
Challenges of the Free Trade Agreement between Ecuador and China

Latinoamérica Sustentable

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Summary

In January 2023, the Ecuadorian government announced the technical completion of the Free Trade Agreement (FTA) between the People's Republic of China (hereinafter, China) and Ecuador, after a record time of ten months and four rounds of negotiations. After the legal review process was completed, the two governments officially signed the treaty on May 10. However, for the agreement to take effect, it must be analyzed by the Constitutional Court and be approved by the National Assembly before finally being ratified. If this happens, Ecuador will become the fourth country in the region to have an FTA with China. In this scenario, what are the implications of an agreement of this magnitude? What can we expect based on the experiences of

Costa Rica, Peru and Chile? This article reflects on these questions and the social and environmental impacts that the imminent ratification of this trade agreement could bring.

Introduction

Undoubtedly, 2023 will be a year remembered in Ecuador for one of its biggest political crises of the century. In the midst of the debates on the future of President Guillermo Lasso, in a context of an impeachment trial in the National Assembly, it very much appears that a historically significant issue for the country is going completely unnoticed: on May 10, the FTA between China and Ecuador was signed. If it goes into effect, Ecuador will become the 25th country in the

¹ Latinoamérica Sustentable (LAS) is a non-governmental organization based in Ecuador that works for the protection of the environment and local communities in the context of Chinese investments in Latin America and the Caribbean. LAS researches, informs, develops advocacy tools, organizes training activities and promotes exchanges between social organizations in Latin America and other regions of the world.

world and the fourth in the region to sign an FTA with China.

Beyond the widely known economic impacts of this type of agreement, which include trade dependency, reprimarization, and deindustrialization, this article proposes to discuss the social and environmental impacts of signing a trade agreement with the “largest factory in the world.” So far, China has signed three FTAs in the region, with Chile, Peru, and Costa Rica, and these cases provide lessons and insights into the possible effects of the pact in a commodity-exporting country like Ecuador.

The document is divided into three parts. The first presents a brief context of the trade relationship between China and Latin America, as well as the main bilateral agreements signed with the countries of the region and the level of strategic relationship. The second section discusses the negotiation process and the current status of the FTA between China and Ecuador, characterized by inexplicable haste, secrecy, and lack of transparency. The third part presents the main socio-environmental concerns and challenges that this agreement would entail, namely the deepening of extractivism, prioritization of legal security for international companies at the expense of the rights of communities and the environment, threats to food sovereignty, among others, and ends with some recommendations for civil society.

Trade relationship and bilateral agreements between China and Latin America

The trade relationship between China and Latin America can be traced back to the 1970s, as Latin American countries slowly began recognizing China in the United Nations (UN) and officially established diplomatic relations. Throughout the 1990s, following the global trend driven by free trade and globalization, China signed over ten Bilateral Investment Treaties (BITs) with Latin American countries, which would lay the groundwork for the deepening of the bilateral trade and investment relationship in the following decades.

At the beginning of the 21st century, two milestones in China’s global expansion strategy triggered unprecedented trade exchanges: the “Going Out” policy and China’s joining to the World Trade Organization (WTO). The consequent opening of new markets and the transnationalization of Chinese companies were accompanied by an increase in the prices of raw materials in the region, which allowed relations between the Asian giant and Latin American countries to expand exponentially. By the end of the first decade of the century, China had become the world’s second-largest economy, the top producer and exporter of manufactured goods, the main global holder of international reserves, and the third-largest global issuer of Foreign Direct Investment (FDI) (Serbin, 2022, 7).

The relationship deepened further in the second decade of the century. In 2008 and 2016, the Chinese government published two white papers on China's foreign policy for Latin America, reaffirming its intention to expand ties with the region and established that trade, financing, and investment would be the main entry channels for Chinese companies and capital in the natural resources, infrastructure, and energy sectors. In this scenario, seven countries in the region established a Comprehensive Strategic Partnership (CSP), the highest level of bilateral relations granted by China.

China's expansion strategy in the region was consolidated in 2018, when the Belt and Road Initiative (BRI) -launched by President Xi Jinping in 2013- contemplated a global scope that included Latin America. The BRI predicts a period of major commercial trade based on the connection of major global supply chains in five areas: politics, infrastruc-

ture, trade, finance, and human connectivity.² At the time this article was written, 21 Latin American countries had officially joined the BRI.

Table 1 shows the main bilateral trade agreements (BITs and FTAs) and strategic (CSP and BRI) agreements signed between China and Latin American countries. According to these data, Chile and Peru are the "closest" to China (with four agreements), followed by Argentina, Costa Rica and Ecuador (three agreements). The case of Brazil is interesting because, despite having only one agreement (CSP), it is undoubtedly one of China's most important partners in the region. This case, as well as those of Venezuela and Mexico, as some studies point out, evidences that the CSP is the most important relationship agreement and the one that sets the tone for the level of bilateral exchange and the country's strategic priority for China (Bittencourt, 2023).

Table 1
Main bilateral agreements between China and Latin American countries

COUNTRY	BTI	FTA	CSP	BRI
Antigua and Barbuda				2018
Argentina	1992		2014	2022
Barbados	1998			2019
Belize	1999			
Bolivia	1992			2018
Brazil			2012	
Chile	1994	2005/2019	2016	2018

² It should be emphasized that at the 20th National Congress of the Communist Party (October 2022) a new Global Development Initiative (GDI) was presented, which was previously outlined by President Xi at the United Nations General Assembly (September 2022) and could indicate a significant shift in China's foreign policy.

COUNTRY	BTI	FTA	CSP	BRI
Colombia	2008			
Costa Rica	1999	2010		2018
Cuba	1995			2018
Dominica				2018
Ecuador	1994		2016	2018
El Salvador				2018
Granada				2018
Guyana	2003			2019
Honduras	1996			
Jamaica	1994			2019
Mexico	2008		2013	
Nicaragua				2022
Panama				2017
Peru	1994	2009	2013	2019
Dominican Rep.				2018
Suriname				2018
Trinidad and Tobago	2002			2018
Uruguay	1993			2018
Venezuela			2014	2018

In the past two decades, Chinese companies have invested around 172 billion dollars and have built over 200 infrastructure projects, mainly in the energy and transportation sectors, in more than 20 Latin American countries (Dussel Peters, 2022a, 2022b). In terms of trade, China went from being a minor partner to becoming South America's main trading partner and the second most important in the entire region. Between 2000 and 2021, trade between the two regions multiplied 26 times over, and trends indicate that it may even double by 2035 (Sahd, 2022). The trade balance reveals an asymmetrical relationship in which Latin America has deepened its role as a commodities exporter, while reinforcing its extractive model to meet China's growing demand for natural resources.

To date, China has signed three FTAs with Latin American countries: Chile (2005), Peru (2009), and Costa Rica (2010). The first two required several rounds of treaty updates or optimizations, but only Chile managed to close out the process in 2019, while negotiations in Peru came to a halt. Meanwhile, new trade agreements are advancing rapidly in the region. Ecuador concluded the negotiation stage in December 2022, and if it is able to complete the current phase of legislative approval, this could become the nation's first FTA with an Asian country. On the other hand, Uruguay approved the feasibility study for an FTA with China in July 2022, and Nicaragua and Honduras officially announced that they will initiate negotiations in 2023.

Table 2
Details of FTAs between China and Latin American countries

Country	Status	FTA Signed	FTA goes into force	Upgrade	Upgrade goes into force
Chile	In force	November 8th, 2005	10/01/2006	Several negotiation rounds between 2016 and 2018.	March 1st, 2019
Peru	In force	April 28th, 2009	March 1st, 2010	4 rounds during 2019 (on hold)	—
Costa Rica	In force	April 8th, 2010	August 1st, 2011	—	—
Ecuador	In the legislative approval phase	—	—	—	—
Panamá	On hold (5 rounds of negotiation: 2018 and 2019)	—	—	—	—
Uruguay	Announced. FTA feasibility study approved (July 2022)				
Nicaragua	Announced (September 2022)				
Honduras	Announced (May 2023)				

The signing of the FTA in all countries marked a milestone in trade relations with China, as the Latin American parties presented it as a mechanism to diversify the basket of exports, enter a market of over 1.44 billion people, and attract investment. However, it is important to consider that, although in Chile and Peru once the treaties came into effect, trade experienced rapid growth and the countries achieved a surplus in bilateral

trade balance, the desired diversification has been far from being achieved.

In both countries, mining exports have grown consistently over the past decade and have topped the list of the main products exported to China. As a result, in 2021, the mining sector represented for 84.4% and 88% of Chilean and Peruvian exports to China, respectively. Copper, the main

exported product, accounted for 71.6 % of Chilean shipments and 70 % of Peruvian shipments. China has become the world's largest buyer of Chilean and Peruvian copper (De Echave and Yauri, 2023, 12-14). On the import side, Peru and Chile mainly purchase information technology products that include cell phones, vehicles, and machinery from China, drawing attention to a significant trade asymmetry, as Latin American countries deepen their commodity export role while continuing to import high value-added manufactures from the "world's largest factory."

The road to the China-Ecuador FTA

The trade relationship between China and Ecuador officially began in 1973, after Ecuador broke off relations with Taiwan and negotiated for the first time the sale of 20.000 tons of bananas to China. In January 1980, both countries established diplomatic relations and opened their embassies in Quito and Beijing, respectively (Garzón and Castro, 2018, 23). During the following two decades, the bilateral relationship was characterized by limited diplomatic cooperation agreements, trade promotion, scientific and technical cooperation, credit facilities for social infrastructure, and investment agreements, particularly in the oil and gas sector (Castro, 2021).

However, it was not until 2007, at the beginning of Rafael Correa's administration, that the relationship became strategic. By the end of his presidency, a decade later, Ecuador had become the fourth-largest recipient of Chinese financing in

Latin America, and China was its main source of bilateral financing, the leading contractor for public infrastructure projects, and was emerging as Ecuador's second-largest trading partner.

In 2021, when Guillermo Lasso took office, Ecuador's relationship with China took a turn that was fully expected for a right-wing government: financing and construction of public infrastructure was reduced, and trade and investment were promoted. This happened in a particular scenario, one in which the Lasso administration unprecedentedly promoted opening the country to trade and announced that it would sign at least ten trade agreements by 2025.³ (Benarroch and Brik, 2021). In his inauguration speech in May 2021, Lasso stated: "We will open Ecuador to free trade agreements with our biggest allies. We will fully integrate ourselves into the world to seek free and fair trade" (Coba, 2021). So far, the administration has successfully negotiated three agreements: with China, Costa Rica, and South Korea, while agreements with countries that include Mexico and the United States are on hold. Regarding the latter, the Minister of Production, Julio José Prado, recently stated that "neither China nor the United States have pressured us to suspend negotiations" and ratified the Ecuadorian government's interest in moving forward and finalizing a trade agreement with the United States (El Comercio, 2023b). Likewise, economist Alberto Acosta Burneo stated that "the United States is the main destination of our total exports and China is the [largest] destination of our non-oil exports," making both markets crucial for Ecuador (France 24, 2023).

3 The negotiation of four agreements, with the United States, Mexico, Panama, and the Dominican Republic, began during the government of his predecessor, Lenín Moreno.

Negotiation process and current status of the FTA

In January 2023, the Ecuadorian government announced the technical completion of negotiations in the China and Ecuador FTA, ten months after President Lasso traveled to Beijing (in February 2022) and signed the Memorandum of Understanding that marked the beginning of the process. The announcement did not establish an exact date for official signing of the treaty, stating that it would take place “after completing the respective processes of formalizing of the offers, translation, and legal review” (MPCEIP, 2023). Although Minister Julio José Prado had announced that he would travel to Beijing to sign the agreement in person, on May 10, 2023, both governments ended up officially signing the treaty at a ceremony held in Quito.

The treaty was agreed in record time, following four rounds of negotiations covering 17 disciplines, which took place between July and December 2022.⁴ The government announced it as the “fastest negotiation in history” (González, 2023). The text of the agreement, published in official channels on the day of the signing, contains more than 700 pages, with 17 chapters on topics that include market access for goods, rules of origin, improvement of customs procedures, and trade facilitation, trade defense, protocols for sanitary and phytosanitary measures, reduction of technical barriers to trade, cooperation for investment, promotion of e-commerce, compe-

tion, transparency, dispute settlement, and economic cooperation (China-Ecuador FTA, 2023). Unlike the recently negotiated agreements with Costa Rica and South Korea, this treaty contemplates the liberalization of trade in goods, but not for services or investments, leading some to argue that it cannot be considered a proper FTA, but rather a trade agreement (González, 2023). On the Ecuadorian side, negotiations were carried out jointly between the Ministry of Production, Foreign Trade, Investments, and Fisheries (MPCEIP) and the Ministry of Foreign Affairs.

Ecuador’s exports to China have been growing at an annual rate of nearly 50% in recent years (El Comercio, 2023b). In 2022, the Asian country surpassed the United States and the European Union, becoming Ecuador’s top destination for non-oil exports. With this FTA, it is expected that exports will increase even further, and 99% of them will reach the destination with preferential tariff treatment. Currently, Ecuador’s main export products to China are concentrated in the oil, mining, and increasingly, agricultural and food sectors, including shrimp, wood, bananas, tuna, and fish. Ecuador imports machinery and mechanical appliances, vehicles, electrical equipment, and other manufactured goods from China (Fedexport, 2022).⁵

In this scenario, it is worth asking: How will the export basket change? Will the diversification and technology transfer promoted by the government be achieved? The experiences of Peru and

4 As a reference, the FTA with Peru, which at the time was questioned for the haste with which the negotiations were carried out, had six rounds in 11 months.

5 It is worth noting that the agreement excludes 11% of Ecuadorian products, between 820 and 840 items, mainly in the footwear, metalworking and white goods sectors, in order to protect these national industries (El Comercio, 2023b). Other sensitive sectors such as vehicles, household goods, meat, textiles, wood and furniture, among others, have gradual tariff reduction periods of up to 20 years (El Comercio, 2023a).

Chile show that this is unlikely to happen in the short term, but exports will likely grow due to the increased sales of traditional products from the hydrocarbon, mineral, and agricultural sectors, mostly linked to extractive activities, which will bring significant social and environmental impacts. President Lasso himself anticipated this possible deepening of the primary export-oriented extractive model when, in August 2022, he referred to trade liberalization, stating that “more bananas and shrimp and flowers from Ecuador in the world means more jobs in Ecuador” (Primi-cias, 2022). Thus, for some, the China-Ecuador FTA is not anchored in productive sector development policies, but rather is based on the interests of exporters and importers (France 24, 2023).

This could be the result of the fact that, at the negotiating tables, the business sector was allowed to participate through a mechanism entitled the “*cuarto adjunto*” or consultative group, through which businesses provided “inputs and information, which helped strengthen the negotiating team’s strategy” (MPCEIP, 2023). However, civil society organizations, the press, and the academic sector had no participation in the process. This resulted in the negotiations being conducted with a high level of secrecy, without timely access to information on the agreements being made. This is confirmed by the internationalist Natalia Encalada, who finds that the negotiations were not only carried out with great haste, but also without any communication with the interested sectors (Romero, 2023). This is regrettable considering that the “*cuarto adjunto*/consultative group” is a mechanism for participation and transparency aimed at informing, communicating, and making recommendations throughout the negotiation process involving different sectors of civil society.

Additionally, unlike the agreements Ecuador was able to reach with Costa Rica and South Korea, negotiations for the China-Ecuador treaty did not address intellectual property, public procurement, labor, and environmental rights; rather, they emphasized market access. In fact, only two articles of the agreement mention environmental issues: Environmental Measures (Art. 9.3) and Environmental Cooperation (Art. 16.13), both subject to the trade chapters on Investment Cooperation (IX) and Economic Cooperation (XVI).

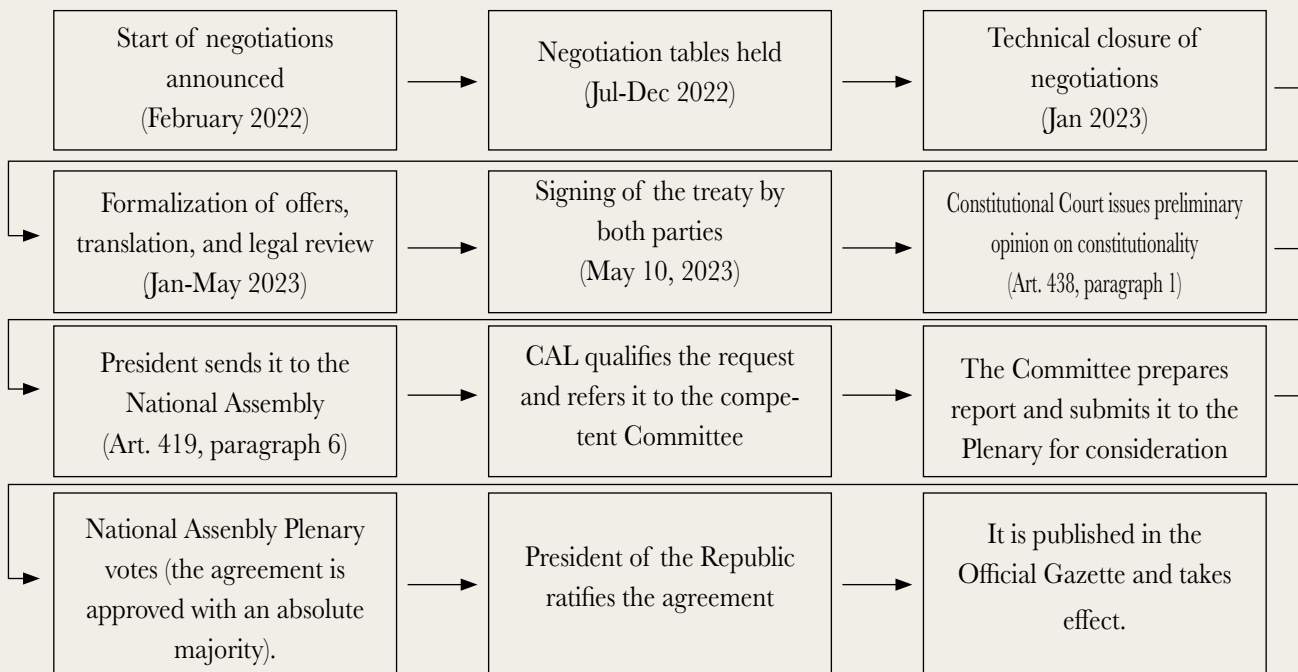
In a recent interview, Minister Prado stated that the negotiations were done this way because it is “simpler and faster” to negotiate solely on the trade of goods and avoid addressing other topics that are usually considered in third-generation agreements that include services and investments (Sonorama, 2023). With this approach, the important implications of the trade of goods on the environment and labor rights are overlooked, as it focuses on promoting large-scale commodities export activities. According to a confidential source close to the negotiation process, the environmental and labor issues were not considered at any table, not even tangentially, at the request of the Chinese government. This fact is concerning, considering that the China-Costa Rica and China-Chile FTAs did include sections on these issues, which, although limited in their non-binding nature, represent progress towards social and environmental protection and provide a framework for demanding their implementation.

Going forward, once signed, the agreement will be subject to the process of constitutional control and legislative approval before being

ratified and entering into force, a process that could take around a year.⁶ According to Article 438 of the Constitution of the Republic, the Constitutional Court will issue a prior and binding opinion on the constitutionality of international treaties before their ratification by the National Assembly. Once the Court's opinion is obtained, "the ratification or denunciation of international treaties will require the prior approval of the National Assembly" in cases where the treaties "commit the country to integration and trade agreements" (Art. 419, literal 6). For this purpose, the National Assembly's Legislative Administration Council (CAL), the body to which all proposed bills are submitted, will

assess and determine a competent Committee, which could be the Committee on International Relations and Human Mobility or the Sovereignty Committee (this qualification procedure does not always or necessarily obey entirely legal considerations; rather, it is primarily influenced by political considerations). The Commission will prepare the report and submit it for the plenary's knowledge. Once in debate, an absolute majority (half plus one) in favor will be required to approve the report. If admitted, the President of the Republic will have the power to ratify the agreement, and only then will it enter into force (see Illustration 1).

Illustration 1 FTA negotiation, signing, and approval process in Ecuador



⁶ After finishing writing this article, President Guillermo Lasso signed executive decree 741 declaring "cross death" (<https://www.eluniverso.com/noticias/politica/este-es-el-texto-del-decreto-presidencial-con-el-cual-guillermo-lasso-mando-a-muerte-cruzada-nota/>), which orders dissolution of the National Assembly until new elections are called, which will presumably be held on August 20, 2023. During this period, the President is seeking to have the Constitutional Court provisionally enforce the trade agreement (<https://www.expreso.ec/actualidad/economia/gobierno-busca-corte-vigencia-temporal-acuerdo-comercial-china-160844.html>). However, the Minister of Government, Henry Cucalón, confirmed that the approval process will be put on hold, and it will be up to the next Assembly to review and ratify the FTA (<https://www.eluniverso.com/noticias/economia/muerte-cruzada-pone-en-espera-la-vigencia-del-acuerdo-comercial-con-china-nota/>).

What if it takes effect? Socio-environmental implications and challenges

Although there are no in-depth studies on the positive or negative impacts of FTAs with China, there is abundant evidence of the challenges that these types of agreements with traditional powers have imposed on commodity exporting countries, where dependence on commodities, reprimarization, and deindustrialization tend to deepen, generating adverse effects on the economy, human rights, and the environment.

Most of China's projects in Latin America, and particularly in Ecuador, are of an extractive nature (mining, hydrocarbons, energy, agro-industry, etc.) and are located in environmentally sensitive areas (Amazon, paramos, forests) having a significant presence of indigenous populations and/or local communities. An FTA with the "world's largest factory" not only has the potential to flood the national market with Chinese products that would threaten the already struggling Ecuadorian industry, the FTA also entails a high probability of deepening an extractive logic that would violate labor and environmental rights in the territories where investments would be made. By strengthening BITs, the treaty prioritizes the legal security of the international investors, and this threatens the sovereignty of the States, which find it impossible to guarantee the constitutional framework of human rights in investment projects.

In Peru, for example, in 2016, the companies Aluminum Corporation of China and Chinalco invoked "the protections granted by the FTA" to file a claim against Peru for not guaranteeing availability and access to land (which is occupied) for the Toromocho mining project. In Ecuador, even without the FTA in effect, in October 2022, Junefield Gold, under the Ecuador-China BIT, sued the Ecuadorian State for lack of guarantees and legal security by "allowing invasions by activists and opponents to occur" in the Rio Blanco mining project,⁷ which has been put on halt by a court order issued in 2018.

Another issue of particular concern is food sovereignty. The FTA with a country like China, with its growing demand for food resources, could intensify monoculture activities for export, which, in addition to affecting the right of peoples to define their own food and achieve self-sufficiency, would weaken public policies aimed at the domestic market while promoting agricultural standards that benefit large export corporations and have irreversible environmental effects on the soil and water of the territories. The government has announced that the FTA with China will significantly increase the export of traditional Ecuadorian products that include shrimp, bananas, flowers, cocoa, and coffee, and will open the doors to non-traditional products, such as "pitahaya, pineapple, mango, blueberries, quinoa, processed foods, fresh and preserved fruits, and a large number of other agricultural and agro-industrial products" (MPCEIP, 2023).

7 For more information on this project see: <https://thepeoplesmap.net/project/rio-blanco-mining-project/>. For more information on the judicial process, see the 2018 ruling: <https://www.derechosdelanaturaleza.org.ec/wp-content/uploads/2018/04/SENTENCIA-RÍO-BLANCO.pdf>

The experiences of Chile and Peru are clear evidence of these impacts, showing that the disadvantages outweigh the benefits. In a December 2022 event on the challenges of Ecuador's FTA with China, two experts reflected on the lessons learned and experiences from the Peruvian and Chilean cases. According to Javier Mujica, in general terms, Peru "did not need this treaty to expand its exports." For example, mining exports, especially copper, increased significantly due to China's demand and interest in the mineral, but not as a direct result of signing the treaty. Likewise, the attorney Juan Carlos Urquidi Fell points out that, in Chile, since the FTA was signed, more cases of corruption and lack of transparency have been evident in investment projects protected by the agreement. Both emphasize that the impacts on human rights and the environment have worsened, even though the agreements have clauses for environmental and social protection (Latinoamerica Sustentable, 2022).

From the start of negotiations in Peru and Chile, there was repeated insistence on the need to include environmental and labor rights chapters in the agreements. Today, these types of chapters are considered good international practice to prevent or mitigate the impacts that accompany the promotion of trade and international investments, although their implementation faces significant challenges.⁸ Two agreements, that of Chile and Costa Rica, include environmental and labor sections.

The FTA with Costa Rica contains two "Memorandums of Understanding and Cooperation on Labor and Environment." In the FTA with Chile, environmental and labor issues were addressed superficially in Chapter XIII, on "Labor, Social Security, and Environmental Cooperation," which also established the signing of a "Memorandum of Understanding and Cooperation on Environment," but this is not part of the FTA, so its provisions are not binding. Although in the optimization of the treaty (in effect since 2019), it was possible to include an environmental chapter (Chapter VI. Environment and Trade), it does not include specific commitments for the parties. In other words, in both the FTA with Costa Rica and the FTA with Chile, the environmental and labor sections are not binding, but rather declarative, and they are not associated with the trade activities they are intended to promote, so they have had no practical effect on environmental protection.

In the case of Peru, the optimization process was put on hold and the environmental and labor aspects are still pending, despite the fact that different sectors of civil society have demanded their inclusion (Ministry of Foreign Trade and Tourism of Peru, 2019). In Ecuador, the situation is even worse; as mentioned above, environmental and labor issues were not even considered at the negotiating tables and were left out of the final agreement.

⁸ This is not a new issue for China. By the end of 2020, China had signed FTAs that include environmental chapters or annexes with New Zealand, Switzerland and Chile, while others were in the final stages of negotiation with Norway and Israel.

In this context, it is essential to reflect on the role of civil society in the signing and subsequent legislative approval of the FTA with China. There are at least three important tasks to consider. First, civil society needs to critically examine these processes that tend to technocratize the treaty discussions and depoliticize them (removing them from society). This involves translating the contents of the agreement into the impacts it would have on people's lives. It is necessary to understand "what is behind" the clauses in order to recover the political meaning of social action. This requires coordinating and joining efforts to raise awareness of the risks and impacts that the ratification of an FTA with China would bring since many industrial and social sectors are unaware of its effects.

Second, it is necessary to build new narratives and rethink new forms of resistance collectively. We need ways to resist an increasingly invasive and extractivist capitalism that disregards environmental and social costs in favor of free markets, legal certainty, and economic growth. Currently, there is a demobilization and lack of information among civil society, which significantly affects collective action.

Third, the press and the media play a very important role in making these challenges visible and in demanding transparency, access to information, and the inclusion of good international practices related to social and environmental standards as well as the participation of civil society, aspects that have been a persistent problem in the bilateral and regional relationship with China.

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