

**FREE TRADE AND AGRICULTURAL
PUBLIC POLICIES FOR PRODUCERS
OF MILK IN COLOMBIA***

**TRATADOS DE LIBRE COMERCIO Y
POLÍTICAS PÚBLICAS AGROPECUARIAS PARA
LOS PRODUCTORES DE LECHE EN COLOMBIA**

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ABSTRACT

This article aims at discussing the Santos government agricultural policies in relation to dairy farmers in Colombia. The dairy sector has been regarded as the agricultural sub-sector most negatively affected by FTAs signed by the Colombian government, especially with the United States and the European Union. Consequently, there is a need for clear public policies for milk producers in Colombia. There are some changes in the approach to agricultural policies by the Santos government. However, it will be argued that conceptual clarity is needed on the priorities of these policies, especially considering aspects of export orientation, local production and rural development.

Keywords: free trade; dairy; agricultural public policy

RESUMEN

En el presente artículo se discutirán las políticas agropecuarias del gobierno Santos en relación con los productores lácteos en Colombia. El sector lácteo ha sido considerado como el sub-sector agropecuario más negativamente afectado por los Tratados de Libre Comercio contemporáneos firmados por el gobierno colombiano, especialmente con los Estados Unidos y con la Unión Europea. Consecuentemente, hay una necesidad de formular políticas públicas claras para los productores de leche en Colombia. Hay ciertos cambios en acercamiento hacia las políticas agropecuarias por parte del gobierno Santos. Sin embargo, se argumentará que hace falta la claridad conceptual sobre las prioridades de estas políticas, especialmente considerando aspectos de la orientación exportadora, producción local y desarrollo rural.

Palabras clave: tratados de libre comercio; productores de leche; políticas públicas agropecuarias

SUMMARY

INTRODUCTION. – I. FREE TRADE AGREEMENTS AS POLICY TOOLS. – II. RURAL DEVELOPMENT POLICIES AND SELECTED ISSUES OF THE LAND QUESTION. – CONCLUSIONS.

INTRODUCTION

Certain actors of the Colombian dairy sector (especially dairy farmers)¹ are afraid that the implementation of the Free Trade Agreements (FTA) signed by the Colombian government will result in serious deterioration of the local dairy production in Colombia. There are opinions which go as far as foreseeing the disappearance of small local milk producers unable to compete against cheap imported products entering duty free or with reduced tariffs. The trade related market liberalization of the Colombian dairy sector became a central issue of agricultural policy debate in Colombia especially after the signing of the FTA with the European Union.²

The dairy sector is one of the most protected agricultural sectors in several developed countries. The world dairy market is dominated by a limited number of exporting countries. On the other hand, only 7% of the world dairy production enters the international trading system (International Dairy Federation, 2010, 5). That way, as a general rule national production covers national consumption. Colombia falls into the example of mainly “self-sufficient” national dairy markets, with limited export potentials, given the current prices due to the still existing protection of the local market by relatively high customs tariffs and quotas. On the other hand, the dairy sector faces severe problems of competitiveness. The domestic support measures for the sector in Colombia are low, especially compared with the EU and the US. Furthermore, available financial resources to provide more support are limited.

The agricultural agenda is a highly debated issue of the World Trade Organization’s Doha Round, and contributed in a significant manner to the interruption of these multilateral market liberalization talks. On the other hand, it should be noted that the mere dismantling of protectionist policies in developed countries will not necessarily result in increased trade of agricultural goods for developing countries. Developed countries even without a subsidy system remain strong competitors. This is because there is a gap in

1 The present article concentrates on dairy producers. The situation of dairy processors is not treated in details.

2 Fedegan, *Desde el cuarto de al lado. La ganadería en los Tratados de Libre Comercio*, Fedegán, Bogotá, 239 (2013).

technology and production levels between these two groups. Hence, there is a need to find the way for developing countries to implement agricultural public policies (including certain protectionist measures) to further develop their sectors.

The Colombian agriculture in the 20th century had periods of uneven development. After the 1930s the agriculture had an important growth until the 1980s, since then the sector is mainly stagnating.³ It maintained a dual economy of large and small landholdings. The situation of small landowners has always been difficult. Forced displacement, social inequalities and violence have been the most influential negative social factors in the Colombian agriculture. Cattle farming had a dominant role in Colombian agricultural development covering most of the agricultural land.

The Colombian State has been using trade related market liberalization policies to introduce competitiveness in the Colombian agricultural market.⁴ Notwithstanding, the unilateral market liberalization policies of the 1990s did not result in enhanced competitiveness for the dairy sector. It cannot be expected that the opening of the uncompetitive Colombian dairy sector to strong international dairy trade actors such as the EU, the US but also Argentina and Chile will resolve the structural problems of the sector. Therefore, the lack of competitiveness of the dairy sector in Colombia must be treated by internal public policies. The government of Juan Manuel Santos Calderón proposed certain changes in agricultural policies in Colombia. As further argued in this article, its agricultural policies represent a combination of the promotion of agro-industrial development based on exports and market oriented policies for small and medium size producers. The agrarian reform was also revived, which is at the same time linked to the launch of the peace talks with the guerrilla group FARC. Although, after two years and a half of President Santos in government, only certain mid-term results can be analyzed; it shows that a considerable amount of new policies have been put on track, while there is a risk of lagging behind in the effective implementation.

3 Salomón Kalmanowitz & Enrique López Enciso, *La agricultura colombiana en el siglo XX*, Banco de la República, Bogotá, 13 (2006).

4 Ildikó Szegedy-Maszák, *Consequences of the Trade Agreement between the European Union and Colombia and the Globalized Nation-State as a Solution: The Case of the Colombian Dairy Sector*, Doctoral Thesis under revision (2013).

The aim of the present article is to evaluate the dairy producers' related agricultural policies of the Santos government. For the purpose of this revision the free trade agreements signed by Colombia with the United States of America and with the European Union are studied, as well as the related rural development policies implemented by the Santos government. The revision is limited in scope for the dairy sector related issues of these policy instruments. As a result of the above, the present article is divided in two sections: i) Free Trade Agreements as policy tools; ii) Rural development policies and selected issues of the land question.

I. FREE TRADE AGREEMENTS AS POLICY TOOLS

Export-oriented agriculture is the central issue of current agricultural policies in Colombia. It is based on the policy goal to enhance international competitiveness of the agricultural sector through negotiating free trade agreements.⁵ Notwithstanding, as the example of the Colombian dairy sector shows, it is not necessarily true in all cases. As argued in the present chapter, the FTA with Mercosur and Chile resulted in rapidly growing imports. Additionally, the FTA negotiated with the US (already in force) and with the EU (under ratification), two of the most important dairy product exporters worldwide,⁶ are expected to considerably effect the already uncompetitive Colombian dairy sector through increasing dairy product imports with very limited export possibilities. Whereas, the import of milk powder mostly hit Colombian dairy producers.

5 The contemporary trade agreements of Colombia had been signed since the 1990s: with Chile in 1993, with Mexico in 1994 and with the Caribbean Community (Caricom) in 1994. The deepening of the regional integration process of the Andean Community of Nations (CAN) also dated back to the early 1990s. On the other hand, the agreements with Cuba (2000), the South Common Market (Mercosur) (2004), the Northern Triangle of Central America (1984/2007), with Canada (2008), with the European Free Trade Association (EFTA) (2008) and with Venezuela (2011) were already results of the 21st century commercial policies based on accelerated bilateral trade liberalization. The two politically and trade wise most significant trade agreements for Colombia: the United States of America – Colombia Trade Promotion Agreement and the Trade Agreement between the European Union and Colombia and Peru were signed in 2006, and 2010 respectively. Currently, Colombia has trade agreement negotiations in process with various parties among others with Costa Rica, Israel, Pacific Allianz, Japan and Panama. The agreement with South Korea is signed, while the negotiations with Turkey are suspended.

6 OECD-FAO, *OECD-FAO Agricultural Outlook 2012-2021*, OECD Publishing on-line. Retrieved from <http://www.oecd.org/site/oecd-faoagriculturaloutlook/> and <http://www.agrinet.de/I-Team/2012.07.13.%20Agricultural%20Outlook-2012-2021-Kapitel-Milch.pdf> (2011).

Milk powder imports from Mercosur corresponded to USD 33.4 million (FOB) in 2012 (USD 24.7 million (FOB) from Argentina and USD 8.6 million (FOB) from Uruguay, amounting to 29.5% and 10.2% of all Colombian milk powder imports in 2012). In the same year Colombia imported from Chile 6,718 tons of milk powder (mostly whole-milk powder (WMP)), which was 500 tons more than from Argentina; and 2,865 tons of whey (resulting in the single most important origin of imported whey in Colombia), and 49.8 tons of cheese (more than all cheese imports from France and the Netherlands together). As a consequence of growing dairy product imports, especially from Argentina, the Colombian government announced on 13 January 2013 the application of a safeguard measure for milk powder originating from Argentina for a period of 90 days with possible extension up to 2 years, considering the 500% import growth of this product from that origin.⁷

The US negotiated the Trade Promotion Agreement with Colombia from November 2003. The agreement was signed on 22 November 2006 and its Protocol of Modifications on 28 June 2007. The Agreement after long delay was finally ratified in the US Congress and entered into force on 15 May 2012. The negotiations of the dairy sector were different to the negotiations of any other sector included in the Agreement and was first to be negotiated by the private sector representatives of each party and then by the State delegations.⁸ From Colombia Analac⁹ led the negotiations. The negotiating position of Colombia for dairy products was offensive, except for milk powder and processed cheese.

Before the entry into force of the Agreement, dairy products originating in the US were charged by the MFN tariff of Colombia with Price Stabilization Mechanism of the Andean Price Band System. The Andean Price Band System was eliminated for all agricultural

7 For milk powder customs tariffs were increased to 98% (Colombian MFN applicable tariff), with a 993 tons quota of 6.6% tariff and an additional quota up to 1957 tons in total with 20% tariff. See Lácteos se suman a lista de sectores con medidas de ayuda, 29 January, *Portafolio*. Retrieved from http://www.portafolio.co/detalle_archivo/DR-79615 (2013).

8 Andrés Espinosa Fenwarth, *Análisis del Acuerdo de Asociación Económica de la Comunidad Andina de Naciones con la Unión Europea: Agricultura y Medidas Sanitarias y Fitosanitarias*, Under edition by Serie Estudios y Perspectivas Oficina de la CEPAL en Bogotá Naciones Unidas – CEPAL, 34 (2013).

9 *Asociación Nacional de Productores de Leche* (Analac) was established in 1956. Analac represents the interests of dairy producers. Retrieved from <http://www.analac.org>

products (Appendix I Article 2b of Agreement). Additionally, Colombia unilaterally accepted to apply to US originating agricultural products the “other clause of preference” (Appendix I Article 2 of Agreement), according to which, preferential duties accorded in future preferential arrangements undertaken by Colombia after February 27 of 2006 must also be applied to US originating agricultural products. It means that all more favorable duty preferences provided in these agreements or arrangements are applicable upon entry into force to US originating agricultural products.

As regards dairy products, Colombia agreed to apply immediate duty free treatment for whey. For the rest of the dairy products tariffs were to be gradually eliminated in a period between 11 and 15 years, depending on the product. For the elimination period growing duty free quotas were also established for US originating dairy products. Quotas were established especially high for milk powder and cheese tariff lines. Colombia established its tariff base rate for dairy products in average between 20-33%, which was much lower than the effective MFN tariff at the time of entry into force of the Agreement.¹⁰ For products originating in Colombia before the entry into force of the Agreement 3rd country tariff or the Andean Trade Promotion and Drug Eradication Act (ATPDEA) was applicable.¹¹ Nevertheless, ATPDEA did not apply for 04 dairy tariff lines, neither its predecessor the ATPA. In the Agreement for all dairy tariff line sub-groups the US provided a mixed either a) duty free or b) 15 years duty elimination or c) quota and 15 or 11 years duty elimination treatment.

Both Colombia and the US were in favor of eliminating export subsidies for agricultural products as regulated in the WTO system. On the other hand, Colombia wanted to negotiate the no reintroduction of export subsidies as well.¹² The other topic in discussion

10 For example, for milk powder the 2012 MFN tariff rate was 98% (applicable after 2011), which was 3 times higher than the base rate (33%) established in the Agreement.

11 The unilateral trade preferences provided by the US in its Andean Trade Promotion Act (ATPA) were received during the Barco government to promote the fight against illicit drugs in the Andean countries. To convert into a permanent system these ATPA trade preferences had been present in Colombian foreign policies since the Gaviria government. The Andean Trade Preference Act (ATPA) was enacted in December 1991. ATPA was renewed and amended by the Andean Trade Promotion and Drug Eradication Act (ATPDEA), enacted on 6 August 2002.

12 It applied for cases when a Party imports export subsidized products and fails to balance this situation with countervailing measures at import but reintroduces subsidies at export.

was the intention of Colombia to eliminate export subsidies incorporated in credits, guaranties of credits and in export insurance schemes. Neither of these proposals of Colombia was accepted by the US.¹³ The original position of Colombia was to include a price protection system similar to the Andean Price Band and a safeguard measure for the entire duration of the Agreement. The US was clear not to accept any price protection system, or safeguard measures after the termination of the tariff liberalization period. On the other hand, the US offered to include dairy products for the application of the agricultural safeguard measures of the Agreement.¹⁴ This latter was rejected by Colombia.¹⁵

For the agricultural sector the results of the Trade Promotion Agreement were reciprocal trade liberalization regarding quotas and tariff elimination periods.¹⁶ Additionally, the elimination of the Andean Price Band System was unfavorable for Colombia and reflected the imposition of rules by them.¹⁷ Notwithstanding, according to Analac, the dairy sector was expected to be winner of the Agreement in the long run considering the export possibilities provided by the US market. This opinion was later revised by the dairy sector actors and the Colombian government. It was also recognized that the trade asymmetries between the parties were not sufficiently taken into account during the trade talks with the US. This situation especially affected the negotiations of the Trade Agreement with the European Union.¹⁸

The Trade Agreement between the European Union and Colombia and Peru is the commercial chapter of the Association Agreement between the European Union and the Andean Community,

13 Luis J. Garay Salamanca, Fernando Barberi Gómez & Iván Mauricio Cardona Landínez, *La negociación agropecuaria en el TLC – alcances y consecuencias*, Planeta Paz, Bogotá, 70-71 (2006).

14 Therefore, although agricultural safeguard measures were established in Article 2.18 of the Agreement as specified in the Party's Schedule, Colombia did not include dairy products in its Schedule. The multilateral and bilateral safeguard measures of the Agreement were applicable for dairy products as well. Bilateral safeguard measures could be applied only during the transition period, and with due compensation (Articles 8.1 and 8.5 of Agreement).

15 Garay Salamanca et. ál., *supra* note 15, at 66.

16 *Id.* at 58.

17 *Id.* at 65.

18 Ministerio de Comercio Exterior, Industria y Turismo Oficina de Estudios Económicos, *Comercio Exterior de Colombia con los Estados Unidos, November 2012*. Retrieved from <http://www.tlc.gov.co/publicaciones.php?id=14853> (2012).

although Ecuador and Bolivia did not enter into the agreement.¹⁹ The dairy sector negotiations were the most controversial of the whole Trade Agreement. The European Union was insistent since the beginning of the negotiations that dairy products were a key sector for European market access to Colombia. The European delegation was also clear of not negotiating a Trade Agreement inferior in terms compared to the Colombian Trade Promotion Agreement with the US. This objective was ever more applicable for the dairy sector.²⁰ The Colombian delegation arrived to the negotiating table after the bitter experience of the US Trade Promotion Agreement and with a dairy sector (especially dairy producers) pushing for minimum market liberalization. Therefore, during the negotiations Colombia had a defensive position, while the European Union was offensive. The dairy sector became the hidden ace for the European Union and the Achilles' heel for Colombia. As analyzed before, the Colombian delegation, upon ratification of the Trade Promotion Agreement with the US, was also bound by the so called "other clause of preference" included in that Agreement.

Although the dairy sector was one of the most sensitive issues for Colombia, the negotiations were left for the very last round of the trade talks. This strategy was highly criticized by Fedegan.²¹ According to their view, it was a mistake to leave the negotiations of the sector for the last instant, when the Europeans already won all and the Colombian delegation had nothing to offer or counter-offer.²² Therefore, the Colombian delegation was in a position where only one bargaining tool was left for the sector to maintain the variable component of the Andean Price Band System as a built in safeguard mechanism. The compromise of the negotiators was to maintain the Andean Price Band. In a hurry to close the trade talks,²³ the

19 It is still an undecided issue whether the negotiations of the political dialog and cooperation chapters of this association agreement have any future at all. See Ildikó Szegedy-Maszák, *Association / Free Trade Agreement – bi-regional partnership between European Union and Andean Community*, 32 *Revista de Derecho de la Universidad del Norte*, 218-245 (2009).

20 Interview with Miriam García Ferrer, EU Delegation Bogotá.

21 Interview with Olga Lucía Salamanca Páez, Fedegan.

22 This opinion was shared by Andrés Espinosa Fenwarth Colombian chief negotiator for agricultural products (interview).

23 The prolonged negotiations of the agricultural sector were considered to be the cause of not closing on time the US Trade Promotion Agreement and losing the possibility of its quick ratification by the US Congress (as opposed to the situation of Peru). Therefore, it was clear in the EU talks that for the sake of one sector the negotiations could not have been jeopardized.

Colombian delegation decided to desist of the Andean Price Band. The most probable underlying reason was a deal to achieve a longer protection period for vehicles and car-parts originating in the EU for the Colombian market.²⁴ This decision was not consulted with the stakeholder groups (not even with the agriculture representative of the Colombian delegation).²⁵ Therefore, it became the turning point in the relations between the government and the stakeholders in Colombia, and initiated the still ongoing dairy sector debate.²⁶

Currently, dairy products originating from Colombia are partially covered by the GSP-Plus of the EU.²⁷ Only three dairy product tariff categories were included in the GSP-Plus, which reflected a closed European market for these products. Nevertheless, Colombian exports to the European Union in these tariff lines are non-existent, as there is no sanitary access for dairy products to the EU market. European dairy market liberalization was set in the Trade Agreement in a more immediate and quicker rhythm, in maximum 8 years for all negotiated products, compared to Colombian dairy market liberalization.

Dairy products originated from the European Union are currently subject to most-favored nation (MFN) tariff with the application of the Price Stabilization Mechanism of the Andean Price Band System in Colombia. Fixed as well as variable components of the Andean Price Band System are fully eliminated for EU dairy products by Colombia in up to 15 years. Although more extended leeway was left for Colombia in the dairy sector market liberalization, it is still comparatively less favorable for Colombia, when there is such an asymmetry in commercial and competitive terms between the two trading partners. There were even opinions, which went as far to state that it was unnecessary to open the Colombian dairy market as much as it finally happened, especially when comparing

(Interview with Andrés Espinosa Fenwarth, Colombian chief negotiator for agricultural products).

24 Andrés Espinosa Fenwarth, *supra* note 10, at 77.

25 Interview with Olga Lucía Salamanca Páez, Fedegan and Andrés Espinosa Fenwarth, Colombian chief negotiator for agricultural products.

26 The debate is further analyzed in the next sub-chapter.

27 As Colombia is also included in the Special Incentive Arrangement for Sustainable Development and Good Governance for the period between 1 January 2009 and 31 December 2013, the GSP-Plus tariff eliminated the ad valorem element of the EU 3rd country customs tariffs. Retrieved from http://ec.europa.eu/taxation_customs/dds2/taric/measures.jsp?Lang=en&SimDate=20121206&Area=CO&Taric=0403100000&LangDescr=en

this Trade Agreement with the Association Agreement signed by the EU with Central America, which was concluded in May 2010.²⁸

Subsidies are of crucial importance in the agricultural trade relations between Colombia and the European Union, being the European Union a highly subsidizing party, while in Colombia subsidies (export and domestic) are almost non-existent. Practically, subsidies are regulated in the Trade Agreement on a declaratory level, without major commitments, especially regarding domestic subsidies. Agricultural export subsidies have decreasing importance in the European Union. The regulation of export subsidies in a bilateral way can have significance only in the case of internal market crisis in the European Union. Lately, the European Union applied export subsidies on butter and SMP during the 2009 milk crisis. Safeguard measures are also significant in the Trade Agreement. There is a difference between the EU and the US Agreements in that regard. As argued before, the US Trade Promotion Agreement did not include a specialized agricultural safeguard clause. The EU Trade Agreement included multilateral and bilateral safeguard measures as well as an agricultural safeguard provision.

A given sector is affected by the accumulated results of the applicable trade agreements, a situation which was not duly considered by Colombia in the separate negotiations of the different trade agreements. Furthermore, the debate on the dairy sector related issues of the Trade Agreement with the European Union seems to reach further than the mere affectation of this sector by the Trade Agreement itself. It is linked to the political debate about agricultural production in general. The press declarations of the time by President Uribe and Andrés Fernández Acosta (Minister of Agriculture and Rural Development) provided a clear message of the Colombian State regarding productivity and the necessary reforms of the dairy sector. In May 2010 President Uribe expressed that there was nothing to be afraid of by the dairy sector, as the government was not to allow its “ship wreck”. On the other hand,

28 This Association Agreement provided higher base rates and lower dairy duty free tariff quotas (especially for Costa Rica) and exclusion from elimination and reduction of out of quota portions. The Central American duty free dairy quotas established were equal to the actual trade volumes registered at the time of the negotiations. See Espinosa Fenwarth, *supra* note 10, at 77.

he adverted not to be afraid of new markets either.²⁹ In the same line of arguments, Minister Andrés Fernández Acosta in May 2010 recognized that the Trade Agreement resulted in great exposure for the dairy sector. Notwithstanding, he also stated that although one sector was negatively affected, it was impossible to desist from the Agreement, because that would have impeded the other sectors to obtain the benefits of the same Agreement.³⁰

This approach seems unchanged in the present government of President Santos. Nevertheless, the application of safeguard measures with Argentina for milk powder and the equally growing milk powder imports observed from Chile and the US (already notorious after 6 months of the entry into force of this latter Agreement), suggest that an important revision of Colombian international dairy trade strategies is necessary. The growing Colombian dairy imports and the stagnation or decrease of dairy exports observed in 2012 seem to require defensive, trade protectionist strategy for the dairy sector, in addition to dairy sector development promotion by internal policies.

II. RURAL DEVELOPMENT POLICIES AND SELECTED ISSUES OF THE LAND QUESTION

As showed in the previous chapter, the signing of the FTA especially with the US and the EU left the Colombian dairy sector rather unprotected as it dismantled custom tariffs and quotas. It further harshened the situation of this already internationally uncompetitive sector in front of cheaper dairy product imports, especially milk powder, which negatively affects Colombian dairy producers. Therefore, the situation of dairy producers was brought into the spotlight by the national interest groups. As argued before, dairy production became the central issue of the political debate about agriculture in the FTA, especially as regards the FTA with the EU. Therefore, this chapter describes the central issues of the current

29 Gustavo Gallo Machado, *La industria láctea sí estará protegida: Uribe*, 27 May, *El Colombiano*. Retrieved from http://www.elcolombiano.com/BancoConocimiento/L/la_industria_lactea_si_estara_protegida_uribe/la_industria_lactea_si_estara_protegida_uribe.asp (2010).

30 Francisco J. Arias R., *Por el TLC, sí se blindará a la industria láctea*, 19 May, *El Colombiano*. Retrieved from http://www.elcolombiano.com/BancoConocimiento/P/por_el_tlc_si_se_blindara_a_la_industria_lactea/por_el_tlc_si_se_blindara_a_la_industria_lactea.asp (2010).

dairy producers' related agricultural policies of the Santos government as regards rural development including selected issues of the land question and the peace process.

The National Development Plan of the Santos government identified the agricultural sector as one of the locomotives of the economy.³¹ It also recognized the rural poverty trap as a central issue, which must be counter attacked together with its spillover effects of violence and illegal drug trafficking. In that sense, policy must be oriented to guarantee access to physical assets (land and water), finances and to improve capacities through integral technical assistance, association and the provision of public goods to insert the agricultural population into the market.³²

The essential requirement of the development path for the Colombian agriculture is competitiveness, which is the condition of viability of products on the market. The context of the above process is the increasing insertion in the world economy, which requires economies of scale based on productive conglomerates that integrate production, transformation and commerce vertically and horizontally. Additionally, it is necessary to involve small producers through association schemes that include them in business development and link them to private investment through inclusive businesses.³³

Anyhow, the National Development Plan resulted to be ambitious in its diagnosis of the rural problem but rather general in formulating its objectives. The two annual reviews of the Ministry of Agriculture and Rural Development regarding the implementation of these agricultural policies were more precise in establishing four major priorities: i) income generation for the rural population; ii) increasing competitiveness in agriculture; iii) risk management in the agricultural sector and iv) equity in regional development. These priorities seem to emphasize social inclusion. On the other hand, as analyzed below, the contradiction remains resilient between economies of scale and small farmer economy.

31 Juan M. Santos Calderón, Angelino Garzón, Juan C. Echeverry Garzón & Hernando José Gómez Restrepo, *Plan Nacional de Desarrollo 2010-2014: Prosperidad para todos*, DNP, 178, 180. Retrieved from [https://www.dnp.gov.co/PND/PND20102014.aspx\(2010\)](https://www.dnp.gov.co/PND/PND20102014.aspx(2010)).

32 Id. 185.

33 Id. 184.

The Santos government's income generation policies were based on the Rural Development Program with Equity (DRE), which is the restructured and renamed AIS³⁴ regulation of the Uribe government. DRE has the single highest agricultural budget value in 2013 amounting to COP 610 thousand million about 40% of the total agricultural budget. As opposed to the AIS, the DRE is only for small and medium size farmers, and large producers can participate only in alliances with small farmers.³⁵ The DRE is based on the principle of food security. DRE prioritizes the reconversion of small cattle and dairy farmers threatened by the FTA.³⁶ The new focus of the DRE is developed through four major programs: LEC,³⁷ ICR,³⁸ Incentives to Technical Assistance and Co-financing of land preparation.³⁹ In addition to DRE within the category of income generation for the rural population there were four other projects also included: Program of Rural Opportunities, Support to Productive Alliances, Rural Women and the Rural Social Housing Program.

As to the "competitiveness in agriculture" policy line, the value of new agricultural credits increased by 30.9% between 2010 and 2011 and with a similar value in 2012, whereas 75% of all credits were taken by medium and large size producers.⁴⁰ In 2011 35.89% of

34 Secured Agro Income (*Agro Ingreso Seguro*).

35 The definition of small and medium size farmers was modified in 2011 to widen the cover of eligibility for subsidies. A producer can be considered small farmer if his/her/its maximum assets are equal to 145 minimum legal salaries (increased from 108 minimum legal salaries). A producer can be considered medium-size farmer if his/her/its maximum assets are equal to 5,000 minimum legal salaries (reduced from 10,000 minimum legal salaries). See Ministerio de Agricultura y Desarrollo Rural, *Informe de Rendición de Cuentas. Gestión 2010-2011*, 18-19. Retrieved from http://www.minagricultura.gov.co/archivos/Documento_Rendicion_Cuentas_2011.pdf (2011a).

36 Id. 18.

37 After 2011, the Special Credit Line (LEC) was modified to promote agricultural projects of planting and maintaining short cycle crops for small and medium size producers and medium or large size producers in association with small producer. See Ministerio de Agricultura y Desarrollo Rural, *Informe de Rendición de Cuentas. Gestión 2011-2012*, 9. Retrieved from http://www.minagricultura.gov.co/archivos/Informe_RendicionCuentas2012.pdf (2012).

38 The Incentive for Rural Capitalization (ICR) was designed to finance among others late yield crops, land preparation and water resources, acquisition of machines and equipment and infrastructure for production. The ICR provides credits and incentives (subsidies), whereas the value of incentives per project to small producers is 40% and for medium size producers 20%, and for medium or large size producers in association with small producers 40%. See Ministerio de Agricultura y Desarrollo Rural, *supra* note 39, at 10.

39 Incentives to Technical Assistance can be 100% subsidized, if the small producer is located in priority zones such as Catatumbo, Macarena or Montes de María among other zones. See Ministerio de Agricultura y Desarrollo Rural, *supra* note 39, at 12-13.

40 Id. at 16.

all Finagro credits were placed in the livestock sector.⁴¹ Budget was also increased to strengthen sanitary institutions, nevertheless, for the dairy sector after 2010 there were no new international sanitary protocols signed.⁴²

As to the “risk management in the agricultural sector” policy line, it dealt with the natural and market based risks of the agricultural sector. To tackle these questions a new entity called Directorate National of Agricultural Risks was to be established. Subsidies were also implemented to finance between 60% and 80% of the currency insurance policies of agro exporters.⁴³

The “equity in regional development” policy line was designed to finance productive conglomerates in two specific regions identified for future agricultural development in Colombia: Altillanura in Orinoquía and Mojana in the meeting point of Antioquia, Bolívar, Córdoba and Sucre Departments.⁴⁴ Nonetheless, as argued below, there is an on-going debate on land extensions permitted for these projects and the regulation of foreign investment in agriculture.

The topic of foreign investment in rural areas in Colombia is closely linked to the question of rural development and competitiveness. Currently, there is a vivid political debate regarding the topic in Colombia. Juan Camilo Restrepo Salazar Minister of Agriculture and Rural Development argued in January 2012 that there is an important interest from part of the foreign corporations to invest in Colombian agriculture.⁴⁵ On the other hand, the Minister foresaw the necessity to regulate foreign investment in agriculture prohibiting the acquisition by foreigners of State owned deserted areas and to impose some minimum conditions of productivity, technology and job creation for foreign investors.⁴⁶ As opposed to

41 These credits provided financing up to 100% of the project with interest rate of DTF+6% for small farmers and DTF+10% for medium size and large farmers up to 2 years of financing period. See Ministerio de Agricultura y Desarrollo Rural, *supra* note 37, at 30.

42 In 2010 under the Santos government international protocols were signed with Chile and Morocco. See *id.* 35.

43 Ministerio de Agricultura y Desarrollo Rural, *supra* note 39, at 28, 30.

44 Ministerio de Agricultura y Desarrollo Rural, *supra* note 37, at 42-46.

45 The Minister cited the examples of the us multinational Cargill and its investment in Meta, which covers 90,000 hectares of land, as well as 100,000 hectares of forest investment by ms Timberland Holdings, Smurfit-Kappa, Compañía Agrícola de la Sierra, Reforestadora del Sinú, Inverbosques and Forest First.

46 Juan Carlos Domínguez, *Inversión extranjera pone el ojo en el campo*, 15 January, *Portafolio*. Retrieved from <http://www.portafolio.co/economia/inversion-extranjera-pone-el-ojo-el-campo> (2012).

the standpoint of the Colombian government, in the Colombian Congress representatives and senators of the governing parties as well as of the opposition presented a regulatory project to restrict foreign investment in agriculture and in mining.⁴⁷ To counteract these developments, the government also presented on 20 November 2012 a regulatory project which requires the authorization of the government for foreign investment in agriculture (Article 3); prohibits acquisition of State owned deserted areas by foreigners (Article 6) but promotes the associative projects with foreign investment (Article 7).⁴⁸ On the other hand, the core problem of the maximum size of agricultural units seems to remain without sufficient discussion.

The Milk Conpes (3675), one of the last agricultural macro policy projects of the second Uribe government, was rapidly drawn up in the early summer of 2010. There was already an important delay in issuing this Conpes, as the negotiations with the US finished in 2007, and the severe situation of the dairy sector, resulting from the Trade Agreement negotiated with the EU had been discussed by all dairy sector actors since 2009, strongly attacking State policies. The major goals of the Milk Conpes (3675) were to enhance competitiveness, to decrease production costs and to increase productivity to deepen and diversify internal and external markets. The policies were directed towards the development of dairy valleys to promote economies of scale. Nevertheless, only a few specific policy instruments were designed for small producers and processors. Because of lack of time, the financing of the Milk Conpes (3675) was not developed by the second Uribe government. The Milk Conpes (3675) in 2011 had a COP 22 billion financing from DRE: COP 11 billion for ICR, COP 4.2 billion for LEC and COP 6.8 billion for technical assistance.⁴⁹ Nonetheless, as an important tendency,

47 The idea was to link the limitation of foreign investment to the agricultural family unit. Although the government rejected the regulatory proposal, the Commission No 1 of the Senate passed the proposal on 16 October 2012 by an 8 to 4 vote. The Minister Restrepo Salazar argued that according to current data of the Colombian Central Bank, only 2% of all foreign investment in Colombia is directed to land or agribusiness. Among the proponents, Senator Juan Lozano argued that regulations limiting foreign investment in agriculture are in force in the US and in some Member States of the EU. See Carlos Ruiz, *Aprueban proyecto para prohibir inversión extranjera*, 16 October, *CMi*. Retrieved from <http://www.cmi.com.co/?n=91048> (2012).

48 Retrieved from http://www.minagricultura.gov.co/archivos/proyecto_de_ley_inversion_extranjera.pdf.

49 Ministerio de Agricultura y Desarrollo Rural, *CONPES Sector Lácteo 3675 Avances*. Retrieved

the participation of the livestock sector (cattle and dairy farmers) in rural development financing sharply decreased in volume after the implementation of the DRE.⁵⁰ On the other hand, financing of rural capitalization (ICR) remained relatively stable in volume, with the increasing participation of small cattle and dairy farmers from 14% to 20% between 2007 and 2011 (in 2011 in all credits 8%).⁵¹ The 2012⁵² and 2013⁵³ Colombian budget included increased funding of COP 25 billion and COP 35 billion respectively for the implementation of the Milk Conpes (3675).

Nevertheless, it seems that during the Santos government there is a gap in the understanding of the policy objectives for the dairy sector between the Colombian State and the representatives of the dairy sector actors in the National Dairy Council.⁵⁴ The dairy sector actors request more direct aid to implement projects to enhance productivity and competitiveness in the sector. On the other hand, the majority of the policy instruments implemented by the Santos government are based on credits for small and medium size producers and the association of large producers with small farmers to create conglomerates. This latter policy objective of association is less familiar for dairy producers.

Furthermore, as showed above, the implementation of these policies still lack results. The land reform of the Santos government seems to generate an additional political threat to certain large cattle farmers (in the dairy sector especially for double purpose farming in extensive form) possibly falling into the category of under-exploitation or non-optimal use of lands clearly attacked by

from <http://proyectosfedegan.co/miembros/2011/1.%20Presentaciones%20reuniones/3.1presentacionavancescompes.pdf> (2011b).

- 50 Especially for the special credit line (LEC), although the participation of small cattle and dairy farmers increased from 2 to 11% between 2007 and 2011 (in 2011 in all credits 4%). On the other hand, the decrease in LEC participation of the cattle farming including dairy farming already started in 2009. The participation of specialized dairy farmers in LEC was as low as 16% in 2009 of total cattle and dairy farmers' LEC credits. See Fedegan, *Balance Anual AIS-FINAGRO 2011*. Retrieved from http://portal.fedegan.org.co/portal/page?_pageid=93,574371&_dad=portal&_schema=PORTAL (2011).
- 51 In 2009 the participation of specialized dairy farmers in ICR was only 14% of total cattle and dairy farmers' ICR credits. See Fedegan, *Comportamiento de crédito Finagro para el sector ganadero enero a diciembre de 2009*. Retrieved from http://portal.fedegan.org.co/pls/portal/docs/PAGE/PORTAL/ESTADISTICAS1/FINANCIAMIENTO/2010_02_15_FINAGRO_COMPORTAMIENTO_DICIEMBRE_2009.PDF (2009).
- 52 Retrieved from http://www.minagricultura.gov.co/archivos/presupuesto_2012.pdf
- 53 Retrieved from http://www.minagricultura.gov.co/archivos/presupuesto_2013.pdf
- 54 Fedegan, *supra* note 4, at 241.

the Santos government. Therefore, the political debate between the dairy sector actors and the Colombian State has different and rather conflicting elements between the interests of different size producers and between dairy producers and processors.⁵⁵ The public policies implemented for the sector are also contradictory. These policies are based on the Milk Conpes designed to support economies of scale, which is in accordance with the National Development Plan of the Santos governments regards productive conglomerates and export orientation. Nonetheless, the actual implementation of the above macro policies is led towards a different path through the DRE directed towards small and medium size producers and the questioning of the structural base of the sector through the discussions on foreign investment in agriculture and land tenancy in the peace talks with the guerrilla group FARC.

The land question and the peace process are central issues of agricultural policies in Colombia. The land question was attended by the Santos government in its Integral Land Policies. The land restitution policies attended the needs of farmers who were victims of violence and displacement. Land restitution was regulated by Law 1448 of 2011. Yet, the implementation of Law 1448 is very slow.⁵⁶

The goal of the Program of Formalization of Rural Property was to accelerate the award of State owned deserted lands and the formalization of rural land titles. According to the National Development Plan in its 4-year period 1.2 million hectares should be formalized.⁵⁷ The revision of the Land Registry is another important element of the land policies. The Land Registry provides legal security of land property and its transactions. It is also related

55 Sara del Pilar Pareja, *La Producción colombiana de leche: perdedora en el acuerdo Colombia – UE*, 249, en Eric Tremolada Álvarez, ed., *Europa: ¿Un mercado de oportunidades?*. Quinta Jornada Cátedra Jean Monnet en Colombia, Universidad Externado de Colombia, Bogotá (2011).

56 The Law applies for acts of illegal armed violence between 1 January 1991 and 1 January 2011 and can be implemented through a period of 10 years. According to the National Development Plan in its 4-year period 160,000 families should be restituted. See Ministerio de Agricultura y Desarrollo Rural, *supra* note 37, at 9-10. Notwithstanding, 18 months after the entry into force of Law 1448 of 2011 only 11 judgments were issued between December 2012 and February 2013, involving 77 claimants, affecting 81 real estates amounting to 442 hectares of land. In Salinas Abdala, Yamile (2013). See Yamile Salinas Abdala, *Balance del compromiso de Santos de restituir tierras y territorios, Indepaz*. Retrieved from <http://www.indepaz.org.co/wp-content/uploads/2013/02/Balance-del-compromiso-de-Santos-de-restituir-tierras-y-territorios.pdf> (2013).

57 Ministerio de Agricultura y Desarrollo Rural, *supra* note 37, at 11.

to the question of rural property taxes, which in its turn influence agricultural production patterns.⁵⁸

The regulatory project on Land and Rural Development was planned to be presented to the Congress in 2012.⁵⁹ It was designed to regulate in an integrated form the Colombian agricultural policies. The regulatory project of the Santos government introduces new concepts such as “territorial focus” (Article 3), “production diversification” (Article 21), and “social nets” (Article 22).⁶⁰ The regulatory project also established a title in equity over land (*derecho real de superficie*), recognizing 30-year renewable and transferable lease agreements. As the land question is closely linked to the peace process with the guerilla group FARC re-initiated by the Santos government, the further development of the regulatory project seems to be put on hold until the peace talks end.

The first issue to be negotiated in the peace talks with the guerilla group FARC was the policy of integral agrarian development.⁶¹ Although, to date only the negotiations of this first agenda item has been initiated, there have been already fundamental contradictions between the terms of the General Agreement established by the negotiating parties for the purposes of the peace process and the actual discourse of the FARC.⁶² The FARC attacked the land

58 Current rural property taxes paid are very low as the value of the land registered in the Land Registry does not reflect real market value. The modification of the rural property taxes could also serve as an instrument to modify land property structures. In Universidad del Rosario (2012). See Universidad del Rosario, *Tierra e impuestos: la política detrás del predial rural*, Fascículo 9, *Universidad, ciencia y desarrollo*. Retrieved from http://www.urosario.edu.co/urosario_files/b2/b2b1d92e-8c17-444f-a3c0-fa279001b292.pdf (2012).

59 Retrieved from <http://www.arcoiris.com.co/2012/11/alejo-vargas-a-la-cabeza-del-foro-de-desarrollo-rural/>

60 The Santos regulatory project in its Article 138 excluded rural land acquisition by extraordinary prescription, and in Article 141 limited the nature of public documents between private parties providing title of property over rural land prior to the entry into force of the regulatory project to those documents supported by tradition of domain prior to 1 April 1974.

61 The other issues are a) political participation; b) end of conflict; c) solution of the illegal drug problem; d) victims; and e) implementation, verification and countersignature. The signing of the Final Agreement initiates the implementation of all agreed points. Retrieved from <https://www.mesadeconversaciones.com.co/formulario-de-comentarios-acuerdo-general>.

62 Iván Marquez (FARC) at the first Havana Round expressed against mining, agribusiness and FTAS, the main building blocks of the Santos government's National Development Plan. At the same time, the Santos government was also clear that the issues of the negotiating agenda cannot be interpreted as entering into a negotiation as regards the economic model, the military doctrine, or foreign investment in Colombia. These latter issues can be treated by the FARC once the armed conflict is over. See Juanita León & Manolo Azuero, *Nueva agenda de las Farc: la anti Prosperidad Democrática*, 18 October, *La Silla Vacía*. Retrieved from <http://www.lasillavacia.com/historia/la-nueva-agenda-de-las-farc-la-anti-prosperidad-democratica-36647> (2012).

restitution and production related association policies, as well the long-term lease agreements and argued for the elimination of the latifundium. The FARC also insisted on including the topic of mining into the negotiations. Therefore, despite the existing common points, the agreement on integral agrarian development seems to be still far from being finalized.

Another very debatable issue of the General Agreement on the peace negotiations established the principle of civil society participation.⁶³ In any case, the interest of the FARC in the participation of the civil society seems to be a double-edge sword for the Colombian government. The FARC requests political representation for the farmers, on the other hand, the Colombian government does not have strategy to implement real civil society participation.⁶⁴ That way, the FARC can advance in its apparent political strategy to get empowered by pretending to represent civil society interests, which leadership can be an important political risk for the society and the Colombian State.

63 The negotiating parties requested the United Nations in Colombia and the Colombian National University to organize a civil society forum to discuss the first point of the negotiating agenda. The Policy Forum on Integral Agrarian Development (with territorial focus) was held on 17-19 December 2012 in Bogota. See PNUD, *Balance Foro Política de Desarrollo Agrario Integral – Enfoque Territorial*. Retrieved from <http://www.pnud.org.co/sitio.shtml?x=67369> (2012).

64 *Los espacios de la sociedad civil en los diálogos con las FARC*, 29 November, *La Verdad Abierta*. Retrieved from <http://www.verdadabierta.com/component/content/article/52-farc/4360-sociedad-civil-aportara-a-dialogos-con-las-farc-> (2012).

CONCLUSIONS

It seems that there is an apparent contradiction within the different agricultural policies implemented by the Santos government. According to the regional focal development plans, the future of agriculture in Colombia is oriented towards large agribusinesses and agro-industrial projects promoting foreign investment. The continuous export orientation of the agricultural sector through international trade policies of FTA also drives to this direction. Nonetheless, the land policies of the Santos government are linked to the policy objectives of income generation for the rural population. Moreover, most agricultural credit and other subsidy lines launched or maintained by the Santos government are prioritized towards small and medium size producers and their associations.

The question is whether these agricultural policies of the Santos government is a genuine intent to promote agricultural production based on the co-existence of different production structures such as small, medium size and large farms; or it is the result of a political game to merely satisfy instant political interests. As shown above, these uncertainties are especially worrisome for the Colombian dairy producers hit by the results of the current trade related market liberalization of the dairy sector.

The future of the implementation of these agricultural policies is still very much questionable. It is not only very slow, but can also be endangered, if the Santos government mismanages the peace talks with the guerrilla group FARC. It seems reasonable to conclude that one of the fundamental underlying reason of the above analyzed uncertainties around the dairy sector related agricultural policies in Colombia is the lack of clarity about policy paradigms as regards general agricultural policies. Economic regulation must be driven by policy paradigms. It is precisely the role of the State to encourage policy debates with the participation of all public policy actors regarding policy paradigms. Discussions about policy paradigms must have a central role in regulation. The decision on policy paradigms is part of the politicization process of regulation. Therefore, a detailed analysis of current agricultural policymaking, especially as regards policy paradigms must be a central issue of future research agendas.

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