shown that the EU was able to assert pressure on Central America to conclude a region-to-region agreement with the EU despite important internal difficulties; and thereby strengthening Central American integration in itself in line with the EU's stated policy goals. This demonstrates the trade power that the EU can wield in a region that is dependent on exporting freely to the European market. This European trade power will be outlined in even more detail for the case of negotiations with Ecuador below.

When looking at the negotiations with the Andean Community the EU ultimately gave in to the lobbying of Colombia and Peru and the imminent threat of worsening terms of trade to the United States. Nevertheless, the continuity of the regional option in the negotiation briefs and the FTA with Colombia and Peru itself opened up the door for the EU to ultimately achieve a policy outcome closer to its initial aims with Ecuador's later accession to the agreement.

### **Ecuador's negotiations with the EU**

The ultimate return of Ecuador to the negotiation table and the successful conclusion of an agreement on its proposed accession to the EU-Colombia/Peru FTA appears very surprising at first sight. This is not only limited to Ecuador's decision to return to negotiations, but equally by the short duration between their opening in January of 2014, and their conclusion in July. Given the complex nature of FTAs, and the experience of other EU free trade negotiations, this is by all means exceptional.

Understanding Ecuador's decision, as well as the speed with which the negotiations were concluded necessitates taking into account a number of factors. Ultimately, however, it was the EU's clever use of different external policy instruments that determined Ecuador's willingness to negotiate and the timeframe within which these occurred.

#### *The economic case*

While Ecuador's ideological opposition to free trade with the EU has been elaborated on in detail above, it is now necessary to take a glance at Ecuador's economic ties with the European Union. While neither Ecuador, or indeed the entire Andean region combined are very significant trade partners from the EU's perspective, this is not the case when looking at Ecuador. In 2014 the EU was the country's second most important recipient for its goods exports, after the United States. These goods exports amounted to a total of 2.2 billion euros in 2014, mainly in the agricultural realm, with the country additionally exporting services to a total value of 400 million euros (DG Trade 2015).

These exports were facilitated in large parts through the country being a member of the EU's Generalised System of Preferences Scheme (GSP), which is an exception to the WTO's reciprocal trade liberalisation requirements. When the EU reformed its GSP scheme in the wake of the Lisbon treaty, to be applied as of January 1<sup>st</sup> 2014, the country initially remained on the list of recipients despite a significant overall reduction in the number of countries being eligible for it (DG Trade 2012). Having signed and implemented a certain number of international labour and human rights conventions, Ecuador was equally one of only 10 countries that were eligible to join the reformed more advanced GSP+ scheme (after already having benefitted from its previous iteration) (DG Trade 2013). Its GSP+ status meant that in 2013 the country's exports to the EU were taxed at 253 million dollars, as opposed to 606 million in absence of GSP and GSP+ (Enríquez 2014b).

Despite the lack of a Free Trade Agreement with the EU, Ecuador hence significantly benefitted from preferential access to the EU's market under this scheme, without having to

reciprocally open up its market. This relative comfort of being able to trade with the EU relatively freely added an important economic element to the country's reluctance to join negotiations with the EU. As a matter of fact, as multiple interviewees have explained, it was due to the Andean region's countries' initial eligibility for GSP that EU officials were initially surprised when the Andean Community originally approached the EU about the potential for an FTA in the early 2000s.

Ecuador's comfortable situation was due to change, however, as the country had been classified as an upper-middle income by the World Bank in 2011, 2012 and 2013. This meant that under the EU's technical GSP rules it would lose eligibility to both schemes one year later, at the end of 2014 (European Commission 2013). This immediately put a large amount of Ecuador's exports to the EU at threat and hence risked to have a severe impact on the country's economy.

The problem was exacerbated by the provisional application of the EU's FTA with Peru and Colombia as of March and August of 2013 respectively. Additionally, the trade chapter of the EU's agreement with the Central American equally provisionally entered into force for its member countries throughout 2013. This meant that these countries, which share partially similar (agricultural) export patterns to the EU, would not only continue to be able to export to the European market at GSP rates, but at even lower tariffs for some kinds of exports.

As one interviewee noted, Ecuador was facing not one, but two interrelated problems at the same time: On the one hand the country was under threat to lose both its GSP and GSP+ preferences without any viable alternative in sight, putting a large part of the country's external trade with the EU at risk, hence potentially having a significantly negative economic impact on the country as a whole. Secondly, the imminent provisional entry into force of the EU's FTA with Colombia and Peru created a risk of trade diversion away from Ecuador. This was mainly due to the similar nature of exports from those countries to the European market. For Ecuador the decision to want to negotiate with the EU at this point hence appears clear:

From an economic standpoint, the country had little choice but to entertain negotiations that would allow the country to secure its exports to the EU were it not to suffer serious economic problems in the short term.

From the EU's perspective the end of the preferences extended to Ecuador do appear to be a mere technical exercise based on the World Bank's reclassification of the country at first. Furthermore, the economic case for the EU to offer Ecuador a replacement scheme is not straightforward. Whereas the EU's willingness to conclude the free trade negotiations with Colombia and Peru could be attributed to a large extent to parallel negotiations between those countries and the United States (Garcia 2013, 532–3), with the EU fearing a loss of market access, similar conditions were not present here.

Ecuador does not have an existing FTA with the United States, similarly having aborted negotiations citing their opposition to FTAs. When talking about negotiations with the EU, be it in the initial round of negotiations or once negotiations had resumed in 2014, the country's government has furthermore not stopped to emphasize that negotiations with the EU were for a different kind of agreement of a "commercial" nature as mentioned previously.

The absence of an FTA with the US meant that there was no risk of European market access as was present when negotiating both with Colombia and Peru. Furthermore, as some interviewees stated, this meant that EU negotiators were sceptical as to Ecuador's capacity to negotiate and implement an FTA. This would have been different had the country already undergone the experience of negotiating with the United States. Lastly, the EU's exports to Ecuador and its export potential to the country hardly make it a top priority for FTA negotiations.

It is hence only a political, rather than economic perspective that can explain the EU's willingness to negotiate with Ecuador.

*Carrots and sticks*

It has already been established that the economic case was largely absent for the EU to negotiate with Ecuador individually. Furthermore, trade negotiations are generally considered administratively costly for the EU, as their complexity binds a significant amounts of scarce human resources across the Commission. It hence seems unlikely that the EU would have offered Ecuador an FTA on its own to replace its market access under the GSP programme.

However, the context of the existing FTA allowed for a relatively simple way to allow for Ecuador's accession, all while upholding the claims to the promotion of interregional ties. The Commission's negotiation briefs that had been modified to allow for bilateral negotiations included provisions that would allow for FTA negotiations with all of CAN's members, without having to restart the process from scratch within the EU's bureaucratic apparatus. Furthermore the FTA in itself emphasizes the potential for expansion to all of the Andean Community states (see Official Journal of the European Union 2012):

Its article 10 emphasizes the importance of the Andean region's regional integration process, stressing that the FTA is not meant to weaken regional integration. Article 329 furthermore outlines a relatively straightforward process under which the remaining Andean countries can join the existing agreement. These provision foresee that it is the EU's sole responsibility to undertake such negotiations, which are limited by treaty to technical elements such as tariff schedules. Only once such negotiations have concluded do these need to be approved by representatives from all of the FTA's members in its dedicated so called trade committee

Whereas Ecuador would have been able to shape the shape of the trade agreement in itself had it remained part of the initial negotiations, the possibilities to alter the existing agreement were hence much more constrained once the country decided to negotiate for its accession to the existing deal.

Overall, it was Ecuador's loss of GSP access that proved an opportunity for the European Commission to get closer to its initial policy goal of reaching an agreement with the Andean Community (while obviously still excluding Bolivia), without having to resort to a costly negotiation with Ecuador that would have to begin from scratch. A tactic of carrots and sticks together with the weakened Ecuadorean negotiation position is what ultimately brought Ecuador into the existing agreement.

The first element to consider is Ecuador's loss of GSP preferences. While the criteria used to determine GSP eligibility under the EU's reformed scheme outlined above are seemingly objective at first glance, a look at the debates that took place when the reform was being decided on in 2011 and 2012 reveals that there was some controversy related to these. A usual row over offering market access to former colonies of some EU member states aside, it was the usage of the World Bank classification that came under some scrutiny.

A working document for the European Parliament's Committee on International Trade acknowledges some of the objectivity problems related to the World Bank's classification, while equally pointing out that for cases where the EU is aiming for a Free Trade Agreements with countries about to lose access to GSP "this proposal could of course lead to increased to leverage for the EU in these negotiations" (Fjellner 2011, 3). Similarly, some of the EU officials interviewed for this project have noted the political nature of the criteria used in GSP's previous iteration, which allowed relatively affluent countries like Argentina or Saudi Arabia to benefit from the scheme.

That the GSP reform was used as a means of pressure by the EU even before it was adopted can be seen when looking at a number of leaked diplomatic cables from Ecuador's embassy to the EU from 2011 and 2012.

On 22 November 2011 the Ecuadorean Vice-Foreign minister for Commercial Affairs Francisco Rivadeneira was informed of the EU's intent to reform its GSP and GSP+ schemes by DG Trade official Peter Thompson, revealing that if the reform went ahead as planned Ecuador would lose its preferential access to the EU's market. Given the general nature of the proposed

criteria to determine GSP status, the same official equally pointed out that chances of gaining an exception were rather slim and that the country should hence aim for a speedy accession to the existing FTA with Colombia and Peru (Yépez Lasso 2011a).

This take-it-or-leave-it offer was immediately accompanied by the potential of a carrot, namely the possible extension of GSP preferences once an agreement had been signed so that no gap would emerge between the country's loss of GSP status and its accession to the existing FTA. The definitive nature of the EU's offer could be seen in a number of meetings between Ecuador's ambassador to the EU and a variety of EU officials on the matter. While the EU officials in question showed different levels of understanding for Ecuador's position, they nevertheless all emphasized that Ecuador had only the chance of joining the existing FTA, or risk losing preferential access to the European market altogether (Yépez Lasso 2011b). Given the previous failure of concluding an agreement with the EU, some officials equally insisted that a formal relaunch of negotiations would have to be preceded by a declaration from Ecuador's president Correa stating his favourable position towards their speedy conclusion (Yépez Lasso 2012c).

When asked about the rather strong position of the EU on the matter several DG Trade officials interviewed for this project related to me that the end of Ecuador's GSP status was merely coincidental. However, they equally acknowledged that the country's loss of GSP preference proved to be the perfect opportunity to invite the country back to the negotiation table.

At first Ecuador seems to have used a two-tier strategy in reaction to these revelations. While undertaking preliminary talks with the EU that could eventually lead to the relaunch of negotiations, Ecuador's diplomatic representatives seem to have equally aimed to lobby EU member states and the EP so as to introduce a possibility for middle-income economies (such as Ecuador) to continue benefitting from GSP+ if they kept fulfilling all political conditions beyond the initial deadline (Yépez Lasso 2012b). Given that this proved to be unsuccessful in the end, the country was left with little choice but to join the negotiations or lose preferential access to the European market.

The limited nature of Ecuador's influence over the agreement it would eventually join can be seen in the actual negotiations phase. As already mentioned, the official phase of negotiations was very speedy, which can be explained in part by time playing in the EU's hand as Ecuador was facing the deadline of losing GSP preferences as of the end of December 2014, but equally by the limited number of adjustments that the EU was willing and able to offer to Ecuador. Ultimately substantial negotiations were limited to tariff schedules and lines (Enríquez 2014a, 2014c), rather than substantial changes to the nature of the agreement.

Nevertheless, these changes also empowered Ecuador's neighbours Colombia and Peru as these will have to agree before the country can join the existing agreement. Given the nature of the accession process, these were presented with the outcome, and presently their approval is still pending.

For both countries a number of issues still stand in the way of their accord. While Peru submitted a lengthy list of questions to the Commission as to the meaning of certain renegotiated passages, Colombia has decided to take issue with two elements in particular, as was revealed in a number of interviews.

On the one hand, the renegotiation introduced changes to the agreement's preamble, which now not only makes reference to the differences in the level of economic and social development of the signatory countries, but equally the remainder of the Andean region. While this Ecuadorean inclusion hence makes symbolic reference to its allies Bolivia and Venezuela, the inclusion has no true implications. For Colombia the matter is procedural as the inclusion of Ecuador into the agreement was meant to only allow for technical changes, such as adding the country's name where necessary and negotiating relevant tariff schedules, rather than substantial changes.

A second alteration to the agreement has direct economic implications. Once in force the agreement's article 78 on the conformity of products with national regulations will include a provision that would signify significantly easier market access for European products to the Ecuadorean market. In essence, European companies will be able to declare that their products fulfil all relevant EU standards, and thereby be considered to equally fulfil the relevant Ecuadorean provisions (European Commission 2014a, Article 78). This could have important economic implications for both Colombia and Peru, as it may make access of their products to the Ecuadorean market more difficult, thus creating the risk of trade diversion.

Nonetheless, despite the cosmetic change added to the agreement's preamble that symbolically recognises some of Ecuador's concerns, the country has only been allowed little concessions concerning the tariff schedule, while having to shoulder the additional burden of having to accept European declarations of conformity.

This relatively harsh negotiation outcome was nevertheless flanked by the prospect of significant carrots that the country would receive in case of agreeing to accede to the existing agreement. Already when informing Ecuador about the proposed changes to GSP the EU floated the possibility that GSP preferences could see an extension through a piece of bridging legislation in case the country agreed to join the existing FTA. The extension would then provide a bridge until said accession to the FTA could enter into force. For Ecuador this would mean that its trade terms with the EU would not worsen in the meantime. However, the EU's conditions to discuss such a bridging measure were clear from the outset and dependent on the country's signature and ratification process of its accession to the FTA, as can be seen in some of the leaked diplomatic cables (Yépez Lasso 2011a, 2012a) or in public declarations from EU diplomats in Quito, who were keen to stress that measures to prevent the country's loss of GSP status would be studied once the negotiations were concluded (Enríquez 2014c).

The proposal for the bridging legislation, while unique was not a completely novel idea. Its political significance should nevertheless not be underestimated. While the Committee on International Trade floated the idea of an automatic extension of GSP preferences in case of a concluded but not yet applied FTA at the time the GSP reform was debated (Fjellner 2012, 9), this did not find its way into the final piece of legislation. Furthermore, the end of negotiations by July 2014 only meant that any possible bridging legislation would have to pass through the EU's legislative process more rapidly than is the norm, so that it could apply from January 2015 onwards. Ultimately the legislative act was introduced by the Commission at the beginning of October, with the votes taking place in the Council and Parliament on the same day in mid-December, leaving less than two and a half months for the proposal to pass through the EU's legislative process.

So as not to ease pressure on ratification by the country, the proposal for the bridging legislation continued to contain a mix of carrots and sticks. While offering Ecuador the much-needed GSP+ extension, it made the country's continued eligibility dependent on—amongst other things—“Ecuador conducting continuous efforts to sign and ratify the Protocol of Accession [to the FTA]” (European Union 2014), thus introducing conditionality, in addition to a maximum timeframe of application of 2 years.

Several interviews with officials in the European Parliament and member state representatives have revealed that this offer was not uncontroversial inside the EU. On the one hand, some feared that this would create a precedent that would hollow out the technical nature of the EU's GSP scheme, while running counter to the EU's WTO obligations<sup>5</sup>. On the other hand, some MEPs feared a loss of influence given that the Commission alone would determine whether to suspend the preferences<sup>6</sup>, and that the bridging legislation could lead to a problem

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<sup>5</sup> The legality of GSP schemes depends in large parts on the objective nature of the criteria used to determine eligibility.

<sup>6</sup> This was agreed to despite the European Parliament's legal services questioning the legality of such a formulation.

where different Andean countries were treated differently, possibly weakening the EU's human rights conditionality<sup>7</sup>.

The existence of a tension over the problematic nature of the EU's use of its trade position for its own benefit equally became clear in parliament, where the legislative proposal's rapporteur Helmut Scholz from the GUE/NGL group mentioned the dilemma that Ecuador was finding itself in, even anticipating some of the upheaval in civil society that would take place over the course of 2015 (European Parliament 2014).

In any case multiple interviewees reported heavy Ecuadorean lobbying ahead of the relevant legislative decisions. This was not only limited to Ecuador's diplomatic representation, but equally done through larger pro-trade networks. Ultimately the bridging legislation passed the EU's legislative process in time, and Ecuador's GSP+ preferences were upheld beyond the 2015 cut-off date.

Shortly after the conclusion of negotiations the EU's Commissioner for Development Andris Piebalgs visited the region and announced that Ecuador would continue to benefit from further EU development funding between 2014 and 2017 to the amount of 67 million euros (European Commission 2014c) despite the EU's overall move to end bilateral cooperation along the lines that the country received previously. While the link between both is more difficult to establish than for the above-mentioned carrots, evidence from the EU's negotiations with Peru and Ecuador shows that DG DevCo has shifted its development aid to those countries in the wake of their signature of the FTA with the EU.

Ultimately the EU has hence made significant use of its trade power to influence Ecuador through a strategy of carrots and sticks into its accession to the existing FTA with Colombia and Ecuador. While it would have been unlikely for the EU to show any interest in the country's loss of GSP and GSP+ status after the cut-off in absence of previous FTA negotiations with the country, the precedent gave the European Commission the necessary policy window to add one more of the Andean Community countries to an existing trade agreement—hence getting closer to the initial aim of reaching a deal with all of the Andean Community's countries. Indeed, the communications between EU officials and Ecuador even ahead of the EU's reform of its GSP system emphasize further GSP itself contains an important political, rather than technical element.

### **Alternative explanations**

While the case for the EU's use of trade power outlined above is compelling, alternative explanations nevertheless need to be considered. Where the above explanation emphasizes the EU's power in giving Ecuador little choice but to join an existing FTA in line with the EU's policy preferences, I will now evaluate how much Ecuador's decision was driven by a genuine Ecuadorean policy shift that occurred in absence of the EU's policy.

Ecuador's decision to entertain negotiations has been described as a "pragmatic turn" in Ecuadorean politics that has taken place since 2013, also taking into account the country's decision to return to international markets to fund the country's debt (El Comercio 2014).

This does not explain the continued difference between the government's rhetoric and political action in the realm of trade policy. Rather, it is evidence of important internal political divisions within Ecuador's bureaucracy that further weakened the country's negotiation position vis-à-vis the EU.

Commercial aspects of Ecuador's foreign policy used to be subject to the control of the country's foreign ministry. With the foreign minister Ricardo Patiño (El Comercio 2014) being one of the main ideologists of Ecuador's concept for a socialist government, his opposition to Free Trade Agreements was natural. This created an internal tension with the Deputy Foreign

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<sup>7</sup> The concern was primarily related to the fact that the EP had insisted on creating a human rights "road map" in the case of Colombia, but not in the case of Ecuador.

Minister responsible for Commercial policy, Francisco Rivadeneira, who is representative of a more pragmatic faction of Ecuador's government.

These tensions become apparent in the leaked diplomatic cables and didn't escape the eyes of the EU's negotiators. These have noted the necessity for Ecuador to speak with one voice on a number of occasions, and Ecuador's ambassador to the EU learned of some official contacts between officials from Quito and the EU from his European colleagues (Yépez Lasso 2011b). This can probably in part be explained by the ambassador's radical opposition to Ecuador's accession to the FTA (Yépez Lasso 2011c).

These internal tensions were equally confirmed in several interviews. Ultimately a Ministry of Commerce was set up under Rivadeneira so as to take away this responsibility from the Ministry of Foreign Affairs. The interviewees attributed the ultimate success of the negotiations to this administrative change. While Rivadeneira resigned immediately after the conclusion of negotiations, his replacement is still very much in favour of the agreement according to an EEAS official and the agreement's ratification by Ecuador should hence not be problematic from this perspective.

Ultimately, however, this infighting cannot explain Ecuador's policy shift itself, but only some of the inconsistencies in the country's negotiation strategy. It is thus important to look whether Ecuador had any alternatives to the FTA with the EU. It is here that the country's attempts to join Mercosur, another Latin American sub-regional organisation come into mind. By doing so it would have followed into the footsteps of its ideological ally Venezuela, which began its accession process after having left the Andean Community. When looking at the economic makeup of Mercosur economies, as well as the fact that Venezuela still has not managed to fully join the organisation to this date, it becomes clear that this was not a viable alternative either.

Ultimately Ecuador's return to the negotiation table can hence best be explained by the lack of alternatives. As one interviewee put it, it was one of two realities in the country that won out in lobbying the president, namely the agricultural/industrial lobby against the president's electoral clientele. With the potential of losing market access to the EU Ecuadorean industrialists and land owners came to be increasingly worried (Enríquez 2013, 2014b; Laines and Ponce 2014), hence increasing the pressure on the government to change its commercial policy if not in rhetoric then at least in practice.

While some changes in Ecuador's commercial and trade policy hence seem to have occurred, these still appear to have been driven to a large extent by the necessity to conform to the EU's demands, rather than a domestic shift of policy.

## **Conclusions**

Looking at the case of the EU's free trade negotiations with Ecuador, the conflicted nature of the EU's power becomes apparent. While trade concerns and the necessity to uphold good relations with both Colombia and Peru can explain the move towards the bilateral negotiations in the first stage, the subsequent negotiations with Ecuador show that the EU is equally willing and able to use its power *through* trade as a means to reach policy goals independent of the trade realm.

The conflicted nature of the EU's policy towards the region can perhaps best be illustrated by looking at the comments made by some EU officials who were interviewed for this project. On the one hand, some asserted that the EU's decision to continue negotiations with Colombia and Peru, while offering the remaining countries the possibility to join at a later date was an act that was respectful of their sovereignty, thereby underlining the EU's willingness to behave as a norm-respecting actor in the international realm. One of the interviewees underlined this further by pointing to the technical nature of the EU's GSP and GSP+ schemes, applying objective standards to a given set of countries. On the other hand, some officials were more open about the EU's intentions, much like could be seen in the leaked diplomatic cables. They argued that when the EU had the means to achieve a policy outcome closer to its own preferences, that it was perfectly legitimate to use the EU's trade policy as a significant means of pressure.

While it is indeed true that the criteria used to determine GSP eligibility are now technical, the debates at the time of the scheme's reform, and the willingness to grant Ecuador the 'carrot' of a preference extension—thereby even possibly violating WTO requirements—demonstrate that ultimately GSP itself forms part of the EU's trade power toolbox.

From the Ecuadorean perspective this hence meant either losing market access, or giving in to the EU's demands, with the latter one ultimately having been chosen. The continued rhetoric by Ecuador's leadership that the agreement did not constitute an FTA but rather a different kind of commercial agreement show that what mattered most for the EU was the substantial achievement of its goals, rather than a public concession as was initially demanded.

Taking stock of the agreement in itself, however, it should become clear that Ecuador's 'negotiations' were little more than the accession to an existing FTA with very few symbolic concessions.

Ultimately the case in question illustrates very well in how far the EU still is a "conflicted trade power" as Meunier and Nilokaidis described it ten years ago. While it on one hand holds up values such as regional integration and biregionalism, the example of Ecuador demonstrates that it will use trade policy to reach results ideal for itself, while limiting the space for decisions on trade policy by other countries.

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