Law and the New Political Economy of Development in Colombia

Changes and Continuities in Industrial Policies

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Abstract

One of the characteristics of the new developmental state in Latin America has been the revival of industrial policies. These policies, however, do not constitute a coherent set derived from clear recommendations enshrined in an economic model. On the contrary, the current configuration of industrial policies responds only partially to a new development consensus. The particular content and shape of these policies, their meaning and distributive effects, are also deeply influenced by the political economy underlying them, the institutional scaffolding in which they are inserted, and the particular legal instruments chosen to implement them. This chapter analyses the configuration of industrial policies in Colombia under the Uribe administration (2002-2010), addressing, in particular, export promotion, foreign direct investment and competitiveness policies. The analysis tracks the historical evolution of these policies from their origins under the Import-Substitution Industrialization model in the 1960s, to their transformations under the Washington Consensus in the 1990s. For each period, the study delves into the prevailing economic ideas that have provided a theoretical justification for the adoption of industrial policies, the political economy underlying them, and the particular institutional and legal shape that they have adopted. The research finds that industrial policies in Colombia during the 2000s were largely justified by appealing to central ideas of the new development consensus, albeit retaining some of the key concepts of the Washington Consensus. In terms of policy design and implementation, while there have certainly been some innovations, industrial policies represented more continuity than change with respect to policies adopted during the 1990s. Legal arrangements, in turn, combined a highly formalist view of law, stressing the role of law as a constraint to state action, with more informal and flexible instruments which see law as a mechanism to coordinate and facilitate communication between the public and the private sectors. Finally, the study finds that a selected group of large local firms and conglomerates, which grew under the protections of the import-substitution industrialization and later took advantage of the economic liberalization, were among the main beneficiaries of the new industrial policies.
1. Introduction
In the last decade, most Latin American countries have adopted important policy reforms revealing a reorientation in their development strategies. For many, this turn constitutes a new development paradigm which expresses a new consensus in economic development thinking and ideas, different from both the import-substitution industrialization model and the neoliberal model. In many countries of the region, these policy shifts coincided with the emergence of left or left-of-center governments which took power deploying a critical, and in some cases radical, discourse against the “Washington Consensus” policies and ideas. However, the new development paradigm goes beyond the political orientation of particular governments. Indeed, the new consensus provides a new language (langue) for development policies which is being used by both progressive and conservative governments alike.¹ This does not mean, of course, that there are no differences in policies and approaches among the different governments. Left and right wing governments tend to favor different constituencies, appeal to different ideals, prioritize different goals. Still, regardless of their political orientation, policy-makers and scholars intervene today in development policy debates building arguments which are structured by a shared language of the new consensus.

One of the central ideas of this paper is that while it may be true that there is an emerging development consensus, current policies are not just the mere outcome of them. The particular content and shape these policies adopt, their meaning and effects, are deeply influenced by the political economy behind them, the institutional scaffolding in which they are inserted, and the particular legal instruments chosen to implement them. The argument unfolds as follows. First, economic models do not determine development outcomes. In other words, the process of economic development is never the mechanical translation of an economic theory into action. The process can be understood as a series of “translations”.² Economic theories are translated into models and policy objectives, policy objectives are in turn translated into institutional arrangements and legal instruments, and these are applied and operate in particular contexts. In each of these translations there are gaps which must be overcome; and each translation unavoidably involves a political choice among alternative options. Second, laws,
policies, and institutions do not take place in a vacuum; they are heavily context–and path-dependent. The functions that policies and institutions play, and the particular effects that they produce, respond to the particular configuration of the context in which they operate. Once a particular institutional arrangement is set in place and background rules are consolidated, it is very difficult to reverse course. Actors are constituted and their behavior is shaped by the institutional setting; new institutions acquire meaning in the broader framework in which they are inserted. Nevertheless, actors still have room for maneuver; rules produce unexpected outcomes, and new rules have a feedback effect, which alters the original configuration of the “first” institutional arrangement, creating thus a “new” and different setting that is in permanent flux and transformation.  

Third, based on the previous two premises and the empirical evidence collected in this study, the paper shows how some social and economic groups in Colombia have managed to effectively surf changes in economic models, policies and strategies, taking advantage of the benefits and opportunities that each change provides.

Like many other Latin American countries, during the 2000s Colombia experienced important economic transformations. Going against the political tide in the region, though, the reforms were led by a right wing government. Unlike the cases of Chavez in Venezuela, Lula in Brazil, or Kirchner in Argentina, to mention just a few, President Álvaro Uribe Vélez’s discourse and policies did not go against the so-called “Washington Consensus”. On the contrary, in some respects they certainly reinforced it. Still, Uribe administration’s policies were actually much more than the mere reflection of ideas inspired by the Washington Consensus. They represented a complex amalgam of legal and institutional arrangements that reflected political, economic and social struggles among different actors; they were built on institutional structures inherited from previous development strategies; and they were justified and advanced, at times, by recurring to the argumentative structures of the Washington Consensus, but at other times, by borrowing from the 

The paper focuses on three pillars of the Colombian industrial policies: export promotion, foreign direct investment (hereinafter “FDI”) and competitiveness policies. Although they differ in goals and

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5 “Understood in the broadest sense of the term, industrial policies include a wide variety of elements, traditionally divided into six subsets: 1) trade policies; 2) investment policies; 3) science and technology policies; 4) policies aimed at promoting micro-, small-, and medium-size enterprises; 5) human-resource training and upgrading policies; and 6) regional development policies.” From an alternative perspective, industrial policies can be classified in the following way: (a) export promotion policies; (b) policies to promote innovation, higher
instruments, what these policies have in common is that, depending on their specific design and implementation, they have a direct impact on the configuration and development of the local private sector. In all these three policy areas, during the 2000s the Uribe administration introduced key reforms which have had a key impact on Colombia’s development strategy.

The paper is structured as follows. After this brief introduction, Section 2 analyzes the policy discourse on exports, FDI and competitiveness under the Uribe’s government as portrayed in its Development National Plans of 2002-2006 and 2006-2010. Then, Sections 3, 4 and 5 delve respectively into Colombia’s export, FDI and competitiveness strategies. Following the periodization proposed by Trubek and Santos, each section focuses on the changes and continuities experienced by the policies in these areas under the Import Substitution Industrialization model (1960s-1970s), then under the neoliberal model (1980s-1990s), and finally during the 2000s in the Uribe administration. In order to better understand the transformations, Section 6 explores the political economy behind them with a particular focus on the changing configurations of the Colombian business sector and the role of international actors in the shaping and legitimation of policy changes. Finally, Section 7 provides an analysis of the implications for law and legal theory of the new political economy of development. The last section sums up the key ideas of the paper as a way of conclusion.

2. The Discourse of the New Development Strategy

The purpose of analyzing the discourse of the new development strategy in Colombia is threefold. First, it allows us to better understand the new development consensus. As a parole, the Colombian discourse productivity and competitiveness; and (c) policies to promote output growth and investment. Needless to say, this distinction is purely analytical. It would be hard to find pure examples of the two types of policies in the real world. It is nevertheless important to distinguish between policies whose main effect is to increase present and future output and policies that change the way output is produced, presumably in the sense of increasing technical and economic efficiency. The set in category (c) of the proposed classification consists of policies that create incentives for producers to, as it were, “do more of the same.” In contrast, policies in category (b) aim to encourage them “to change their ways,” i.e., to produce more efficiently. In other words, while, in its pure form, the first policy set leads directly to increases in output and investment allowing firms to leave their production functions unchanged, the second set is deliberately designed to alter firms’ production functions. See Alberto Melo, ‘Industrial Policy in Latin America and the Caribbean at the Turn of the Century’ (2001) IDB Working Paper 459, p. 13-14; see also, Alberto Melo and Andres Rodriguez-Clare, ‘Productive Development Policies And Supporting Institutions In Latin America And The Caribbean’ (2006) IADB Working Paper C-106, p. 19.

6 Export promotion policies constitute a mechanism that, among others, helps firms expand the size of the market in which they operate. Thus firms manage to go beyond the boundaries of national economies and have the opportunity to increase their productivity thanks to economies of scale and the sophistication of managerial practices. FDI policies, in turn, seek mainly to attract capital and technology. As it is well known, the reliance on FDI to bolster development is a risky endeavor as the positive effects of FDI cannot be taken for granted. In particular, with relation to domestic firms, foreign multinationals may be a double-edge sword. While some domestic firms may benefit from the presence of foreign multinationals by linking their development to the foreign partner or acquiring their technology and know-how; other domestic firms may be outcompeted by foreign multinationals and disappear. Finally, competitiveness policies look to reduce costs as well as to create and protect a set of rents which may help domestic firms to produce and profitably market goods and services.

reflects the assumptions and structures of the *langue* that dominates today development policies and ideas. As this book shows, despite the specific differences in the *paroles*, there seems to be a shared development *langue* that cut across different countries, political ideologies and policy areas. Second, the section analyzes the discourse in order to see the role assigned to law and the legal assumptions behind the new consensus. When these legal assumptions are brought to the front, it is easier to see the political choices and distributive consequences underlying the policies. Finally, when contrasted with the policies analyzed in the subsequent sections, it is possible to observe that despite apparent constraints, the discourse is open, flexible and contradictory enough to allow for the design of a plethora of different policies.

For the discourse analysis I take the Development National Plans. In the case of Colombia, they constitute a key material that reflects the official discourse and ideas of the government. The plans are passed at the beginning of each Presidential period. They are prepared by the National Department of Planning (NDP), in formal consultation of different sectors, and are eventually endorsed by the Congress. The plan sets the broad guidelines that orient and legitimize the economic specific policies adopted by the government.

In this section I analyze the Development National Plan of 2002-2006 and the one of 2006-2010 which set the policy foundations of the Uribe’s government. I focus in particular on those chapters, sections and parts devoted to export policies, FDI policies, competitiveness policies, and more broadly, the role of the state in economic development. Although both development plans reflect the ideas of the same government, they present significant differences, including differences in structure, style and vernacular. While the first plan reflected more directly some of the core ideas of the Washington Consensus (or the Washington Consensus plus, including second generation reforms), the second plan openly embraces the ideas and vocabulary of the new economic consensus. It is possible to observe, thus, that over time there is an increasing predominance of the latter in the government’s discourse. As a result, the discourse of Uribe’s government providing the ideational anchor for legitimizing industrial policies presented a mixed picture in which ideas characteristic of the orthodox “Washington Consensus” merged with typical ideas of the new development consensus.

It would be beyond the scope of this paper to analyze in depth ideas of the Washington Consensus and the new development consensus. The Washington Consensus has been widely discuss and needs no further analysis here. Regarding the new development consensus, today an emerging “institutionalist school” is increasingly being used by scholars and policymakers, regardless of their political orientation, to back up their arguments, policies, and decisions. Scholars such as Douglas North, Joseph Stiglitz, Peter Evans, Michael Porter, Dani Rodrik, Ricardo Hausmann, Daron Acemoglu, and even the more heterodox Gary Gereffi, Robert Wade, or Ha-Joon Chang are repeatedly cited in debates, discourses and policy documents. Despite their differences, their different theoretical tradition, and policy recommendations,

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they all emphasize, in one way or another, the critical importance of “institutions” for economic development. At the risk of oversimplifying, I suggest that the core assumptions of the mainstream version of the new consensus are the following. 1) One-size-fits-all policies are doomed to fail. Policies that work in one country may not work in others; and 2) in every successful development experience, the state has played a critical and complementary role with markets. The dichotomy of either the state or the market is replaced by the idea of the state and the market. A central corollary emerging from these ideas is that given that effective development policies are highly context- and path-dependent, countries should be given policy space to experiment, to use their own judgment, and to explore what might work best for them. The least risky and most effective way to experiment and learn what works best in each case requires public-private partnerships that bolster fluid communication and strong cooperation between the state and private actors 9.

**Development National Plan 2002-2006 “Hacia un Estado Comunitario”**

The DNP 2002-2006: Towards a Communitarian State is a relatively short plan as compared to previous development plans. It is technically rather poor and resembles more a government platform rather than a proper national development plan. It is written in a relatively plain language and the way in which the policy areas are organized already gives an idea of the policy priorities of the government. Chapter 1 is on security, chapter 2 on economic growth and employment, chapter 3 on social equity, chapter 4 on transparency and efficiency of the state 10. In Uribe’s view, if security was guaranteed, then economic growth would follow. I will now focus on headings on competitiveness and on trade of the chapter on economic growth and employment. In both cases the Plan endorses the competitiveness and trade strategies 1999-2009 set forth by Conservative President Pastrana.

In the DNP 2002-2006 the concept of competitiveness is fuzzy. Nonetheless, it is possible to observe that the plan tends to have a formalist institutionalist view of it. Competitiveness is “the framework in which productive activity is developed”. As in the neoclassical institutionalist view, a la North for example 11, the state, institutions and the law are seen as “the rules of the game”, and once they are set, to the extent that they are stable and clear, entrepreneurial activity and development blossoms 12. State

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10 Chapter 2 “Impulsar el crecimiento economico sostenible y la generacion de empleo” (Bolster sustainable economic growth and employment generation) ) is divided into nine sections: 1) housing; 2) oil and mining; 3) transport; 4) public utilities; 5) science, technology and innovation; 6) competitiveness and development; 7) trade policy; 8) environmental sustainability; and 9) employment. Chapter 5 focuses on macroeconomic projections


12 Competitiveness requires an “enabling environment for the development of the entrepreneurial activity” which includes, among others, “adequate institutions”. In the view of the DNP, “the intervention of the State is an essential factor in the creation of a favorable environment for the competitive operation of firms”. The DNP
intervention and law can easily transform into “excessive red tape” which may hinder firms’ activities, affecting competition and even creating corruption. In order to achieve these goals (setting rules of the game for promoting competition and avoiding excessive red tape) the role of the state is one of “coordination”. Finally, the plan associates competitiveness with increases in exports and the way foreseen to achieve them is through sectorial public-private agreements.

Regarding trade, the plan overtly adopts a traditional neoclassical view. The plan assumes that the more trade integration, the better. Moreover, “trade policy must not be limited to trade liberalization or the establishment of export promotion instruments”. It must, at the same time, “pave the way towards opening and deregulation of capital markets and services”. Trade integration processes try to “facilitate access to external markets and advance in the harmonization of rules that regulate economic activity”. The plan recognizes that an increase of the participation of the national productive capacity in the world production is not the automatic outcome of greater integration. However, it relegates that consideration to a secondary level. Only “ideally”, trade policy should be accompanied by competitiveness increases. The legal instruments envisaged to implement this policy are international treaties which should seek to eliminate access barriers, bolster foreign investment, and facilitate the allocation of resources towards more productive activities. In turn, it takes for granted that negotiations will include an “ample and ambitious” agenda that covers services, investment, government procurement, intellectual property rights, and competition law.

Finally, regarding FDI, the DNP takes the standard view according to which “foreign capital flows facilitate access to new technologies and knowledge and contribute to external financing”. Hence, a comprehensive policy to attract foreign investment is necessary. Once again the plan shares the

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13 Firms’ activities are affected by “excessive red tape” and requirements and “lack of rationality” in processes within the public administration, which lead to “barriers of entry” to new firms, “over-costs” for the operations of existing firms, and “corruption”. In order to address these problems, the DNP establishes that the competitiveness policy will operate in six lines: 1) elimination of red tape and higher rationality in bureaucratic processes; 2) strengthening the coordination role of the state; 3) creation of a balanced system of (intellectual) property rights; 4) generalized access to information technologies; 5) development of encompassing policies of biotechnology and tourism; 6) promotion of efficiency and development of markets. In turn, “in order to promote efficiency in the productive apparatus and the development of markets” it is necessary to establish a “new and more complete institutional and legal framework that bolsters competition and consumer protection”. In order to achieve this, the plan mainly sees two ways: to strengthen consumer protection organizations and to consolidate a metrology public agency.

14 The DNP focuses on the multilateral level and the regional hemispheric level. Regarding the WTO, the plan takes the view that the current multilateral system presents important distortions to free trade and sees the Doha Round as an opportunity to address them, which would allow Colombia to increase the access to external markets, particularly of agriculture products. The plan also says that Colombia will seek to reach a balanced agreement in the FTAA negotiations which would eliminate unnecessary barriers to trade and investment, and would “improve” WTO disciplines. In addition to include the Mercosur, Central America and the Caribbean as key targets in the trade integration strategy, the DNP stresses the critical importance of the Andean Community. It highlights that it is the main destination of Colombian exports with higher value added, and therefore, it orders the government to work on “the consolidation of an Andean common market”.

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assumptions of the institutionalist neoclassical view\textsuperscript{15}: neutrality, clarity and stability in legal rules are a necessary and fundamental precondition to attract foreign investments.

It is beyond the scope of this paper to analyze the agriculture sector. However, it is interesting to note that in contrast to the orthodox position in manufactures, in the realm of agriculture exports the plan clearly takes an open more interventionist approach.\textsuperscript{16}


The DNP for the 2006-2010 period, “Communitarian State: Development for All”,\textsuperscript{17} presents significant differences with relation to the previous plan. First, it is comprehensive, clearly organized, well written, and technically much better than its predecessor. Unlike its predecessors, in many aspects the plan resembles a scholarly work. Academic citations abound and it takes a lecturing perspective, devoting extensive parts to explain, and justify, policy proposals.

A neo-institutionalist approach with a strong reliance on market mechanisms informs the entire plan. If the previous plan could have been written by, say, Douglas North, the second plan could have been written by Dani Rodrik and Ricardo Hausmann. In fact, in some parts the plan is the virtual reproduction of the work of some of the most representative scholars of the new consensus. For example, when discussing growth, the plan presents a literature review on the subject, it acknowledges that its purpose is to provide the theoretical background for the new policies, and then it reproduces Rodrik’s ideas on the role of institutions in economic development. After recognizing that institutions play a “fundamental” role in economic development, the plan then openly adopts a formalist, institutional pluralist approach to development. The plan endorses Rodrik’s idea that there is a set of “first-order economic principles for development”, as proposed by neoclassical economic analysis, which are: protection of property rights, contract enforcement, market-based competition, appropriate incentives, sound money, debt sustainability. These principles, in turn, can be fulfilled through a diversity of institutional arrangements\textsuperscript{18}. The plan then concludes “the fact that there are clear basic economic principles does not mean that there is clarity regarding how they should be implemented in institutional terms. The way in which this plan interprets the above literature is in the following way: there are some basic economic principles which must be respected; however, each country has the right, and perhaps

\textsuperscript{15}“In addition to macroeconomic stability, greater security, and the consolidation of a clear, transparent and non-discriminatory institutional framework, the government will develop a program of investment promotion that will emphasize the legal stability and the many opportunities of the country”.

\textsuperscript{16}The plan proposes the use of WTO instruments “to protect the sector and stabilize prices of sensitive products” in order to provide a “reasonable protection to agriculture production”. Also, in the FTAA negotiations, the plan highlights that it will support the principle of conditionality. Regarding the coffee sector, the plan stresses that the purchase guarantee, the provision of public goods, and the stabilization of income will continue being the major objectives if the coffee institutionalization.

\textsuperscript{17}Interestingly, also in 2006, Joseph Stiglitz, leading scholar of the neo-institutionalist school, together with Andrew Charlton launched the best-seller “Fair Trade for All”

\textsuperscript{18}“The questions around institutional diversity are: 1) What type of property rights: private, public, cooperative?; 2) What type of legal regime: customary, civil, or adopt or innovate?; 3) What is the right balance between competition in decentralized markets and public intervention?; 4) What type of financial institutions and of corporate governance are more appropriate to mobilize domestic savings?; 5) Is there a public role for stimulating the generation and absorption of technology – protection of intellectual property rights?”.
the obligation, to develop its own institutional forms, which give adequate expression to the basic economic principles. This is, to a great extent, the main task of this Plan”.

In the chapter “High and Sustained Growth”, the plan develops a section called “The strategy of productive development” in which it provides the ideational legitimation for a new role of the state in the economy, and more specifically in industrial policies. The section particularly emphasizes the differences with the previous approach to productive policies in the following terms: “The national policy of productivity and competitiveness has emphasized the conquest of external markets (...) [and] put forward that trade liberalization and deregulation would be enough for investors to reallocate productive resources following the signals of markets’ prices. Therefore, the prevailing idea was that sectorial policy should be limited to the maximum extent possible, and in the best case, it should be transversal (...) without distinction of size, specific activity, region or level of development of the affected firm”. However, the plan notes, “today it is evident that the initial endowment of factors, the technological stock, or the exchange relations do not determine in an unequivocal way the pattern of specialization of the economy. The same endowment of initial conditions allows for the existence of multiple market equilibriums associated with different patterns of specialization. It seems that successful policy interventions aimed accelerating the transition from a pattern of specialization to another have been responsible for the dissimulate competitiveness situations that two countries may present today despite having started with similar initial conditions”. Therefore, it is convenient “to rethink our productive development policy.” Thus the plan proposes “to structure a coherent and integral plan of public policy” based on two pillars: 1) “more and better production”, a systemic effort to take advantage of existing comparative advantages; 2) “the productive transformation”, to develop competitive advantages on the bases of the current comparative advantages. “It is not enough with the availability of natural resources and its efficient economic use; it is not sustainable an insertion into international markets based on low wages, and even less, on a competitiveness founded on exchange rate lags. The country won’t stop being poor, if it continues producing goods of a poor country”19. How to produce goods of a rich country then? It is necessary to move from a platform based on comparative advantages to a competitiveness based on the increasing productivity of factors, skilled work force, and strong infrastructure. Erecting an infant industry argument, the plan concludes that competitiveness should also be based on “a structure of tariffs and protection oriented towards the desired future productive profile, rather than the permanent safeguard of the least efficient sectors, and fundamentally, towards innovation and technological development”.

Among the specific transversal policies identified by the plan to achieve these goals, it mentions “Entrepreneurial development, innovation and technological development”. Within this category, the plan highlights the following policies: 1) Promotion of innovation and technological development for competitiveness; 2) Competitiveness associated with entrepreneurial productivity; 3) International insertion and trade facilitation; 4) Appropriate functioning of domestic market; 5) Specific strategies of productivity and competitiveness for micro and SMEs. It is interesting to note in the specific proposals for some of these policies the plan adopts a highly formalist approach and its recommendations do not differ significantly from those of the old Washington Consensus and some of the policy proposals of the

2002-2006 plan. When dealing with entrepreneurial productivity, the plan focuses on “legal stability for investors”. In the plan’s words “the existence of clear, predictable and stable rules enables to attract new investments, both foreign and domestic. The adoption in Colombia of the so-called legal stability contracts has been an adequate vehicle for the attraction of new investors”. In the section devoted to International insertion, Colombia’s strategy is based on the following assumptions. The conclusion of last generation international trade agreements is a guarantee that countries, that still have a relatively unstable legal environment, provide to investors, offering them a margin of security that allows them to adopt mid- and long-term decisions with minimum uncertainty. For the negotiations of the agreements, the plan sets forth that they should “strengthen the standards of protection offered to foreign investors”. Furthermore, the plan foresees the need of “institutional strengthening and legal adjustment for taking advantage of the international trade agreements”. In this part, the plan provides that in investment issues, the State should adopt a plan to strengthen its “capacity to reduce the risks of non compliance with international obligations and to resolve investor-State disputes”\(^{20}\). Finally, with regard to the “appropriate functioning of the domestic market”, the plan focuses on the promotion of competition, consumer protection, strengthening of the bankruptcy procedures, and reduction of red tape.

Concerning sectorial policies, the plan points in possibly contradictory directions. On the one hand, it recognizes that the sectors or clusters that have greater knowledge content and technological development, innovative activities, present higher growth rates in international trade, and therefore, should be the priority of target policies for productive development. However, on the other hand, it adds that activities with low technological content could also be considered as priorities since they represent “a high potential of employment generation and income, a wide spatial coverage in the national territory, a clear potential of competitive insertion into globalized markets, and create a derived demand with strong multiplying effects on the rest of the economy”\(^{21}\). After placing productivity (competitiveness) at the center of the development strategy, and underlying technology intensiveness as the major driver behind it, it is not easy to justify the incorporation of this second set of criteria for targeting sectors. In fact by adding the second set, “technology”, as a technical measurement, no longer is as a criterion for sector prioritization. Only a political choice can decide between prioritizing a technology-intensive sector or a sector of low technology content.

Finally, when addressing the “challenges for the communitarian State”, the plan develops provides an “administrative model for the economic intervention of the State”, an “optimum model of economic intervention”. According to the plan, the state intervention must be guided by “an equilibrium between the market and the public interest in a way that amends both market and government failures”. It also

\(^{20}\) Unlike the previous plan which focused on the Americas, the 2006-2010 plan sets a strategy based on multiplying international agreements with trade partners all over the world. Thus, the plan seeks the international insertion through the WTO, the FTAA, the Andean Community, and agreements with Central America and the Mercosur, the European Union, and some Asian countries.

\(^{21}\) More specifically, the government identifies the following sectors or clusters as priorities: some sub-sectors in agro-industry, tourism, handcrafts, information technologies and communications, software development, transport and logistics, professional services (particularly, health), and within the traditional manufacturing sector, those activities of medium technological content with potential to expand in international trade.
stresses that the model of state intervention recognizes that “given that state intervention implies a restriction on economic freedom, it can only be carried out when it is fully justified”. State intervention is justified when it is necessary to: a) incorporate economic efficiency given the existence of natural monopolies; b) eliminate obstacles that prevent competition; c) mitigate negative externalities and promote positive externalities; d) reduce transaction costs; and e) ensure provision of public utilities to the extent that is economically and technically feasible. Moreover, before intervening, it is necessary to take into account the following considerations: i) the intervention must be the only available means to protect the public interest and it must be strictly carried out to the extent that it is necessary to mitigate the risk; ii) the cost of the intervention must be lower than the cost of no intervention; iii) the risks of mitigating or avoiding must be reasonably predictable; iv) intervention must be flexible in order to carry out regular reviews, trying to the extent possible to guarantee the stability in the rules of the game. As a result, according to the plan, “the contemporary state changes its direct and global interference on the economy and society for an indirect and sectorial presence. Therefore, the new dynamic of the economic development process presents the need of a specialized alternative intervention in economic and social sensitive activities (such as public utilities, financial activities, health services)”. Once again, the plan has a dual face. On the one hand, it presents the general goals, the broad guidelines, using the vocabulary and appealing to the images of the new development consensus. But on the other hand, when proposing specific policies, it relies on policy recommendations that repeat the cannon of the Washington Consensus or the Washington Consensus plus. Furthermore, despite the appealing to the idea of equilibrium between the state and the market, and the stated need to address both market and state failures, the conditions set that could justify an eventual state intervention are so stringent that it is hard to see any actual balance.

To what extent the apparent contradictions in ideas and discourse were reflected in the design and implementation of concrete policies during the 2000s? To what extent the ideas set in the development plans actually constrained the design of specific policies? What were the economic outcomes and actual beneficiaries of these policies? In the next sections I will try to provide some answers to these questions in the light of the export, FDI and competitiveness policies adopted under the Uribe government in the 2000s.

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The plan also suggests that in order to consolidate this model the state can play the following roles: planning, regulation, promotion, control, and direct intervention. Regarding the first role, the plan highlights the need of strengthening the state capacity of planning. It also points out that regulation is the paramount instrument of intervention in the economy in order to define the rules within which individuals develop their activities. In particular, it mentions that instruments such as economic analysis of law, risk objective assessment and alternative regulatory environments are part of the best practices in regulation. With respect to promotion, the plan focuses on the use of financial incentives to induce individuals to develop activities that respond to public needs or the public interest. In relation to the participation of the State in entrepreneurial activities, the plan notes that given “the inherent contradictions between the public and the entrepreneurial space” this type of intervention has been significantly reduced and provides a series of measures to increase the participation of private actors in the operations of SOEs.
3. Export Strategy
The Uribe government made of exports a centrepiece of Colombia’s development strategy. The export orientation, though, was not new for Colombia. In fact, export promotion policies represent one of the clearest examples of policy continuity in Colombia’s development strategy. Already in the late 1990s, the Pastrana government, from the Conservative party, launched the Export Strategic Plan 1999-2009 with the goal of making exports an engine of economic growth. The Export Strategic Plan was later adjusted and reinforced by Uribe in 2004.

The importance of exports as a central component of the development strategy is not merely the outcome of the neoliberal policy reforms or ideas prevailing since the early 1990s. Actually, the export oriented strategy was already one of the central components of the ISI model in Colombia. Indeed, unlike other countries in the region which took a more inward-looking approach, Colombia pursued a clearly defined “mixed model” of ISI based on both import protection and export promotion.

Despite the overall continuity in the export strategy of Colombia since the 1960s, this does not mean that the strategy has not experienced significant changes over time. The remaining of this section will address some of the most significant changes and continuities in export policies, with a particular focus on policy discourses on export promotion, the institutional design of the government agencies in charge of export promotion, and the international strategy.

The ISI origins
As mentioned, one of the distinguishing features of the ISI in Colombia was its emphasis on export promotion, crystallized during the administration of Lleras Restrepo (1966-1970), leader of the Liberal party. While the strategy was committed to protecting manufacturing from international competition, it also attempted to graft manufactured exports onto the ISI model.

The export policy of Lleras Restrepo relied on both macroeconomic and microeconomic instruments. At the macroeconomic level, the government issued the Decree-Law 444 of 1967, known as the Estatuto

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24 One of the characteristic of the ISI model in Latin America was its inward-looking focus in order to avoid the vulnerability of external shocks which had proved to be so damaging for its economies. High costs of production due to the small size of domestic markets that did not allow for economies of scale, overvalued exchange rates, and certain export pessimism, coupled with import restrictions to promote industrial development, led the region to become increasingly divorced from the international trading system. Although the ISI model sought to alleviate the balance-of-payments problems derived from the shortage of foreign exchange, in fact the inward-looking model did not solve them. On the contrary, industrial growth, especially the development of heavy industry, required significant amounts of foreign capital to acquire machinery and intermediate goods, which led to regular balance-of-payments constraints. In order to overcome some of the initial ISI shortcomings a group of Latin American countries, including Colombia, sought an export promotion strategy. The Colombian strategy was based on the recognition of three elements: first, that the domestic market was not large enough to support firms of optimal size in many branches of industry; second, late stages of industrialization were facing balance-of-payments constraints; and third, that the Colombian export basket was too concentrated on coffee exports and, therefore, the whole economy was highly vulnerable to the swings of the coffee’s international market. See, Victor Bulmer-Thomas, *The Economic History of Latin America Since Independence* (Cambridge: Cambridge University Press, 2003).
Cambiario, which established a highly effective crawling peg system which is deemed to have played a key role in Colombia’s export success.\textsuperscript{26} Although highly effective, as the backbone of the ISI strategy, the regime was eventually dismantled in 1991 as part of the neoliberal reforms pushed by the Liberal Gaviria’s government. In contrast, at the microeconomic level, it is possible to observe significant continuities. This is the case, for example, of the Plan Vallejo policy and the institution Proexpor, which were created during the ISI period and have played a fundamental role in Colombia’s development strategy until today.

Originally established in 1959, the Plan Vallejo was significantly expanded in 1967. Over time, it became a very successful drawback scheme based on tariff rebates on imported inputs entering into all exports.\textsuperscript{27}

Also in 1967, the Lleras Restrepo administration created under the Banco de la Republica,\textsuperscript{28} the Colombian Central Bank, a special credit program, the Fondo de Promoción de Exportaciones (“Proexpo”, Export Promotion Fund) which provided particular support through medium-term financing for non-traditional exports (i.e., exports other than coffee, bananas, oil, and emeralds). Over time, Proexpo expanded its scope and included among its functions the provision of marketing support, facilitating information about international markets, assistance in trade shows, promotion of commercial missions abroad, and so on.

In the late 1960s and 1970s, the expansion of markets and promotion of exports were also sought through an international strategy structured by international treaties. As shown below, this is a strategy that would be continued and even strengthened over time, although under a different priorities of strategic partners and modes of integration.\textsuperscript{29}

\textsuperscript{26} The Estatuto Cambiario established an exchange-rate strategy known as the “crawling peg" which was designed to preserve the real value of currency through frequent mini-devaluations following an initial realignment of the currency. It played a major role in keeping exports competitive. The main merit of the crawling-peg system was that introduced stability after the chaotic environment in which events had evolved in previous years. The Colombian external sector stabilized and the exchange rate system remained in place until the 1990s. On the other hand, the CATs (certificados de abonos tributarios), later known as CERTs (certificados de reembolso tributario), were also extensively used. They were tax rebates which consisted in a certificate, equivalent to a fixed proportion of the FOB value of exports, which could be set against future tax liability. These export subsidies, however, were largely eliminated in 2002 due to the restrictions imposed by the agreement on subsidies under the WTO. Due to the elimination of these instruments during the neoliberal reforms, they are not analyzed in depth.

\textsuperscript{27} Carlos Diaz-Alejandro, Foreign trade regimes and economic development: Colombia (New York: National Bureau of Economic Research, 1976)

\textsuperscript{28} During the ISI period, Colombia extensively used subsidized credit through the Central Bank, specialized financial institutions and development funds. In 1940, the government created the Instituto de Fomento Industrial (Industrial Development Institute) (IFI) which provided venture capital for new industrial endeavors and allowed for direct participation of the state in the newly created companies. In 1963, Colombia also created the Private Investments Fund to promote industrial investments and exports, and the Industrial Financial Fund, in 1968, to promote small and medium enterprises.

\textsuperscript{29} However, key shifts in the overall strategy, in the choice of the trading partners, and in the scope, nature and depth of the obligations brought about very different developmental implications.
During the ISI period, reflecting the international ideas of CEPAL, Colombia saw regional integration as an effective tool to restore dynamism of the inward-looking model of development and to provide the necessary scales for efficient production. While not renouncing to a multilateral strategy, Colombia focused its trade efforts on Latin America, and more specifically, on the Andean countries.

The neoliberal reforms

In terms of outcomes, the Colombian export strategy presented a mixed picture. Ultimately, the export promotion strategy was not successful in restoring the export sector as one of the engines of growth. However, this may have been for reasons that were beyond the control of the Colombian government. Still, the export strategy did change the composition of the export profile of Colombia; it helped to diversify the export platform and the share of manufacturing exports increased significantly, contributing thus to the partial transformation of the productive structure. In other words, Colombia effectively managed to avoid the heavy dependence on coffee prices and external vulnerability, some of the main original goals of the ISI model.

In orthodox neoclassical theory there is no room for keeping export promotion policies. Although they are a type of intervention that is far shallower than many of the traditional ISI policies, after all they still constitute a form of state intervention that in strict terms should be avoided. As proposed in standard international trade accounts, countries should specialize its trade pattern based on natural comparative advantages where they face lower opportunity costs.

While in the early 1990s there already was an emerging critical literature against export promotion agencies, the Colombian government decided to strength its export promotion policies, albeit under a different institutional setting. Thus in 1991 President Gaviria, in use of extraordinary powers delegated

30 In 1970 it joined the Latin American Free Trade Association (LAFTA) which would later become the Latin American Integration Association (ALADI). Most importantly, in 1969, the Andean Pact, a regional integration mechanism, was created with the goal of expanding the regional market through gradual elimination of tariffs among members, sector programs of industrial development, and eventually creating a custom union. Furthermore, Colombia also sought to take advantage of world trade growth by joining the General Agreement on Tariffs and Trade (GATT) in 1981, and by taking advantage of the Generalized System of Preferences (GSP) sponsored by UNCTAD by which the United States, Western Europe and Japan provided less-developed countries preferential access to their markets. See, Felipe Jaramillo, “Colombia”, in Patrick Macrory, Arthur Appleton, and Michael Plummer, eds., The World Trade Organization: Legal, Economic and Political Analysis (Springer Publishing: 2005)

31 The coffee boom of the 1970s led to a significant revaluation of the real exchange rate and effectively undermined the export efforts. In addition, the Andean Pact was full of exceptions and the exit of Chile in 1976 meant a hard hit to the regional integration mechanism. Moreover, developed countries strategically used trade and non-trade barriers that negatively affected the export possibilities of developing countries. See, Victor Bulmer Thomas, supra note 28; and Jose Antonio Ocampo, supra note 25.


34 Ricardo Rocha and Marcelo Olarreaga, eds., Las exportaciones colombianas en la apertura (Bogota: Universidad del Rosario and Instituto del Banco Mundial, 2000)
by Congress, divided Proexpo into two new independent agencies: Bancoldex (an Ex-Im Bank) and Proexport (an Export Promotion Agency). Both institutions were created under the umbrella of a newly created Ministry of Foreign Trade, a ministry which would increasingly accumulate power within the government, absorbing powers from an increasingly weakened Ministry of Economic Development, eventually dismantled in 2002 by President Uribe. In the new institutional structure, Bancoldex would provide financial assistance for exports and Proexport was assigned the provision of non-financial export promotion services.\textsuperscript{35} In addition, regarding other export promotion instruments, the government also maintained and even strengthened the draw-back scheme \textit{Plan Vallejo} especially after 1993. Instead, largely due to the legal commitments undertaken by Colombia under the WTO’s Agreement on Subsidies and Countervailing Measures, the CAT system had to be suspended.\textsuperscript{36}

These changes were reflected legally as well. For example, Bancoldex was organized as a second-tier public commercial bank, which would be managed in commercial terms without receiving budgetary or monetary subsidies apart from its initial capital base.\textsuperscript{37} In turn, although Proexport was established within the Ministry of Foreign Trade, it was organized as an autonomous endowment operating under private law, and its governing board was composed by both public officials and representatives of the private sector.\textsuperscript{38}

The international strategy also experienced a reorientation. Although without renouncing to the Andean integration, Colombia sought to diversify its trading partners. The multilateral strategy gained weight, through the WTO, and regional strategy diverted from Latin America to the entire hemisphere, through the FTAA.

\textit{Export Strategy in the 2000s}

In the 2000s export promotion policies were subject to changes. This time, however, the scope of the reforms was far more limited than the reforms of the early 1990s with respect to the past. Perhaps one of the most noticeable changes can be observed at the discourse level. Unlike in the 1990s, today state intervention to promote exports is seen under a positive light. Thus, export promotion agencies (EPAs) like Proexport count with the explicit support of the mainstream economic literature which sees EPAs as effective governmental mechanisms of intervention to address market failures.\textsuperscript{39} A different strand of literature, rather than emphasizing the problems of information asymmetries and transaction costs in

\textsuperscript{35} Non-financial export promotion services are usually classified as follows: a) country image building (advertising, promotional events, but also advocacy); b) export support services (exporter training, technical assistance, capacity building, including regulatory compliance, information on trade finance, logistics, customs, packaging, pricing); c) marketing (trade fairs, exporter and importer missions, follow-up services offered by representatives abroad); and d) market research and publications (general, sector, and firm level information, such as market surveys, on-line information on export markets, publications encouraging firms to export, importer and exporter contact databases). Daniel Lederman, “Marcelo Olarreaga, Lucy Payton, “Export Promotion Agencies: What Works and What Doesn’t” (2006) World Bank Policy Research Working Paper 4044


\textsuperscript{37} In part, this reform was prompted by the Constitutional Reform of 1991 which prohibited the Central Bank from continuing to extend development credit through rediscount facilities.

\textsuperscript{38} Decree 2553 of 1999.

\textsuperscript{39} Lederman \textit{et al.}, supra note 35.
export operations, it focuses on the importance of changing the production structure and increasing the value added of exports.\(^{40}\)

As mentioned before, the guidelines orienting export policies during the 2000s basically were laid down in the Export Strategic Plan (ESP) 1999-2009 which was amended by the Uribe government in 2004. This was expressly recognized in the DNP 2002-2006 which set the foundations for the export strategy. The goals of the ESP were the following: 1) To increase and diversify the export supply of goods and services based on world demand; 2) To increase exports through the promotion of international investments and an improvement in the conditions for supplying international services; 3) To increase firms’ productivity and exports’ competitiveness; 4) To regionalize export activities; and 5) To develop an entrepreneurial culture.

The main government agency in charge of implementing the ESP was Proexport, an institution that, as seen before, was born during the ISI period and was reconverted in the 1990s. Over time the agency has become an important arm within the government and gained the recognition of both the public and the private sector for its good performance.\(^{41}\) Thanks to its effectiveness, during the 2000s Proexport continued to grow and gain power within the public administration, accumulating functions and responsibilities in investment and tourism policies.\(^{42}\) Benefiting from its relative financial autonomy acquired through the initial endowment created by the government to support Proexport activities, the agency had relative autonomy from the pressures and instabilities derived from budgetary politics, and its personnel has tended to have a rather technocratic profile.\(^{43}\) These factors have contributed to the relative stability of the institution, the accumulation of capabilities, and the good quality of its services. One of the most notable transformations in Proexport during the 2000s was its international expansion. Indeed, Proexport notably expanded its international network, deploying almost twenty commercial offices and representations around the globe.\(^{44}\) This phenomenon is relatively new and seems to pose

\(^{40}\) Hausmann R., Hwang J., Rodrick D., supra note 19.

\(^{41}\) Several studies have found robust evidence of a positive impact of Proexport’s services on export growth, especially export product diversification. Marcela Melendez and Guillermo Perry, supra note 36.

\(^{42}\) Created in the early 1990s as part of the neoliberal reforms, over time the Ministry of Foreign Trade, Industry and Tourism became a powerful ministry which in 2002, at the beginning of the Uribe administration, absorbed many of the functions of the formerly powerful Ministry of Economic Development which was dismantled. Thus in the 2000s the Ministry of Foreign Trade emerged as the main governmental arm in charge of designing and administering some of the key instruments of the new strategy. An alternative reading could be made. Trade, investment and industrial policies were traditionally under the control of the Ministry of Economic Development. During the 1990s, the foreign trade functions were given autonomy (isolation) in order to facilitate the implementation of the trade policy reforms. After this period, once the major reforms were already implemented, trade, investment and industry came together again, this time under the new Ministry of Foreign Trade rather than the old Ministry of Economic Development. This can be seen as a merely formal or nominal difference. Still, the nominal change is symbolically not minor.

\(^{43}\) Despite the technocratic profile of its staff, Proexport’s political autonomy is relative and its operation is closely interlinked to the Ministry of Foreign Trade. Moreover, it is expected that the relationship becomes even closer given that the initial endowment with which the agency was founded is almost over, and consequently, Proexport will increasingly rely on the national budget.

\(^{44}\) By 2010, Proexport had more than 23 offices around the world (China, Venezuela, Mexico, Germany, Peru, UK, Spain, USA, Ecuador, Costa Rica, Guatemala, Chile, Brazil, Canada, Arab Emirates, France, Russia, India, Belgium and the Caribbean)
important legal challenges for the state in its new role as development agent. The main problems are related to the (lack of) legal capacity of public agencies to act and acquire obligations abroad and issues of international responsibility which may involve directly the state. So far the state response to these challenges has been ad hoc and responding to the specific needs of each case. In general, though, the state has tended to limit to the largest possible extent the probabilities of being hold internationally responsible for the operations of its agencies. The way of doing this has been by highlighting the private capacity and private instruments under which these agencies operate abroad.

While Proexport showed overall continuity regarding the 1990s, Bancoldex experienced an important transformation more in line with the new prevailing ideas in development economics. In 2003, the Uribe government decided to liquidate the old Instituto de Fomento Industrial ("IFI", Industrial Development Institute) and transfer its standing credit lines to Bancoldex which, as shown above, in the 1990s emerged exclusively as an Ex-Im bank. As part of the new reform, Bancoldex cancelled all existing IFI credit lines with the exception of those geared to finance small and medium enterprises (SMEs). This move, though, had a critical impact on the institutional structure and profile of the bank. Since then Bancoldex has converted itself from a merely Ex-Im bank into a multipurpose development bank with a strong focus on micro, small and medium enterprises. Thus today Bancoldex not only provides financing for import and export activities but also for domestic market operations. Furthermore, in recent years it has expanded its functions to include support services and trainings for entrepreneurs of micro and SMEs. As a result, in the 2000s Bancoldex emerged as a key institution for the support and strengthening of local firms which needed the state assistance in order to be competitive in more open markets. As shown below, this type of new institutions and policies intended to strengthen SMEs have played a key role in restoring the political and economic alliance within the Colombian private sector.

A notable case of continuity refers to the Plan Vallejo, originally created in the ISI period and maintained after the neoliberal reforms. Although it is a high transaction costs mechanism due to the required registrations and approvals, the Plan Vallejo in practice has become a useful instrument which is used mostly by permanent large export firms in sectors that are intensive either in imported capital goods or intermediate inputs (mining, chemicals and graphic arts, and a few agricultural products such as flowers, banana, and sugar), for which the combined effect of duties and delays in VAT rebates can be substantial. Under the Uribe government, the Plan Vallejo was improved in 2002 and was expanded to cover export of services in 2008. As mentioned before, the CERTs, a subsidy proportional to exports gross value, were basically eliminated in 2002 due to fiscal stress and in order to comply with WTO obligations.

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45 This challenge seems to affect not only governmental agencies but also other public entities, such as State-Owned Enterprises which are internationalizing its operations. This is the case, for example, of Ecopetrol or ISA. Also, this phenomenon does not seem to me limited to the case of Colombia but to other countries in the region as well. See, for example, the cases of APEX, Petrobras and the BNDES in Brazil.

46 Decree 2394 of 2002

47 Decrees 2099 and 2100 of 2008.

48 Exceptionally, the CERTS were temporarily revived in 2007 to compensate some sectors for the currency’s overvaluation.
Finally, during the 2000s the international strategy for export promotion also experienced important changes within a general trend of continuity. As set in the DNP 2002-2006, the Uribe administration deepened the international strategy initiated in the 1990s by adopting more stringent international commitments and moving away from the Latin American focus. The main legal vehicle used to open markets and promote exports was FTAs involving “WTO-plus obligations”. Unlike the mechanisms adopted in the 1970s, the new international agreements represented a deeper level of integration, less policy space for the state, and expanded the coverage of policy areas to include, for example, investment, labor and environmental issues. The changes in the international strategy were reflected also in the choice of preferred trading partners. Especially after the failure of the FTAA negotiations in 2005 and the withdrawal of Venezuela from the Andean Community of Nations, Colombia aggressively sought to conclude an FTA with the United States. The relevance of this reorientation was such that the US-Colombia FTA became a central piece in the Uribe’s development and international economic strategy. Although by the end of Uribe’s mandate the treaty had not entered into force due to obstacles in the US Congress, the government widely used the treaty as a powerful device to push for domestic reforms. Indeed, Uribe justified an array of domestic reforms in a wide set of policy areas, including intellectual property, labor and environment, among many others, in order to accommodate the United States’ demands and to conform with the FTA’s future obligations and standards which were presented as the reflection of “modernization”, “best practices” and “universal standards”.

4. Foreign Direct Investment Strategy

Another cornerstone of the development strategy under Uribe’s government was foreign direct investment. FDI policies in Colombia, though, present a very different evolution path vis-à-vis export promotion policies. Unlike the policy foundation of export promotion policies which can be traced back to the 1960s, at the heyday of the ISI model, the policy matrix structuring Uribe’s FDI strategy was laid down in the early 1990s as a key component of the neoliberal program. Indeed, the FDI basic legal structures built during the ISI period were radically transformed under the government of President Gaviria, from the Liberal party, and they have remained since then practically untouched. Furthermore, the major initiatives on FDI introduced by Uribe in the 2000s added institutional layers which deepened the neoliberal regulatory model.

Three features stand out in the case of FDI policies in Colombia during the 2000s. First, it seems that innovative ideas on FDI which inform the new economic consensus did not permeate Colombian policy circles and did not manage to be reflected in the Uribe administration’s policy initiatives. Second, although these initiatives were presented as instruments to attract FDI and were widely targeted to foreign investors, in practice they mostly benefited large domestic firms. Third, within the general trend towards deepening of the neoliberal regulatory model, in the case of the new BITs the Colombian

49 In the 2000s Colombia concluded FTAs with El Salvador, Guatemala and Honduras, Panama, EFTA, Chile, and the United States.

50 The reforms included the launch of the Domestic Agenda initiative, a public-private competitiveness program aimed at identifying opportunities and threats posed by the FTA. See, CONPES 3297 “Agenda Interna para la Productividad y la Competitividad: Metodologia” (2004). The program, however, was eventually absorbed when the National System of Competitiveness was created in 2009 (see below).
government made timid attempts to incorporate in the negotiations clauses favouring the state’s capacity, more in line with the most recent ideas regarding FDI.

**The ISI model for FDI**

As in other Latin American countries, FDI played a key role in the Colombian development strategy during the ISI period. Recognizing that foreign aid either bilateral (through USAID) or regional (the Alliance for Progress), and that international lending either official (World Bank) or private would not provide the sufficient capital for development, Latin American countries sought for alternative sources and saw that FDI could become a key component in their development efforts. It was expected that multinational corporations (hereinafter “MNCs”) would not only provide a source of capital but also access to advanced technology, management know-how, and even international markets through exports. Nevertheless, while MNCs could be potentially beneficial, it was clear that they could also crowd out domestic firms and harm domestic industrial production. Therefore, once again with the theoretical backup of CEPAL’s work, most Latin American countries adopted FDI regimes that would welcome FDI but under close scrutiny and detailed regulation of their activities. The regulation of FDI in Colombia under the ISI model, as elsewhere in the region, went through two very different moments. Although throughout the period FDI was always welcome and “promoted”, the stance towards it varied considerably, both in time and across sectors. In short, while in the first moment, regulation represented a “friendly welcome”, or even sometimes a “naïve welcome”, the second regulatory wave was definitely a “hostile welcome”.

In 1967, with the enactment of the *Estatuto Cambiario*, Colombia adopted for the first time a systemic and explicit way of regulating FDI. The overall stated goal of the statute was to promote economic and social development and achieve an exchange rate balance through various means. Among these, it foresaw the “encouragement of investment of foreign capital in harmony with the general interests of the national economy”. The statute conditioned the investor’s rights granted in the regime to the previous registration and approval of the investment. The government, acting through the Department of National Planning, had ample margins to screen FDI and prevent it from negatively affecting local producers. Also, in order to control capital outflows, the regime limited the possibilities of repatriation

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52 In 1931, as a response to the adverse economic effects of the Great Depression, Colombia created the Office of Exchange Controls and embarked in the first intended process of regulation of foreign capital inflows. The office granted permission to reimburse abroad capital imported into the country under any modality, as well as interest and dividends for new capital. In 1947, Colombia established for the first time the requirement of registration of foreign capital which was defined as the contributions made in foreign exchange earnings or industrial, agricultural or mining machinery. By 1951, in an attempt to assess the real extent of foreign investment in Colombia, the government provided that any imported capital, regardless of the mode of entry, was under the obligation to be registered in order to have the right of repatriation or transfer. As it can be seen, before the 1960s, the legislation explicitly dealing with foreign investment was shallow and had a limited impact since it concentrated primarily on getting information about capital movements and conditioning the investor’s rights of exchange or repatriation simply to the previous automatic registration of the investment. See, Luis Jorge Garay, Colombia: estructura industrial e internacionalización 1967-1996 (Bogota: Banco de la Republica, 1998)
53 The NDP was in charge of approving or rejecting FDI projects following the authorization criteria set forth by the CONPES. As the general objective of the regime, the authorization criteria were also broad: a) Contribution to
of profits and capital, and set restrictions on Colombian firms to make investments abroad (outward FDI). Although the regime did not formally exclude sectors, in practice no foreign investments were authorized in key sectors such as the financial sector and public utilities.54

As in many other parts of the developing world, the experience with MNCs was rather disappointing55 and the stance towards MNCs significantly shifted. In addition to new intellectual winds that portrayed a rather negative view of MNCs,56 important changes in the international context facilitated a second wave of regulation of FDI. Latin American governments unexpectedly found alternative ways of financing their development efforts through private international lending and thus avoided the reliance on MNCs and FDI.57 These alternatives gave host countries greater bargaining power and leeway for stricter

employment creation; b) Net effect on balance of payments; c) Use of local content; d) Proportion between imports and investment needs of the foreign firm; e) Contribution to joint-ventures with local firms; f) Level of competition in the domestic market; g) Contribution to the integration in Latin America; h) Technical features of the project; i) Contribution to the increase and diversification of exports.

54 For investments in the oil and mining sectors, the statute provided a special regime.

55 Among the most common problems that host developing countries faced with foreign MNCs were: a) MNCs took advantage of the access to local subsidized credit and did not bring fresh capital; b) taking advantage of the underdevelopment of local firms, MNCs did not bring cutting-edge technologies but rather used outdated technologies that were no longer used in home markets; c) taking advantage of high levels of protection of the domestic market, most of the inward manufacturing FDI was market-seeking (it “jumped” the import tariffs protecting the domestic market from foreign competition), rather than efficiency-seeking interested in exporting to third countries; d) using more advanced technologies and capital to invest in advertising and differentiation of products, MNCs managed to outcompete local firms and operate in oligopolistic markets characterized by above average rents. See, Rhys Jenkins, Transnational Corporations and Uneven Development: The Internationalization of Capital and the Third World (London: Routledge, 1987)


57 The oil crisis of the early 1970s, which resulted from the conflict in the Middle East, rocketed oil prices and led to high levels of international liquidity. Thus the enormous amounts of petro-dollars of the Middle Eastern countries were canalized through private financial institutions in the United States which found in Latin America a good
regulation. Moreover, an increasing nationalist sentiment fueled by the decolonization movement and the politics of the Cold War provided the tone for the new regulation of FDI.

In addition to some “soft law” initiatives, Colombia and the other Andean countries sought to adopt international “hard” rules by the creation of the Andean Pact. In an effort to strengthen their bargaining power and avoid the typical race to the bottom that developing host countries easily undertake vis-à-vis multinationals, the Andean countries adopted a common regime on foreign investment with the Decision 24 of 1971. While the goal of the previous regime in Colombia emphasized the pursuit of national development and foreign exchange balance, the aim of the second regime was to achieve economic and technological independence. Interestingly, the search for greater economic autonomy was devised through less policy space, common standards and greater international commitments. At the time, “economic independence” was understood as keeping economic activities under control of local hands, and therefore, several of the provisions of the Andean Foreign Investment Code were aimed at protecting and strengthening the local private sector.

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58 In addition to the traditional layer of regulation focused on domestic legal instruments, Colombia, together with other countries of the region, sought to build an international legal regime for FDI. Part of these efforts was the United Nations’s initiative to develop a New International Economic Order (NIEO) and the drafting of the Code of Conduct on Transnational Corporations and the International Code of Conduct on the Transfer of Technology. 59 The government of Pastrana Botero incorporated Decision 24 and other complementary rules in Colombia through the Decree-Law 1990 of 1973. The adoption of the code was initially blocked by the courts, which questioned the constitutionality of its implementation by executive decree. “The code was deemed an international treaty which had to be implemented through the normal legislative process. These legal complications resulted at least in part from the hostility to the foreign investment code.” Jorge Esquirol, ‘Foreign Investment: Revision of the Andean Foreign Investment Code’ (1988) 29 Harvard International Law Journal 169. Interestingly, as shown below, in the 1990s the government also faced the opposition of the courts to some of the new FDI policies, the bilateral investment treaties, more favorable to MNCs. In this second time, however, the courts took the opposite side of the foreign investors’ interests. 60 Decision 24 sought a broad and deep regulation of FDI. Among its main provisions, the new regime retained the previous approval procedure; promoted joint-ventures between foreign and national companies; mandated the conversion of foreign firms into national firms within a term of 15 years; restricted the access to domestic credit by foreign firms; reserved several economic sectors to national firms; severely limited the repatriation of capital and profits; and deeply regulated technology transfers and the royalties paid for technology acquisitions. The attempt to retrain foreign MNCs’ activities was particularly strong in the financial sector. In 1975, the government pursued the “Colombianization” of the banking sector, which counted with the support of the local business association representing financial institutions (Asociacion Nacional de Instituciones Financieras (National Association of Financial Institutions) (ANIF). According to Law 75, foreign banks were forced to sell its shares to domestic firms. Foreign banks that wished to continue operations in Colombia had to transform themselves into joint ventures within three years. The new joint venture would be required to have no less than 51 percent of equity owned by Colombian nationals, and any further capitalization had to be undertaken by Colombian interests. A firm was considered domestic if foreign capital was 20 percent or less of total capital. Up to 49 percent, the firm was considered a joint venture.
The neoliberal turnaround

Unlike export promotion policies, the Colombian FDI regime was subject to radical changes during the neoliberal reforms of the 1990s. Already in 1987, the Andean Group adopted a new “common” regime (Decision 220) that meant major changes to the Andean Foreign Investment Code informed by Decision 24. Most importantly, it introduced greater flexibility to the regional framework by allowing each country member to design its own specific regime on foreign capital. Indeed, although formally maintaining some of the basic structure and principles of its predecessor, the new regime effectively meant a radical change. In its search for more policy autonomy, Decision 220 signaled the actual abandonment by the Andean Community of an ambitious plan to achieve controlled foreign investment within the Andean subregion. The common regime was thus replaced by individual national interest. Accordingly, in 1991 the Gaviria administration abolished the 1967 Estatuto Cambiario, one of the pillars of the ISI model, and adopted a new foreign exchange regime introducing radical changes to the rules of foreign investment. While the formal requirement of registration was maintained, the new regime eliminated the requirement of previous authorization by the National Department of Planning. It introduced broad and far reaching definitions of foreign investment and it enshrined the principle of national treatment for foreign investors. But for two sectors, defense and national security, and treatment and disposal of toxic, hazardous or radioactive waste not produced in Colombia, no other

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61 The Cartagena Agreement Commission passed the Decision 220 which Colombia implemented through the Decree 1265 of 1987 and the CONPES Resolution 44 of 1987. Under the new framework, foreign firms had broader rights to repatriate capital and profits, formerly banned sectors were open to foreign investors, restrictions on access to domestic credit by foreign firms were relaxed, the period to transform a foreign firm into a national one was extended, and the obligation to sell the investment only to domestic investors and form joint-ventures was abolished, except for those firms who wanted to enjoy the trade benefits of the Andean sub-regional market.

62 “The changes introduced by Decision 220 have rendered the Andean Foreign Investment Code innocuous. The effectiveness of the code resided in its adoption of systematic foreign investment regulations that applied to and were intended to benefit the entire subregion. Although the code did permit flexibility and its provisions were not followed rigidly in every case, it did establish a common posture from which deviations required some degree of justification. The parallel requirements across the subregion enabled the members of ANCOM to mutually reinforce their positions and maintain their agreed development priorities. The elimination of the common standards negates any value the code might have had in enhancing the bargaining position of ANCOM countries vis-à-vis foreign investors.” Jorge Esquirol, supra note 59, 176. As an exception, the new regime retained Decision’s 24 annual limit on repatriation of 20% of the foreign capital invested. A few years later, Decision 291 of 1991 further reinforced this regime. Among others, it allowed the country members to consider as ‘foreign capital’ intangible technological contributions such as trademarks, designs, technical assistance and technical knowledge patented and unpatented; it established that each country was free to authorize the level of free transfer of net profits; it recognized that investors could repatriate the amounts obtained as a result of the sale of their shares, rights and participations; and it set forth that disputes settlement mechanisms would be dealt according to the rules adopted by each individual country member.

63 During the 1990s, the foreign investment regime established in 1991 suffered several amendments. Nevertheless, none was significant and in all cases they were towards greater liberalization. See CONPES Resolutions 52 of 1991; 53, 55, 56, and 57 of 1992; and 60 of 1993; and the decrees 2348 of 1993; 98, 1812, 2012, 2764 of 1994; 517 of 1995; 1295 of 1996; 1874 of 1998; and 241 of 1999. In the year 2000, President Pastrana introduced few more changes and systematized the regime as the General Regime of Foreign Capital in Colombia and Colombian Capital Abroad (Decree 2080). In 2003, lastly, President Uribe Velez introduced some additional minor amendments.
sectors were excluded from foreign investment. Once an investment was registered, there were no restrictions on transfers abroad of proven net profits and remittance of amounts received as proceeds from the sale of the investment within the country, or from liquidation of the company or its portfolio, or from a reduction in its capital. Finally, unless otherwise stated in the provisions of the prevailing international treaties and conventions, the provisions of Colombian legislation applied for the settlement of disputes involving foreign capital. Similarly, unless the contracting parties agreed to submit disputes to international arbitration, suits were to be filed before the Colombian courts.

While in the late 1980s Colombia sought to gain policy space vis-à-vis the Andean FDI common regime in order unilaterally regulate capital inflows, during the 1990s Colombia restrained its policy autonomy regarding FDI and adopted rigid commitments at both the multilateral and bilateral levels. In this regard, Colombia followed the two-track strategy of adopting international rules both multilaterally and bilaterally. As a Member of the WTO, Colombia adopted stringent obligations concerning FDI in the Agreement on Trade-Related Investment Measures (TRIMs), the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Also at the multilateral level, Colombia joined the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for Settlement of Investment Disputes (ICSID) under the auspices of the World Bank.

At the bilateral level, Colombia also signed a few bilateral investment treaties (BITs) which usually established even higher levels of protection for foreign investors (WTO-plus obligations). This strategy, however, suffered a temporary impasse when the government faced the opposition of the Constitutional Court. The Court pointed out that these treaties would be unconstitutional given that the Colombian Constitution sets forth the possibility of expropriation without compensation on the basis of equity reasons, an exception which is not foreseen under the BITs. Still, after a constitutional amendment in 1999, the government was able to continue using these international instruments. This impasse would usually go unnoticed and would be part of the normal political and legal difficulties that a government may face when trying to implement reforms. However, the obstacle that delayed the adoption of BITs had important, unforeseen, consequences. As shown in the next section, once the constitutional obstacle was overcome, in the 2000s the Uribe’s government re-launched the strategy of using BITs. This time, however, the international context and the shape of BITs had changed in a way more favorable for host states, and Colombia unexpectedly benefited from it.

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64. Also, there remained some restrictions regarding ownership composition in radio and television broadcasting companies, sectors dominated by traditional local firms and major economic groups. Also, it maintained special regimes for oil and mining and the financial sector.

65. Exceptionally, restrictions on remittance and repatriation could be imposed when international reserves fall to levels equivalent to less than three months of imports.

66. BITs with United Kingdom, Cuba, Peru, and Spain.

67. See, Constitutional Court decisions C-358 (1996), C-379 (1996), C-008 (1997), C-494 (1998). It is interesting to note that, as mentioned in note 41, the previous regime based on Decision 24 was blocked by the courts in part due to its excessive restrictions on foreign multinationals. In the 1990s, instead, the Constitutional Court blocked the BITs and took a position rather contrary to the interests of the foreign investors.

68. Legislative Act 01 (1999)
In terms of the main institution in charge of promoting FDI, the government decided to follow a model similar to that of export promotion. Thus in 1992 it created Coinvertir (Invest in Colombia Corporation) as an autonomous public-private non-profit corporation operating under private law. Its goal was to promote and facilitate the development and consolidation of foreign investment, and its functions, far from the screening and monitoring of investments common during the ISI period, were to promote Colombia as an investment location, assist potential investors, provide investors with after-care services and conduct investment climate monitoring with recommendations for improvement. Coinvertir was funded by the government and private contributions, with the private sector occupying half the seats on its executive board.

**FDI strategy in the 2000s**

During the 2000s, FDI continued to be seen as an engine for growth and development in Colombia, and the FDI strategy meant nothing but deepening the neoliberal regulatory model of the 1990s. Within this trend, at least two phenomena are worth highlighting. One is that FDI policy and discourse in Colombia remained immune to the rise of the new institutionalist economic ideas which have lately gained space in development debates, as reflected for example in the DNP 2006-2010. Despite the stress of the DNP on the importance of policy experimentation, with regard to FDI matters, Colombia adopted highly formalist approach, embracing “international standards” (the one size that fits all), seeking to restrain the state’s policy space to the greatest extent, for example through BITs, under the assumption that the limitation of the state’s levels of discretion would attract more FDI inflows. Following this rationale, Uribe introduced a series of policy initiatives, like the legal stability contracts, which consolidated the regulatory model and further limited the state’s capacity. What is interesting here is that despite being widely portrayed as a mechanism to attract FDI, in fact these instruments were mostly used by large local firms.

Before delving into specific policies, it is important to note a significant institutional change that took place in the 1990s. The fate of Coinvertir did not follow path of its export cousin, Proexport. Unlike the latter, dwindling contributions from both the public and the private sectors meant that after a few years Coinvertir’s position became untenable. Financially weak, understaffed, and largely reactive, in 2005 the government, following the recommendations of the study developed by the Irish Development Agency, decided to liquidate it and transfer its responsibilities to Proexport, expecting to capitalize on potential synergies between FDI and export promotion activities, as well as tourism, another policy area under the control of the promotion agency. As a result, one single agency remained in charge of exports, investments and tourism promotion. This was relevant not only in terms of bureaucratic politics and state capacity, but also in terms of cross-pollinations. The incorporation of foreign investment

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71 In organizing its investment promotion services, Proexport received the assistance of the Irish investment promotion agency (Irish Development Agency, IDA), considered to be one of the best-run investment promotion agencies in the world.
72 One consequence of this has been the emphasis on the country’s image –“Colombia is passion” – in the approach to FDI policy. Indeed, given the association commonly held among foreign investors that Colombia is
activities within the portfolio of Proexport not only increased the power of the agency within the government, but also yielded positive results. Investment promotion activities experienced a notable and vigorous rebirth under the institutional management of Proexport. Thus in 2009 Proexport, as a foreign investment promotion agency, was ranked 16th among 181 investment promotion agencies around the world according to the Global Investment Promotion Benchmarking 2009 elaborated by the World Bank. Another side effect of the effectiveness of the agency has been that, in its efforts to promote FDI, over time Proexport became the main voices of foreign TNCs within the Colombian government, lobbying for regulatory reforms that would please foreign investors’ interests, and eventually, lead to greater investments.73

Under the Uribe administration the general domestic legal framework for FDI did not experience any major change; i.e., the basic structure continued to be the same that President Gaviria set in 1991. On the other hand, the international strategy was significantly reinforced. Indeed, continuing the trend of the 1990s, in the 2000s Colombia adopted stringent international rules that granted ample rights and guarantees to foreign investors and in turn restricted the State’s regulatory capacity. While many countries in the region during the 2000s stepped back from adopting more international commitments restricting their policy space, Colombia, on the contrary, aggressively sought to conclude BITs and investment chapters in FTAs, i.e., WTO-plus obligations, limiting its margin of maneuver.74 Aware of the dubious capacity of BITs to attract FDI but at the same time of the hardship of their sanctions in case of dispute, the Uribe administration used the conclusion of BITs largely as a marketing strategy and signaling mechanism.75 During the 2000s, Colombia signed BITs, in part, in an attempt to distinguish itself from its Andean neighbors Venezuela and Ecuador, who adopted an openly critical stance towards foreign investor, particularly in the energy sector. The goal was to show that Colombia followed the international standards of protection of FDI, and in this respect, the strategy was rather successful.76

related to guerrilla and drug trafficking, the government and FDI related agencies have devoted, with great success, large resources and significant efforts into changing Colombia’s image.

73 Until the late 2000s, Proexport participated in the BITs negotiation process representing the investors community’s interests. However, later the responsibilities were concentrated in a specialized department within the Trade Ministry where Proexport provides, at least formally, no input.


75 Government officials recognize that in many cases the BITs are not a request made by the investors before making an investment. Moreover, often Proexport officials have to explain to potential investors the benefits arising from the BITs and Double Tax Treaties which have many legal technicalities that are incomprehensible for the lay-investors. As recognized by government officials, the vast majority (“95%”) of foreign investors do not know what a BIT is. See, Jason Webb Yackee, ‘How much do U.S. corporations know (and care) about bilateral investment treaties? Some hints from new survey evidence’ (2010) Columbia FDI Perspectives 31

76 In 2009, for example, thanks to a great extent to the high number of BITs concluded in the previous years, Colombia achieved the top of the Latin American ranking of the Doing Business Report produced by the World Bank. It is important to take into account that the DBR weights number of changes in legislation rather than
Within this general trend towards increasingly stringent international commitments, though, it is possible to note some attempts at retaining some degree of control over domestic regulatory decisions. Thanks to the unexpected difficulties that the government faced in the 1990s to adopt BITs, Colombia unintentionally benefited from being a latecomer in the wave of signing BITs. As seen in the previous section, due to the Constitutional obstacle regarding compensations in case of expropriation based on equity reasons, Colombia was not able to build an extensive network of BITs as other countries of the region did—most notably Argentina.  However, after the Constitutional obstacle was finally overcome in 1999, and paved the way for Colombia to adopt international commitments, the financial crisis hit Argentina in 2001. The Argentine crisis unleashed an unprecedented number of cases before the ICSID, showing the BITs “in action” and the actual effects of the 1990s-generation of BITs, especially regarding the dispute settlement system. Studies started to show that BITs’ effects on attracting FDI are, at best, dubious. Still, the dispute settlement mechanism of BITs showed that they are unbalanced against state’s interests. They can be quite effective in protecting investors’ interests and applying sanctions to host state, and therefore, constraining state’s capacity to act and carry out policies which have traditionally been considered within the state’s proper domain. As a result, learning from the experience of the Argentine case and other countries, during the 2000s Colombia adopted a relatively more cautious approach to BITs if compared to the first wave of the 1990s. For example, Colombia selected and prioritized the countries with whom it would conclude BITs in accordance to its new development strategy; it developed a Colombian “BIT model” which followed the general framework and ethos of the 2004 US BIT model, but at the same time, it introduced some important amendments aimed at securing some policy space, defending the state’s interest. Colombia also created a special committee to develop a defense strategy in case of dispute settlement; and it promoted joint activities aimed at exchanging information with other host countries in order to learn from their experiences.

absolute numbers. Thus although countries such as Argentina or Chile have concluded far more BITs than Colombia, the latter has concluded more BITs than any other country in the region in the last years.  

While in the 1990s Colombia signed 4 BITs, Argentina signed 56.


By 2010, Colombia had signed investment agreements, either as investment chapters in free trade agreements or as BITs, with the following countries: United States, Canada, European Union, United Kingdom, Spain, Switzerland, China, India, Korea, EFTA, Mexico, Chile, Peru, Guatemala, El Salvador and Honduras. Agreements with Belgium, Germany, and France were still under negotiation.

Colombia has realized about the enormous advantage that implies sitting at the negotiation table with a previously crafted BIT model. A BIT model not only sets a frame for the negotiation process, it also increases the bargaining leverage. The model, generally agreed among different government agencies, sets the upper and lower limits of the bargaining possibilities beyond which, in principle, the negotiators cannot concede. Naturally, these rigidities limit the possibilities of reaching an agreement. In practice, however, these limitations are not so constraining. First, from a broad perspective, the model is largely based on the standards usually found in most BITs, which facilitates the negotiations and finding common grounds for agreement. And second, there are exceptions to the upper and lower limits depending on who is the counter-party in the negotiations. Thus, for example, Colombia has agreed to include an “umbrella clause” in the FTA with the United States; a provision that is excluded from the Colombian BIT model and is generally considered to be a deal breaker issue in negotiations with other countries.
Besides the investment promotion activities carried out by Proexport and the BITs, the Uribe’s government envisaged three policies aimed at promoting investments: Legal Stability Contracts (LSCs), Free Trade Zones (FTZs), and sector-specific fiscal incentives. Although offered to foreign investors, these instruments are actually open to both foreign and domestic investors. Sector-specific incentives consist of traditional income tax exemptions for a specific period of time. According to Colombia’s legislation, companies which benefit from these incentives pay a 0% income tax rate for a period of time and once that term is over they are subject to the general tariff which is 33%. Although these incentives are offered to both foreign and domestic investors, depending on the sector, in practice they are either mostly used by foreign investors or by local investors depending on whether the sector is mainly dominated by foreign TNCs or domestic firms. The other two instruments (FTZs and LSCs), while horizontal sector-wise, they are explicitly targeted to large investments, thus benefiting large Colombian firms and foreign MNCs.

In 2007 Uribe’s government enacted a new regime for Free Trade Zones (FTZs), through two successive decrees based on the Law 1005 of 2005. Law 1005 permitted the government to comply with WTO mandates by converting old FTZs, created during the ISI model, to general-purpose free trade zones in which firms would be able to import capital goods and inputs free of taxes (tariffs and VAT) and be subject to a reduced corporate income tax rate of 15 percent. The decrees extended these privileges not just to existing export promotion zones, but also to a wide variety of temporary and even

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82 The selected sectors and timeframe of benefits are the following: 1) hotel services provided in new hotels constructed between 2003 and 2018, for 30 years; 2) hotel services provided in hotels remodeled and/or expanded up to 2018, for 30 years; 3) ecotourism services, for 20 years beginning in 2003; 4) late yield crops planted between 2003 and 2013, for 10 years; 5) new medicinal and software products manufactured in Colombia with a high content of national scientific and technological research and covered by new patents registered before the appropriate authorities, for 10 years beginning in 2003; 6) electric power sales produced by generating companies based on wind resources, biomass or agricultural waste, for a 15-year period; 7) river transportation services provided with shallow draft ships and barges, for 15 years from 2003; 8) publishing companies devoted to publishing books, magazines, brochures or scientific or cultural collectible series, for 20 years beginning in 1993. On the dubious developmental effects of this and other fiscal incentives, see Louis Wells, Jr., Nancy Allen, Jacques Morisset, and Neda Pirnia, “Using Tax Incentives to Compete for Foreign Investment: Are They Worth the Costs?” (2001) Foreign Investment Advisory Service Occasional Paper 15. For the case of Colombia, see Arturo Galindo and Marcela Melendez, ‘Corporate Tax Stimulus and Investment in Colombia’ (2010) IDB Working Paper Series 173.

83 Decrees 383 and 4051 of 2007.

84 The range of benefits of the regime include the following: a) Single 15% income tax rate (this is less than half the full rate of 33 percent) for industrial users of goods, services and operators, except for commercial users; b) No custom taxes on merchandise imported from abroad; c) VAT exemption got raw materials, inputs and finished goods sold from a national custom territory to industrial users of FTZs; d) VAT exemption on merchandise sales to foreign markets; e) Possibility of performing temporarily partial processing outside of the FTZ; f) Possibility of selling inside the national territory 100% of the goods or services produced in the FTZ with custom tariff and VAT payable only on the percentage of inputs imported from third countries.

85 Earlier FTZs were established basically as free import zones under Law 105 of 1958, mostly for holding inventories of imported goods that would pay tariffs when retired from the FTZ for use or sale. In 1985, Law 109 established a modernized Free Trade Zones regime for Exports. Under the new law, six additional FTZs were created before 2005. FTZ investment, exports and employment grew rather slowly and never covered a high proportion of exports. Due to the requirement of geographic location of FTZs, firms preferred the benefits of the effective Plan Vallejo. By 2004 exports from FTZs were just 4.1 percent of total exports as compared to figures above 50 percent in Mexico, Central America, Dominican Republic, Puerto Rico, Malaysia, Czech Republic, and
permanent zones, including ports, mining zones, and even individual projects or firms, regardless of their location, as long as they comply with the required minimum investment or employment levels.\textsuperscript{86}

In order to benefit from this scheme, the investment project needs the government’s approval. Interestingly, the legal structure adopted to administer this instrument largely resembles the structure of the FDI regulation under the ISI model. Indeed, at the time of evaluating the investment plan, a government commission must take into account the contribution offered by the project to the modernization and reconversion of the productive goods and services sectors, its ability to improve competitiveness, increase and diversify the supply, and its contribution to scientific or technological research. In addition, specific requirements are set depending on the type of investment (goods, services, health, agribusiness and bio-fuels, ports), and only a few sectors are excluded.\textsuperscript{87} However, in spite of the formal selection criteria intended to guarantee a neutral process to choose the beneficiaries, in policy circles and the private sector it is commonly believed that these decrees were “negotiated” to make sure that particular investment projects would fit the required conditions. In practice, what has happened is that the FTZ regime turned into a mechanism to grant tax benefits to large firms in a more or less discretionary way.\textsuperscript{88} After the enactment of the new regime, in the midst of great controversy, the number of FTZs exponentially grew from 11 to a total of 55 approved projects.\textsuperscript{89}

The other major instrument developed by the Uribe administration to bolster investments in Colombia was the Legal Stability Contracts (LSCs). Perhaps better than any other economic policy, the LSCs instrument best reflected and put into practice one of the central pillars of President Uribe’s political discourse: investor’s confidence. Like in the case of BITs, the rationale underlying the instrument relies on the basic assumption that private investment decisions are an outcome of legal certainty which is almost inevitably undermined by the state’s actions. Therefore, the argument goes, in order to promote

\begin{itemize}
\item China who have relied extensively in such an instrument for export promotion. Thus EFZs were converted in 2007 to general purpose FTZs, in order to adapt to WTO agreements but also to institute a preferential tax regime for large investments, whether oriented to domestic or foreign markets.
\item It establishes that Free Trade Zones are “geographical areas” defined within the national territory for the development of industrial goods and services or commercial activities under a special tax, customs and foreign trade regime. The stated goal of the regime is the creation of jobs and attraction of new investments. Interestingly enough, in the case of projects representing a high economic and social impact for the country, a new figure was created, known as a Special Permanent of Single-Enterprise Free Trade Zone (SEFTZ), regardless of their geographic location. Even existing firms can be converted into an FTZ if they undertake a significant expansion of production.
\item These are non-renewable natural resources, financial services, state concessions, residential utilities, except those devoted to electric power generation and new companies which provide international long-distance telephone services.
\item Fedesarrollo, ‘El Nuevo Regimen de Zonas Francas’ (2008) Economia y Politica 34
\item Businessmen recognize that these tax incentives do not affect in a significant way their long-term “business plan” (expansions and product diversification). They, of course, admit that they are a welcome addition to their cash flows and that, on occasion, they influence the choice of technology (by allowing them to choose the most expensive, presumably more capital-intensive, technology). Furthermore, authorities and beneficiaries are aware that the regime is creating major tax discrimination among competing firms and that the situation will be politically untenable in the future. Because of this, in turn, firms benefiting from the new regime have entered into tax stability agreements with the government. Finally, as the tax reduction for new investments and the new FTZ regime evolved independently, it seems that neither the government nor Congress realized they could be cumulative. See, Marcela Melendez and Guillermo Perry, supra note 36.
\end{itemize}
investments, and consequently growth, the state must restrain itself. According to Law 963 of 2005, a firm, either foreign or national, may sign a contract with the State by which the firm making a large investment (over 1,500,000 US dollars) accepts to pay a premium equivalent to 1% of the total annual investment. In exchange, the State is obliged to “freeze”, that is, continue applying to the particular investor the specific rules and regulations deemed determinant of the investment decision, which must be expressly specified in the contract signed between the investor and the state. The contracts may last between three and twenty years, and the kind of norms that may be subject to freezing is significantly broad. Portfolio investments are excluded, but no economic sector is barred from benefiting from this regime. In case of dispute, it is possible to settle it in a national arbitral tribunal who shall only apply Colombian legislation.

The mechanism adopted to administer the concession of LSCs is similar to that of FTZs. The LSCs are subject to a previous approval by a governmental committee that needs to follow a set of formal criteria and guidelines set forth by the DNP and CONPES. Thus an investor seeking to benefit from these contracts must submit a request with detailed information about the investment proposal, feasibility studies, origin of funds, and the number of new employments that the project expects to generate. As in the case of FTZs, the set of criteria is broad enough to allow a considerable margin of discretion to the reviewing committee. Also, the procedures for approval leave enough space for maneuver to the state, and therefore, it enables the state to speed up or delay the process for particular firms and projects. Interestingly, this signaling mechanism has had effects contrary to the intended ones. On the one hand, like in the case of BITs, the mere fact of providing special protections and extra mechanisms to limit the state’s capacity to act shows that the state, particularly in the eyes of the own government in power, is not reliable or stable enough to offer proper conditions conductive to investment. On the other hand, while the instrument may be effective to serve as a marketing mechanism for foreign investors unaware of the realities of the Colombian economy, local and foreign investors with experience and good knowledge of the politics and economy of Colombia know that this instrument has been used by the government with ample discretion in many cases, undermining therefore, the image of transparency and neutrality that the government tries to convey to consolidate investor’s confidence.

By the end of Uribe’s mandate, more than 60 contracts were approved and 46 were actually signed. Once again, the main beneficiaries were the Colombian large firms. Foreign TNCs also benefitted from this mechanism albeit to a lesser extent; only about 30% of the contracts were signed with foreign TNCs. Although in principle a broad type of rules could be frozen under the LSCs, the contracts were almost exclusively used for protection of tax schemes. Most of the stabilized legal provisions were, by far, in the Estatuto Tributario, or closely-related provisions on tax and tariffs. This shows that after all, the LSCs worked as an insurance for a limited number of firms against future tax raises. At the same time, it also

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90 It may include laws passed by Congress, decrees of the Executive, administrative acts of national entities, and even binding administrative interpretations. Also, “frozen” norms may be whole statutes, specific articles, numerals or even paragraphs. The only norms that remain excluded are those related to: social security, taxes or forced investments required by the State under the state of exception, indirect taxes, prudential financial regulation, and the tariffs regime of public utilities.

shows that behind the investor’s interest in “legal certainty” and a “stable legal environment”, ideas that many times are seen as constitutive elements of the “rule of law”, there is simply, and to an extent understandably, an interest in not having the state altering taxes, a policy instrument that directly affects the economic equation of their businesses either diminishing the margin of profits or even making the investment economically unviable.

5. Competitiveness Strategy
Since the 1990s a new type of industrial policy has emerged in Latin America. Under different labels such as “productive policies” or “competitiveness policies”, the governments of the region have adopted a series of policy initiatives justified as attempts broadly aimed at increasing the productivity of specific “sectors”, “clusters”, or “value chains”. The particular objectives of these initiatives vary. In some cases they may seek to provide protections against foreign competition, in other cases they look to increase export capabilities, and yet in other cases, they try to develop a new sectors or productive activities. They have been implemented in a wide variety of ways, using different types of instruments, involving different types of actors, having different levels of reach and scope. Similarly, the role of the state has also varied considerably, ranging from a purely facilitating role of coordination to the provision of financing, trainings, regulations, and so on. At the ideational level, these initiatives have been legitimized from different perspectives and bodies of literature in economics, business administration, development studies, public administration, and sociology, among others. In fact, competitiveness policies represent perhaps the archetype of industrial policy as recommended by the new development economics consensus. In the next section I will analyze the rise and consolidation of these policies in Colombia during the Uribe administration.

In the mid 1990s, the rush for radical neoliberal reforms partially receded due to the opposition of several sectors that had been hit by the liberalization. Within the private sector, among the most affected were the SMEs and the large local firms operating in the tradable sector. In this context, the Samper administration,\footnote{Samper, a member of the Liberal party, was Minister of Economic Development in the Gaviria administration where he represented the moderate wing favoring gradual, rather than radical, reforms.} aware of the need to promote the adjustment of the country’s productive structure to compete in international markets, launched for the first time after the apertura an initiative aimed at increasing the international competitiveness of particular sectors.\footnote{Previously, actually, the Gaviria administration contracted the international consulting firm Monitor, founded by Michael Porter and other Harvard faculty, to carry out seven sector-level “competitiveness studies”. Though these studies did not lead to significant action, their concept of competitiveness based on productive chains began to circulate among Colombian policymakers.} During the 2000s, this policy eventually became a cornerstone of the Colombian new industrial policy.

For the first time in Colombia, the Samper government included in the National Development Plan of 1994-1998 a chapter entitled “Competitiveness for Internationalization.” This chapter paved the way for a change in policymaking by introducing new institutions and new instruments explicitly designed to increase productivity and competitiveness. The most notable change was brought about by the creation
of a National Council for Competitiveness (NCC) in 1994,\textsuperscript{94} an advisory council to the President on all matters related to “quality, productivity and competitiveness improvement for the country and its regions.” Originally, the NCC included seven representatives of the private sector, three representatives of the academia, and three representatives of the workforce, all appointed by the President. As part of the decisions of the NCC, the government eventually negotiated 11 “Competitiveness Agreements” with selected sectors, “production chains”, whereby involved parties committed to particular actions for competitiveness improvement.\textsuperscript{95} While some of these agreements were oriented towards restructuring in response to the distresses resulting from increased import competition, others were aimed at the development of export capabilities. Most of the agreements contained concrete action plans, with government commitments in areas of regulation, trade policies, financial support and infrastructure, and private sector commitments to certain productivity or export goals.

From the early 1990s until the mid 2000s, competitiveness policies in Colombia went through several internal reform processes and restructurings. Some of the major efforts were the National Policy for Productivity and Competitiveness 1999-2009 and the Colombia Competes Network as well as the Internal Agenda for Productivity and Competitiveness which was built as a response to the launch of the FTA negotiations with the United States\textsuperscript{96}. Ultimately, the amendments and uncoordinated initiatives never really took off and undermined the possibilities of consolidating the process.\textsuperscript{97} It suffered from weak and disorganized institutional structures, overlapping tasks, lack of strategic view, poor coordination, weak execution, and absence of monitoring mechanisms or evaluation of results. Still, despite all the deficiencies, the different initiatives set the foundations for a new industrial policy for Colombia. Over time the competitiveness agenda, inspired in the ideas of Michael Porter,\textsuperscript{98} managed to gain its own place within the Colombian development strategy as well as in economic policymaking and discourse. Indeed, since the 1990s every National Development Plan has underscored the importance of enhancing competitiveness and productivity for economic growth and devoted specific chapters or sections to the competitiveness policy. Although not explicitly framed as an “industrial policy”, a term at odds with the prevailing neoliberal ideas, the competitiveness policy eventually became in fact one of the major Colombian industrial policies of the last decade.\textsuperscript{99}

Indeed, after a series of failed initiatives, in 2006 the Uribe’s government finally managed to build a coherent institutional setting for competitiveness policymaking by creating a National System for Competitiveness and placing competitiveness policies at the center of the economic development

\textsuperscript{94} Decree 2010  
\textsuperscript{96} CONPES 3297 “Agenda Interna para la Productividad y la Competitividad: Metodología” (2004)  
\textsuperscript{97} See, Marcela Eslava and Marcela Melendez, supra note 95, at 26, and Maria Piedad Velasco, “Políticas de Productividad y Competitividad en Colombia 1998-2002”, UN Economic Commission for Latin America and the Caribbean, Santiago de Chile, 2003.  
\textsuperscript{98} See, supra note 93. See also, Michael Porter, The Competitive Advantage of Nations (New York: The Free Press, 1990)  
strategy. For this purpose, the Uribe administration initially requested an international consulting firm to provide a full assessment of competitiveness policies and processes for the period 1998-2006; as a result of which a study highlighted the major weaknesses in the overall institutional structure.\(^{100}\) It also concluded that the major process drawbacks were weak execution together with weak monitoring of actions and commitments, and inadequate impact evaluation.\(^{101}\) Consequently, the government reorganized the institutional setup and redefined the strategy with the purpose of giving coherence to the institutional setting of productivity and competitiveness policymaking. As part of this effort, in 2008 the CONPES approved the organization of a National System for Competitiveness (NSC) understood as the set of “guidelines, regulations, resources, programs and public and private institutions that foresee and promote the design and adoption of a policy for productivity and competitiveness.”\(^{102}\) Today the institutional structure is a unified structure, coordinated by a National Commission for Competitiveness (CNC) which is made up of a balanced representation of public and private key interests, with a public-private operational executive committee, a governmental operational committee and a public-private technical secretariat.

The rationale behind the new “Competitiveness and Productivity Strategy” is that firms and sectors’ competitiveness is key for the country’s productivity and growth. According to this view, the state has fundamentally a facilitating role providing both general and sector-specific public goods, and public-private alliances are needed to identify and support successful “bets”, emerging clusters and industries, solve coordination problems, and overcome bottlenecks. The CONPES document on competitiveness highlights that the competitiveness agenda should be based on productivity increases and not on reduction of labor costs or rent-seeking activities, and productivity increases should come mostly through the development of new products and exports, as concludes the study prepared by Hausmann and Klinger which deeply influenced the new competitiveness system.\(^{103}\)

Another idea is that at the heart of the competitiveness policy is that public-private collaboration is crucial for successful development. This is an idea that scholars such as Rodrik and Hausmann have strongly advanced in contemporary literature on development economics.\(^{104}\) According to them,\(^{100}\) Among the major deficiencies, the study stressed the following: a) duplication of efforts and consultation activities; b) a low level of activity on transversal and process issues; c) excessively informal links with key decision making bodies; and d) weak participation by entrepreneurs, particularly SMES (private sector representation was mostly carried on through business association staff), as well as by several key agencies.

\(^{101}\) The study included a survey of participants which highlighted the capabilities and commitment of some government agencies, especially NDP and the Ministry of Trade and its agencies, a few departments and municipalities, and private sector organizations. Instead, civil society organizations, academic representatives, the ministry of Agriculture and its agencies and most departmental and municipal agencies received low scores on capabilities and commitment.

\(^{102}\) CONPES 3527 (2009).


industrial policy is about getting the institutional setting right, and in this sense, public-private collaboration mechanisms have higher chances of making better decisions and avoiding both market and government failures. While the Colombian private sector participated in the design and implementation of competitiveness policies from the beginning, its key role in the system was further reinforced in 2007 with the creation of a Private Council for Competitiveness (PCC). The PCC includes business associations and a selected set of large firms, both national and foreign, as well as influential businessmen. This council closely resembles to the US Competitiveness Council and has had former Chief Economist of the Inter-American Development Bank and Harvard Professor Ricardo Hausmann as its main advisor. Under the new competitiveness system, the PCC has a leading voice. It gained a key and privileged position as a member of the Technical Secretariat to the NCC, together with the Department of National Planning, which is in charge of preparing the policy documents for discussion at the NCC. In addition, the president and vice president of the Consejo Gremial Nacional—the presidents of ANDI and Sociedad de Agricultores de Colombia, respectively—have seats on the Competitiveness Council’s board of directors. The existence of these formal mechanisms of participation, however, has not prevented private sector representatives from using alternative, less formal venues of participation in policymaking and lobbying.105

Another distinguishing feature of the Colombian competitiveness system is the key role played by international actors and ideas. It is clear that in the building and consolidation of the Colombian competitiveness system, the influence of external advisors, from Porter to Hausmann, as well as international institutions such as the World Economic Forum, World Bank, Inter-American Development Bank, Andean Development Corporation, and the USAID has been significant.106 Partly as a result of this exposure to international influences, as in the case of FDI policies, the marketing efforts oriented towards the international audience have been a key component of the competitiveness policy. The Uribe administration took particular measures to show that Colombia complies with “international standards” and global “best practices”. Thus, for example, the PCC and CONPES adopted as explicit goals the improvement of Colombia’s score in the WEF Competitiveness Indexes and the World Bank Doing Business Reports. Moreover, the Ministry of Foreign Trade assigned officials responsible for each set of indicators, with the responsibility of promoting agreements among the relevant government units and


In fact, in recent times the latter are perceived as more effective and seem preferred by private producers for discussing the policy issues they consider most pressing. Rodrigo Losada, supra note 60, presents evidence that these direct contacts are the instrument that business associations use most frequently to influence policy. In a survey of heads of business associations, he finds that almost all of them (93 percent) establish direct contact with congressmen and government officials to present the sector’s point of view. Interestingly, this occurs despite the fact that 91 percent of those associations report being able to participate in formal consultative bodies created by the government. Marcela Eslava and Marcela Melendez, supra note 95.

In the last years, the CEPAL has regained some of its influence on Latin American economic policy circles and it has advocated for the adoption of new industrial policies. See, Bernardo Kosacoff and Adrian Ramos, ‘The industrial policy debate’ (1999) 68 Cepal Review 35; Wilson Peres, supra note 123; and Wilson Peres and Annalisa Primi, supra note 123. However, in the case of Colombia’s competitiveness policies, the role of the CEPAL has been less relevant.
monitoring their implementation. Not surprisingly, Colombia was selected twice in a row as “major reformer” according to the *Doing Business* indicators.\(^\text{107}\)

One of the leading initiatives of the national system of competitiveness is the *Program for the Transformation of Production* (PTP), within the Ministry of Foreign Trade, which has the goal of developing “World Class Sectors”.\(^\text{108}\) This program is the crystallization of a long series of efforts in Colombia to develop sector-specific policies aimed at strengthening particular sectors with export potential in an increasingly competitive global environment. The remaining of this section will focus on three dimensions of this program: the selection process of sectors, the benefits for the selected sectors, and the organization mechanisms.

Since the 1980s, in the discourse of policymaking circles and neoclassical economics texts, the idea of “picking winners” has been closely associated with the most negative aspects of the ISI model. The impact of this idea has been such in economics that many “neo-developmental” scholars try hard to build arguments to discriminate among sectors for state support, and at the same time, distinguishing it from “picking winners”.\(^\text{109}\) The Uribe government carefully presented the program in a way that would not fall into the supposed contradiction between “believing in the market”, horizontal policies and impartiality, and at the same time choosing specific sectors for favored treatment and introducing “distortions” into the market. In order to overcome this apparent difficulty of legitimizing sector-specific policies in a pro-market government, the PTP has strongly emphasized the objective and independent evaluation based on technical, impartial and transparent methodologies to, ultimately, “pick winners”.

The PTP was officially launched in late 2008 and at that time the Ministry of Foreign Trade emphasized in the presentation the marked differences vis-à-vis traditional industrial policies, specially the fact that the PTP is a “competitive program”, without the “arbitrary” selection of winners.\(^\text{110}\) This is supposed to be so as eventually the benefits of participating in the program could be granted to any sector that presents a sound “value proposal” and because no subsidies or differential tariffs or taxes are offered to the chosen sectors.

Nevertheless, the way in which the government actually selected the benefited sectors was the result of an accumulation of different processes and methods, which certainly did not necessarily rule out the possibility of an “arbitrary” selection. By the end of Uribe’s mandate, Colombia had implemented three rounds of selection. In the first round, the Ministry of Foreign Trade, with the advice of the consulting

\(^{107}\) Such a strong drive towards achieving improvements in these external indicators stimulates activism and compliance and facilitates monitoring and evaluation, but it has also created a bias towards actions with positive impact on the indicators but may not yield actual benefits. As noted by Marcela Melendez and Guillermo Perry, supra note 36, there is no way to know the actual benefits on total-fator-productivity increases of a given improvement in one or another of the individual WEF or CDB indexes. For a legal critique of some of the several shortcomings of the Doing Business Report, see Alvaro Santos, ‘Labor Flexibility, Legal Reform and Economic Development’ (2009) 50 *Virginia Journal of International Law* 43.


\(^{109}\) See, for example, Dani Rodrik, “The Return of Industrial Policy”, *Project Syndicate*, December 04, 2010.

\(^{110}\) Announcement made by Minister of Trade Guillermo Plata on October 1, 2008.
firm McKinsey, unilaterally identified a set of potential world-class sectors for Colombia through a methodology that contrasted global opportunities with Colombian relative “strengths” (understood as sectors with strong local development and/or potential for growth, significant actual export performance and competitive advantages) and “weaknesses”. This first pool of sectors emerged from a host of previous studies which were hired by the government during the 2000s. A preliminary subgroup of emerging sectors with strong export growth potential was identified for which a more detailed analysis of potential markets and entry barriers was then undertaken. Accordingly, a short list of seven sectors was selected. After an “open” call to these sectors for “sector-level value proposals,” to which six sectors responded, the “best” two were selected: business process outsourcing and software and IT services. The selection was made by a jury composed by both public and private institutions. As a result, detailed “business plans” were elaborated for these sectors, with funds provided by the Ministry of Foreign Trade and the technical support of McKinsey. Later on, from a second call for sector-level value proposals two additional emerging export growth sectors were selected: health tourism and cosmetics, for which business plans were produced following the same methodology.

While the first round seems to have responded to technical considerations, in line with the new economic development consensus which emphasizes the importance of selecting sectors intensive in technology, with strong export potential, and so on, the second round appears to have responded rather to reasons of domestic political economy. In the second round the Uribe’s government made a similar call for proposals but this time the pool of sectors addressed was made of “mature” sectors with export growth potential. Thus, following a similar methodology, 11 mature sectors “with export potential through innovation and development of new products” were invited through their respective business associations to present “sector value proposals.” Seven of these sectors presented proposals and four were selected: graphic industries, auto parts, textiles, and electric energy. In the case of these mature sectors, the Ministry financed only half of the cost of the elaboration of the business plan, the other half being financed by the respective business association. Unlike the first call, which seems to have been a “bet” on future winners, an attempt to experiment, trying to develop new productive

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113 Business process outsourcing, software and IT services, health tourism, cosmetics, household appliances, auto parts and pharmaceuticals
114 In the first call, the jury was composed by the Department of National Planning, the Private Council for Competitiveness, President’s High Council on Competitiveness and Regions, Proexport, and Bancoldex.
115 The “Business Plans” are based on a detailed identification and projection of global and regional market opportunities, benchmarking of Colombian strengths and weaknesses vis-à-vis potential competitors, establishment of goals and an action plans. To take an example, 31 required action initiatives were identified for the business process outsourcing sector, of which 12 were related to skill upgrading, 9 to the regulatory framework, 8 to industry maturing, and 2 to infrastructure improvements. It is estimated that the implementation of this plan may generate around US$1.4 billion in additional exports (out of US$3.3 billion in additional total sales) and 78,000 new jobs by 2012.
116 Graphic industries, energy power, siderurgy and metal mechanics, jewelry, textiles and apparel, footwear and leather products, petrochemicals and plastics, fertilizers and pesticides, auto parts, biotechnology, and health services.
capacities as in the best tradition of the ISI model, the second call may be seen rather as “saving losers” from the past, labor-intensive and politically sensitive sectors, in some cases “rent-seekers” built during the ISI period, which are struggling to survive in more competitive markets.

Finally, at the very end of Uribe’s mandate, a third call was launched. This time it was targeted to the sectors where Colombia presents traditional “natural” comparative advantages. Jointly with the Ministry of Agriculture, the PTP called for proposals in agricultural and agro-industrial sectors and the following four sectors were selected: cacao, chocolate and confectionery, bovine cattle, palm oil, and shrimp industry. Here again, in a country with a strong and large agriculture sector, it seems that the decision to extend the benefits of the program to the agriculture sector responded to political economy consideration, supported by economic ideas that tend to rely more on natural comparative advantages and market signals.

As a result, the PTP initially arose as a governmental program that resembled the ethos of the ISI industrial policies: the selection of a small number of sectors with strong developmental effects, making a bet on the future and seeking a transformation of the production structure. However, over time the government was forced to incorporate traditional sectors that did not necessarily respond to the original idea. The inclusion of traditional sectors, though, can be interpreted as a move that the government made to politically legitimize a program that inevitably discriminates among sectors to grant state’s assistance. A probably unintended outcome of this has been that the PTP gradually turned into a governmental program with a more “horizontal” approach seeking to raise the competitiveness of different sectors across the economy. Even so, the program still retained a selection process with a prioritization of sectors according to more or less technical criteria. However, as seen above, the ample margins of discretion that the government had to define the targeted pool of sectors for a call of proposals could have easily undermined any attempt to maintain a purely technical selection process.

Beyond the features of the selection mechanism, the PTP presents two additional major shortcomings. The first one refers to the instruments used and benefits provided by the program, and the second one relates to the lack of enforcement mechanisms. Regarding the former, one of the major tangible benefits provided by the program is the elaboration of a business plan, subsidized by the government, which counts with the technical support of a recognized international consulting firm, i.e., cheaper know-how. Another major benefit from participating in the program is the active involvement of the government to facilitate coordination and overcome bottlenecks among the different actors of the chosen sector, including firms in the production chain, business associations, governmental agencies, and so on. However, while these instruments are certainly useful, the PTP lacks traditional “hard” instruments, such as explicit protections, tax incentives or subsidies, which in many cases may be far more effective to bolster the development of a sector. The lack of hard mechanisms seems to have responded to at least two factors. On the one hand, there is an ideological component. Shallow interventions and limiting the role of the government to a purely coordination function is in line with the most conservative positions in the new development economics consensus. It fits best in the discourse and ideological orientation of Uribe government and it somehow reduces the contradictory image

117 Unlike in the previous two calls, the consulting firm hired by the government was A.T. Kearney.
arising from a “neoliberal” government having an industrial policy that picks winners. On the other hand, there seems to have been also practical reasons. The PTP was launched in the midst of the US economic crisis in 2008 which severely affected the resources of the Colombian government and its capacity to provide financial benefits.\footnote{118}

The absence of hard mechanisms \textit{within} the PTP, however, does not mean that they do not exist in practice. In fact, some firms operating in sectors selected by the program also benefit from the special regimes of FTZs, LSCs or sector-specific incentives. This may be problematic for at least two reasons. First, it undermines the effectiveness of the program, or the competitiveness policy at large, given the lack of coordination between the different policies and instruments within and outside the PTP. Second, it makes less clear and transparent the identification of the actual beneficiaries of the competitiveness policies; i.e., it obscures the political choices behind the industrial policy.

Finally, the second important shortcoming of the PTP is the lack of hard “performance requirements” and the lack of enforcement mechanisms. In part due to the absence of hard incentives provided by the government, in turn the private sector does not make costly or deep commitments either. Still, even when it does, and although the program counts with effective monitoring mechanisms, there are no effective sanctions in case of non-compliance by the actors involved.\footnote{119} In this way, the PTP repeats once again, one of the major deficiencies that characterized the ISI policies in Latin America, in contrast to its South East Asian counterparts, i.e. the absence of both effective performance requirements and sanctions.\footnote{120}

\section*{6. The Political Economy of Industrial Development}

In order to better understand the changes and continuities of industrial policies in Colombia it is key to take into account the political economy behind them. In the case of Colombia, the state has traditionally had very close ties, almost symbiotically, with the local private business sector. Also, the influence of international experts and institutions cannot be underestimated. Therefore, the next sections will analyze the transformations of the industrial business sector in Colombia in the last decades as well as the changing role of international actors. The section concludes with an analysis of the reconfiguration experienced in the Colombian private sector in the last decades, as a result of the accumulation of ISI and neoliberal policies, which in turns sustains today the current development strategy.

\footnote{118}{However, the government could have taken a different approach as Brazil did by an expansion of credit through the Brazilian Development Bank (BNDES).}

\footnote{119}{The absence of sanction mechanisms and effective incentives may lead to the somehow awkward situation in which the Colombian government may identify a strategic sector, with great potential for growth and positive externalities for the country’s development, but due to the lack of appropriate policy instruments, the business plan may not be successfully carried out, and the whole sector may decline due to responsibility or negligence of specific firms or particular actors.}

\footnote{120}{Alice Amsden, \textit{The Rise of "The Rest": Challenges to the West From Late-Industrializing Economies} (Oxford: Oxford University Press, 2001).}
Politics of Industrialization: The Rise of the Industrialists

“Ahora todo el gobierno está dominado por la ANDI”, said Jorge Eliecer Gaitán.121 A few months later, on April 9 of 1948, Gaitán was assassinated and the Bogotazo, a violent popular riot, broke out.122 This scene condenses in a nutshell the political context in which the industrialization process in Colombia was born and marked its subsequent evolution. It portrays a Colombian state highly influenced by the industrialist interests, the exclusion of opposing voices, and a concomitant violence. The aftershock of Gaitán's murder initiated a decade of open violence, known as La Violencia, fueled by the struggle for power between the Conservative and Liberal parties, and among the rising working class, the traditional coffee exporting producers, and the emerging industrial bourgeoisie.

In the aftermath of La Violencia, however, it began a period of high political stability which allowed for the full development of the ISI model in Colombia. In 1958, a power sharing agreement headed by the two major political parties, the Liberal and the Conservative parties, together with the strong support of the economic and political elites, created a narrowly based political arrangement known as the Frente Nacional;123 a coalition formed to prevent both a relapse into La Violencia as well as the return of

121 “Now the whole government is dominated by the ANDI” (ANDI: Asociacion Nacional de Industriales, the National Association of Industrialists). Discourse pronounced by Jorge Eliecer Gaitan on December 10, 1947. El Tiempo, December 11, 1947.
122 The riot that followed Gaitan’s assassination left over 4,000 dead and thousands injured, with much of downtown Bogotá destroyed. The impact of the Bogotazo was such that it had repercussions beyond Colombia, fomenting upsurges in other countries of Latin America. In the late 1940s, Gaitan had become the leader of the Liberal Party and the most prominent politician in the country. Seen as a threat by both the Conservatives and traditional Liberal elites, as well as the major producer associations, Gaitan counted with massive support among the country’s working class, coffee growers, and small businessmen. In 1948, at the time of his assassination, he was seen as the candidate most likely to win the presidential elections. See Eduardo Saenz Rovner, La Ofensiva Empresarial: Industriales, Politicos y Violencia en los Años 40 en Colombia (Bogota: Tercer Mundo – Uniandes, 1992) and Paul Oquist, Violence, Conflict and Politics in Colombia (New York: Academia Press, 1980).
123 The political pact, eventually endorsed by a national plebiscite, required both political parties to share equally all executive, legislative, and judicial posts, and stipulated that for sixteen years (from 1958 to 1974) the presidency would alternate, exclusively, between members of the two parties. In addition, most measures would require a two-thirds congressional vote for approval, making thus radical changes highly improbable. The Constitutional reform of 1968 extended the principle of bureaucratic parity from 1974 to 1978, and required the president to extend in cabinet posts “adequate and equitable” representation to the major party not holding the presidency, a practice which was maintained by most presidents until the 1990s. As a consequence of the guaranteed rotation of the presidency during the Frente Nacional, the electorate was progressively alienated as its vote had been rendered largely meaningless. See, Jonathan Hartlyn, The Politics of Coalition Rule in Colombia (Cambridge: Cambridge University Press, 1988). Arend Lijphart, Democracy in Plural Societies (New Haven: Yale University Press, 1977); Robert Dix, ‘Consciational Democracy: The Case of Colombia’, (1980) 303 Comparative Politics 12; Jonathan Hartlyn, The Politics of Coalition Rule in Colombia (Cambridge: Cambridge University Press, 1988); Alexander Wilde, ‘Conversations among Gentlemen: Oligarchical Democracy in Colombia’, in Juan Linz and Alfred Stepan, eds., The breakdown of democratic regimes: Latin America (Baltimore and London: The John’s Hopkins University Press, 1978). Unlike most countries in the region, Colombia managed since 1958 to avoid formal military rule and persistent political instability while being governed by a civilian political regime. Still, it is remarkable that nearly 75 percent of the National Front period was conducted under the state of siege. See Gustavo Gallón Giraldo, Quince años de estado de sitio en Colombia, 1958-1978 (Bogota: Editorial de America Latina, 1979). Ana María Bejarano and Eduardo Pizarro Leon Gómez, ‘From restricted to besieged: the changing nature of the limits to democracy in Colombia’ (2002) The Hellen Kellogg Institute for International Studies, Working Paper # 296.
populist leaders which may mean a threat to the traditional elites. If, as Kennedy suggests, it is difficult to interpret the “politics” of development with confidence as, during the ISI period, right, left, and center regimes shared the dominant mode of development thinking, in the case of Colombia the task is even harder. During the Frente Nacional, while difference in style and constituencies between the Liberal and Conservative parties remained, the period presented high levels of consensus, homogeneity and continuity in substantive policies. On the other side of the coin, this monopolized political scenario did not provide the working classes and peasantry an institutionalized channel for advancing their interest. Since the 1960s, therefore, the politics of economic development in Colombia evolved in an environment in which the labor movement played largely a secondary role and the only real threat to the ISI model was represented by the guerrillas.

While labor forces were relegated in the construction of the ISI model, the business associations, known in Colombia as gremios, instead, played a major role in policymaking. Indeed, a restrictive political system in Colombia did not mean an insulated or autonomous state. Among the Colombian gremios, the National Association of Industrialists (Asociacion Nacional de Industriales, ANDI) in particular, stood

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124 With the support of the traditional elites and business associations, in 1953 Rojas Pinilla seized power through a coup d’état with the goal of putting an effective end to the Violencia. The following year he was elected President of Colombia. His administration was characterized by strong state intervention and public works in parallel with the experience of Peron in Argentina and Getulio Vargas in Brazil. In this period, Colombia experienced an outstanding industrial growth. However, over time Rojas Pinilla lost the support of the largest producers and the Conservative and Liberal parties’ elites who saw his increasingly “populist” policies as a threat to their power and interests.

125 See, Kennedy, supra note

126 Gaitan, one of the leaders of the Liberal party, had represented probably the most important attempt to canalize the labor movement through the political system. Later on, in 1964 Rojas Pinilla created the party Alianza Nacional Popular (National popular Alliance) (ANAPO) which could have emerged as a vehicle for the working classes. However, in 1970, when the party had become a powerful force and likely winner, the presidential elections were tainted by fraud and the traditional parties retained power. As a reaction, several member of ANAPO disillusioned with the electoral system founded the guerrilla movement M-19, a name chosen in allusion to the date of the presidential elections of 1970.

127 The end of the La Violencia did not mean the end of actual conflict and violence in Colombia. On the contrary, as it is well known, it continued, albeit under a different forms and rationales: the guerrilla warfare. During the 1960s, the first major guerrilla organizations of Colombia were created: the Ejército de Liberación Nacional (ELN, in 1964), the Fuerzas Armadas Revolucionarias de Colombia (FARC, in 1964), and the Ejército Popular de Liberación (EPL, in 1967). Later, in the 1970s, new guerrilla movements arose: Movimiento 19 de abril (M-19), in 1970; Autodefensa Obrera (ADO), in 1976. In the 1980s, Partido Revolucionario de los Trabajadores (PRT), in 1982; Movimiento Manuel Quintín Lame, in 1984; Ejército Popular Revolucionario (EPR), in 1985; Frente Ricardo Franco, in 1986. And in the early 1990s, the Corriente de Renovación Socialista (CRS), in 1991.

128 Ben Ross Schneider, Business Politics and the State in 20th Century Latin America (Cambridge: Cambridge University Press, 2004). Schneider points out that Colombia represents perhaps the case of best organization of business interests in Latin America. It would be a mistake, though, to see the Colombian state as merely captured by business interests. Instead, the relationship has been rather of a two-way type. In fact, the state played a key role in the creation and development of the major business associations during the first half of the twentieth century. Successive governments helped to organize business interests as a means of supporting the development of strategic sectors and delegating some policy responsibilities to entities that were considered to have greater technical capabilities. See Rosemary Thorp and Francisco Durand, ‘A Historical View of Business-State Relations: Colombia, Peru, and Venezuela Compared’, in Sylvia Maxfield and Ben Ross Schneider, eds., Business and the State in Developing Countries (Ithaca: Cornell University Press, 1997).
out.\textsuperscript{129} It was created in Medellin by the major industrial firms in 1944 under the auspices of the government,\textsuperscript{130} and since then it has played a protagonist role in the political economy of development of Colombia.\textsuperscript{131} Noteworthy, during its “Golden Age” (1948-1970) and throughout the \textit{Frente Nacional} period, prominent members of the ANDI and other major business associations had direct participation in government positions and Congress seats, allowing industrialists and business class to have a strong influence on the design of the ISI project in Colombia.\textsuperscript{132}

At the same time industrialists were gaining power, getting access to key state decision making positions, and the political system remained restrictive, the important participation of international experts rendered the ISI model less contestable and helped to portray an image of depoliticized economic policymaking. Through different international channels, Colombia had a high level of exposure to the ideas of some of the leading development scholars and policymakers of the time. Justified by the idea that Colombia suffered from a deficit in professionalized personnel and technical expertise, the planning organizations of the country were often advised by foreign experts.\textsuperscript{133} To mention just a few,\

\textsuperscript{129} With the only exceptions of the agricultural, coffee and banking associations, most producer associations in Colombia were formed in the 1940s. No single umbrella association has represented the private sector as a whole in Colombia. The closest approximation is the ANDI, which includes not only all major industrial firms but also important firms in agro-business, finance, insurance, and commercial distribution. Thus, it is common for major firms to be members of both more specialized producer associations and ANDI.\

\textsuperscript{130} Partly, the ANDI was created as a response to President Lopez’s (1934-1938 and 1942-1945) request to have one single spokesman for industry. See, Miguel Urrutia, \textit{Gremios, Politica Economica y Democracia} (Bogota: Fondo Cultural Cafetero, 1983).\

\textsuperscript{131} The key role of business associations and the ANDI in particular in Colombia’s economic life is outstanding. For a detailed account, see Nicanor Restrepo Santamaria, "Transformación e Influencia de las Asociaciones Patronales de Antioquia sobre las Políticas Económicas y Sociales Colombianas a partir de 1940" (PhD diss., Ecole Des Hautes Etudes En Sciences Sociales, 2009). Restrepo Santamaria was for several years the head of the Grupo Empresarial Antioqueno (GEA), one of the four biggest business groups in Colombia, a prominent member of Colombian elite, and a key actor in national politics in the last decades. He provides an extensive and detailed analysis of how Antioquian elites effectively managed to have a great influence on Colombia’s economic development policies since 1940s by occupying leadership positions in major firms, \textit{gremios}, and the government and Congress. Practically all government ministers in positions important for national economic development have been presidents of business associations and top executives in the private sector.\

\textsuperscript{132} In his work, Saenz Rovner, supra note 8, shows how some Antioquian firms and the ANDI had direct influence on the National Board of Customs, hired members of the public administration as lobbyists, and managed to have direct access to the media. According to Saenz Rovner, Lleras Restrepo (President between 1966-1970) was hired to write articles in \textit{El Tiempo}, the major Colombian newspaper, and lobby before state agencies in favor of the industrial sector. In contrast, organized labor and popular sector organizations have been considerably less influential. Jonathan Hartlyn, ‘Producer Associations, the Political Regime, and Policy Processes’, (1985) \textit{20 Latin American Research Review} 111. The parallel between the state and private sector was such that during the National Front period, many business associations made efforts to become explicitly bipartisan. This was so to the point of adjusting the numerical make up of their boards to allow for an even distribution of members from the two parties. “The removal of many issues from partisan debate gave private sector groups a more important role as societal intermediaries; in effect business associations provided a “corporative” style of interest articulation between state and society”. See, Carlos E. Juarez, ‘Trade and Development Policies in Colombia: Export Promotion and Outward Orientation, 1967-1992’ , (1993) \textit{28 Studies in Comparative International Development} 67, p. 73\

\textsuperscript{133} Since 1945, and especially since the mid 1960s, there has been an increasingly technocratic orientation of state planning efforts in Colombia, leading governments to increasingly rely on technical and bureaucratic approach to economic development. An economic discourse backed by international institutions helped to consolidate a 
Lauchlin Currie was head of the World Bank mission to Colombia, the first one of its kind to a developing country, in 1949, and a few years later, he served as chief economist of the National Department of Planning (hereinafter “NDP”) (1971-1981); and Albert Hirschman, a leading development scholar, served as financial advisor to the NDP (1952-1954). Colombia was also one of the main beneficiaries of the US aid initiative “Alliance for Progress”, an international cooperation program envisaged by the United States to contain the advance of communism in Latin America after the Cuban revolution, which had the influential participation of worldwide-known Walt Rostow. In turn, the venues through which Raul Prebisch and the CEPAL’s thought influenced Colombia’s economic policymaking were several. A telling example is that Lleras Restrepo, just a few years before becoming President of Colombia and leading the golden age of the ISI model in the country, worked directly with Prebisch and served as consultant to CEPAL.

Politics of Economic Liberalization: The Breakup of the National Industrialist Alliance

Like many other countries in the region, by the mid 1970s Colombia began to introduce some changes to its development strategy. Shocked by the global economic instability of the time, Colombia adopted a series of measures that involved both greater intervention in some areas, like in the financial sector, and less intervention in others, like in import tariffs. The latter type of measures meant the beginning of a technocratic approach to economic policies through the ideas and instruments of “planning”, a notion appealing to rationality devoid of politics. The constitutional reform of 1945 gave a legal anchor to the idea of “planning”. However, its institutional consolidation required the international boost. It was only after the Currie Mission that technical organizations for planning were established within the Colombian government. Therefore, in 1950 the Consejo Nacional de Planeación (later as Consejo Nacional de Política Económica y Social (CONPES) and the Comité de Desarrollo Económico (later as Departamento Nacional de Planeación were established as vehicles for the development of National Plans for Development (Law 19 of 1958); the Ministry of Development was created and units of planning were introduced within several ministries. Development planning activities during the 1950s were still modest due to the social and political unrest that dominated the country. However, once the National Front was consolidated, in 1966 these institutions regained power and played a major role in economic development policymaking. As shown below, these development institutions’ weight relative to other Ministries in the policy debate decreased significantly after the neoliberal reforms. See, Arturo Escobar, ‘The Professionalization and Institutionalization of ‘Development’ in Colombia in the early Post-World War II Period’ (1989) 9 International Journal of Educational Development 139.


135 After holding key positions in the Kennedy administration, Rostow was appointed by President Johnson in 1964 to be the U.S. Member of the Inter-American Committee on the Alliance for Progress. Although the initiative eventually failed for a series of factors, Colombia managed to implement several projects sponsored by the Alliance and with the support of Rostow. Luis Eduardo Fajardo, ‘From The Alliance For Progress To The Plan Colombia: A Retrospective Look At U.S. Aid To Colombia’, (2003) Working Paper No. 23, Crisis States Program, Development Research Centre, London School of Economics and Political Science.

shift in the development strategy. Thus Colombia sought to increase the economy’s productivity through the implementation of gradual pro-market reforms. Although exchange controls remained largely unaffected, import tariffs were reduced with the explicit goal of increasing national industry’s levels of efficiency. In addition, a major financial reform sought to deregulate the domestic market, though still keeping it closed to foreign firms. This trend “towards the market”, however, was suddenly reversed during the 1980s when the country was hit hard by the external debt crisis in the region. Going against the tide, and at a high domestic cost, Colombia did not default on its external debt, and in order to fulfill its obligations, the Colombian government undertook a series of measures aimed at reaching the necessary surplus. Thus the government reintroduced import controls, increased import tariffs, expanded subsidized credit, stimulated exports, and importantly, devalued the currency.\textsuperscript{137}

Once the worst of the crisis was overcome, Colombia embarked on one of the most radical economic transformations in its history, known as the \textit{apertura}.\textsuperscript{138} While Colombia had traditionally had an open position to receive international advice on economic matters, the desperate need for capital gave an even upper hand to international financial institutions.\textsuperscript{139} This time though, the ideological consensus prevailing in these institutions had experienced a significant shift in its approach to economic development since the early 1980s. Orthodox ideas of Anne Krueger, Stanley Fischer, and Larry Summers, chief economists of the World Bank, informed the new trends\textsuperscript{140} and inspired what would be known as the “Washington Consensus”.\textsuperscript{141} Since the 1970s, the ISI model had already been under attack from two very different fronts, dependency studies and neoclassical economics, which fought for providing an alternative model for development to the region.\textsuperscript{142} As it is well known, it was the diagnosis and policy recommendations of the latter which prevailed and gave the intellectual legitimation for the forthcoming economic reforms.\textsuperscript{143} A new generation of neoclassical economists took influential


\textsuperscript{138} It is beyond the scope of this paper to provide a complete analysis of the political economy of the \textit{apertura} process in Colombia. This section only highlights its main salient characteristics. For two comprehensive analyses of the political economy of the \textit{apertura} in Colombia, see Sebastian Edwards, \textit{The Economics and Politics of Transition to an Open Market Economy: Colombia} (Paris: OECD Development Centre, 2001) and Miguel Urrutia, ‘Colombia’, in John Williamson, ed., \textit{The Political Economy of Policy Reform} (Washington D.C.: Institute for International Economics, 1994).

\textsuperscript{139} During the 1980s, when the first reform attempts started, the World Bank provided specific loans in exchange of trade liberalization reforms. Once the worst of the crisis was overcome, the World Bank pushed for further import liberalization reforms.


\textsuperscript{141} Ten particular reform policies made up the “Washington Consensus”: 1) fiscal discipline, 2) public expenditure priorities, 3) tax reform, 4) liberalization of financial markets, 5) competitive exchange rate, 6) liberalization of trade policy, 7) foreign direct investment, 8) privatization, 9) deregulation, and 10) property rights. See, John Williamson, supra note 8.


\textsuperscript{143} See, Jairo Estrada Álvarez, ed., \textit{Intelectuales, tecnócratas y reformas neoliberales en América Latina} (Bogotá: Universidad Nacional de Colombia and Convenio Andrés Bello-Colciencias, 2005). Anil Hira, \textit{Ideas and economic
positions and the Chicago school displaced the CEPAL as the “think tank” for economic policy in Latin America. As part of its development common sense, the Chicago school saw that government intervention, intrinsically inefficient and prone to rent-seeking, was one of the fundamental reasons behind major crises in Latin America, including the debt crisis. They thus saw the ISI model, built on the idea of planning and state intervention, as a development strategy doomed to fail.

Although some of the neoliberal reforms began during the Barco administration in the 1980s, it was not until the early 1990s that the policy recommendations of the Washington Consensus were carried out through. Led by President Gaviria, from the Liberal Party as Lleras Restrepo, the “father” of the modern Colombian ISI model, the various set of reforms was presented as a single package facilitating thus its political implementation. Although there was natural controversy around the reforms, there was a

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144 In a parallel move within Colombia, the Economics Department of the University of Los Andes challenged the dominance of the think tank Fedesarrollo, traditionally associated with the development of ISI policies in Colombia. See, Francois Serres, ‘Las élites de la Administración Pública en Colombia’, in Andrés Gómez León, ed., Diálogos de la Economía con Otras Ciencias (Bogotá: Asociación de Economistas de la Universidad Nacional de Colombia, 2009). Technocrats, or technopols, relatively isolated from traditional pressure groups, played a crucial role in the transition to economic liberalization. Since the late 1980s, a group of economists, associated with the economics department of the University of Los Andes, trained in Unitedstatesean or European universities, associated with the Central Bank, and relatively alien to the traditional economic establishment, had a series of regular meetings in which they envisaged the economic program of reforms which would later be implemented. This group, which became known as the “Club Suizo” group, was led by Rudolf Hommes who later became president Gaviria’s Minister of Finance and mastermind of the economic apertura. See, Sebastian Edwards, supra note 138; Estrada Alvarez, supra note 143; Jorge Dominguez, ed., Technopols: Freeing Politics and Markets in Latin America in the 1990s (Philadelphia: Pennsylvania State University Press, 1997)


147 President Gaviria was seconded by his Minister of Treasury Hommes and the director of the NDP Armando Montenegro. For a complete account of the reforms as seen by the protagonists, see Rudolf Hommes, Armando Montenegro, and Pablo Roda, eds., Una apertura hacia el futuro: balance económico 1990-1994 (Bogotá: Tercer
general consensus among political and social elites. Among policy-makers as well as pressure groups there was a sense of inevitability based on the belief that liberalization and market-oriented reforms were a powerful and “unstoppable” global trend which Colombia had to join so as not be “left out”. In addition, the tradition of power sharing consolidated during the National Front period gave room for politics of relative consensus, avoiding thus a strong opposition by any of the traditional parties.\textsuperscript{148}

Perhaps one of the most, if not the most, intriguing question regarding the reform is how it was possible that the Colombian government managed to carry out a radical reform that from the outset was known to harm the protected and privileged industrial sector. It is clear that the new ideational consensus, the able political strategy of the Gaviria government, and the relative isolation of “technopols” facilitated the process. However, the question still remains. How was it possible that the industrialists, which had accumulated so much power during the last decades and had direct access to key centers of economic policymaking, allowed the government to carry out a reform which would be expected to go against their interests?

An important part of the answer lies on the unforeseen and subtle, but at the same time radical, reconfiguration that the Colombian private sector experienced during the ISI. Towards the end of the ISI period, Colombia had managed to relatively develop its domestic private sector. The industrialization process, as elsewhere in Latin America and other parts of the developing world, was accompanied by high levels of concentration, and in particular, the formation of business conglomerates, or \textit{grupos economicos}.\textsuperscript{149} As a result, by the late 1980s important sectors of the economy were dominated by large

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Mundo Editores y Departamento de Planeacion Nacional, 1994). As in most developing countries, the neoliberal reforms in Colombia were triggered by a crisis. But unlike many other countries in the region where the crises previous the reforms derived from hyperinflation or a balance of payments crises, i.e., they were economic crises, in Colombia it was a political and social crisis. Guerrillas, and especially drug trafficking, seemed to be completely out of control. During the electoral campaign of 1989, Luis Carlos Galan, popular candidate of the liberal party influenced by Gaitan’s ideas and likely winner of the elections, was assassinated. See, Sebastian Edwards and Roberto Steiner, ‘On The Crisis Hypothesis Of Economic Reform: Colombia 1989-91’ (2000) 37 \textit{Latin American Journal of Economics} 445. The Gaviria administration used an array of direct, indirect, and cross compensation mechanisms as well as exceptions or special protections in order to gain the support of different pressure groups for the implementation of the reforms. Thus, for example, the trade liberalization was accompanied by an important exchange rate devaluation in order to get the support of exporters. Strategic timing and speed was also on the government’s side. Noteworthy, the \textit{Estatuto Cambiario}, one of the cornerstones of the ISI model, was abolished by Congress in a rather quick session and the reform barely made the front page of the newspapers. See, Sebastian Edwards, supra note 138; Miguel Urrutia, supra note 138.

\textsuperscript{148} In turn, labor, a pressure group largely against the reforms, was not strong enough to have an important role. With low levels of unionization, especially if compared to other Latin American countries, workers were not well organized and despite opposing the reforms, they were not able to stop them. An important exception, though, is large firm and SOEs’ labor unions. In fact, it is argued that the momentous of the \textit{apertura} was first affected by the failed attempt to privatize the telecommunications state-owned company due to the fierce opposition of its labor union. Sebastian Edwards, supra note 138.

\textsuperscript{149} See, Wilson Peres, ed., \textit{Grandes empresas y grupos industriales latinoamericanos: expansion y desafios en la era de la apertura y la globalizacion} (1998) (Mexico: Siglo XXI); and Tarun Khanna and Vishay Yafeh, ‘Business Groups in Emerging Markets: Paragons or Parasites?’ (2007) 45 \textit{Journal of Economic Literature} 331. Conglomerates are a particular form of business organization by which groups of firms are held together through interlocking directorates, holding companies, cross-financing, and often continued family ownership, conducting business in several, often unrelated markets and sectors. See, Mark Granovetter, ‘Business Groups and Social Organization,’ in
local firms and diversified local conglomerates which over time had managed to expand their businesses and accumulate capabilities in a context of protected markets.\textsuperscript{150}

Economic groups and large firms born during the ISI period in Colombia became a type of economic organization that differed in significant respects from the traditional industrial firm interested in the protections of the ISI model. Over time, Colombian grupos económicos became key employers, sources of tax revenues, owners of mass media, political campaign contributors, accumulating thus a tremendous political influence over the direction of the economic strategy of the country. The size and diversification of their businesses placed economic groups in a better position at the time of the opening of the market. Hence, when the market was liberalized, the groups were able to divest in non-competitive sectors and concentrate its efforts on only a few competitive business lines or non-tradeable sectors. These firms usually had a dominant position in the markets of their core business, and therefore, market liberalization did not mean an immediate threat to them. On the contrary, in some cases, it meant an opportunity to expand their sales which had reached a roof within the confines of the protected local economy. Thus, in many cases, groups were interested in having access to cheaper imported inputs and technology in order to reduce their production costs and gain access to export markets. In addition, groups were usually better positioned to have access to finance in order to smooth the transition to more open markets.\textsuperscript{151}

The national alliance of industrialists that had supported the ISI model against foreign competition broke up in the 1990s.\textsuperscript{152} Economic groups and large firms found that they had more in common with foreign

\textsuperscript{150} Rudolf Hommes, ‘Regulation and deregulation in Colombia: Much Ado About Nothing?’ (1997) 40 Desarrollo y Sociedad 133.

\textsuperscript{151} The sources of facilitated access to finance were several: through the financial firm of the group; the highly profitable “cash cow” firm of the group; or capital markets which saw economic groups as less risky investments.

\textsuperscript{152} See, Angelika Rattberg, Business versus Business? Grupos and Organized Business in Colombia, Latin American Politics and Society, Vol. 47, No. 1 (Spring, 2005), pp. 31-54; Rattberg, Angelika (2001), The Political Preferences of Diversified Business Groups: Lessons from Colombia (1994-1998), 3 Business and Politics 1. The breakup within the industrialist alliance was also reflected in the diminished power of the once powerful ANDI. On the one hand, business associations in general lost importance in the aftermath of market-oriented reforms. They were particularly important in a context of strong government intervention, where development programs were targeted to specific sectors, and some of the associated policy responsibilities were delegated to sector associations. The neoliberal reforms, though, dismantled many sector-specific benefits that were administered by specialized associations. Also, as the productive structure of the country became more diversified, business interests became increasingly fragmented undermining the capacity of general associations to effectively represent them. On the other hand, increasingly powerful grupos económicos, with greater financial capability, over time overshadowed business associations. In the words of Revéiz, “presidential power is exerted now more around business groups than around business associations.” Edgar Revéiz, El Estado como Mercado (Bogota: Fonade and Carlos Valencia Editores, 1997). Also, the associations’ main source of funding is the contributions of its affiliates, set in proportion to firm employment or output. Rodrigo Losada, Los Gremios Empresariales en Colombia en los Inicios del Siglo XXI (Bogotá: Pontificia Universidad Javeriana, 2000). This gives large firms and
MNCs than with their Colombian allies, namely, small and medium size enterprises. Thus, once the reforms were perceived as inevitable, Colombian large firms changed the position they had adopted during the previous liberalization attempts of the late 1970s and late 1980s. Together with the domestic financial sector which had emerged as a new powerful actor since 1970s, they supported the reforms and let their Colombian former allies fall. They followed different strategies: some took advantage of the opportunities provided by the privatization of SOEs, others focused initially on their non-tradable products, and still others built new alliances with new actors, i.e., foreign MNCs, suppliers and consumers abroad, and so on. Thus economic groups became a new and different kind of “economic animal”, with their own economic interests and agenda, more prone to liberalization and market-oriented reforms.

**Rebuilding and Reconfiguring Alliances**

At the turn of the century, the international context changed and international events shook, once again, economic models and theories. Just like in the early 1990s when slow growth, inflation, inequality, the debt crisis, and the fall of communism were attributed to the “ISI model”, and ultimately, to “excessive” state intervention in the economy, in the early 2000s slow growth, unemployment, inequality, and the global financial crises were attributed to the “neoliberal model”, and ultimately, to unrestrained markets forces and the lack of state regulation. In Latin America, the new context

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business groups effective power over many business associations; in some cases, these firms effectively appoint the association’s head or pay some of the high-ranking officials at the association. Nevertheless, this does not mean that business associations have completely disappeared of the political scene. When it is convenient, large firms continue to use business associations. Interestingly, even though business groups have direct influence over the policymaking process, they also frequently participate through business associations. One advantage of this strategy for groups is that other actors and the public at large see business associations as representative of interests that are more general than those of business groups; the views promoted by associations are thus more easily presented to the public. As shown in the next sections, many public-private policy initiatives continue to be canaled through business associations.

As mentioned before, another important compensatory measure was the significant devaluation of the Colombian peso which made domestic products temporarily more internationally competitive.

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The following are some of the key accepted “facts” which have been interpreted in a way that discredits the neoliberal model and lie behind the emerging consensus on development economics: a) the financial crises that have hit countries, regions, or the world economy since the mid 1990s (Mexico 1994, Thailand, Korea, and Indonesia 1997, Russia and Brazil 1998, Turkey 2000, Argentina 2001, United States 2008) and the counterexample of Chile which has been used particularly in arguments against the liberalization of capital accounts; b) the median growth rate in low- and middle- income countries which fell from 2.5% in 1960s-1970s to virtually 0% in 1980s-1990s. Even if the debt crisis of the 1980s is not taken into account, because it could be attributed to the ISI model, the levels of growth rate have been rather disappointing; c) The levels of unemployment which significantly rose during the 1990s. While this fact was interpreted at the time as the lack of labor markets flexibility, today it is seen under the light of transition costs in the pro-market liberalization reforms and the result of the lack of social safety nets; d) since the 1980s inequality has increased among and within countries, and while poverty levels have decreased, relative poverty has remained at very high levels. Moreover, the decrease in absolute poverty is explained largely by the decrease in poverty in China and India, two of the major outliers who are considered not to have followed the Washington Consensus. Although it is recognized that their impressive economic growth has been the result of their pro-market reforms, it is stressed that their policies have been very heterodox, and responding to the specific context in which they took place. Similarly, the miracle of the Asian Tigers has been reinterpeted not as the result of open and deregulated markets, but rather as an example of positive synergies between the state and the market, following too a heterodox path. See, among others, Alice Amsden, *Asia’s Next
opened the door to the emergence of left and left-of-centre governments which took power usually with a rather strong anti-“Washington Consensus” discourse. In this turn to the left in the region, Colombia was an outlier. Although in the elections of 2002 the left had a historically good performance, the electorate favoured the candidate that deployed the most radical discourse against the guerrilla and promised the end of the conflict, the right-wing candidate Alvaro Uribe Velez. After building his career within the Liberal Party, Uribe ran for the presidency as an independent candidate. He received the strong support of paramilitary groups and managed to get the support of the conservative wing within the Liberal Party and most of the votes of the Conservative Party. It was the first time that candidate not formally belonging to either the Liberal or the Conservative party won the Presidency since 1958 when the Liberal and Conservative parties set the National Front. In Uribe’s campaign, the economic and security discourses were closely interlinked, associating the end of the guerrilla conflict with higher levels of investment and growth. Furthermore, in a decade marked by neoconservatism and the “war on terrorism” in the United States, Uribe received the blessing of President Bush which translated into political support, economic “cooperation” through a Free Trade Agreement, and importantly, financial resources mainly through the Plan Colombia.

The Colombian grupos economicos and the foreign TNCs, an increasingly influential actor in Colombian politics particularly after the apertura, decisively supported Uribe. And not surprisingly, as in the apertura period, this group of firms were, once again, some of the main beneficiaries of the new economic strategy. Compared to the 1990s, however, the alliances within the private sector experienced a reconfiguration and there were some important shifts in the rationale and instruments behind the industrial policies. Indeed, once the neoliberal economic model was consolidated and the losers of the apertura reconverted themselves to survive in the new environment, the Colombian grupos economicos sought to rebuild an alliance with them. In an increasingly competitive global economy, and particularly after the definitive incorporation of China into the world trading system in 2001, many Colombian business groups and large firms realized that in order to survive they needed a strong local competitive

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156 The “Plan Colombia” was developed by Democrat President Bill Clinton (1993-2001) and Conservative President Pastrana (1998-2002) as a long-term plan aimed at putting an end to Colombia’s long armed conflict and eliminating drug trafficking. The Plan was further expanded by Republican President George W. Bush (2001-2009) and President Alvaro Uribe (2002-2010).

157 On the one hand, in the last decades the guerrilla groups had become not only a problem and an “extra cost” for doing business, but also it was directly affecting the social and economic elites who were personally affected by increasing kidnaps and assassinations. On the other hand, the explicit promise of President Uribe to restore “the investor’s confidence” was an open statement according to which under his administrations (2002-2006, 2006-2010) the major economic policies would be targeted to favour them.
base. Therefore, they sought to establish new alliances and linkages with their old Colombian partners. This interest coincided with that of foreign MNCs which also benefit from a strong local base. While in the past local and foreign firms fought for rents created within the national economy, today they fight for rents in the global market. The expansion of the market has made room for more players and the possibilities of alliances between local and foreign firms which have the common interest of having the best quality of labor, infrastructure and inputs at the lowest possible cost. The national economy no longer defines the size of the market and demand, but it provides the platform, the basic inputs for competing in a more open global economy.

As the Colombian private sector began a reconfiguration in the 2000s, a new economic consensus using a distinctive vernacular and referring to new theoretical frameworks emerged and provided the ideational legitimation to the policies that seek to consolidate the new alliance. As mentioned at the beginning of the paper, the structures, modes, ideas, images, and arguments of a neo-institutionalist school of development is increasingly dominating the debates among scholars and policymakers, regardless of their political orientation, and serving as a legitimation for policy arguments, design of public policies, and political decisions. In this context, we have seen the important role that some leading scholars, like Porter and Hausmann, have played in the design of the new policies in Colombia. Moreover, as seen in Section II, important parts of the 2006-2010 Development National Plan, which provide the legitimation for export, FDI and competitiveness policies, are embedded in the new ideas about development and openly endorse them, without necessarily rejecting the previous discourse. In turn, behind the robes of the new discourse, many policy recommendations of the Uribe government largely followed the trends of the 1990s.

Finally, in order to make a basic assessment of the industrial policies emerging during the 2000s, it is important to take into account the overall outcome. Regarding exports, in the 2000s Colombia had an outstanding performance. It tripled the value of its exports, moving from US$ 10 billion in 2002 to US$ 32 billion in 2010, due to increases in both exportable volumes and international prices, particularly in commodities. While the reasons behind the export performance of Colombia are several, export promotion and competitiveness policies have undoubtedly played a positive role. What is important to note is that while the Colombian export performance was certainly laudable, the export profile of Colombia in 2010 was virtually the same as in 1991, the beginning of the pro-market reforms. More than 70% of Colombian exports continue to be commodities and primary products; instead, high-technology exports represent less than 3%. While it would be hard to attribute these results just to export promotion and competitiveness policies, it is clear that Colombia has not changed its way of insertion into the world economy nor made much progress in the transformation of its productive structure. Despite the shifts observed in discourse, policies and instruments in the last decade, results seem to have varied quantitatively but not qualitatively. Although it is true that it may be too soon to make a

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158 This time, though, interests were no longer driven by nationalist sentiments as it happened in the 1960s and 1970s when nationalisms were fuelled by the decolonization movement and the Cold War.

159 Although it is hard to “locate” the institutionalist school of development and clearly identify a place as the CEPAL or the Chicago school in former periods, in the case of Colombia, scholars associated with Harvard University have played a significant role.
complete evaluation of the impact of the new policies, the analysis above has shown that nothing in the design of the policies and instruments allows foreseeing any significant change in the future.

With regard to FDI, since 2004 Colombia has shown an outstanding performance in terms of the amount of FDI received compared to its neighbors in the region. It surpassed Argentina in the Latin American ranking, behind only Brazil and Mexico, the two largest economies in the region, and Chile the best performing economy in the region since the 1980s. FDI inflows have moved from US$ 2.134 million in 2002 to US$ 7.207 million in 2009, reaching levels of US$ 10.596 million right before the global crisis of 2008. However, most investment inflows have gone into sectors where Colombia already has “natural” comparative advantages, maintaining the production structure achieved during the ISI period. Indeed, most inward FDI were directed to the exploitation of natural resources (mainly oil, gas and mining), representing more than 60% of total inflows. Moreover, investments in the manufacturing sector, only the third destiny sector, representing around 15% of total FDI, have largely been the product of mergers and acquisitions rather than greenfield investments.

7. Legal Implications
This section seeks to reveal the “implicit legal theory” behind the new development strategy adopted by Colombia. It also provides a picture of the role of law during the 2000s in the light of the new political economy of development. Finally, it tries to show how Colombia has in fact responded to the fundamental legal challenges of the new developmental state as identified by David Trubek in his chapter.

Implicit Legal Theories of the ISI and the Washington Consensus
The Colombian case endorses the implicit legal theory identified by Kennedy for the ISI and the Washington Consensus models. In the 1960s and 1970s, in Colombia law was broadly understood as purposive. As the regulation of FDI shows, law was subordinate to social purposes – either to “national development” or to “economic and technological independence”, rather than expressing a priori limits or purposes of its own. This legal pragmatism involved a purposive reasoning to link legal arrangements with social needs and objectives (“antiformalist social” in terms of Duncan Kennedy). The ISI also involved the creation of public law institutions, established by statute and implemented by public law bureaucracies (Proexpo, NDP Investment Review Committee). Law allocated authority in public agencies which had more or less discretionary power to approve investments or not, to provide export subsidies or not. Although not explicitly, development professionals had a highly instrumentalist view of law. As the attempts to regulate locally and internationally FDI show, law was assumed to be a powerful and effective instrument of social and economic transformation, with the power to overcome barriers inherited from the past or imbricated in local or international contexts. Finally, while retaining the focus on the national level, law was also increasingly internationalized in order to achieve economic goals – think of the GATT, ALADI, or the ACN. Of course, these implicit legal ideas had blindspots and biases that

160 Here I draw upon the idea of “Implicit legal theory” as developed by David Kennedy when he refers to the legal assumptions behind the economic and political projects of development. See, David Kennedy, supra note 8.
161 See, David Kennedy, supra note 8.
162 See, Duncan Kennedy, supra note 1.
made more difficult to see the dangers of state failure and rent-seeking, the difficulties of legal implementation, or the benefits of private orderings and private law.

In the neoliberal reforms law remained as pragmatic and purposive instrument of policy as in the ISI period. The reforms implied the building of completely new legal regimes, locally and globally, to support markets. As shown by the reforms in FDI, the neoliberal law remained instrumentalist and positivist. The statutes proposed to accomplish the new goals of liberalization were usually standardized and trying to reflect international “best practices”. And as during the ISI period, policymakers were highly dependent on legislative positivism and unconcerned about the relationship between law in the books and law in action. However, at the same time, there were significant and apparent differences. While in classical developmentalism legal instruments were usually of a public nature, of the command and control genus, and law was seen primarily as a tool to empower the state and render its interventions and regulations in the market more effective, in the neoliberal model law took a different direction. During the Washington Consensus period, law was basically seen as a framework for the market and a shield against undue state intervention. Legal instruments took the form of rights, private law gained prominence, and legal arrangements sought to protect private property rights, facilitate contracts, and limit state discretion. Law no longer was used to improve the effective exercise of state power, but as a more effective restraint of government rent seeking. Also, in a highly formalist view of law, courts grew in significance, central to the enforcement of market transactions and limitation of public discretion (see, for example, the new FDI regime).

The Role of Law in the 2000s
In the last decade, Latin America has experienced important economic changes which have been accompanied by a reorientation of its economic and social policies, including industrial policies. To the extent that these policies implied new ways of state intervention, some scholars have suggested that the configuration of a “new developmental state” (NDS) is in the making.163 This book is an attempt to better understand what the implications of these changes are for law and legal theory and practice.

As the case of Colombia shows (see also Helena Alviar’s chapter), if anything characterizes the NDS is precisely the lack of a single approach. Instead, the current development strategy shows a mixed picture where rationales for state intervention, no intervention, or even for the type of intervention, vary considerably depending on the issue or policy area. This paper argues that in the case of industrial

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163 In this paper I have been reluctant to use the term of “new developmental state” because it stresses the break and differences with previous forms of state, particularly the neoliberal state, moving attention away from the many aspects of continuity in policies between the two periods. In addition, the “developmental” aspect evokes the idea that the state is intervening in ways similar to those of the “developmental state” which emerged in the twentieth century in Latin America and South East Asia. However, a closer look at current forms of state intervention shows that they have little in common with old ones. It is true that today there is more state activism and direct intervention as compared to the trends of the 1980s and 1990s; but the forms such activism takes today are quite different from the past, and reducing developmentalism to just state intervention leaves aside critical aspects of the developmental state. Finally, the reference to the state transmits the idea that the whole state apparatus may be either developmental or neoliberal, or for this case, neo-developmental. Rather, in this paper, I have argued that the state’s actions are characterized by the multiplicity of rationales underlying intervention, types of interventions, shapes, instruments, discourses, policies, and so on.
policies in Colombia this diversity in approaches responds to at least three interrelated factors: the new ideational consensus among scholars and policy makers about how to bring about economic development, the accumulation of institutional layers and legal arrangements inherited from previous development strategies, and the specific political economy underlying the policy reforms. What is interesting to note is that current ideational consensus, unlike the developmentalism of the 1960s or the neoliberalism of the 1990s, allows for the possibility of coexistence of multiple rationales for state action—or at least it does it to a greater extent than previous discourses.\textsuperscript{164} Unlike its predecessors, the current consensus explicitly rejects the idea that “one-size-fits-all” and emphasizes the critical importance of context in effective development policies. Furthermore, it rejects the dichotomy of either the state or the market, and rather it embraces the idea of the state and the market. This flexibility and more open structure allows policies sustained by apparently contradictory rationales to live together without putting under too much stress the boundaries and coherence of the “model”.

As this paper has shown, unlike what happened when the ISI or the neoliberal policies arose, the “new” strategy does not involve a neat break with the recent past. Rather, and particularly in the case of Colombia, there seems to be much more continuity than change. In fact, it is telling the fact that every time Colombia embarked on a new development strategy in the past, it enshrined so in the national constitution.\textsuperscript{165} The current policies and strategy, instead, have smoothly emerged without the need for deep reforms in major legal structures such as the constitution, or international legal and economic structures.

This paper has analyzed three industrial policies which have followed different paths and responded to different rationales. In the case of export promotion policies, most of the instruments analyzed were born during the ISI model. The \textit{Plan Vallejo} has survived almost unaltered since its creation in the 1960s. Similarly, Proexport and Bancoldex are the continuation of the old Proexpo. Within this continuity, though, there have been some changes. Proexport and Bancoldex are no longer state institutions operating under public law. Rather, today they are respectively a public-private agency and a public commercial bank operating under private law and using public and private law instruments as their means of action. Also, Proexport has internationalized its operations and notably increased its capabilities, effectiveness and know-how. Bancoldex, in turn, after a period of exclusive focus on import-export operations, has been recently converted into a multipurpose development bank oriented towards micro and SMEs. All in all, in relation to export promotion policies, Colombia has adopted an approach of shallow intervention, seeking to address market failures such as information costs, asymmetries of information, and so on, which are typical of export operations. While it is true that most of the export promotion policies have survived from the ISI period, it is also true that they represent limited ways of state intervention that fit well in a chastened neoliberal model; they were not part of the hard core of ISI policies. In this policy area, law is seen as an instrument of the state that intervenes to address market imperfections. Perhaps the major change with respect to the past is that while in the ISI these interventions were carried out by public institutions through public law instruments, today the

\textsuperscript{164} In a way, it resembles the flexibility of the development common sense of the 1970s. See, David Kennedy, supra note 8.
\textsuperscript{165} This was the case of the constitutional amendment of 1968 and the enactment of the new constitution in 1991.
institutions can be public-private entities using private and public law instruments and developing operations beyond the boundaries of the local economy.

FDI policies followed a clearly different path. Unlike export promotion, FDI policies experienced a radicalization in the later stages of the ISI period which in the 1990s was seen as one of the crystallizations of the excesses of state intervention. Accordingly, the legal regime erected during the ISI model was virtually dismantled and a radically new one was built during the 1990s. The rationale behind the new regime responded to the most basic premises of the neoliberal model: adoption of deep international commitments recognizing ample rights to private investors, providing strict protection, and limiting to the greatest extent the level of discretion of the state. During the 2000s, this approach has been reinforced through the development of a network of BITs and the creation of new instruments such as the LSCs and the FTZs. Only marginally the state has tried to retain some policy space as in the negotiation of BITs. In this policy area, law continues to be seen through the lenses of rights, guarded by independent courts, that set a limit to state action and discretion and provide guarantees for the protection of private interests.

Lastly, competitiveness policies provide the example of a new way of state intervention that is supported by the new ideational consensus emerging after the Washington Consensus. As seen, the PTP has been designed with the advice of leading scholars and dressed with the robes of the most recent ideas in development economics. As the old industrial policies, competitiveness policies seek the transformation of the productive structure; and as the old industrial policies, they pick winners —though without saying it explicitly, and little by little broadening its scope. The rationale is that effective development policies need the effective collaboration between the public and the private sector and the role of the state is mainly one of coordination. Given that the PTP is in its early stages, it is still institutionally weak and has not resorted to a particular legal instrument in a systematic way. Instead, it has used a variety of instruments ranging from policy directives produced by CONPES, non-binding agreements among private and public actors, and non-official internal documents. Still, perhaps the most commonly used instruments are internal documents and non-formal (oral) mechanisms, which give flexibility and expediency to the system as well as poor transparency. While the coordination actions encompass a wide variety of public and private actors including governmental agencies, private firms, business associations, labor unions, and universities, there is a selected group that occupies a privileged position within the PTP. The implementation of the program counts with the key participation of international private consulting firms, and the main interlocutors in the private sector are the business associations and the largest firms in their respective sectors. In this policy area law is seen as a coordination tool, as a means to set and improve the channels of communication and collaboration between the public and the private sector with the goal of reducing transaction costs and increasing information and knowledge for policymaking and business development.

What is the political economy behind these policies, instruments and new strategy? The neoliberal reforms of the 1990s, locked-in in profound legal reforms which included constitutional and international instruments, left Colombia more open and vulnerable to changes and swings in the global economy. Unlike most countries in the region, the international financial crises and the fall of the Washington Consensus hit Colombia at a time when a conservative government was taking power and
with its main efforts focused on putting an end to the guerrilla. At the same time, throughout the region, the crisis of the neoliberal model was accompanied by demands for greater state intervention and the belief that the economic destiny of the country could not be left just to the market. This time, though, the conditions were not given for the types of interventions that characterized the ISI model after the crisis of 1929 and the two world wars. Institutional and legal constraints, vested interests, ideological biases, and political conditions in Colombia were not favorable for actions such as intervening directly on prices, closing the market or de-linking from the international markets, or transferring private property to state’s hands.

The social pressure for state action, though, was still present. Local private firms in turn were threatened by foreign competition and instability, and sought some sort of state intervention. Large firms and economic groups saw that the state could play a coordinating role that would help them rebuild the alliance with local partners in order to become internationally more competitive; small firms, in turn, saw in the state a source of support that would help them overcome obstacles and acquire capabilities to survive and compete in open markets. On the other hand, the state, and Uribe’s government in particular, faced the challenge of how to intervene in the economy in order to keep levels of employment and investment when the state no longer has direct control of key assets as it used to have in the ISI period? In other words, how to influence on investment decisions and carry out a transformation of the productive structure in spite of not holding the property over the country’s productive assets? How to control the economy without having the strings that directly move it?

The industrial policy response to this challenge in the 2000s has been twofold. On the one hand, it has sought to incentivize private investments by reducing the costs associated with risks of regulatory changes and by granting tax exceptions. This has been the role of BITs, LSCs and FTZs. On the other hand, it has sought to increase the productivity of the private sector by reducing costs associated with doing business. In the face of a competitive threat, the state response has not been protection as in the ISI, but strengthening of capabilities in the private sector. For this purpose the state has used a plethora of instruments. The coordination role of the PTP, the draw-back system of Plan Vallejo, the information and marketing services of Proexport, the training programs for SMEs of Bancoldex are, ultimately, different ways that the state has to reduce transaction costs and assist the private sector to improve the way it runs business.

This political challenge of the new development strategy has been compounded by legal challenges too. Traditional public law instruments of the top-down, command and control type, were not effective because the state no longer had direct property over major productive assets, because their use was not possible due to legal and institutional restraints, or simply because of ideological biases or political constraints that did not make them an option. At the same time, private law instruments in general are less effective to have direct control over property that is in others’ hands, and therefore, did not constitute a reliable alternative tool either. As a result, the state has resorted to an eclectic range of instruments varying their use according to the particular circumstances, specific needs, and policy areas.

In his chapter, Trubek poses three major dilemmas for law in a new developmental state: 1) how to have flexible and revisable legal frameworks without affecting private investors’ confidence in the legal
framework so as they are willing to invest; 2) how to avoid agency capture in close public-private collaborations; and 3) how to guarantee transparency and accountability in policymaking. From the analysis of its industrial policies, it is possible to suggest that the Colombian legal response to these problems has been the following. Regarding the first dilemma, Colombia has adopted an uncompromising formalist approach to the protection of private property and the constraint of state action, offering all sorts of guarantees to the private investor if she decides to make an investment. As seen above, this has been the role of BITs and LSCs. On the other hand, it has adopted an approach of limited intervention in an attempt to influence when, how, where the private investor makes an investment. For this purpose it has used a variety of instruments such as the PTP, Proexport, or Bancoldex, being flexible in addressing the specific needs of the private sector and promoting a close collaboration between the public and the private. Regarding the question of capture, given that many reforms have been relatively recent, it is hard to say whether public institutions have been captured. However, it is clear that the state has chosen a selected group of interlocutors and beneficiaries within the private sector (business associations and large firms) and a specific group of firms (domestic large firms) has benefited most from the systematic use of instruments and services. BITs are naturally targeted to large multinational corporations, LSCs and FTZs are intended to benefit large firms. The national competitiveness system and the PTP have assigned privileged roles to international consultants, business associations, and large firms. Surveys reveal that Plan Vallejo and Proexport services are mostly used by large firms. In this context, Bancoldex, by focusing its services on SMEs, seems more an exception than the rule. Finally, regarding transparency and accountability, these are aspects that have not been a major concern in the design and implementation of Colombian industrial policies. Moreover, as seen above, even in those policies that take the most formalist approach, the government has had ample margins of discretion to make choices.

8. Conclusions
This paper on industrial policies is an attempt to better understand the configuration of the new development strategy adopted by Colombia in the last decade. The paper shows that the current configuration of development policies in Colombia responds only partially to the specific features of an emerging economic and legal consensus. On the one hand, some of the basic precepts, background ideas and assumptions of the Washington Consensus are still in effect. On the other hand, a wide variety of policies, institutions and legal instruments, with different rationales and born in the past under different development models, have survived waves of reform, transformed themselves, and coexist today. If anything characterizes the new strategy is the lack of a single approach. This feature, in turn, may be positive or negative. On the one hand, it may be positive to the extent that it allows for a plurality of forms of regulation and it may make intervention more responsive to the specific needs of context. On the other hand, the mixed picture may make it fuzzier to identify types of rules that prevail and systematic biases in their application. This paper has tried to shed light on this blurry picture showing that in the Colombian case behind the merge of the public and the private there has been more continuity than change, both in rules and in outcomes.