



# NEGOTIATIONS WITH LOADED DICE

The role of the Peruvian private sector in the process of  
the Trade Promotion Agreement

December 2009

Centre for Latin American Research and Education – CEDLA  
Bart-Jaap Verbeek MSc



**Cover illustration:**

14 May 2004, Government Palace, Lima: Peru's President Alejandro Toledo presents the official negotiating team four days prior to the first negotiating round in Cartagena, Colombia. Standing to Toledo's right are Minister of Foreign Trade and Tourism Alfredo Ferrero Diez-Canseco, and Vice-Minister of Foreign Trade and Chief Negotiating Team Pablo de la Flor-Belaúnde. Note the presence of business leaders at the last row: second to the left is Roque Benavides and on the ultimate right is César Peñaranda, coordinators of CENI. In the centre of the last row stands Graciela Fernández-Baca, associated to CONFIEP. *Source: Agronoticias No. 293, October 2004.*

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## List of Abbreviations

ADEX	<i>Asociación de Exportadores</i> – Exporters Association
ADIFAN	<i>Asociación de Industrias Farmacéuticas Nacionales</i> – Association of National Pharmaceutical Industries
AGAP	<i>Asociación de Gremios Productores Agroexportadores del Perú</i> – Association of Agroexporting and Producing Gremios
ALAFARPE	<i>Asociación de Laboratorios Farmacéuticos del Perú</i> – Pharmaceutical Laboratories Association of Peru
AMCHAM	American Chamber of Commerce
APRA	<i>Alianza Popular Revolucionaria Americana</i> – American Popular Revolutionary Alliance
ASBANC	<i>Asociación de Bancos del Perú</i> – Banking Association of Peru
ATPDEA	Andean Trade Promotion and Drug Eradication Act
CADE	<i>Conferencia Annual de Ejecutivos</i> – Annual Executives Conference
CAF	<i>Corporación Andina de Fomento</i> – Andean Development Corporation
CAN	<i>Comunidad Andina de Naciones</i> – Andean Community of Nations
CCL	<i>Cámara de Comercio de Lima</i> – Lima Chamber of Commerce
CENI	<i>Consejo Empresarial para Negociaciones Internacionales</i> – Business Council for International Negotiations
CEPES	<i>Centro Peruano de Estudios Sociales</i> – Peruvian Centre for Social Studies
CNA	<i>Confederación Nacional Agraria</i> – National Agricultural Confederation
COMEX	<i>Sociedad Nacional de Exportadores</i> – National Exporters Society
CONFIEP	<i>Confederación de Instituciones Empresariales Privadas</i> – Confederation of Private Business Institutions
CONVEAGRO	<i>Convención Nacional del Agro Peruano</i> – National Convention of Peruvian Agriculture
DL	<i>Decreto Legislativo</i> – Legislative Decree
FTA	Free Trade Agreement
FTAA	Free Trade Area of the Americas
IDB	Inter-American Development Bank

ILO	International Labour Organisation
IMF	International Monetary Fund
INDECOPI	<i>Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual</i> – National Institute for the Defense of Competition and the Protection of Intellectual Property Rights
IPE	<i>Instituto Peruano de Economía</i> – Peruvian Economy Institute
MEF	<i>Ministerio de Economía y Finanzas</i> – Ministry of Economy and Finance
MINAG	<i>Ministerio de Agricultura</i> – Ministry of Agriculture
MINCETUR	<i>Ministerio de Comercio Exterior y Turismo</i> – Ministry of Foreign Trade and Tourism
MINJUS	<i>Ministerio de Justicia</i> – Ministry of Justice
MINSA	<i>Ministerio de Salud</i> – Ministry of Health
MINTRAB	<i>Ministerio de Trabajo</i> – Ministry of Labour
PERUCAMARAS	<i>Cámara Nacional de Comercio, Producción y Servicios</i> – National Chamber of Commerce, Production and Services
PRODUCE	<i>Ministerio de Producción</i> – Ministry of Production
PUCP	<i>Pontificia Universidad Católica del Perú</i> – Pontificia Catholic University of Peru
REDGE	<i>Red Peruana por una Globalización con Equidad</i> – Peruvian Network for a Globalisation with Equity
RREE	<i>Ministerio de Relaciones Exteriores</i> – Ministry of Foreign Affairs
SNI	<i>Sociedad Nacional de Industrias</i> – National Industrial Society
SNMPE	<i>Sociedad Nacional de Minería, Petróleo y Energía</i> – National Mining, Oil and Energy Society
SNP	<i>Sociedad Nacional de Pesquería</i> – National Fishery Society
STE	<i>Secretario Técnico Ejecutivo</i> – Executive Technical Secretary
TLC	<i>Tratado de Libre Comercio</i> – Free Trade Agreement
TPA	Trade Promotion Agreement
UP	<i>Universidad del Pacífico</i> – University of the Pacific
USAID	United States Agency for International Development
WTO	World Trade Organisation

*...to those who lost their lives in Bagua, 5 June 2009*



# 1 Introduction

On Friday 5 June 2009, continuing protests throughout the entire Amazonian region of Peru escalated completely with the violent repression in Bagua: according to official numbers, thirty-four people lost their lives in the bloody confrontation between the national police and the protesting indigenous groups. For almost two months, tensions between armed national security forces and rebellious native people had grown ever since President Alan García announced the state of emergency in the Amazonian districts of four departments in eastern Peru, Loreto, Amazonas, Ucayali and Cuzco. Constitutional rights such as the freedom of public gathering were suspended temporarily and state officials were authorised to search private properties without warrant. The decision to declare the state of emergency in these regions was an answer to the protest actions of the indigenous population.

The cause of the conflict was the unconstitutionality of several legislative decrees among which DL1090, the so-called *Ley Forestal* (forest law), implemented after the signing of the free trade agreement (FTA) with the United States. It turned out that the Peruvian government had not consulted the native population prior to the execution of the decrees despite Convention 169 from the International Labour Organisation (ILO) and the UN's Declaration on Indigenous Tribe Rights, that secure indigenous groups their sovereignty over their own lands.

This outburst of growing discontent of civil society was a popular response to the implementation process of the FTA and, moreover, the broader political and economic pathway of Peru. As one of the last strongholds of neo-liberalism in Latin America, Peru has continuously been opening its market in order to integrate into the world economy – a process started under Alberto Fujimori in 1990. After the failing attempts by the United States to create a Free Trade Area of the Americas (FTAA), it instigated a wave of bilateral trade agreements that has spread all over the continent. Initially negotiating with the Andean Community of Nations (CAN) – Colombia, Ecuador, Peru and Bolivia – the United States has signed so far only with Peru a bilateral free trade agreement. Evidently, the Peruvian government proved to be the most favourable to sign the trade agreement as President Alejandro Toledo announced under the slogan “*TLC sí o sí*” (“yes or yes to the FTA”) the willingness to sign at any cost.

On 12 April 2006, amid the presidential elections, the Peruvian President Alejandro Toledo and the trade representative of the US government Robert Portman signed the draft of the free trade agreement between both countries under the name Trade Promotion Agreement (TPA). The agreement had been established four months earlier, on 7 December 2005. The negotiation process had come eventually to an end without any participation of Peru's CAN partners when President García and President Bush finalised the implementation of the long-pending agreement. Since the start of the negotiations of a free trade agreement with the United States, in May 2004, the debate centralised around the economic aspects. While the overall effects of the TPA on the US economy are expected to be negligible, the TPA is said to strengthen, over time, the process of economic reform and development in Peru. The agreement makes the preferences granted to Peru through earlier trade programmes permanent, allowing businesses and investors to make decisions with more certainty and in a more stable environment. The debates on the agreement in geopolitical terms, as a development project of Peru, regional integration and as a form of insertion into the world economy, were less intense and less diffused. However, this agreement affects the entire national institutional structure; the impact that the TPA and the insertion into the international economy has is evident.

Simultaneously, the Peruvian government launched a major propagandistic campaign to promote the “infinite market and employment for everybody.” It overshadowed the discussion of other equally important aspects that are more difficult to catch. This campaign only diffused the benefits, occulted the costs and manipulated statistics, with the aim to show the advantages of the agreement. According to the National Pre-electoral Barometer poll of May 2006, realised by the Public Opinion Group of the University of Lima, sixty-seven per cent of the population said to be little or not informed at all on the TPA with the United States. Nevertheless, fifty-nine per cent of the population said to support its signing. Political leaders avoided strong articulation and, in some cases, they waited to the results of the approval polls of the agreement were shown in order to emit their pronouncements with electoral calculations.

The critical observations to the TPA originated, basically, in the sectors that would be affected directly such as agriculture, national health care and environmental groups. Only few organisations from the society, academics and political representatives made analyses with respect to the TPA. These studies involved political economic aspects, the development strategy that it conditions, the type of insertion that determines the international economic scale, and its impact on Andean and regional integration processes (Ruiz Caro 2006). Many universities and NGOs, that could have used their capacity to promote relevant studies on this issue, abstained from doing so. Due to the lack of participation of the political parties and civil society, with several exceptions, they missed the possibility to define limits or at least investigate, at the time, the high amount of aspects included in the negotiations. Instead, they opted to look the other way so that political opportunism dominated the decision-making on economic policies.

### **1.1 The power of the paradigm**

The hypothesis of this research is centred around the assumption that the continuation of powerful economic interests prevailed and determined the eventual outcome of the TPA process. Presidents may change every five years, but even after the ten-year semi-authoritarian Fujimori administration triggering a process of democratisation, these interests did hardly change. Under neo-liberalism a new hegemonic ideology became the paradigm not only in Peru but throughout Latin America. As stated by Durand (2005, 12), it is crucial to understand that the permanence of the paradigm – a formal scheme in which general principles are being projected in a set of decisions – is not only a marginal aspect of power, it originates in it. Its validity or its obsolescence is, therefore, a political matter. The survival of an ideological hegemony depends on the success of the social struggle within the society. The results of these combats determine the continuity or the suspension of the paradigm that guides public policy. With every presidential change, with the existence of participative or true representative democracy, the paradigm’s principles and effects can be discussed and questioned. The constant struggle of occupying the state and managing it decides in the end if the hegemonic community of the existing paradigm (in the case of neo-liberalism the technocratic elites, politicians, business power groups and ideologists) achieves altering the political correlation in its favour.

The analysis of the consequences of neo-liberalism in the political and economic system forms the context of this particular case of the TPA. It is necessary to identify the effects or consequences of the new paradigm on the structure, weight and orientation of the most powerful business segments, which are the ones that command the actual market economy. It is most important to reflect on them because they have constituted themselves within the new gravitational centre of the Peruvian society. The question is who accumulated or lost economic power in the new paradigm, how and through who they exercise the access and organise the influence in the state, who wins and loses with the decisions taken, what is the reaction of the

different interests in the political game and what are the relations and positions between those particular interests. According to Durand (2005, 21), the power elites not only have the hegemony but, moreover, legitimacy; they can generate benefits for the country and its society or, furthermore, they can create a hegemony without consensus that is politically fragile and socially rejected.

With the recent tragedies in Bagua as result, it seems that the neo-liberal paradigm is indeed a hegemony without consensus. Under the title "*Por un Perú Moderno*" (For a Modern Peru) President García launched a total number of ninety-nine legislative decrees in 2008 of which only twenty-two are directly linked to the implementation of the TPA. The government used these decrees to promote reforms that go beyond the agreements of the TPA. In fact, they express a vision that had never come to a political agreement before; hence the TPA is used as a legitimate argument to reinforce the profound neo-liberal reforms. Despite the fact that most decrees will contribute to the development of the country, an important number will contribute to the diminishment of environmental and social protection standards in order to facilitate the exploitation and use of grounds, forests and water that will affect small agricultural producers, farming and native communities. Various reforms made by the government are not obliged by the TPA, but seem to be established by a vision on development and the use of natural resources announced in a series of newspaper articles "*síndrome del perro del hortelano*" (the syndrome of the dog in the manger) published by President García in 2007 and 2008. In these articles, García systematically accuses the native population of blocking Peru's deliberation from poverty since they refuse to share the rich natural resources like a dog in the manger; in García's vision, those resources are property of all Peruvians and the Peruvian government has the right to create welfare for all Peruvians.

The influence of the private sector on the economic policies of Toledo and García has been as high as under the (semi-)authoritarian regime of Alberto Fujimori. The entrance of the neo-liberal paradigm generated conditions for an extreme concentration of economic power in the top of the business pyramid. The new emerged corporate class became an important political actor which acquired privileged levels of access and influence. Especially during complex trade negotiations, the government relied heavily on the technical expertise that is found among organised business associations. Therefore, the relations between business and the government are a central element of this thesis. These relations have been tightened under the technocratic and neo-liberal restructuring process, creating an often vague division of the private and the public sector. Since the coverage of the trade agenda has been expanded to other issues such as intellectual property rights, services, competition policies and investment with the creation of the World Trade Organisation (WTO) in 1995, the business sector maintains a bigger variety of relations with the government. These go beyond the traditional pressure lobbying on market access and tariff policies and reflect the interaction between business and the government that include the exchange of expertise on these new trade agenda issues. The new characteristics of business-government relations tend to strengthen the privileged position that business has acquired in the neo-liberal model.

In short, in the case of the TPA the hegemonic paradigm consisted of a strong power coalition; a power triangle between corporations, the government and the media. Visible in other Latin American countries, it is possible to contest this coalition by mobilising civil society, weakening political parties, conquering the government and changing these powerful relations. However, the Peruvian government has been keen on maintaining the continuity of these structures, of which the lack of dialogue and, eventually, the bloodshed in Bagua are a result. Before the negotiations of the TPA, the Peruvian negotiating team made several agreements with

representatives of the Peruvian society at the *mesas de coordinación* (coordination tables) but these were never seriously taken into account. Less than ten per cent of what was agreed at those coordination tables can be found in the actual signed agreement. With a highly dispersed and marginalised civil society on the one hand and the powerful and well-integrated business networks on the other, it seems that the adoption and continuation of the neo-liberal hegemonic model did not improve the democratic debate that may lead to an eventual better equilibrium of wealth and access.

## 1.2 Objectives and outline of the thesis

This research puts the negotiating process of the Trade Promotion Agreement in the larger context of the continuing neo-liberal power structure with its strong ties to the private sector. These ties have been strengthened since the Fujimori era (1990-2000) when encompassing business associations began to play a more significant role in the policy-making process, equally important as the personal relations between the public and the private sector through the technocratic policy-makers that depended on or were part of the private sector. Under the Andean Trade Promotion and Drug Eradication Act (ATPDEA), established in 2002 as an extension to the Andean Trade Promotion Act (ATPA) of 1991, Peruvian exports have boomed over the last five years, resulting in the emergence of a new bias to the political economy of Peru. The TPA will not only consolidate the previous established commercial preferences for an indefinite time, it will also signal the world that Peru is continuing with its market reforms and that it has transformed itself into a serious trading partner. Therefore, the TPA is a crucial instrument to the Peruvian private sector with a lot of interests at stake. Even within the trade department of the Peruvian government, there was an internal debate on which pathway to follow, but in the end the TPA with the United States has cleared the way – practically and ideologically – for the complete opening of the Peruvian market and the integration into the world economy, resulting in the signing of many other bilateral free trade agreements with the main economies in the world. The process of negotiating, approving and promoting the TPA in Peru forms, therefore, an excellent case to investigate how these powerful business elite groups have operated and used their political weight in order to influence the establishment and the draft of the agreement, in the end determining the entire process of the TPA in Peru.

The central question of this research is:

*What has been the role of the private sector in Peru in the negotiation, approval and promotion process of the Trade Promotion Agreement (TPA) with the United States?*

In order to operationalise the role of the private sector the first part focuses at the formal and traditional political organisation of the private sector through sectoral and encompassing business associations. The second part examines the informal and personal influence of the private sector at the negotiating and ratifying process as well as during the promotion and diffusion of the agreement through personal or sectoral pressure on the negotiating team and against opposing groups. These different parts are based on the aforementioned characteristics of business participation in contemporary trade negotiations. They include also the division between the formal and informal participation, which is based on the theoretical concepts of organised business that tends to provide more transparent and accountable assistance, and the personalised policy networks that are rather informal. These concepts are further explored in the next chapter. The third research focus adds the international dimension of the emerging political weight of the private sector in Peru. Due to massive privatisations and the rigorous

opening of the domestic market, many transnational companies have entered and are currently dominating the Peruvian economy; it is crucial to include the international aspect of the private sector since under neo-liberalism the dependence on international financial institutions, foreign direct investment and technocratic (mostly international) economic policy has significantly grown. As both the third and sixth chapter clarify, the rules of the game were predominantly set by transnationalised interests. Economic asymmetry between the United States and Peru meant different interests in the TPA where through an aggressive negotiation position and strategy the United States could realise most of its offensive demands. The possibility for the Peruvian government to manoeuvre was restricted since these rules of the trade game were set by the United States.

### **Research setting and methods**

I have spent three and a half months in Lima (May – August 2009) in order to carry out my research. Considering the fact that Lima is the primate city of a highly centralised Peru, it was the most convenient and logic option to carry out my research in the nation's capital since every political and economic decision is made here. Fortunately, the *Centro Internacional de la Papa* (International Potato Centre, CIP) of the Agricultural University of La Molina, Lima, offered me a working desk where I enjoyed an amiable and stimulating environment to conduct this research. During the period of fieldwork I have lived in the bourgeoisie middle-upper class city-district of Miraflores, which is located next to Lima's new financial centre in the San Isidro district. Though close, the urban traffic formed the main constraint of an efficient fieldwork day. Many business institutions and consultancy headquarters are also to be found in Miraflores, but other institutions such as universities, research centres and civil society organisations were located in different parts of the metropolitan area.

San Isidro is Lima's most flourishing city-district. When after 1992 foreign direct investment started to flow into the city, this new business district began to take shape in which most banks constructed their new office towers, followed by exclusive hotels and executive office complexes. As a result of uncoordinated private projects, the construction sector along with the real estate and the leisure sectors grew rapidly, what became visible in the business, industrial, and commercial and entertainment sectors. This unregulated urban development created many islands of wealth; these were generated by powerful private companies and real estate developers who shape privileged spaces for the cosmopolitan elites. The core of Lima's private sector is located at the *Centro Empresarial* where the Via Principal is often denominated as "little Manhattan." Indeed, various *Torres Reales* provide luxurious offices for Peru's most powerful business associations and numerous transnational companies, under the strict vigilance of countless private guards. The personal attendance of business forums and interviews with business leaders have contributed to create this image of a highly insulated private island in a sea of poverty.

The information used for this thesis has been derived from various sources. This included mainly documents from different private sector organisations, NGOs, government agencies and other institutions that were elaborated during the TPA debate. These documents consisted of newspapers, magazines, opinion articles, business magazines, books, academic articles and studies on the TPA, presentations, press releases, magazines, posters, media analyses, letters from business associations to ministers, and statutes of newly formed business alliances. Through the collection and analysis of these written and primary sources the positions, proposals and opinions of the private sector regarding the TPA could be assessed.

Other important information was gathered in twenty-seven interviews with key persons who were involved in the debate. Information acquired through interviews provided interesting background information and occasionally revealing details. These experts, related to different sectors, have actively participated in or were at least closely related to the TPA; they have helped me in understanding the political and economic significance of the TPA to Peru, why it has been such an important, delicate and sometimes controversial matter, and how the public-private relations have determined the general process. The interviews were held with various business leaders, academics at different universities, former and current state officials, private consultants and several representatives of US institutions such as AMCHAM and USAID. These interviews with insiders were useful to fill some gaps caused by the inaccessibility or unreliability of certain documents of government agencies or private sector organisations.

The interviews were semi-structured and basically evolved around a general topic list; the second part of the interview consisted mainly of a depth-interview (Annex 1 gives a topic list). All the interviews were one on one with the exception of one round-table meeting in which four persons (originally six) participated. Since these key persons were acquainted with each other, it was rather easy to contact the right respondents. Annex 2 provides a list of the interviewees' positions and dates of interview. No explicit confidentiality was expected or requested by the respondents except for one. With their permission all interviews were digitally taped apart from the one at USAID/US Embassy where electronic devices were prohibited, and one interview that took place under an informal setting. All interviews were carried out by myself; only the round-table meeting was set up by two other persons who also participated in the meeting. All the obtained data was coded and transcribed directly; however, the round-table meeting was transcribed by a Peruvian friend in return for a small financial compensation since it was hard to understand the interviewees. Despite having mixed feelings about the results, it proved a useful help.

A third research method consisted of observational participation in business forums in order to identify the possibilities for lobby practices between the private and public sector (Annex 3). Though the Vice-Minister of Foreign Trade informally invited the attending business leaders to accompany him on the forthcoming trade negotiations, no sufficient opportunities to lobby were recognised. Nonetheless, the setting, atmosphere and characteristics of the audience and the speakers contributed to the general image of the Peruvian private sector as a selected and elitist club.

### ***Structure of the thesis***

Prior to the analysis of the particular forms of business organisation and participation in the TPA process, an extensive chapter on the political economy of market reforms explores how neo-liberalism has contributed to the tighter relations between the private and the public sector. Many scholars have written on neo-liberalism in Latin America and the emergence of collective action among business groups in the form of encompassing business associations that gave the private sector an increasing political voice. Internationally educated technocrats have determined the political economy of Peru, as well as in many other Latin American countries during the 1990s under structural adjustment programmes that were imposed by the international financial institutions in order to control hyperinflation, stabilise prices, stimulate privatisations, reduce import tariffs and open the economy to foreign investment. During these rigorous measures, which occurred in Peru under the (semi-) authoritarian regime of Fujimori, the private sector became increasingly concentrated and oligopolised into a core of big corporations with often transnational links. As the centre of a new emerged power structure,

business became an important political actor in determining the national political economy. Interests of the government started to coincide with the interests of the private sector through technocratic policy-makers that were closely affiliated with these private powers. Under these processes, the growing political importance of the private sector went together with the transnationalisation of the Peruvian economy through massive privatisations under Fujimori. The political power of business groups recollects the underlying theoretical debate on the relation between neo-liberalism and democracy when the state retreats itself from public policy-making and when, especially in Peru, civil society is weakly organised; this may create spaces for authoritarian rule when the government is captured by big business.

The more technical debates around the TPA are reviewed in the third chapter in order to contextualise the specific aspects of the TPA. It shows how the United States has determined the general negotiation process in order to advance on the new trade agenda issues in a bilateral way – issues that are favourable to US offensive interests and that were not advancing on the multilateral agenda. Due to enormous asymmetries between the two countries in terms of economic impact and therefore negotiating power, Peru had to accept certain demands that resulted eventually in a series of assumable negative impacts in issues such as agriculture, intellectual property rights and investment. Under the competitive liberalisation strategy developed by the United States, Peru accepted these demands in order to secure its temporary preferential market access that was granted earlier under specific trade programmes. This gave the United States an important trump for the negotiations and, furthermore, it created a narrow but powerful domestic lobby in Peru that was in favour of the TPA. These demands and antecedents cleared the path for the start of the negotiations of the trade agreement and have significantly determined its outcome.

The fourth chapter analyses how the formal and regulatory participation by the private sector in Peru occurred. Built upon earlier business-government initiatives such as national export plans, the Peruvian government relied heavily on the technical expertise that is to be found among business associations. This incentive led to the creation of an ad-hoc business council that incorporated most of Peru's important business associations. This business council proved to be an excellent platform for maintaining full coordination between the national private sector and the government. The council copied the official negotiating structure in order to provide a daily assistance from the private sector at every different negotiating level and issue. This has been greatly endorsed by both the private sector and the government. This chapter also highlights that indeed the business associations played the most important and significant role during the trade negotiations. Interestingly, the business council was not an official part of the negotiations but could legitimately participate in the Room Next Door among other representatives of the society. However, this proved to be rather inefficient in channelling interests to the government and functioned mostly as a décor to maintain communication between the government and civil society. Hence, the business council provided a much more efficient tool for interest channelling.

Yet, as the fifth chapter studies, informal relations between business and government have played an important role. Discrepancies between business associations and internal balances of power between certain sectors, associations and companies have been used to influence the TPA process. These reflect the informal and pressure lobbying which became more active during the political phases of the TPA. The private sector maintained a fluent communication with the government, but, moreover, with the Peruvian and the US Congress in order to stimulate the approval of the trade agreement. Further, this chapter analyses how certain private interests prevail over others and how the policy networks, that are mostly

invisible and hard to detect, have determined the TPA process. Political decisions were directly related to business interests and the Ministry of Foreign Trade showed the ability to trespass other government related institutes that held a more cautious position. Despite the attempts to reduce some of the negative effects through the amendment protocol, the Peruvian government continues to hold on to the trade agenda issues that were set by the United States. The conjuncture of public and private interests became also clear in the promotion of the TPA. This power coalition launched a major campaign in order to diffuse the benefits of the trade agreement and to change the initial negative public opinion into a more favourable one. These activities were carried out by the government, the private sector and several consultancy firms that were in fact propagandists considering their close relation with big business and the government. These activities led to a large control of national media and promotional events, effectively muting the opposing groups.

The sixth chapter explains how the Peruvian national negotiating position is largely influenced by transnational interests. Many national corporations do not necessarily represent national capital, but are often linked to transnational corporations. During the negotiations these companies, represented by the national business associations, may act as national entities, but their interests are often spread. This chapter discusses the issue of how the domestic national position is determined by these transnationalised interests and how this in fact explains much of the outcome of the trade negotiations. Furthermore, these transnational interests were particularly defended by the United States through specific negotiation strategies and positions. Second, the United States was also closely related to the domestic consensus negotiations through US institutions such as the Embassy, USAID and the most powerful advocate of free trade and US business interests, AMCHAM. Therefore, it seems evident that the main interests behind the TPA reflect these transnationalised interests.

Finally, the conclusion returns to the initial research question on the role of Peru's private sector during the TPA process and what kind of implications this has had on the results of the trade negotiations and the democratic debate. The theoretical concepts discussed in the second chapter are applied to the case of the TPA and shows how the new emerged corporate power structure could manage the trade negotiations by controlling the powerful coalition with the media and the government. This final part of the thesis provides a perception of the fundamental ways in which international trade negotiations tend to strengthen the neo-liberal hegemonic paradigms and how these domestic powers are able to survive as long as there is no significant contestation from other sectors of the society.

## 2 Convergence of Public and Private Interests

The second chapter of this thesis outlines the dimensions and the background of neo-liberalism and its effect on business-government relations in order to explain the preeminent political role of the Peruvian business sector during the negotiations of the TPA. Peru's participation in the TPA with the United States meant a strong consolidation of its economic restructuring programme which was initiated in 1990. Since then economic liberalisation has been among the main policy objectives of the Peruvian government. The first section describes and analyses how the transformation of a state interventionism model based on import substitution to neo-liberal restructuring based on deregulation and liberalisation has changed economic policy-making profoundly throughout Latin America. Under the market reforms new economic and often transnational conglomerates became important actors in the policy-making process while old protected national business groups were affected by the massive privatisations and rigorous market liberalisation. Through personal relations with the technocratic policy-makers but, also, through professionalised and newly emerged peak business associations that encompass traditional sectoral associations, interactions between the neo-liberal governments and the national business sectors were strengthened. These strong ties did not always lead to the total deregulation of the market; with key positions in the economic policy-making process occupied by technocrats and business leaders, economic policies and market reforms tended to favour mainly business interests as visible in trade policies.

The second section specifies these re-regulation politics by using the collective action theory, and puts these issues inside the fundamental debates on neo-liberalism and democracy. It aims to provide a conceptual and theoretical ground for understanding the political and economic changes in Peru that tend to strengthen the political role of private actors. The last section explicitly shows how these processes have worked in Peru, where under a semi-authoritarian regime neo-liberalism became locked-in, how business-government relations became tighter and how they survived the democratic transition.

### 2.1 Neo-liberal market reforms: altering business-government relations

During the early 1980s, most of the Latin American countries were unable to finance the huge foreign debt payments of international loans they had been accumulating under the import substitution industry (ISI) model in previous decades. To avoid a complete collapse of their highly inflated and indebted economies, most of the governments were forced to devalue their currencies, refinance their foreign debts, reduce government expenditures, and restructure their economies according to the terms set by the International Monetary Fund (IMF), the World Bank, and the Inter-American Development Bank (IDB). Harris sees this process in a larger context of "increasing globalisation or integration of national and regional economies into the global capitalist economic system" (Harris 2003, 366). Neo-liberalism has provided ideological justification for capitalist restructuring and this ideology was adopted by the international financial institutions (IFIs) and the US governments. Their stabilisation and structural adjustment programmes imposed on the national governments consisted of debt payments, opening up of the economies to transnational capital, and integrate their economies into the global market (Harris 2003, 368). Governments were required to reach an agreement with the IMF in order to obtain possible loans from the World Bank, IDB, G-7 government loans and grants, and sometime from the private sector. This group of creditors was influential in creating

the Washington Consensus (Weisbrot 2006). The Washington Consensus<sup>1</sup> is often referred to as a package of policies emphasising on privatisation, price stabilisation, reduction of import tariffs, liberalisation of local financial markets and opening of economies to foreign investment. These policies would stimulate foreign trade and investment, and would encourage private companies. The resulting growth would eventually trickle down as economies become more competitive and efficient (Birdsall, de la Torre & Menezes 2008, 1).

When looking at how and by whom the neo-liberal policies were implemented in Latin America, interestingly, a new group of actors arose. It was possible to implement such reforms due to the failing preceding populist regimes, which had lost their electoral support; it made neo-liberalism the new hegemonic ideology in the region, even influencing leftist political parties and intellectuals (Veltmeyer, Petras & Vieu 1997 213; Harris 2003, 369). As Robinson describes, the political domination under neo-liberalism, known as “capitalist polyarchy”, consists of a small group that rules on behalf of capital. They are dominated by transnationalised factions of the local elites in Latin America and have the structural power of the global economy supporting them. During the political transition from military to civilian rule they gained control to neutralise the democratisation process in the region. “They have enabled the transnational elites to reorganise state institutions and to create a more favourable institutional framework for a deepening of neo-liberal adjustment” (Robinson 1998/1999, 121; Harris 2003, 371). The views and interests of the national political elites have affected the specific forms of neo-liberal policies. The degree of their relative political autonomy and their linkages with international states, multilateral organisations and transnational enterprises determines the content of their policies (Fernández Jilberto & Hogenboom 2007, 9).

It is, however, uncertain whether the new leading policy-makers endorsed the neo-liberal ideas out of orthodox economic ideology or out of pragmatic reasons. There is evidence that the ideological commitment of political leaders to neo-liberal market reforms is not based on conviction, but more as a response to pressures from the international financial institutions, economic malaise, and the need to restore public authority. As Weyland (2002, 27) points out, instrumental calculations and political decisions have determined market reforms just as much as ideological conversion. As many Latin American countries were just deliberated from military dictatorships, democracy was still fragile. Many of these neo-liberal policies were highly unpopular due to their social costs such as unemployment and high taxes; further, these reforms tended to favour only the business sector in a direct way. Several scholars (Demmers, Fernández Jilberto, Hogenboom 2001; Weyland 2002) have argued that the new neo-liberal political leaders have been applying populist political strategies to use the growing political importance of elections and opinions polls – with the return to democracy – to their own advantage; they sought, together with neo-liberal experts, to diminish political interference in the market, block traditional state influence and specific interest lobbies to dismantle the protectionist development model (Weyland 2002, 62, 63). Through applying neo-populist elements, they were able to enact neo-liberalism while maintaining their political position, as the debate on neo-liberalism and democracy will be discussed later in this chapter.

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<sup>1</sup> See Williamson (1990) for further analysis of the Washington Consensus. It is often preferred to use the term Washington Agenda, since there was only a consensus among the Washington-based financial institutions and industrialised countries instead of a world-wide consensus.

### ***Organised business and policy networks***

The switch to neo-liberal policies has changed the structure of the private sector and its relations to governmental policy-makers profoundly. Traditional protectionist business groups that benefited under the previous state interventionism model had to change their style of lobbying and influencing in order not to lose their political power. Under the neo-liberal model, they had to adapt and prepare themselves to the new challenges that market liberalisation and economic integration brought. Leaders of the newly transformed business sector became key actors in economic policy-making process. The more competitive and bigger enterprises supported neo-liberal trade liberalisation since they rely less on business associations and could influence policy-makers through new channels (Durand & Silva 1998; Weyland 2002). In order to understand this process of how the business sector became an important actor in policy-making in Latin American countries, the transition from technocratic neo-liberal restructuring to pro-business politics has to be analysed.

Neo-liberal restructuring consists of two stages. Generally, the initial stage of market reforms<sup>2</sup> was based on the macroeconomic stabilisation in order to reduce fiscal deficits and control inflation. Due to the rigorous policy shift, these policies were established in isolated policy-making environments by state actors and technocratic elites. These stabilisation policies are easier to carry out with direct and visible results. The type of political and collective alliance or coalition that supports the government and the structural adjustment determines the orientation of adjustment. With a broader coalition that supports the government and greater nationalism, the neo-liberal reforms will be less radical (Gonzales de Olarte 1998, 30).

The second generation policies of neo-liberal restructuring are much more difficult to implement given their all-over society changing character. These policies involve the strengthening of a state's organisational resources through the construction of new and more effective state institutions, such as independent central banks, regulatory commissions, extractive institutions, and compensatory organisations (Arce 2005, 10). It is, therefore, more difficult to predict the outcomes of these more complex reforms regarding the involvement of more actors and the uncertain and less clear results. Structural adjustment depends on the state and quality of governmental institutions in charge of carrying out the adjustment, such as the Central Bank, public treasury, tax administration, customs, and ministries. A better institutional quality improves coordination and continuity, better control of the adjustment execution and reduces social costs (Gonzales de Olarte 1998, 31). Arce states that during the first stage of neo-liberal restructuring it is more difficult to identify the winners and losers than during the second stage when the burdens of state reforms become largely borne by specific groups (Arce 2005, 11). An optimal continuity of stabilisation and reforms minimises the economic and social costs of the adjustment, it generates credibility, and it facilitates the transition from stabilisation to stable growth. The continuity depends on the political orientation of the government, on the economic interests that it represents, and on its economic advisors that have had an important influence and autonomy in the reform's orientation (Gonzales de Olarte 1998, 35).

One crucial element under neo-liberal reforms in Latin American countries has been the massive privatisation of former state companies. During these transfers from the public sector to the

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<sup>2</sup> As Weyland (2002) has argued, market reform does not necessarily embody the aim to install a full-scale free market economy. A former communist government can initiate an economic transition toward a more Scandinavian social democracy by inserting market elements, but those are not neo-liberal reforms. Neo-liberal reforms, as a more narrow term, imply the radical aim to create a free-market economy, of which among other Latin American countries Peru is an example.

private sector a major transnational component was added to these economies. The process of privatisation was carried out by a technocratic elite that favoured conglomerates and economic groups with access to international finance and investment capital. Linked to foreign investors, transnational corporations soon acquired these new private companies from national entrepreneurs, making them the cornerstone of economic development and growth. Newly emerged economic groups and conglomerates have transformed economic concentration into a “decisive political factor in the relations between economy, politics, the market and the state” (Fernández Jilberto & Hogenboom 2007: ix, xx).

This increasing political importance of the business sector in Latin America has appeared in two ways. First, with the emergence of encompassing business organisations, organised business could provide more positive and better structured contributions to economic policy-making than traditional sectoral associations or private companies (Olson 1982). Encompassing business associations congregate specific sectoral and regional interests, generating policy consensus among business elites. Moreover, these peak organisations are helping and training business leaders in defending general interests, creating a group of business elites who are able to articulate politically. These potential qualities, together with the professional and technically competent sectoral organisations, “provide them with the capability to be effective support groups for market-oriented reforms” (Durand & Silva 1998, 3). Even within encompassing business associations an internal debate took place with a consensus in favour of free trade as the eventual outcome. The strong demand for market-oriented reforms, with the general consensus on economic liberalisation, added the voice of business to an agenda for economic reform backed by state actors and international financial institutions. More importantly, they provided domestic legitimacy for that agenda. As Durand and Silva (1998, 17) argue, the organised business sector became part of a “support coalition for market-oriented reform, giving institutional expression to the policy demands of business groups before the economic reforms were initiated.” This coalition was, furthermore, crucial in the implementation of these neo-liberal reforms and in consolidating them.

Under the state interventionism model, sectoral and industry associations were mainly passive, reacting defensively against policies in order to block their implementation. However, the new encompassing business associations started to make proposals to policies in order to provide coherence between the technocrats and the private sector. With the professionalisation to take a more active role in the implementation and evaluation stages of neo-liberal restructuring, business associations became increasingly important in elaborating policy adjustments. Furthermore, they were often closely related with private think tanks led by technocrats who supported the reforms through technical studies (Durand & Silva 1998, 26).

The second appearance of the political role of the business sector in Latin America, next to the formal and broad business associations, is influencing the policy-making process through informal and direct contacts between big business and the government. With the newly emerged economic power groups in the political arena, specific and close ties with key policy-makers and state officials tend to distort classic free market<sup>3</sup> and democracy theories, making these relations rather obscure. As Fernández Jilberto and Hogenboom (2007, 14) point out, the rigorous privatisations during the neo-liberal market reforms in Latin America went together with the personal interests of state technocrats who became businessmen or investors in the newly privatised firms, resulting in conflicts of interest and old ghosts such as patronage and

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<sup>3</sup> Adam Smith’s neo-classical work on the free market economy is based on the deliberation of the market from both governmental agencies as specific interest groups, including economic conglomerates.

corruption. It marked, therefore, the second stage of neo-liberal reforms, when business started to obtain a stronger position inside the policy-making process and established good and close relations with the technocratic elites. During the first and initial stage of reforms, the views of business leaders and technocrats didn't coincide on all points: where technocrats opted for free and open markets, entrepreneurs wanted privatisation and deregulated markets as well as arrangements that would protect their powerful position (Teichman 2001). However, the technocratic elites and policy-makers depended on the support of the private sector for their economic reforms, and the growing personal interest of these technocrats in becoming part of the entrepreneurial elite changed their pro-market agenda into a pro-business agenda (Fernández Jilberto & Hogenboom 2007, 156). The increasing importance of multinational capital, initially through joint ventures with domestic economic groups and later through acquiring these companies, created strategic allies to combine the benefits of the new economic policies for foreign companies with the market knowledge and lobbying capacities, and, often, with financial support from international financial institutions (Fernández Jilberto & Hogenboom 2007, 17, 18). Therefore, neo-liberalism has not fully erased the previous state interventionism model, but, rather, introduced "non-transparent incidental (but massive) state intervention directed in support of an economic class that has little affinity with the domestic economy and its workers" (Fernández Jilberto & Hogenboom 2007, 162).

Several scholars question whether the traditional formal business associations have become less relevant since powerful economic business groups have obtained strong and direct access to policy-making state actors through extensive personal networks. As Teichman (2001, 16-20) shows, technocrats in Latin America dominated the domestic economic policies and formed a bridge between the state and the international financial community. Personal relations and loyalty are the most important factors in the creation of *policy networks*, where institutionalised bases of power are being combined with personal power. These networks consisted originally of a small group of technocrats with international connections and education who aimed at market reforms. Another meaning of the term policy network has been added by Faust (2004), who identifies these networks in Latin America and East Asia. Faust defines the emergence of a policy network as an "organisation located between the hierarchy of the state and the anarchy of the market in which private and state actors are connected by the exchange of goods and/or information, thereby decreasing strategic uncertainty and transaction costs" (Bull 2008, 198). Nevertheless, Teichman's explanation tends to portray the crucial role of personal relations better, where technocrats are involved or closely related to market reform policy and business is being brought into those policy networks through formal associations and chambers or through informal personal contacts. The concept of policy networks broadens the sight on why policy choices do not always coincide with the interests of social groups or other coalition partners, and could explain why certain coalition groups triumph over others.

However, as noted by Bull (2008) in her argument about Latin American policy networks, the term policy network overlooks the fact that policy networks are also widespread amongst public officials and representatives of business associations instead solely individual businessmen. Especially in technically complex trade negotiations<sup>4</sup>, technocrats, who are technically educated and possess a common belief in technological solutions, tend to be highly

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<sup>4</sup> Current trade negotiations go beyond the reduction of trade tariffs. They include highly complex matters such as intellectual property rights, labour rights, environmental standards, and investment protection. As Bull points out: "Meaningful participation in trade negotiations, therefore, demands a high level of technical expertise" (Bull 2008, 199).

influential in economic policy making and, particularly, in trade policy making. Therefore, these highly skilled technocrats may seek participation from technically trained business representatives who are competent in trade issues and are, according to Bull, “more likely to be found in formal business associations than among individual business leaders” (Bull 2008, 199).

Thus, formal business associations play an equally important role in policy networks as the personal ties between the private and the public sector, especially when it comes to trade negotiations. Moreover, influence through formal business associations tends to be more transparent, legitimate and accountable than immediate contact between business leaders and policy-makers. As Durand and Silva (1998, 3, 17) argue, encompassing business associations can accumulate sectoral interests and, hence, alleviate distributional politics. Furthermore, strong encompassing business associations guarantee better informed policy advice. When state actors involve business into the policy-making process with the responsibility for implementing those policies given to business associations, the inducement for the business sector to invest in the institutional capacity of these associations will increase. The private sector will invest in developing technical capacity when state technocrats allow business participation through its associations based on their expertise (Schneider 2004, 229).

### ***Business and trade policy***

The two analysed channels of business influence on policy-making have two purposes when it comes to trade policies. Traditional academic writing on trade policy sees trade decisions as the outcome of industry lobbying. Business has to decide if its main interest is in the protection of the domestic market or in the access to other markets (Frieden & Martin 2002, 126). Based upon this assumption, business tries to pressure on policy-makers in order to ensure the desired outcome. However, business preserves many specific relations with governmental actors on much more complex matters. As Cutler, Haufler and Porter (1999, 12, 13) have pointed out, governments might beseech business participation and even delegate responsibilities to business actors. Moreover, business and governments often work together closely on detailed and complicated issues, fed by the desire to exchange knowledge, so that business-government interactions go beyond the traditional lobby-activities. Contemporary trade negotiations not only consist of the liberalisation of market goods, but also of complex matters such as environmental and labour standards, intellectual property rights and service trade, shifting business interests from tariffs to regulatory instruments, safeguards and subsidies. This has particularly been the recent case of bilateral trade agreements, where business-government relations reflect the interaction between business and governments on domestic regulatory issues and not the pressure on traditional tariff negotiations.

Therefore, a new kind of framework (Table 1) resembles the new business-government relations that highlights the fact that governments actively seeks business participation, that they depend strongly on the expertise of business, and that these interactions happen in a context of uncertainty (Woll & Artigas 2007, 122, 127). Woll and Artigas (2007, 123) distinguish in their comparison of business-government relations in international trade politics two incentives for business lobbying, namely the original pressure lobbying and the interactive business-government relations, which they call “regulatory trade lobbying”. Trade negotiations go beyond the traditional desire to create a free trade system based on national comparative advantage, but, rather, investment has become equally important as trade, especially in Latin American countries (Sauvé 2006).

**Table 1: Two types of business-government relations**

	Pressure lobbying on trade	Regulatory trade lobbying
Goal of negotiations	Opening / closing of domestic markets to foreign goods	Internationalisation of regulatory regimes to facilitate trade and trans-border operations
Typical means for achieving goal	Tariffs or non-tariff barriers	Regulatory reform or creation of international regulatory standards
Stake for economic actors	Demands for or against market opening	Participating in the elaboration of targeted rules specifying how to liberalise
Lobbying mode	Exerting pressure, consultation	Consultation, cooperation
Principal resource	Political support (financial or electoral)	Technical expertise
Principal constraint	Competition between groups	Dependence on government solicitation; complexity and uncertainty

Source: Woll and Artigas 2007

Transnational companies originated in the developed world can only access new developing markets under a specific regulatory framework for matters such as investment, intellectual property rights, or state procurement. Known as non-tariff barriers to trade, these obstacles are often embedded in various domestic regulatory schemes or competition policies. So it is no longer the question whether to liberalise trade, but *how* to liberalise trade in a given sector; it is about ensuring the market access to another country (Woll & Artigas 2007, 124, 125; Bull 2008, 202).

Consequently, the business sector becomes an important actor in providing specific knowledge required by the government in order to negotiate the internationalisation of the domestic regulatory scheme. Therefore, as trade agreements tend to facilitate the operation of business, the private sector becomes a privileged actor for government delegations during trade negotiations (Coglianese, Zeckhauser & Parson 2004). Specific know-how and expertise indeed turn into a crucial resource for lobbyists who attempt to access international trade negotiations. Business, thus, becomes part of the network that structures global business relations (Braithwaite & Drahos 2000). The convergence of public and private functions has, furthermore, made the clear division between the “two-levels”<sup>5</sup> of trade negotiations more vague. This process facilitates efficient trade negotiations by legitimating the agreements and ensuring support domestically. Inevitably, degrees of exclusion among certain societal group from influencing trade policy have been a common result, as has been the case of the TPA in Peru for example. Hence, the study of the participation of the private sector in trade negotiations might show how state actors are still important in the manner how business organises in the context of a globally integrated economy and a market oriented development model. Though, they are constituted rather as part of policy networks with transnational links than within the national context of business action since, when related to trade negotiations, these links are expected to be established with business and public actors of other countries (Bull 2008).

<sup>5</sup> During trade negotiations, the chief negotiators bargain simultaneously with the international counterpart of the negotiations and the domestic interest groups, making it a “two-level game”. See, Intal-ITD-STA (2002), *The Trade Policy-Making Process Level One of the Two Level Game: Country Studies in the Western Hemisphere*. Buenos Aires: Inter-American Development Bank.

## 2.2 Regulation, collective action and democracy

As stated in the previous section, business started to play an increasingly important role in the policy-making process. Neo-liberal reforms in Latin America have not only led to a total deregulation of the market; as business interests became more vested in the political decision-making process, more policies of regulation were installed to favour these interests. Neo-liberal restructuring has generated widely spread and high social costs, where the main beneficiaries are among few powerful interest groups such as business. "Rather than imposing concentrated costs on powerful interest groups or producing diffused benefits for the rest of the society [...] regulation created concentrated gains and targetable, excludable benefits" (Arce 2005, 2). Market reform measures, such as privatisation and trade liberalisation, initiated the formation of "distributional coalitions" that centred the benefits and gains. Furthermore, Hellman (1998) and Schamis (1999, 233) note that beneficiaries of economic neo-liberal reforms represent the principle political obstacle to these reform policies instead of the affected sectors. Business groups have obtained such power over the policy-making process that they are able to determine and direct the government's market reform progress and make them favourable to their own interests, which might not always coincide with the orthodox neo-liberal programme. As Arce (2005, 2) argues, the capacity of a government to carry out successful neo-liberal reforms depends on restraining the beneficiary groups rather than neutralising the affected groups. It is not only about the concentrated costs (disorganising civil society) or concentrated benefits (strengthening new actors such as business) but, moreover, to acknowledge the complexity of market policies and the variable impact on interaction between the state and its actors. Neo-liberal reform policies can re-organise democratic structures through different patterns of societal organisation but they can also "destroy or undermine the capacity of other societal group through outright political exclusion or clientelism" (Arce 2005, 3).

With his influential theory on collective action, Olson (1965) argues that the occurrence of the benefits and costs of a policy forms the incentive to trigger political organisation and to take on collective action. Olson states that the "provision of public or collective goods is the fundamental function of organisations generally" (Olson 1965, 15). Potential members of organised groups have incentives to free ride, which is to let others do the work of organising and then enjoy the benefits of successful lobbying. Free riding undermines the public or collective goods and might discourage collective action unless the involved number of members is small or an organisation provides a selective group of members. The determination of collective action depends on the distribution or concentration of the benefits and costs, best visualised by Wilson's typology (1980) (Table 2). Majoritarian politics are the outcome of the absence of opposition with the costs and benefits of a policy widely distributed. With concentrated costs and distributed benefits, entrepreneurial politics will arise due an encountering dominant interest group unfavourable to its goals. The policy sets the general public in opposition to special interests. Finally, when both costs and benefits are concentrated, certain rival interest groups in conflict will encounter the government, putting special interests in opposition to special interest. Interest-group politics will therefore be the likely outcome (Arce 2005, 12, 13; Wilson 1980).

However, there are certain limitations to Olson's collective action theory. Certain interest groups tend to dominate the power equilibrium on a structural basis when opposition is being excluded and silenced. Only in a perfect democracy with full participation and access to information and bargain politics, the outcome of reform policies will be the result of the balances of power between interest groups. In the case of trade liberalisation, Haggard & Kaufman (1995, 156) argue that a large group of potential beneficiaries lack incentives to organise themselves

and to lobby. In a distributive model, policy reform is supported by winners and opposed by losers; the final decision depends on the political power balance between these coalitions. Trade reforms might generate social wealth and income of specific interest groups, they also “typically encounter opposition from import-competing interests and the non-traded goods sector respectively” (Haggard & Kaufman 1995, 157).

**Table 2: Wilson’s typology of policy situations**

Costs of reform	Benefits of reform	
	Concentrated	Diffuse
Diffuse	Client politics	Majoritarian politics
Concentrated	Interest group politics	Entrepreneurial politics

*Source: Arce 2005; adapted from Wilson 1989*

Another problem of Olson’s theory is that it cannot explain the challenges confronted by opposing sectors of neo-liberal reforms (societal sectors). As Roberts states, Olson’s argument is based on the assumption that potential members are “rational utility maximisers who have perfect information”, overlooking their specific origins, behaviour, or dynamics (Roberts 1998, 57). Considering that labour unions in Latin America have become weaker and business is more dependent on and responsive to the government, the benefit of having privileged access to information suggests a fundamental rethinking of Olson’s collective action theory (Schneider 2004, 25, 33).

The general power equilibrium between the opposing interest groups gradually disappears when neo-liberal reforms become more “locked-in”. As Teichman states: “once having made the transformation from statism to a greater reliance on the market, the logic of the new economic arrangements mightily constrains policy choice” (Teichman 2001, 215). Market reforms, therefore, have limited the capacity of social groups to influence policy-making, but, moreover, it constrains the capacity of state actors to address societal demands. Their diminishing sovereignty stimulates them to regionally integrate their economies with other states to keep on maintaining limited control over international investment flows. “The new role of the state as an agent of the globalising capital flows weakens its relation with civil society: the state has lost its capacity to represent its citizen’s social, economic and political demands” (Fernández Jilberto & Hogenboom 2007, 24). Spaces for exclusionary practices can be created when the business sector as purely private sphere of activity is insulated from public and democratic accountability. Social and economic inequalities can be translated into concentrations of power in the political sphere that block the exercise of popular sovereignty and interests (Roberts 1998, 29). Neo-liberalism, therefore, tends to erode democratic principles.

### ***Debate on neo-liberalism and democracy***

How is it possible that the neo-liberal hegemony manages to survive despite popular pressure and the breakdown of democratic norms? The process of neo-liberal reforms certainly created a curious paradox between democracy and neo-liberalism; they may require a significant concentration of political power since it involves the forceful dismantling of the established development model. On one hand, market reforms did not destroy democracy in Latin America. Despite the fact that in various Latin American countries neo-liberal presidents concentrated power, this was not directly linked to or caused by the enactment of neo-liberalism (McClintock

1994). In fact, neo-liberalism managed to survive with the international protection for democracy in Latin America<sup>6</sup>, and the socioeconomic impact of the market reforms has weakened domestic threats to the democratic stability (Weyland 2005, 138). The growing integration into global markets, especially when locked-in by free trade agreements, increases the control that external actors can execute in defence of constitutional governments (Remmer 2003, 33).

On the other hand, however, neo-liberalism has changed the domestic balance of power. Leading business sectors have greater access to international capital markets and stronger links to multinational companies; they have acquired many public companies and, basically, own a bigger part of the national economy. Traditional opposition to neo-liberalism, such as labour unions, has been weakened due to trade liberalisation, labour market deregulation, privatisation, and the shrinking of public administration. Elite sectors have been strengthened at the expense of the political role of civil and political organisation, including political parties. Weyland sees problems such as “the betrayal of campaign promises, demagoguery, and corruption” as a growing result of these imbalances (Weyland 2005, 142-144). Further integration into the world market means also that international investors have more “exit options” to leave the country; the investment infrastructure and climate has to be optimal in order to attract foreign investment, limiting available resources to other programmes and, in the end, democratic decision-making over the governmental budget. Latin American democracies under neo-liberal presidencies tend to have foreign and domestic investors with strong transnational links as an important “constituency”, opposed to citizens, voters, and interest groups. As argued by Veltmeyer, it is not that the state’s power decreases under neo-liberalism, rather, “they have been restructured to better service the interests of the transnational capitalist class” (Veltmeyer 2004, 175), equal to what Teichman (2001) and Fernández Jilberto and Hogenboom (2007) have also argued.

Subsequently, neo-liberalism seems to ensure democracy as a political system, yet, it erodes also some of its principles. According to theories on democracy, the citizenry should have the possibility to determine a country’s policy. In his view of an idealistic democracy, Dahl states that “all full citizens have unimpaired opportunities [...] to have their preferences weighed equally in the conduct of the government” (Dahl 1971, 2). When a political leader becomes the national leader, after being elected by the citizenry, the interests of the investment community appear to be more important, resulting in the betrayal of electoral promises. This is a feature of neo-liberalism that is not uncommon among Latin American countries and will become more tangible in the case of the TPA in Peru. The public agenda in Latin America has been monopolised by economic policy issues, defined in a very technocratic and socially regressive way (O’Donnell 2004, 50). Whereas tripartite bargaining, including state agencies, organised labour and organised business, might improve the policy-making and implementation process, this proved to be short-lived. With the economic policy pact being established, further negotiations – due to poorly institutionalised bargaining mechanisms – was lacking, putting

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<sup>6</sup> After the *autogolpe* by Peruvian president Alberto Fujimori on 5 April 1992, international institutions and the US government condemned the democratic breakdown and suspended all their aid until the new Congress was installed by the new Constitution of 1993, after a public referendum. Fujimori understood very well that he needed good relations with the IMF and industrialised countries, especially the United States, in order to attract foreign investors and continue with his neo-liberal reforms. Also in Guatemala, where President Jorge Serrano followed Fujimori’s example in 1993, the US government threatened with sanctions and the national business elites worried about the possible distorted trade flows.

labour in an inferior position to business interests. Competing organised interests are lobbying state agents and congressional leaders in a direct way (Durand & Silva 1998, 35, 36).

It is the question whether democracy is seen as a just a political regime or the organisation of society as a whole that involves social and economic relations as well. Under the first “reductionist” approach, the political arena is conceived as an institutionally separate domain of activity. As Roberts puts it, “the logic correlate of the contraction of the public sphere of democratic decision making is an expansive notion of the private sphere of social and economic relationships that lies beyond the proper domain of democratic citizenship” (Roberts 1998, 25). Therefore, a democratic regime does not account for the broader set of societal interactions, hierarchies and inequalities. In contrast, the “holistic” approach revolves around democratic norms and values that are applicable to every aspect of society, making it not only a political regime but, moreover, a broader set of social relations (Roberts 1998, 29). This division of different approaches to the democratic principle is useful when applied to democratic regimes under neo-liberalism. Political regimes may look democratic, but, when using the holistic approach, certain democratic principles and norms tend to be (temporarily) diminished. In theory, democracy can be seen as a balance between the interests of various political powers, bounded by certain regulations that manage the plurality of interests and secure the rights of politically marginalised groups. However, the urge for greater security and reduced uncertainty creates “democratic pacts” among elite actors who fear that democratic majority may jeopardise their often long-term interests. Przeworski (1991, 90) argues that these pacts are in fact conservative mechanisms since they restrict democratic pluralism by protecting settled interests, sharing power and restraining opposition. By doing so, it is possible to contain the threats by potential democratic majorities without the reinforcement of authoritarian control. With the economic bias in public policy-making under neo-liberalism, governments are relying more on capitalists to produce and invest, in order to generate economic performances that will feed popular support. Moreover, the structural weight of capital is strengthened since they do not depend on collective action to defend their interests. The possibility of retreating investment or the mentioned exit options puts vast pressure on national policy-makers, as argued earlier by Weyland (2005).

Thus, the survival of the neo-liberal model depends on the hegemonic continuation of the most powerful interests and the lock-in of the reforms. It is crucial to understand that the permanence of this neo-liberal “paradigm” – a formal scheme in which general principles are being projected in a set of decisions – is not only a marginal aspect of power, it originates in it. Its validity or its obsolescence is, therefore, a political matter (Durand 2005, 12). The survival of an ideological hegemony depends on the success of the social struggle within the society. The results of these combats determine the continuity or the suspension of the paradigm that guides public policy. With every presidential change, with the existence of participative or true representative democracy, the paradigm’s principles and effects can be discussed and questioned. The constant struggle of occupying the state and managing it decides in the end if the hegemonic community of the existing paradigm (in the case of neo-liberalism the technocratic elites, politicians, business power groups and ideologists) achieves altering the political correlation in its favour (Durand 2005, 13-15). Representative democracy tends to be rather fragile due to the chronic incapacity of democratic governments to deal with increasing social problems. A contributory factor is, according to Monge Salgado (2006, 63), the willingness to make agreements with influential groups, such as big investors, the media, and the army, who ignore electoral promises and deal with issues that exclude citizens and voters from participation or information. Instead, participative democracy aims at the radical transformation

of the state-civilian relation and creates conditions for the continuing legitimacy of representative democracy. The participation of traditionally excluded groups would lead, then, to a better balance of influence opposed to the *poderes fácticos* (Monge Salgado 2006, 64).

As stated earlier, it becomes more difficult to change orientation since neo-liberalism operates with a new structure of economic power, civil institutionalism and state power that work like a straitjacket. It is necessary to identify the effects or consequences of the new paradigm on the structure, weight and orientation of the most powerful business segments, which are the ones that command the actual market economy. It is most important to reflect on them because they have constituted themselves within the new gravitational centre of the society. The question is to recognise who accumulated or lost the economic power in the new paradigm, how and through who they exercise the access and organise the influence in the state, who wins and loses with the decisions taken, what is the reaction of the different interests in the political game and what are the relations and positions between those particular interests. The power elites indeed not only have the hegemony but, moreover, legitimacy; they can generate benefits for the country and its society or, furthermore, they can create a hegemony without consensus, politically fragile and socially rejected (Durand 2005, 21).

### 2.3 Policy networks in action: the Peruvian case

Hotel Paracas, 1980, *Conferencia Anual de Ejecutivos* (Annual Executives Conference, CADE). A group of Peruvian industrialists is putting economist Roberto Abusada under pressure, who is recently appointed as Vice-Minister of Trade. He is being accused of instigating tariff-lowering that may threaten the industrialists' investments. Twenty-nine years after the hostilities, Abusada has become Peru's most influential economist and manages the most powerful business consultancy firm in the country, *Instituto Peruano de Economía* (Peruvian Economy Institute, IPE). In the meantime, the vast majority of those industrialists closed their factories or changed activities (Durand 2008, 71).

This little anecdote demonstrates the profound changes that Peru has undergone since the return to democracy in 1980.<sup>7</sup> The third part of this first chapter outlines the path of neo-liberal market reforms that Peru's has taken in order to explain how it has changed the relations between business and government, how these interactions and dependencies have managed to survive, and how the preeminent role of the Peruvian business sector has shaped the contemporary context of the TPA.

Under President Fernando Belaúnde Terry (1980-1985) the first attempts to introduce neo-liberal and market reforms were made, but his programme was rather inconsistent. Although he strived for the reduction of inflation, the liberalisation of price controls, and the opening of the Peruvian economy, Belaúnde's administration decided to withdraw the trade liberalisation programme due to strong pressure from traditional organised industrialists. As Arce (2005, 33) noted, Belaúnde's "dedication" to neo-liberalism was rather pragmatic and instrumental than ideological and far from orthodox. Economic stagnation, worsening living standards and increasing terroristic violence by *Sendero Luminoso* (Shining Path) deteriorated

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<sup>7</sup> Peru's economy remained relatively market friendly and non-interventionist in comparison with many other Latin American countries (Dancourt 1999), until the nationalistic military regime of General Velasco (1968-1975), that put an abrupt end to the economic model evolved around foreign direct investment and exports of primary products. Velasco introduced the well-known import-substitution model, creating financial problems. Under pressure of the International Monetary Fund (IMF), the succeeding military regime of General Bermúdez (1975-1979) implemented austerity measures to stabilise the economy, eventually leading to the return to democracy after the failure of these packages to address the structural economic problems.

the country's situation. The neo-liberal reforms became very unpopular since Peruvians associated these with their worsening living standards; the market reforms were reversed by populist and anti-imperialist President Alan García Pérez (1985-1990). The young and charismatic García became the first President from the old mass-based political party *Alianza Popular Revolucionaria Americana* (American Popular Revolutionary Alliance, APRA) since its foundation in 1930. García returned to the state interventionism model with the control of prices and the reduction of foreign debt payment that eventually led to the international isolation of the Peruvian economy from the international financial community. Inflation skyrocketed and led to the record hyperinflationary crisis with an annual inflation of 7,649 per cent in 1990 (Arce 2005, 35). Political violence intensified and resulted in several human rights violations.

With the devastation of the Peruvian economy and the increasing civil unrest, business-government relations began to deteriorate, particularly after the nationalisation of the Peruvian private banking system in 1987. However, this has marked the rise of the political organisation among business associations with the emerging importance of an encompassing business association *Confederación de Instituciones Empresariales Privadas* (Confederation of Private Business Institutions, CONFIEP), created in 1984, in order to defend collectively the interests of the banking sector. CONFIEP became the collective voice of Peru's private sector and thanks to its growing number of members it turned into an important player. Moreover, international links helped CONFIEP in its formation and consolidation. The US Agency for International Development (USAID) sponsored business associations throughout the Latin American continent in order to strengthen the political weight of the private sector that was threatened by internal insurgencies. In the case of CONFIEP, USAID granted US\$2 million annually for the payment of facilities, staff salaries, conferences, and the publication of conference proceedings and a monthly magazine *Presencia*. It is even argued by a former CONFIEP president that ninety per cent of its budget was covered by USAID support (Durand 1998a, 266).

### **Market reforms under Fujimori**

With the private sector disassociating from both Belaúnde – who left the economy in a deep recession – and García, and the Peruvian people's growing distrust in traditional political parties, the call for a political *outsider* grew. In 1990, the independent Alberto Fujimori was elected by the Peruvian people and defeated well-known writer Mario Vargas Llosa who was endorsed by CONFIEP and the upper- and middle-class sectors of the society. Fujimori based his electoral programme on the gradual adjustment of the economy compared to the neo-liberal *shock-therapy* predicted by Vargas Llosa. After his election, Fujimori went to Washington where he met with the representatives of the international financial community; once back in Peru, Fujimori started to implement a neo-liberal policy based on stabilisation and structural adjustment programmes with support from the international financial institutions (IFIs)<sup>8</sup>.

Fujimori's ten-year administration can be divided into three different stages with each different characters. During this first "orthodox" stage (1990-1992), with technocrats on the rise (Arce 2005, 42), Fujimori's first Minister of Economy and Finance (MEF), Hurtado Miller, carried out the so-called *fuji-shock*: price controls and almost all government subsidies were eliminated,

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<sup>8</sup> Due to the reduced service of debt payment and his anti-imperialist character, Peru was ineligible for loans under García. At the meeting between the Peruvian delegation consisting of Fujimori, top-economist Hernando de Soto, his brother and top-UN official Álvaro de Soto, and former UN president Javier Pérez de Cuellar, with IMF director Michel Camdessus, IDB president Enrique Iglesias, and World Bank president Barber Conable, the message for Fujimori became clear: apply an immediate liberalisation programme and the reinsertion of Peru into the international financial community (McClintock & Walls 2003, 94).

and the service of debt payments – about US\$60 million a month – were resumed. Due to unsatisfactory results, Fujimori appointed a new Minister of MEF with much stronger commitment to free-market reform and much greater technical expertise, Carlos Boloña, an economist from Oxford University. Boloña carried out a reform package by decree and announced the privatisation of public companies. After these shock measures, international financial support was immediately granted (McClintock & Walls 2003, 94, 95). According to Gonzales de Olarte (1998, 32), Fujimori implemented the most extreme form of structural adjustment, meaning total deregulation of markets, privatisation of public companies and activities, the extreme liberalisation of foreign trade, the type of change constituted in the market, the reduction of the political economy to a narrow macroeconomic policy with the use of very few instruments and centred basically in fiscal policy, which results condition the monetary policy, which is at its turn rather passive. Especially during this first period, Fujimori depended highly on internationally well-educated technocrats who were independent from politics and influential in neo-liberal reform policies. Hernando De Soto, an internationally renowned economist with a pro-free market vision, became Fujimori's closest advisor and his USAID and AMCHAM sponsored Institute for Liberty and Democracy provided various top-officials. It was De Soto who recommended Boloña as new MEF Minister, who had good international relations and who would gain the confidence of the IMF and the World Bank (McClintock & Walls 2003, 59, 60).

Yet, Fujimori, as a political outsider, did not have the majority in the Peruvian Congress. Therefore, he could not pass all the laws and decrees that were necessary to carry out his politics of reform, but, also, his fight against terroristic groups. Consequently, Fujimori took over the Congress by a self-coup (*autogolpe*) on 5 April 1992 and suspended democracy temporarily. In spite of popular support, the international community condemned the breakdown of democracy by Fujimori and pressured Peru with temporary loan cuts until the new Congress was constituted in 1993 by popular referendum. By now, Fujimori had the congressional legitimacy to enact neo-liberalism in its most rigorous form. The self-coup initiated the “pragmatic phase” of *Fujimorismo* (1993-1998), marked by the entrance of business into politics (Arce 2005, 43). The consolidation of the neo-liberal reforms was carried out by Jorge Camet, who was Minister of Industry at that time and a successful engineer and entrepreneur. Moreover, he had served as the president of CONFIEP and his appointment as the new MEF Minister intensified Fujimori's ties to the business community of Peru.

As McClintock and Walls (2003, 96) argue, Camet was not very interested in economics; even though he would be Fujimori's longest-serving minister, Peru's economic policies were, basically, managed by the international financial institutions and the US Treasury Department. Despite US President Clinton's personal disinterest in Latin America, trade and investment were the most important elements for economic growth and foreign policy. Latin American countries had to open their economies to US exports, stimulate foreign direct investment, service international debts, and secure a stable currency. Eventually, free market reform and democracy would reinforce each other. Fujimori became the key actor in making the bilateral agenda between Peru and the United States, where Vladimir Montesinos – his personal and national security advisor – was important in all other policies except in free-market reforms (McClintock & Walls 2003, 39, 49, 96).

### **Business steps in**

During this second stage, the political organisation of business grew significantly. The transformation of the economic centre has strengthened economic power as an easily accessible political influence due to neo-liberal policies and globalisation (Durand 2005, 199). First, under MEF Minister Camet and through the government's *Comisión de Promoción de la Inversión Privada* (Commission for the Promotion of Private Investment, COPRI), more than 180 state companies from all kinds of sectors were privatised for a total value of US\$6.6 billion. These massive privatisations attracted foreign direct investment, especially from the United States. US investment tripled between 1990 and 1999, making the increase of US investment in Peru greater than in any other Latin American country. Major investment was made in mining and oil, but important investments were also made by large US companies interested in the Peruvian consumer market and financial sector (McClintock & Walls 2003, 99). Privatisation meant that owners and managers of these newly emerged private companies have converted into key actors of economic power; as powerful political actors and the most influencing social class. Therefore, the economy is being conducted by the private sector that, at its turn, is being commanded by big companies (Durand 2005, 200).

**Table 3: The hundred biggest companies in sales, by property, Peru 1987-2001**

	1987		1994		2001	
	No.	% in sales	No.	% in sales	No.	% in sales
State	28	48.5	14	33.4	12	20.6
Multinational	25	20.6	30	33.2	41	48.5
National	43	28.9	46	28	30	23.1
Other	4	2.1	10	4.6	17	7.7

Source: Tatsuya Shimizu, "Family Business in Peru: Survival and Expansion Under the Liberalization". Tokyo, IDE-JETRO, Discussion Paper No. 7, pp.26. Elaboration by Durand (2005)

Second, as Table 3 shows, the privatisation process had, also, led to the internal shift of the private sector toward multinational corporations. The relative weight of the national business component has been reduced while the foreign component has been increased. National business has lost its economic weight. Moreover, as a result of neo-liberal restructuring and processes like privatisations and joint-ventures, an intense concentration of ownership and productive capacity has occurred. The gravitational factor of the business class is composed by a reduced number of powerful companies (Durand 2005, 200, 201). Furthermore, as Annex 4 and Annex 5 demonstrate, over the last ten to fifteen years the Peruvian economy has been totally dominated by both transnational corporations as Latin American economic groups, marginalising national Peruvian groups. According to Durand, these traditional national groups of economic power have lost importance due to their lack of a globalised vision and a weak line of managerial succession. However, recent studies have shown that the new path of economic growth initiated in 2004 has had its consequence in the hierarchical structure of the Peruvian economy: new economic conglomerates have appeared and others have been strengthened. Interestingly, as Annex 6 shows, new Peruvian economic groups have appeared thanks to their seek for internationalisation while maintaining their focus on Peru.

Third, under the orthodox phase Fujimori transformed the traditional business hierarchy completely "from a position of strength", imposing the first reforms. Later, during the second phase, business acted more pro-actively in economic policy-making with a more responsive government to business demands (Arce 2005, 135). Business could provide more specific,

detailed, and comprehensive policy proposals thanks to the formation of several institutions. The *Instituto Peruano de Economía* (Peruvian Economy Institute, IPE) was created in 1994 by Roberto Abusada and was financed by CONFIEP, business groups, and the World Bank in order to advise in trade and tax matter to MEF. The direction of IPE has permanently consisted of businessmen, technocrats, and lawyer who were all related to MEF, including Camet himself. IPE covers annually an amount of US\$10,000 to a select group of twenty-five big companies and power groups to finance various information activities to business leaders, and in elaborating campaigns (Durand 2005, 217). The creation of IPE has improved the business sector's institutional development and the capacity to participate in the policy-making process. Moreover, CONFIEP founded also the Productivity Institute and the Entrepreneurial Club, two organisms to stimulate relations with foreign investors and help the private sector with its professionalisation. Further, links between business and the government were strengthened through the CADE congresses, organised by the *Instituto Peruano de Administración de Empresas* (Peruvian Institute for Business Administration, IPAE), that evolved into a big annual conference with participating businessmen and state representatives (Durand 1998a, 259).

**Table 4: Government and business exchanges of key figures under Fujimori**

	Business background	Governmental position	Links with IPE
Jorge Camet	CONFIEP, construction enterprises	Minister of Economy and Finance	
Liliana Canale	COMEX	Minister of Industry	
Alfonso Bustamante	ASBANC, Telefónica	Minister of Industry	President, board member
Arturo Woodman	CONFIEP, COMEX, Alicorp, Grupo Romero		Secretary, Vice-President
Ricardo Márquez	SNI	Vice-President	
Efraín Goldenberg	SNP	Minister of Economy and Finance	
Roberto Abusada	Investor	MEF advisor	Founder and treasurer
Jorge Baca	Manager of Grupo La Fabril	Minister of Economy and Finance	Manager
Leoni Roca		MEF and Prime-Minister advisor	Manager
Fritz DuBois	Partner of Abusada, editor newspaper "El Comercio"	MEF advisor	Manager
Guillermo Wiese	Banco Wiese		Vice-President
Francisco Moreyra	Lawyer, Camet's personal advisor		Secretary, board member
Luis Hotschild	Mining entrepreneur		Board member
Jorge Picasso	Banco Latino, Grupo Picasso Salinas		Board member

*Source: Arce 2005, Durand 2003. Own elaboration.*

The emerging political role of the private sector, as Table 4 shows, has led to the "capture" of certain key positions by business. In the political arena, business manifests itself directly through relations between entrepreneurs and the state, or indirectly through various intermediate institutions such as business associations, press, parties, consultancy, lawyer studies, opinion companies, foundations, private universities that may influence the state and its policies. As Durand states, there are multiple points of contact between business and the

government, making platforms like CADE and, even, CONFIEP less relevant (Durand 2005, 203, 215).

However, the new economic structure, with its core in exports and the financial sector, displaced the importance of traditional business associations such as the *Asociación de Exportadores* (Exporters Association, ADEX) and *Sociedad Nacional de Industrias* (National Industrial Society, SNI), leading to several frictions. Even within CONFIEP, the new gravitational centre lies with the export and financial sectors, upon which ADEX and SNI formed a *Coordinadora Gremial* (Association Coordination). Moreover, in 1993 a fraction of big exporters of ADEX separated to form under the leadership of Peruvian businessman J.F. Raffo the *Sociedad Nacional de Exportadores* (National Exporters Society, COMEX), a process that weakened the presence of the industrial sector led by ADEX and small and medium enterprises related to ADEX. Also, the American Chamber of Commerce (AMCHAM) has expanded its numbers of members with an increasing number of multinationals from the United States and Peruvian companies that trade with the United States. Major North-American interests in Peru together with a series of Peruvian companies linked to the United States have led to the creation of the North-American – Peruvian Business Council in 2001, based in Washington, as a business lobby group in the United States. Furthermore, the Spanish Chamber of Commerce has major interests in telecommunication, banking, pension funds, oil, and energy. The energy sector, dominated by multinational corporations, has been added to the traditional mining and oil business association (SNMPE), which, together with the mining boom of the 1990s, increased its political weight exponentially (Durand 2005, 212, 213).

The last phase of *Fujimorismo*, the “watered-down phase” (1998-2000) as called by Arce (2005, 45), represented the gradual decline of the Fujimori administration, eventually only supported by personal loyalists. Business elites started to seek alternatives to Fujimori, whose authoritarian character increasingly began to threaten economic stability (Arce 2005, 146). *Fujimorismo* is often defined as a competitive authoritarian regime that is formally democratic but functioned with an authoritarian logic due to the political scenario where it profiled itself as a hegemonic actor with an important popular and social support, and, moreover, capable of winning elections. Furthermore, it is characterised by its distrust and reject of institutional, social and political intermediates that could limit its power (Tanaka 2005, 20, 21, 44). During these last two years of Fujimori’s regime, imports started to outnumber exports and criticism on the free-market model arose since Fujimori was only keen on being re-elected in 2000. As a result, international debt increased and foreign direct investment declined.

Yet, the international financial community was not greatly concerned by Fujimori’s authoritarian regime since its manipulations often benefited major US companies (McClintock & Walls 2003, 109). Peruvian business elites often criticised Fujimori’s beneficiary treatment of foreign investors that are, obviously, outside the national network of CONFIEP (Arce 2005, 137). After corruption and criminality scandals, Fujimori had to resign finally in 2000 and fled the country to Japan. Discrepancies among business leaders whether to support Fujimori or not, led eventually to the separation of ADEX and SNI from CONFIEP. Policy centralisation does not always provide effective market reforms. As Haggard and Kaufman (1995) note, a successful implementation of market reforms might need more instruments of responsibility and consultation. The exclusionary politics under Fujimori turned into a highly autocratic and personalistic direction (Arce 2005, 144). Obviously, business does not have interest in the strengthening of democratic institutions. As Durand states “the question is not so much whether business will contribute to democracy but whether democracy can guarantee business interests (Durand 1998b, 33).

### ***Continuity of the neo-liberal paradigm***

After the fall of Fujimori and a transitional government of Valentín Paniagua (2000-2001), the independent economist and former World Bank employee Alejandro Toledo became Peru's new President in 2001. Toledo's small and fragile party Perú Posible proved to be incapable of constituting a solid and sustainable basis for his presidency. During his electoral campaigns of 2000 and 2001, Toledo obtained various generous contributions from wealthy businesspeople. The financial support of the electoral campaign was one of the main mechanisms to secure the continuity of policies and the defence of the acquired rights and privileges under Fujimori. It opens a relation and continuation that permits effective lobbying and the defence of economic interests on the basis of the personal and direct relation between the representatives of the economic and political power (Durand 2005, 76, 77). George Oros contributed through his foundation with US\$1 million since the first campaign against Fujimori. The Peruvian-Israelite investor Joseph Maimán established an early and very close relationship with Toledo and his presidential environment. Maimán's group Merhav manages an international investment fund in Israel of US\$4,000 million. Also other Jewish-Peruvian businessmen established close presidential relations, such as Ivcher, who defends the government in his media channels. Ivcher contributed with US\$300,000, equal to Genaro Delgado Parker's and Eugenio Bertini's donation, who were linked to the national intelligence service. National investor Adam Pollack became a close acquaintance to Toledo and hotel investor Luis León Rupp offered Toledo a building for his Perú Posible headquarters (Durand 2003, 514, 515).

Toledo was only elected as a protest vote against former-President and APRA leader Alan García, who left Peru ruined in 1990. Toledo was highly dependent on independent technocrats, even causing resistance within his governmental party. His main political programme evolved around macroeconomic stability and an impulse for second generation market reforms. His interest for retaining the status quo inside the state apparatus was shockingly responded (Tanaka 2005, 29). Toledo was a moderate President in economic issues and irresponsible in the issue of electoral promises. As both Tanaka (2005) and Durand (2003) point out, his policies were both traditionally technocratic and populist: public expenditures for the creation of a basis of policy support and the access of military leaders in public functions as compensation for the electoral support during the campaigns of 2000 and 2001 made him rather incoherent and erratic (Tanaka 2005, 31). He counted on the explicit support of the party of Paniagua and Belaúnde *Acción Popular* (Popular Action, AP) and Vargas Llosa together with their technocrats. Also former directors of CONFIEP, ADEX and other business associations supported Toledo (Durand 2003, 512).

Once Toledo was elected his advisors arranged a trip to Washington and Spain, just like Fujimori, to make early contacts with external power groups; it was an attempt to meet the neo-liberal vehicles personally (Durand 2005, 79). Despite the heterogeneity of the newly established cabinet, it could not, however, hide the hegemony of neo-liberalism directed by external powers and the strength of the primary export economy under the leadership of multinational companies. The decisive power is in the hands of those who control the economic apparatus of the state. The three key figures of Toledo's administration were all related to globalisation and strongly connected to foreign and national investors. Prime-Minister Roberto Dañino was a lawyer with a study in Miami specialised in business and is board member of various international companies. MEF Minister Pedro Pablo Kuczynski, who would become later on Prime-Minister, controls, like Soros and Maimán, a Latin American investment fund in Miami and he is manager of privatised firms with experience in various continents. Vice-President and Minister of Industry – and later Minister of Foreign Trade - Raúl Diez-Canseco, former partner of

Carlos Boloña in educative companies and food business franchises, is a national entrepreneur specialised in international restaurants and has been the promoter of free trade agreements. Eventually, the TPA process was led by succeeding Minister of Foreign Trade Alfredo Ferrero Diez-Canseco, a top-lawyer who used to be Vice-Minister of Foreign Trade under his uncle Raúl Diez-Canseco. Ferrero's Vice-Minister of Foreign Trade, who was head of the negotiating team during the TPA negotiations, was Pablo de la Flor Belaúnde, a major stakeholder in mining giant Antamina. Furthermore, Richard Webb, related to the World Bank and head of a team of investigators during the electoral campaign that operated with funds from international financial organisms, became president of the *Banco Central de la Reserva del Perú* (Central Reserve Bank of Peru, BCRP) (Durand 2003, 512-515).

As Durand (2005, 81) argues, Toledo had to operate with a straitjacket in political economic issues, continuing the inherited orientation from the preceding regime without any major adjustments. All of the mentioned names participated under Belaúnde as minister, politician, advisor or official in economic positions, that is, under the first attempt to introduce neo-liberal policies in Peru. Without exceptions, all of them were part of Vargas Llosa's environment in the elections of 1990, who, at his turn, supported Toledo. With Toledo as President, they could finally breathe neo-liberalism freely without its suffocating association with Fujimori. The Peruvian economy is seriously controlled by independent figures and outside the populist pressure from the government, creating economic and social stability but political instability. There is still little confidence in politics, creating spaces for the invasion of outsiders and improvising leaders who continue with the logic of a democracy without political parties. These independent figures renew politics and improvise without experience and are, therefore, politically vulnerable to certain interests. (Tanaka 2005, 35, 41). The main limitations to critical initiatives and opposition to the hegemonic paradigm are based on the lack of visible alternative paradigms, the lack of coordination and fragmentation between political powers and popular organisations, and, moreover, the absence of parties and political leaders that originally represent these aspirations. Personalities and political capital are more important than party organisations in the actual political system; where money flows openly, greater influence of big economic interests is possible, showing the popular representative crisis of the large democratic institutions. This feeds the objective to obtain legitimacy and maintaining the neo-liberal hegemony (Durand 2005, 87).

The vested interests in consolidating the economic model based on exports and free trade were well-embedded in the surprisingly changed discourse of former anti-imperialist and state interventionist Alan García who was re-elected in 2006. Despite his electoral campaign that was based on an eloquent critique of the neo-liberal model, Alan García directly appointed several important key figures at strategic positions of his administration once elected as President. Under García the position of MEF has been taken by former bank executive and Toledo's deputy finance chief Luis Carranza and Luis Valdivieso. The latter has a great reputation as a former IMF employee; he also used to be the advisor to Fujimori's second and most technocratic MEF Minister Carlos Boloña. As the TPA became a highly political matter at the time, the election of these kinds of state officials facilitated the continuity of the trade strategy that was initiated by the government of Alejandro Toledo; the absorption of this strategy reveals the capture of García by big business. García appointed immediately the neo-liberal economist Hernando De Soto as his personal representative on the TPA; as soon as De Soto resigned, García elected the distinguished business leader David Lemor to lobby in Washington for the ratification of the TPA. Lemor used to be the Minister of Production under Toledo and as president of SNI he led

the private negotiations on market access. Moreover, the governmental change did not constitute a relevant change of officials at the Ministry of Foreign Trade; the new Minister Mercedes Aráoz had closely participated in the negotiation process under Alfredo Ferrero and was besides consultant to the World Bank and IDB a renowned professor of economics at the liberal and pro-free trade *Universidad del Pacífico*. The new Vice-Minister of Foreign Trade, top-lawyer Luis Alonso García, was the official negotiator on intellectual property, and the new Peruvian Ambassador in Washington was Felipe Ortiz de Zevallos, director of liberal consultancy firm APOYO and former rector of the *Universidad del Pacífico*. Apparently, the legitimacy of the neo-liberal model still proves to be strong enough to survive considering that the key figures in García's administration are all related to business.

## 2.4 Concluding remarks

This chapter has discussed the dimensions and backgrounds of neo-liberal politics in Latin America and Peru in particular. It explains the altered business-government relations and its effect on the preeminent political role of the business sector as an emerging actor in the policy-making process. Through strong encompassing business associations and through personal interactions with state officials, the business sector became part of transnationalised policy networks that consisted of technocrats that commanded the market reforms. With the emergence of the political role of business, originally orthodox and disciplinary neo-liberal restructuring became more regulated in favour of those powerful interests, leading to the economic concentration in powerful economic groups and the political concentration in neo-populist presidents and teams of technocrats. Neo-liberal restructuring was deepened in Peru under the (semi-) authoritarian presidency of Fujimori. Whereas Belaúnde and García are often criticised for the country's poor economic performance during the 1980s, Fujimori is equally criticised for his undemocratic and authoritarian practices with the coup of 1992 as the biggest reversal of the democratisation process in Latin American since the 1980s. However, his macroeconomic policy has controlled hyperinflation, triggered new economic growth and opened the Peruvian market to the international financial community.

Yet, the consolidation of the neo-liberal reforms during Fujimori's presidency has led to a political and economic polarisation in the Peruvian society. The increasingly transnationalised economic power group became an important political actor since the new economic model was largely depending on their success but the acquisition of political importance of this small privileged corporate class led to the marginalisation of other societal groups in terms of access to the policy-making process. Moreover, economic growth did not generate the expected trickle-down effect to the poorer social classes. The shock policies hit smaller national companies hard so that only the biggest and most competitive businesses survived, which enabled them to acquire a dominant position within the economic structure of Peru.

Remarkably, even after the fall of Fujimori, this neo-liberal model has been adopted by the succeeding governments of Toledo and García. In this model, macroeconomic performance, integration into the world market and exports have become the main priority and continues to be controlled by the policy networks; through business associations and through personal relations, business maintains its predominant position inside the policy-making process. The process of economic restructuring with a transnational component has meant an increasing weight of external interests and actors. Therefore, as discussed in the next chapter, the consolidation of this neo-liberal model reflects an equal important interest behind the TPA as the opportunities for foreign investment and trade expansion.

### 3 Clearing the Path for the TPA

The contemporary stage of neo-liberalism – a diminishing phenomenon in Latin America – is marked by trade liberalisation. With exception of the signing of the North-American Free Trade Agreement (NAFTA) in 1994, most trade agreements between Latin American countries and the United States have been signed only in recent years. This chapter outlines wherein the necessity to sign a bilateral free trade agreement between Peru and the United States originates. Furthermore, this chapter provides a brief overview of the main effects and sensitive elements of the Trade Promotion Agreement (TPA) that became the centre of the debates about the impact of the trade agreement. The arguments of the pro-free trade groups were predominantly based on the demand to make earlier granted trade preferences permanent, providing a stable business environment to attract foreign investment, and consolidate the market reforms that make Peru's insertion into the global economic system more profound. Moreover, impact studies provided grounds for sectoral lobby activities in favour of the TPA. However, critical assessments highlighted the negative impacts on specific sectors that could be expected due to trade liberalisation. These analyses pointed at serious risks as a result of political, economic and legal changes that the TPA was likely to produce. This brief overview helps to understand the major concerns behind the criticism by civil society and other organisations. Where the government and the private sector possessed enough resources and technical expertise to elaborate powerful arguments and studies to defend the TPA, critical organisations often relied on studies made by others with the exception of the agricultural sector that proved to be capable of producing critical technical studies itself. However, as later discussed in chapter five, the defenders of the TPA would eventually become a reactor to any critical assessment.

#### 3.1 Competitive liberalisation

Only since the start of preferential trade with Canada two decades ago and later with Mexico under NAFTA, the United States has been more in favour of bilateral or regional trade. Originally, it was thought to include NAFTA in a Free Trade Area of the Americas (FTAA) that would incorporate the entire Western Hemisphere in one free trade zone. Negotiations were initiated in 1994 and would be completed in 2005. However, frustrated negotiations due to extended membership and substantially broadened agendas in multilateral trade organisations like the World Trade Organisation (WTO) and the stagnation of the FTAA have resulted in the so-called "spaghetti bowl" of bilateral preferential trade agreements all over the world. Moreover, the US Congress permanently blocked the fast-track negotiating legislation to the United States Trade Representative (USTR) that constrained the FTAA negotiations throughout the 1990s.

Yet, the Trade Promotion Authority in 2002 under the administration of George W. Bush, earlier denied to the Clinton administration in 1998, allowed USTR to carry out trade deals at various levels. With the obtained authority, the US government under the strong leadership of USTR's Robert Zoellick tried to catch up since other trade partners had been signing already many free trade agreements (Wise & Quiliconi 2009, 9). As Wise and Quiliconi argue, the Trade Promotion Authority is characterised by more legal and technical issues and is centred on services, investment, and intellectual property rights to benefit specific US economic interests (Wise & Quiliconi 2009, 14). Under Zoellick's direction, USTR launched the credo of "competitive liberalisation"; competition among countries was expected to initiate the most desirable set of incentives for the beginning of trade negotiations (Phillips 2008, 151).

Competitive liberalisation soon emerged among Latin American countries that were part of the G-21 coalition in the WTO.<sup>9</sup> With the failing negotiations at the WTO meeting in Cancún in 2003, Zoellick announced that the US government would not wait for those countries in the multilateral system, but would advance towards free trade bilaterally with countries that were well-willing. Therefore, the Brazilian led G-21 group soon splintered with the prospect of a trade agreement with the United States as the reward of leaving the G-21 coalition, especially with the final stagnation of the FTAA negotiations in 2003 (Phillips 2008, 152). Peru is one of those countries that left the G-21 group in order to initiate trade negotiations with the United States. On October 3, 2003, the former Minister of Foreign Trade and Vice-President of Peru, Raúl Diez-Canseco, announced publically Peru's withdrawal of the G-21. He declared that Zoellick was very clear about the conditions: Peru had to leave the G-21 in order to be eligible for bilateral trade negotiations. A bilateral free trade agreement (FTA) would, therefore, be an opportunity to advance in trade matters that were impossible under multilateral or regional negotiations. In this context, the decision of the Toledo administration to leave the G-21 and initiate the bilateral negotiation process of an FTA with the United States has weakened the Peruvian prospects of integration into international trade through an alliance with other developing countries that would permit a better negotiation position with the United States (Ruiz Caro 2006, 89; Alayza 2007, 144). As Wise and Quiliconi (2009, 14) state, competitive liberalisation represents an "elite governmental project which reflects the US assessment" that if multilateral or regional negotiations fail in reaching an agreement on the new trade issues, the US will seek these agreements on bilateral basis.

### ***Asymmetries***

In Latin America, the recent trade agreements of the United States are with countries that show the willingness to continue with deepening trade and investment liberalisation.<sup>10</sup> These agreements are characterised by sheer asymmetries and little economic interests from US point of view; the involved countries have small and open economies that depend largely on trade with the United States. Bilateral trade agreements with these small countries imply to strengthen the neo-liberal model that many Latin American countries applied in the 1990s, given the fact that several countries started to reject the market model in recent years (Wise & Quiliconi 2009, 3). Motivations for such forms of trade are mixed in different proportions. Larger trade partners are nearly always seeking a mix of economic and political benefits, such as stimulation of economic and political stability and overall development, defence of markets, and reversal of trade discrimination. Smaller partners are motivated more by economic factors such as market access, access to investment, credibility and support, both financial and institutional, for economic reform programmes (Winters 2000). Generally, developing countries are seeking for better market access and the attraction of foreign investment, while developed countries seek stable business environments and the expansion their economic rules and regulatory systems to developing countries (Sánchez-Ancochea & Shadlen 2008, 2).

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<sup>9</sup> The G-21 was constituted during the failing ministerial meeting of the WTO in Cancún, 2003, where Brazil led a coalition of developing countries that reclaimed among other issues the elimination of all agricultural subsidies in developed countries to generate a different treatment between rich and poor countries.

<sup>10</sup> NAFTA was the first bilateral trade agreement signed by the United States that included a Latin American country, in 1994. Only after ten years, in 2004, the US signed an FTA with Chile that marked the beginning of a new wave of bilateral trade agreements in Latin America: El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic (DR-CAFTA) in 2006, with Costa Rica in 2007; Panama in 2006; and Peru in 2007. The long-pending FTA with Colombia is still not ratified.

As Van Dijck argues, critical remarks of preferred bilateral trade agreements include the possibilities of similar benefits under multilateral negotiations, the lack of a consensus of quantified data of the potential benefits – even in advanced models like computable general equilibrium (CGE) – and “true” motivations for participating of smaller countries, which are rather based on the alternative prospects of being an outsider and suffering from trade and investment diversion in a major foreign market (Van Dijck 2004, 152, 153). Small countries would be better positioned under multilateral negotiations where they can “retain greater room to manoeuvre in the implementation of competition policy and the promotion of economic endeavours that are more likely to generate jobs and growth in per capita income (Wise & Quiliconi 2009, 3).

The fear of being excluded has particularly served as a main motive for small countries to sign an FTA with a big economy such as the United States, next to the additional export prospects. The US trade strategy of competitive liberalisation has initiated a dynamic of competing countries for better integration into the international trading system and, moreover, and better partners of the United States. The fear of exclusion complements and strengthens domestic political processes that contribute to the advancement of free trade agreements, such as asymmetrical information, resources, and capacities for political mobilisation of various actors. These new processes of trade politics in Latin America include well-organised beneficiaries that are well aware of their benefiting position concerning the trade negotiations and, therefore, tend to be better informed and politically positioned than affected groups (Sánchez-Ancochea & Shadlen 2008, 14-15).

Sánchez-Ancochea and Shadlen express their concerns that these new structures of trade policies might lock-in the contemporary routes that have been evidently unsuccessful since orthodox neo-liberal policies in Latin American countries have generated unemployment, informality and income inequality. Moreover, current trade issues include new areas such as investment, intellectual property, and services; the regulation of these issues has advanced more at a bilateral and regional level than in the WTO and restrictions are tighter in FTAs (Sánchez-Ancochea & Shadlen 2008, 9, 11-12).

### **3.2 ATPDEA as the sword of Damocles?**

The Trade Promotion Agreement (TPA) is built upon the temporal preferences extended to Peru under the Andean Trade Preference Act (ATPA) and the Andean Trade Promotion and Drug Eradication Act (ATPDEA), making it the main pressure force behind the TPA.<sup>11</sup> The ATPA was enacted in 1991 as part of a larger Andean Initiative that was launched by the United States in 1991. The main goals of this Initiative was to expand private sector opportunities and investment in non-traditional sectors of the Andean countries as an alternative to production of illegal drugs and to help them diversify their economies and expand their exports. ATPA preferential duty treatment expired in 2001, but was renewed by the ATPDEA as part of the Trade Promotion Authority Act of 2002. The ATPDEA significantly expanded the product coverage of the ATPA programme. In all, nearly 6,300 tariff rate lines or products are covered by ATPA trade preferences, of which about 700 were added by ATPDEA. Certain products are

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<sup>11</sup> In comparison with the US trade agreements with Mexico and Chile, which were based on structures of trade and investment with these countries, the TPA with Peru is based on the ATPDEA that was grounded in drug eradication in exchange for preferential market access. As Wise and Quiliconi (2009) argue, the ATPDEA was instigated rather by governmental actors than by private sector demands, creating weak roots of the TPA since Peru is highly and asymmetrically dependent on the US market through exports under these earlier granted preferences and US investment.

excluded from preferential tariff treatment under ATPA, among others textile and apparel articles not otherwise eligible for preferential treatment under ATPDEA. The ATPDEA was scheduled to expire on 31 December 2006. Prior to its expiry, the programme was extended for six months and, on 28 June 2007, it was extended for an additional eight months through February 2008 (Kryzanek 2008, 264; US International Trade Commission 2006, 29, 30).

The other major US trade preference programme to Peru is the US Generalized System of Preferences (GSP). Benefits under the GSP programme were scheduled to expire on 31 December 31 2006, but the programme was extended through 31 December 2008. The objective of GSP is promoting economic growth of developing countries by stimulating their exports. Since both GSP and ATPDEA programmes are unilateral and not reciprocal, countries have to comply with certain requirements in order to be included on the list of beneficiary countries. Among these criteria are insurance of not conducting a communist regime, no nationalised or expropriated goods of US investors or citizens, the level of economic development, the protection of human rights, the realisation of labour rights, a certified plan of drug eradication, anti-corruption conventions, support to the US in its international war on terrorism, additional received preferences from other countries, its commercial opening and the respect to intellectual property rights (Morón, Bernedo, Chávez, Cusato & Winkelried 2005, 181; Alayza 2007, 145). ATPDEA and GSP provisions are similar in many ways, and many products can enter the United States free of duty under either programme. The ATPDEA programme, however, seem to be more comprehensive and to be preferred by Andean producers. ATPDEA authorises duty-free treatment on more tariff categories than the GSP, including textile and apparel articles ineligible for the GSP. Furthermore, rules of origin under ATPDEA are more liberal than those of the GSP (US International Trade Commission 2006, 30).

However, the impact of the ATPDEA is often overrated. With an eventual expiration of the ATPDEA, not all exports to the United States would be affected. Less than a third of Peruvian exports destined to the United States were realised under the ATPDEA programme, which, at its turn, represented less than ten per cent of Peru's total exports. More than seventy per cent of Peru's exports are primary materials, such as mining and fishing, and do not form part of the ATPDEA. The main beneficiaries of the ATPDEA corresponded to textile and apparel sectors, and exportable agricultural products, that, in Peru, are characterised by a high degree of concentration of exporting companies. These are, obviously, among the main defenders of the TPA that extends their preferences (Ruiz Caro 2006, 19, 20). Therefore, the ATPDEA has created a narrow but powerful business lobby ready to defend their position in protected sectors of the US market. The possible losses with the expiration of the ATPDEA formed the basis for national entrepreneurs and government representatives to declare publically that Peru's interest is not in the extension of the ATPDEA but in obtaining a free trade agreement that would make these preferences permanent. As Wise and Quiliconi (2009, 23-24) state, "the TPA has mobilised privileged lobbies that will gain disproportionately from liberalisation while losses for the population at large are more probable." The TPA is generally based on a template that combined the ATPDEA preferences and the new trade issues such as investment and intellectual property that are derived from USTR's competitive liberalisation strategy. The special interest lobbies, propelled by privileged government contacts, were the main forces behind the negotiations and opposition from affected groups that were highly dispersed and disadvantaged by asymmetrical information, was easily overcome.

In this context, the negotiations started on 18 May 2004, initially as a free trade agreement between the United States and the Andean countries of Colombia, Peru, Bolivia and

Ecuador.<sup>12</sup> Figure 1 at the end of the chapter provides a detailed timeline of the TPA process. The sensibility of the included issues in this agreement debilitated the Andean positions and made both Ecuador and Bolivia retreat from the negotiation process, leaving Colombia and Peru negotiating in a bilateral way. For these countries and for the Andean Community of Nations (CAN), the context of the trade negotiations caused problems in the issue of Andean integration and the redefinition of criteria related to its development model.

### 3.3 Impact and sensitivities of the TPA

The negotiations gradually centred around two aspects of the process of trade opening with the United States. First of all, they included a vast agenda of trade issues incorporated in trade agreements, such as the traditional market access topics of agriculture, textile, sanitary measures, and, in addition, topics that are not advancing in the WTO (investment, services, intellectual property). More importantly, the negotiations were not only characterised by a gradual liberalisation process of products proposed by each negotiating partner; they included a total liberalisation of goods and services in various sectors only with those exceptions that were anticipated during the negotiations (Alayza 2007, 148). Therefore, this liberalisation process between countries with enormous asymmetries in development level, especially with a developed country that does not comply with the full liberalisation that it strived for, has initiated a wave of serious concerns about the impact of the TPA on Peru.

Ever since the initiation of the negotiations for a free trade agreement with the United States, there have been fronts opposed to and in favour of the agreement. The main campaign against the TPA that represented the high concerns about certain negative impacts, under the name *TLC ¡Así No!* (FTA not like this!), was principally led by agricultural producers organised in *Convención Nacional Agraria* (National Agricultural Convention, CONVEAGRO), health organisations such as ForoSalud, and other organisations. This campaign, built upon earlier structures of protest against the FTAA and with international support from OXFAM, had as its main objective collecting the necessary autographs in order to solicit the Congress to bring out a national referendum on the approval of the trade agreement. Their main concerns basically centred on several sensitive issues that are briefly discussed in the next paragraphs where different economic impact studies are compared and evaluated.

#### *Impact studies*

Numerous impact studies have been carried out by several scholars from different countries to evaluate the outcome of the Trade Promotion Agreement. However, various methodologies were used what resulted in different conclusions of the economic effects. Most of these studies have used general equilibrium models (CGE), which provide quantitative evaluations of the likely effects on wages, employment, welfare, and other important economic variables. General equilibrium modelling are large-scale computer models that attempt to bring together the theoretical understanding of market behaviour with key features of the specific economies involved (Brown 1992, 26). As the key actor in the negotiations of the TPA, the *Ministerio de Comercio Exterior y Turismo* (Ministry of Foreign Trade and Tourism, MINCETUR) elaborated a static impact model that foresaw an increase of the real gross domestic product (GDP) of 2.31 per cent. Investment as a percentage of the initial GDP would increase with 0.56 per cent which would mean a growth to US\$300 million. In general, the TPA would stimulate economic growth whereas a possible expiration of the ATPDEA would cause a series of economic costs. Without

<sup>12</sup> Venezuela was not found eligible for a free trade agreement by the United States. As a member of the CAN, the signing of the FTA between Peru and the United States made Venezuela leave the CAN in 2006.

the TPA and an expiration of the ATPDEA preferences, MINCETUR calculated a GDP reduction of 1.11 per cent and a decrease of investment as a percentage of the GDP of 0.38 per cent, which is close to US\$210 million (MINCETUR 2005a, 9). The TPA was expected to spur Peru's total production growth with 2.26 per cent; the textile (7.41 per cent), apparel (10.37 per cent) and non-traditional agricultural sectors (vegetables, fruits and nuts 2.76 per cent) were thought to be among the most benefitting sectors due to high export figures (MINCETUR 2005a, 11-13). Import is expected to grow with 5.44 per cent; thanks to the elimination of tariffs that Peru applied to the United States, the imports of machineries and equipment, electronic equipment, vehicles and other parts would grow (MINCETUR 2005a, 14).

As shown in Annex 7, other impact studies also predicted a strongly positive impact of trade liberalisation on these sectors. Scholars at the *Pontificia Universidad Católica del Perú* (Cuadra, Fairlie Reinoso & Florián 2004, 159) foretell a production growth in textile-apparel (11.27 per cent), which already showed great dynamism under the ATPDEA, livestock, forestry and fishing (9.91 per cent) and agriculture (9.02 per cent) among other sectors. Though the agricultural sector demonstrates high growth figures, the authors warn about the controversy of the internal subsidies and aid to its sensitive products in the United States. Moreover, the impact on welfare is measured where generally terms of trade as the relative prices of Peru's export to import is used as a proxy for the relative social welfare. This is expected to be negative (-0.20 per cent) in the most extensive variant on the long term for Peru (Cuadra et al. 2004, 111). The overall view of export rates in the eight chosen sectors is positive but the aggregated changes hide the produced changes in every subsector. For instance, the TPA seems to be beneficiary in the case of agriculture while, according to Cuadra et al., the subsector of cereals (rice, wheat and other cereals and grains) produces a negative outcome of 5.30 per cent. Nevertheless, the presented results demonstrate that the agricultural sector benefits from trade liberalisation since several subsectors compensate the negative effects for the subsector of cereals (Fairlie Reinoso 2005, 42).

The TPA is likely to generate negative effects for agricultural sectors dedicated to subsistence production. Most impact studies highlight the wheat sector among the most affected sectors (Annex 7). Where MINCETUR indicates a negative impact of 4.65 per cent, the International Food Policy Research Institute (IFPRI) foresees a dramatic loss of 10.86 per cent in the case of wheat. Despite high expected gains in the textile-apparel (7.82 per cent) and sugar (9.76 per cent) sectors, the losses in other sectors result in a negative figure for total production (-2.29) and eventually in a small negative impact on the GDP (-0.12 per cent), implying that the TPA does not lead to poverty reduction (Bouët, Mavel & Thomas 2008, 28). Yet, MINCETUR (2005a, 10-11) argues that the TPA does not originate a substantial change in the productive structure of the country, but instead it generates the strengthening of the sectors in which Peru has comparative advantages.

As IFPRI (Bouët et al. 2008, 25) predicts a drop of real wages due to the TPA (especially unskilled real wages in agriculture with 0.57 per cent), MINCETUR forecasts an additional employment growth with the TPA into effect; this is interpreted as a result of a more efficient allocation of labourers between the productive sectors that displace them from uncompetitive traditional agriculture (wheat, rice and cotton) to the more competitive manufacturing and non-traditional agricultural (vegetables, fruits and nuts) sectors. Further, MINCETUR estimates an additional six per cent to the average annual growth of the total exports for the first five years after the coming into effect of the TPA. The agreement would also increase the total number of average annual export companies with 500, and export products with 380 (MINCETUR 2009).

Another influential impact study that defends the TPA was elaborated by scholars at the *Universidad del Pacífico* and IPE (see Annex 7). This study only highlights a positive macroeconomic impact of the TPA, which is thought to stimulate a steady growth to 3.29 per cent in twenty years after the realisation of the TPA (Morón, Bernedo, Chávez, Cusato & Winkelried 2005, 218). However, their linkages to the powerful pro-free trade think tank IPE might reveal their prejudice of the optimistic macroeconomic impact of the TPA. Furthermore, numerous other studies and presentations by the proponents emphasised the positive results of the TPA through the attraction of foreign investment, stable growth of exports and the further integration into the world economy. Generally, most of the sectoral prognoses for Peru were based on the results of Peru's liberalisation policies in the wake of the market reforms of the 1990s. Among the expected winners were large companies in the exporting manufacturing and non-traditional agricultural sectors, and smaller companies that were able to adjust to the economic openness. Though not clearly assessed by impact studies, the pro-TPA lobby also included sectors that would benefit from the attraction of foreign capital such as the financial and mining sectors.

As shown, CGE models tend to produce different results on the impact of the TPA on the Peruvian economy. The different interpretations of the outcomes by the scholars who carried out these models may depend on their political position. Moreover, these models only include the general and macroeconomic impact of trade liberalisation; the social, developmental and environmental impact of a free trade agreement on the smaller scale is overlooked by economy-wide models. Therefore, various sensitive issues of the TPA are not incorporated into these models, but will have a certain impact; the most important critical assessments to the TPA are discussed below.

### ***Agriculture***

The issue of agriculture is probably the most sensitive element of the TPA since this sector represents thirty-five per cent of Peru's economic active population, nine per cent of its GDP, and the highest percentage of poor people. First, the highly subsidised agricultural sectors by the United States may distort international prices and by lowering the tariffs, it may also distort the internal prices in Peru, generating issues of unfair competitive problems. The issue of the US subsidies has always been a non-negotiable item. Second, nothing has been agreed on producer and internal subsidies during the negotiations. The United States imposed Peru to dismantle its internal price band mechanisms that were supposed to limit the negative impacts of unfair competence. Third, although special agricultural safeguards have been established, these are not considered as sufficient protection mechanisms as these are only being applied to a small number of products in which sensitive products like maize and wheat are not included. These safeguards, together with the price bands, were Peru's only protection mechanisms.

Fourth, the agreed removal of tariffs has not been favourable to sensitive products like cotton, wheat and oils which will have immediate access. The weight of products with a high export potential prevails over the protection of traditional agricultural products that should be protected against the subsidised import products; only three per cent of agricultural lands and nine per cent of the agricultural GDP are related to agro-export, which has already been the main beneficiary under ATPDEA regulations. On the other hand, with the TPA, fifty per cent of sensitive products will have an immediate tariff elimination that will affect more than one million small producers located in Peru's rural and poor zones. Finally, the real access of Peruvian agricultural products to the US market depends not only on the tariffs, but also on the sanitary and phytosanitary measures that the United States applies to Peruvian products. The

TPA allows both countries to apply their own measures, however, it has established a Permanent Technical Committee on Sanitary and Phytosanitary Measures that seeks better consultancy and understanding of applying these measures, and can settle disputes: the United States contributes more to this organism, and will, therefore, determine the Committee's decisions and practices that depend on this country (Fairlie Reinoso, Queija De La Sotta & Rasmussen Albitres 2006, 5-32; Ruiz Caro 2006; CEPES 2005; CEPES 2006; Alayza 2007, 158-162).

### ***Investment***

The tenth chapter of the TPA is probably one of the most important chapters and, definitely, represents the biggest interest of the United States in accomplishing a free trade agreement with Peru. First, the TPA broadens the definitions on the concept of investment and investors: as written in Article 10 of the investment chapter, the definition of investment includes bonuses, loans, contracts, licences and authorisations. With the inclusion of the word loans in this definition, it gives private investors more power to pressurise national states in case of unfulfilled payments. Second, the agreement – in order to stimulate better investment practices – reduces the capacity of Peru to regulate foreign investment harming a sustainable development. The Peruvian state is being limited in its capacity to demand responsible behaviour of the foreign investors. In the future, it is highly possible that there will be disputes between the Peruvian state and US companies as the case of NAFTA has shown in the past. With the established dispute settlement mechanism US investors have the right to ignore local and national tribunal jurisdiction and can step directly to an international arbitrary tribunal that, due to its focus on the private spheres, might not favour public interests. The TPA favours the interests of transnational corporations by neglecting environmental protections which could have negative effects through for instance the conduction from mining activities.

Third, the definition on expropriation has been expanded enormously. Not only does it include the direct expropriation by a state of the use, title or gains of an investor's property, the TPA has introduced the term indirect expropriation that includes the possible constraints on future profits of a company. Therefore, even governmental decisions and legislative initiatives such as the establishment of environmental protection norms, and revision of tax policies may constrain a company's future profits and allows it to reclaim the Peruvian state at the international arbitrary court. Yet, Peruvian investors in the United States do not have additional rights to what US investors have (Fairlie Reinoso et al. 2006, 67-80; Ruiz Caro 2006; CONVEAGRO 2006a; Alayza 2007, 155-158).

### ***Intellectual Property Rights***

One theme on which many of the internal debates centred is the chapter on Intellectual Property Rights (IPR) and is expected to cause a series of costs for Peru. In Peru, as a member of the WTO, it is obligatory to comply with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) of 1994. At the Andean level (CAN), additional rules to intellectual property consistent with TRIPS do exist which regulate industrial property, copyrights, the access to genetic resources and in a general manner the traditional knowledge. The negotiations of the TPA have resulted in the adoption of a TRIPS+, which not only elevates IPR standards established by the WTO and CAN, but also hinder the use of certain flexibilities and safeguards. In relation with biodiversity, the main affected sector will be the agricultural sector where it is not permitted to conserve and use seeds to develop their own sorts. The agreement does not recognise the dimension of traditional knowledge of the local communities and does not

establish mechanisms for the sharing of the benefits from the use of this knowledge and biodiversity.

The agreement is thought to affect public health, with great differences in prices between generic medicines under TRIPS and original medicines. Furthermore, certain impact studies have demonstrated the costs of implementing the protection of data exclusivity and the long term estimations of extending patents. It is clear that the TPA is in conflict with the Doha Declaration: the standards of TRIPS+ are an efficient instrument to maintain monopolistic power of transnational pharmaceutical companies and to avoid the market access of generic drugs of lower costs. This can worsen in a country like Peru, where the majority does not have access to medicines due to the price increases, which already has led to a decrease of the percentage of people with insurance. The loss of access to medicines and the costs over biodiversity represent the main dangers of the TPA in the chapter of IPR. During the negotiations, the then Minister of Health, Pilar Mazzetti, elaborated a critical study that expressed the concerns of the impact on public health and the access to medication, based on the US proposals on IPRs. In the worst case and only over the first five years, between 700,000 and 900,000 persons, annually, would be excluded from medicines if the budgets of the Ministry of Health and the public institution EsSalud would not be altered. Generic products would eventually diminish with sixty-nine per cent of all medicines of original mark in thirteen years after the coming into effect of the TPA (Fairlie Reinoso et al. 2006, 40-66; Ruiz Caro 2006; Alayza 2007, 162-165).

### **3.4 Concluding remarks**

This chapter has provided a brief overview on the context of the Trade Promotion Agreement between Peru and the United States, where the demand of establishing such an agreement came from, what the results of competitive liberalisation and asymmetrical negotiations for a developing country such as Peru are. To advance on the new trade agenda issues that are standing still under multilateral negotiations, the United States began to reset its focus to bilateral trade agreements. Under the tactical strategy of competitive liberalisation, Peru showed a positive attitude with the withdrawal from the G-21 of the WTO that opened the way for bilateral overtures. The possible expiration of earlier granted trade preferences under ATPDEA was the driving force behind Peru's pro-TPA behaviour. It provided certain beneficiary sectors an incentive to make themselves strong and to lobby in favour of the TPA since the costs of the expiration of ATPDEA would affect these sectors. However, although the economic interests were obvious, also political motivations steered the Peruvian government to pursue the trade agreement. Besides continuing with further economic liberalisation, the TPA would consolidate the process of neo-liberal restructuring and economic integration. The Peruvian necessity to establish the TPA and the sheer political and economic asymmetries between the United States and Peru severely weakened the Peruvian negotiating position.

These uneven negotiations have led to various sensitive issues of the TPA that might cause serious problems in Peru. As different analyses have indicated, the most negative impacts are to be expected on the issues of agriculture, intellectual property rights and investment. These issues became central to the national debates on the TPA and were structurally given little attention by the government and the groups in favour of the trade agreement. Where the next chapters study the weak national position to secure a better deal on these specific items since the biggest interests were in other elements of the trade agreement, this chapter has shown that the context of the trade negotiations was mainly arranged by the United States. The possibility of the Peruvian government to manoeuvre within the trade negotiations was rather bounded due to these US demands but the negotiating team proved to be well-willing in following these US

standards and, therefore, defending the most powerful interests behind the TPA that represented the interests of the new power structure as discussed in the previous chapter.

**Figure 1: Timeline political process of the TPA**

*18 November 2003*  
 USTR Robert Portman informs US Congress of the intention of the Bush administration to initiate negotiations for a free trade agreement with CAN

*7 December 2005*  
 Completion of negotiations for the "Peru-US Trade Promotion Agreement"

*28 June 2006*  
 Peruvian Congress ratifies TPA; 79 votes in favour, 14 against, 6 abstain

*25 June 2007*  
 Signing of Amendment Protocol of the TPA between Peru and United States

*8 November 2007*  
 US Chamber of Representatives ratifies the TPA; 285 votes in favour, 132 against

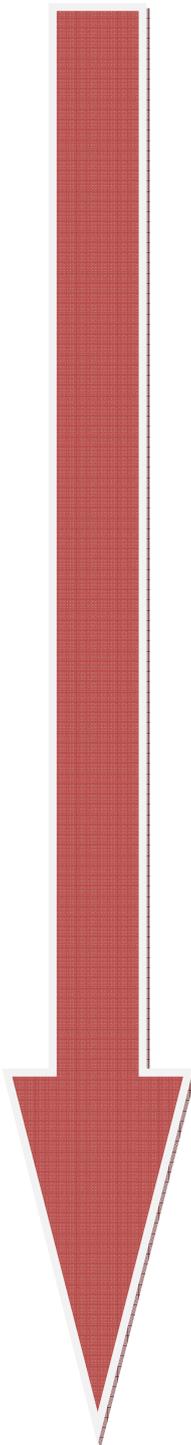
*May 2004 – December 2005*  
 14 Negotiation Rounds

*12 April 2006*  
 Toledo and Bush sign the TPA in the United States

*7 November 2006*  
 Legislative elections in US Congress

*27 June 2007*  
 Peruvian Congress ratifies Amendment Protocol; 70 votes in favour, 38 against, 1 abstain

*4 December 2007*  
 US Senate ratifies TPA; 77 votes in favour, 18 against



*16 January 2009*  
 After green light by USTR, Bush and García finalise implementation process; TPA comes into force on 1 February 2009

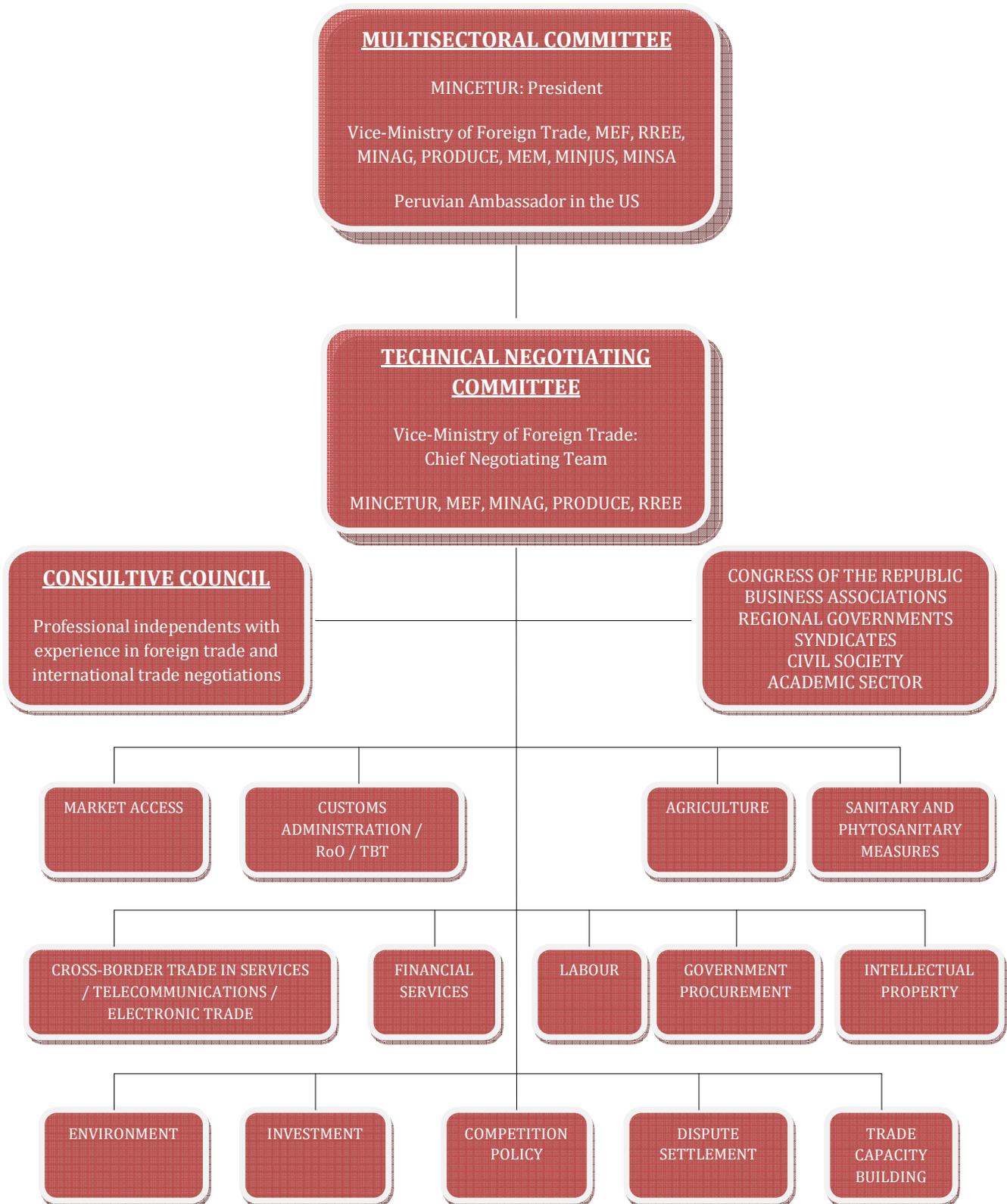
## 4 Formal and Regulatory Lobbying

This chapter examines the organisation and participation of the Peruvian private sector during the different stages of the TPA process. As the characteristics of these various processes of negotiation, ratification, and implementation of the agreement have changed through time, the role of the private sector also changed. As discussed in chapter two, under the new neo-liberal paradigm business has tended to move away from the old dichotomy between protectionism and reciprocal trade liberalisation. Besides preferential market access, the attraction of foreign investment has become one of the major stakes in international trade negotiations which reflect the strategic positioning of business (Woll & Artigas 2007, 125). Particularly with the new trade issues on the agenda, the transmission of technical expertise and information has become an important part of trade policy lobbying; therefore, the participation of the private sector in trade negotiations goes beyond the traditional pressure on tariff liberalisation. Governments and state technocrats rely on this expertise in the negotiation of the transnationalisation of the domestic market, providing incentives for the private sector to invest in developing institutional and technical capacities. Basically, this regulatory trade lobbying depends on government requests for expertise which are likely to be found among well-organised and skilled business associations. As argued in chapter two, the influence on trade policy through formal business associations tends to be more transparent, legitimate and accountable than immediate contact between business leaders and policy-makers. Hence, this chapter studies the business participation in the trade negotiations and implementation process of the TPA as a formal and regulatory interest channel.

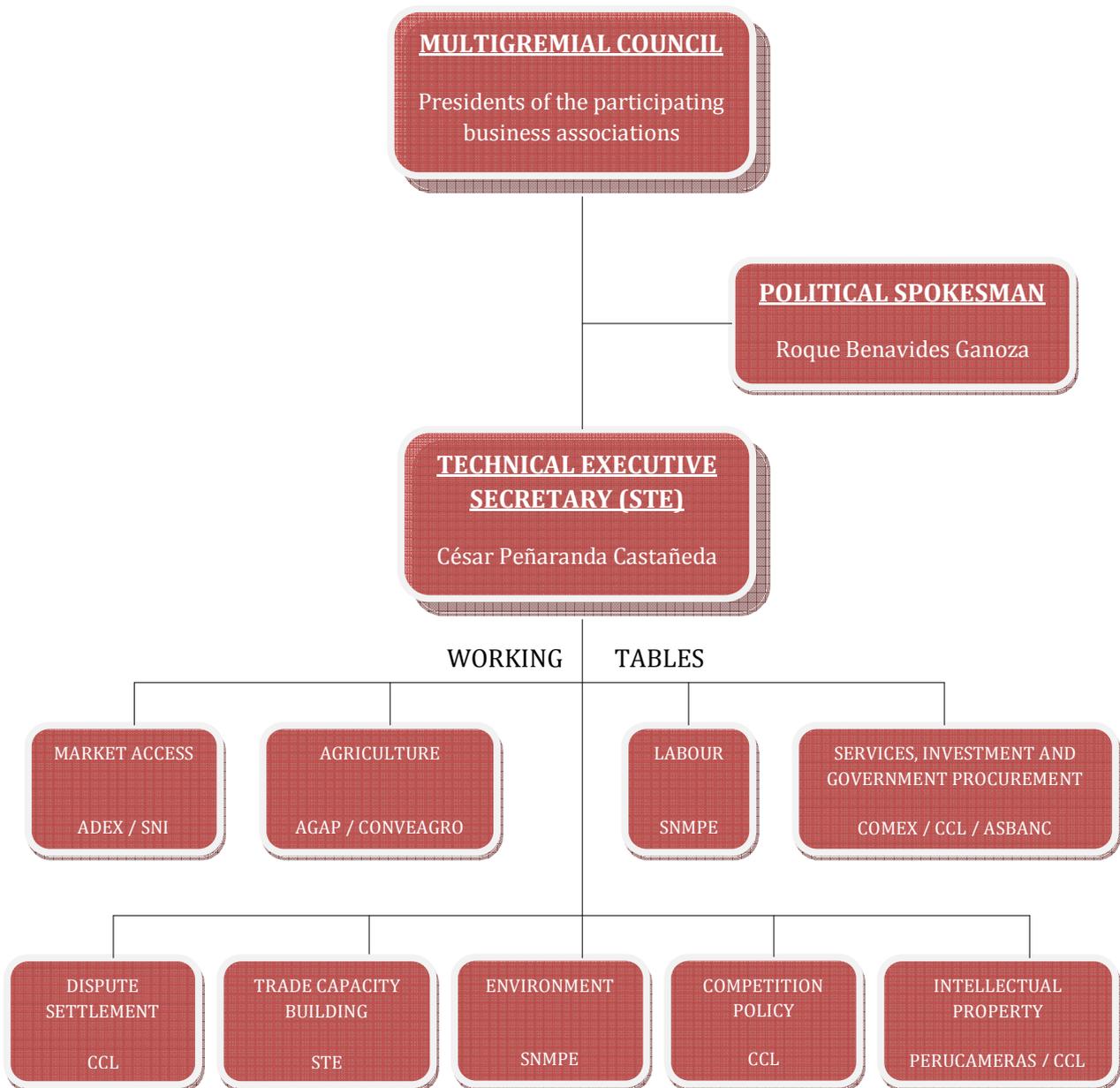
The first section analyses the organisation of the Peruvian private sector into an ad-hoc encompassing business council that provided the government with a strong technical assistance on a daily basis. Emphasised is the fact that the business associations maintained control over this business council, diminishing the role of individual private companies in the regulatory trade negotiations. The tight cooperation between the government and the private sector during this process was preceded by strong consultation in the elaboration of the national export plan that locked-in Peru's economic model. The second section provides details on what the different positions within the business council were and how they affected the internal relations between the business associations. Certain associations that were critic or even openly opposed to the TPA participated also in the business council but political opportunism and internal conflicts of interests weakened their negotiating positions. The business council was, in fact, never a platform to discuss the support of the TPA so that these particular groups were constrained in their interest channelling, as further explored by the third section.

As part of the earlier briefly mentioned "two-level game" of trade negotiations, the official negotiating scheme of the government consisted of internal negotiations and bargaining with domestic interest groups. The latter occurred during several coordination tables prior to the TPA but, more relevantly, in the Room Next Door (*Sala Adjunta* or *Cuarto de al Lado* in Spanish), where the government would theoretically provide a consultation platform for members of the business, academic and civil society. However, the quality of this consultation proved to be poor, which further strengthened business influence. The last section discusses how the implementation of the TPA took place with a less intensive private sector organisation; the lack of efforts by the new government of García in addressing certain concerns and the elaboration of legislative decrees generated unsatisfactory results.

**Figure 2: Negotiation chart MINCETUR**



Source: MINCETUR ([www.tlcperu-eeuu.gob.pe](http://www.tlcperu-eeuu.gob.pe)); own elaboration

**Figure 3: Negotiation chart CENI**

Source: César Peñaranda Castañeda (2004) 'El TLC y el Rol del Sector Empresarial Privado en la Negociación': presentation at CONFIEP; own elaboration.<sup>13</sup>

<sup>13</sup> Several working tables were divided into sub-tables. The table of market access, coordinated by ADEX and SNI, was separated into the following tables with its own coordinator: tariffs and non-tariffs (SNI), rules of origin (SNI), customs procedures (ADEX), technical barriers to trade (ADEX), and safeguards (SNI). A special workshop on textile and apparel accompanied the tariff and non-tariffs table, directed by ADEX and SNI. The agricultural working table was divided into sanitary and phytosanitary measures (AGAP), and subsidies and safeguards (CONVEAGRO). The table of services, investment and government procurement was divided into seven sub-tables, namely: investment (COMEX), electronic commerce (CCL), cross-border trade in services (CCL), government procurement (COMEX), temporary entry of businessmen (CCL), and telecommunications (CCL).

#### 4.1 Business Council for International Negotiations

In order to understand the influence of the private sector in Peru on the outcomes of the trade negotiations it is useful to compare the negotiation structures of the government with the organisation by the private sector. The way how the private sector organised itself determines for a great part the negotiation position of the government, considering that the decisions about the final agreement were delegated only to the official state negotiators who belonged with majority to the sectors in favour of the TPA. In charge of the trade negotiations, the *Ministerio de Comercio Exterior y Turismo* (Ministry of Foreign Trade and Tourism, MINCETUR) equipped an official negotiating team that consisted of nineteen state officials with one chief negotiating team and eighteen worktable coordinators of each negotiating topic. These nineteen officials were the only representatives with official negotiating capacities at the different working tables. Consequently, these were the only ones with the authority to expose Peru's position and to be the official spokesman for the negotiating tables. Chief negotiating team was the Vice-Minister of Foreign Trade, Pablo de la Flor Belaúnde, and the Head of the Multisectoral Committee was Minister of Foreign Trade and Tourism, Alfredo Ferrero Diez-Canseco. Peru's negotiating team counted with a team of consultancy officials coming from twenty-eight public institutions that were involved in the negotiation topics. These officials did not have any negotiating authority and their tasks were exclusively to support and consult the official negotiators at every table. These officials did not carry any official voice during the negotiations (MINCETUR 2004). Annex 8 gives a full list of Peru's official negotiating team.

Simultaneously, Peru's powerful encompassing business association CONFIEP and the *Cámara de Comercio de Lima* (Lima Chamber of Commerce, CCL) took the initiative at the start of the negotiations in 2004 to form a business platform called *Consejo Empresarial para Negociaciones Internacionales* (Business Council for International Negotiations, CENI). In this platform, the most important business associations – see Annex 9 – in Peru united to create a structure similar to what the government had established at the beginning of the negotiations with the United States (see Figure 2 and 3). The explicit objective of CENI was to bring the private sector together with one common proposal to the TPA; CENI would participate with the negotiating team of the government in the definition of technical and strategic negotiating positions (Peñaranda Castañeda 2004). To encourage this, CENI copied the official structure so that at the level of the group of ministers operated a consultative committee named *Consejo Multigremial* that integrated the presidents of all the participating business associations (*gremios*). This Multigremial Council held the general orientation and approved the technical and strategic integral negotiating proposal. The presidents appointed two persons to be the spokesmen of CENI during the negotiations. Primarily, Roque Benavides Ganoza<sup>14</sup> was appointed as political spokesman to handle political issues and had a more active role when the Peruvian Congress took over the item of the agreement. The political spokesman of the Multigremial Council participated as the spokesman of CENI in the Multisectoral Committee of the government and acted as such in the media. Secondly, they appointed a technical spokesman that was to be named *Secretario Técnico Ejecutivo* (Technical Executive Secretary, STE) and they

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<sup>14</sup> Roque Benavides Ganoza is member of the Benavides family who is among Peru's wealthiest mining families. Roque Benavides is a well-known person in Peru's business community: he has served as president of CONFIEP and *Sociedad Nacional de Minería, Petróleo y Energía* (National Society of Mining, Oil and Energy, SNMPE). He is the general manager of mining company Buenaventura, which runs the Yanacocha mines, and is furthermore board member of AMCHAM, ADEX and INDECOPI, which is Peru's national institute for the protection of intellectual property and defence of competition policy.

elected César Peñaranda Castañeda<sup>15</sup> as STE. The STE offered the technical and strategic integral negotiating proposal, participated as the technical spokesman of CENI in the Multisectoral Committee of the government and acted as such in the media. As much as Roque Benavides in the political part and César Peñaranda in the technical part, they became the representatives of the private sector, at least of those who participated in CENI (Peñaranda Castañeda 2004).

CENI proved very effective in assisting the government through the establishment of the same nineteen working tables that handled the same topics as those at the governmental level. The working tables had a coordinator responsible for organising and managing the meetings, registering the consensuses and disagreements, informing the STE and being the link with the corresponding coordinator of the government's table, and acting as a spokesman of CENI for this table in the consensus issues. A representative from a determined *gremio* coordinated each working table of the private sector and the *gremios* could enroll in every working table that they were interested in. The STE would structure the technical and strategic integral negotiating proposal based on the technical position that emerge from the working tables of CENI. These nineteen working tables provided the private sector with a strategic private position for when the government would invite the private sector to participate and exchange positions. Consensus was reached through unanimity or otherwise by majority, however, this was not binding; the business associations could still present their positions individually to the government in private meetings or in the Room Next Door.<sup>16</sup> Subsequently, the government had a tremendous support from the private sector as the nineteen specific working tables and the chief negotiator had direct counterparts in the working tables in CENI and César Peñaranda, who practically coordinated CENI.

Essentially, CENI was never a big organisation. At its commence it had a small budget to cover the first costs that were later financed by the *Corporación Andina de Fomento* (Andean Development Corporation, CAF).<sup>17</sup> The costs of CENI consisted of the payment of the STE, an assistant and the travels of these two persons to all the Negotiation Rounds and meetings. Every *gremio* eventually covered the costs of all their personnel who often participated in a voluntary way.<sup>18</sup> Accordingly, only two people were fully employed by CENI given that there were nineteen working tables coordinated by personnel of the participating *gremios*. The nineteen working tables met weekly, the *consejo multigremial* met minimally once a month and the STE met with the nineteen coordinators of the working tables on a weekly basis; however, this depended on the complexity of the specific negotiation issues.<sup>19</sup>

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<sup>15</sup> César Peñaranda Castañeda is the executive director of the *Instituto de Economía y Desarrollo Empresarial* (Economic and Business Development Institute) at CCL; he is furthermore acknowledged for his participation in the period of market reforms that were initiated since the beginning of the 1990s in Peru and was elected as STE thanks to his intellectual, academic and professional reputation.

<sup>16</sup> Interview with César Peñaranda Castañeda; 10 August 2009.

<sup>17</sup> CAF is a multilateral financial institution that mobilises resources from international markets to Latin America, in order to provide multiple banking services to both public and private clients of its shareholder countries. CAF is the main source of multilateral financing of the Andean region. Likewise, during the last five years, the institution has strengthened its presence in Latin America, particularly in projects that contribute to regional integration.

<sup>18</sup> Alejandra Alayza, coordinator of the *Red Peruana por una Globalización con Equidad* (Peruvian Network for a Globalisation with Equity, RedGE) suspects that companies had to pay a quota proportional to their size. According to Alayza, Southern Perú Copper Corporation was one of the main contributors since an important interest behind the TPA was investment in mining. However, César Peñaranda made it clear that the only financial support came from CAF.

<sup>19</sup> Interview with César Peñaranda Castañeda; 10 August 2009.

Despite the fact that private companies attended the working tables, only the business associations were able to make decisions within CENI. Many business leaders participated at personal title or in representation of a sectoral association, though, considering their capacity of interest intermediation, the domination of the business associations was legitimate. As experienced by certain business representatives, private companies were not very responsive to the efforts to participate instigated by their associations; few companies were capable of elaborating a proposal and to present and lobby it to the government.<sup>20</sup> Companies could, on the one hand, lobby their specific interests through participating in trade committees within the business associations; these collected opinions and comments on the proposals that were eventually presented in CENI of to the government as a recommendation on behalf of the sector.<sup>21</sup> On the other hand, the biggest companies had bigger interests in the negotiations because of their greater capacities. They were stronger, more consistent and their interests were clearer. In comparison, smaller companies possessed less expertise and had, generally, more concerns than offensive interests in entering the US market.<sup>22</sup>

Thanks to CENI's specific structure and intensive work, the communication with the government was fluent. Given his well-placed position in Peru's business community, Roque Benavides maintained permanently contact with the government. Together with César Peñaranda, he had close relations with the Minister of Foreign Trade and Tourism Alfredo Ferrero and the Vice-Minister of Foreign Trade Pablo de la Flor. Underneath them, each negotiator had contact with CENI's nineteen table coordinators. The technical inputs provided by CENI were used by MINCETUR as the fundamentals for the conclusion of the TPA. Representatives of MINCETUR and CENI had private accounts that took place practically on a weekly or, occasionally, on a daily basis. Yet, this interaction did not only find place in the official Room Next Door, but, moreover, the contact was often personal through telephone calls with the negotiators.<sup>23</sup> Apparently, the private sector proved to the government that it was a valuable partner in providing expertise, which became an important resource to gain access to international trade negotiations. Both the private sector and the government greatly endorsed the negotiation process since it incorporated an efficient participation mechanism for the private sector that could generate technical and political support of the TPA.

### ***National Strategic Export Plan***

The close collaboration between MINCETUR and the main business associations during the negotiations of the TPA had a significant antecedent. After the prolongation of the preferences to the US market in 2002 with the ATPDEA, MINCETUR elaborated a National Strategic Export Plan 2003-2013 (*Plan Estratégico Nacional Exportador*, PENX) together with the participation of ADEX, SNI, CCL, and COMEX. In this plan, a diagnosis of the national export sector was developed in order to analyse its size, composition and evolution. Through a broad discussion with specialists from both the public and private sector, the specific problematic of the export sector was identified in four thematic areas; the exportable offer, destine markets, trade facilitation, and export culture. The results of these thematic areas were used for the definition of the strategic objectives by the multisectoral committee in the Peruvian Congress, designated for the

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<sup>20</sup> Interview Ricardo Paredes, Director Economic Studies and Business Consultancy, COMEX; 8 July 2009.

<sup>21</sup> Interview with a Regional Director of an international fishmeal, fish oil and wood exporting company; 8 June 2009

<sup>22</sup> Interview with Rubén Ríos Gamarra, International Negotiations Coordinator at CCL; 6 August 2009.

<sup>23</sup> Interview with Alvaro Díaz Bedregal, advisor Vice-Ministry of Foreign Trade and member of the negotiating team; 31 July 2009.

elaboration, coordination, and the monitoring of PENX (MINCETUR 2003). In essence, this strategic plan paved the road for the strategic objectives behind the TPA. PENX was, in fact, the matrix document where all the objectives are defined and different tasks are assessed. It is seen as the “master plan behind the trade agreement, the mother of public-private work.”<sup>24</sup>

Not only PENX formed an incentive for tight interaction between the private sector and the government. The business associations work on a daily basis with the state and participate directly with the government on a varying set of regulatory issues. They participate in tens of committees in MINCETUR and many more in other ministries. As discussed in chapter two, the government indeed relies on the technical capacities of the business associations. This is for example strikingly confirmed by the Minister of Foreign Trade, Mercedes Aráoz, who asserts that “MINCETUR is counting on ADEX as its main associate in the search of new markets. We consult them permanently; the issue of market access is present in every trade negotiation” (ADEX 2008). Furthermore, with the establishment of the TPA MINCETUR elaborated a specific Developing Plan of the US Market (POM EEUU) that permits Peruvian exporters and entrepreneurs to identify the trade opportunities that the TPA with the United States offers. This plan is also the result of close collaboration between MINCETUR and ADEX, SNI, CCL, and COMEX, but also with financial support of the Inter-American Development Bank (IDB) (MINCETUR 2007).

What these kind of governmental plans indicate is that the initial objectives of the country’s economic strategy were already established before the start of the negotiations of the TPA. Since the main business associations participated in the elaboration of these programmes, the concordance between the public and private sector was high so that both sectors had their interests and objectives clear, enlightening the negotiation positions.

## 4.2 Positions of the *gremios* within CENI

Essentially, CENI was never a platform to discuss whether to support the trade agreement or not since almost every participating business association was strongly in favour. Therefore, discussions that took place within CENI represented more detailed and technical interests. For most business associations the main objective was to consolidate the preferential access to the US market under the ATPDEA regulations and attract foreign investment through the commitment to international standards on issues such as intellectual property rights and regulations on investment and sanitary measures. The most important business associations that represent different sectors such as ADEX, SNI, COMEX, and CCL participated actively and dynamically at the different working tables. Due to the different natures of their activities, they defend other interests, given that ADEX and COMEX represent the export sectors, CCL represents commercial and trade companies, and SNI represents producing and industrial companies. Consequently, it was inevitable that not all interests coincided within CENI.

### *Technical debates*

Most of the debates evolved around issues such as competition policy where those with major export interests did obviously not have so many interests in trade defence mechanisms to protect the national industry. As the representative association for the national industry, SNI attempted to limit the massive entrance of US products that would harm and affect Peru’s national industry. Subsequently, SNI participated actively in defending the strong and competitive textile and apparel industry and the protection of the entire Peruvian textile

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<sup>24</sup> Interview with Juan Carlos León Siles, Exporters Defender at ADEX; 16 June 2009.

production chain in general. Hence, SNI made the choice not to slow down the entrance of imports, but rather to “protect the national industry while there is an important entrance of products. The trade agreement would benefit the national production in great ways since the US and Peruvian markets are perfectly compatible.”<sup>25</sup> Part of SNI’s work was to define the position with regard to the tariff lowering process as much in defensive interests or imports, as in offensive interests or exports; the final tariff position had to combine the national interests with the offensive interests the exporting sectors had. Related with market access are the rules of origin, where too strict norms could make the established preferences at other tables useless when Peru could never comply with those agreed criteria, as the same counts for competition policy, safeguards and technical barriers to trade.<sup>26</sup> Strategically, SNI positioned itself as a supporter of the TPA under the condition that certain protections to the national industry were to be held.

CCL maintained a similar position but it has always been in favour of the TPA. Its first objective was to consolidate the preferential access of the ATPDEA regulations, to conceive a greater access for Peruvian products to the US market, but also the reduction and flexibility of non-tariff measures such as technical barriers to trade and sanitary measures. According to CCL, Peru had to secure at least some established regulations with its main trade partner otherwise the growth and exports increase will be put at risk. The cost of not having the agreement was rather high. But on the other hand, CCL strived for securing trade defence mechanisms sufficiently relevant to be able to preserve the national industry, since CCL has both export as import interests.<sup>27</sup>

These cautious positions from CCL and especially SNI differed from the interests of exporting sectors represented by ADEX and COMEX, who were pressuring for a better market access but also for more flexibility and the reduction of tariffs. Theoretically, longer terms of tariff lowering imply a better protection for sensitive sectors where industrial companies are given more time to prepare themselves; shorter terms of tariff lowering would be applied to products that have aggregated value or are technologically efficient. In the end, the agreed terms of tariff lowering would balance these interests. Consolidation of preferential access to the US market was essential not only by preferential tariffs but also through industrial certifications, imports, and sanitary measures that were not published in a proper manner before. The free trade agreement would make this more transparent for both countries.<sup>28</sup>

The strongest advocate of free trade was probably COMEX. COMEX defends the interests of the biggest and most powerful export companies. Moreover, it functions as a private think tank by using three very strong principles that frame their activities: promotion of private investment, free trade and free market. COMEX tries to influence public policy, economics, and foreign trade by fulfilling these two different roles. Therefore, COMEX had very strong positions to the TPA as it pleaded for a total deregulation and liberalisation of the Peruvian market.<sup>29</sup> In its influential weekly *Semanario*, COMEX has opposed structurally any forms of safeguards, subsidies, or gradual periods of tariff-lowering. The competitiveness of the national economy has to be improved by increasing production with export as the best remedy. COMEX saw the protectionist instruments only as a benefit for the old mercantilist lobby and privileged companies that would affect the consumer in the end. The ATPDEA had to be consolidated to

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<sup>25</sup> Interview with Luis Miguel Silva, Foreign Trade Assistant at SNI; 10 July 2009.

<sup>26</sup> Interview with Luis Miguel Silva, Foreign Trade Assistant at SNI; 10 July 2009.

<sup>27</sup> Interview with Rubén Ríos Gamarra, International Negotiations Coordinator at CCL; 6 August 2009.

<sup>28</sup> Interview with Luis Miguel Silva, Foreign Trade Assistant at SNI; 10 July 2009.

<sup>29</sup> Interview Ricardo Paredes, Director Economic Studies and Business Consultancy, COMEX; 8 July 2009

attract more foreign investment that would generate more and formalised jobs. COMEX has shown its discontent with the eventual agreed periods of tariff-lowering, established safeguards, and the overprotected agricultural sector; this would undermine Peru's competitiveness and productivity (COMEX 2004a; COMEX 2005a; COMEX 2005b).

Also ADEX has expressed certain concerns about the TPA; but where COMEX saw these as internal struggles with old "lobbies", ADEX recognised that several issues were not negotiable since they were imposed by the United States, as was the case of agricultural subsidies in the US, and various standards in intellectual property such as biotechnology and biodiversity. "These imposed agendas put you in a condition that make you feel like a loser on these points." However, with the preferences of the ATPDEA made permanent by the TPA, ADEX consolidated its main interests.<sup>30</sup>

Generally, the relations between the *gremios* have always been friendly and polite. Despite that every business associations represented other technical interests, the bigger and most important interests were complementary or identical. The dialogue, discussion, participation and consensus mechanisms were always maintained, as confirmed by numerous business representatives. As a representative of SNI states, "it was looking for the original motivation that two opposing *gremios* had and which one would be the most fundamentally beneficial for the country."<sup>31</sup>

### **Sectoral opposition**

In comparison to the business associations that represent the interests of various sectors and levels of the production chain, smaller sectoral business associations could address their specific interests easier since they defend more narrow sectors. Business associations such as *Sociedad Nacional de Pesquería* (National Fishery Society, SNP), *Asociación de Gremios Productores Agroexportadores del Perú* (Association of Agroexporting and Producing Gremios, AGAP), *Asociación de Industrias Farmacéuticas Nacionales* (Association of National Pharmaceutical Industries, ADIFAN), *Sociedad Nacional de Minería, Petróleo y Energía* (National Mining, Oil and Energy Society, SNMPE), *Asociación de Bancos del Perú* (Banking Association of Peru, ASBANC), and *Asociación de Laboratorios Farmacéuticos del Perú* (Pharmaceutical Laboratories Association of Peru, ALAFARPE) represented much narrower interests. Where the positions of SNP and AGAP were primarily based on the consolidation of the ATPDEA since the export of fishery and agricultural products to the United States are the motor of Peru's exports, certain interesting contradicting positions emerged in two specific sectors.

First, where ALAFARPE represents international pharmaceutical laboratories – none of their associates is Peruvian as will be further discussed in chapter six – ADIFAN defends the interests of national pharmaceutical industries. Where one would expect major collisions between these two business associations, strangely, ADIFAN remained rather indecisive in the debates, constantly shifting between supportive and opposing behaviour, leading to the greater importance in CENI by ALAFARPE. Interestingly, within ADIFAN a powerful Peruvian economic group by the name of Corporation Drokasa was opposing the agreement strongly since their traditional business was in the pharmaceutical industry through its companies Farmindustria and Pharmedlab, which together are the main producers and distributors of pharmaceutical products in Peru. Over the years this family-run business group, led by the Chlimper family, has

<sup>30</sup> Interview with Juan Carlos León Siles, Exporters Defender at ADEX; 16 June 2009.

<sup>31</sup> Interview with Luis Miguel Silva, Foreign Trade Assistant at SNI; 10 July 2009.

developed successful businesses in the export of agricultural products.<sup>32</sup> As part of Corporation Drokasa, AgroKasa became the most important exporter of fresh asparagus and table grapes in Peru, exporting mainly to the United States so that their balance of interests started to shift. During the negotiations of the trade agreement, Corporation Drokasa and the Chlimpers were actively debating the patents of intellectual property within ADIFAN. When they turned out more favourable to the TPA because of their shifting balance of interests, they resigned from ADIFAN. Pedro Francke, economist at *Pontificia Universidad Católica del Perú* demonstrates this at the hand of a private conversation with the CEO of the company.

The CEO of Corporation Drokasa showed me personally that the TPA would be more favourable to the company. In their balance of interests the company would gain more in the exports of agricultural products than it would lose in the pharmaceutical sector. Although risky, he made it clear that the board of the company was unanimously in favour of the TPA.<sup>33</sup>

This gives the impression that there exists a conjunction of interests within ADIFAN.<sup>34</sup> The associates of ADIFAN are national pharmaceutical laboratories meaning that all of them would have clear interests against the trade agreement, but ADIFAN never articulated this. These companies, like Farminustria and Pharmalab, are not acting like individual pharmaceutical companies but are rather part of a bigger conglomerate with interests in other sectors. This would determine the lack of strong articulation against the agreement, favouring the position of ALAFARPE.<sup>35</sup>

### ***Agricultural sensitivities***

As mentioned in the previous chapter, the impact of the TPA on Peru's agricultural sector is expected to be fundamental and dramatic. The gradual and immediate elimination of import restrictions is likely to damage the traditional agricultural production in Peru's countryside; in addition, with unfair competition and distortion of international prices through internal aid to farmers in the United States it seems unlikely for this traditional farming to survive the US competition. Asymmetries in agricultural lands, governmental support and technology will supposedly contribute to the destruction of national agricultural production where the TPA would benefit big corporate groups related to the export of non-traditional agricultural products. Consequently, this was the most sensitive working table within CENI. Led by AGAP, *Convención Nacional del Agro Peruano* (National Convention of Peruvian Agriculture, CONVEAGRO) and *Junta Nacional de Usuarios de Riego del Perú* (National Board of Peruvian Irrigators), the different interests in the agricultural chapter of the trade agreement were directly confronted; where AGAP was a strong player in defending agricultural export interests, CONVEAGRO represents the national agriculture and was the only *gremio* inside CENI that

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<sup>32</sup> The CEO of Corporation Drokasa, José Chlimper Ackerman, made a remarkable move in 1986 of leaving the direction of ALAFARPE to become the president of ADIFAN. Later he went on to become president of SNI, CADE and COMEX and was Minister of Agriculture in 2000.

<sup>33</sup> Interview with Pedro Francke, former national coordinator of ForoSalud and the campaign *¡TLC Así No!* and actual professor of economics at the *Pontificia Universidad Católica del Perú*, Lima; 24 August 2009.

<sup>34</sup> Interview with Pedro Francke; 24 August 2009.

<sup>35</sup> However, ADIFAN has recently developed a more critical tone to the trade agreement. Luis Caballero, president of ADIFAN, criticises the liberalisation of the government procurement in buying national medicines, when before the TPA the government was obliged to buy at least twenty per cent from national producers. "With the financial crisis, many countries are protecting their sectors, except for Peru. Even the United States launched the campaign 'Buy American Products'. SNI (2009) 'Trato Discriminatorio'. *Industria Peruana* 832: 22-24.

openly opposed the agreement from the beginning.<sup>36</sup> However, CONVEAGRO was invited to participate in CENI, but assumedly to “liberate CENI from criticism in the public opinion. They only invited CONVEAGRO to use us as co-responsible since we could form a powerful opponent outside CENI.”<sup>37</sup>

Remarkably, the Peruvian government had compromised many of CONVEAGRO demands to protect the national agriculture sector even prior to the trade negotiations. However, these concessions were never fully implemented. The *Acuerdo Nacional* (National Agreement) of 2002, signed by among others President Toledo, Premier Kuczynski, future President Alan García, CONFIEP and SNI, compromised to “diminish the imports of alimentary” and “defending the internal market from subsidised imports”, which are actually promoted by the trade agreement (CONVEAGRO 2006b). On 14 February 2004, different *gremios* – among whom CONVEAGRO, AGAP and ADEX – signed the *Plataforma de Consenso para el Relanzamiento del Agro Peruano* (Consensus Platform for the Relaunch of Peruvian Agriculture) which explicitly compromised to “defend the national agriculture to foreign subsidies” and “create a process of dialogue and collaboration to define a development plan for the sector.”<sup>38</sup> More so, on 20 February 2004, the government constituted the *Pacto Agrario Nacional: Carta Verde* (National Agricultural Pact: Green Card) which ninth point guaranteed the rights to completely compensate the distortions of international prices originated in the subsidies and support that some countries apply to their agro producers and exporters; in other words, the defence of the national production against any form of foreign unfair competition. This Green Card was elaborated on initiative of the government and signed by President Toledo, the Ministers, and the agricultural *gremios* (CEPES 2005; Trinidad 2006).

The Green Card was an important document in the context of the negotiations since it was a guarantee document for CONVEAGRO’s participation. However, it was only signed under political pressures; the document was never complied since there was never a real intention to implement it. The Green Card was never used in the official negotiations, where Peru’s position should not be founded on the lowering of import tariffs without correcting the subsidies. Instead, the negotiating team thought to neutralise the subsidies with producer compensation, but up to today there are still no appropriate compensation programmes.<sup>39</sup>

Therefore, CONVEAGRO’s position during the negotiations evolved around the principles of the Green Card; to establish comprehensive safeguards but, moreover, to maintain the price bands as a stabilisation programme for import costs that were applied to rice, sugar, maize, and dairy in Peru. Since the United States imposed Peru to eliminate these price bands as it considered these as a constraint for its products’ competitiveness, the Peruvian negotiating team opted for other instruments, namely compensation to the elimination of price bands. This measure became a very critical issue within CENI; it was considered as very inconvenient to renounce border mechanisms like price bands in exchange for massive compensation offers to the national agricultural sector (CEPES 2005). These concerns were based on the fact that these compensations would have a financial impact on the state’s budget. Still, the Peruvian negotiator

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<sup>36</sup> AGAP represents non-traditional or “modern” agriculture with products such as asparagus and avocado that geographically consist of not even ten per cent of Peru’s agriculture lands. However, more and more agro-industrial companies are currently buying lands. CONVEAGRO represents traditional agriculture with products such as maize and wheat, sectors to be affected on a large scale by the trade agreement. These sectors correspond to a larger share of Peru’s GDP than the sectors that are represented by AGAP.

<sup>37</sup> Interview with Guillermo Rebosio, member of negotiating team at CONVEAGRO; 11 June 2009.

<sup>38</sup> Interview with Reynaldo Trinidad, Chief Editor and Founder of agricultural magazine *Agronoticias*; 13 August 2009.

<sup>39</sup> Interview with Guillermo Rebosio, member of negotiating team at CONVEAGRO; 11 June 2009.

on agriculture, Julio Paz, offered CONVEAGRO six different alternatives for the price band mechanisms, but in the end none was realised. This implies that he used this to mute opposition where he knew in fact that it was prohibited by the United States to apply any price bands.<sup>40</sup>

This kind of opportunism occurred also within CENI when the agricultural sector made another consistent proposal that included these positions to the trade agreement and where foreign trade in any aspect was an integrated element of. This proposal was turned into an agricultural platform called National Multigremial Agro Platform, signed by several associations such as AGAP, ADEX, CONVEAGRO and the National Board of Peruvian Irrigators. In exchange for CONVEAGRO's support of the free trade agreement, the government would accept, execute and implement the platform. This platform was created within CENI but CONVEAGRO never participated in the official presentation to the government because, due to earlier experiences, it realised that these proposals would never be executed by neither Toledo's government nor the upcoming government of Alan García.<sup>41</sup>

Despite the hard positions of CONVEAGRO and their completely opposing interests, no major problems with AGAP occurred within CENI. The general manager from AGAP admits that CONVEAGRO had unfortunately the image of being a "reactive *gremio*" and that their declarations were "a bit harsh", but AGAP's experiences with CONVEAGRO were good up to moment that they retreated from CENI.<sup>42</sup> The good relations became clear especially when AGAP's president ignored pressures from other business representatives – more than thirty businessmen – including the chief negotiating team, Vice-Minister of Foreign Trade Pablo de la Flor, to leave the working table and to confront CONVEAGRO openly; instead, he stayed loyal to the continuing dialogue with CONVEAGRO.<sup>43</sup> AGAP also participated in the Green Card, but "the truth in Peru is that certain documents are made with salutes to the flag; they reflect great and positive ideas but in the end there is no form to execute them."<sup>44</sup>

Generally, CENI provided an effective consultation platform for the private sector to gain access to the trade negotiations. The technocrats of MINCETUR, that were highly affiliated with the ideology of the free market and trade liberalisation, allowed the private sector to participate in return for the exchange of technical knowledge. The communication between the private sector and the negotiating team was well-handled and the input of CENI was fundamental in MINCETUR's negotiating position. However, the intensive cooperation restricted opposing associations in the assessment of critical positions.

### 4.3 Negotiation Rounds and the Room Next Door

Where participation through CENI reflected an unofficial negotiation mechanism as part of the domestic tier of the "two-level game", official participation in the trade negotiations by the Peruvian society occurred in the Room Next Door. The official Negotiation Rounds between USTR and MINCETUR lasted from May 2004 to December 2005 and took place in various cities in the United States, Peru, Ecuador and Colombia; during these Rounds a Room Next Door was formed by representatives from diverse business institutions, labour syndicates, universities, research centres, professional school, NGOs, the Congress, political parties and regional governments, as demonstrated earlier in Figure 2. In this Room Next Door, as stated explicitly by MINCETUR, the negotiating team would "recollect proposals from these sectors related to each

<sup>40</sup> Interview with Guillermo Rebosio, member of negotiating team at CONVEAGRO; 11 June 2009.

<sup>41</sup> Interview with Guillermo Rebosio, member of negotiating team at CONVEAGRO; 11 June 2009.

<sup>42</sup> Interview with Sandro Farfán Padilla, General Manager of AGAP; 12 August 2009.

<sup>43</sup> Interview with Guillermo Rebosio, member of negotiating team at CONVEAGRO; 11 June 2009.

<sup>44</sup> Interview with Sandro Farfán Padilla, General Manager of AGAP; 12 August 2009.

one of the subjects under negotiation” (MINCETUR 2005b). Furthermore, the official negotiation mechanisms also included the Consultative Council for the TPA that incorporated professionals with experience in foreign trade. This committee advised the negotiating team to strengthen the national positions that would be taken to the negotiation table.

The business representatives participated actively in the TPA negotiations via the Room Next Door, showing that consultation of the private sector on the TPA was constant. Indeed, the participants of CENI, the coordinators of the working tables, the STE, the political spokesman, and several presidents of the business associations met with the negotiating team every day after the official negotiations. These meetings were considered crucial by the private sector since they permitted a great coordination with the government on issues that were under negotiation. Participation in the Room Next Door allowed the private sector to debate and exchange ideas on the proposals of the government.<sup>45</sup> Not only CENI and the individual business associations took part in the Room Next Door, also many specific sectors sent their representatives to the Rounds, creating an intense web of lobbyists around the negotiating team.<sup>46</sup> Moreover, the experiences of CENI led to the creation of an Andean business council where CENI teamed up with Colombian and Ecuadorian business representatives that were organised in a similar way. This regional business council only met during the Negotiation Rounds but it strengthened the interaction with the government on a regional level since these meetings often included the chief negotiating team of the three Andean countries.<sup>47</sup>

### ***An informative platform***

Despite the explicit statements by MINCETUR, evidence suggests that the official consultation via the Room Next Door remained rather poor. The Room Next Door was in fact not a negotiation mechanism but a transparency tool to inform representatives of the Peruvian society on the progress of the negotiated issues; proposals were never recollected. According to MINCETUR, Peru’s official negotiation position was based on the “consensuses with the Peruvian industry and the sectors of the society that desired to participate.”<sup>48</sup> During the preparations of the TPA prior to the negotiations, MINCETUR elaborated several studies of previous agreements such as NAFTA and the FTAs with Chile and CAFTA to learn about the US negotiating strategy. Moreover, MINCETUR arranged several coordination tables in order to call on the Peruvian society to coordinate the national proposal. These coordination tables were based on the pre-existing structures of the FTAA negotiations. However, not every participating representative made a concrete written proposal; many just made comments instead of preparing a formal document.<sup>49</sup> Essentially, Peruvian civil society could only present their proposals during these *ex ante* coordination tables that would eventually be brought to the official negotiations by MINCETUR. Yet, not even ten per cent of what was agreed at these tables is to be found in the actual signed agreement.<sup>50</sup>

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<sup>45</sup> Interview with César Peñaranda Castañeda; 10 August 2009.

<sup>46</sup> Interview with Sandro Farfán Padilla, General Manager of AGAP; 12 August 2009. Besides the president and vice-president of AGAP, who permanently went to all Rounds, many associates participated in the Room Next Door by sending their own sectoral lobbyists; one of these was the asparagus lobby. These travels were mainly financed with own resources.

<sup>47</sup> Interview with César Peñaranda Castañeda; 10 August 2009.

<sup>48</sup> Interview with Alvaro Díaz Bedregal, advisor Vice-Ministry of Foreign Trade; 31 July 2009.

<sup>49</sup> Interview Juan Carlos Vargas, *Programa Laboral de Desarrollo* (Labour Programme for Development, PLADES); 5 June 2009.

<sup>50</sup> Interview Hernán Navarro, Technical Team *Centro Peruano de Estudios Sociales* (Peruvian Centre of Social Studies, CEPES); 18 May 2009.

Since the Room Next Door was not a negotiation mechanism, it was something illusive to use this platform for making recommendations and presenting proposals. First, it proved to be difficult to defend specific interest as many different representatives from various sectors including the private sector participated. Second, there was hardly a broad consensus. In the case of agriculture, presided by CONVEAGRO, it was impossible to reach an agreement with one group pleading for immediate elimination of the tariffs and another group pleading for maintaining the tariffs.<sup>51</sup> Subsequently, the sessions in the Room Next Door were rather informative given that the specific interests did not conciliate. The negotiators observed and recollected different opinions, but, in the end, the final decisions were to be made by the government; evidently, these decisions often favoured the private interests of the sectors in support of the TPA.

Moreover, during the fifth Negotiation Round in Guayaquil, Ecuador, Roberto López from *Acción Internacional para la Salud* (International Action for Health, AIS) and linked to ForoSalud<sup>52</sup>, was expelled from the Room Next Door after distributing critical pamphlets.<sup>53</sup> Hence, one could ask what this Room Next Door in fact served for, when it did not provide the desirable participation platform for civil society. As another observation implies, the government relied more on the unofficial input of the private sector through CENI than on official consultation. “The representatives of the transnational pharmaceutical companies, ALAFARPE, were very active in the process of the TPA with the United States. However, in the Room Next Door they hardly asked questions, they hardly spoke at all. They were only in the hotel the entire day.”<sup>54</sup> These experiences show that the Room Next Door only served as a décor for the government to secure the official participation of the society in the negotiations, which became in fact more marginalised from the negotiations. As for the private sector, the well-structured CENI proved to be a much more efficient channel for influencing the negotiating team than the Room Next Door. Interestingly, in personal interviews with business leaders, many confused CENI with the Room Next Door while CENI was essentially nothing more than a private platform whose vast majority supported the TPA as a rather homogenous group.<sup>55</sup> In contrast, the Room Next Door was an official consultative mechanism constituted by the government to interrelate with representatives of its society that was much broader than CENI; it shows that the business elite has privatised a formal public platform.

### ***Confidential talks***

A second argument behind the idea that official consultation remained poor is that the conversations were strictly confidential. Figure 4 shows schematically how the Negotiation Rounds functioned. The participants of the Room Next Door were not allowed to enter the official negotiation room and additionally, journalists were permanently prohibited to enter the

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<sup>51</sup> Interview Guillermo Rebosio and Miguel Macedo, members of negotiating team at CONVEAGRO; 11 June 2009.

<sup>52</sup> AIS in Latin American network that promotes the universal right of access to medicines, the rational use and the democratic participation of individuals and communities in its political policies. Roberto López is the representative for Peru within AIS and the very first criticism to the possible negative impacts of the trade agreement on the prices of medicines came from AIS. In Peru, AIS and Roberto López teamed up with ForoSalud, a national network which is part of AIS that represents an articulated space for the civil society on health issues.

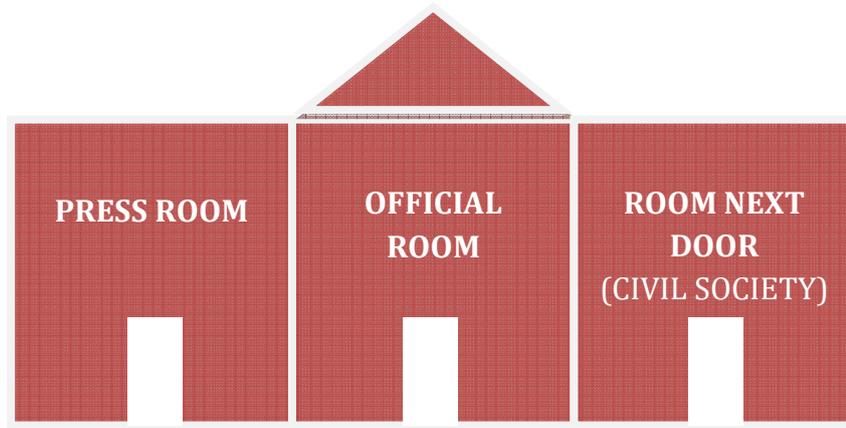
<sup>53</sup> Interview with Pedro Francke, former national coordinator of ForoSalud; 24 August 2009.

<sup>54</sup> Interview Alejandra Alayza, executive coordinator of *Red Peruana por una Globalización con Equidad* (Peruvian Network for a Globalisation with Equity, RedGE); 26 June 2009.

<sup>55</sup> Interviews with several representatives from business associations.

other two rooms. By strictly separating these different rooms, the Peruvian society never knew, for instance, what the official proposition of the United States was.<sup>56</sup>

**Figure 4: Watertight compartments**



Source: AGRONOTICIAS No.293, 2004; own elaboration

Moreover, MINCETUR obliged the representatives of civil society, including Congressmen of the Republic, to sign a declaration of confidentiality before allowing them to enter the Room Next Door during the negotiation rounds. As this peculiar document, shown in Figure 5, says:

...I hereby declare [...] not to divulge the documents or information that were given to me with reserved character as part of the developed work regarding the subscription of a Free Trade Agreement between Peru and the United States of America.

Paradoxically, the statement is set up under the Transparency and Access to Public Information Law (*Ley No 27806*, modified by *Ley No 27927*) as if negotiating a trade agreement was a state secret and that knowing and spreading the details would be a matter against national security. It seems that both the Peruvian and the US governments did not want the Peruvian society in general to know the official proposals and counter-proposals for the TPA, and that they were negotiating more than trade issues to which involvement of civil society was considered inconvenient. With this declaration of confidentiality it was possible to provide a participatory character to the negotiations and to hand over certain information to the representatives of civil society, but simultaneously, it silenced them to make sure that this information would not flow to their bases with the objective to discuss it (Agronoticias 2004a).

Civil society as a concept remains rather amorphous. Many definitions include NGOs, labour unions, environmental groups and human right activists; however, others include business as a fundamental element. For instance, MINCETUR never used the term civil society, but only recognises a society in which business is seen as an integral part.<sup>57</sup> On the other hand, Peruvian societal groups tend to resent the neo-liberal ideologies of the political and economic elites and seek to change this status quo. The government beard the responsibility for formulating consensus positions among all societal sectors in the trade negotiations.

<sup>56</sup> Interview with Reynaldo Trinidad, Chief Editor and Founder of agricultural magazine *Agronoticias*; 13 August 2009. Trinidad is also board member of CONVEAGRO, allowing him to enter both the Room Next Door on behalf of CONVEAGRO and the Press Room on behalf of his magazine. Subsequently, his magazine was the only medium in Peru that structurally exposed the US propositions.

<sup>57</sup> Interview with Alvaro Díaz Bedregal, advisor Vice-Ministry of Foreign Trade; 31 July 2009.



working tables, a total of 168 representatives from CENI participated in coordinated sessions with representatives from MINCETUR as indicated in Table 5. CENI provided analyses on the proposals where MINCETUR officially presented these to the public sector; the final document was to be taken by MINCETR to USTR and the US Embassy in Lima. At this time, CONVEAGRO was no longer integrated in CENI, but, interestingly, the American Chamber of Commerce (AMCHAM) in Lima became a member and was actively involved in each issue under discussion. Among the seventeen participating *gremios* were ADEX, ALAFARPE, CCL, COMEX, SNI, ADIFAN, and SNMPE with ADEX and SNI as the most active (see Annex 10) (CENI 2008).

**Table 5: Participation of CENI at the work tables during the implementation**

Working Table	Coordinators	Participants	Sessions
1. Market Access	Javier Dávila (SNI) Eduardo Brandes (MINCETUR)	31	2
2. Rules of Origin	Martín Reaño (SNI) Marcela Zea (MINCETUR)	19	2
3. Customs Administration	Richard Chumbiauca (ADEX) Carlos Posada (MINCETUR)	25	6
4. Competition Policy	Silvia Seperack (CCL) Carlos Castro (MINCETUR) Mariella Amemiya (MINCETUR)	18	4
5. Public Contracting	Ricardo Paredes (COMEX) José Luis Cano (MINCETUR)	15	1
6. Financial Services	Enrique Arroyo (ASBANC) José Luis Castillo (MINCETUR)	6	1
7. Telecommunications	Carlos Durand (CCL) Benjamín Chávez (MINCETUR)	10	2
8. Intellectual Property	Carmen Arana (CCL) Teresa Mera (MINCETUR)	17	10
9. Environment	Carlos Aranda (SNMPE) Ernesto Guevara (MINCETUR)	18	2
9a. Forest	Herbert Frey (ADEX) Ernesto Guevara (MINCETUR)	9	2
<b>Totals</b>		<b>168</b>	<b>32</b>

*Source: CENI (2008) Implementación y Provechamiento del Acuerdo de Promoción Comercial Perú – Estados Unidos. Presentación de Ing. Roque Benavides Ganoza a la Comisión de Comercio Exterior del Congreso de la República; 5 May 2008*

Despite the close cooperation between CENI and the government, the coordination and participation within CENI deteriorated. For instance, the number of members was reduced from twenty-seven to seventeen (Annex 10). Furthermore, the fact that CENI remained inactive and essentially dismantled after the signing of the TPA indicates that the importance of such an encompassing private platform decreased during succeeding trade negotiations. Considering that Peru has been signing countless of bilateral trade agreements, it seems that the business community lost the interest in participating actively in trade negotiations. Possibly, this lack of interest is generated by the increased capacity and expertise among MINCETUR's technocrats acquired during the TPA negotiations. The TPA was the very first comprehensive trade agreement for Peru that triggered many interests in the private sector. The major concerns disappeared after the TPA so that the technical team of MINCETUR was trusted by the private

sector to be sufficiently capable of continuing with the instigated process of trade liberalisation.<sup>59</sup>

However, the implementation process was used by the executive power to implement a series of legislative laws that trespass the regulations of the TPA. Under the temporary granted delegation of legislative faculties, MINCETUR elaborated a package of ninety-nine legislative decrees that represent a wide range of laws on varying issues. In the publication of the legislative decrees under the name *Por un Perú Moderno* (For a Modern Peru), President Alan García explains explicitly that the objectives of his government are the infrastructural advance, the social and decentralised redistribution and the improvement of labour conditions to which these decrees would contribute (García 2008, 7-13). The quality and the constitutional validity of the decrees, though, are questioned by many scholars as the Peruvian government has exceeded the delegation of exceptional powers. This was granted with the specific objective to elaborate norms for the implementation and optimisation of the TPA. The decrees should therefore strictly abide by the compromises of the TPA. Yet, only twelve decrees are directly related to the TPA. While the legislative powers were delegated for a period of 180 days, more than two third was drafted in the last weeks; this might have affected their quality considering the wide range of incorporated issues (Eguiruren Praeli 2008).

The remaining seventy-seven decrees aim to modify diverse norms such as access to natural resources including water and land, as well as other regulations related to the rights of indigenous peoples and peasant communities; these new norms tend to reduce some social and environmental standards and facilitate private investment, neglecting some of the criteria explicitly stipulated in the TPA.<sup>60</sup> As further analysed in chapter five, many of the decrees ignore certain amendments to the TPA that came imposed by the United States after the Congressional elections that were won by the Democrats. These amendments are ought to reverse some of the TPA's most rigorous measures in issues such as labour, environment and intellectual property. However, these amendments were considered as unnecessary barriers to free trade by the Peruvian government and the private sector, but had to be accepted in exchange for the TPA's ratification in the US Congress. The fact that CENI was involved in the Multiparty Committee of the Congress, presided by MINCETUR, that was in charge of the execution of the decrees, reveals that the powerful private interests behind the most comprehensive form of trade liberalisation prevailed over the attempts to neutralise some of the TPA's negative impacts on Peru (Eguiruren Praeli 2008, 16, 17).

These interests correspond traditionally to Peru's umbrella business association CONFIEP. But due to the nature of CONFIEP, which encompasses the most important business associations with exception of SNI and CCL, its role remained rather unclear during the trade negotiations. Nevertheless, its ties with CENI were inevitable.<sup>61</sup> Although not as an entity, CONFIEP managed to participate at CENI's working tables through independent consultants and advisors.<sup>62</sup> CENI's particular structure permitted a fluent coordination among the business

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<sup>59</sup> Interview with Alvaro Díaz Bedregal, advisor Vice-Ministry of Foreign Trade; 31 July 2009.

<sup>60</sup> Emma Gómez, legal advisor to CooperAcción, Acción Solidaria para el Desarrollo: *La Violación de Derecho de las Comunidades a Ser Consultadas, Eliminando el Acuerdo Previo, Pueden Agudizar los Conflictos Socio Ambientales en Zonas Mineras*. Available at [www.redge.pe.org](http://www.redge.pe.org).

<sup>61</sup> Besides being a past-president of CONFIEP, CENI's political spokesman Roque Benavides was also the president of CONFIEP's subcommittee *Consejo de Negociaciones Internacionales* (International Negotiations Council, CNI).

<sup>62</sup> Interview with Graciela Fernández-Baca, advisor to CONFIEP; 28 August 2009. Fernández-Baca is a well-positioned person in Peru; at the same time that she represented CONFIEP and CENI, she was also director of PROMPERU, a public-private institution that promotes Peruvian exports, but only at "personal

associations. CENI appeared to be a much more relevant umbrella institution during the TPA process as it also outnumbered CONFIEP with members, including SNI and CCL. CENI's spokesmen appeared constantly in the media and attracted the attention of the World Bank and the Inter-American Development Bank (IDB). As its name indicates – it is written in plural – CENI was created with the intention to secure the participation of the private sector in every economic trade negotiation that Peru was looking for in a bilateral manner. However, the relevance and presence that CENI obtained led to a type of “business jealousy” by CONFIEP that could “position CENI in such a way that it seemed only to be created for the TPA.”<sup>63</sup> This led to the eventual disintegration of CENI after the ratification of the TPA where the business associations now participate individually and independently in recent trade negotiations. During the implementation of the TPA, CONFIEP took over the coordinative role within CENI with the “hope to attract CENI's members to CONFIEP.”<sup>64</sup>

Yet, CONFIEP's presence decreased CENI's capacity of interest intermediation. Long-standing frictions between the allied ADEX, SNI and CCL with CONFIEP are part of a larger story that is rather political than economic. Within CONFIEP the financial and mining sectors have become the dominant sectors so that CONFIEP often defends other interests than these three *gremios*.<sup>65</sup> CONFIEP represents, moreover, many multinational associates and has therefore other objectives; occasional conflicts of interest occur when CONFIEP pressures a decision or position in defence of foreign companies.<sup>66</sup> Hence, with the creation of the *Alianza Empresarial para el Desarrollo* (Business Alliance for Development), ADEX, SNI and CCL attempt to strengthen the position of these three private sector organisations in order to defend their particular interests. Among its objectives are the “active participation in negotiation of pending trade agreements and the implementation process of these agreements”, and “to support Peru's consolidation as a strategic ally to the government in economic and trade forums.”<sup>67</sup> Essentially, the re-emergence of CONFIEP as an effective interest channel deteriorated the coordination among Peru's business associations. With a disintegrated CENI, directed by CONFIEP, and the creation of new interest channels, the TPA formed a unique incentive to unite the private sector to this extend.

Moreover, the lack of an internal agenda reflects the prevalence of these important interests. Once elected as President, Alan García appointed the internationally renowned economist Hernando De Soto as personal TPA representative. De Soto announced the necessity of a “*TLC hacia adentro*” (internal FTA) as a strategic policy to prepare Peru for the coming into effect of the agreement. These intentions were endorsed by the private sector and were picked up by the new Minister of Foreign Trade and Tourism Mercedes Aráoz (Peñaranda Castañeda 2004; ADEX 2007). However, De Soto resigned directly when he calculated that the TPA would only benefit two per cent of the Peruvian companies, leaving the internal agenda untouched. Subsequently, no tangible steps to execute this programme were made; this seems to be related to the fact that the priority of García's administration is not in small agriculture since much of the internal agenda consisted of compensations to sensitive agricultural products and

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title”. Moreover, she was president of CCL, a Congress member (1995-2000) and is currently advisor to ASBANC. Within CONFIEP, she is advisor to the CNI.

<sup>63</sup> Interview with César Peñaranda Castañeda, STE of CENI; 10 August 2009.

<sup>64</sup> Interview with Graciela Fernández-Baca, advisor to CONFIEP; 28 August 2009.

<sup>65</sup> Interview with Luis Miguel Silva, Foreign Trade Assistant at SNI; 10 July 2009

<sup>66</sup> Interview with Juan Carlos León Siles, Exporters Defender at ADEX; 16 June 2009.

<sup>67</sup> *Declaración de Principios de la Alianza Empresarial para el Desarrollo* – Declaration of Principles of the Business Alliance for Development, signed by the presidents of ADEX, SNI and CCL (respectively José Luis Silva, Peter Anders, Eduardo Farah) on 16 April 2009.

corresponding programmes of competitive strengthening for those products (CEPES 2009). In fact, it considers small agriculture as an obstacle for the competitiveness of Peru.

Therefore, the implementation stage of the TPA reflects a less transparent and less coordinated process than during the negotiations. It gives the impression that García relies even more on big business since the broad consensus platform that CENI provided became less articulated. Eventually, the interests of the top of the business pyramid seem to prevail through the elaboration of the legislative decrees and the lack on the internal agenda, reversing several established measures that tended to constrain García's neo-liberal and free market project.

#### **4.5 Concluding remarks**

This chapter has shown that in the context of the preparations and negotiations a strategic private alliance of proponents emerged. The Peruvian private sector created a well-structured organ to provide formal technical support to the government in the regulatory trade negotiations. By copying the official negotiation structure, the private sector could maintain coordination with the negotiators at every level, realising an effective consultation mechanism on a daily basis. In general, CENI represented a private consensus that supported the TPA. Consequently, the incorporation of critical groups in CENI contributed to the marginalisation of these opponents from the TPA process as their interest channels became constrained. Moreover, as an antecedent, the economic route of development through exports as established in public-private market plans created the basis for the specific trade negotiations, where the private sector sought to defend its specific interests within the outlined objectives of these economic plans. Therefore, it was obvious that the free trade agreement with the United States would be established under any circumstances, with the expiration of ATPDEA preferences as an efficient pressure tool.

Furthermore, the government relied essentially more on the unofficial input from the private sector through CENI than on the official input from societal organisations through the Room Next Door. Where the Room Next Door during the Negotiation Rounds was installed as the official participation mechanism, it turned out to be used as a décor for securing and maintaining total communication with the Peruvian society. No proposals were to be taken here and, as certain observations have demonstrated, the private sector possessed a more effective channel for influencing the trade policy process with CENI. In essence, CENI was the only organ that maintained such great coordination with MINCETUR during the negotiations, which confirms the hypothesis of the strong participation by the private sector in regulatory trade negotiations. The formal and regulatory business participation continued during the implementation phase but the quality deteriorated as CONFIEP started to regain relevance. During this stage it seems that other interests and priorities prevailed; the grip of the top of the business pyramid on García in fact increased. During the implementation, the exchange of technical expertise and business consultation took place though it appeared under less transparent and less accountable conditions.

Finally, the elaboration of a wide range of legislative decrees trespassed the original intention to prepare Peru for the coming into effect of the TPA; this may create grounds for more social conflicts as a result of their poor quality and the hasty execution process. Moreover, without the implementation of the internal agenda, Peru is not prepared with the necessary dynamic, efficiency and opportunities to capitalise the benefits and minimise the costs of the TPA. Intentionally, CENI would provide a counterpart for the government to elaborate the internal agenda but this has never occurred. It has become part of a chain of unfulfilled promises by García's administration.

## 5 Informal and pressure lobbying

Where the previous chapter has analysed how the Peruvian private sector formally participated in the regulatory negotiations of the TPA in a cooperative way, this chapter examines the influence of business in a rather informal way. The private sector was indeed brought to provide the know-how to effectively negotiate commitments in their respective industries; still, competing interests as in deciding which tariffs and non-tariffs to relax and how to liberalise certain sectors remained an important component of business lobbying. For uncomplicated decisions like the reduction of tariffs, economic interest groups can provide financial or electoral support in exchange for decisions in their favour (Woll & Artigas 2007, 126).

The framework for types of business-government relations that was discussed in chapter two includes pressuring as an effective business activity in order to ensure political decisions in their favour. As a result, competition between interest groups occurs; this competition leads to more aggressive lobbying styles when the negotiation process ensures through official and formal procedures that all stakeholders can participate. Moreover, as Woll and Artigas (2007, 132-133) argue, when the stakes are clearer, business is more likely to try to exert pressure on state negotiators; successful pressure lobbying might wield even more influence than regulatory lobbying. Different and informal interest channels proved to be equally effective in the TPA negotiations; personal policy networks have constituted less transparent business influence on the trade policy-making process. This chapter studies how these informal policy networks and influence channels determined the TPA process as well as the formal regulatory lobbying activities.

The first section analyses how competition between economic interest groups occurred within CENI and that important interests prevailed over others by using informal pressure lobbying strategies. In some cases, economic power groups did not even depend on CENI in channelling their specific interests; personal relations with the government were more effective in influencing trade policy. The second section discusses the submission of the TPA to political pressures. Ever since its creation in 2002, MINCETUR has proved to be a powerful stronghold for the neo-liberal directors of the economy; this ministry resembles the culmination of interests of the new elites that conduct Peru's political economy. The technocrats at MINCETUR were the main force behind the TPA plans who presented it as a logical and inevitable undertaking; therefore, the private sector had major affinities with MINCETUR. Informal and pressure lobbying was not only executed by business; also MINCETUR actively defended the TPA.

This became clear during the ratification stage of the TPA; the third section shows that the trade agreement became part of a political game under pressure of the forthcoming presidential elections. However, the political debate remained rather poor so that the TPA was never truly analysed prior to its ratification by the Peruvian Congress; this provided major opportunities for both business and MINCETUR to lobby in the Congress. This strategy was continued in the US Congress after Peru's approval. Under the new government of Alan García, intensive lobby activities contributed to the TPA's ratification by the US Congress as outlined in the fourth section. Yet, a protocol of amendments was added to the TPA due to Democratic pressures, which were eventually reversed by García's legislative decrees. The final section examines the promotion of the TPA by MINCETUR and the private sector. The government invested heavily in promotional campaigns in order to change the public opinion. Several lobby firms were contracted and simultaneously with MINCETUR and the private sector hundreds of

events were organised throughout the country; moreover, media leverage proved to be an effective strategy to mute opponents to the TPA.

### 5.1 Balances of power and interests: within and behind CENI

As discussed above, competition among economic interest groups is likely to occur when the stakes in trade negotiations are clearer. The decisions and positions of economic power groups within CENI were on many occasions influenced by other institutions and the debates were determined by specific interests related to trade liberalisation. Pressure lobbying among the business associations proved to be an effective tool in influencing the position of CENI, showing a power balance that was favourable to the vested economic elites. This argument is strengthened by a particular occurrence at the intellectual property working table during the discussions on whether to support the US request to extend patents to more than twenty years or not. Under the direction of SNI, the majority was opposed to the extension considering that this would trespass WTO regulations where patents expire after a period of twenty years. However, during the voting process many business representatives were pressured to vote in favour by their presidents, as an observation shows:

At the moment that everybody started to vote, with the majority against the extension of patents, the representative of SNP, who was sitting next to me, received a phone call. A few minutes prior to the voting the representative and general manager of COMEX, Patricia Teullet, had left the room and called the president of SNP, who at his turn called the SNP representative telling him to vote in favour. This SNP representative then said to me that he had to do what his president told him, and he voted in favour.<sup>68</sup>

Simultaneously, the representative and board member of ADEX, who voted initially in contra, was replaced by another board member who subsequently voted in favour of the extension of patents as the same observation demonstrates:

José Luis Silva, who was sitting on my other side, was the representative of ADEX in CENI at the intellectual property table, whereas Pedro Gamio represented ADEX at the textile table. However, Gamio entered the room and stated that he came in representation of ADEX and was free to give his opinion. Consequently, they started to argue openly; all the attendees, including the official negotiator on intellectual property Luis Alonso García, could see what was happening. Apparently, Patricia Teullet had been calling many business leaders, representatives of the government and the national exporters committee in order to inform on what was occurring at this table.<sup>69</sup>

These observations provide evidence how competition between economic interest groups have determined certain outcomes of the trade negotiations. In spite of the fact that the extension was never realised – some suspect an even more aggressive lobby by SNI behind the prevention – clear stakes tend to cause pressure lobbying; José Luis Silva, nowadays president of ADEX, is the general manager of the pharmaceutical company *Laboratorios Farmacéuticos Hersil* that fabricates medicinal products that contain the native *maca* whereas several US laboratories possess the patent to therapeutic methods with *maca* products.<sup>70</sup> The extension of patents would evidently affect *Hersil's* activities whereas it would benefit these US laboratories; with the

<sup>68</sup> Interview with Miguel Macedo, member of negotiating team at CONVEAGRO; 11 June 2009.

<sup>69</sup> Interview with Miguel Macedo, member of negotiating team at CONVEAGRO; 11 June 2009.

<sup>70</sup> Interview with Miguel Macedo, member of negotiating team at CONVEAGRO; 11 June 2009.

general tendency to reject the extension, Pedro Gamio only intervened to explicitly block the issue.

This contributes to the idea that certain power groups are in fact managing the Peruvian economy and constrain the choices of politicians in conducting trade policies. During the negotiations of the TPA, the mining sector was one of the sectors that corresponded to these business interest groups. The business association that represented the mining sector, *Sociedad Nacional de Minería, Petróleo y Energía* (National Mining, Oil and Energy Society, SNMPE), was one of the most powerful proponents of the TPA within CENI. However, SNMPE never articulated publically and participated passively. They were hardly seen during the debates, though they influenced the TPA process heavily.<sup>71</sup> The mining sector consists of a small amount of corporations, but they are well-represented and strongly organised in SNMPE. Moreover, this business association consists of many transnational corporations that are active in the mining, oil and energy sectors; the liberalisation of the regulations on foreign investment would certainly benefit these companies. Furthermore, the interests of these sectors in the TPA are inevitable considering the fact that the political spokesman of CENI, Roque Benavides, is the major stakeholder of Peru's leading mining company Buenaventura. In addition, the Benavides family has a great reputation in the mining sector with Roque Benavides as past-president of SNMPE.

These consolidated power structures and the low profile during the CENI meetings suggest that distinct interest channels provided a more effective way to influence the state negotiators. An illustrative example is a particular photograph of the celebration of the TPA's signing, where next to President Toledo and a handful of state officials many business leaders such as the president of SNI and Dionisio Romero appear.<sup>72</sup> Romero has been Peru's most successful and powerful businessman for decades but he never appeared during any of the negotiations.<sup>73</sup> Romero's economic conglomerate is one of the main beneficiaries since his companies are active in various beneficiary sectors such as financial services, agricultural industry and, moreover, energy and telecommunications sectors. Hence, the involvement of business leaders like Romero in the trade negotiations did not necessarily reflect participation through CENI. Yet, it was clear and notable during the negotiations that the powerful business interests were related to the small top of the business pyramid. "Although they never participated personally, they had four or five persons who were very reliable with ideas, words and resources. These persons could simultaneously present themselves in one or various institutions to generate these business interests."<sup>74</sup>

Moreover, aggressive pressure lobbying was also useful in the defence of protectionist measures. The sugar, ethanol and lactose industries were initially opposed to the TPA and supported the position of CONVEAGRO. Among these influential groups was *Grupo Gloria*, active

<sup>71</sup> Interview with Miguel Macedo, member of negotiating team at CONVEAGRO; 11 June 2009.

<sup>72</sup> Dionisio Romero is considered Peru's most successful and influential businessman. He is the founder and ex-chairman of *Banco de Crédito de Perú* (Peru's credit bank) and chairman of Credicorp. His *Grupo Romero* runs various successful companies active in sectors such as agro industry, imports of alimentary (Alicorp), financial services, oil and energy, telecommunications, and the export of textile and cotton. According to the yearly survey *Encuesta del Poder* (Power Survey: [www.encuestadelpoder.com](http://www.encuestadelpoder.com)) Romero has been steadily elected among the ten most powerful Peruvians since 1981, and under Toledo and García he has been occupying constantly the third or fourth place behind political figures. As transition President Valentín Paniagua (2000-2001) argued, he was the only President that has never flown on a private jet from Romero. Interestingly, also Roque Benavides appears on the power list, making the top ten during his presidency at CONFIEP (1999-2001) and again in 2007.

<sup>73</sup> Interview with Miguel Macedo, member of negotiating team at CONVEAGRO; 11 June 2009.

<sup>74</sup> Interview with Miguel Macedo, member of negotiating team at CONVEAGRO; 11 June 2009.

in the alimentary sector and part of *Grupo Rodríguez*.<sup>75</sup> As an economic group, *Grupo Gloria* did not possess sufficient political pressure on the TPA so they supported CONVEAGRO in organising and financing mobilisations. On the other hand, *Grupo Gloria* was capable of conducting a strong media campaign though they never participated personally in the protest actions. During CONVEAGRO's weekly meetings called *Martes Agrarios* (Agricultural Tuesdays) they aggressively criticised the official negotiator on agriculture, Julio Paz, by "yelling and insulting him in a very nasty way."<sup>76</sup> However, as soon as their demands were honoured, they abandoned CONVEAGRO completely and cut off all communications. With their demands secured through free riding temporarily on the efforts of collective action by opposing groups, they in fact changed their lobby against the TPA into a lobby in favour of the TPA; due to the breadth of offensive interests in other sectors, the TPA would generate many opportunities for these corporations.

Informal and pressure lobbying thus formed a significant constituent of the private sector activities during the trade negotiations. Not only within the formal private platform that CENI provided, also informal personal relations between businessmen and trade policy-makers tended to be important. The actual impact of these policy networks on the outcome of the trade negotiations is hard to measure, but certain observations and the significant positive effects of the TPA on these specific sectors imply that the government relied on the informal input of the policy networks in the TPA process as well.

## 5.2 Political pressures

The vested economic interests in the TPA were well-reflected by several political actions; these reveal the conjuncture of public and private interests. The state technocrats who conducted Peru's trade liberalisation process considered the TPA as a vital instrument to consolidate the market reforms that were instigated in the 1990s. In their vision, the signing of the TPA would mean a logic and desirable step in Peru's profound neo-liberal restructuring process. The prospects of permanent preferential trade with the United States created an unprecedented eagerness to sign the TPA as President Toledo publically announced "*TLC sí o sí*" (FTA yes or yes) at the start of the negotiations. Furthermore, when in November 2005 the United States announced that the conclusion of the TPA negotiations was still far away, the Minister of Foreign Trade and Tourism Alfredo Ferrero announced that he would "do whatever is necessary to close the trade negotiations." Shortly after, President Toledo publically declared that he "instructed the negotiating team to make the Peruvian position more flexible" (Agronoticias 2005).

Moreover, when on 24 November the negotiations were officially suspended, Prime-Minister Pedro Pablo Kuczynski, who has both the Peruvian and the US nationality, travelled to Washington to "force the decision" (Agronoticias 2005). During this visit, Kuczynski effectively ignored the consensus on agricultural tariffs that was negotiated by both technical teams and eliminated the import-tariffs for several alimentary products that are fundamental to Peruvian agriculture. This action reinforced the negotiation process but affects directly thousands of small agricultural producers in the Andes that will have no alternatives to either sow coca or to migrate to the cities.<sup>77</sup> These kind of statements and political actions constitute a type of political

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<sup>75</sup> *Grupo Gloria* is mainly active in the alimentary sector with Gloria Milk as its best known product. However, the conglomerate is also active in agricultural industry, pharmaceutical and transport sectors. It runs also the Yura mine for cement-winning.

<sup>76</sup> Interview with Guillermo Rebosio, member of negotiating team at CONVEAGRO; 11 June 2009.

<sup>77</sup> Interview with Reynaldo Trinidad, Chief Editor and Founder of agricultural magazine *Agronoticias*; 13 August 2009.

opportunism that is related to the political and economic interest in free trade and the insertion into the world economy.

The pro-free trade policy of the Peruvian government was predominantly eased by the Ministry of Foreign Trade and Tourism (MINCETUR) which was created in 2002 with a financial support of US\$7.15 million by the IDB. Its specific objectives include strengthening Peru's negotiating capacity in international trade forums and enhancing the performance of trade promotion policies (IDB 2002, 2, 3). Consequently, free trade proponents were recruited and the consecutive ministers are all related to the free market discourse.<sup>78</sup> Hence the technocrats of MINCETUR became the main force behind the TPA plans and instigated the process of preparations and eventually the negotiations and promotion of the trade agreement.

However, not all ministries shared MINCETUR's enthusiasm about the TPA and its impact on Peru. Major concerns on the negative impact of the intellectual property regulations and the prices of medicines arose within the *Ministerio de Salud* (Ministry of Health, MINSA). Several employees at MINSA were related to *Acción Internacional para la Salud* (International Health Action, AIS) that contributed to the articulation of these concerns.<sup>79</sup> Moreover, the Minister of Health, Pilar Mazzetti, contracted a consultancy firm to elaborate a study on the impact of the TPA on the prices of and access to medicines, which eventually presented alarming results as shown in chapter three (MINSA 2005). Strikingly, MINCETUR proved to be capable of blocking the official publication of this critical study; despite that this study was elaborated by another governmental entity and that the responsibility of publishing a study on public health corresponded to MINSA, MINCETUR was able to prevent this. Nevertheless, critics to the TPA had access to the results of this study through the parliamentary office of Congressman Javier Diez-Canseco, who placed an official request so that MINCETUR was obliged to transmit the information.<sup>80</sup> MINCETUR indeed transmitted the results of the study on a compact disc; shortly after, the study was published on a web portal called *Perú Frente el TLC* (Peru against the FTA) and a press release on the main alarming results was sent to the media.<sup>81</sup>

Subsequently, the government itself provided an inducement for the growing opposition to take action. Where the first concerns were expressed by Roberto López of AIS, the national debate on the impact of the TPA and public health was soon prompted. The study of MINSA was used by the emerging opponents of the political campaign *TLC ¡Así No!* (FTA not like this!) and contributed to influential critical studies by scholars at the progressive *Pontificia Universidad Católica del Perú* of Lima. Whereas previous critical assessments were directly denominated by

<sup>78</sup> Businessman Raúl Diez-Canseco was the first Minister of MINCETUR, followed by his nephew and top-lawyer Alfredo Diez-Canseco and the liberal economist Mercedes Aráoz. In the aftermath of the Bagua uprising, eventually, several Ministers had to resign. On 11 July 2009, Aráoz was installed as the new Minister of Production, a ministry located in the same building as MINCETUR and with similar objectives. The new and actual Minister of Foreign Trade is now Martín Pérez, a politician allied to the neo-liberal and conservative party *Unidad Nacional* of Lourdes Flores, and with education at the liberal *Universidad del Pacífico* and in the United States. Moreover, he used to be the director of a supermarket chain in Callao.

<sup>79</sup> Interview with Pedro Francke, former national coordinator of ForoSalud and the campaign *TLC ¡Así No!* and actual professor of economics at the *Pontificia Universidad Católica del Perú*, Lima; 24 August 2009.

<sup>80</sup> Javier Diez-Canseco, a solitary and leftist politician, was essentially the only Congressman that was openly and structurally opposed to the TPA. Remarkably, he is the cousin of Raúl Diez-Canseco and thus also related to Alfredo Ferrero Diez-Canseco. The contradictive ideologies of the country even occurred within one single family.

<sup>81</sup> This web portal was an accessible place that provided alternative and different information opposing all the official information such as presentations by CONVEAGRO and Alan Fairlie. Interview with Alejandra Alayza, executive coordinator of *Red Peruana por una Globalización con Equidad* (Peruvian Network for a Globalisation with Equity, RedGE); 26 June 2009.

the government as falsehoods, the study of MINSA in fact encouraged the launching of the political campaign since they provided exact numbers on the increase of medicine prices.<sup>82</sup>

Evidently, the negative results of MINSA's study were inconvenient to the proponents of the TPA. The press release on this study was picked up by Peru's most important and conservative newspaper *El Comercio*; shortly after its publication, businessman Fritz DuBois entered the editorial board of the newspaper and accused the chief editor of the economic section of publishing this information, which was in fact public.<sup>83</sup> Fritz DuBois is the business partner of Roberto Abusada, former MEF advisor and former IPE director.<sup>84</sup> DuBois' wife, Cayetana Aljovín, is the actual president of Proinversión, which is a public-private organisation that promotes privatisation and private investment in Peru. Moreover, DuBois is the actual director of one of Peru's main newspapers *Peru21*. The case of the study of MINSA suggests that it slipped through the policy networks and the media leverage by the pro-free trade coalition and it further indicates how easy the media is to access for business.

Consequently, MINSA's study became seriously questioned by MINCETUR to the point that Alfredo Ferrero elaborated another study with private consultants from APOYO and the liberal *Universidad del Pacífico*.<sup>85</sup> Obviously, this study showed a more positive impact of the TPA on public health in Peru (APOYO Consultoría 2005).<sup>86</sup> By arguing that there was a "certain degree of ignorance within MINSA regarding the true risk of elevating intellectual property standards," MINCETUR thus proved prepared to discredit the competence of MINSA in order to defend the TPA.<sup>87</sup>

The insulated conduction of trade policies by MINCETUR without the consideration of the skills and knowledge of other sectors is also reflected by the dismissal of the *Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual* (National Institute for the Defence of Competition and the Protection of Intellectual Property, INDECOPI) as the official negotiating entity on intellectual property. In addition to MINSA, INDECOPI elaborated two critical studies on the access to medicines as well, and after several Negotiation Rounds INDECOPI started to question the chapter on intellectual property; under its director

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<sup>82</sup> Prior to MINSA's study, ForoSalud elaborated a critical flyer with the main concerns on the rising prices of medicines with the TPA. The government directly responded by accusing them of spreading lies. Interview with Pedro Francke; 24 August 2009.

<sup>83</sup> Derived from personal contact of Alejandra Alayza with the chief editor of the economic section of *El Comercio*. Interview with Alejandra Alayza; 26 June 2009.

<sup>84</sup> Roberto Abusada is the mastermind behind the entrance of neo-liberalism in Peru. According to Francisco Durand, a political scientist, Abusada has been advocating free trade already since 1980 when he broke down all trade tariffs as Vice-Minister of Trade, only to be reversed by Alan García in 1985. As soon as Fujimori came into power, he returned as advisor to MEF. During this period, he participated in the privatisation of Aeroperú that resulted in a conflict of interest, making him resign a few weeks before the actual privatisation. Abusada then created IPE in 1994 with support of the World Bank, economic power groups and Telefónica, and returned as a private policy advisor. This way he found a way to participate with the government without being formally part of the government.

<sup>85</sup> The director of APOYO is Felipe Ortiz de Zevallos, who was Rector of *Universidad del Pacífico* for the period 2004-2009 and who became the actual Peruvian Ambassador in Washington in 2006 in order to promote the TPA in the United States.

<sup>86</sup> According to Fairlie et al (2006), the methodology of this study is directly derived from the World Bank report of Fink (2000) *How Stronger Patent Protection in India Might Affect the Behaviour of Transnational Pharmaceutical Industries* and other studies. The model simulates the consumer decisions and the behaviour of pharmaceutical companies. Fairlie et al argue that the general costs of the TPA for the public sector are low according to this study because it does not quantify the loss of access to medicines; it only quantifies the increased entrance of medicines destined to the consumers. It therefore overestimates the positive impact of the TPA on public health.

<sup>87</sup> Interview with Alvaro Díaz Bedregal, advisor Vice-Ministry of Foreign Trade; 31 July 2009.

Santiago Roca, INDECOPI developed an institutional position that rejected the TPA. The official negotiator Luis Alonso García, who started the negotiations as the negotiator on behalf of INDECOPI, resigned and switched to MINCETUR close before the seventh Negotiation Round (MINCETUR 2005c). Despite the fact that the sectoral public experts at INDECOPI argue that the negotiations on intellectual property rights were inadequate, MINCETUR renounced the negotiating team and installed its own technical teams. According to MINCETUR, INDECOPI “did not reflect the technical position of MINCETUR and MEF as it was led by people that lacked real knowledge on the effects of trade opening and the rules of intellectual property on the prices of medicines.”<sup>88</sup>

Practically, it did not mean a significant change due to the fact that Luis Alonso García already operated as the official state negotiator on intellectual property rights. However, the entity for which he negotiated was changed. This affirms that the interests of MINCETUR, and to a lesser extent MEF, dominated despite the competence and skills of other sectoral institutions. MINCETUR proved hence capable of overcoming governmental opposition and maintained close coordination with the private sector through the constituted policy networks.

### 5.3 Ratifying the TPA in Peru

Pressure lobbying by the proponents of the TPA intensified in order to achieve the agreement’s ratification in the Peruvian Congress. Where in Anglo-Saxon countries the activity of lobbying is rather accepted and not considered illegal or unethical, in Peru it is still associated with corruption; the political arena is still weak so that lobby strategies are not completely transparent. In fact, the private sector often avoided the term “lobbying” and defined their activities as “interest management.”<sup>89</sup> For instance, COMEX constantly used the term “lobby” to accuse the sugar industry of old protectionist lobbies, where they carefully described their own activities as “support” and “assistance” to the government.<sup>90</sup> Nonetheless, many influential groups combined technical opinions with business interests and lobbied strongly in Peru and in the United States.

The dynamic between CENI and members of the Peruvian Congress was very high. The political spokesman of CENI, Roque Benavides, had permanently contact with the government and CENI actively participated in the Congress to convince the Congressmen on the importance of the TPA; also many meetings were organised by both the spokesmen of CENI during the Negotiation Rounds.<sup>91</sup> Moreover, CENI contracted a lobby firm that pressured the TPA’s approval by the Congress in the media. The private sector participated in the financial support for this publicity, but also in the payment of consultants that arranged private talks with the Congressmen.<sup>92</sup> Hence, the private sector not only participated in consultancy but also by providing financial support. The lobby activities occurred at these three levels of discussion; through the technical arguments during the negotiations, through the media as opinion leaders, and through direct personal contact with the government by telephone or email. In these communications the private sector pressured the government and emphasised that it was strongly in favour of the TPA.<sup>93</sup> These relations and lobbies were so powerful that the business

<sup>88</sup> Interview with Alvaro Díaz Bedregal, advisor Vice-Ministry of Foreign Trade; 31 July 2009.

<sup>89</sup> Interview with Richard Inurritegui Bazán, general manager of SNP; 24 June 2009.

<sup>90</sup> Various *Semanarios* by COMEX.

<sup>91</sup> Interview with César Peñaranda Castañeda, Secretary of CENI; 10 August 2009.

<sup>92</sup> Interview with Graciela Fernández-Baca, advisor to CONFIEP; 28 August 2009.

<sup>93</sup> Interview Ricardo Paredes, Director Economic Studies and Business Consultancy, COMEX; 8 July 2009.

associations were able to prevent a possible dismissal of Alfredo Ferrero as Minister of Foreign Trade when during the negotiations rumours on a change of cabinet became strong.<sup>94</sup>

During the Negotiation Rounds, the Room Next Door also proved to be an adequate platform for pressure lobbying since it provided an official opportunity for the government, the private sector and the Congressmen to interact. The lobby of MINCETUR in the Peruvian Congress was very effective. At the end of each Negotiation Round MINCETUR elaborated a complete report on the progress of the negotiations, which they sent to CENI but also to each Congressman.<sup>95</sup> The invitations of the Congressmen to the different Rounds resembled essentially an investment in votes in favour of the TPA by MINCETUR; the relatively weak Peruvian Congress was actually susceptible to the lobby practices of the private interest groups and MINCETUR. The fact that the cabinet consisted of a team of independent professional with different political tendencies – appointed by Toledo as he was losing political legitimacy at that moment – created little coherence between the Congress and cabinet.<sup>96</sup>

Moreover, the participation and dedication of the Congressmen was rather marginal. For instance, of the thirty Congressmen that would travel to the seventh Round in Cartagena, Colombia, only two assisted the training seminar on the trade agreement organised by ADEX: Adolfo de la Torre (Perú Posible) and Victor Noriega (APRA). The lack of interest in the technical aspects of the TPA suggests that the decisions of the majority of legislators respond more to political opportunism rather than to technical reasoning and preparation (IPE 2005a). The final decision on the TPA was thus in hands of people without real technical knowledge on the trade agreement, making the decision submissive to external influences.

Hence MINCETUR actively participated in the Peruvian Congress in order to diffuse the benefits of the TPA as Table 6 indicates though only up to 5 May 2005. It shows however that MINCETUR elaborated an intense lobby strategy to promote the TPA and secure the votes. Subsequently, there was hardly any opposition in the Congress. Among the main opponents were Javier Diez-Canseco, Ronnie Jurado, and *Aprista* Elvira de la Puente but the lack of capacity to structure an opposing group to the TPA restrained the critical assessment within the Congress. For instance, Javier Diez-Canseco was refused to participate in the Committee of Foreign Trade in the Congress.<sup>97</sup>

Furthermore, its institutional power has been severely weakened due to the composition of the Peruvian Congress. Ever since Fujimori created a unicameral system, the Congress is rather fragile and easy to manipulate in comparison to a two-cameral Congress where the upper chamber would function as a filter that slows down the decision-making process. Instead, legislative decisions in Peru are made through floor sessions where at the end the number of votes determines the eventual approval.<sup>98</sup> The ratification process of the TPA by the Peruvian Congress took place amidst the presidential elections in 2006, where it was still uncertain who would win. During the electoral campaigns, nationalist candidate Ollanta Humala was openly opposed to the TPA where APRA candidate Alan García remained rather unclear about his position on the TPA.

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<sup>94</sup> Interview with Pedro Francke; 24 August 2009.

<sup>95</sup> Interview with Alvaro Díaz Bedregal, advisor Vice-Ministry of Foreign Trade; 31 July 2009.

<sup>96</sup> Interview with former Vice-Minister of Labour (2004-2005) Alfredo Villavicencio; 1 July 2009. Villavicencio was appointed as an independent professional coming from the *Pontificia Universidad Católica del Perú*, Lima, as a Professor of Labour Rights.

<sup>97</sup> Interview with Alejandra Alayza; 26 June 2009.

<sup>98</sup> Interview with Francisco Durand, Professor Political Science at the Texas University of Austin and *Pontificia Universidad Católica del Perú*, Lima; 19 May 2009.

**Table 6: MINCETUR's activities in the Peruvian Congress, up to 5 May 2005**

ACTIVITIES WITH THE CONGRESS
<ul style="list-style-type: none"> <li>• Conformation of an ad-hoc committee to concentrate the coordinative works of the Minister with the Congress</li> </ul>
<ul style="list-style-type: none"> <li>• 11 public presentations organised by the Congress</li> </ul>
<ul style="list-style-type: none"> <li>• 13 meetings with 6 parliamentary benches (FIM, APRA, Unidad Nacional, Perú Ahora, GPDI and Acción Popular)</li> </ul>
<ul style="list-style-type: none"> <li>• 40 individual meetings with Presidents of the Congress, Presidents of the Parliamentary Committees, and Congressmen</li> </ul>
<ul style="list-style-type: none"> <li>• Meeting with the advisors to the Congressmen members of the Foreign Trade Committee, and the Congressmen of the Perú Posible bench (party of President Toledo)</li> </ul>
<ul style="list-style-type: none"> <li>• 5 meetings with advisors to Congressional Committees and Congressmen</li> </ul>
<ul style="list-style-type: none"> <li>• 2 parliamentary questionnaires</li> </ul>
<ul style="list-style-type: none"> <li>• Constant providence of information as wished for by congressmen and/or their advisors</li> </ul>
<ul style="list-style-type: none"> <li>• Handing over all the reports of the seven Negotiation Rounds</li> </ul>
<ul style="list-style-type: none"> <li>• Promotion of the assistance of Congressmen to the Rounds in Guayaquil, Tucson and Cartagena</li> </ul>
<ul style="list-style-type: none"> <li>• Organisation of a parallel working agenda at the Negotiation Rounds with representatives of national entrepreneurs and SMEs, and with the various chiefs of the negotiation tables</li> </ul>
<ul style="list-style-type: none"> <li>• Various meetings of the Vice-Minister and the Minister with the main Congressional leaders</li> </ul>

*Source: Alfredo Ferrero, Minister of Foreign Trade and Tourism. Presentation at CONFIEP; 5 May 2005*

Initially, García stated clearly that if Toledo would approve the TPA, he would “personally erase his signature so that the agreement would be discussed by the country.”<sup>99</sup> He even affirmed to revise the agreement sentence by sentence before voting for its approval. When García and Humala went to the second election round, the TPA became the central item during the debates; García expressed his concerns especially on the impacts on agricultural producers and stated that he would “renegotiate the TPA in defence of the farmers.”<sup>100</sup> However, despite these electoral promises, García ordered his APRA party to vote in favour of the TPA, implying an internal shift favourable to the continuation of the neo-liberal paradigm. Once the APRA votes were secured, the ratification of the TPA was finally discussed by the Peruvian Congress on the very last day of Toledo’s presidential term and after a short debate of only four hours, the Congress approved the TPA at 02:33 a.m.

It shows how qualitatively weak the public debate on the TPA in the Congress was. Evidence indicates a lack of expertise among the Congressmen and that the decision-making process on the TPA was rather dominated by political opportunism. Yet, the ratification of the TPA cleared the way for other trade agreements with important economies such as China, Japan, Canada and the European Union. Moreover, the strong articulation of MINCETUR silenced the initial opposition within the government that contributed to the political campaigns of “left-wing NGOs and environmentalists that frustrated the process of further trade liberalisation.”<sup>101</sup>

<sup>99</sup> Declarations by presidential candidate Alan García in Trujillo, 13 March 2006.

<sup>100</sup> Declarations by Alan García in Ica, May 2006.

<sup>101</sup> Interview Ricardo Paredes, Director Economic Studies and Business Consultancy, COMEX; 8 July 2009. Paredes used to be an employee of MINCETUR before transferring to COMEX in 2007.

## 5.4 Ratifying the TPA in the United States

As pointed out in chapter two, the appointment of several key figures at strategic positions of García's administration constituted a smooth continuation of the instigated processes evolving around the TPA. Hernando De Soto was appointed as García's personal representative on the TPA, soon to be succeeded by David Lemor who was president of SNI during the trade negotiations and consecutively Minister of Production under Toledo. Lemor was now appointed to lobby in Washington for the ratification of the TPA.<sup>102</sup> Moreover, the new directors of MINCETUR were closely related to the TPA negotiations since Minister Mercedes Aráoz was the official negotiator on trade capacity building and Vice-Minister Luis Alonso García was the official negotiator on intellectual property. Furthermore, García elected Felipe Ortiz de Zevallos as Peruvian Ambassador to the United States, a position that has proven to be a strategic placement.<sup>103</sup> The election of these officials facilitated a continuation of the strategy that was initiated by the government of Alejandro Toledo and became absorbed by the government of García whose shifted discourse consolidated the economic model based on exports and free trade.

With the TPA ratified by the Peruvian Congress, one of the most important objectives of the new installed government was to achieve the agreement's ratification in the US Congress. The government and the business elites therefore actively lobbied for the TPA in Washington DC. The Peruvian lobby activities in the United States took already place during the negotiations and were intensified during the ratification stage. The Peruvian private sector conducted a lobby strategy and as one specific objective of CENI emphasises, CENI would promote the support of the business community and the US Congress (Peñaranda Castañeda 2004). CENI maintained a close coordination with US Congressmen and organised many meetings in Peru and the United States to interrelate with the private and public sector. Explicit lobbies in the United States were either directly organised by CENI or arranged through lobby advisors that were financed by CENI.<sup>104</sup>

Moreover, CENI had fluent communication with US business groups to support the TPA; countless meetings were organised with the American Chamber of Commerce (AMCHAM) in Peru and the United States, as chapter six will further discuss, and many Peruvian businessmen interacted with US businessmen. During the negotiations, CENI communicated directly with the representatives from USTR and at the Negotiation Rounds the spokesmen of CENI had permanently contact with US Congressmen, authorities of the US Trade Secretary, US Ministers, US Chambers of Commerce and US representatives from agricultural, labour and environmental sectors. Not only trade related entities were subjected to the CENI lobby, also US NGOs and Peruvian, Colombian, and Ecuadorian groups in the United States were approached to explain the TPA.<sup>105</sup>

Also the TPA lobbies by the Peruvian government in Washington were impressive. MINCETUR hired several well-connected lobby firms who effectively lobbied in both the Republican Party and the Democratic Party. One of these firms was DTB where the lobby was led

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<sup>102</sup> After the ratification of the trade agreement in the United States, President García put David Lemor as the director of Proinversión.

<sup>103</sup> Former Prime-Minister Roberto Dañino was the Peruvian Ambassador for the period 2002-2003 and played a key role in the promulgation of the ATPDEA. The actual Ambassador in Washington is Luis Valdivieso who used to be MEF Minister during the first years of García's second term. Valdivieso has a great reputation as a former IMF employee and used to be the advisor to Fujimori's second and most technocratic MEF Minister Carlos Boloña.

<sup>104</sup> Interview with Graciela Fernández-Baca, advisor to CONFIEP; 28 August 2009.

<sup>105</sup> Interview with César Peñaranda Castañeda, STE of CENI; 10 August 2009.

by Peruvian top lawyer Carlos Paz-Soldan.<sup>106</sup> The other lobby firm was Fierce, Isakowitz & Blalock that was accompanied by Patton Boggs. These lobbyists met with more than 145 US Congressmen, both Republicans and Democrats (IPE 2007a). The Peruvian Ambassador to the United States, Felipe Ortiz de Zevallos, was also involved as an important actor. Ortiz de Zevallos played a key role between the government in Lima and the US Congress that consisted of lobbying in order to convince the US Congressmen, US Senators and the White House. In addition, David Lemor played a crucial role in the promotion of the TPA in the United States and remained in close contact with Peru's Prime-Minister Jorge Del Castillo, Minister of Foreign Trade Mercedes Aráoz, Peru's Ambassador to the United States, and Peru's key lobbyists.<sup>107</sup> Lemor's task was to participate in the Peruvian Embassy's technical team to evaluate the most technical parts of MINCETUR and to promote US investment in Peru, which he continued to do as director of Proinversión.<sup>108</sup>

These kind of lobby practices were encouraged by the private sector, which still pressured for more lobby in the United States. For the business elites, the ratification of the TPA was the most crucial political item on the short term; therefore, they suggested that "Mercedes Aráoz should 'move' to Washington if necessary and request as many meetings as possible; President García should visit President Bush and talk with Democratic leaders" (IPE 2007b).

### ***The protocol of amendments***

Despite the intensive lobbying by both the Peruvian government and the private sector, the ratification of the TPA in the US Congress was delayed due to the mid-term legislative elections in November 2006 that were favourable to the Democratic Party. This meant a slight rupture in the TPA process considering that the agreement was built on the principles of free trade that corresponded to the Republican-controlled Congress and USTR. With now a Democratic majority in the US Congress, a new consensus with the White House and USTR resulted in a "New Trade Deal" that, generally, reduces the rigidity of intellectual property rights, and elevated labour, environmental and investment standards. This new political context created a new template for US trade policy; amending the TPA prior to its ratification would mean a first tangible step. However, the US Congress was not authorised to amend the TPA since it delegated temporal powers to USTR under the Trade Promotion Authority act in 2002. The Peruvian decision to renegotiate these amendments directly with the US Congress contributed to the TPA's ratification by the US Congress, whereas the other remaining Andean partner, Colombia, continued to negotiate with USTR, resulting in a stalemate precisely because of labour and human rights concerns by the US Congress.<sup>109</sup>

Labour opposition in the US Congress formed the initial stumbling block for the ratification of the TPA. A great deal of support for the Democratic Party is originated in labour unions with the national labour union AFL-CIO as its traditional ally. A considerable number of Congressmen remained in doubts about the TPA; particularly Charles Rangel – Chairman of the

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<sup>106</sup> Peruanistablogspot.com (2009). According to its website, DTB has lobby experience in the US agriculture sector and lobbies explicitly for Peru's asparagus and textile and apparel sectors, representing beneficiaries of the TPA.

<sup>107</sup> Interview with Álvaro Henzler, former assistant to the Peruvian Ambassador in Washington and economist at the *Universidad del Pacífico*; 8 July 2009.

<sup>108</sup> Ortiz de Zevallos and Premier Del Castillo organised in October 2008 the first forum on investment in the United States that attracted 40 top businessmen from Peru and around 150 US businessmen who had interests in investing in Peru. Various Ministers and, above all, David Lemor were present with the idea of promoting investment in Peru.

<sup>109</sup> Interview with Felipe Ortiz de Zevallos, Peruvian Ambassador to the United States 2006-2009, by Carol Wise, Professor Political Economy at the University of South California; 2 June 2009.

House of Ways and Means Committee and Congressman for New York – and Sander Levin – Chairman of the Trade Subcommittee and Congressman for Michigan – worked intensively on the issue of labour. Therefore, the labour aspect became the main focus of the intensified Peruvian lobby. The Peruvian Ambassador to the United States, Felipe Ortiz de Zevallos, arranged a meeting in Washington with President García, Charles Rangel and the president of AFL-CIO, John Sweeney. The charismatic García was able to convince Rangel and Sweeney that labour rights would be respected by explaining the origins of his mass-based labour party APRA; as a result, Sweeney stated that he would abstain from voting, effectively reducing the number of votes in contra. This declaration by Sweeney accelerated the Peruvian lobby in the US Congress.<sup>110</sup>

Subsequently, the protocol of amendments to the TPA was started in May 2007. Some have argued that the intentions of these amendments might not necessarily represent the improvement of the well-being of Peruvians but rather a tighter protection of US interests.<sup>111</sup> Nonetheless, they generally represent a positive change to the earlier elaborated agreement from a Peruvian perspective. Certain labour and environmental standards were elevated – the installation of a new Ministry of Environment was one of the demands – and minor issues on intellectual property and investment were amended. Evidently, these modifications were inconvenient to the Peruvian private sector. Neither MINCETUR nor the private sector desired an included chapter on labour in the first place as it would limit competitiveness and constrain free trade; they knew however that it came imposed by the United States since they already established a labour component in the general system of preferences since the 1970s. So, the objective of MINCETUR was to constitute the *softest* labour chapter possible; though, the negotiation was never complicated since, in political terms, the *Ministerio de Trabajo* (Ministry of Labour, MINTRAB), who was in charge of the official negotiations on labour, had the coincidence with USTR and MINCETUR.<sup>112</sup>

Interestingly, the initial irrelevant labour component converted into the determinant for the TPA's ratification. One decisive element was the visit by Rangel and Levin, among several other US representatives, to Peru. During this two day visit – 5 to 7 August 2007 – they met with Peruvian representatives from the government, CENI, syndicates, business, AMCHAM, and President García. These talks led to the radical change of their positions. Particularly Levin had an initial precautious view on labour relations in trade agreements considering that he represented the state of Michigan, a region severely affected after the coming into effect of NAFTA. The lobby of the proponents included the arguments that these US concerns were based on misinformation and that Peruvian labour laws were in fact stricter and more favourable to the employee than US labour laws. Moreover, Peru has subscribed more labour laws from the International Labour Organisation (ILO) than the United States.<sup>113</sup>

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<sup>110</sup> Interview with Felipe Ortiz de Zevallos, Peruvian Ambassador to the United States 2006-2009, by Carol Wise; 2 June 2009.

<sup>111</sup> According to Fairlie and Queija (2007), the US interests of amending the TPA are primarily based on the elevation of labour standards in order to guarantee the disappearance of 'unfair competitiveness' that Peru handles with low salaries and bad working conditions. As also imposed in the environmental amendment, the US will decide whether a company complies with these requirements or not, with a possible suspension of preferential access to the US market at stake. Further minor and less significant but favourable amendments are made on intellectual property and investment; however, nothing has been amended on the most sensitive issues such as agriculture, denying any Peruvian interests of amending the agreement.

<sup>112</sup> Interview with former Vice-Minister of Labour (2004-2005) Alfredo Villavicencio; 1 July 2009.

<sup>113</sup> Interview with Tom Calame, general manager of JW Marriott Hotel Lima and board member AMCHAM; 7 July 2009.

Nevertheless, the amendment on labour obliged the Peruvian government to elaborate more austere norms on labour relations. A special committee consisting of labour experts established the *Ley General de Trabajo* (General Labour Law, LGT) that would significantly improve labour conditions in Peru.<sup>114</sup> Despite the concerns by certain experts on the possibility for Peru to comply with these new high standards on the short term, the Peruvian government accepted the LGT in exchange for the TPA. Consequently, the passage of the LGT was fiercely resisted by the private sector. According to business elites, the LGT would hinder the exploitation of the TPA in Peru and it would constrain the formalisation process of labour contracts (COMEX 2007).<sup>115</sup> Also MINCETUR considered these imposed amendments initially as a political platform from the Democratic Party that had contrary opinions on free trade than the Peruvian state technocrats.<sup>116</sup> However, these amendments had to be accepted in order to achieve the ratification of the TPA in the US Congress.

With the secured concessions by the Peruvian government, Rangel and Levin greatly facilitated the ratification process in the US Congress with its final approval on 4 December 2007. Conversely, as soon as the US Congress ratified the TPA, the Peruvian government elaborated a series of legislative decrees that reverse many of the amendments as discussed in the previous chapter. The LGT was never implemented; instead, one of the approved decrees contains a new law on micro and small enterprises that directly opposes the LGT.<sup>117</sup> The Peruvian government politically used the LGT to resolve the main US doubts. The legislative decrees in fact reflect a prevalence of political and economic interests that were more affiliated with the TPA prior to the amendments and the vision of USTR. When USTR's Susan Schwab finally gave the green light for the coming into effect of the TPA on her last day in office, 16 January 2009, Peru was still failing to comply with the new labour norms and several other legislative modifications.<sup>118</sup> The forthcoming entrance of the newly elected US Democratic President Barack Obama to the White House on 20 January 2009 might have rushed the implementation process and its eventual approval. Moreover, the implementation of the TPA served as a condition for further trade agreements between Peru and China, Canada, European Union and other Asian countries (Council on Hemispheric Affairs 2009). The implications of the rigid implementation process imply that the "New Trade Policy for America" was severely undermined by the political goals of Bush and García. More so, these goals tend to be related to major private business interests behind trade liberalisation.

## 5.5 Promotion of the TPA in Peru

As discussed in the previous paragraphs, all economic sectors that stood to gain from the TPA actively participated in a wide range of lobby practices. Through informal and pressure lobbying the private sector sought the assurance of a trade agreement that would be as favourable as possible, an objective shared by the government technocrats in MINCETUR. Simultaneously, these proponents of the TPA aimed their efforts also towards the public as it became clear that the increasing anti-TPA alliance received significant and widespread popular support. In order to overcome popular resistance to the agreement, the government launched a large promotional campaign. With active support and participation of the private sector, MINCETUR attempted to

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<sup>114</sup> Interview with former Vice-Minister of Labour (2004-2005) Alfredo Villavicencio; 1 July 2009.

<sup>115</sup> Interview with Tom Calame, general manager of JW Marriott Hotel Lima and board member AMCHAM; 7 July 2009.

<sup>116</sup> Interview with Alvaro Díaz Bedregal, advisor Vice-Ministry of Foreign Trade; 31 July 2009.

<sup>117</sup> Interview with former Vice-Minister of Labour (2004-2005) Alfredo Villavicencio; 1 July 2009.

<sup>118</sup> Inside US Trade 23 January 2009.

convince the public and small companies of the benefits of the TPA; the intense promotion strategy included the organisation of numerous events and the elaboration and divulgation of promotional material that was accessible and easy to understand by the public.

However, these promotion activities rather reflected a sophisticated propaganda strategy. Despite an econometric model that only analysed the impact of market access liberalisation on the Peruvian economy as discussed in chapter three, the government never elaborated a comprehensive study on the economic and social impact that incorporated an extensive analysis of every chapter of the TPA (MINCETUR 2005a). The revelation of detailed impact on the Peruvian economy and society was clearly not of interest for the government. Instead, it launched a major campaign in favour of the TPA distributing numerous brochures, cards and media spots that contained biased information and hid the negative effects. As shown in Table 7, MINCETUR actively promoted the TPA through a nation-wide campaign that eventually had a large impact on the Peruvian public; clearly, comics and frequently asked questions were more accessible than the econometric critical assessments such as those from Alan Fairlie and other scholars at the *Pontificia Universidad La Católica* in Lima.

The main arguments used by MINCETUR centred on the pure trade aspects of the agreement where it in fact incorporates much more issues. Among the arguments were simple slogans such as “the unique opportunity that Peru should not miss”, often enthusiastically expressed by the negotiators itself, and the exaggerated additional market access for Peruvian exports where the majority already had preferential access under ATPDEA, GSP or most-favoured nation principles of the WTO (Ruiz Caro 2006, 71, 72). Especially the importance of the ATPDEA and its possible expiration generated a prejudiced support in favour of the TPA. According to MINCETUR, it was necessary to exaggerate on occasion in order to distort the “false information by the powerful enemies of free trade.”<sup>119</sup> The webpage opened by MINCETUR is seen by the government as an example of transparency and informing the population. However, the information, limited to the trade aspects of the TPA, is restricted to the majority of the Peruvian population due to economic and cultural limitations. The informative supplements to the newspaper *El Comercio*, despite the government’s claims, did not reach even ten per cent of the interior parts of the country since this newspaper predominantly circulates in the metropolitan area of Lima (Agronoticias 2004b).

Nonetheless, the propaganda by MINCETUR was highly effective. Under the leadership of Álvaro Barnechea García, head of communication for the TPA, MINCETUR elaborated a powerful strategy by organising promotional events throughout the entire country.<sup>120</sup> MINCETUR organised more than 700 public presentations nation-wide on the benefits and opportunities of the TPA. Various trade specialists went to every corner of the country to divulge the positive impacts of the TPA and MINCETUR contracted translators to communicate with indigenous groups. For instance, Bagua was visited several times in 2004 and 2005 by MINCETUR to present the benefits of the TPA.<sup>121</sup> One returning and important element of the campaign was the “Map of the exportable offer of Peru” that was handed out to every single participant during these presentations in order to show the exportable opportunities of every Peruvian region (Annex 11).

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<sup>119</sup> Interview with Alvaro Díaz Bedregal, advisor Vice-Ministry of Foreign Trade; 31 July 2009.

<sup>120</sup> Interview with Jorge Chávez Alvarez, executive president of MAXIMIXE; 11 August 2009.

<sup>121</sup> Interview with Alvaro Díaz Bedregal, advisor Vice-Ministry of Foreign Trade; 31 July 2009.

**Table 7: MINCETUR's nation-wide promotional activities, up to 5 May 2005**

<b>PROMOTIONAL ACTIVITIES</b>		
<b>Activity</b>	<b>Place</b>	<b>Reach</b>
Web page	" <a href="http://www.tlcperu-eeuu.gob.pe">www.tlcperu-eeuu.gob.pe</a> "	102.000 entries and 645.000 hits at the time
Popular comics "Opportunities of the FTA"	Peru	1.000.000 copies in Lima; 3.000.000 copies nation-wide
Radio campaign "the more we sell outside, the more employment we'll have inside"	At a national level; Radio Nacional, RPP, Radiomar, Radio Moda, 1160, CPN and 20 regional radios	Three spots with 4.340 appearances and 49.000.000 impacts
Newspaper supplements of 16 pages	Nation-wide; El Comercio, Correo, El Trome, El Popular	2.500.000 readers
10 newspaper press cards "Export success stories"	Nation-wide; La República, Perú21, Ojo, Gestión, Expreso	1.500.000 readers
4 press tours to cover export success stories in the agro-industrial sector	Ica, Chincha, Piura, Arequipa	Broadcasted and published by 4 television stations and 2 writing press media
<b>PUBLICATIONS AND DOCUMENTS</b>		
<b>Activity</b>	<b>Reach</b>	
Basic information maps	10.000 copies	
Brochures "Faces of Foreign Trade"	First edition 5.000 copies	
Brochure "MSMEs and the challenge of the FTA"	First edition 10.000 copies	
Document "Frequently Asked Questions on the FTA"	In press at the time	
Document "Key notions"	In press at the time	
7 reports of each and every negotiation table of every negotiation round up to date	Handed over to the Congress and spread through internet and the media	
<b>ORGANISATION OF EVENTS</b>		
<b>Activity</b>	<b>Location</b>	
4 workshops on port SMEs	Paita, Chimbote, Matarani and Ilo	
2 workshops for business conglomerates SMEs from Lima	Lima	
1 workshop for regional business conglomerates		
9 conferences and 1 workshop for academic youth and young entrepreneurs	Universities in Lima	
9 regional workshops	Chiclayo, Trujillo, Cajamarca, Piura, Arequipa, Cusco, Loreto, San Martín and Huaraz	
1 workshop for regional journalists, 1 workshop for local press, and 1 educational workshop for economic reporters		
Seminar "FTA and Regional Development"	Arequipa	
Seminar "FTA for Presidents, Vice-Presidents and regional officials"		
Workshop to elect MSMEs representatives for the negotiation rounds		
Sending technicians from MINCETUR to more than hundred events organised by public and private institutions	16 regions	

*Source: Alfredo Ferrero, Minister of Foreign Trade and Tourism, 5 May 2005*

This major campaign was highly disproportional to the activities of the opposing campaign. With concerns about the negative impacts on agriculture, CONVEAGRO also participated in several informative events, though with a limited number of experts. As experienced by members of CONVEAGRO, it became strenuous to maintain the confrontation with MINCETUR.

For every two persons from our side – Luis Zúñiga and Miguel Caillaux – they had hundred persons rotating throughout the country to give speeches in favour of the TPA. Two persons can be effective in six months, but two or three years is too much. Moreover, people started to say that we were cry-babies who were always repeating and opposing everything. You had to confront them in rotating panels so they were always fresh. They attacked you until you gave up. We have only participated in about a hundred events while they have organised hundreds. Moreover, they bombed you with flyers and posters.<sup>122</sup>

The promotional campaign by MINCETUR was a major investment in order to generate public support to the TPA. Apparently, quantity was more important than quality where often only a handful of MINCETUR technocrats possessed sufficient technical capabilities during the agricultural debates.<sup>123</sup> Rather, it was more the ideological matter that an exporting country would be a successful country that prevailed behind the TPA. This idea was eventually adopted by Alan García who introduced a scheme whereby peasant farmers are encouraged to produce for niche export markets (García 2005). However, it is unlikely that this will benefit more than a small fraction of Peru's highland farmers since the programme is predominantly assisting producers that already export. On the other hand, many farmers that produce for the domestic urban market will face the prospect of disabling competition from subsidised US producers due to the TPA.

### ***Private support***

MINCETUR maintained a close coordination with the private sector in the promotion of the TPA. Most importantly, it strategically contracted several consultancy firms that were related to business and hence strongly in favour of the trade agreement. Table 8 shows at least four of these firms that operated in fact as propagandists since their consultants were either former state officials or former business leaders. The Integral Development Collective (CID) is an NGO founded in 1990 to pay attention to entrepreneurs and business creators. As Peru's most powerful private think tank close to the public decision-making process, IPE provided ideological and theoretical support by elaborating high quality publications and questionnaires. The consultants of IPE also appeared as strong defenders of the TPA as they fiercely attacked opponents in personal debates.<sup>124</sup>

Important work in the promotion of the agreement was done by Consultandes, which is a private consultancy firm that works for numerous multinationals. Consultandes is led by former US diplomat and ex-president of AMCHAM John Youle, and is related to US corporations and the US Embassy. Its actual vice-president is Jaime García, former Vice-Minister of Foreign Trade and well-connected in Peru's private sector, who participated considerably in the trade negotiations on behalf of various private sector organisations, both in CENI as in the Room Next Door.<sup>125</sup>

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<sup>122</sup> Interview with Guillermo Rebosio and Miguel Macedo of CONVEAGRO; 11 June 2009.

<sup>123</sup> Interview with Miguel Macedo of CONVEAGRO; 11 June 2009.

<sup>124</sup> Interview with Guillermo Rebosio of CONVEAGRO; 11 June 2009.

<sup>125</sup> Jaime García is besides a private consultant also professor of economics at the University of Lima. García used to be Vice-Minister of Industry and Vice-Minister of Foreign Trade between 1993 and 1996. He negotiated on behalf of CCL and CONFIEP on the issues of investment, financial services and intellectual property rights. As representative of the academic sector, he also participated in the Room Next Door. Furthermore, he used to be the general manager of AMCHAM and was employed by USAID and IDB.

**Table 8: Government expenses on promotional activities in Peru through consultancy, 2004-2006**

Person/Institution	Period	Activity	USD	Soles
<i>Colectivo Integral de Desarrollo (CID)</i>	Nov-04	Nine Conferences "Challenges of the FTA with the US"	29,452.50	98,076.84
	- Jan-05			
<i>Instituto Peruano de Economía (IPE)</i>	Jan-05	Six Seminars "Opportunities for Port SMEs with an FTA with the US"*	23,986.33	82,273.11
	- Jul-05			
Jaime Armando García Diaz	Feb-05	Elaboration of the SME document "MSMEs Facing the Challenges of the FTA"	6,500	22,295
	Jul-05	Twelve Forums "How to Export to the US with the benefits of an FTA"***	30,248.40	103,752.01
	- Oct-05			
	Mar-06	Realisation of ten events on how to export to the US with the benefits of an FTA***	19,800	64,548
- Apr-06				
<i>Total payment García Diaz</i>			<i>56,548.40</i>	<i>190,595.01</i>
Jorge Chávez Alvarez	Jul-05	Eight Forums "Opportunities and Challenges of the FTA with the US"****	26,400	90,552
	- Sept-05			
	Jan-06	Elaboration and performance of twelve events on the diffusion of the FTA*****	46,200	150,612
- May-06				
<i>Total payment Chávez Alvarez</i>			<i>72,600</i>	<i>241,164</i>
<b>TOTAL PAYMENT</b>			<b>182,587.20</b>	<b>612,108.91</b>

\*In Chimbote (2), Ilo, Matarani, Callao and Pisco

\*\*In Trujillo, Sullana, Huaraz, Huancayo, Tarapoto, Pucallpa, Abancay, Arequipa, Huancavelica, Jaen, Quillabamba and Juliaca

\*\*\*In Chimbote, Piura, Huaraz, San Martin, Iquitos and five in Puno

\*\*\*\*In Ica (2), Piura, Cusco, Iquitos, Tumbes, Tacna and Moquegua

\*\*\*\*\*In Cusco, Tumbes, Ayacucho, Junin, Arequipa, Cajamarca, Tacna, Moquegua, Cusco, Ucayali, Ayacucho and Junin

Source: Budget Report, Committee of Foreign Affairs, Congress of the Republic.

Elaboration by RedGE and myself

Due to these relations Consultandes became one of MINCETUR's closest allies in the promotion of the TPA. According to García, it was necessary to inform the public on the benefits since considering the existence of "other strategies of groups opposed to the agreement." Consultandes developed activities directed to different sectors such as SMEs, micro enterprises and youth in collaboration with local and regional chambers of commerce, producers associations and local universities; media appearances and participation in public debates contributed to the conviction of Peruvian society.<sup>126</sup> As an insider states, Jaime García used to travel to every city in Peru's specific regions that supported the nationalistic tendency of Ollanta Humala who openly opposed the TPA; after a thorough analysis of the arguments of local leaders in the media, García then organised events to tackle their statements by providing specific

<sup>126</sup> Interview with Jaime García, vice-president of Consultandes; 23 July 2009.

counterarguments.<sup>127</sup> Instead of providing arguments to support the TPA proactively, this strategy resembled a rather reactive position that effectively weakened the opposition due to asymmetries in resources and organisation.

Also the contraction of Jorge Chávez Alvarez, executive president of Maximixe Consultancy, had an antecedent.<sup>128</sup> Maximixe is Peru's leading consultancy firm and has realised studies and consultancies for MINCETUR with a strong specialisation in foreign trade. Together with public and private entities, Maximixe elaborated sectoral plans of export, product plans, and facilitation plans of foreign trade; as the leader consultancy firm during this project, it contributed to the definition of MINCETUR's negotiation strategy through the national exporters plan PENX. Consequently, Chávez assisted in several Negotiation Rounds and participated in the issue of agriculture; this illustrates the reliance of the government on the input of private assessments during the negotiations. The confirmation by Chávez that CENI was essentially integrated in the negotiating team made the distinction between the private sector and the government vaguer.<sup>129</sup> This type of alliance essentially formed the basis for further cooperation during the promotional activities. Maximixe participated actively on behalf of MINCETUR and organised sixty-five per cent of the total amount of promotional events. Nonetheless, it was contracted only for face-to-face communication as the public strategy was managed by Álvaro Barnechea García and MINCETUR.<sup>130</sup>

The intensive promotion of the TPA by MINCETUR and the contracted private consultants proved effective in shifting in public opinion. Whereas the Peruvian population was initially critical to the trade agreement, opinion polls started to indicate a high popular support in 2006.<sup>131</sup> This was the result of a silent process of convincing and explaining; it generated a public culture that evolved around these ideas of exports, economic reforms and a fear of exclusion. It remains doubtful whether the Peruvian population truly understood the technical matters or that it was indoctrinated by the publicity campaign.

### **Business events**

In addition to MINCETUR and the contracted consultancy firms, the private sector was actively involved in the promotion of the TPA and invested much in resources for its diffusion. According to its objectives, CENI diffused the TPA at a national level to "generate a current of public opinion in favour of its endorsement" (Peñaranda Castañeda 2004). Various private sector organisations assisted CENI in the organisation of business events where local entrepreneurs were persuaded to support the agreement.<sup>132</sup> Moreover, business associations such as CONFIEP, CCL and SNI organised many seminars, conferences and workshop in coordination with the government. Technical studies that defended the agreement were elaborated with financial support from the IDB, CAN and domestic private sector.<sup>133</sup> These studies and opinion articles

<sup>127</sup> Interview with former colleague of García at USAID; 19 May 2009.

<sup>128</sup> Also Jorge Chávez Alvarez is a renowned person in both Peru's public and private sector. Chávez was the executive president of the *Banco Central de la Reserva* (Central Reserve Bank, BCR) during the period 1990-1992. He used to be the governor of Peru at the IMF and IDB, and was the general director of economic matters at MEF. Moreover, he was advisor to the negotiating committee of the TPA.

<sup>129</sup> Interview with Jorge Chávez Alvarez, executive president of Maximixe; 11 August 2009.

<sup>130</sup> Interview with Jorge Chávez Alvarez, executive president of Maximixe; 11 August 2009.

<sup>131</sup> According to the National Pre-electoral Barometer poll of May 2006, realised by the Public Opinion Group of the University of Lima, sixty-seven per cent of the population said to be little or not informed at all on the TPA with the United States. Nevertheless, fifty-nine per cent of the population said to support its signing, the highest rate among the Andean countries that were negotiating with the United States.

<sup>132</sup> Interview with César Peñaranda Castañeda, Secretary of CENI; 10 August 2009.

<sup>133</sup> Interview with Jaime García, vice-president of Consultandes; 23 July 2009.

were furthermore divulged through numerous business magazines that constituted an influential lobby tool. These magazines consisted predominantly of contributions by trade experts, business leaders and state officials from MINCETUR, creating a narrow field of interaction.

Another effective lobby instrument of the private sector included business events. As mentioned in chapter two, the *Conferencia Anual de Ejecutivos* (Annual Executives Conference, CADE) is Peru's most relevant business event that is often attended by hundreds of businessmen and political leaders. Moreover, it provided an adequate platform for the TPA. During the TPA process several specific TPA presentations were made; at the CADE 2006, US Ambassador to Peru, James Curtis Struble, made a special contribution and Hernando De Soto presented his "*TLC hacia adentro*" programme.<sup>134</sup> The Conference also proved to be useful for the government to acquire certain business opinions. After CADE 2004, Peruvian entrepreneurs stated to increase their investments in agriculture and manufacturing with the trade agreement; ninety-three per cent of the attendees was in favour of the TPA, generating a great support for the government (MINCETUR 2005d). Other business events, organised by the individual business associations, assisted in the informing of a specific business public and in the lobby to the government through the presentations of proposals. The informal settings of these events might have provided lobby opportunities as often state officials and various ministers participate and interact with business leaders.<sup>135</sup> These kind of business activities facilitated the promotion of the TPA; close collaboration with the government implied the creation of a type of power coalition that maintained control over the TPA process and muted the opposition.

### ***Media leverage***

A detailed analysis of the TPA coverage by the Peruvian media indicates that the public interests were neglected; the audience was in fact captured by the widespread pro-TPA campaign and a rather homogenised media limited the public access to alternative information. According to Crouteau & Hoynes (2006, 8, 22, 29), the fundamental aspect of the media is to provide information that encourages the citizen to participate in the political system; essentially they produce political goods since an informed citizen is assumed to be better for democracy than an ignorant one. A widely accessible and open media system means a free circulation of information without the intervention of the government that restricts the flow of ideas. Therefore, the health of the political discourse depends to a large degree on the quality of the information that circulates in the media.

Both MINCETUR and the private sector elaborated an intensive media strategy to promote the TPA. CENI's spokesmen provoked many interviews that were published and

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<sup>134</sup> Interview with Graciela Fernández-Baca, advisor to CONFIEP; 28 August 2009.

<sup>135</sup> I have personally attended a business meeting organized by COMEX under the name "Trade Agreements". This event took place on 21 July 2009 in Hotel Los Delfines, one of Lima's finest five-star hotels and popular location for these kinds of meetings. Among the speakers were Patricia Teullet, general manager of COMEX, Ernesto Guevara, official negotiator on environment for the TPA, José Antonio de la Puente, partner of Comercia Consulting, Eliel Hasson, general manager of Trade&Legal Consulting, and Eduardo Ferreyros, Vice-Minister of Foreign Trade. Though the setting and ambiance were informal, one could sense the friendship, the trust and the affiliation the audience, consisting of business representatives, had with Vice-Minister Ferreyros when he held his speech on MINCETUR's trade strategy and bilateral agreements. For me, this was a clear case of how close the private sector acted with the government on trade matters. Despite the joyful setting, one serious request was made by Ferreyros when he invited the business audience to travel with the negotiating team to the next Negotiation Round of the trade agreement with the European Union. This shows that the government indeed encourages business participation in governmental matters.

broadcasted by Peru's main media channels; CENI's working table coordinators also appeared permanently in public debates on the radio and television to explain the technical issues.<sup>136</sup> Business leaders maintained a personal coordination with journalists and were constantly invited to promote the TPA; pro-TPA economists and consultants published many articles in newspapers and magazines.<sup>137</sup> Occasionally, business associations hired private companies that acted as a spokesman in the media.<sup>138</sup> Hence the proponents were prominently present in the media that contributed to the shift in public opinion. Moreover, they were able to further marginalise the TPA opposition through media leverage.

The opposition, mainly represented by the political campaign *TLC ¡Así No!*, strived in fact for a more democratic and righteous negotiation process that would incorporate the national interests. The campaign was directed by CONVEAGRO and ForoSalud that operated at a technical level through elaborating counter-proposals, encouraging the dialogue with the government. However, other groups such as *Confederación Nacional Agraria* (National Agricultural Confederation, CNA) and *Confederación Campesina del Perú* (Farmers Confederation of Peru, CCP) maintained a more radical discourse that rejected trade opening in general. Due to these strong positions, they were never invited by the government during the TPA process as they would be opposed to any form of free trade; subsequently, these organisations organised major mobilisations throughout Peru with fatal consequences.<sup>139</sup> Since these grassroots organisations were identified as leftist radicals by the public opinion, they effectively weakened the critical assessments by the opposition campaign. The technical and political debate of the campaign was therefore directed by a reduced number of people such as Luis Zúñiga and Miguel Caillaux of CONVEAGRO, Pedro Francke of ForoSalud, and Congressman Javier Diez-Canseco who acted as the interlocutor between the politically dispersed opposition and the government through his parliamentary office.

However, in terms of media access the articulation of critical assessments was a rather marginal process. Only the progressive newspaper *La República* published anti-TPA press notes and political statements and its subsection *Actualidad Económica* often included critical articles of economists such as Alan Fairlie, Pedro Francke and Humberto Campodónico. Other newspapers such as *El Comercio* only mentioned critical opinions in a negative context that evidently provoked many negative reactions. Moreover, evidence suggests that the proponents of the TPA leveraged Peruvian radio stations.<sup>140</sup> State officials of MINCETUR structurally denied invitations to critical radio programmes and media control included the dismissal of a particular radio moderator who was "unnecessarily questioning the TPA after a severe revision of the radio station."<sup>141</sup> These occurrences imply that MINCETUR was pressuring radio stations in order to mute criticism; the media leverage was in fact so strong that national NGOs were put under government surveillance. When CEPES, the technical department of CONVEAGRO, transmitted critical assessments on the TPA by conducting a radio programme in Peru's inner parts, it was considered as part of a complot against the country; David Lemor instigated the

<sup>136</sup> Interview with César Peñaranda Castañeda, Secretary of CENI; 10 August 2009.

<sup>137</sup> Interview with Jaime García, vice-president of Consultandes; 23 July 2009.

<sup>138</sup> Interview with Sandro Farfán Padilla, General Manager of AGAP; 12 August 2009.

<sup>139</sup> Interview with Benjamin Armas, executive director of CNA; 1 June 2009.

<sup>140</sup> One highly influential radio programme is still broadcasted today: *De Todo Un Poco* at CPN Radio where Patricia Teullet, general manager of COMEX, presents economic analyses.

<sup>141</sup> During the trade negotiations, agricultural journalist Reynaldo Trinidad conducted a particular radio programme where he decided to "inform the Peruvian people on the realities of the TPA" when Alfredo Ferrero continued to ignore his invitations. Subsequently, he was fired the next day. Interview with Reynaldo Trinidad, Chief Editor and Founder of agricultural magazine *Agronoticias*; 13 August 2009.

accusations by announcing the presence of a massive anti-TPA campaign in the provinces that operated with millions of dollars from unknown funds where the radio programme in fact did not cost much since it was distributed on cassettes and CDs.<sup>142</sup> Overall, the *TLC ¡Así No!* campaign, which was only active in the last six months of 2005, never cost more than US\$800,000.<sup>143</sup> The proportion of the economic costs of the proponent's campaign compared to the anti-campaign was a hundred to one. The written press, radio and television were all connected to business in favour of the TPA.<sup>144</sup>

Also national television programmes were subjected to the pro-TPA coalition with the exception of the well-respected and critical programmes of César Hildebrandt who debated specific items such as public health and agriculture. Representatives of opposing groups were rarely invited; when invited, they were simultaneously attacked by several proponents in a personal and insulting way. Moreover, they were always associated with the violent marches by radical groups. In one specific television programme of Jaime De Antaus, economists Humberto Campodónico and Alan Fairlie were fiercely insulted while the moderator refused to intervene, making them eventually walk out of the studio.<sup>145</sup> Also the executive director of ADIFAN was severely overruled by a Chilean expert on pharmaceutical legislation when he presented the negative results of an impact study of US trade agreements with Chile and Mexico on the national television channel *Canal N* (IPE2005b).

Apparently, the proponents managed a media style that discouraged the opposition through personalising the conflict. They were capable of muting the opponents through assaultive discussions and when proven insufficient, they accused them of making political statements that undermined the technical debates.<sup>146</sup> The small group of opponents was essentially considered as “anti-globalisation”, “anti-Yankee” and “anti-trade integration,” (COMEX 2004b) and critical scholars were denominated as “political and academic leftists” that suffer from “paranoid hallucinations” (COMEX 2005c; COMEX 2006a; COMEX 2006b; COMEX 2006c). The demands by the anti-TPA campaign to organise a national referendum on the TPA were regarded as “absurd and inspired by intransigent positions” (IPE 2005c; COMEX 2005d). Despite the collection of more than 100,000 autographs, the Committee on Foreign Trade never took action in the Peruvian Congress.<sup>147</sup> Evidently, the media leverage by the government and the private sector limited the public access to alternative sources of assessment on the TPA. This reflected the marginalisation of critical groups and undermined eventually the democratic debate, which lacked adequate channels for discussion. The power coalition constituted by TPA proponents thus included the private sector, the government and the corporate media.

<sup>142</sup> Interview with Guillermo Rebosio of CONVEAGRO; 11 June 2009.

<sup>143</sup> Interview with Alejandra Alayza, executive coordinator of RedGE; 26 June 2009.

<sup>144</sup> Interview with Pedro Francke, former national coordinator of ForoSalud and the campaign *TLC ¡Así No!*; 24 August 2009.

<sup>145</sup> Interview with Guillermo Rebosio and Miguel Macedo of CONVEAGRO; 11 June 2009.

<sup>146</sup> As Reynaldo Trinidad argues, the Peruvian society never knew the complete story. “Wherever I participated in discussion panels, I always came out as the winner. The public was always shocked: Why does the government never tell us this? Why does this not appear in the media? During one particular event at the faculty of economy at the University Federico Villareal, I debated with then Vice-Minister of Foreign Trade Luis Alonso García. I mentioned the destructive impact of the TPA in the case of barley; he did not have any other answer than to state that I was making political statements.” Interview with Reynaldo Trinidad, Chief Editor and Founder of agricultural magazine *Agronoticias*; 13 August 2009.

<sup>147</sup> Interview with Alejandra Alayza, executive coordinator of RedGE; 26 June 2009.

## 5.6 Concluding remarks

This chapter has analysed how the participation activities of Peru's private sector included informal and pressure lobbying in order to secure its interests in the context of the TPA. Ever since a new economic elite has emerged in the 1990s, which is predominantly active in the export, financial and mining sectors, economic power is increasingly concentrated. The interests in trade liberalisation that corresponded to this elite prevailed over more moderate positions due to its acquired dominance. Informal and pressure lobbying proved to be an efficient tool in securing major interests in the TPA; moreover, policy networks among business leaders and state officials played a key role in determination of the agreement. Some business leaders were never seen in CENI but seemed to maintain personal relations with the government that provided an alternative interest channel. The composition of business structures tends to be complicated to such an extent that the TPA was rather endorsed out of pragmatic reasons; specific sectoral lobbies were set up to secure government protection, implying that the main interests behind the TPA were pure economic.

The comprehensive alliance between the private sector and government became reinforced during the ratification stage of the TPA. MINCETUR operated as a strong actor in defending the TPA; through dominating other government institutions and effective lobbying in the Peruvian Congress it was able to overcome opposition, making the TPA subjective to political opportunism. The lack of interest by the Peruvian Congressmen allowed the proponents to lobby intensively. These lobbies were also extended to the US Congress where the government actively interacted with US Congressmen with close cooperation of hired lobby firms and Peruvian private sector organisations. Despite certain Democratic concerns in the United States, the Peruvian executive branch was able to resolve doubts and simultaneously defend the major economic interests that were at stake. The legislative decrees form part of Alan García's political objective to consolidate the profound market reforms; the amendments to the TPA would therefore constitute a certain constrain in his neo-liberal project despite his electoral promises.

The nation-wide debate on the TPA remained rather poor. The emerged power coalition dominated the government and the corporate media. During the TPA debate the pro-TPA alliance reacted actively on criticism with respect to possible damage caused by trade and investment liberalisation. Their positions were effectively presented in the media through numerous documents and speeches. Through an intensive promotion campaign, the proponents were in fact able to change the initial negative view on the TPA by highlighting the benefits and hiding the costs; large amounts of money were spent on lobbying for the same purpose. These profound business-government relations were strengthened with the prospects of free trade with the United States and formed an incentive for further integration in other trade negotiations. On the other hand, Peruvian opposing organisations were relatively weak as a result of historical marginalisation. Societal organisations attempted to gain better access to information but were incapable of changing official TPA proposals. Their concerns remained at grassroots level and were largely ignored by the Congress and the corporate media. Media leverage deteriorated the democratic debate since it constrained public access to alternative information; the Peruvian society was largely captured by TPA propaganda that was channelled through a homogenised media. It also restricted the articulation of critical groups that represented public interests such as small agriculture and national health.

## 6 Transnationalised Interests

As examined in chapter two, the trend of massive privatisations and liberalisation has put transnational corporations (TNCs) in a dominant position in Peru. The removal of trade tariffs, non-trade barriers, price controls, subsidies and other restraints on the free play of economic market forces has made Peru more attractive to TNCs; they are more likely to expand their investment activities under a stable host government. Therefore, TNCs have used their resources and power to influence international trade negotiations and have taken full advantage of the move toward privatisation to influence trade politics (Madeley 1999, vii, 4). As a result of this acquired dominance, a new kind of transnational capitalist class has emerged. As argued by Sklair (2001, 10-17), a group within the national capitalist class organises big business and promotes its interests in all spheres, reinforcing the process of denationalisation. This transnational capitalist class is a well-defined group whose preferences prevail over countering preferences of other interest groups. They appear not only in corporate fractions but also among bureaucrats, politicians, professionals and the media. Their economic interests are increasingly globally linked rather than exclusively national in origin. Moreover, the products of TNCs serve the interests of globalised rather than localised capital. Hence, the transnational capitalist class seeks to exert political control in domestic and international politics. Their perspectives on most economic and political issues are based on free trade and export promotion; the shift from import-substitution to an outward-oriented global model has been driven predominantly by this class through government agencies, business professionals, elite opinion organisations, and the media (Sklair 2001, 18-20). Evidence for this proposition is presented by analysing how these transnational actors operated in the TPA process.

The addition of this transnational dimension is crucial in understanding how the Peruvian negotiation position was in fact largely influenced by transnationalised interests through the earlier discussed two-level game of trade. According to Putnam (1988, 434), the first level includes the international negotiations where “national government seek to maximise their own ability to satisfy domestic pressures, while minimising the adverse consequences of foreign developments.” Level two is the domestic level, where “domestic groups pursue their interests by pressuring the government to adopt favourable policies, and politicians seek power by constructing coalitions among groups”. The argument of this chapter is based on the suggestion that the TPA negotiations were dominated by transnationalised economic interests through a control of the two levels of the trade game. The first section analyses how the United States maintained a firm negotiation position and strategy in order to serve specific interests in the TPA. As part of the in the third chapter discussed asymmetries between Peru and the United States, these strategies imposed many conditions to the TPA that weakened Peru’s position. In addition, US institutions that operate in Peru such as USAID and the US Embassy in Lima actively participated in the TPA preparations and negotiations as studied in the second section. This suggests that the United States managed the first level of the trade game.

In order to discuss national business, it is important to analyse the composition of the national private sector. Many big corporations and business associations do not necessarily represent solely national productive capital. They often serve transnational interests as they have acquired foreign capital or have multinational members. These joint ventures may act as national business but their interests are often disseminated. As discussed in the third section, many TNCs are members of different national business associations and major Peruvian

economic power groups are connected to foreign capital, trade and investment. Therefore, the strong influence of the private sector, as highlighted in the previous two chapters, contained a transnational component that often trespassed national interests. Moreover, the American Chamber of Commerce (AMCHAM) in Lima is a powerful advocate of free trade and proved to be a significant actor in serving the interests of US corporations and US investors in Peru. Through close collaboration with CENI and active lobbies with MINCETUR, USTR and in the US Congress, AMCHAM played a key role in the prevalence of transnational interests in Peru's negotiating position. Hence these last two sections argue that these transnationalised economic interests effectively dominated the second level of the trade game.

## 6.1 US position and strategy

To secure its specific economic interests in bilateral trade agreements, the United States clearly defined its objectives in the mandate of the Congress in the Trade Promotion Authority act of 2002. In this act the United States addresses the stakes behind trade negotiations.

...Trade agreements maximise opportunities for the critical sectors and building blocks of the economy of the United States, such as information technologies, telecommunications, and other leading technologies, basic industries, capital equipment, medical equipment, services, agriculture, environmental technologies, and intellectual property. Trade will create new opportunities for the United States and preserve the unparalleled strength of the United States in economic, political, and military affairs. The United States, secured by expanding trade and economic opportunities, will meet the challenges of the twenty-first century.<sup>148</sup>

In order to expand economic opportunities, the United States elaborated a firm negotiation position that, according to 2001 Nobel laureate Joseph Stiglitz, not always assures free trade since the principle that manages the US government's philosophy is to let US producers enjoy better conditions than any other. Even despite the fact that a small country could adopt protectionist measures against the United States, there still exists a total asymmetry in terms of power.<sup>149</sup> Stiglitz considers that the form how trade is currently negotiated is not symmetric and does not prioritise equity and democracy, but "particular groups like pharmaceutical and oil companies; at least these interests are represented by USTR. US FTAs undermine the long-pending work by the WTO as multilateral agreements are trespassed and new ones are made where one single party has total power."<sup>150</sup> Even the director-general of the WTO, Pascal Lamy, considers that FTAs are instruments that are little fair for smaller economies. "Nobody can deny that the United States, European Union and China, with their big markets and resources, have favourable conditions to negotiate with a small country."<sup>151</sup>

Due to the large asymmetry, the United States was able to impose certain conditions on the TPA negotiations, as discussed in chapter three. As a precondition the United States forced Peru to resign from the WTO's G-21, to eliminate its price bands and broaden its application of intellectual property rights; issues such as agricultural subsidies and anti-dumping measures were excluded from the negotiations. The one permitted compensation programme in agriculture, the special agricultural safeguard, is only allowed to be applied during the period of

<sup>148</sup> Trade Promotion Authority Act, Division B, title XXI, 2002.

<sup>149</sup> 'Stiglitz Proposes a new Agenda for Latin America'. *ABC Color*, Asunción, Paraguay. 1 September 2003. Derived from Ruiz Caro 2006, 30.

<sup>150</sup> 'Economistas Estadounidenses Stiglitz and Sachs Critican el TLC'. *El Tiempo*, Bogota, Colombia. 18 April 2006.

<sup>151</sup> 'Los TLC no Son Justos con los Países Andinos'. *El Comercio*, Lima. 17 May 2006.

tariff-lowering. As soon as the tariff is set to zero after the agreed term, this safeguard is prohibited (CONVEAGRO 2006a). Furthermore, whereas the United States considers the TPA as an “agreement” in legal terms, for Peru it implies a “treaty” that requires modification of legislation. Therefore, the implications of the TPA on Peru are bigger and would require dedicated legislators. However, considering the lack of any alternatives by the Peruvian government (*TLC sí o sí*) and the alienation of the Peruvian Congress from the negotiation process, these imposed conditions have affected the Peruvian position significantly.

During the negotiations the United States maintained an exhaustion strategy that evidently undermined the negotiation process. This consisted of leaving the most sensitive issues such as intellectual property and agriculture to the end, which occurred also in the negotiations with Mexico, Chile and Central-America. Moreover, the last stretches of the negotiations were realised in the offices of USTR in Washington instead of the usual event hall where the Peruvian negotiators could gather with its domestic representatives to discuss the progressions. The negotiating methods used by the United States also included the lack of counter-proposals to the Peruvian proposals in the most sensitive issues such as agriculture and intellectual property rights at their most tensed moments, changing the chief negotiators of various tables, and the unannounced absence of several of them (Ruiz Caro 2006, 72-73). This strategy clearly limited the negotiation process.<sup>152</sup>

### ***US interests***

Essentially, the trade agreement has little impact on the US economy despite the reciprocal preferential access to the Peruvian market. One of the official US objectives of the TPA was to generate conditions for an alternative development in the coca zones of the Andean countries that produce together hundred per cent of the world’s coca. In this sense, Peru held an important trump since the United States coerced Peru to continue its strong fights against drugs (MINCETUR 2005b). Yet, the Peruvian government did not consider in its political propaganda that the strategic objective of the US was in fact to strengthen its economic hegemony as stated in the Trade Promotion Authority. By signing a trade agreement, these countries would increase their dependence on the first economy of the world, and it would ease the alignment of political interests around common economic interests (Zegarra 2005). Nevertheless, the US interests were primarily in the new trade agenda issues; Peru agreed to exceed its commitments to the WTO and to eliminate most of its barriers to services and investment. This substantial liberalisation includes sectors such as telecommunication, finance and energy, and will generate new opportunities for US investors. As concluded by Wise and Quiliconi (2009, 26), “US financial service suppliers can establish subsidiaries or branches for banks and insurance companies, US portfolio managers can provide services to both mutual funds and pension funds in Peru, and US telecom firms can lease parts of Peru’s telecom network.”

Certainly, the US negotiation strategy contributed to the advancement of these new trade issues. In WTO negotiations on services under the specific General Agreement on Trade in Services (GATS), governments present in multilateral setting their liberalisation proposals in

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<sup>152</sup> In his renouncement card in December 2005, Colombian negotiator Luis Guillermo Restrepo Vélez, who represented the health sector at the intellectual property table, stated: “it would be more transparent to tell the country that the work by the eighteen tables failed on the issue of intellectual property and health. There was actually never a negotiation; to eventually sign an FTA with the United States, it is necessary to abandon the strategy of “interest negotiation”, to trespass the “red lines” and to accept certain dispositions in order to elevate the protection to similar or superior levels to that of the US-Chile FTA and US-CAFTA FTA.”

those sectors that are considered pertinent. By presenting this “positive list”, the liberalisation under GATS is voluntary: everything that does not appear on the list is not considered as a negotiation object. However, in the case of the TPA this was negotiated under a “negative list”; everything that the government did not exclude of the negotiations was an object for liberalisation. These were transmitted into the chapters on investment and cross-border trade in services where the TPA seeks to eliminate regulations that could be demanded by trade between national and foreign companies. This would usually limit the foreign procurement of national companies, but under the TPA normative services can be exclusively controlled by foreign companies. To prohibit the right of limiting the number of companies or operations that could exist in a country, corporations have free access to natural resources in a country always and whenever these are available. These will be exploited increasingly with this unlimited access (Ruiz Caro 2006, 46). Also the chapter on governmental procurement was negotiated under a “negative list”, which permitted the participation of US companies in every aspect of public contracting that the Peruvian government realises, with certain exception. Although MINCETUR highlighted the compromise of the participation of Peruvian companies in public contracting by the United States that ascends to US\$98 billion as benefit of the TPA, the asymmetries between both economies permit to suppose that the US presence will increase in public procurement in Peru, displacing medium companies with export potentials (Fairlie et al. 2006, 88-91).

Another major US interest that was cunningly negotiated was the strengthening of intellectual property rights. Generally, industrialised countries are pressuring for changes in patterns of intellectual property rights (IPR) so that big corporations have even more favourable conditions than established under TRIPS regulations of the WTO. Although the Andean negotiators have requested the recognition of IPRs in issues of biodiversity, genetic resources, and traditional knowledge, this has not been adequately covered by the TPA. The United States has never subscribed the Convention on Biological Diversity, active since 1994, which contemplates “fair and equitable sharing of the benefits arising out of the utilisation of genetic resources and the sovereign right of the countries on these resources.”<sup>153</sup> It is evident that the corporations dedicated to biotechnological activities do not have interests in establishing these recognitions since they may constrain free trade and their profits. Yet, the United States has declared to recognise biodiversity and traditional knowledge in the TPA, though in an annexed letter; it does not form part of the chapter on intellectual property. Subsequently, the recognition of this stays subjective to the negotiation power that pharmaceutical companies realise with local Peruvian entities (Ruiz Caro 2006, 52).

With these new conditions for US investors at stake, the US government pressured Peru occasionally during the negotiations in favour of its companies. Directly or indirectly, the United States demanded to advance with the dispute settlement between a number of US companies and the Peruvian state, as a precondition to the approval of the TPA. Chief negotiating team and Vice-Minister of Foreign Trade, Pablo de la Flor, made a political revelation in October 2004: “The message that we have received from the US authorities is that if we do not make bigger advances in the issue of dispute settlement, the US government will not pass the agreement to the US Congress to ratify it.” Cause of this pressure seemed to be the disputes that six US companies were having with the Peruvian state of which several corresponded to the settlement in Court, others with the national tax administration (*Superintendencia Nacional de*

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<sup>153</sup> [www.cbd.int](http://www.cbd.int)

*Administración Tributaria*, SUNAT), and others with certain ministries through the administrative track.

Also Robert Zoellick, US Trade Representative and mentor-chief of the TPA, was pressured by US lobbyists and Congressmen to settle these disputes in the context of the presidential elections in 2004. For instance, the Democrats' representative Robert Meléndez demanded publically to put the trade negotiations with Peru on hold by qualifying SUNAT as a "renegade agency that opposes the efforts of the Peruvian courts in resolving issues"; he furthermore stated that "Peru cannot consider itself an investment promoter when it does not respect the law." The president of the Foreign Affairs Committee of the House of Representatives, Cass Ballenger, also argued about the "mistreatment by SUNAT through applying arbitrary taxes on US companies", mentioning among these Duke Energy International, Global Crossing, Engelhard Corporation, Doe Run Corporation, PSEG Global, and Sampra Energy. Additionally, John Murphy, vice-president for continental issues of AMCHAM, said that "the disputes between American companies and Peru exceeds more than 300 million dollar" (Agronoticias 2004c). Undoubtedly, the motives for these interventions, seen in the light of the sensitive US electoral scene, were to pressure the Peruvian government by threatening to block the signing of the trade agreement.

## 6.2 Assistance by US institutions

Although the official trade negotiations were executed by USTR and MINCETUR, certain US institutions were closely related to the Peruvian negotiating team. One of those institutions was the United States Agency for International Development (USAID), which is a governmental agency that provides US economic and humanitarian assistance throughout the world. USAID has provided technical assistance during the drafting of agricultural safeguards and forestry and natural resource management regulations. Furthermore, it assists the Peruvian customs service with the design of an electronic information system that is needed to maintain common data between the United States and Peru, and to control high-risk merchandise. The enactment of the TPA has created multiple opportunities for USAID to support the Peruvian government in meeting key commitments prior to and during the implementation of the trade agreement (USAID 2009).

Moreover, USAID conducted several specific programmes related to the TPA through which it could channel certain interests. One important programme was USAID's Andean Regional Trade Capacity Building Programme that implemented training sessions in technical barriers to trade, labour rights and intellectual property rights.<sup>154</sup> Between October 2005 and June 2006, US\$1.2 million was spent to educate 709 public and private sector officials in Colombia, Ecuador, and Peru. The Regional TCB Programme also elaborated several studies and institutional reform proposals for strengthening the TPA's implementation capacities. This programme "expanded USAID's regional technical assistance activities, provided specific support for the TPA and made small, but important contribution toward the Agency's bilateral objectives" (USAID 2006). Through workshops and seminars USAID sought to ensure that governments would issue technical regulations through a transparent and open process in order not to create unnecessary barriers to trade. According to the programme's final report, the education on intellectual property rights was developed from a request for technical assistance during the trade negotiations. The TCB Programme has actively participated with INDECOPI to raise awareness among micro, small, and medium enterprises (MSMEs) about IPRs and

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<sup>154</sup> Interview with Eduardo Albareda, Economic Development and Trade Department of USAID; 27 August 2009.

competitiveness. After the conclusion of the negotiations, the programme also initiated a “series of public opinion assessments in the form of periodic short surveys that track and monitor recent attitudes and developments in anticipation of the debate within the Peruvian Congress.” Finally, the report makes a striking statement about the necessity for a continuation of the instigated process during the Peruvian elections: “in Peru, the change in government will require ongoing support to ensure that the new García administration adopts the recommended strategies” (USAID 2006). Practically, this meant not only lobbying but it also included cutting off finances to projects and organisations that were opposed to the TPA.<sup>155</sup>

Interestingly, this Regional TCB Programme was not carried out by USAID itself but in cooperation with the Washington-based economic consultancy firm Nathan Associates. During their missions to Lima in August 2004, Nathan representatives have spoken with among others Mercedes Aráoz who was the negotiator on trade capacity building, and representatives of CAF, CAN, USAID, and IDB; furthermore, meetings with private MSME organisations such as COMPYMEP and PERUCAMERAS were part of the agenda. These experiences together with the Regional TCB programme have eventually resulted in the prolongation of the MSME programme CRECER under the name MYPE Competitiva; this new project attempts to strengthen competitive and trade capacities of micro and small enterprises (MSE) to incorporate them in the export chain and prepare them for the TPA. Furthermore, the World Bank initiated in June 2003 an US\$20 million Trade Facilitation and Productivity Improvement Project in Peru (Nathan 2004). Moreover, several multilateral organisations such as the World Bank and the IDB showed a great interest in the trade negotiations and maintained close contact with CENI’s coordinators through personal meetings.<sup>156</sup> Evidently, the United States could participate in the TPA process on a local level through these institutions in order to strengthen the Peruvian position to the trade agreement.

In addition, the US Embassy in Lima was very active in facilitating the TPA process. It has organised many meetings with the private sector, with syndicates and with the negotiating team during the negotiations; the US Embassy actively diffused the benefits of the TPA and persuaded ministers personally through teleconferences, particularly in MINCETUR.<sup>157</sup> The US Ambassador James Curtis Struble played a key role and was involved in direct negotiations with President Toledo. When the approval of the TPA by the Peruvian Congress slowed down, the US Embassy transferred a delegation from Vietnam, who had just signed a trade agreement with the United States, to Lima with the objective to stimulate the TPA process. Another important lobby between the US government and Peru was to accelerate Peru’s integration in the Asia-Pacific Economic Cooperation (APEC) forum and subsequently, to nominate Peru as host of the APEC Summit in November 2008. The timing was crucial since the recently signed TPA would consolidate Peru’s market reforms; it made the country more attractive as an international trade partner, which has facilitated further trade agreements between Peru and the APEC countries.<sup>158</sup>

Yet, many of these US involvements were little transparent as certain issues were unmentionable. Several US representatives participated in debates and events in Peru but refused to talk on sensitive issues such as agricultural subsidies. “Only mentioning the subsidies

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<sup>155</sup> “I recall one CEPES project financed by USAID that was cut off. They cut finance if you were opposed to the TPA; not directly for your opinion but for other motives. They could not silence CEPES, but I imagine that they have silenced many entities that way.” Interview with Guillermo Rebosio of CONVEAGRO; 11 June 2009.

<sup>156</sup> Interview with César Peñaranda Castañeda, Secretary of CENI; 10 August 2009.

<sup>157</sup> Interview with former Vice-Minister of Labour (2004-2005) Alfredo Villavicencio; 1 July 2009.

<sup>158</sup> Interview with Tom Calame, general manager of JW Marriott Hotel Lima and board member AMCHAM; 7 July 2009.

was enough to break off the interview; we could never discover the true intentions of the United States.”<sup>159</sup> Also the Vice-Minister of Labour during the negotiations, Alfredo Villavicencio, shares these experiences.

The US labour standards were nonnegotiable. I have discussed much about why the issue of equity and non-discrimination was not included but they never explained to me what the real reason was. The formal explanation was that the US Congress could reject the TPA if Peru would not accept those regulations, but I believe that the real reason was that they have serious problems with migrant workers. One explicit law of equity and non-discrimination could install certain relevant rights for migrants.<sup>160</sup>

Moreover, the US Embassy and USTR participated narrowly in the implementation of the TPA and the elaboration of the legislative decrees (CENI 2008). Especially the US Embassy was active in directing and investigating the decrees.<sup>161</sup> As an insider suspects, these negotiations were not official but executed under the table.<sup>162</sup> The United States showed the willingness to finance and direct the implementation of various regulatory reforms that were required for Peru to “harmonise all of these new trade agenda commitments with US codes.” The TPA was ratified by both Congresses in 2007, however, the US executive power blocked the formal launching until it received the green light from USTR with regard to the Peruvian government’s passage of the ninety-nine legislative regulatory decrees which conform with those of the United States (Wise and Quiliconi 2009, 26).

Despite the Democratic majority in the US Congress and the earlier established amendments, USTR still remained authorised to insist in the elaboration of the legislative decrees. The prospect of a Democratic dominance over USTR and the White House on 20 January 2009 rushed the implementation of these regulatory reforms which seemed to affect the eventual outcome. The strong negotiation position and strategies, the political pressures and the many economic opportunities that the TPA provides for US business contribute to the suggestion that the United States remained in control over the first level of the trade negotiations. Hence the Peruvian government was unable to maximise its own ability to satisfy domestic protections; however, Peru’s negotiating position proved to be in compliance with the adverse consequences of trade liberalisation enhanced by USTR.

### 6.3 Trespassing national interests

Many of these offensive interests in trade liberalisation were well-embedded in Peru’s concentrated economic power structure. Essentially, since the entrance of neo-liberalism in the early 1990s under Fujimori, many transnational corporations dominate the Peruvian market as shown in Annex 4, 5 and 6. Even national economic power groups are strongly related to transnational interests. This has resulted in the emergence of a transnational capitalist class that consists of a small but powerful business elite in command of Peru’s trade policies. Their globally linked economic interests tend to prevail over national and local interests. Moreover, national business groups often acquired foreign capital, disseminating their economic interests.

<sup>159</sup> Interview with Reynaldo Trinidad, Chief Editor and Founder of agricultural magazine *Agronoticias*; 13 August 2009.

<sup>160</sup> Interview with former Vice-Minister of Labour (2004-2005) Alfredo Villavicencio; 1 July 2009.

<sup>161</sup> Interview Manuel Quindimil, Deputy Manager of Government and Legislative Relations of AMCHAM; 10 August 2009.

<sup>162</sup> Interview with Pedro Francke, former national coordinator of ForoSalud and the campaign *TLC ¡Así No!*; 24 August 2009.

For instance, when analysing the participation of companies in the imports coming from the United States, these are foreign and big national companies that control the sector; these are the main beneficiaries since they can now import duty-free (Ruiz Caro 2006, 32).

By analysing the composition of the highly protected sugar sector, which managed a short but very powerful lobby during the negotiations, it becomes clear that these strong voices are representing enormous vested interests in the sugar industry. Not even in the times of *latifundismo* and the big *haciendas* agricultural lands were concentrated to such a high extent. These lands are controlled mainly by domestic economic power groups such as Grupo Gloria, Grupo Oviedo and Grupo Wong. With the increasing economic interests in ethanol, the productive sugar industry starts to attract US investors. Stratos Renewables already presented an offer for the acquisition of Agroindustrias San Jacinto of Grupo Picasso and in 2008 US company Maple acquired around 10,600 hectares in Piura for an ethanol project. Furthermore, Grupo Oviedo has confirmed that they are analysing an alliance with foreign investors to produce ethanol. There is, hence, an increasing interest of local and foreign groups in accumulating big extensions of terrains and they prove to be very dynamic (Navarro 2009). It seems inevitable that the TPA and the liberalisation of foreign procurement of national companies will accelerate the US share in Peruvian agricultural lands, destined for the production of sugar and ethanol. With the national business sector closely relations to the transnational business sector, it is harder to distinguish these particular interests during the trade negotiations in Peru.

The conjuncture of national and transnational interests became apparent when Allan Angell Bessonnes, member of Peru's official negotiating team on the issue of intellectual property, resigned after four Negotiation Rounds and went to work for the pharmaceutical multinational Pfizer. As a supposed defender of Peru's interests, Angell Bessonnes attended all the negotiating meetings as the senior deputy of the official negotiator Luis Alonso García and, therefore, possessed privileged and confidential information. This transfer reflects a clear conflict of interests especially considering that Pfizer was trying to impose the patent of second use for its product Viagra. Moreover, Pfizer was one of the promoters of many demands made by the US negotiating team at the table of intellectual property rights.<sup>163</sup> This kind of transfers leads to the possibility to influence certain decisions that will favour the private and transnational interests. However, since Pfizer is an associate of the Peruvian business association ALAFARPE, this provides a good example of how national economic interests are transnationalised. ALAFARPE represents the multinational pharmaceutical companies that are active in Peru (Table 9) and participated actively during the trade negotiations, both in CENI and in the Room Next Door. Since all its associates are international, ALAFARPE has always made its reports in English.<sup>164</sup>

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<sup>163</sup> 'TLC: Renuncia de Funcionario Revela Fragilidad del Perú en Negociaciones'. *La República* 16 September 2004.

<sup>164</sup> Interview with Alejandra Alayza, executive coordinator of RedGE; 26 June 2009.

**Table 9: Foreign capital of pharmaceutical laboratories in Peru, 2005.**<sup>165</sup>

Laboratories associated with ALAFARPE	
Laboratory	Country of origin
1. Abbott Laboratorios S.A.	United States
2. Abeefe Bristol-Myers Squibb	United States
3. Aventis Pharma S.A.	France
4. Bayer	Germany
5. Boehringer Ingelheim	Germany
6. Elifarma	Peru
7. Eli Lilly Int. Inc.	United States
8. Glaxo SmithKline	United States
9. Johnson & Johnson Medical	United States
10. Merck Peruana	Germany
11. Merck Sharp & Dohme	United States
12. Novartis Biosciences	United States
13. OM Perú	Switzerland
14. Organon	The Netherlands
15. Pfizer	United States
16. Roche	Switzerland
17. Shering Peruana	Germany
18. Shering-Plough	United States
19. Laboratorios Wyeth	United States

*Source: Seinfeld Lemig, Janice & Karlos La Serna (2005).*

It obviously tangled the national interests in the dialogue for a national position if a Peruvian reports to another Peruvian what the interests of transnational companies such as Pfizer are. Hence, the debate on national business is part of a broader discussion that is related to transnational business, which is evident in this case. In comparison, the national laboratories are united in ADIFAN, which consisted in 2005 of nineteen Peruvian and two Argentinean laboratories. Whereas ADIFAN's associates do not invest significantly in research and development, and mainly produces generic medicines, ALAFARPE's members are active in commercialising brand medicines. They conduct broad innovative research and invest around US\$20 million annually in Peru. Furthermore, transnational companies are also present among Peru's distributors and importers of pharmaceutical products.<sup>166</sup> This is not only apparent in the pharmaceutical sector, also major transnational corporations in mining and financial sectors are represented by national business associations such as SNMPE, ASBANC and CONFIEP. They embody the new emerged transnational capitalist class that has become a privileged political actor with high levels of access and influence. Their economic interests are primarily based on export and stable investment regulations that will provide opportunities for the expansion of their activities. Therefore, the analysis of the transnational dimension behind Peru's trade policies indicates that the dominance of transnational interests in the second level of trade negotiations in the case of the TPA is evident.

<sup>165</sup> The contemporary structure of ALAFARPE is slightly different but it still consists mainly of international pharmaceutical laboratories. The structure of 2005 is relevant in the context of the negotiation process (2004-2005) in order to demonstrate the transnational dimension behind the negotiations on intellectual property.

<sup>166</sup> Among the imports are the so-called "parallel imports" that consist of realised buys in other countries of a product fabricated on behalf of its patent. This figure exists so the local importing companies tend to acquire products of transnational corporations in countries where the transnational covered lower prices in order to import them later to its country, where the filial of the transnational covers higher prices.

#### **6.4 American Chamber of Commerce (AMCHAM)**

Another Peruvian-based private sector organisation that promoted the TPA was the American Chamber of Commerce (AMCHAM) in Lima. AMCHAM represents major US and Peruvian companies as well as others producing in Peru. Moreover, it has been a strong advocate of free trade that defends the economic interests of US companies in particular. According to the Senior Vice-President for International Affairs of the US Chamber of Commerce, Daniel Christman, “AMCHAMs advance the interests of American business overseas. Its core activity is representing the US investment community; AMCHAMs in Latin America are, in essence, the voice of American business” (AMCHAM 2007). AMCHAM Peru has about 500 associates of which around 180 are US companies; the biggest share of these US companies are mainly active in mining, energy and finance with big players such as Citibank, Procter & Gamble, Duke Energy and Maple. During the negotiations of the TPA AMCHAM participated first of all actively in Peru. Since AMCHAM is besides a chamber of commerce also a business association that defends the interests of its associates, AMCHAM was closely related to CENI. Though AMCHAM was not an official member of CENI since it supposedly represented US interests, numerous meetings were organised considering that many Peruvian companies were associated with AMCHAM.<sup>167</sup> Moreover, AMCHAM facilitated the communication between CENI and the US private sector organisation that assisted the US government during the negotiations.<sup>168</sup> This business coalition was created by the US Chamber of Commerce in order to support the TPA; AMCHAM kept the coordination between the board of CENI and this US business coalition. As the executive director of AMCHAM, Aldo Defilippi, recalls, “CENI met every Monday from 1p.m. to 3p.m. and the business coalition in Washington met every Monday from 3p.m. to 5p.m.”<sup>169</sup>

AMCHAM negotiated generally on all the issues but was a particular strong player in the issue of intellectual property where certain serious concerns arose among its associates. The concordance with ALAFARPE was obvious since many associates were member of both institutions. AMCHAM created an internal organ to investigate and ensure better protection of the intellectual property rights, which was led by a representative of Pfizer.<sup>170</sup> The importance of the US companies was enormous up to the point that they even lobbied in the US Congress together with AMCHAM. Namely, AMCHAM organised eighteen lobby missions during nineteen months in order to promote the TPA in the US Congress. AMCHAM took constantly five or six general managers of US companies based in Peru such as PriceWaterhouseCoopers, Citibank and Procter & Gamble, to visit a total 325 US Congressmen. “If we wanted to visit the Congressman for the state of Illinois, we searched for companies from Illinois based in Peru to convince the Congressman of the benefits of the trade agreement for Peru, for the business environment and for US companies.”<sup>171</sup> AMCHAM had a very powerful arm due to the fact that these companies were constituent to the Congressmen they visited in Washington; no other Peruvian business associations had these opportunities. Furthermore, AMCHAM conducted a very intensive strategy to promote and diffuse the TPA in Peru. They published many opinion articles and they participated in several television and radio programmes, closely collaborating with MINCETUR and CENI.

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<sup>167</sup> Interview with César Peñaranda Castañeda, STE of CENI; 10 August 2009.

<sup>168</sup> Interview with Graciela Fernández-Baca, advisor to CONFIEP; 28 August 2009.

<sup>169</sup> Interview with Aldo Defilippi, executive director of AMCHAM; 10 August 2009.

<sup>170</sup> Interview with Tom Calame, board member of AMCHAM; 7 July 2009.

<sup>171</sup> Interview with Aldo Defilippi, executive director of AMCHAM; 10 August 2009.

**Photo 1: Eighteenth AMCHAM mission to the US Congress for promoting the TPA's approval, 19-21 September 2007**



From left to right: Miguel Mur, executive director of PriceWaterhouseCoopers; Federico Elewaut, general manager of Citibank; Frank Santeiro, general manager for Latin America of Fedex; and Aldo Defilippi, executive director of AMCHAM Peru.

*Source: CONTACT July-December 2007.*

Through proposals, communications, publications and opinion letters AMCHAM maintained a fluent coordination with both MINCETUR and USTR. Moreover, AMCHAM organised more than hundred events on the trade agreement throughout the entire country that many times included the participation of various ministers and dignitaries such as Alfredo Ferrero, Mercedes Aráoz, David Lemor, Felipe Ortiz de Zevallos and James Curtis Struble. These activities seem to comply with the explicit objective to “continue being aggressive in promoting free trade around the world” (AMCHAM 2008). Likewise, AMCHAM facilitated the specific trade missions between Peruvian and US delegations. When USTR delegations visited the US Embassy in Lima, AMCHAM was usually the intermediary since USTR has a permanent member in the board of AMCHAM. The trade department of the US Embassy is enormous and influences many of the Embassy’s activities. For instance, the actual commercial counsellor of the US Embassy in Colombia, Margaret Hanson, participated actively in the TPA negotiations. In December 2006, Pfizer recognised her for her “exemplary support of US business interests in Peru and outstanding defence of intellectual property rights.” In May 2008, the US Department of State recognised her for “contributions resulting in the settlement of over US\$300 million of commercial disputes, thereby paving the way for the TPA.”<sup>172</sup> She negotiated on the chapters of customs and telecommunication and used to be a board member of AMCHAM. “One way or another, AMCHAM always manages the role of interlocutor. For USTR officials it is the best way to acquire direct information from US companies or companies related to US companies in Peru.”<sup>173</sup>

The participation of AMCHAM is crucial in the prevalence of transnational interests over national interests. Considering that AMCHAM also actively participated in the Room Next Door and in the implementation process, it is evident that the US interests strongly controlled both tiers of the “two-level game” in Peru that incorporated official negotiations and domestic negotiations with interest groups. US and Peruvian private interests are interconnected as the emergence of several institutions related to trade and investment show. The North American – Peruvian Business Council, created in 2002 and directed by former US Ambassador to Colombia

<sup>172</sup> [www.buyusa.gov/greatlakes/hansonmusebio.pdf](http://www.buyusa.gov/greatlakes/hansonmusebio.pdf)

<sup>173</sup> Interview with Tom Calame, board member of AMCHAM; 7 July 2009.

Myles Frechette, is a lobby organ in Washington that supports US and Peruvian companies that operate in Peru (Durand 2003, 502; Durand 2005, 214). Many new investment opportunities are promoted by private institutions such as Investperu, which consist of US and Peruvian managers experienced in mergers and acquisitions, real estate and consultancy that use the TPA as an incentive for their activities.<sup>174</sup> Furthermore, MINCETUR has created together with Proinversión, ADEX and SNI the United States Peru Chamber of Commerce (USPCC) in 2008 to foster the business development of Peruvian Americans residing in the United States in order to help them to benefit from trade activities and the TPA in particular. This bilateral chamber of commerce, based in New Jersey, acts also as a strategic ally of the Peruvian government and has signed a cooperation agreement with the Peruvian consulting firm Korimayo that will provide financial advice to Peruvians living in the United States wishing to develop investment projects in Peru. USPCC supports Peruvian entrepreneurs in the United States to take better advantage of the TPA and promote investment; moreover, a closer collaboration with the US Congressmen and US business is among its objectives. These kind of private institutions that promote US investment in Peru are thus often not solely US initiatives but do, generally, tend to defend the transnationalised interests that benefit from the trade agreement.

## 6.5 Concluding remarks

As this chapter has clarified, the major interests behind the TPA are not necessarily representing national interests. Multinational corporations are often predominant in various sectors such as mining, energy, pharmacy, and finances where the liberalisation of the new trade agenda issues has the highest priority. Through maintaining a very strong negotiation position, the United States could meet its objectives to secure a favourable deal to its companies active in these sectors in the Peruvian market. These objectives were clarified in the trade promotion authority act that allowed USTR to negotiate bilateral trade agreements; in comparison, the Peruvian authorities never elaborated a tactical negotiation strategy, contributing to the high asymmetry between the two countries. When taking the “two-level game” into account, the United States controlled both tiers. Through its strong negotiation position and strategy it managed to overpower the Peruvian negotiating team and to establish a trade agreement that is highly favourable to the US companies.

Second, through certain institutions such as USAID and AMCHAM the Peruvian national negotiation position was highly influenced by US, and eventually, transnational interests. Since these institutions participated actively in the elaboration of the national consensus in Peru, it explains how national and transnational interests were melted together. Moreover, transnational corporations that are active in Peru are also integrated in the national business associations that participated in CENI and, therefore, the Peruvian negotiation process. In fact, the offensive interests in the TPA of CENI and AMCHAM are hard to distinguish since both institutions tend to represent and defend transnational interests. The companies associated with these two institutions are either multinational corporations or national business groups that acquired foreign capital and conduct activities in sectors that are dominated by foreign capital. Thus, the national Peruvian position contained a firm transnational component since the TPA process was mainly directed by the transnational capitalist class whose economic interests coincided with the US interests.

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<sup>174</sup> [www.investperu.com](http://www.investperu.com)

## 7 Conclusion

The adoption of the neo-liberal paradigm in Peru has contributed to the generation of a new kind of power structure that is dominated by market forces. The extreme and radical application of the neo-liberal model in Peru has led to a series of major societal costs especially since it was enacted in an (semi-) authoritarian form. A new gravitational centre of political power has been constituted since 1990 where the private sector, dominated by “corporative giants”, commands the economic policy-making process; the state has been effectively captured by the private sector that functions as an “invisible hand in the state” (Durand 2005, 254). Through massive and rigorous privatisations during the early market reform stages, assets and power became concentrated in the narrow top of the business pyramid. Neo-liberal technocrats supported this concentration process that was accelerated by drastic and little transparent fusions between privatised state companies and economic power groups. The new emerged corporate class became a privileged political actor that acquired powerful levels of access and influence that no other interest group enjoys; more importantly, these market forces were able to take over the political domain due to the lack of significant counterweights. Moreover, the opening to foreign trade and investment resulted in the denationalisation of the Peruvian economy and the displacement of national capital; transnational corporations and to a lesser extent Latin American economic groups are currently directing the economy where the number of national business groups is reduced. The neo-liberal competitive shock policies have weakened the position of national capital that was eventually acquired by predominantly foreign private corporations through joint ventures. Thus the process of structural adjustment and market reforms generated conditions for an extreme concentration of economic power in a small core of corporations located in Lima. The neo-liberal project has generated an economic structure that is not only privatised but also increasingly “transnationalised, oligopolised and elitist.” As Durand (2005, 260) puts it, “this new plot of interests has managed an effective capture of the state.”

This thesis has analysed the organisation of the Peruvian business sector in order to understand the contemporary economic and political situation. The analysis of the composition, behaviour and relations between national and foreign capital, and between the private sector and the government, enables a better view on how the new power structure has affected the political system. The capture of the state by business created a power coalition that consists of a power triangle between the government, business and the media; this power coalition proved to be successful in muting opposition groups that constrained effective actions to oppose this large influence and power. Strikingly, this power coalition survived the corrupted and (semi-) authoritarian regime of Fujimori and continued in the market democracies of Toledo and García. The case of the Trade Promotion Agreement with the United States shows how this power coalition functioned and how Peruvian business groups, with often transnational interests, have played a key role in this process.

Generally, organised business through business associations has become more vocal and skilled in the economic decision-making process; the strong demand for market-oriented reforms, with the general consensus on economic liberalisation, added the voice of business to an agenda for economic reform backed by state actors and international financial institutions. As argued by Schneider (2004, 11), encompassing business associations in Latin America were primarily created out of conflicts with the government and only to be strengthened by further

encouragement and benefits from the government. When it organises, the private sector is essentially a reactor to government actions. The private sector will invest in developing technical capacity when state technocrats allow business participation through its associations based on their expertise. Particularly in highly complex trade negotiations business associations tend to play a very specific and crucial role. According to Bull (2008, 199), “meaningful participation in trade negotiations demands a high level of technical expertise that is likely to be found among formal business associations.” As discussed in the second chapter, the private sector and the government often work together closely on the new complicated trade agenda issues such as intellectual property, service trade, and investment regulations, so that these interactions go beyond the traditional lobby-activities. Especially during bilateral trade negotiations the relation between business and governments reflects the interaction on domestic regulatory issues and only to a lesser extent the pressure on traditional tariff negotiations. Therefore, the framework by Woll and Artigas (2007) is useful since they distinguish two forms of business participation, namely regulatory and pressure lobbying. Whereas traditional pressure lobbying focuses on very specific thematic issues, regulatory trade lobbying enhances a coordinated collaboration between the private sector and the government on trade issues that require highly technical knowledge.

The political organisation of Peru’s private sector in the TPA process is examined within this framework. Moreover, as stated in the theoretical explorations in chapter two, the new emerged power structure involves also the policy networks where institutionalised bases of power are being combined with personal power. Technocrats are involved or closely related to market reform policy and business is being brought into those policy networks through formal associations and chambers or through informal personal contacts. Yet, influence through formal business associations tends to be more transparent, legitimate and accountable than immediate contact between business leaders and policy-makers; therefore, the formal and regulatory lobbying activities through business associations are combined, as well as the informal and pressure lobbying activities through the policy networks.

## **7.1 Business politics**

As stated by Schneider (2004), strong business associations can help resolve informational and political problems that complex trade negotiations generate. Peruvian state officials that participate in trade negotiations relied on business associations that possessed sufficient technical knowledge and aggregated interest consensuses. MINCETUR has always had a fluent communication with the private sector considering the elaboration of several national export plans that locked-in the economic and trade route for the next decade. The position during the negotiations was predominantly derived from these plans and formed an antecedent for strong cooperation between the government and the private sector during the negotiations of the TPA. The fact that MINCETUR constantly seeks business participation implies that they find the business associations capable of participating in economic and trade decisions. This close cooperation formed an incentive to create an ad-hoc encompassing business platform that was founded in 2004. Twenty-seven business associations united in the Business Council for International Negotiations (CENI) that provided the government of support. CENI, financed by CAF and led by two top-business leaders, literally copied MINCETUR’s internal negotiating structure in order to provide a support or proposal from the private sector at every different technical level. CENI provided the technical assistance that the government was seeking for which strengthened the relations between the private sector and the government. Moreover, the government could enhance the business capacity for interest intermediation within CENI where

its associates realised that differences between its members had to be resolved before taking the joint proposal to the government in order to prevent losing influence. The frictions between the three *gremios* ADEX, CCL and SNI, and Peru's umbrella business association CONFIEP were set aside during the CENI sessions since all desired the establishment of the trade agreement. The support by big business for the TPA was nearly unanimous during the negotiations so that the collaboration between business and government in trade negotiations generated a clear political support since the business associations were publicly in favour of the TPA.

Schneider (2004, 43) claims that concentrated economic power actually encourages collective action since fewer companies control more of the economy, overcoming free riding easier; "high corporate concentration reduces the costs of organising and increases the incentives for attracting each member on the margin." Returning to Olson's theory, larger firms have incentives to take on a disproportionately share of the costs of collective action (Olson 1965, 35). As argued by Schneider (2004, 43), a high ownership concentration correlates with strong encompassing organisation, which is certainly true in Peru (CONFIEP, CENI). In the particular case of CENI where the largest groups dominated the peak association, it looked like the natural exploitation of the large by the small as hypothesised by Olson (1965, 35), with the small free riding on the efforts of the large. On the other hand, interpreted by Olson (1965, 132-141) as a "by-product", associations with great lobbying power could in fact also be formed by a selective incentive that differs from common lobbying interests. The TPA provided therefore this selective incentive to create CENI that influenced who organised and how intensively; moreover, the association shaped how preferences were aggregated and expressed (Schneider 2004, 238).

CENI incorporated also opposing business associations. Through their participation in a private platform that unconditionally supported the TPA they became effectively muted in the articulation of their critical assessments. Both CONVEAGRO and ADIFAN, which represent respectively the sensitive national agricultural and pharmaceutical sectors, participated in the CENI negotiations but were weakened due to unfulfilled governmental promises or internal struggles of interests. However, CENI did not participate in the official negotiations. Only state representatives negotiate since a trade agreement is a matter between governments, making MINCETUR and USTR the official negotiators. During the negotiation rounds MINCETUR maintained communication with those who were interested in the progress of the negotiations in the Room Next Door. Initially established to create a space for dialogue between the trade negotiators and the business, academic, and civil society, it evolved into a platform to only inform those interested groups. Generally, no consultancy or proposals were being made there; moreover, under strict confidentiality rules the participants were prohibited to diffuse the information from the Room Next Door. Yet, the private sector had a powerful platform with CENI to maintain close relations with MINCETUR on a daily basis; the Room Next Door was only used as a décor for maintaining communication with civil society, which became in essence excluded from the negotiations. The tight collaboration between the private sector and the government was continued during the implementation of the trade agreement, where CENI actively participated with MINCETUR. Interestingly, CONFIEP started to develop a type of business jealousy since CENI incorporated much more associates and had an outstanding relation with MINCETUR. Considering CONFIEP's traditional hegemonic position in Peru's private sector, it displaced CENI and took the initiative to form a new CENI with a reduced number of *gremios* that eventually had less impact than before.

Informal and pressure lobbying as part of the policy networks also occurred during the TPA process as chapter five has pointed out. The negotiations reflect in fact how Peruvian economic policies are managed by a concentrated group of economic power within the political

sector. Politicians come and go but these power groups continue to be the same; the power pyramid does not change so that the conditions for economic policy-making remain unaltered. New political actors encounter certain constraints to their policy-choices because some sectors are controlling the national economy. This became clear during the negotiations where certain sectors prevailed since their interests were related to the most powerful national business groups. Within CENI certain powerful business associations had a stronger position to defend their interests, but strikingly the most influential business leaders such as Dionisio Romero were not seen during the negotiations. These individuals never participated but through their personal policy networks they were able to influence and direct the trade negotiations. However, the informal personal lobbies are hard to distinguish from the formal institutional lobbies. These are related strategies; institutional pressures by business associations are accompanied by the personal relations. The lobby strategy uses both tools. The big economic interests have pressured in a personalised way as they have institutionalised their personal relations. Business associations manage those different levels of lobbying very well since these activities are dated from older times. Hence, the presence of the lobby in favour of the TPA was very clear, greatly supported and well articulated. It is obvious how the economic decisions are all related to big business; behind the TPA and the legislative decrees one can see that the main interests are in investment, agricultural exports and mining sectors that belong to the most powerful and biggest economic groups in Peru. The export sector is the biggest economic sector and there is much money involved in export activities. Therefore, it is the strategic priority to promote exports in the government. When looking at to who the export activities correspond, these are all economic groups that are more or less delimited and they often have transnational faces.

With the strong pro-free trade vision within MINCETUR there was a great conjuncture of interests in both the executive branches of the Peruvian government and the private sector; many officials of MINCETUR were affiliated with big business considering the yearly transfers from state officials to the private sector and the technocratic or business backgrounds of ministers and vice-ministers. Ever since the administration of Fujimori there has been a grey area between the private and public sector which continues up to today. Despite the democratisation process since *Fujimorismo*, which was instigated by Paniagua and maintained by Toledo and García, one aspect that has never changed is the personnel in certain ministries; these are the ministries that develop Peru's economic pathway and are responsible for the final economic decision, namely MINCETUR and MEF. This has become clear during the TPA process when MINCETUR even overruled other competent ministries that had a more cautious position regarding the TPA and the possible negative impacts on certain sectors. MINCETUR is captured by members of this group of professionals and business leaders that are not seldom coming from abroad. The business sector pressures the government to nominate people with the right pretensions to these formal positions; they need people they can trust so that it will be easy to access and influence by business, creating this very grey area.

Specific pressure activities by the private sector and MINCETUR occurred in both the Peruvian and US Congress through strong lobbies in order to get the TPA ratified. MINCETUR and CENI lobbied intensively in the Peruvian Congress where they also hired several lobby companies to lobby in the United States. CENI maintained a well coordinated collaboration with the US private sector and took on the initiative to create an Andean CENI with its Andean counterparts. A salient element of the TPA process was the promotion by the government and the private sector. MINCETUR considered a positive public opinion on the TPA important enough to invest heavily in campaigning in favour of the TPA by sending many officials to

different parts of Peru in order to promote and diffuse the benefits of the trade agreement. The government cooperated closely with the business associations since these became also specialised in the trade negotiations and the promotion. MINCETUR launched a large propaganda campaign with help from several private consultancy firms that were actually propagandists since they were former state officials and business leaders. Through an aggressive media battle the economic and political elites were able to mute opposing groups to the TPA and change the public opinion from negative to supportive. The Peruvian public became captured by the pro-TPA campaign that only highlighted the benefits and hid the negative implications. Media leverage proved to be an efficient tool that restrained public access to alternative information. Hence, this power triangle between the corporations, governments and corporate media created a very strong and effective power coalition that was in favour of the TPA.

## 7.2 Transnationalised rules of trade policy

As chapter three and six have highlighted, the Peruvian national interests in the TPA are embedded in a transnational network of interests in trade liberalisation. The economic and political asymmetry favoured the negotiation position of the United States whose offensive interests were in different aspects of the TPA than Peru's interests. Where Peru sought the permanent preferential market access in the United States that was earlier established under the ATPDEA, the United States launched a trade programme of competitive liberalisation in developing countries. This strategy would accelerate the advancement of the new trade agenda issues such as investment and intellectual property rights in a bilateral way; this would facilitate the entrance of US corporations into those new markets. The expiring ATPDEA regulations clearly generated a specific lobby group in Peru to support the TPA and, therefore, the United States had a strong trump to pressure the trade negotiations that would be favourable to the US interests. The economic asymmetry weakened the Peruvian negotiation position since the Peruvian economy is depending on exports to the United States whereas trade with Peru is hardly significant for the US economy. It was nearly impossible for Peru to secure a better deal; through experiences with other Latin American countries the Peruvian government knew that many negotiation issues had to be accepted or were not negotiable. As mentioned in chapter two, trade negotiations consist of the "two-level game" where state agents negotiate officially and bilaterally, and bargain with domestic interest groups. Clearly, the United States dominated the official negotiations through specific positions and strategies that were not to withstand by the inexperienced and submissive Peruvian negotiating team.

However, a more profound analysis of the national Peruvian private sector provides arguments to assume that the Peruvian private interests reflected transnational interests, dominating therefore also the second tier of the two-level game namely the domestic interest groups. Many Peruvian business groups are related to foreign capital and many powerful transnational corporations control different parts of the Peruvian economy. Neo-liberalism has opened the national market to foreign direct investment; new emerged corporate groups have become also political actors that exercise influence on the national economic policies. During the negotiations, many of these business groups had indeed transnational interests in the trade agreement as the case of the pharmaceutical sector has shown. Various companies are also associated with AMCHAM, which is a very powerful advocate of free trade and strong defender of US companies' interests; subsequently, the national private position to the trade negotiations revealed a conjuncture of national and transnational interests. In addition, US governmental institutions such as the US Embassy in Lima and USAID have supported the TPA process by

delivering technical assistance. These examples imply that the US interests were also defended by the domestic tier of the two-level game of trade. The hegemonic neo-liberal paradigm in Peru has essentially generated conditions for the continuing denationalisation of the Peruvian economy.

The case of the TPA hence shows how bilateral trade agreements between small and big economies tend to consolidate the neo-liberal model. Where many Latin American countries have started to reject the market model in recent years – which the retreat from the trade negotiations by Bolivia and Ecuador resembles – the Peruvian economic and political domain is dominated by neo-liberalism to such an extent that this model is capable of surviving different presidential changes. The economic policies of economic liberalisation and deregulation, as the diminishing role of the state during the Washington Consensus, were functional to the concentration of global corporative power in almost all economic sectors. Corporations have been converted into real economic and political powers. That is why the government, especially in Peru, has each time less power to conduct the national political economy. The TPA seeks to consolidate these policies that make the reforms of the 1990s permanent in an international treaty. These kind of agreements are a one way road where the United States maintains complete power and uses them to benefit its corporations that it represents. By signing the TPA, Peru will continue to be submissive to the aggressive interests of the developed world; it reinforces Peru's position at the beginning of the production chain and consolidates the perverse specialisation of the economy that is associated with the intensive exploitation of natural resources and cheap labour. According to Ruiz Caro (2006, 96), trade agreements constitute an ancient instrument of articulation to the international economic system. She states by mentioning an influential ECLAC report that growth needs to create a “new reform agenda that rejects the neo-liberal programmes and focuses on economic politics with a better equilibrium between the market and the state” (ECLAC 2004). However, in a state as the Peruvian that is captured by big business it remains difficult to withstand the powerful market forces. Despite the efforts of the amendment protocol, that was ought to neutralise some of the rigorous aspects of the TPA, the coincided political goals of President García and Bush prevailed over the intentions for a new trade policy.

In the case of the TPA, the capture of the Peruvian government by business weakened the national negotiation position. As Wise and Quiliconi (2009, 27) argue, the motives for Peru to sign the TPA are understandable. They include the export and investment dependence on the US market that has been fostered over time by the ATPDEA, and the fear of exclusion. Toledo's credo at the start of the trade negotiations “yes or yes to the FTA” meant an unconditional support of the trade agreement. The domestic political debate was of very low quality due to asymmetric information, scarce resources and weak organisational capacities of the affected sectors to secure a better deal. The majority of the political sectors have only treated the TPA as a trade agreement and evaluated it as such. In a scene of social instability, the government should have presented the TPA in its complete economic, social, legal and political dimension; the fear to know the risks and negative aspects of the agreement reduced the possibilities to modify its contents. Moreover, through enormous campaigns in favour of the TPA that were organised and executed by the power coalition marginalised civil society completely from participation in the TPA process. Peruvian civil society has long been subjective to extensive state intervention and the relation with the political and economic elites continues to be distant, but it has shown to be capable of mobilising itself and organising protest actions. The increasing number of social conflicts, even with transnational corporations, demonstrates a growing social unrest and rejection of the contemporary political economic policies.

### 7.3 Revision of the neo-liberal model on the verge?

As outlined in the second chapter, many scholars have discussed whether business is a force for or against democracy. One fundamental question is asked by Schneider (2004, 242, 243) that focuses on the dimension of organisation; does stronger organisation tend to make business more democratic? A key element in his argument is the variable of access. Privileged access stimulates collective action and support for the status quo, either democratic or authoritarian. This is certainly true during the (semi-) authoritarian regime of Fujimori where strong support and good access characterised the relationship between organised business and the government. Business moved away from Fujimori when evidence of corruption and personalistic tendencies accumulated, which diminished their access; governmental representation of business is the crucial aspect for business organisation, though the access of business to the post-Fujimori government remained equally high. Yet, the importance of being organised has decreased; the personal relations with the government are not as institutionalised as formal business associations. To discuss major investment projects and to find partners and lobbies, private think tanks such as IPE or private meetings between the President, the Prime-Minister and the companies prove to be much more efficient. These are personal and possibly secret connections between big investors and the government, making business institutions such as CONFIEP less relevant. The influence of multinationals and big business on the policy of President García is just as strong as under the Fujimori administration; he is seriously affiliated with big business. García organises weekly meetings with a selected group of business people – among others Dionisio Romero – from distinct sectors such as mining and agribusiness; these kind of sessions must be very political. One striking example is the elimination, or at least the minimisation, of all tariffs for the importation of nearly all alimentary products, including the disappearance of the quotas and the gradual tariff-lowering agreed in the TPA with the United States in 2007. Consequently, Peru's cotton production is close to collapse due to unfair competition where the same is about to happen with the production of maize, lactose, wheat, barley and meat since García lowered the tariffs for many more countries.<sup>175</sup> This only favours certain business groups and concentrates economic power; seventy-five per cent of Peru's alimentary imports is dominated by one single company, namely Alicorp of *Grupo Romero*. These processes reflect the nature of the contemporary Peruvian political economy.

The implementation of the TPA, which occurred under García, provides another example of how his government is captured by major business interests. The elaboration of the legislative decrees took place under a little transparent and rushing process that exceeded the temporarily granted legislative faculties. Many of these decrees are not directly related to the implementation of the trade agreement, but tend to reflect private interests. Certain decrees will affect fundamental labour rights and will threaten their stability, the liberty to associate and bargain collectively that were acquired under the amendment regulations of the TPA (Mujica Petit 2009). In the case of intellectual property, the Peruvian government exceeds the norms of the Andean Community on industrial property that will benefit pharmaceutical corporations and trespass the amendment protocol. The decrees consolidate the expectations of the US government on the creation of a new property right that grants exclusivity in the market, creating a monopolistic situation that corresponds to the US strategy of a global standardised intellectual property level in line with their legislations and interests (Espinoza Carillo 2009). Even the infamous DL1090, which caused the Bagua uprisings, facilitates the investment in

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<sup>175</sup> Interview with Reynaldo Trinidad, Chief Editor and Founder of agricultural magazine *Agronoticias*; 13 August 2009.

forests and the exploitation of natural resources; these are activities to which also *Grupo Romero* is related. The decrees coincide the vision of García with the visions of USTR that defend the major economic interests of (trans-) national corporations. In return, García has created a hegemony without consensus which is politically fragile and socially rejected. His personal vision on development and the use of natural resources were publically announced in the series of publications where he sees small agriculture as a constraint to economic development and competitiveness, and the native populations of Peru's remote areas block the country's modernisation "like the dog in the manger."

As Durand suspects, Alan García tried to impose himself on business in the 1980s and he failed. In order to become President again, he had to make a deal with business that basically kidnapped him. "You could say that he developed the Stockholm syndrome where the captive believes in whatever the capture wants, but in an extreme way."<sup>176</sup> Hence, big business has the option for exercising power through corruption, policy networks, and media leverage that undermine political equality. The participation of business leaders in politics as powerful individuals weakens democracy by making political representation unequal. The commanders of the political economy maintain an unstable and distant relation with the society that is little organised and weakly represented. The case of the TPA indicates that these societal groups were essentially excluded from the trade negotiations; through informal and pressure lobbying, political pressures and sophisticated promotional activities by the power coalition the opposing groups were completely marginalised during the TPA process. The lack of practicing a better defence of public interests deteriorated the democratic debate. Whereas the small economic and political elite tends to support the contemporary process of rigorous trade opening and diffusion of the capitalist culture, the majority of the Peruvian population rejects this process of denationalisation and economic power structures. As structurally excluded actors the poor social classes appear in social conflicts and violent actions that represent the social unrest.

As long as there is no significant counterweight to this power structure, the neo-liberal and pro-business paradigm continues. As Roberts (1998, 279) argues, isolated forms of contestation can hardly challenge concentrations of private economic power or a "logic of capital accumulation that is increasingly transnational in scope." Accountability, contestation, or the exercise of power by civil society can check the abuse of power, but the neo-liberal hegemony in Peru has proven to reinforce itself by countering contestation with each time more rigorous and violent reactions. The implications of *Baguazo* could have brought Peru on the verge of a serious revision of the neo-liberal model; for the first time in Peru's history the Amazonian indigenous people have become organised as citizens but the campaign against them has been vicious. Not even Toledo went that far in moving against civil society. With García's unconditional believe in development through investment, exports and exploitation of natural resources, it is highly uncertain that his discourse will be moderated in the near future. If this neo-liberal economic discourse continues to provoke social costs, more conflicts and tensions will arise that will oblige the political elites to respond.

García's response to the implications of *Baguazo* was to install a new cabinet where irrelevant figures were removed and key figures in his neo-liberal modernisation projects remain active, basically meaning a new continuation of the hegemonic paradigm. As stated by Durand (2005, 266), though the neo-liberal response is "generating hope with an exaggerated promise of great projects of gas and mining, and trade agreements to expand exports, it is the question whether they really form an alternative to the contemporary problems." A profound

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<sup>176</sup> Interview with Francisco Durand, political scientist; 19 May 2009.

revision of the neo-liberal hegemonic paradigm would include a more active role of the state in distributing the generated wealth to the lower parts of the social pyramid in order to avoid a higher concentration. As Arce (2005, 139) argues, institutionalised contestation and accountability would diminish the weight of organised business and established political leaders who benefit the most from the exclusionary decision-making process.

Business leaders have direct negotiations with the commanders of the political economy in Peru, MEF and MINCETUR; unrestrained by representative institutions, the coalition between the government and the private sector jeopardises a distributive economic development. Generally agreed, it is important to create a competitive instead of an oligopolised market; a more dedicated, involved and transparent government would elevate the political economy that eventually would help to prevent further escalating political distortions and social unrests. García's polarising policies tend to endanger the country's further development since a marginalised civil society now possesses the possibility to block any future investment project under the obliged consultancy regulations, including projects that can contribute to Peru's growth. In order to prevent international isolation and a step backwards in development, the state should provide incentives to strengthen civil society. This is vital so that it can be included to make useful contributions during the tripartite negotiations between the state and the private sector; these should be equilibrated negotiations without any loaded dice.



## Annexes

### Annex 1: Topic list interviews

#### Interview business representatives

Kind of organisation; what does it represents and what are its objectives?  
 Participation in negotiation of TPA: experiences from CENI  
     Organisation's position to TPA  
     Expressing its opinions: profile  
     Relations with other associations  
 Most important points of TPA: specific interests, proposals  
     Input of representing members  
     Negotiation evaluation: final results  
     Sources of information to judge the impact  
 General view on the group in favour of the TPA  
     Position within the private sector  
     Organisation of events  
     Lobby / political organisation  
     Contact with ministries  
 Contact with other state agencies  
 Contact with consultancy firms  
     Contact with US companies  
     Contact with US institutions

#### Interview opponents

Affiliation with TPA  
 Media experiences  
 Most critical points  
 Establishment of group in favour of TPA  
 Experiences from Room Next Door / negotiations  
     Views on the participation of business  
     Role of ministries  
 Specific role of ministry of foreign trade  
     Role of other state agencies  
     Experiences from CENI  
 Opinions on positive views from the private sector  
     Views on the pushing forces behind the TPA  
 Views and experiences from the lobbies in favour  
     Role of universities  
     Role of consultancies  
     Role of US companies  
     Role of US institutions  
     Role of business events  
 Views on informal relations between business and government

**Annex 2: List of respondents**

Date	Name	Function	Organisation
18-05	Juan Rheineck Piccardo, Hernán Navarro, Iris Camacho, Jodie Judena	Director and Technical Team	CEPES
19-05	Francisco Durand	Professor and Political Scientist	University of San Antonio, Texas
01-06	Benjamin Armas Quispealaya	Executive Director	CNA
05-06	Juan Carlos Vargas	Sub-manager	PLADES
08-06	Anonymous	Regional Director	Fish-oil, -meal, and wood exporting company
11-06	Miguel Macedo, Guillermo Rebosio (Hernán Navarro, Iris Camacho)	Ex-negotiators	CONVEAGRO
16-06	Juan Carlos León Siles	Exporters Defender	ADEX
24-06	Richard Inurritegui Bazán	General Manager	SNP
25-06	Alejandra Alayza	Coordinator	RedGE
26-06	Miguel Canessa	Professor Labour Rights	PUCP
01-07	Alfredo Villavicencio	Ex-Vice Minister of Labour; Professor Labour Rights	PUCP
07-07	Tom Calame	General Manager; Board Member	JW Marriot Hotel Lima; AMCHAM
08-07	Ricardo Paredes	Economic Studies Manager and Business Consultant	COMEX
08-07	Álvaro Henzler	Peruvian Embassy in US; researcher	UP
10-07	Luis Miguel Silva	Foreign Trade Assistant	SNI
23-07	Jaime García	Vice-President; ex-Vice Minister of Foreign Trade	Consultandes
31-07	Álvaro Díaz Bedregal	Advisor to Vice-Minister of Foreign Trade	MINCETUR
06-08	Rubén Oscar Ríos Gamarra	International Trade specialist	CCL
10-08	César Peñaranda	Executive Technical Secretary	CENI
10-08	Aldo Defilippi	Executive Director	AMCHAM
10-08	Manuel Quindimil	Deputy Manager of Government and Legislative Relations	AMCHAM
11-08	Jorge Chávez Álvarez	President	MAXIMIXE
12-08	Sandro Farfán Padilla	General Manager	AGAP
13-08	Reynaldo Trinidad	Founder and Chief-Editor	Agronoticias
24-08	Pedro Francke	Professor Economics; ex-coordinator	PUCP; ForoSalud
27-08	Eduardo Albareda	Economic Development and Trade	USAID
28-08	Graciela Fernández-Baca	Advisor	CONFIEP
<b>Total of 27 interviews</b>			

**Annex 3: List of participation / observation**

<b>Date</b>	<b>Activity</b>	<b>Participants</b>	<b>Description</b>
03-07	Public Forum on Legislative Decrees and Internal Agenda of TPA, organised by RedGE; chaired by Alejandra Alayza	Maria Remy (IEP); Fernando Eguren (CEPES); Alberto Barandiaran (environment lawyer); Pedro Francke (Economist)	Greatly attended forum with four critic speeches; diverse public, critic questions; platform for the diffusion of critical flyers and documents
21-07	Forum on Trade Agreements, organised by COMEX; chaired by Patricia Teullet, general manager COMEX	Ernesto Guevara (MINCETUR); José Antonio de la Puente (Comercia Consulting SAC); Eliel Hasson (Trade&Legal Consulting - TLC); Eduardo Ferreyros (Vice-Minister of Foreign Trade)	Greatly attended forum with four positive speeches in favour of free trade; homogenous business public, informal atmosphere, no specific identification of lobbying

**Annex 4: Privatised state companies in order of importance, by buyer (in millions of US\$), 1995-2004**

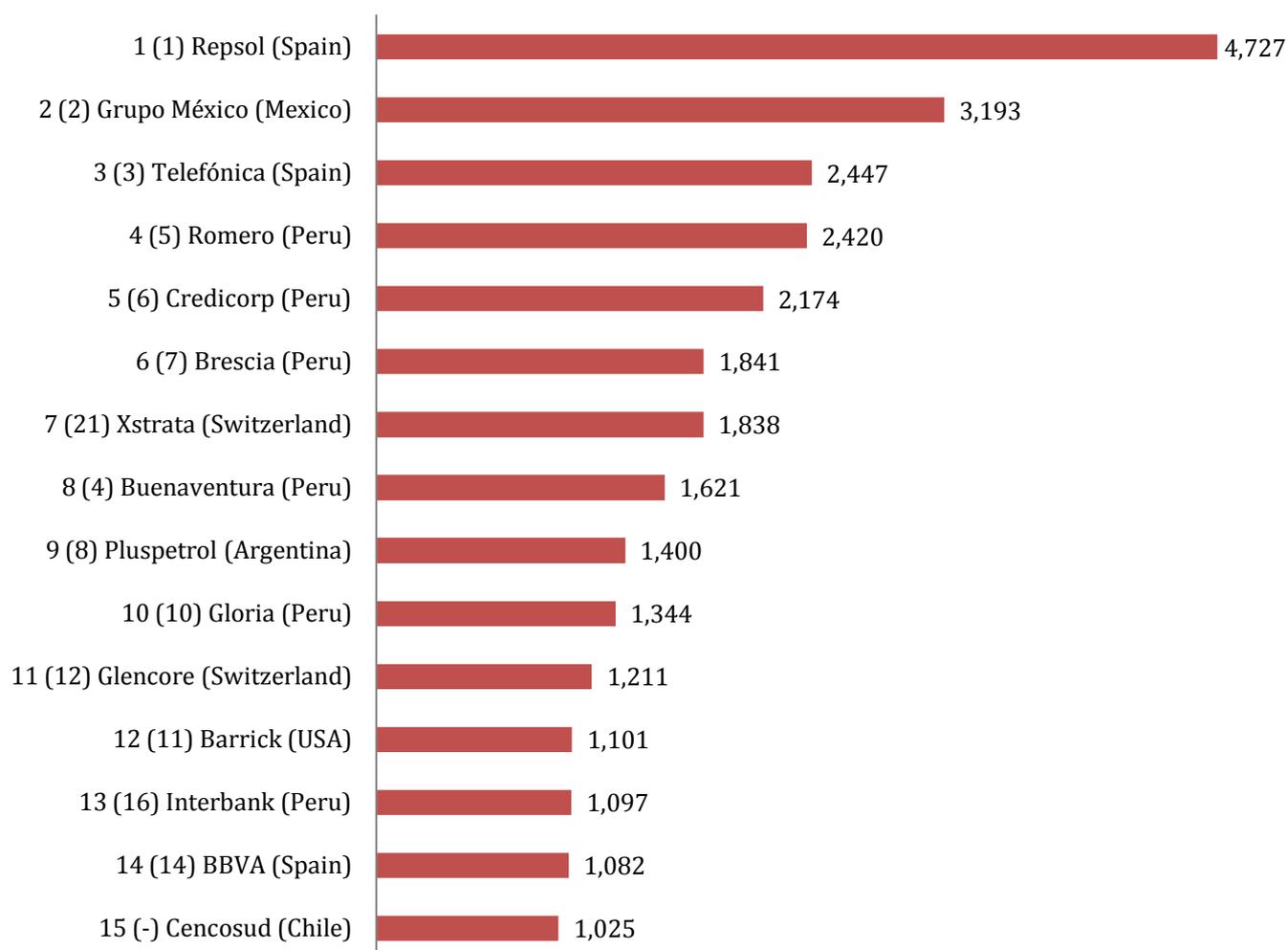
State company	Paid amount	Buyer
1. Telefónica	2,000	Telefónica de España (Spain)
2. Edegel	524.4	Consortio Generandes (USA, Chile)
3. Banco Continental	255.7	Banco Bilbao Viscaya (Spain and Peru's Grupo Brescia)
4. Tintaya	277.1	Magma Copper/Global Magma (USA)
5. Egenor	228.2	Dominin Energy
6. Petroperu-Lot X	202	Grupo Perez Compaq (Argentina)
7. Petromar	200	Petrotech International (USA)
8. Luz del Sur/Edegel	212.1	Ontario Quinta AVV (Canada, Chile)
9. Sider Perú	186.2	Consortio Acero (USA) and Wiese Inversiones (Peru)
10. Refinería La Pampilla	180.5	Repsol YPF (Spain) and Exxon (USA)
11. Edelnor	174.4	Enersis (Chile)
12. Refinería Cajamarquilla	193.3	Cominco/Marubeni (Canada, Japan)
13. Petroperu-Lot 8/8X	142.2	Pluspetrol (Peru's Grupo Graña Montero), Yukong (South Korea)
14. Empresa Minera Mahr Tunel	127.7	Volcán Minera (Peru's R. Letts C. and Grupo Picasso)
15. Empresa Metalurgica La Oroya	123	Denco Group/Doe Run Resources (USA)
16. Hierro Perú	120	Shogun (China)
17. Cementos Lima	103.2	Various (Peru's Rizo Patrón family)
18. Cemento Yura	67.1	Grupo Rodríguez (Peru)
19. Empresa Minera Paragsha	61.8	Volcán (Peru) and Glencore (Switzerland)
20. Tourist Hotels	25	Various national (Grupo Picasso)
21. Interbanc	51	International Financial Holding (Peru's Rodríguez P.)
22. Cahua	41	Grupo Galski (Peru)
23. Cementos Norte Pacasmayo	68	Various (civil participation)
24. Cerro Verde	35.4	Cyprus Climax (USA)
25. Refinería de Ilo	66.6	Southern Peru CC (USA)
26. Cemento Sur	33.3	Grupo Rodríguez (Peru)
27. Aeroperú	25.4	Aeroméxico (Mexico)
28. Electro Sur Medio	25.4	Consortio Hica (Argentina, Peru)
29. Antamina	20	Inmet Mining Co/Rio Algon (Canada)
30. Radio Panamericana and TV	18	Grupo Delgado Parker (Peru)
31. Petrolube	18	Mobil Oil (USA)
32. Pesca Perú (Mollendo, Chicama)	14	Grupo Galski (Peru)
33. Empresa de la Sal	14.4	Química del Pacífico (Peru)
34. Corpac-Playa Estacionamiento	12	Grupo Raffo (Peru)
35. Puerto Matarani	12	Grupo Romero (Peru)

Source: *The Peru Report Peru: The Top 5,400 Companies*. Lima: *The Peru Report*, p.1077 and *Comisión de Promoción de la Inversión Privada (COPRI)*. Elaboration by Durand (2005).

**Annex 5: Ranking of the first thirty companies ordered to sales volume (in millions of Peruvian nuevos soles), 2004**

Company	Multinational, national, or Latin American	Sales	Employees
1. Telefónica	Multinational	4,238,284	5,325
2. Refinería La Pampilla	Multinational	2,793,487	334
3. Southern Peru CC	Multinational	2,040,378	4,432
4. Minera Yanacocha	Multinational/ Grupo Benavides	1,639,300	n/a
5. Occidental Petroleum	Multinational	1,511,522	508
6. Perupetro	Multinational	1,463,540	n/a
7. Alicorp	Grupo Romero	1,400,422	1,565
8. Mobil Oil	Multinational	1,146,355	176
9. Shell	Multinational	1,025,615	134
10. Luz del Sur	Multinational	940,446	651
11. San Ignacio de M.	Grupo Arias	931,065	1,661
12. Cargill Peru	Multinational	923,665	43
13. Backus	Grupo Bavaria (Colombia)	895,905	n/a
14. Edelnor	Multinational	890,361	772
15. Peruana de Combustibles	National	854,594	53
16. Barrick	Multinational	852,220	n/a
17. Ferreyros	Grupo Ferreyros	682,462	1,340
18. Molinos Mayo	Multinational	661,333	1,984
19. Gloria	Grupo Rodríguez	695,160	850
20. GyM	Grupo Graña and Montero	656,275	660
21. Química Suiza	Multinational	630,731	980
22. Repsol YPF	Multinational	620,923	24
23. Santa Isabel Supermercados	Multinational	590,187	2,537
24. Nestlé	Multinational	553,367	237
25. Procter & Gamble	Multinational	541,768	353
26. Saga Falabella	Grupo Falabella (Chile)	535,511	n/a
27. Refinería de Zinc-Cajam	Multinational	524,867	544
28. Consorcio Minero	Multinational	513,246	85
29. Minsur	Grupo Brescia	488,619	418
30. Cementos Lima	Familia Rizo Patrón	485,050	345

Source: Lanota. Com de Colombia, 19 April 2004. <http://lanota.com/cifras/pe/real>. Elaboration by Durand (2005).

**Annex 6: Economic groups in Peru, ranked by income in thousand US\$, 2007 (2006)**

Source: *El Comercio*, 7 June 2009, "nuevos rostros en el mercado". Own elaboration.

### Annex 7: Overview of major indicators of impact studies (in percentages)

	Major winning sectors in terms of production	Major losing sectors in terms of production	Total production
MINCETUR (2005) (for the year 2004)	<p><i>Light manufacturing:</i></p> <ul style="list-style-type: none"> <li>• apparel (10.37);</li> <li>• textile (7.41);</li> <li>• other light manufacturing (3.28);</li> <li>• leather (2.83).</li> </ul> <p><i>Agriculture:</i></p> <ul style="list-style-type: none"> <li>• other cultivation (2.86);</li> <li>• vegetables, fruits and nuts (2.76).</li> </ul> <p><i>Services (2.29)</i></p>	<ul style="list-style-type: none"> <li>• wheat (-4.65);</li> <li>• cotton (-2.36);</li> <li>• machinery and electronic equipment (-1.74);</li> <li>• coal (-1.23);</li> <li>• processed rice (-0.18).</li> </ul>	2.26
Cuadra et al. (2004) (on the longest term)	<ul style="list-style-type: none"> <li>• textile-apparel (11.27);</li> <li>• livestock, forestry and fishing (9.91);</li> <li>• agriculture (9.02);</li> <li>• services (7.41).</li> </ul>	<p><i>in terms of export*</i></p> <ul style="list-style-type: none"> <li>• cereals (wheat, rice, other cereals and grains) (-5.30);</li> <li>• meat products (-4.11);</li> <li>• wood and paper (-3.00).</li> </ul>	7.02
Bouët et al. (2008) (for the year 2020)	<ul style="list-style-type: none"> <li>• sugar (9.76);</li> <li>• textile and wearing apparel products (7.82).</li> </ul>	<ul style="list-style-type: none"> <li>• wheat (-10.86);</li> <li>• vehicles and vehicle equipment (-4.59);</li> <li>• petroleum and chemical products (-2.33);</li> <li>• raw milk and diary products (-1.65);</li> <li>• meat (-1.31);</li> <li>• services (-0.23).</li> </ul>	-2.29
Morón et al. (2005) (after twenty years)			<ul style="list-style-type: none"> <li>• non-tradable 2.93</li> <li>• importable 1.97</li> <li>• exportable 4.73</li> </ul>
<b>Macroeconomic indicators</b>			
	<b>Gross Domestic Product (GDP) growth</b>	<b>Export growth</b>	<b>Import growth</b>
MINCETUR (2005) (for the year 2004)	2.31	5.39	5.44
Cuadra et al. (2004) (on the longest term)	7.02	12.00	11.55
Bouët et al. (2008) (for the year 2020)	-0.12	8.01	**
Morón et al. (2005) (after twenty years)	3.29	6.09	3.82

\*No negative data in terms of production available though negative impacts on subsector level do occur. This data on negative impacts in terms of export is derived from Fairlie Reinoso (2005, 42) who provides detailed information on the model used by Cuadra et al. (2004).

\*\* No general figure on import growth available. However, imports from the United States increase by fifty-eight per cent for Peru, but imports from every other trade partner decrease with the TPA.

Source: MINCETUR (2005a); Cuadra, Fairlie & Florián (2004); Bouët, Mevel & Thomas (2008); Morón, Bernedo, Chávez, Cusato & Winkelried (2005). Own elaboration.

**Annex 8: Peru's negotiating team**

Chief negotiating team: Pablo de la Flor Belaúnde		
Negotiating table	Chief	Institution
1. Market access (industrial and textile)	Eduardo Brandes	MINCETUR
2. Customs administration	Carlos Posada	MINCETUR
3. Rules of origin	Marcela Zea	MINCETUR
4. Technical barriers to trade	Carmen Ochoa	MINCETUR
5. Agriculture	Julio Paz	MINAG
6. Sanitary and phytosanitary measures	Elsa Carbonell	SENASA
7. Financial services	Javier Illescas	MEF
8. Cross-border trade in services	Benjamín Chávez	MINCETUR
9. Telecommunications	Liliana Ruiz	OSIPTEL
10. Electronic trade	Juan Luis Reus	MINCETUR
11. Investment	Carlos Herrera	Proinversión
12. Government procurement	José Luis Cano	MINCETUR
13. Competition policy and safeguards	Silvia Hooker	MINCETUR
14. Labour	Liliana Honorio	MINCETUR
15. Environment	Ernesto Guevara	MINCETUR
16. Dispute settlement and institutional matters	Sara Rosadio	MINCETUR
17. Intellectual property	Luis Alonso García	INDECOPI
18. Trade capacity building	Mercedes Aráoz	MINCETUR

*Source: MINCETUR, own elaboration*

### Annex 9: Business associations of CENI during the negotiations

<i>Gremios</i>
• <i>Asociación de Administradoras de Fondos Privados de Pensiones</i> (Association of Private Pension Funds Administrators, AAFP)
• <i>Asociación de Bancos del Perú</i> (Association of Banks of Peru, ASBANC)
• <i>Asociación de Empresas de Transportes Aéreo Internacional</i> (Association of International Air Transport Companies, AETAI)
• <i>Asociación de Empresas Privadas de Servicios Públicos</i> (Association of Private Companies of Public Services, ADEPSEP)
• <i>Asociación de Exportadores</i> (Exporters Association, ADEX)
• <i>Asociación de Gremios Productores Agroexportadores</i> (Association of Agroexporting Producers Gremios, AGAP)
• <i>Asociación de Representantes Automatrices del Perú</i> (Association of Automobile Representatives of Peru, ARAPER)
• <i>Asociación Peruana de Avicultura</i> (Peruvian Aviculture Association, APA)
• <i>Asociación Peruana de Consultoría</i> (Peruvian Consultancy Association, APC)
• <i>Asociación Peruana de Empresas de Seguros</i> (Peruvian Associations of Insurance Companies, APESEG)
• <i>Asociación Peruana de Entidades Prestadoras de Salud</i> (Peruvian Association of Health Service Entities, APEPS)
• <i>Asociación Peruana de Productores de Azúcar</i> (Peruvian Association of Sugar Producers, APPAR)
• <i>Bolsa de Valores de Lima</i> (Lima Stock Exchange, BVL)
• <i>Cámara Nacional de Turismo</i> (National Chamber of Tourism, CANATUR)
• <i>Cámara de Comercio de Lima</i> (Lima Chamber of Commerce, CCL)
• <i>Cámara Peruana de la Construcción</i> (Peruvian Chamber of Construction, CAPECO)
• <i>Cámara de Industria y Artesanía de la Pequeña y Microempresa de Arequipa y Región Sur</i> (Chamber of Industry and Craftwork of Small and Medium Enterprises from Arequipa and the Southern Region, CAMARAPYME)
• <i>Convención Nacional del Agro Peruano</i> (National Convention of Peruvian Agriculture, CONVEAGRO)
• <i>Cámara Nacional de Comercio, Producción y Servicios</i> (National Chamber of Commerce, Production and Services, PERUCAMARAS)
• <i>Consejo de Organizaciones de la Micro, Pequeña y Mediana Empresa del Perú</i> (Council of Micro, Small and Medium Enterprise Organizations of Peru, COMPYMEP)
• <i>Red Nacional de Cámaras</i> (National Network of Chambers)
• <i>Junta Nacional de Usuarios de Riego del Perú</i> (National Board of Peruvian Irrigators)
• <i>Sociedad de Comercio Exterior</i> (Foreign Trade Society, COMEX)
• <i>Sociedad Nacional de Minería, Petróleo y Energía</i> (National Mining, Oil and Energy Society, SNMPE)
• <i>Sociedad Nacional de Industrias</i> (National Industries Society, SNI)
• <i>Sociedad Nacional de Pesquería</i> (National Fishing Society, SNP)
• <i>Sociedad Nacional de Seguridad</i> (National Security Society, SNS)
<b>Total of 27 business associations</b>

Source: César Peñaranda Castañeda (2004) 'El TLC y el Rol del Sector Empresarial Privado en la Negociación': presentation at CONFIEP; own elaboration

**Annex 10: Business associations of CENI that participated in the working tables for the implementation of the TPA**

<i>Gremios</i>	Number of representatives
ASBANC	1
AETAI	2
ADEX	49
<i>Asociación Laboratorios Farmacéuticos del Perú</i> (Pharmaceutical Laboratories Association of Peru, ALAFARPE)	1
<i>Asociación para el Fomento de la Infraestructura Nacional</i> (Association for National Infrastructure Development, AFIN)	5
APA	4
<i>Asociación Peruana de Propiedad Industrial y Derechos de Autor</i> (Peruvian Association of Industrial Property and Author Rights, APPI)	1
<i>Asociación Peruana de Empresas de Servicio Expreso</i> (Peruvian Association of Express Service Companies, APESE)	2
American Chamber of Commerce (AMCHAM)	18
CCL	22
CONFIEP	0
<i>Confederación Peruana de Madera</i> (Peruvian Wood Confederation, CPM)	2
<i>Consejo Nacional de Usuarios del Sistema de Distribución Física Internacional de Mercancías</i> (National Council of Merchandise Distribution Users, CONUDFI)	2
COMEX	7
SNI	46
SNMPE	1
SNP	3
<b>Total of 17 business associations</b>	<b>Total of 168</b>

Source: CENI (2008) *Implementación y Provechamiento del Acuerdo de Promoción Comercial Perú – Estados Unidos*. Presentación de Ing. Roque Benavides Ganoza a la Comisión de Comercio Exterior del Congreso de la República; 5 May 2008

Annex 11: MINCETUR's map of the exportable offer of Peru

# Mapa de la oferta exportable del Perú

Todas las regiones tienen productos que pueden competir con éxito en el mercado mundial y contribuir a generar inversión y empleo descentralizados.



Source: MINCETUR, "TLC y Agro" 2005



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