

A NEW GROWTH
PARADIGM?

**THE SERVICES ECONOMY
IN THE
PACIFIC ALLIANCE**



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Table of Contents

Figures	4
Tables	4
Abbreviations	6
Key Messages	7
Methodology	10
I Introduction	11
II The Services Revolution: Economic Transformation Through Services	14
1. The Role of Services in Economic Transformation: A Framework	15
a) The Role of Services to Promote Competitiveness and Economic Growth	15
b) The Role of Services in Promoting Inclusive Growth and Poverty Reduction	17
c) Services and SME Development	18
d) The Role of Services in Product and Process Innovation	20
III Mapping the Services Landscape in the PA	24
1. Internationalization of Services in the PA	24
a) Characterization of international services trade in the PA members	24
c) Market Access through Market Presence: Intra-regional FDI in Services	36
d) Summary Findings	47
2. Services Governance in the PA: Current Developments	49
a) Commercial Protocol Provisions	51
b) Developments in the Commercial Protocol	56
c) Promoting Forward Movement	58
IV The Collaborative Economy: Prospects and Challenges for the PA	62
1. What the Collaborative Economy is about	63
a) Conceptual Distinctions	63
b) Characterization and Motivations of the Collaborative Economy	65
c) Benefits and Downsides of the Collaborative Economy	66
2. Development of the Collaborative Economy in the PA	69
3. Policy Challenges and Responses: Issues to Consider	73
a) Consumer protection	73
b) Taxation	74
c) Regulation and the Collaborative economy	74
4. Summary Findings	77
V Concluding Remarks and Recommendations	79
Annex: The State of Play of Backbone Services in the PA	85
1. Chile	85
2. Colombia	97
3. Mexico	112
4. Peru	119
5. Sub-Sectoral Services Strategies in the PA Members	126
Bibliography	130

Figures

Figure 1. PA: Services Trade to GDP Ratios, 2005-2015	25
Figure 2. PA: Services Exports 2011-2015, USD \$ bn	26
Figure 3. PA: Services Trade Balances 2011-15	26
Figure 4. PA: Variation of Trade Balances in Services 2011-15	27
Figure 5. Chile: Sectoral Distribution of Services Exports, 2014	28
Figure 6. Colombia: Sectoral Distribution of Services Exports, 2015	28
Figure 7. PA: Mexico: Sectoral Distribution of Services Exports, 2015	29
Figure 8. PA: Peru: Sectoral Distribution of Services Exports, 2015	29
Figure 9. Domestic Services Value Added Share in Gross Exports	36
Figure 10. Colombia: Sectoral Distribution of Outward FDI, 1994-2016	38
Figure 11. Chile: Share of FDI Inflows by Source Country, 2009-15	44
Figure 12. Colombia: Share of FDI Inflows by Source Country 2009-2016	45
Figure 13. Colombia: Sectoral Distribution of FDI Inflows, 2009-16	46
Figure 14. Latin America: Share of Collaborative Economy Initiatives per Country	70
Figure 15. Main Limitations of the Collaborative Economy to Growth in LA	72
Figure 16. Chile: Market Structure in Mobile Internet Services (%) for 3G-4G, 2016	90
Figure 17. Chile: Market Share of Fixed Internet Providers, 2016	90
Figure 18. Colombia: Structure of the Financial System	100
Figure 19. Colombia: Share of Institutions in the Assets of the System, 2017	101
Figure 20. Colombia: Share of Subscribers by Operator	104
Figure 21. Colombia: Market Share for Mobile Internet (%), 2016	105
Figure 22. Peru: Share of Lines by Operators	122

Tables

Table 1. The Structure of Output in PA Members 2000-2015	24
Table 2. PA: Sectoral Distribution of Intra-regional Trade in Services, 2014	31
Table 3. Colombia: Value and Share of Services Trade to the PA, 2013-15	32
Table 4. Chile: Value and Share of Services Trade with PA members, 2011-13	33
Table 5. Chile: Sectoral Distribution of Intra-regional Services Trade, 2011-13	34
Table 6. Chile: Value and Share of Intra-regional FDI in Services, 1990-2015	37
Table 7. PA: Value of Total FDI Inflows, 2000-15 (US\$ bn)	39
Table 8. Value of FDI Inflows to PA Members by Sector, 2009-15 (in US\$ bn)	40
Table 9. Peru: Value of FDI Inflows from PA Countries, 2009-16 (in US\$ bn)	41
Table 10. Peru: Value of Total FDI Inflows from PA Partners by Sector, 2016	42
Table 11. Peru: FDI from Chilean and Colombian Service Companies, 2011-16	43
Table 12. Leading Trans-Latin Services Enterprises Operating in the PA, 2013	47
Table 13. General Typology for WTO+ and WTO-X Commitments in PTAs	50
Table 14. Proposed Typology for GATS+ and GATS-X Provisions	52
Table 15. PA GATS+ and GATS-X Commitments under the Commercial Protocol	54
Table 16. PA: Collaborative Economy Initiatives	71
Table 17. Regulatory Challenges of the Collaborative Economy	76

Table 18. Chile: Evolution of the Financial System Structure, 2005-15	88
Table 19. Chile: Rights for Foreign Airlines	92
Table 20. Chile: Performance Indicators in Backbone Services, 2016	94
Table 21. Colombia: Performance Indicators in Backbone Services, 2016	110
Table 22. Mexico: Performance in Backbone Services, 2016	118
Table 23. Peru: Structure of the Financial System, 2016	121
Table 24. Peru: Performance Indicators in Backbone Services, 2016	125
Table 25. PA Members Export Promotion Programs in Services	127

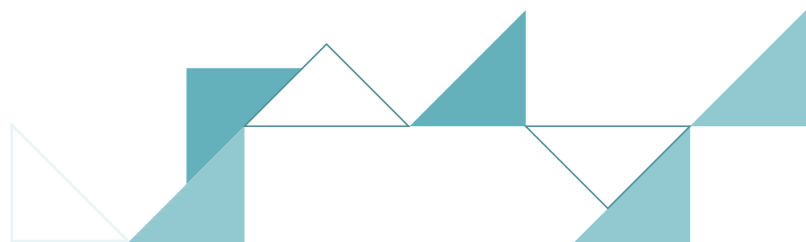
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Abbreviations

ARPPi	Agreement for the Reciprocal Promotion and Protection of Investment
BPO	Business Process Outsourcing
CAN	Andean Community (Spanish acronym)
CEAP	The Pacific Alliance Business Council (Spanish acronym)
DIRECON Relations,	The General Directorate of International Economic Chile (Spanish acronym)
ECLAC	United Nations Economic Commission for Latin America
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
FTC	Free Trade Commission
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GMF	Tax on Financial Transactions (Spanish acronym)
IADB	Inter-American Development Bank
ICTs	Information and Communication Technologies
ICST	International Centre for Trade and Development
IFRS	International Financial Reporting Standards
IMF	International Monetary Fund
IOE	Specialized State-Owned Institutions (Spanish acronym, Colombia)
ITC	International Trade Centre
ITU	International Telecommunications Union
MERCOSUR	Southern Common Market (Spanish acronym)
NAFTA	North American Free Trade Agreement
NCMs	Non-conforming measures
OECD	Organisation for Economic Cooperation and Development
PA	The Pacific Alliance
PISA	International student assessment
R+D	Research and Development
REACOEX	National Registry of Overseas Reinsurers and Reinsurance Brokers (by the Spanish acronym, Colombia)
SELA	Latin American and Caribbean Economic System (Spanish acronym)
SMEs	Small and Medium Enterprises
FDT	Telecommunications Development Fund (by the Spanish Acronym)
TPA	Trade Promotion Agreement
UNCTAD	United Nations Conference on Trade and Development
WB	The World Bank
WEF	World Economic Forum
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Key Messages

The digital revolution, alongside far-reaching innovations in production processes in goods and service industries, has upended the long-held view of services as non-tradable activities. The last few decades' continued domestic reforms and of trade and investment liberalization in services, much of which enacted unilaterally, have contributed to the rapid internationalization of service industries and resulted in the heightened contestability of services markets across the globe. The above changes have placed the service economy at the very center of ongoing transformations of the domestic and international economies. In the process, services have emerged as a major source of export diversification, job creation, productivity increases, gender mainstreaming as well and an effective route to escalating countries' growth trajectories.

This report situates some of the above trends in the Pacific Alliance context. The report explores the role that services are playing in the PA's evolving economic landscape, both at the level of individual member countries and regionally between them.

While there is much evidence of the growing internationalization of services markets throughout the PA, the regional grouping as a whole does not appear to be reaping the full benefits of ongoing trends in servicification. Services contribute an estimated 30 percent of the added value in gross exports from PA members, a level significantly lower than the average observed in other developing countries (40 percent) and in developed countries (where it stands at 50 percent+). Meanwhile, the share of services exports in output remains low in all four PA members, and persistent deficits on their services account are suggestive of a number of competitiveness challenges. Nonetheless, the region has absorbed rising levels of FDI directed to service sector activities in recent years and trade in non-traditional services, notably through digital means, offers considerable potential to scale up production and exports. This should help PA members diversify away from what for many of them remains an excessive degree of dependence on extractive or primary sector activities while enhancing economy-wide allocative efficiency in sectors that use services intensively, notably in manufacturing. Considerable scope also exists to promote more intense intra-regional ties in services trade and investment, notably through deepened public-private cooperation initiatives and intensified efforts at transaction cost-reducing regulatory convergence.

While important efforts have in recent years been directed to tackling the various bottlenecks – infrastructural, regulatory or in terms of human capital – that PA members face in some of their backbone services, a deeper commitment to trade and investment liberalization and regulatory convergence is required over the medium-term to adequately address the region's key impediments to service sector growth. The depth and breadth of such impediments varies across PA countries and sectors, but there are also a number of similarities that could usefully trigger deepened cooperation between PA members in

areas such as education and vocational training, connectivity infrastructure, entrepreneurship, service sector SME finance and the development of digital ecosystems. Examples of such collaboration could include the modernizing of national qualification frameworks and the spread of digital literacy programs. Such cooperation should be targeted at tackling the most glaring regulatory or institutional asymmetries between members with a view to scaling up regional markets and boost competitiveness on external markets.

For the PA as a whole, the report finds that intra-regional trade and investment ties are noticeably greater – by a factor of more than 3 - in services than in goods. Intra-regional services trade among PA members accounts for an estimated 11 percent of the regional grouping's total services exports. In the case of Colombia, services exports destined to PA partner countries represents close to a fifth (18 percent) of total services exports. Intra-regional services trade ties are strongest between Colombia, Chile and Peru, suggesting that gravity - neighboring ties and geographic proximity - still matter in the PA's service economy, despite the potential that digital transactions portends in overcoming the twin tyrannies of distance and geography. Moreover, PA members have become increasingly important source and recipient countries of intra-regional FDI. More than 5 percent of aggregate FDI in Colombia comes from Chile, while 2 percent comes from Mexico. Chile's second largest stock of FDI is found in Colombia, with Peru in fourth place. A look at the sectoral distribution of intra-regional FDI confirms that services account for a predominant share of cross-border investment activity, sowing the seeds for further two-way trade and investment and the rise (or deepening) of region-wide supply chains. For instance two-thirds of Chilean FDI in Peru is in finance, retail distribution and transport services. Similarly, more than half of Chilean FDI in Mexico and Colombia lies in service industries.

The trends depicted in this report point to a number of issues calling for a deepened agenda of PA-wide collaboration involving all key stakeholders in the region's service economy. These agenda should put attention on two key issues. First, fostering intra-regional trade in intermediary and final services between the PA members. Second building and consolidating regional offers of services that are more than the current aggregation of individual countries' baskets of services exports. These offers of integrated services could be traded outside the region with target markets. Developing an overarching regional policy for services in the PA requires bearing in mind these two dimensions: (i) internal; and (ii) external.

In developing a regional policy towards services, PA members need to be alert both to sectors where existing comparative and competitive advantages can already be found, alongside new areas where deepened cooperation on enabling frameworks can spur innovation. The latter, non-traditional sectors include a range of activities deployed through new business models, professional services (especially in architecture and engineering), software and IT developments, and creative industries. Creating attractive digital environments allowing the region to onshore several tasks within regional or global value chains offers significant growth opportunities for PA service providers. Moreover, in an environment where

linguistic, cultural and physical proximity all continue to matter as drivers of integration, physical as well as digital connectivity must work hand in hand in regional services policies.

From a regulatory perspective, a process of regional services governance has emerged in the PA with the conclusion and implementation of the Framework Agreement and the Commercial Protocol. This budding regime is characterized by a myriad of legally binding and enforceable commitments alongside various forms of soft law and cooperation efforts. On the basis of the typology developed in this report, the PA Commercial Protocol provides for GATS+ and GATS-X commitments in the form of both hard and soft law. In so doing, it improves on pre-existing framework conditions by adopting latest generation rules. Some of these are highly innovative, evidencing the benefits of the PA's pragmatic, Member-driven, problem-solving approach to tackling areas of common interest to policy-makers and private operators, such as regional value chains and SMEs. Yet, much additional space exists for further innovative cooperation initiatives through legal means. These include the periodic launch of negotiating rounds incorporating new policy areas and deeper commitments resulting from policy dialogues anchored in cooperation provisions in areas such as maritime transport, telecommunications, e-commerce/digital governance, vocational training, regulatory improvement and corporate social responsibility, to name a few.

The development of ICTs and maturing region-wide Internet usage have allowed for the emergence of an alternative and disruptive economic system — the collaborative economy — that challenges the traditional ways in which goods and services are produced, sold and consumed. This system provides for peer-to-peer (P2P) interaction over digital platforms in order to satisfy various economic needs, reducing the transaction costs of accessing goods and services. The collaborative economy comprises a wide range of activities, such as the temporary leasing of housing units, space or other tangible assets with or without a financial payment in return between the peers. Other activities include bartering, the reselling, sharing or swapping of products, and the supply professional and traded services, among others.

The collaborative economy holds the potential to create higher levels of economic activity by facilitating the exchange of goods and the emergence of new services. Moreover, this crowd-based, networked, economic system offers entrepreneurs the opportunity to operate businesses through scalable digital platforms as intermediaries of peer-to-peer interactions.

However, the collaborative economy also raises a number of challenges to regulators and policy makers who need to balance the protection of public interests such as consumer safety and information with the promotion of the benefits of the digital environment. Traditional economy regulations provide increasingly inadequate responses to the governance challenges of the digital world. Issues of consumer protection, labor rights and entitlements, as well as taxation are at the forefront of policy and regulatory concerns. Self-regulatory practices have started to emerge among companies to address the loopholes, but their scope remains limited.

To harness the full potential of the Pacific Alliance's services economy, this report advances a number of policy recommendations. A centrally important starting point is for PA Members to develop a joint work program aimed at generating more disaggregated, harmonized and comprehensive data on services output, employment, intra-regional trade and investment. More updated quality data will help cross-country comparisons and longitudinal analysis to inform not only policy makers but also private stakeholders in their business and resource allocation decisions. Moreover, greater attention should be paid to the monitoring and evaluation of existing national policies and regional initiatives through adequately granular M&E metrics.

Second, regional initiatives remain key to the adequate supply and funding of regional public goods capable of enhancing service sector integration. This includes programs targeting the mobility of human capital as well as efforts at promoting greater digital and physical connectivity. Such collaborative efforts draw attention to the need for region-wide institutional coordination and proper region-wide stakeholder consultation architectures. Advancing a concrete regulatory convergence agenda is also needed with regard to the mutual recognition of educational degrees/certifications and professional licenses/authorizations. This is desirable not only to promote academic, but also professional mobility in order to be able to tackle skills shortages while contributing to knowledge transfers. Steps should also be taken to facilitate the temporary mobility of technicians and other vocationally trained professionals within the PA to undertake paid activities in other members. PA members should also consider developing a work program on trade facilitation for services including substantial regulatory convergence, approximation and equivalence; procedural requirements and information access for consumers and businesses on a regional scale. Such initiatives would help address and lower trade costs across various sectors.

At the regulatory level, considerable scope exists for PA members, both individually and collectively, to strengthen and further develop regulatory regimes in services. In doing so, the monitoring and evaluation of numerous soft-law and cooperation frameworks of the Commercial Protocol would be instrumental in promoting regulatory convergence.

Finally, targeted strategies directed at service-sector SMEs could enhance their participation in regional value chains. In this context, the promotion of PA-wide regional clusters can constitute a building block for a regionalized services market. Moreover, firm-level data gathering efforts should be directed at gaining a better sense of the competitive strengths and weaknesses of PA SMEs.

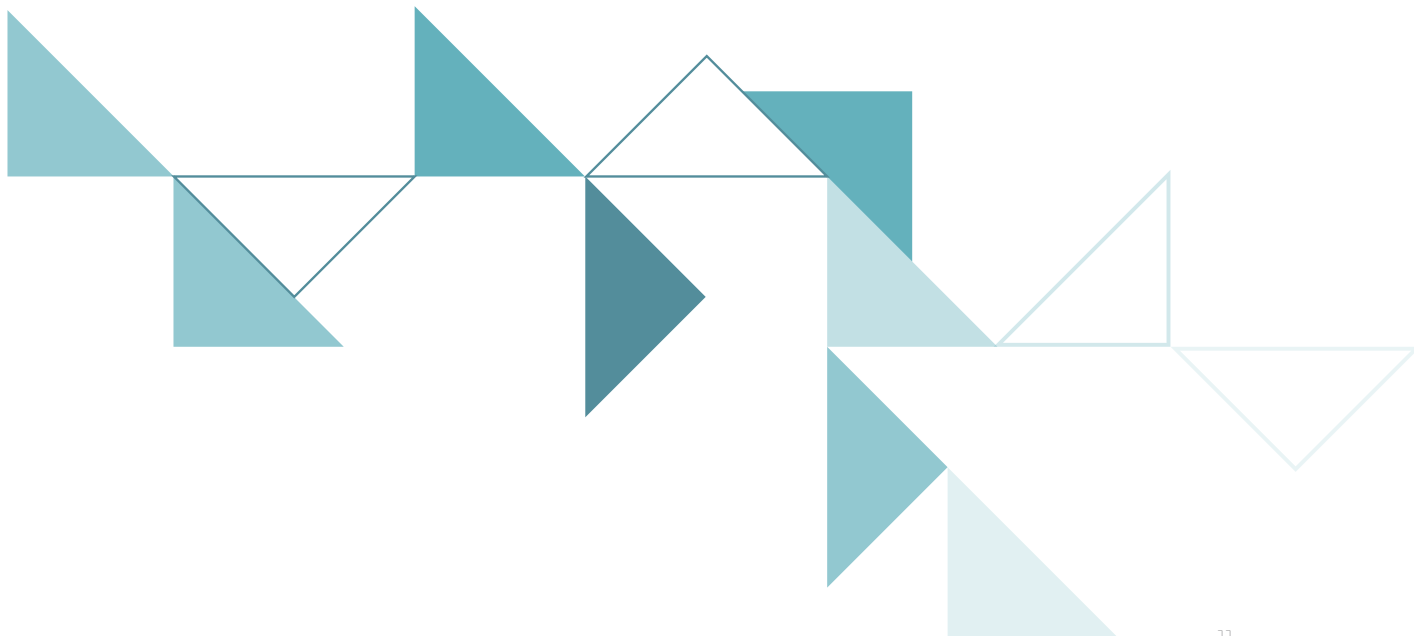
Methodology

The aim of this report is to assess the performance, key challenges and policy implications of enhancing the service economy, including the collaborative economy, within the members of the Pacific Alliance and at the regional level.

The report uses a qualitative methodological approach to address the several points of enquiry examined. For the qualitative analysis, the research involved the use of primary materials such as treaty documents, political declarations as well as national regulations implemented by the PA countries that directly or indirectly impact the performance of the PA's service economy and its prospects for internationalization. Secondary materials also inform and support the analysis. Such sources include: journal articles, books, working papers of regional inter-governmental organizations and research centers, government documents and materials drawn from the Internet.

The report also draws on quantitative information produced by national authorities such as central banks, ministries and other government agencies, the World Bank Group, ECLAC, the IADB and the OECD to document the state of play of service sectors performance and the internationalization of services in the PA. Quantitative information produced by the World Economic Forum and by various national authorities is also considered in the report's depiction of the performance of backbone services within the region. Quantitative data on levels of exports and imports of services, value added by domestic services in exports, and investment flows targeted at services industries is used to undertake intra-regional and cross-country comparisons.

Work on services, including in the PA context, remains challenging as a result of the relative paucity of data on regional trade and investment ties. Limitations arise not only when making comparisons across countries and sectors, but also longitudinal comparisons across time. That most PA members have only partially disaggregated data on exports and imports of services and FDI flows by country of origin and destination points to an area of in crying need of deepened cooperation.



I Introduction

While the service economy is increasingly on the radar screens of policy makers as they realize the central role it plays in enhancing competitiveness and national welfare, the contribution of services trade to growth and development still tends in most economies to take a back seat to manufactured exports. Meanwhile, the contribution that greater service sector efficiency can make to the success of regional integration initiatives, including within the Pacific Alliance (PA), has arguably yet to garner the attention it deserves.

This report attempts to fill the above gap by providing a better understanding of the manifold ways in which the service economy – and services trade – can meaningfully contribute to economic growth and national development strategies within the PA. It examines the state of the service economy and of trade and investment in services in the PA from an economic and regulatory perspective. The report further tackles one of the most innovative developments in services – the rise of the so-called "collaborative" economy. It discusses its potential to enhance the development of SMEs along with the challenges and risks arising from its growth, to which policy-makers need to remain alert.

The remainder of the report is organized as follows. Section II proposes a conceptual framework to understand the strategic role that services play in underpinning four key dimensions of the growth process: (i) boosting competitiveness and allocative efficiency; (ii) promoting inclusiveness and inequality reduction; (iii) contributing to SME growth and enhancing their access to international markets; and (iv) a source of product and process innovation.

Section III of the report maps the services landscape in the Pacific Alliance from an economic and regulatory stance. The section depicts salient trends in services trade and investment at the intra-regional level and for individual PA members. It subsequently explores the regulatory regimes governing trade and investment in services in the PA through the lens of two key region-wide legal instruments: the Framework Agreement and in particular the Commercial Protocol. The section closes with an examination of various soft law initiatives that PA members are undertaking in the services realm.

Section IV attempts a conceptualization of the collaborative economy and advances a number of conjectures on what the growth of the collaborative economy portends for policy initiatives in the PA region. The report's closing section recalls core findings and puts forward a number of recommendations to move the PA services agenda forward.

The report includes an annex section that deepens the analysis of service sectors performance for individual PA members by considering two core issues. It first assesses the performance of backbone services and the regulatory environments in place within the individual PA members. It describes the domestic liberalization patterns through (unilateral) regulatory reforms and their contribution to region-wide regulatory convergence and growth. Second, it examines current national strategies to support export diversification opportunities for PA members in the services field and the degree to which they converge or overlap.

A woman in a blue uniform is working on a car in a garage. She is holding a tool and looking up at the engine. A man in a blue uniform is standing next to her, pointing at the engine. The background shows the interior of a garage with various tools and equipment.

II. The Services Revolution: Economic Transformation Through Services

II The Services Revolution: Economic Transformation Through Services

If the importance of the services to the global economy and to the welfare of producers and consumers seems to be a broadly accepted fact since the 1990s, the role that services trade plays in generating the above benefits continues to be inadequately explored. The central salience of services lies not only in their prominence in global GDP but also employment and economy-wide competitiveness. The share of services in aggregate output rose from 65 to 68 percent between 2006 and 2014.¹ Such a share tends to be highest in developed economies, with figures often exceeding 70 percent.² Services sectors employ more than half of the global workforce, absorbing close to two in every three workers in a large subset of developed and developing countries alike.³

Between 1970 and 2014, the share of services in total exports of goods and services grew from 17 percent to over 23 percent.⁴ During this period, services remained the fastest growing component of international trade. The share of services in world trade increased over the last five years. In 2015, trade in services accounted for around 13 percent of global GDP.⁵

The increasing tradability of services owes to far-reaching advances in information and communications technologies alongside continued (unilateral) trade and investment liberalization efforts.⁶ It is estimated that close to three out of every four dollars' worth of services traded across borders involves intermediary rather than final services.⁷ Still, significant challenges remain at the domestic and international levels to reduce structural and regulatory barriers preventing not only the expansion of international services markets but also the use of the service economy to boost domestic growth.

1 Services, etc, Value Added (% GDP), The World Bank, < <http://data.worldbank.org/indicator/NV.SRV.TETC.ZS>>.

2 World Development Indicators: Structure of output, The World Bank, < <http://wdi.worldbank.org/table/4.2#>>.

3 Employment in Services (% of total employment), (International Labour Organization, Key Indicators of the Labour Market database) < <http://data.worldbank.org/indicator/SL.SRV.EMPL.ZS>>.

4 Prakash Loungani, et al, 'World Trade in Services: Evidence from a New Dataset' (February, 2017) < <http://pubdocs.worldbank.org/en/815061480467907896/World-Trade-in-Service-February-2017.pdf>> 6, 19.

5 Trade in Services (% GDP), The World Bank < <http://data.worldbank.org/indicator/BG.GSR.NFSV.GD.ZS>>.

6 Ejaz Ghani, Arti Grover Goswami and Homi Kharas, Service with a Smile, PREM Economic Premise, No. 96, (November 2012), The World Bank. <<http://siteresources.worldbank.org/EXTPREMNET/Resources/EP96.pdf>> 2. The tradability of services has a higher ratio for developing countries.

7 OECD Global Relations Secretariat, 'How to Foster the Internationalisation of SMEs Through the Pacific Alliance Integration Process' <alianzapacifico.net> 10.

The opening section of this report explores the ways in which the service economy is central to competitiveness, inclusive and sustainable growth in the PA.

1. The Role of Services in Economic Transformation: A Framework

The transformative properties of service-led growth has led some experts to posit a 'services revolution' thanks to the sector's impact on income growth, job creation,⁸ gender equality, poverty reduction, as well as product and process innovation.⁹ This revolution challenges the long-held view of industrialization (and goods-led exports) as the primary engines of economic growth and structural change.¹⁰ A question that arises in the PA context is the extent to which the service economy offers a feasible means for individual PA members to catch up with economies in the developed world.

The service economy plays a strategic role in supporting economic growth and development. Its relevance can be seen through four core dimensions: (i) via its impact on competitiveness and its ability to serve as a growth escalator through improvements in economy-wide allocative efficiency; (ii) via its ability to sustain inclusiveness and pro-poor development outcomes, including gender equality; (iii) through its lower minimal efficient scale of operation and its correspondingly large potential impact on SME development; and (iv) via its impact on product and process innovation.

a) The Role of Services to Promote Competitiveness and Economic Growth

Services matter to a country's overall competitiveness and economic growth in several direct and indirect ways. Services help in diversifying a country's exports, a trend that has taken root in a growing number of developing countries in recent years. Services increasingly find themselves at the very core of the development strategies of countries across a wide range of sectors. Services supply critically important inputs to other economic sectors, such as agriculture, fisheries, mining, manufacturing, and other services. High quality and low cost transportation, logistics, telecommunications, financial, and energy services hold the key to the efficient supply of other goods and services, a particularly important dimension in the PA context given the prevailing geographic realities of distance between

8 Neil Balchin 'Why services are important for industrialisation and economic transformation' in Bernard Hoekman and Dirk Willem te Velde (eds), *Trade in services and economic transformation/ A new Development policy priority* (Essay Series, Overseas Development Institute, February 2017) 8, 8.

9 Ejaz Ghani and Homi Kharas, *The Service Revolution*, PREM Economic Premise, No. 14 (May 2010), The World Bank. <<http://siteresources.worldbank.org/INTPREMNET/Resources/EP14.pdf>> 2; Loungani, above n 4, 14.

10 Gisela di Meglio, et al, 'Services in Developing Economies: A New Chance for Catching-up?' (SWPS 2015-32, University of Sussex, November 2015) 3.

members.¹¹ Services contribute to the competitiveness of other sectors by reducing transaction costs, diffusing knowledge, providing physical or digital platforms to deliver other goods and services, preparing the labor pool with the necessary skills to perform higher value-added activities across all sectors..¹² This dynamic poses a challenge for PA members, who can only reap the full benefits of more service-centric growth trajectories if the region's range of intermediate service inputs becomes more internationally competitive.¹³

Recent research suggests that the effect that service sector performance exerts on overall economic growth is as strong, if not stronger, than the effect of manufacturing growth.¹⁴ Moreover, the correlation between services growth and per capita GDP growth is stronger than the correlation between manufacturing sector growth and per capita GDP growth.¹⁵ Services firms that export further show greater productivity levels than those that do not, offering credible evidence that services trade is a key driver of productivity improvement.¹⁶

Services also make a key contribution to labor productivity growth in developing countries. Evidence from Latin America reveals that this is linked to productivity improvements within the service sector itself.¹⁷

Services trade also sustains efforts at export diversification in a large swathe of developing countries. Within the PA, this is notably the case of Mexico in regard to exports of communication and distribution services and in Chile in regard to distribution and transportation services alongside a wide array of business and professional services.¹⁸ The increasing ease with which services are today traded, notably in the digital realm, offers significant scope for production and export diversification and a concomitant reduction of dependence on commodity and other traditional exports in developing countries. The need for export diversification has long underpinned efforts at nurturing a more vibrant service economy in Chile, Colombia and Peru.¹⁹

Much recent empirical work lends support to the idea that services offer a

11 Max Mendez-Parra, 'Trade in services and economic transformation: some evidence' in Bernard Hoekman and Dirk Willem te Velde (eds), *Trade in services and economic transformation/ A new Development policy priority (Essay Series, Overseas Development Institute, February, 2017)* 11; *Services and Sustainable Development: A Conceptual Approach (International Centre for Trade and Sustainable Development/ICTSD, Framework Paper, September 2016)* 6.

12 Balchin, above n 8, 8-9; Joseph Francois and Bernard Hoekman, 'Services Trade and Policy' (2010) 43 *Journal of Economic Literature*, 642, 682. See also Mendez-Parra, above n 11, 11.

13 See below Annex.

14 Ghani, above n 6.

15 Loungani, above n 4, 12, 31.

16 Balchin, above n 8, 8. See also Mendez-Parra, above n 11, 12.

17 Xinshen Diao, Margaret Mc Millan and Dani Rodrik, 'The recent growth boom in developing economies: the role of services' in Bernard Hoekman and Dirk Willem te Velde (eds), *Trade in services and economic transformation/ A new Development policy priority (Essay Series, Overseas Development Institute February, 2017)* 6, 6.

18 Sebastián Saez, "The Strategic Development Role of Trade in Services," in Saez, Sebastián (ed) *Trade in Services Negotiations: A Guide for Developing Countries, Directions in Development: Trade*, (The World Bank, 2010) <<http://issuu.com/World.Bank.Publications/docs/9780821383537>> 2.

19 OECD Global Relations Secretariat, above n 7, 13-4.

meaningful path towards sustainable growth in developing countries.²⁰ Such literature usefully recalls that developing countries can nurture comparative advantages, specialize and scale up in services to speed up the growth process.²¹ Some authors, however, caution, as for goods trade, that the composition of services (and of services exports) can strongly influence the degree to which the sector can contribute to sustainable growth.²² Such experts thus posit a complementary rather than substitutive role for services, particularly knowledge-intensive business services, as a core catalyst of economic development, recalling the centrally important catalytic role played by manufacturing in scaling up the demand for more sophisticated service inputs and the attendant risks of premature de-industrialization.²³

b) The Role of Services in Promoting Inclusive Growth and Poverty Reduction

Recent studies have shown that the service economy is both more resilient to the vagaries of the economic cycle and more gender inclusive.²⁴ Ghani and Kharas stress that countries with high employment in services tend to be characterized by above-average rates of female participation in the labor market.²⁵ Studies show that female employment increases in countries with sizeable services exports.²⁶ In turn, the greater participation of women in formal employment contributes to poverty reduction and lower income inequality by boosting household incomes. The enhanced economic status of women reduces the number of children per household, allows for enhanced educational opportunities and better health for children, all of which increases the capacity to save. Tourism, healthcare, education and ICT stand out as gender-friendly service sectors. The service economy tends to produce more favorable gender outcomes than does manufacturing because of its propensity to cater for more flexible working hours and work methods (i.e. telecommuting).²⁷

The service economy can absorb workers confronted with the decline in manufacturing jobs.²⁸ Data tracking the average annual growth in total employment between 2010 and 2014 and the average growth of services exports over the same period reveals that those countries that have experienced fast growth in services exports have also experienced rapid growth in aggregate employment levels.²⁹

20 Ghani, above n 9, 4.

21 Sebastián Sáez, et al, Valuing Services in Trade/ a Toolkit for Competitiveness Diagnostics (World Bank, 2014) 13.

22 Di Meglio, above n 10, 20.

23 Dani Rodrik (2013), The Perils of Premature Deindustrialization, Project Syndicate, (October 11).

24 Ghani, above n 6.

25 Ghani, above n 9, 4. See also Ghani, above n 6.

26 Loungani, above n 4, 13.

27 Sonja Grater, Ali Parry and Wilma Viviers, 'Realising the Potential of Services SMEs in Developing Economies' (International Centre for Trade and Sustainable Development, February 2017) 8.

28 ICTSD, above n 11, 3.

29 Loungani, above n 4, 13, 33.

c) Services and SME Development

The increasing tradability of services, the fragmentation of production and the rapid pace of technological progress offer exciting new opportunities to SMEs in serving international markets. A myriad of modern services such as business and IT services can be produced and exported at low costs nowadays, changing the long-held belief of services as non-tradable or non-scalable.³⁰ A growing number of services are becoming digitally deliverable, offering evidence of the transformative potential of the Internet and of Internet platforms to expand services exports.³¹ The growth of the Internet further helps SMEs to access timely information on changing demand conditions in international markets and to identify local suppliers and distributors on the reaction. It can furthermore inform SMEs of how their competitors respond to market changes.

Technology start-ups in engineering, design, computer games and online applications are typically born with global aspirations thanks to the ease with which firms can market, sell and deliver their services and products online. When compared to other complex organizational structures, SMEs are often more flexible and therefore have a greater ability to adapt to rapid changes in the demand conditions and technological developments.³²

Service sector SMEs can operate internationally in several ways. First, through internal organic expansion, allowing them to sell differentiated products directly in foreign markets. The empirical evidence on offer suggests that exporting SMEs tend to be larger,³³ more productive, and more capital and skill-intensive than those that do not.³⁴ Moreover, studies suggest that service sector SMEs that internationalize tend to remain internationally active, continuing to export after their initial foreign forays.³⁵ Service sector SMEs can participate in international markets through non-equity modes of investment, providing franchisees, repair, marketing and distribution services. Such indirect forms of internationalization is possible through licensing and technology transfer agreements, commercial cooperation, franchising and after sales contracts.³⁶ SMEs can also connect to international networks by participating, typically as suppliers, in regional or global value chains providing intermediary services and supplying them to subsidiaries of multinationals in their home country.³⁷

30 Hildegunn Kyvik Nordås 'Services SMEs in International Trade: Opportunities and Constraints' (International Centre for trade and Sustainable Development and World Economic Forum, May 2015) <www.e15initiative.org> 1; Sáez, 'Valuing Services in Trade' above n 21, 12.

31 Grater, above n 27, 9; Joshua P Meltzer, 'Using the Internet to Promote Services Export by Small and Medium Size Enterprises' (Working Paper No 83, Brookings, February 2015) 5; Iza Lejárraga, et al, 'Small and Medium Sized Enterprises in Global Markets: A Differential Approach for Services?' (OECD Trade Policy Papers No 165, 2014) 7.

32 Nordås, above n 30, 1.

33 But see Lejárraga, above n 31, 66. The authors suggest that the effects of firm size are ambiguous in the case of services.

34 Lejárraga, above n 31, 7; Meltzer, above n 31, 4;

35 This assertion deserves empirical testing at the level of the services SMEs in the PA. See, eg, Lejárraga, above n 31, 6, 67.

36 OECD Global Relations Secretariat, above n 7, 10.

37 Nordås, above n 30, 3-4.

Smaller services firms tend to use indirect channels more than direct modes of trading when compared to manufacturing SMEs.³⁸ Seen from a PA perspective, such trends recall the importance for PA members to cooperate in developing business clusters and encouraging closer linkages with larger domestic lead investors and foreign owned enterprises in services and manufacturing alike.³⁹ For this to occur, SMEs need to meet quality and other types of standards demanded by MNEs. In the context of business services, this could usefully involve PA-wide certification and accreditation schemes, precisely the type of regional public good-type of initiative that PA members have shown a propensity to explore.

SMEs nonetheless face persistent material constraints. As regards for instance their ability to sell and deliver services online, SMEs still need to gain the trust of consumers in the digital world.⁴⁰ SMEs rely on secure online payment systems and Internet platforms and portals to generate such trust. Moreover, SMEs selling online need to rely as much as offline sellers on marketing and advertising efforts to attract customers to their products.⁴¹ As in the offline world, SMEs often lack the staff with the necessary marketing and advertising skills to attract the attention of their target market. In particular, high-tech SMEs typically lack personnel with soft, managerial and business skills.⁴² This is an issue that has been identified in the context of technology-based SMEs within the PA. Access to finance also represents a potentially difficult hurdle for services SMEs because of perceived risks and the greater difficulties encountered in collateralizing intangible assets. This notably hinders their ability to finance and grow exporting ventures.

At the regulatory level, SMEs find it more difficult and costly to adjust and comply with a multiplicity of regulatory measures. The International Trade Centre's (ITC) 2016 SMEs Competitiveness Outlook noted that in developing countries, a 10 percent increase in the regulatory burden reduces the goods exports of SMEs by 3.2 percent, twice the burden experienced by large firms.⁴³ The above problem is magnified when one considers the greater propensity of smaller firms to serve foreign markets on a cross-border basis rather than through a commercial presence. Even when SMEs decide to establish a commercial presence abroad in order to better respond to foreign market demands, they more often than not do so through representative offices rather than through branches or subsidiaries. Policy interventions and cooperation initiatives on the SME front need to better acknowledge such a reality considering the negative effects that implementing regulations on localization and commercial presence may have for such firms.

SMEs are also providers of a variety of business services in consultancy and other areas that require professional services from regulated professions such

38 Lejarraga, above n 31, 5, 66.

39 OECD Global relations Secretariat, above n 7, 8, 22. See also Lejarraga, above n 31, 5-6.

40 Meltzer, above n 31, 17-8.

41 Nordås above n 30, 3.

42 Nordås above n 30, 3.

43 International Trade Centre, 'SME Competitiveness Outlook/Meeting the Standard for Trade' < <http://www.intracen.org/SMEOutlook/SME-Competitiveness-Outlook-2016/> > XIX, 45.

as engineering, architecture, accountancy, law and other technical professions. Meeting licensing and other qualifications requirements to deliver these types of services in several foreign destinations can become particularly burdensome for SMEs,⁴⁴ recalling the important trade facilitation benefits to be derived from mutual recognition efforts.

Despite the growing potential of online delivery of services, many services are still delivered offline through the physical presence and attendant proximity of suppliers, either for reasons of market preference or due to the type of service. Complying with multiple migratory regulations, visa requirements, work permits and related administrative procedures can prove particularly taxing for service sector SMEs.

The PA forms an attractive export market for the region's SMEs, thanks to the existence of cultural affinities, a common language and closeness in business practices as compared to larger markets in the United States, Europe or Asia. Geographic proximity to target markets positively affects SME export levels.⁴⁵ The PA market offers ready opportunities for the region's service sector SMEs to benefit from scale effects and could serve as a platform to test and prepare for competition in extra-regional markets. A first step in designing policies that foster greater intra-regional trade of PA SMEs in services is to gain a better understating of the existing SME landscape in the region. This can be done by better mapping SME market structures, identifying the sectors in which they predominantly operate, the range of services they offer, and the most binding constraints they face as exporters.

Finally, as in all sectors, service sector internationalization in the PA is and must be seen as a two-way street. Access to international networks offers services SMEs the opportunity to source and import a broader variety of potentially better and cheaper inputs, resulting in lower operating costs, improved productivity and enlarged profit margins.⁴⁶

d) The Role of Services in Product and Process Innovation

Knowledge-based business services and ICT-related services are instrumental in promoting innovation not only in services, but also in the manufacturing and agricultural sectors.⁴⁷

Moreover, scope for innovation arises from the value that service inputs add

44 Meltzer, above n 31, 8.

45 Lejárraga, above n 31, 67.

46 Lejárraga, above n 31, 7.

47 Elena Arias-Ortiz, et al, ' La Productividad en el Sector Servicios en America Latina y el Caribe' en Diego Aboal, Gustavo Crespi y Luis Rubalcaba (eds), La Innovación y la Nueva Economía de Servicios en América Latina y el Caribe/ Retos e implicaciones de política (Centro de Investigaciones Económicas, 2015) 65, 66 [Elena Arias-Ortiz, et al, ' Productivity in the Services Sector in Latin America and the Caribbean' Diego Aboal, Gustavo Crespi y Luis Rubalcaba (eds), Innovation in the New Services Economy in Latin America and the Caribbean/ Challenges and Policy Implications (Centre for Economic Research, 2015) 65, 66]; ICTSD, above n 11, 18.

to final goods.⁴⁸ Such effects help explain the proliferation of policy efforts deployed towards designing innovation policies targeted specifically at service industries, all the more so as experience appears to show that horizontal (i.e. non-sector specific) policies often fail to unleash the full innovation potential of services.⁴⁹

Greater product and process innovation in services could play a significant role in speeding up lagging productivity levels observed within the PA countries.⁵⁰ Evidence collected at the firm level reveals higher levels of labor productivity within innovating firms in Chile and Colombia. Innovating firms are indeed more likely to introduce improvements and changes in their products and/or production processes when compared to non-innovating firms.⁵¹

Innovation in services generates a number of positive spillovers, both sector-specific and economy wide, and can strengthen comparative advantages already in place while also contributing to the emergence of newer types of services.⁵²

Innovation in services occurs through multiple channels and is not exclusively driven by technology. Den Hertog defines service innovation as: "(...) a new service experience or service solution in one or several of the following dimensions: new service concepts, new customer interactions, new value system/business partners, new revenue models, new organizational or technological service delivery systems"⁵³ Among the distinctive features of service sector innovation are the lesser prominence of R+D, patents and other intellectual property rights-related matters.⁵⁴ Moreover, as services rely on repeat user and consumer interaction, innovation is also shaped to some extent by consumer co-participation. Service innovation also depends more broadly on informal activities and cooperation with other partners (including competitors, for instance in sharing payment platforms or distributional channels) in comparison to manufacturing innovations, which tends to rely more heavily on infrastructure. Furthermore, the minimum efficient scale of operation, and hence of innovation, is significantly smaller in services than in industry, requiring smaller doses of capital.⁵⁵

48 Patrick Low, 'What we can learn from case studies on services' in Bernard Hoekman and Dirk Willem te Velde (eds), *Trade in services and economic transformation/ A new Development policy priority* (Essay Series, Overseas Development Institute, February, 2017) 17, 18.

49 Luis Rubalcaba, 'La Innovación en los Servicios' en Diego Aboal, Gustavo Crespi y Luis Rubalcaba (eds), *La Innovación y la Nueva Economía de Servicios en América Latina y el Caribe/ Retos e implicaciones de política* (Centro de Investigaciones Económicas, 2015) 39, 50, 63 [Luis Rubalcaba, 'Innovation in Services' in Diego Aboal, Gustavo Crespi y Luis Rubalcaba (eds), *Innovation in the New Services Economy in Latin America and the Caribbean/ Challenges and Policy Implications* (Centre for Economic Research, 2015) 39, 50, 63].

50 Ibid 39-63.

51 Gustavo Crespi, Ezequiel Tacsir and Fernando Vargas 'Innovation and Productivity in Services/ Empirical Evidence from Latin America' (Technical Note TN-690, Inter-American Development Bank, 2014) 25. This is particularly the case of technological innovation in services in Colombia.

52 Rubalcaba, above n 49, 12.

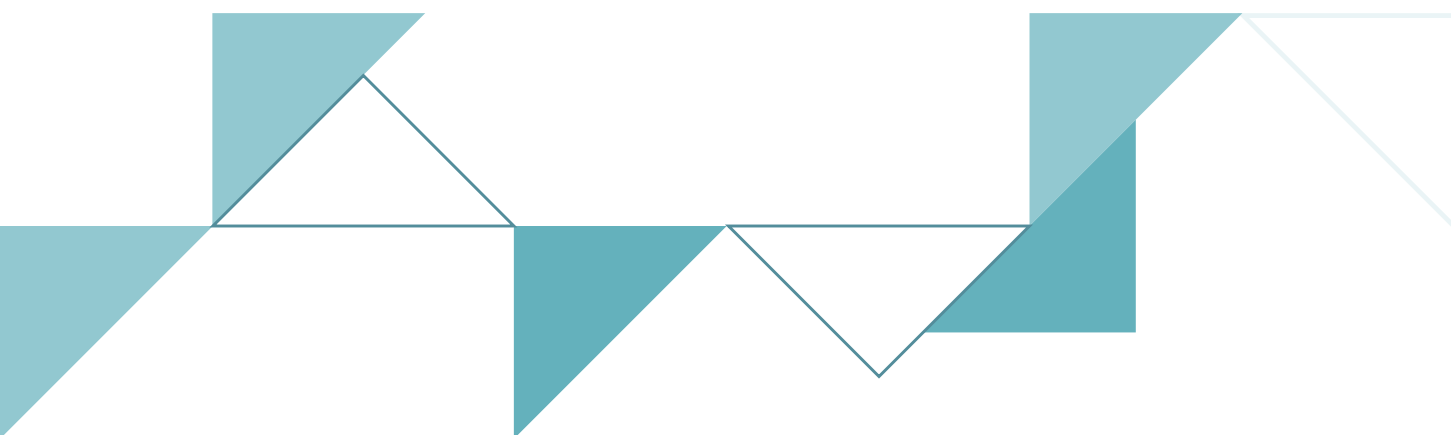
53 Pim Den Hertog, *Managing Services Innovation/Firm Level Dynamic Capabilities and Policy Options* (PhD, University of Amsterdam, 2010) < https://pure.uva.nl/ws/files/1485785/80515_thesis.pdf 19.

54 Rubalcaba, above n 49, 39, 46.

55 But see René A Hernández, Alfredo Hualde, Nanno Mulder and Pierre Sauvé (eds), *Innovation*

As regards the contribution that international trade can make to the innovation process, there is empirical evidence showing that services exports and imports help service sector firms to innovate through knowledge transfers and exposure to other more productive and innovative firms.⁵⁶ Such outcomes appear magnified by the cross-border movement of capital that is typically associated to services trade. Firms operating in foreign markets need to innovate to adapt to different and new regulatory environments, overcome cultural barriers, adopt international standards or modify their service offerings to suit local market conditions.⁵⁷ Heightened exposure to international competition creates further pressure to innovate. Thus, there is a significant, often overlooked, positive linkage between innovation and the internationalization of services. Firms that innovate are more likely to export. And by the same token, firms that export are more likely to innovate.⁵⁸

Finally, it bears recalling that fostering innovation in services also requires adequate backbone services: in particular communication and ITC services,⁵⁹ education services and financial services. There is strong evidence linking educational attainment to the capacity to adapt innovations produced overseas to the local environment.⁶⁰



and Internationalization of Latin American Services (ECLAC & Colegio de la Frontera Norte, 2016) 24. The authors' findings suggest that the size of the firm in countries like Chile and Colombia is related to the type of innovation. Larger firms are more likely to produce technological innovations in the services sectors in Chile and Colombia.

56 Lejarraga, above n 31, 7; Meltzer, above n 31, 4. Lejarraga refers particularly to the effects of international trade in the innovation rates of SMEs.

57 Hernández, above n 55, 11.

58 Hernández, above n 55, 11-2.

59 Rubalcaba, above n 49, 39, 56.

60 Marcus Noland, Donghyun Park, and Gemma B. Estrada 'Developing the Services Sector as an Engine for Growth in Asia/Overview' in Donghyun Park and Marcus Noland (eds), *Developing the Services Sector as an Engine for Growth in Asia*, (Asian Development Bank, 2013) 8, Figure 1.3.

III. Mapping the Services Landscape in the Pacific Alliance



III Mapping the Services Landscape in the PA

Gaining an understanding of the services landscape in the PA requires a twofold outlook: economic and regulatory. From an economic perspective, the section that follows documents key trends in the contribution of services trade and investment to individual PA economies and to region-wide trade and investment ties in services. From a regulatory point, it subsequently explores the PA's emerging governance regime for services through a mixed model of hard and soft law, mediated by several instances of regulatory cooperation.

1. Internationalization of Services in the PA

a) Characterization of international services trade in the PA members

The Pacific Alliance follows the general global trend of services assuming a dominant share of output and employment throughout the region. The share of services in GDP among PA members has remained close to 60 percent over the past fifteen years, with slight increases in the case of Chile and Mexico, while it remained stable or showed a slight decline in the cases of Peru and Colombia respectively. As Table 1 shows, services account for more than 60% of employment in all four countries, a figure that reached 75 percent in Peru in 2010. Colombia was the only member that showed a (slight) contraction of employment in services between 1994 and 2010, the latest period for which ILO data is available.⁶¹

Table 1. The Structure of Output in PA Members 2000–2015⁶²

	Gross domestic product		Agriculture		Industry		Manufacturing		Services	
	\$ Billions		% of GDP		% of GDP		% of GDP		% of GDP	
	2000	2015	2000	2015	2000	2015	2000	2015	2000	2015
Chile	79.3	240.8	6	4	32	33	17	12	62	63
Colombia	99.9	292.1	9	7	29	34	15	12	62	59
Mexico	683.6	1,143.8	4	4	35	33	20	18	62	64
Peru	51.7	189.1	9	8	32	33	17	15	59	59

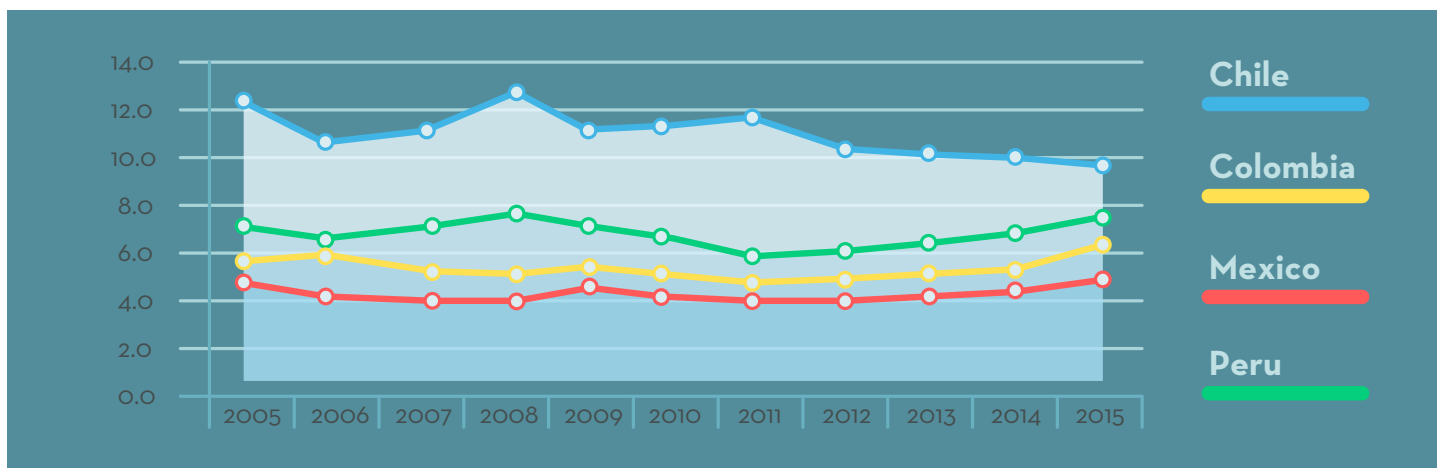
Source: World Development Indicators, (WB)

61 Employment in Services (% of total employment), (International Labour Organization, Key Indicators of the Labour Market database) < <http://data.worldbank.org/indicator/SL.SRV.EMPL.ZS>>.

62 Trade Map/ Trade Statistics for International Business Development, International Trade Centre (ITC) data <<http://www.trademap.org/>>.

Despite the importance of services in the domestic economies of PA members, the share of services exports in output remains low. This suggests that considerable scope exists for PA members to experience a strong rise in international services trade. At the same time, it suggests the need to review current policies with a view to tackling various constraints weighing on services export growth. The share of services trade in GDP of PA members has lagged far behind the global share, particularly in the case of Colombia, Peru and Mexico. Chile is the PA member with the highest services trade to GDP ratio, albeit on a declining trajectory since 2008.⁶³ Other PA members experienced a decline in services trade to GDP ratios from 2008 to 2011 but experienced a recovery from 2011 to 2015.⁶⁴ Expressed on a balance of payments basis, the share of services in total trade has remained broadly stable at just over 20 percent for OECD countries and 15 percent for middle-income countries.⁶⁵

Figure 1. PA: Services Trade to GDP Ratios, 2005–2015⁶⁶



Source: based on WB data

Estimates from the World Bank and UNCTAD suggest that the aggregate exports of services of PA members stood at US\$ 45.8 billion at the end of 2015.⁶⁷ The share of PA members in global services trade remains small when compared to other regional groups, such as ASEAN.

63 Trade in Services (% GDP), The World Bank < <http://data.worldbank.org/indicator/BG.GSR.NFSV.GD.ZS>>.

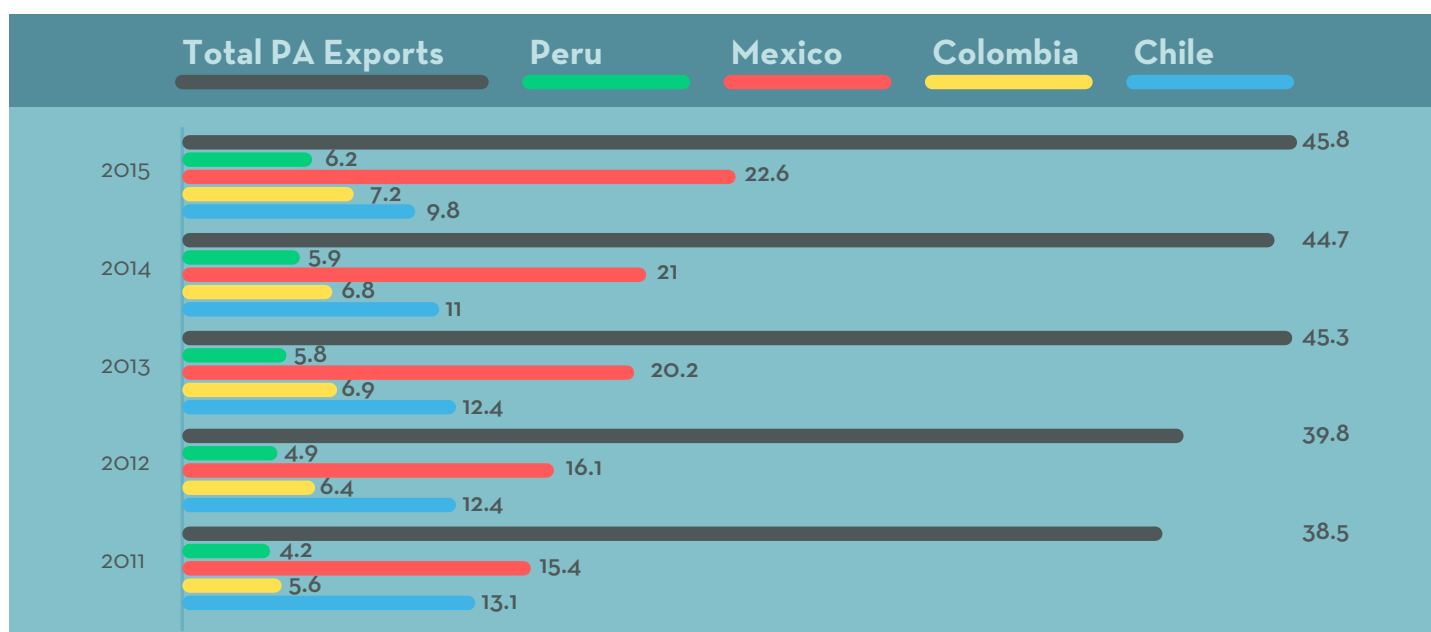
64 Trade in Services (% GDP), The World Bank < <http://data.worldbank.org/indicator/BG.GSR.NFSV.GD.ZS>>.

65 Quantifying the benefits of services trade liberalization (Centre for International Economics, June 2010) < <https://dfat.gov.au/about-us/publications/Documents/quantifying-the-benefits-of-services-trade-liberalisation.pdf>> vi.

66 World Development Indicators: Structure of Output, The World Bank (2 February 2017) < <http://wdi.worldbank.org/table/4.2>>.

67 Trade in Services (% GDP), The World Bank < <http://data.worldbank.org/indicator/BG.GSR.NFSV.GD.ZS>>.

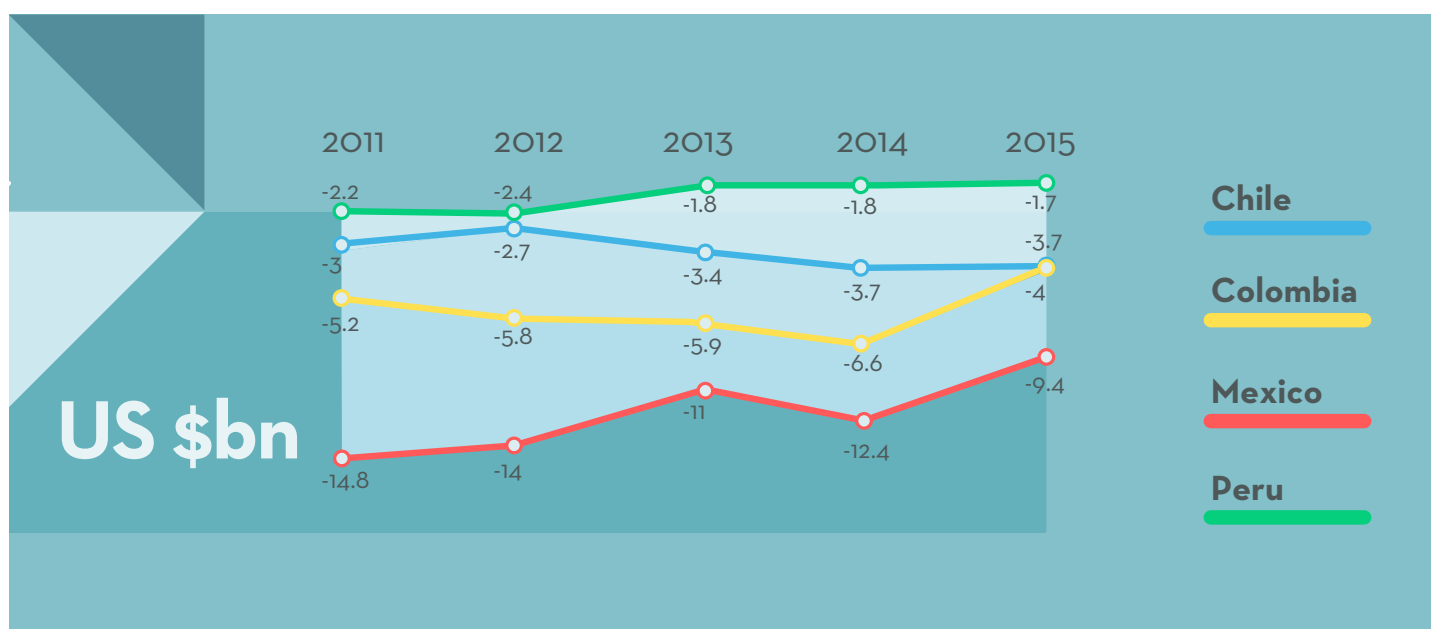
Figure 2. PA: Services Exports 2011–2015, USD \$ bn⁶⁸



Source: Based on ITC, UNCTAD and WTO data

PA members report an overall deficit on their services accounts. In all four members, imports of services from the rest of the world exceed services exports. Such a deficit declined slightly over the 2011-15 period.

Figure 3. PA: Services Trade Balances 2011–15⁶⁹



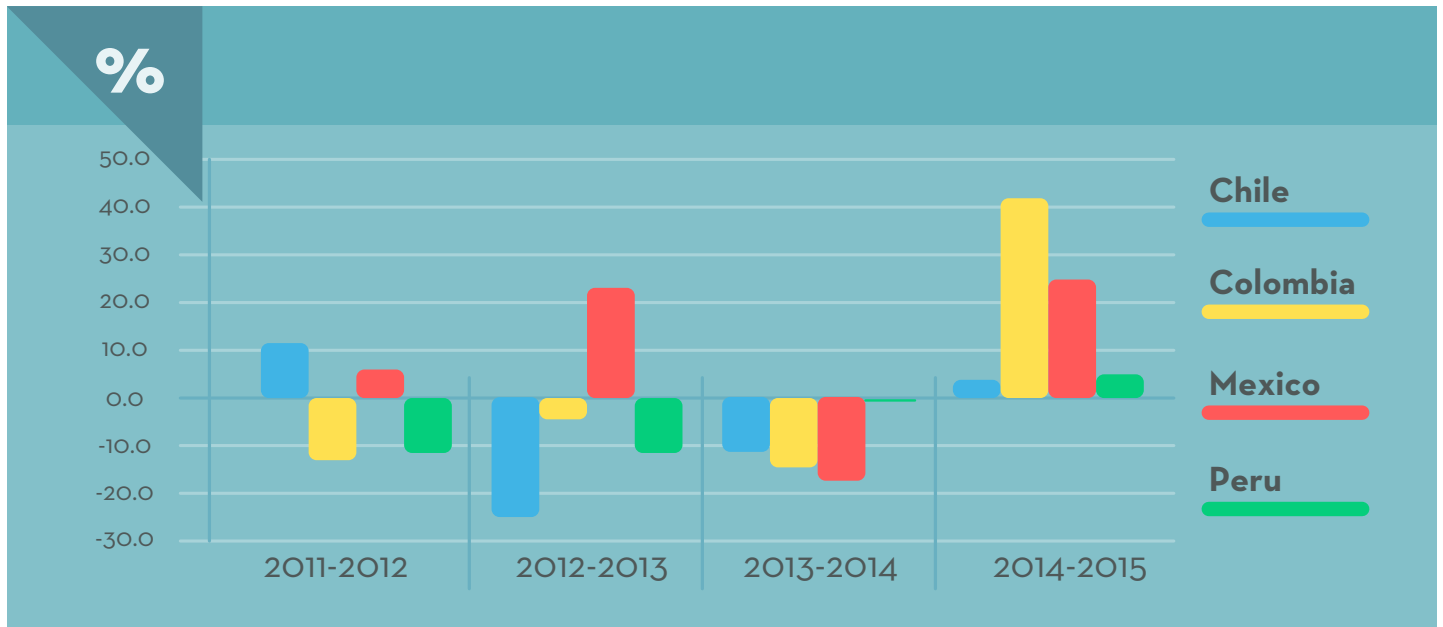
Source: Based on ITC, UNCTAD and WTO data

68 Based on data from ITC, UNCTAD and WTO trade in services statistics available at <<http://www.trademap.org/>>.

69 Authors' estimations based on data from ITC, UNCTAD and WTO trade in services statistics available at <<http://www.trademap.org/>>.

While the services trade accounts of PA members present differing patterns over the period examined, all have experienced a narrowing of their trade deficits in services in 2014-2015.⁷⁰

Figure 4. PA: Variation of Trade Balances in Services 2011-15⁷¹



Source: own elaboration Based on ITC, UNCTAD and WTO data

A disaggregated look at the sectoral composition of PA members' services trade shows a number of cross-country similarities and differences. In Colombia, transport and travel account for 80 percent of total services exports. For Chile, the two subsectors accounted for 65 to 70 percent of services exports between 2013 and 2015. Peru follows a similar pattern, with the two sectors representing around 75 percent of the country's services exports to the world. For Mexico, insurance and related financial services take precedence over transport services exports. Along with travel services, the three sectors accounted for 83 to 94 percent of Mexican services exports between 2013 and 2015.⁷² Other business services⁷³ also play a significant role in the services exports of PA members. For Colombia and Peru, business services account for roughly a tenth of services exports, a level half that obtaining in Chile.⁷⁴

70 Data from 2015 is estimated by the World Bank in the cases of Chile, Colombia and Peru.

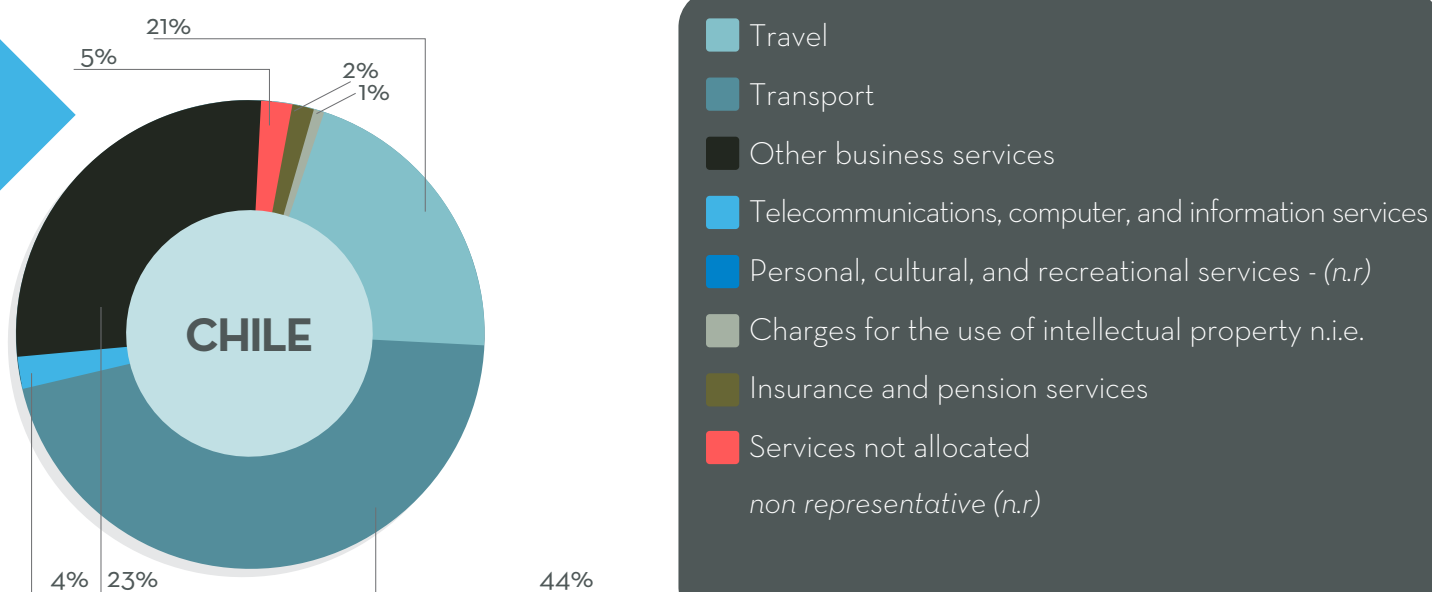
71 Authors' estimations based on data from ITC, UNCTAD and WTO trade in services statistics available at <<http://www.trademap.org/>>.

72 Own elaboration based on data from ITC, UNCTAD and WTO trade in services statistics available at <<http://www.trademap.org/>>.

73 This category of sectors includes: research and development services, professional and management consulting services, technical and trade related and other business services.

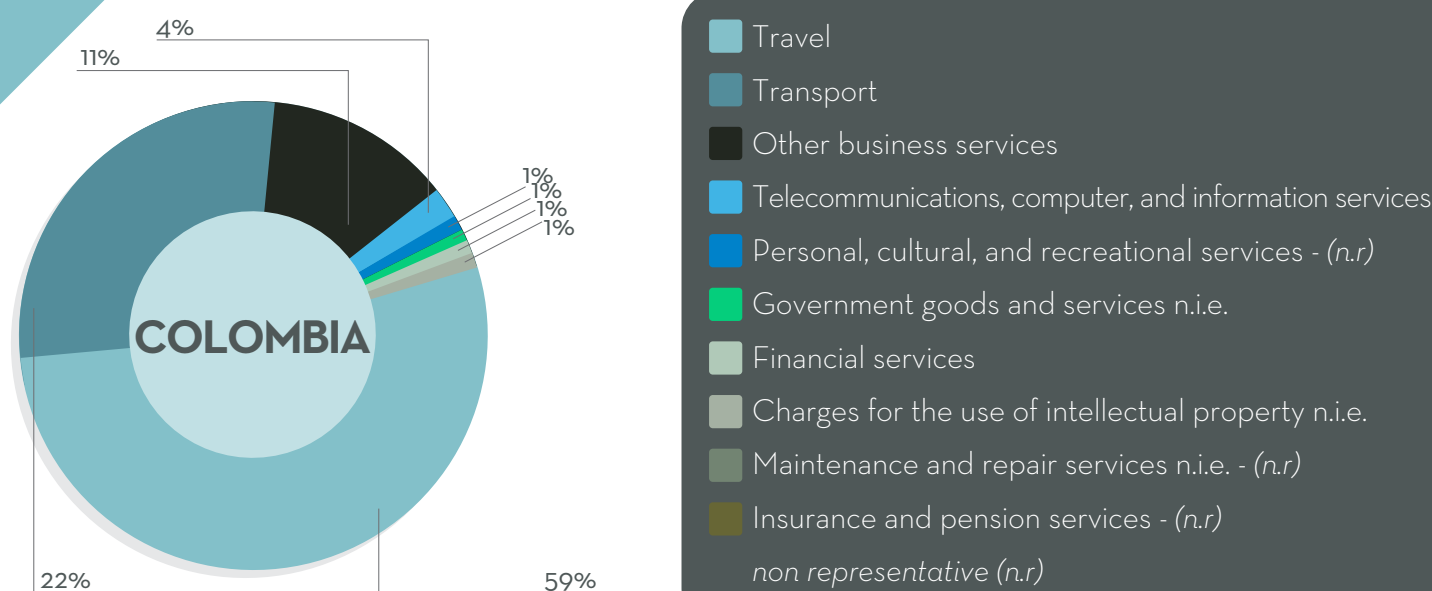
74 In the case of Mexico no data was available under this item.

Figure 5. Chile: Sectoral Distribution of Services Exports, 2014⁷⁵



Source: Authors' calculations based on ITC, UNCTAD and WTO data

Figure 6. Colombia: Sectoral Distribution of Services Exports, 2015⁷⁶

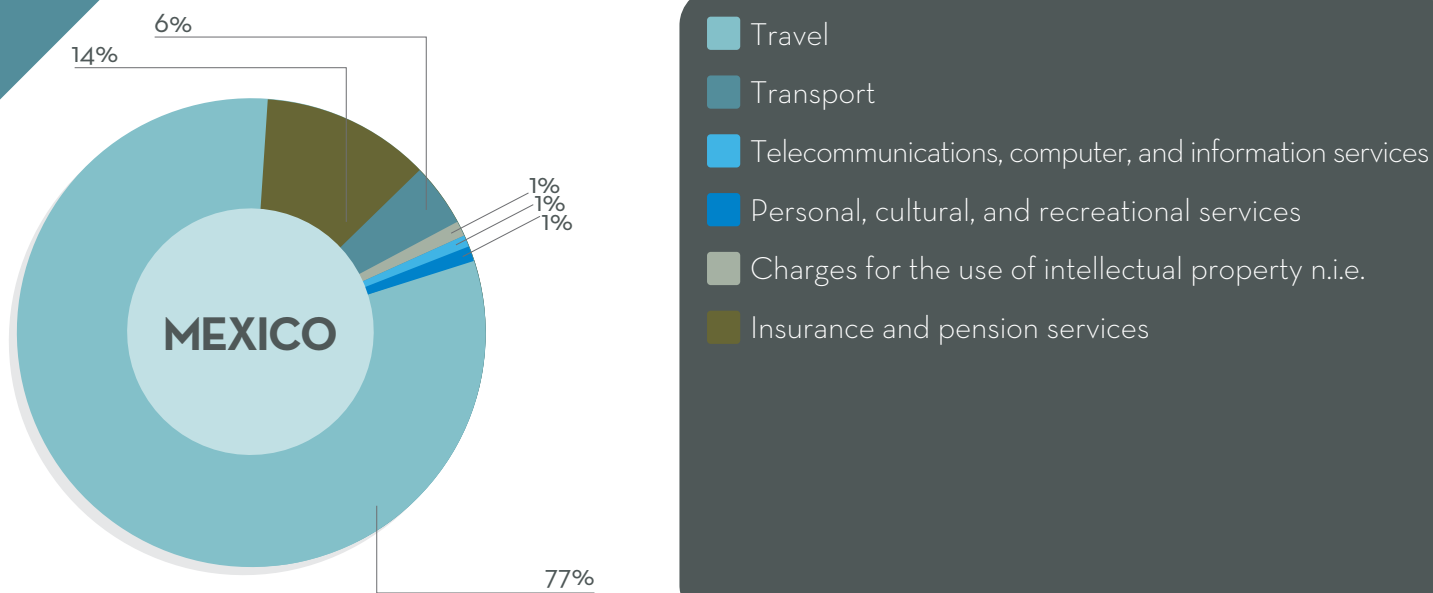


Source: Authors' calculations based on ITC, UNCTAD and WTO data

75 Authors' estimations based on data from ITC, UNCTAD and WTO trade in services statistics available at <<http://www.trademap.org/>>. (Disaggregated data was available up to 2014)

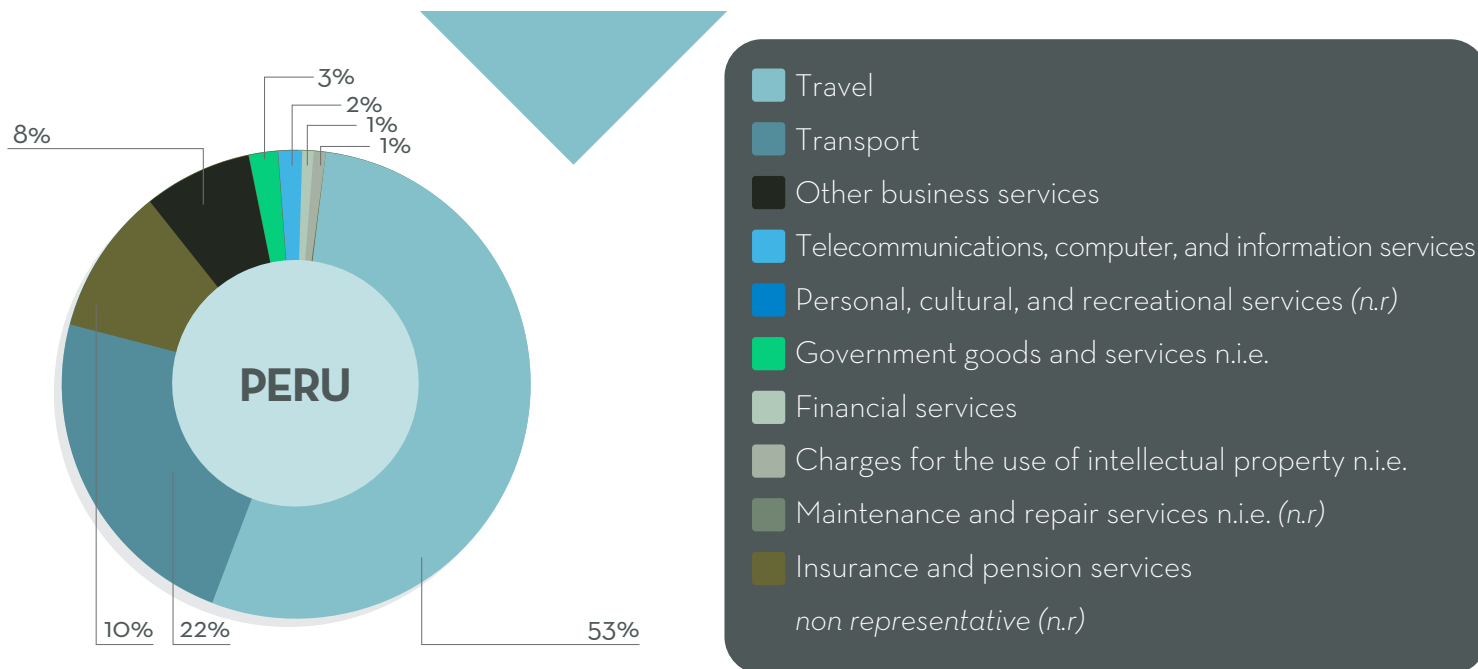
76 Authors' calculations based on data from ITC, UNCTAD and WTO trade in services statistics available at <<http://www.trademap.org/>>.

Figure 7. Mexico: Sectoral Distribution of Services Exports, 2015⁷⁷



Source: Authors' calculations based on ITC, UNCTAD and WTO data

Figure 8. Peru: Sectoral Distribution of Services Exports, 2015⁷⁸



Source: Authors' calculations based on ITC, UNCTAD and WTO data

77 Authors' calculations based on data from ITC, UNCTAD and WTO trade in services statistics available at <<http://www.trademap.org/>>.

78 Authors' calculations based on data from ITC, UNCTAD and WTO trade in services statistics available at <<http://www.trademap.org/>>.

b) Trends in Intra-Regional Services Trade

Within the PA sub-region, data on intra-regional services trade are still limited and highly aggregated for Mexico and Peru.⁷⁹ This complicates attempts at assessing the

extent of service sector integration between PA members.⁸⁰ However, estimations made by ECLAC suggest that intra-regional trade in services between PA members accounted for around 11 percent of total services exports of the regional grouping, with 8 percent of exports directed to other Latin American countries and 81 percent to the rest of the world.⁸¹ While low, intra-regional trade in services among PA members remains significantly greater than that observed for merchandise trade, where it is estimated to stand at a mere 3.4 percent.⁸² The PA's level of intra-regional trade in services – on both the import and export sides - has experienced continuous growth since 2013.⁸³

The most significant contributions to intra-regional services trade ties in the PA are made by Chile, Colombia and Peru, with Mexico exporting services chiefly to its northern neighbors, and particularly the United States. Intra-regional trade in services between the three South American members reached 17 percent of their total services exports in 2014⁸⁴ (see Table 2).

79 Secretaría General de la Asociación Latinoamericana de Integración, 'Estadísticas del Comercio Internacional de Servicios: Diagnóstico sobre la Compilación y Difusión en los Países Miembros de la ALADI' (ALADI, 2016) 77, 87 [General Secretariat of the Latin American Integration Association, 'Statistics for International Trade in Services LAIA' (LAIA, 2016) 77, 87]. Mexico does not compile statistics on the international trade on services by country partner. Peru develops a compilation on the international trade in services by country partner announced for publication in 2016, but it is not available at the moment of writing.

80 Jose Duran Lima and Daniel Cracau, 'The Pacific Alliance and its Economic Impact on Regional Trade and Investment' (ECLAC, International Trade Series No 128, December 2016) 27.

81 Ibid.

82 Ibid 12.

83 Osvaldo Rosales, Sebastián Herreros Uguarte y Jose Duran Lima, 'La Alianza del Pacífico: comercio, inversión y desafíos a futuro' en Adriana Roldán Pérez (ed) La Alianza del Pacífico: plataforma de integración regional con proyección al Asia Pacífico (Fondo Editorial Universidad EAFIT, 2015) 67, 88 [Osvaldo Rosales, Sebastián Herreros Uguarte and Jose Duran Lima, 'The Pacific Alliance: trade investment and Future Challenges' in Adriana Roldán Pérez (ed) The Pacific Alliance: platform for regional integration with a focus on Asia Pacific (Fondo Editorial Universidad EAFIT, 2015) 67, 88].

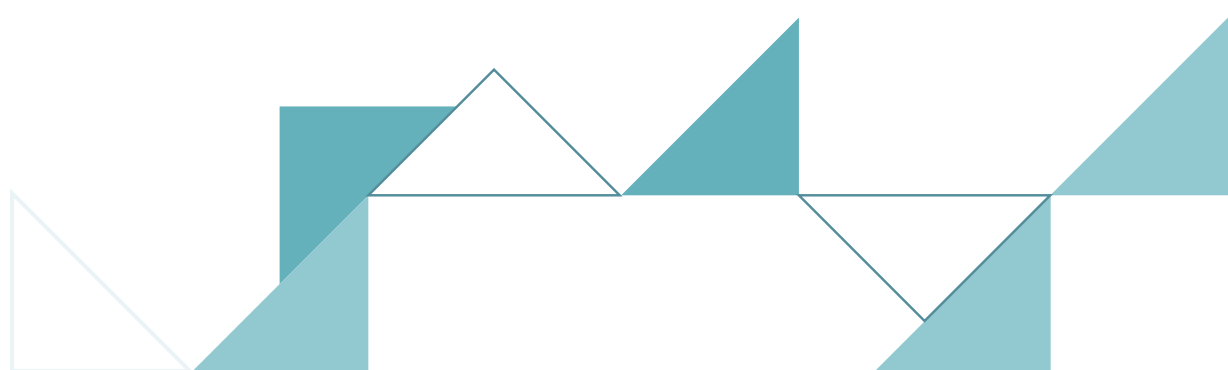
84 Duran-Lima, above n 80, 27.

Table 2. PA: Sectoral Distribution of Intra-regional Trade in Services, 2014⁸⁵

	Chile	Colombia	Peru	Mexico	Intra PA (including Mexico)	Intra PA (excluding Mexico)
Transport (%)	10.1	14.1	23.2	16.7	13.7	13.4
Travel (%)	5.2	21.0	34.4	4.1	10.9	21.5
Other Services (%)	12.9	14.3	20.1	3.8	9.8	14.6
Total Xs PA / Xs World (%)	10.1	17.8	28.3	4.5	11.1	16.8
Total PA (Million Dollars US \$)	1105	1219	1645	908	4876	3969

Source: Duran-Lima & Cracau (2016)

For Colombia, the PA sub-region ranks among the country's eight most important destinations for services exports and imports. Mexico represents Colombia's fourth supplier of services, after the United States, Panama and Spain, followed by Peru and Chile.⁸⁶ Mexico also represents Colombia's third export market, followed by Peru in fifth place and Chile in sixth place. While Colombia's bilateral trade balance in services with Mexico is negative, it runs a surplus with the other two PA members. In 2015, Colombia exported US \$1.3 billion to its PA counterparts and imported from them a total of US \$1.4 billion.⁸⁷ Table 3 below provides a disaggregated picture of recent trends in Colombia's services trade with PA partners.



⁸⁵ Ibid 27.

⁸⁶ Quarterly Sample of International Trade in Services (2013-2016), Department of National Statistics, (Colombia) <<https://www.dane.gov.co/index.php/estadisticas-por-tema/comercio-internacional/muestra-trimestral-de-comercio-exterior-de-servicios>>.

⁸⁷ Rosales, above n 83, 88. Data from 2008 to 2013 confirms the trend.

Table 3. Colombia: Value and Share of Services Trade to the PA, 2013–15⁸⁸

	Exports			Imports		
	2013	2014	2015	2013	2014	2015
Chile	325	368	370	188	257	293
Mexico	386	434	497	506	615	726
Peru	334	417	415	280	289	335
Total PA Million US \$	1044	1219	1283	974	1160	1355
World (services) ^a Million US \$	6859	6846	7238	12 774	13 506	11 841
Share PA (%)	12.5	17.8	18	7.6	8.6	11

Source: Duran-Lima & Cracau (2016)

a Balance of Payments data from Colombia

Colombia's main services exports to the PA, excluding travel, consisted of air transport of passengers, telecommunications, computer-related services, transport of cargo as well as architectural and engineering services.⁸⁹

The available data for Colombia reveal the growing importance of intra-regional services trade in several categories of IT-related services, such as computer and telecommunication services, alongside rising exports of professional and business services that likely attest to FDI-driven regional value chain dynamics. These include services such as architecture, engineering and other consultancy areas such as business and management, accounting and taxation services. Colombia exports and imports similar categories of services from its PA partners, a pattern of long trade long depicted as intra-industry trade in the goods realm.⁹⁰ Of particular note in the Colombian case is the significant recent rise of call center and back office services exports to Mexico and Chile.⁹¹

In the case of Chile, data on intra-regional services trade available for the 2011–13 period shows that the level of exports to other PA members stood at almost twice the level of imports from the sub-region. In 2013, Chile exported US \$ 1.1 billion worth of services to its PA partners and imported a total amount of US \$ 702 million. Chile has maintained a positive trade balance in services with its PA counterparts. Peru is the most significant destination of Chilean services exports and its main source of intra-regional imports. Table 4 offers a snapshot of Chile's intra-regional services trade during the 2011–13 period.

88 Based on Jose Duran Lima and Daniel Cracau, 'The Pacific Alliance and its Economic Impact on Regional Trade and Investment' (ECLAC, International Trade Series No 128, December 2016) 28. Data for 2015 from January to December based on: Department of National Statistics, Quarterly Sample on International Trade of Services <<https://www.dane.gov.co/index.php/estadisticas-por-tema/comercio-internacional/muestra-trimestral-de-comercio-exterior-de-servicios>>.

89 Duran-Lima, above n 80, 28.

90 Duran-Lima, above n 80, 30.

91 Department of National Statistics, above n 86.

Table 4. Chile: Value and Share of Services Trade with PA members, 2011–13⁹²

	Exports			Imports		
	2011	2012	2013	2011	2012	2013
Colombia	113	138	196	144	136	151
Mexico	273	267	267	224	204	187
Peru	668	714	642	295	347	364
Total PA Million US \$	1054	1119	1105	663	687	702
World (services) ^a Million US \$	13 105	12 387	12 452	16 158	15 131	15 855 ⁹³
Share PA (%)	8.0	9.0	8.9	4.1	4.5	4.4

Source: Duran-Lima & Cracau (2016).—

Table 5 below provides a disaggregated look at Chile's intra-regional trade in services with its PA partners over the 2011-13 period. Revealing once more the influence that geographical proximity can play in services trade, the data show the significant share – more than a third - that PA countries play in Chilean exports of business, computer and information services, with neighboring Peru being by far the most important destination market for Chilean business service exports relative to other PA partners. For computer and information services, Peru has recently replaced Mexico as Chile's leading intra-regional trading partner, followed by Colombia. Within the PA, services trade ties are strongest overall between Chile and Peru.

Table 5. Chile: Sectoral Distribution of Intra-regional Services Trade, 2011–13⁹⁴

⁹² Duran-Lima, above n 80, 29.

⁹³ According to Trademap data: <<http://www.trademap.org/>>.

⁹⁴ Authors based on statistics from the Central Bank of Chile. Data is based on entry and exit of remittances and it is not available for imports of business services and computer services.

Sector	Type of flow	Destination /origin	2011	2012	2013	2014	2015	2016
Transport	Exports ^a	Colombia	58	71	63	63	57	74
		Mexico	162	137	140	97	58	59
		Peru	282	216	229	169	129	112
		Total AP US\$ millions	502	424	432	329	244	245
		World US\$ millions	7509	6245	5907	4671	3298	2953
		AP %	6,7	6,8	7,3	7,0	7,4	8,3
		Imports	Colombia	135	130	153	162	114
Mexico	152		116	120	106	65	62	
Peru	113		129	137	98	91	75	
Total AP US\$ millions	400		375	410	366	270	253	
World US\$ millions	7998		6977	6977	6023	4579	4179	
AP %	5		5,4	5,9	6,1	5,9	6,0	
Travel	Exports		Mexico	41	44	45	53	56
		Peru	72	84	73	88	76	73
		Colombia	na	na	na	na	na	na
		Total PA US\$ millions	na	na	na	na	na	na
		World US\$ millions	1813	2150	2181	2259	2481	2737
		PA %	na	na	na	na	na	na
		Imports	Mexico	64	81	82	114	100
Peru	188		214	220	231	184	189	
Colombia	na		na	na	na	68	66	
Total PA US\$ millions	na		na	na	na	352	360	
World US\$ millions	1663		1833	1867	2089	1963	2137	
PA %	na		na	na	na	18	17	
Business ^a Services	Exports		Colombia	16	28	67	48	53
		Mexico	17	29	25	13	15	13
		Peru	252	234	207	167	156	126
		Total PA US\$ millions	285	291	299	228	224	185
		World US\$ millions	751	867	793	694	723	576
		AP %	38	35	38	33	31	32
		Computer and information Services	Exports	Colombia	23	31	28	34
Mexico	32			35	25	27	19	13
Peru	15			28	27	38	35	37
Total PA US\$ millions	70			94	80	99	79	89
World US\$ millions	184			234	229	245	239	279
%PA	38			41	35	44	33	32

Source: PA figures are the authors' estimations based on data from the Central Bank (Chile)

a Includes business, professional and other technical services

na: not available

Despite the fragmented and inadequately disaggregated nature of statistical

information on the PA's intra-regional trade ties in services, all available data point to growing trade in services between the PA members, with significant upward potential to deepen trade in non-traditional sectors such as computer services, telecommunications, other business services including architecture, engineering and related services, accounting, auditing, bookkeeping and tax consultancy services as well as call center services.⁹⁵ These trends are backed up by the picture emerging from sector-specific studies, as is discussed below.

Moreover, two important caveats need to be borne in mind in analyzing the above trends. First, available service sector and service trade statistics fail to capture the full degree to which services affect the performance of downstream or upstream activity in extractive sectors, manufacturing and other service sectors. The ongoing 'servicification' revolution at play in a large and growing number of industries, from extractives to manufacturing and other services, has shed useful analytical light on the centrality of service sector efficiency for enhanced sectoral and economy-wide performance. It has also drawn attention to the degree to which all products feature significant degrees of services value-added.⁹⁶ This new reality lies behind the recent analytical emphasis placed on – and empirical attention devoted to – so-called trade in value-added (or TiVA).

Servicification often entails that much of the value added within a supply chain takes place at the beginning of the chain via tasks involving process innovation and R&D as well as at the end of the value-chain through activities involving commercialization, distribution, marketing, brand management and after-sale services. Such value-added trade poses numerous measurement challenges and often leads to underestimating the true influence that services and services trade play in contemporary economic life.⁹⁷ It is generally acknowledged that services account for around 30 percent of manufacturing value-added.⁹⁸

Intermediate (input) services play a significant role in the production of other goods and services and for the subsequent export of those products. This role is increasingly being captured through TiVA indicators, which are currently available only until 2011. TiVA data suggest that for the PA countries' domestic services value added share in gross exports is still modest when compared to other reference countries. The average share of domestic services added value in gross exports is broadly similar throughout the sub-region. For Mexico such a share averaged 27.2 percent between 2000 and 2011.⁹⁹ At 32.4 percent, Chile had the highest PA share of domestic services value added, followed by Colombia at 29.3 percent and Peru at 28.3 percent. Such shares rank below those observed in countries such as Costa Rica, Turkey, South Africa or Poland. For developed

95 Duran-Lima, above n 80, 29.

96 See Lucian Cernat and Zornitsa Kutlina Dimitrova, Thinking in a Box: A “mode 5” Approach to Services Trade (Chief Economist Note, European Commission, March 2014) < http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152237.pdf >.

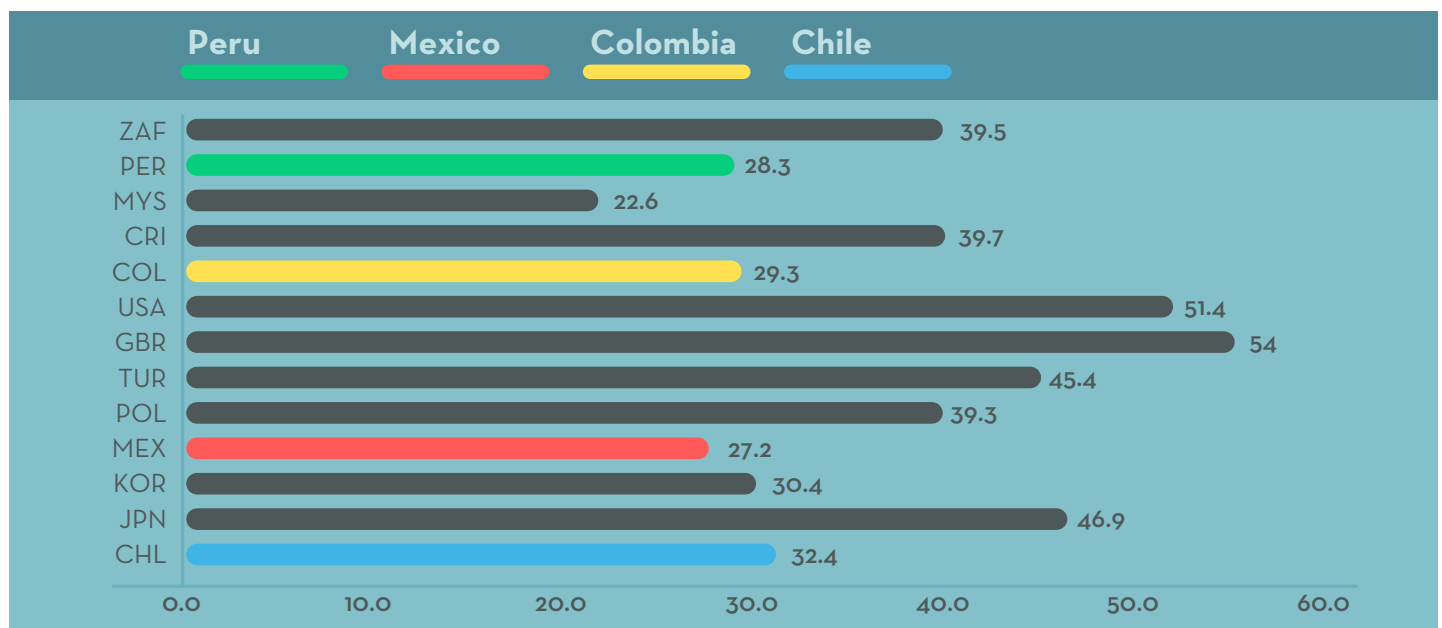
97 See, eg, Chad P Bown, et al, Better Neighbors/Towards a Renewal of Economic Integration in Latin America (World Bank 2017) 53. The authors point to overlap between goods and services statistics and the difficulty to disaggregate the two types of exports.

98 Sáez, above n 21, 4-5.

99 Own estimations based on annual percentages between 2000 and 2011 of the TiVA indicators. See Trade in Value Added, OECD < http://stats.oecd.org/Index.aspx?DataSetCode=TIVA_2016_C1 >.

services economies such as Japan, the United States and the United Kingdom, the average share of domestic services value added in gross exports is close to or exceeds 50 percent. Figure 9 below presents a comparison of the share of domestic services value added for different countries using the OECD TiVA database.

Figure 9. Domestic Services Value Added Share in Gross Exports, Selected Countries (Average) ¹⁰⁰



Source: Author calculations based on TiVA Data from OECD.

Furthermore, the empirical discussion above does not comprise services trade taking place under so-called Mode 3 –commercial presence (or investment-related trade in services), which involves sales within the territory of a PA country by foreign services companies established in that country.¹⁰¹ The World Trade Organization (WTO) estimates that Mode 3 accounts for half of global trade in services.¹⁰² This centrally important dimension of services trade in the particular context of the PA is discussed next with a view to providing a fuller and more accurate picture of the role that services trade plays in the sub-region.

c) Market Access through Market Presence: Intra-regional FDI in Services

The need for proximity between buyers and sellers of services, that of tailoring product offerings to differentiated market environments and the preference of host countries to subject foreign-established service providers to home country regulatory regimes all imply that Mode 3 dominates the landscape of cross-

¹⁰⁰ Ibid.

¹⁰¹ Duran-Lima, above n 80, 30.

¹⁰² Centre for International Economics, above n 65, 1.

border service activity. Services account for three fifths of aggregate FDI stocks and more than half of annual FDI flows have been directed towards service activities for much of the past two decades.¹⁰³

Available data for the PA sub-region suggest that flows of capital between PA members are stronger than flows of goods.¹⁰⁴ In the case of Chile, the PA accounts for 34 percent of the country's total FDI outflows, with accumulated intra-regional FDI of US\$ 36.2 billion from 1990 to 2015.¹⁰⁵ Colombia represented Chile's second most important FDI destination during the period while Peru and Mexico placed 4th and 8th respectively. Chile's DIRECON estimates that from a total of US \$ 106.6 billion of outward FDI materialized between 1990 and 2015, some 47 percent went to services as compared to 25 percent allocated to manufacturing FDI and 28 percent to all other sectors.¹⁰⁶

Table 6 below provides information on the services sectors where Chile's outflows of FDI are allocated within other PA members.

Table 6. Chile: Value and Share of Intra-regional FDI in Services, 1990–2015¹⁰⁷

Destination of FDI	Services Sectors	Estimated Accumulated Value (1990-2015)US\$ bn	Share of outward FDI in services (%)
Colombia	Retail, services related to financial intermediation and transport	9.3 (from a total of 18.1 of FDI)	51,6
Peru	Transport and trade (including retail), real estate and financial intermediation	11.1 (from a total of 16.8 of FDI)	66,4
Mexico ¹⁰⁸	Transport, storage, telecommunications and financial intermediation	0.9 (from a total of 1.5 of FDI)	60,9

Source: DIRECON (Chile)

In the case of Colombia, cumulative FDI outflows (in all sectors) reached an

¹⁰³ UNCTAD, 'World Investment Report 2016/Investor Nationality Policy Challenges' (Report, 2016) < http://unctad.org/en/PublicationsLibrary/wir2016_en.pdf > vi.

¹⁰⁴ Duran-Lima, above n 80, 31.

¹⁰⁵ Ministerio de Relaciones Exteriores/Dirección General de Relaciones Económicas Presencia de Inversiones Directas de Capitales Chilenos en el Mundo (Julio 2016) < https://www.direcon.gob.cl/wp-content/uploads/2016/06/001_Presencia-ID-Cl-en-mundo-1990-dic2015.pdf > 8, 12, 17 [Ministry of Foreign Affairs/ General Directorate of Economic Relations, Presence of Direct Investment of Chilean Capitals in the World (July 2016) < https://www.direcon.gob.cl/wp-content/uploads/2016/06/001_Presencia-ID-Cl-en-mundo-1990-dic2015.pdf > 8, 12, 17].

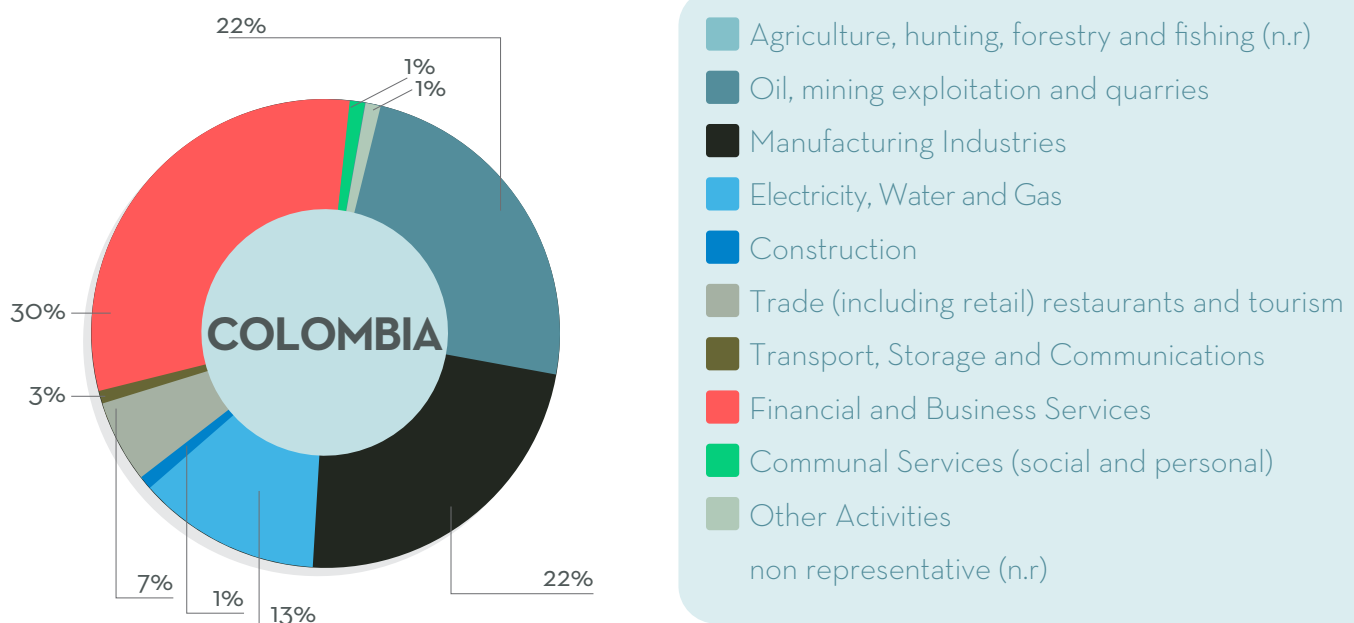
¹⁰⁶ Ibid. Estimations by DIRECON are not comparable to the estimations of the Central Bank of Chile because they are based of different methodologies and sources.

¹⁰⁷ Ministry of Foreign Affairs, above n 105, 20, 22.

¹⁰⁸ Ibid 1.

estimated US\$ 52.3 billion between 1994 and 2016.¹⁰⁹ The leading destinations of Colombia's outward FDI are Panama, the United States, England and Spain, with Chile standing in fifth place with a total of US\$ 3.9 billion invested between 1994 and 2016. Next in line is Peru, with US\$ 3.4 billion in aggregate FDI outflows. Meanwhile, Mexico has absorbed US\$ 2.1 billion worth of total Colombian FDI during the same period, representing the ninth largest destination of Colombia's total outward FDI in goods and services sectors.¹¹⁰ Data in Figure 10 below indicate that, in keeping with the global trend, more than half of Colombia's outward FDI has in recent decades been directed to services-related activities.¹¹¹

Figure 10. Colombia: Sectoral Distribution of Outward FDI, 1994–2016¹¹²



Source: Authors' estimations based on Bank of the Republic data (Colombia)

109 Banco de la República de Colombia, Flujo de Inversión Directa de Colombia en el Exterior Balanza de Pagos < <http://www.banrep.gov.co/es/inversion-directa> > [Bank of the Republic of Colombia, Direct Investment Flows from Colombia Overseas/Balance of Payment < <http://www.banrep.gov.co/es/inversion-directa> >].

110 Ibid.

111 Estimation based on the aggregation of shares for the following activities: Electricity, water and gas; construction; trade, restaurants and tourism; transport, storage and communications; financial and business services; and communal services for a total estimated of 55 percent.

112 Bank of the Republic of Colombia, above n 109.

Table 7. PA: Value of Total FDI Inflows, 2000–15 (US\$ bn)¹¹³

PA country	2000-2009	2010	2011	2012	2013	2014	2015
Chile	11.9	15.5	23.3	28.5	19.4	22.3	20.5
Colombia	8.9	6.4	14.6	15.0	16.2	16.3	12.1
Mexico	25.3	26.4	23.6	20.4	45.9	25.7	30.3
Peru	5.0	8.5	7.7	11.9	9.3	7.9	6.9

Source: ECLAC (2016)

FDI data by ECLAC indicate that services accounted for 49% of total FDI inflows to Colombia and Mexico in 2015.¹¹⁴ The share of FDI inflows in services has continued to grow in Colombia and Mexico over the past six years compared to inflows into other economic activities.

The sectoral distribution of FDI inflows within the PA confirms the central importance of services. Given evidence of increasing complementarity between trade and investment ties in a world of production fragmentation, there are strong reasons to believe that the rising share of services FDI within the PA has been fueling rising trade ties within the sub-region (see Table 8 below).

The sectoral distribution of FDI inflows within the PA confirms the central importance of services

¹¹³ Simple average. Data from before 2010 is not directly comparable to 2010 and later data. See Comisión Económica para América Latina y el Caribe (CEPAL), 'La Inversión Extranjera Directa en América Latina y el Caribe 2016' (LC/G.2680-P), Santiago, 2016 <http://repositorio.cepal.org/bitstream/handle/11362/40213/7/S1600664_es.pdf> 49 [Economic Commission for Latin America and the Caribbean (ECLAC), 'Foreign Direct Investment in Latin America and the Caribbean, 2016' (LC/G.2680-P), Santiago, 2016 <http://repositorio.cepal.org/bitstream/handle/11362/40213/7/S1600664_es.pdf> 49].

¹¹⁴ ECLAC, above n 113, 26.

Table 8. Value of FDI Inflows to PA Members by Sector, 2009–15 (in US\$ bn)¹¹⁵

PA Country/	Sector	2009	2010	2011	2012	2013	2014	2015
Chile ^a	Natural Resources	7.1	5.2	18.22	13.9	4.3	4.3	10.7
	Manufacturing	0.44	0.63	0.94	2.6	1.45	1.64	0.42
	Services	4.1 (31)	6.8 (44)	4.9 (21)	9.0 (32)	8.9 (46)	11.6 (52)	4.4 (22)
	Others	1.7	2.8	-0.73	3.01	4.7	4.7	5.0
Colombia	Natural Resources	5.7	5.0	7.3	8.0	8.3	6.5	3.8
	Manufacturing	1.4	0.21	1.2	2.0	2.5	2.8	2.4
	Services	1.0 (12)	1.2 (19)	6.1 (42)	5.1 (34)	5.3 (33)	7.0 (43)	5.9 (49)
	Others	na	na	na	na	na	na	na
Mexico	Natural Resources	1.3	1.6	0.75	3.1	5.7	2.5	0.90
	Manufacturing	6.7	14.0	10.3	8.9	30.1	14.8	15.2
	Services	9.9 (38)	10.8 (41)	12.6 (53)	8.4 (41)	10.1 (22)	8.5 (33)	14.3 (47)
	Others	na	na	na	na	na	na	na
Peru	Natural Resources	ni	ni	ni	ni	ni	ni	ni
	Manufacturing	ni	ni	ni	ni	ni	ni	ni
	Services	ni	ni	ni	ni	ni	ni	ni
	Others	ni	ni	ni	ni	ni	ni	ni

Source: ECLAC (2016)

a: Data from Chile updated based on data from the Central Bank of Chile up to August 2016.

() Figures in parenthesis represent the percentage of the sector in aggregate FDI flows.

Peru absorbed an estimated US\$353.4 billion of FDI in goods and services sectors between 1994 and 2016. PA members account for a significant share of such inflows. FDI. Chile ranks as Peru's fifth largest foreign investor, preceded by Spain, the United Kingdom, the United States and the Netherlands. Colombia is the seventh source of FDI to Peru, while Mexico is the eleventh.¹¹⁶ The growing relevance of PA members' FDI in goods and services sectors in Peru is captured in Table 9 below.

¹¹⁵ Ibid 84.

¹¹⁶ Authors estimations based on data from ProInversión. See ProInversión/Agencia de Promoción de Inversión Privada, Estadísticas Generales/Inversión Extranjera Directa/Saldo de Inversión Extranjera en el Perú como Aporte al Capital, por País de Domicilio 1994-2016 < <http://www.proinversion.gob.pe/>> [ProInversión/Agency for the Promotion of Private Investment, General Statistics/ Foreign Direct Investment/Balance of Foreign Direct Investment in Peru as contribution to equity capital by country of domicile < <http://www.proinversion.gob.pe/>>]. This data is not comparable to the data from The Central Bank of the Reserved of Peru (CBRP).

**Table 9. Peru: Value of FDI Inflows from PA Countries, 2009–16
(in US\$ bn)¹¹⁷**

PA Country	2009	2010	2011	2012	2013	2014	2015	2016
Chile	1.3	1.35	1.39	1.40	2.2	2.22	2.52	2.53
Colombia	0.81	1.1	1.14	1.05	1.08	1.08	1.12	1.12
Mexico	0.46	0.46	0.46	0.47	0.46	0.48	0.49	0.49
Total PA in US\$ bn	2.6	2.9	3.0	2.9	3.7	3.8	4.1	4.1
Total FDI in US\$ bn	19.4	21.3	22.0	22.7	23.9	24.3	24.6	24.7
% PA	13	14	14	13	16	16	17	17

Source: ProInversion (Peru)

According to data produced by ProInversion, FDI flows to Peru in goods and services sectors stood at US\$ 24.7 billion in 2016. As noted above, a significant share of intra-regional FDI is allocated to services sectors within the PA. Chile's FDI to Peru concentrated in communications, financial services, retail trade and energy in 2016. Colombia's contribution to the energy sector in Peru was also significant in 2016, while Mexico's investment in the communications sector comprised almost 84 percent of total Mexican FDI in Peru last year (see Table 10 below).

Colombia's contribution to the energy sector in Peru was significant in 2016

¹¹⁷ These figures are based on ProInversion data of FDI in Peru as equity contribution to capital. These amounts are significantly higher than the ECLAC's FDI estimations that are based on the data produced by the Central Bank of the Reserved of Peru.

Table 10. Peru: Value of Total FDI Inflows from PA Partners by Sector, 2016¹¹⁸ (in US\$ MM)

Sector/Economic Activity	Chile	Colombia	Mexico
Mining	192.1	0	55
Communications	1012.6	7.6	407.2
Financial	651.8	15.2	15.5
Energy	153.7	438.9	0
Industrial	200.5	516.5	2.2
Trade	143.2	6.1	2.1
Oil	0	97.9	0
Services	64.8	8	0
Construction	81.9	0	4.7
Transport	0.1	13.5	0
Fishing	0	0	0
Tourism	0	0	0
Agriculture	20.4	0	0
Housing	0	0.3	0.3
Forestry	0	0	0
Total (Million US)	2 533	1 124	487

Source: ProInversion (Peru)

Information by Proinversion Peru for the 2011-16 period shows the following foreign services companies from Chile and Colombia having registered investments in the Peruvian service sector (see Table 11).



¹¹⁸ Authors based on data from ProInversion. See ProInversion, above n 116.

Table 11. Peru: FDI from Chilean and Colombian Service Companies, 2011–16¹¹⁹

Foreign Investor	Country of Origin	Receptor Company	Economic sector
Empresa Nacional De Telecomunicaciones S.A.	Chile	Entel Perú S.A. (Antes Nextel Del Peru S.A.)	Communications
Entel Inversiones S.A.	Chile	Entel Perú S.A. (Antes Nextel Del Peru S.A.)	Communications
Energis S.A.	Chile	Generalima S.A.C.	Energy
Contourglobal Latam S.A.	Colombia	Energia Eolica S.A.	Energy
Promigas S.A. E.S.P.	Colombia	Gas Natural De Lima Y Callao S.A.	Energy
		Gases Del Pacífico S.A.C.	Energy
Forum Servicios Financieros S.A.	Chile	Forum Comercializadora Del Perú S.A.	Financial
		Forum Distribuidora Del Peru S.A.	Financial
Empresa De Energía De Bogotá S.A.E.S.P.	Colombia	Consorcio Transmantaro S.A.	Energy
Interconexión Eléctrica S.A.E.S.P.	Colombia	Consorcio Transmantaro S.A.	Energy
Inversiones Nittra S.A.	Chile	Holding Nitratos S.A	Financial
Talbot Hotels S.A.	Chile	Afinmuebles S.A.C.	Services
Transmasivo S.A.	Colombia	Peru Masivo S.A.	Transport
Habitat Andina S.A.	Chile	Afp Habitat S.A.	Energy
Sally Chile Holding Spa	Chile	Sally Perú Holdings S.A.C.	Trade
Skbergé S.A.	Chile	Santander Consumo Perú S.A.	Energy
Concay S.A.	Colombia	Desarrollo Vial De Los Andes S.A.C	Transport
Latam Energy Chile Spa	Chile	Hidroeléctrica Laguna Azul S.R.L.	Energy
Inversiones Altair S.A.	Chile	Inversiones Altair S.A.C.	Financial
Dreams Perú S.A.	Chile	Dreams Corporation S.A.C.	Tourism
Kandeo Fund I (Colombia) Fcp (Kfic)	Colombia	Mareauto Perú S.A.	Services

Source: ProlInversion (2016)

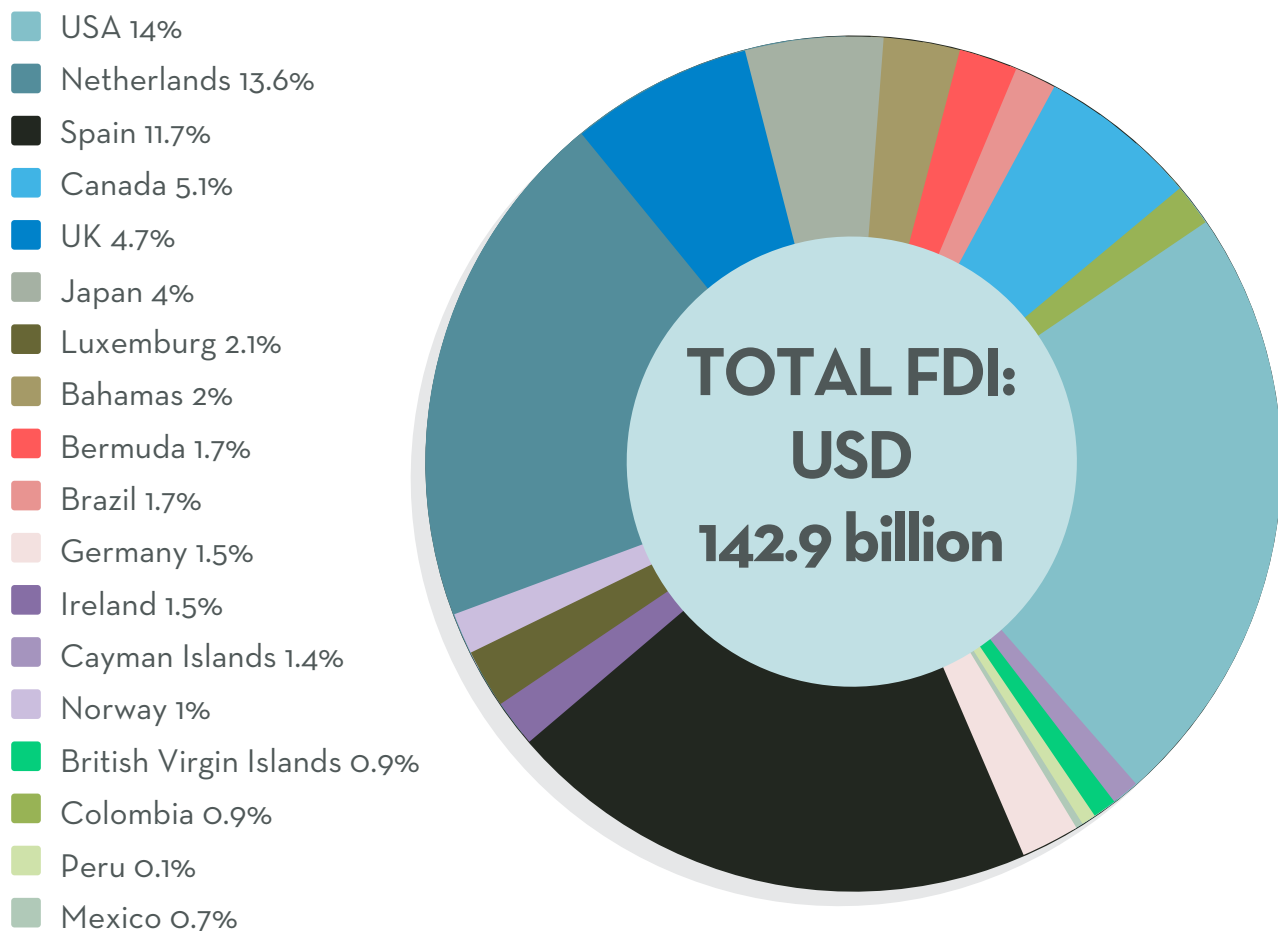
Inward FDI to Chile between 2009 and 2015 came primarily from the United States, The Netherlands, Spain, Canada and the United Kingdom.¹²⁰ Among

119 Authors based on data from ProlInversion Peru. See ProlInversion/Agencia de Promocion de Inversion Privada, Estadísticas Generales/Inversión Extranjera Directa/Principales Inversionistas 2011-2016 < <http://www.proinversion.gob.pe/>> [ProlInversion/Agency for the Promotion of Private Investment, General Statistics/ Foreign Direct Investment/Main Investors 2011-2016 < <http://www.proinversion.gob.pe/>].

120 Authors based on data from the Central Bank of Chile. See Inversión Extranjera Directa por

PA source countries, Colombia led the way, accounting for an estimated 1 percent of aggregate FDI inflows during the period, followed by Mexico with an accumulated FDI flow of US\$ 1.1 billion.¹²¹ Total FDI inflows to Chile during the period stood at US\$ 142.9 billion according to the Central Bank of Chile.¹²² Figure 11 below shows the distribution of Chilean inward FDI by source country over the 2009-15 period.

Figure 11. Chile: Share of FDI Inflows by Source Country, 2009-15¹²³



Source: Authors' estimations based on Central Bank data (Chile)

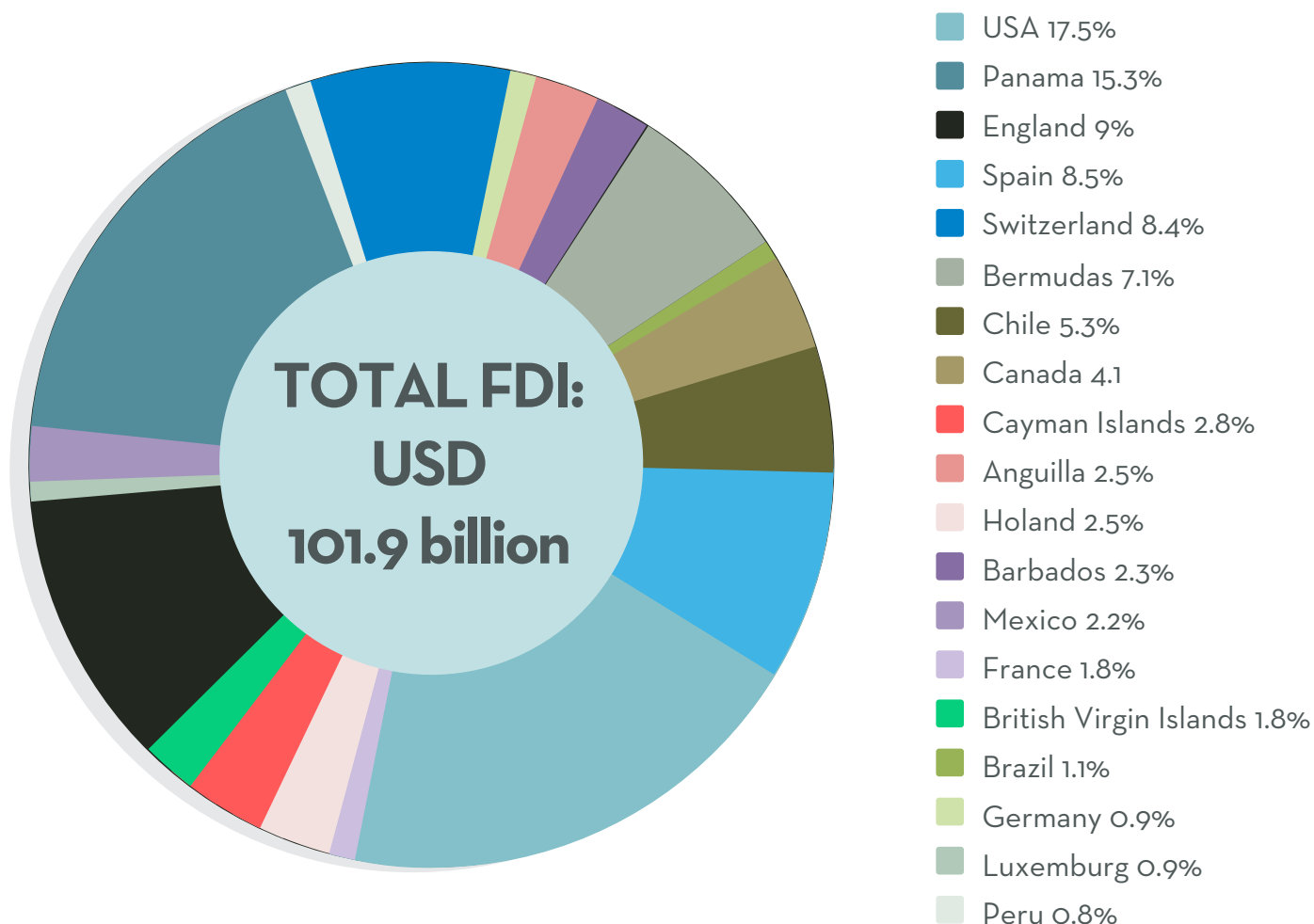
In the case of Colombia, data from the Bank of the Republic suggests that aggregate FDI inflows reached US\$ 101.9 billion between 2009 and 2016. The main sources of FDI to Colombia are the United States, Panama, England, Spain and Switzerland. Chile is Colombia's seventh source country, with cumulative

Sector y País, Banco Central de Chile, < <http://si3.bcentral.cl/estadisticas/Principali/Excel/SE/BDP/excel.html> > [Foreign Direct Investment by Sector and Country, Central Bank of Chile <http://si3.bcentral.cl/estadisticas/Principali/Excel/SE/BDP/excel.html>].

121 Ibid.
 122 Ibid.
 123 Ibid.

inflows of US\$ 5.4 billion during the period, representing 5.3 percent of total inward FDI to Colombia. Meanwhile, Mexico's contribution stood at 2.2 percent (at US\$ 2.1 billion) while Peruvian FDI contributed 0.8 percent of Colombia's FDI inflows (at US\$ 793 million) between 2009 and 2016 (see Figure 12 below).

Figure 12. Colombia: Share of FDI Inflows by Source Country 2009–2016¹²⁴

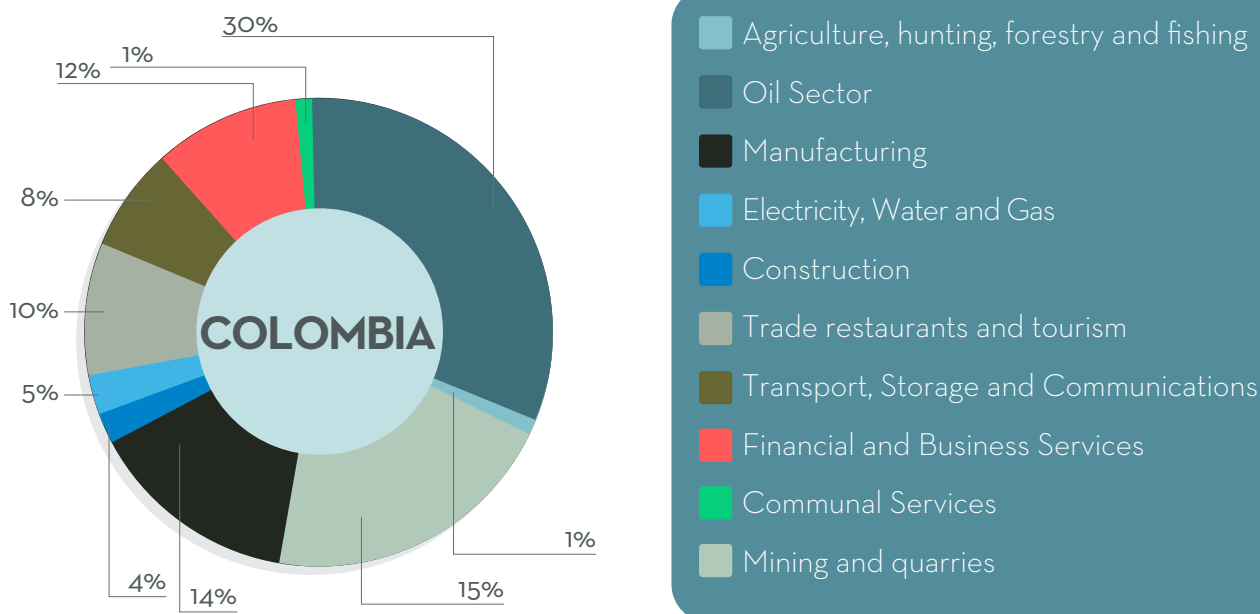


Source: Authors' estimations based on Bank of the Republic data (Colombia)

While the sectoral distribution of inward FDI is not disaggregated by source country, it is estimated that 40 percent of FDI directed towards Colombia in recent years has targeted services sectors (see Figure 13 below).

124 Bank of the Republic of Colombia, above n 109.

Figure 13. Colombia: Sectoral Distribution of FDI Inflows, 2009–16¹²⁵



Source: Authors' calculations based on Bank of the Republic data (Colombia)

In the case of Mexico, whose integration pattern traditionally displays a much more predominant Northern orientation, PA members play a more marginal role as FDI source countries. This is so despite the fact that Mexico ranks among the world's leading FDI destinations according to UNCTAD estimates.¹²⁶ The main sources of Mexico's inward FDI in 2015 were the United States, Spain, Japan, France and the Netherlands.¹²⁷

The discussion in this section makes clear that services contribute far more to intra-regional trade and investment ties within the PA than is commonly assumed. Table 12 below depicts the list of Trans-Latin services enterprises that have their parent company in one PA country and which operate in another PA member through a commercial presence.

¹²⁵ Ibid.

¹²⁶ UNCTAD, Handbook on Statistics (UNCTAD, 2016) 4.

¹²⁷ Secretaría de Economía, Inversión Extranjera Directa en México y en el Mundo/ Carpeta de Información Estadística (25 de Noviembre de 2015) < http://www.economia.gob.mx/files/comunidad_negocios/ied/analisis_publicaciones/Otros%20estudios/carpeta_informacion_estadistica_1115.pdf > [Economy Secretariat, Foreign Direct Investment in Mexico and the World/ Statistical Information Folder (25 November 2015) < http://www.economia.gob.mx/files/comunidad_negocios/ied/analisis_publicaciones/Otros%20estudios/carpeta_informacion_estadistica_1115.pdf >].

Table 12. Leading Trans-Latin Services Enterprises Operating in the PA, 2013¹²⁸

Enterprise	Sector	Chile	Colombia	Mexico	Peru	Sales (million dollars)
Cencosud	Retail	PCa	X		X	19743
Grupo Falabella	Retail	PC	X		X	11834
LATAM	Air Transport	PC	X	X	X	11906
Sigdo Koppers	Construction	PC				2953
Ripley	Retail	PC	X		X	2624
Entel Chile	Telecommunications	PC	X		X	3101
Salfacorp	Construction	PC	X		X	2024
Sonda	Software	PC	X	X	X	1283
Cruz Blanca SA	Health	PC			X	982
Lipigas Chile	Gas Distribution	PC	X		X	440
Grupo Sura	Finance	X	PC	X	X	ni
Grupo Aval	Finance		PC	X		9000
Empresas Públicas de Medellín	Electricity and telecom	X	PC	X		6753
Avianca	Air Transport		PC		X	4269
Grupo Carvajal	Graphic Industry	X	PC	X	X	1813
America Movil	Telecommunications	X	X	PC	X	60079
Ingenieros Civiles Asociados	Construction	X	X	PC	X	2259
Grupo Saba	Retail			PC		3601
Grupo ACP	Microfinance				PC	ni

Source: Duran-Lima and Cracau
a PC: parent company

The preceding discussion vividly illustrates that, notwithstanding the patchiness and often-limited comparability of region-wide trade and investment data, there is considerable evidence supporting the claim that PA members are today more closely integrated in services than they are in goods trade and investment.

d) Summary Findings

The PA's growing level of integration in services trade and investment flows is evidenced in the following findings:

¹²⁸ Duran-Lima above 80, 31.

- i. Notwithstanding the ability of digital transactions to overcome distance and the tyranny of the region's difficult geography, neighboring ties and geographic proximity appear to still matter for the PA's service economy, where greater levels of trade and investment integration in services prevail among the South American partners. This is most notably in the case of Chile, Colombia and Peru, all of whom appear to have reached higher integration levels in services trade assessed in terms of exports and imports of services and of cross-border FDI flows.¹²⁹ However, distance seems to be a factor that still has relevance in constraining closer intra-regional ties between Mexico and its three PA brethren. Mexico's services trade with the rest of the PA partners remains the lowest of the four individual members in both absolute and relative terms.
- ii. Among PA members, Colombia is Mexico's most important trading partner in services, with two-way ties consisting chiefly of trade in computer services and other business, engineering and architecture consultancy services.
- iii. The PA sub-region represents a significant export market for service providers from Chile, Colombia, and Peru. The PA also plays an increasing, albeit less significant, role as a source of services imports in PA members. Such a role, moreover, is constrained by the PA's very marginal level of intra-regional trade in manufactured products.
- iv. The PA represents a growing market for knowledge-based services trade between Chile and Colombia, notably in IT, computer-related and associated consultancy services. Chile's integration with the PA is particularly noticeable in the area of business services, with the sub-region accounting for a major share of aggregate exports for this category of services. Integration between Chile and Peru in the area of business services as well as in computer and information services is also growing and contributing to closer economic ties between the two neighbors.
- v. Foreign direct investment constitutes the other significant dimension of deeper integration in service markets among PA members. PA partners are becoming increasingly important source and destination countries for each other's investors, with Chile and, to a lesser extent, Colombia, as key drivers. Roughly a third of outward FDI from PA countries heads for other PA countries. While gauging with adequate policy granularity how much of the capital coming from PA partners goes to services sectors, there is growing evidence that services account for a predominant share of region-wide FDI activity, sowing the seeds for further two-way trade and investment ties and the rise (or deepening) of region-wide supply chains. Firm-level evidence of parent companies from other PA members and the sectors they operate in confirms the important role that services have in capturing investment flows in the areas of telecommunications, IT, public utilities, finance, retail trade, transport, construction, tourism and professional services.

Generally speaking, and as is the case of many countries at similar levels of

129 Bown, above n, 97, 3-4, 21. The authors argue strongly that distance still plays a role in shaping trade flows due to the costs associated to the cross border movement of good and services. Thus the movement of factors is still sensitive to geography.

development, travel and transport services play the most significant role in the basket of services exported from Chile, Colombia and Peru to the rest of the world. In the case of Mexico, insurance and related financial services assume a more significant share in services exports than do transport services. Business services play a more moderate role in the services exports of Colombia and Peru, accounting in both cases for roughly 10 percent of total services exports. However, imports of business services play a more prominent role for both these PA members. Chile's situation is different as its exports of business services to the rest of the world stands at twice the level it sells to its closest PA trading partners in the region.

2. Services Governance in the PA: Current Developments

Along with horizontal and sector-specific strategies enacted at the domestic level in each PA member, a process of regional services governance has started to emerge with the conclusion and implementation of the Framework Agreement¹³⁰ and in particular with the Commercial Protocol.¹³¹ The approach taken reflects a multilayered model of governance in services for the regional grouping. A myriad of mandatory commitments akin to those normally found in legally binding and enforceable trade agreements are combined with various forms of soft law and cooperation efforts in areas such as regulatory improvement and coherence, telecommunications and e-commerce and education and mobility of persons. This section explores the extent to which the Commercial Protocol provides for WTO-plus (WTO+) and WTO-extra (WTO-X) commitments in advancing regional governance in the PA's services economy. In doing so, the Report explores the extent to which the combination of hard and soft law initiatives is affecting the quality of services governance and the depth of integration of services markets achieved within the regional scheme.

Horn, Mavroidis and Sapir (HMS) originally coined the concepts of WTO+ and WTO-X to develop a comparative depiction of the preferential trade agreements concluded by the European Union and the United States.¹³² WTO+ provisions are those embedded in a preferential trade agreement (PTA) that refer to deeper levels of trade governance in policy areas already subject to WTO provisions¹³³

130 Acuerdo Marco de la Alianza del Pacífico, suscrito 6 de Julio de 2012 (entró en vigencia el 20 de julio de 2015) [Framework Agreement of the Pacific Alliance, signed 6 July 2012 (entered into force 20 July 2015)].

131 Protocolo Adicional al Acuerdo Marco de la Alianza del Pacífico, suscrito el 10 de febrero de 2014 (entró en vigencia el 01 de mayo de 2016) [Additional Protocol to the Framework Agreement of the Pacific Alliance, signed 10 February 2014 (entered into force 01 May 2016)]. Bilateral regulatory regimes were in place between the different members with provisions regarding services and investment in bilateral FTAs, (Chile-Colombia; Chile-Mexico; Chile-Peru; Colombia-Mexico; Mexico-Peru) the Andean Community and the Agreement for the Promotion and Reciprocal Protection of Investments between Colombia and Peru.

132 Henrik Horn, Petros C Mavroidis and Andre Sapir 'Beyond the WTO? An Anatomy of EU and US Preferential' (2010) 33 *The World Economy* 1565.

133 *Ibid* 1567.

whereas WTO-X provisions account for rules and commitments in areas not yet subject to multilateral governance.¹³⁴ The World Bank also used such taxonomy in a recent survey of 279 PTAs.¹³⁵ According to the methodology developed by HMS, WTO+ commitments refer to 14 policy areas while 38 different new issues are seen as forming WTO-X disciplines. A second dimension of the commitments examined in these studies refers to their enforceability. Horn, Mavroidis and Sapir understood legal enforceability as the extent to which the provisions were 'effectively binding'. In their assessment, the authors consider the precision of treaty language and whether the provisions concerned are subject to a PTA's dispute settlement mechanism.

Table 13 below summarizes the policy areas covered by each type of provision.

136

Table 13. General Typology for WTO+ and WTO-X Commitments in PTAs

WTO + areas in PTAs	WTO-X provisions in PTAs		
PTA industrial goods	Anti-corruption	Nuclear safety	Public administration
PTA agricultural goods	Competition policy	Money laundering	Regional cooperation
Customs administration	Environmental laws	Information society	Research and technology
Export taxes	Intellectual property rights	Industrial cooperation	SMEs
Sanitary and phytosanitary measures	Investment measures	Illicit drugs	Social matters
State Trading enterprises	Labor market regulation	Illegal immigration	Statistics
Technical barriers to trade	Movement of capital	Human rights	Taxation
Countervailing measures	Consumer protection	Health	Terrorism
Anti-dumping	Data protection	Financial assistance	Visa and Asylum
State aid	Agriculture	Energy	
Public procurement	Approximation of legislation	Education and training	
TRIPS	Audiovisual	Economic policy dialogue	
GATS	Civil protection	Cultural cooperation	
Trade related Investment measures (TRIMS)	Innovation policies	Political dialogue	

Source: Horn, Mavroidis and Sapir; WTO, World Trade Report 2011

134 Ibid 1571.

135 Claudia Hofmann, Alberto Osnago and Michele Ruta, 'Horizontal Depth/ A new Database on the Content of Preferential Trade Agreements' (Policy Research Working Paper No 7981, World Bank Group, February 2017) 6. There are some differences with the HMS methodology regarding the parameters used for coding the provisions and the criterion of enforceability.

136 Horn, above n 132, 1574, 1577. See also The WTO and Preferential Trade Agreements: From Coexistence to Coherence, World Trade Report 2011 < https://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report11_e.pdf > 130.

Closer scrutiny of the PA's Commercial Protocol (CP) suggests that it is, in effect, a new generation PTA. That is, an agreement providing for horizontal depth in terms of both WTO+ and WTO-X provisions.¹³⁷ This finding is unsurprising given the international context in which the PA's Commercial Protocol was negotiated providing for cross-fertilization across the several (mega-regional) agreements being negotiated by PA members at the time. But more importantly, given the long-term aim of the PA to progressively scale-up the regional integration process into one characterized by the free movement of goods, services, capital and persons,¹³⁸ such aims call for a need to go beyond the traditional remit of PTA governance.

a) Commercial Protocol Provisions

In the particular context of services trade, available assessment methodologies appear ill equipped in characterizing the depth of integration flowing from latest generation PTAs and the extent to which they extend beyond WTO treatment and coverage.¹³⁹ Existing categorizations do not offer the level of granularity required to document developments arising in e-commerce and digital trade, telecommunications, maritime transport, investment, rule-making, transparency, or regulatory cooperation, most of whom are not or inadequately considered in existing taxonomies.¹⁴⁰

For this reason, Table 14 below proposes an updated version of Table 13 above and encompasses a fuller range of policy areas taken up by the most recent generation of deep integration agreements in services.



137 See also Camilo Pérez Restrepo and Alma Sofía Castro Lara, 'The Pacific Alliance: WTO+ and WTOx?' (unpublished). The authors use Wignaraja's taxonomy on WTO+ and WTOx disciplines to reach the same conclusion in relation to the overall protocol and the services chapter at the macro level.

138 Framework Agreement of the Pacific Alliance, signed 6 July 2012 (entered into force 20 July 2015) art 3.1 a).

139 Hofmann, above n 135, 7. (Subsequently refer to as the HOM methodology)

140 See Carsten Fink and Martin Molinuevo, 'East Asian preferential trade agreements in services liberalization content and WTO rules' (2008) *World Trade Review* 7 (4) 641-673. The authors developed their own metrics to estimate the extent to which PTAs in East Asia went beyond WTO commitments for sub sectorial services liberalization in the concrete schedules and non-conforming measures.

Table 14. Proposed Typology for GATS+ and GATS-X Provisions

WTO + areas in PTAs (GATS +)	WTO X areas in PTAs (GATS-X)	
Cross-Border Trade in Services	Competition policy	Education and training
Domestic regulation	Investment measures	Statistics
Localization disciplines on local commercial presence and residency, local management	Labor market regulation	Taxation
Transparency	Movement of capital	SMEs
Telecommunications	Consumer protection	Research and technology
Financial Services	Data protection	E-commerce
Movement of persons	Audiovisual	Road Freight transport
Maritime transport	Innovation policies	Regulatory cooperation
Air Transport	Information society	
Professional services	Localization disciplines on computing systems	
Trade related Investment measures (TRIMS) for services.	Competitive delivery services	
State aid (Subsidies)	Cross-border transfer of information	
State trading enterprises and designated monopolies	Energy	

Source: own elaboration

This report maps the PA's emerging governance regime in services. A key dimension of such mapping relates to the PA's twin, parallel and complimentary pursuit of hard and soft law initiatives. Hard law refers to binding commitments prescribing obligations with a 'precise' content and scope and subjected to the dispute settlement mechanism. In turn, soft law refers to provisions that lack enforceability under dispute settlement mechanisms or provisions that have a limited (weaker) level of enforceability because they are either concerned with commitments on due process and positive actions rather than on the attainment of specific objective results. Examples of soft law provisions in the PA's Commercial Protocol include expressions such as: 'best endeavors' 'shall work jointly'; 'shall strengthen'; 'should encourage'; 'shall cooperate'; 'commit to promote'; to the extent practicable.¹⁴¹

In the context of this assessment, enforceability relates to provisions that are subject to the dispute settlement mechanism of the agreement. Moreover, legal enforceability also offers a spectrum of policy options. Some provisions could have stronger levels of protection if invoked as a nullification and/or impairment

¹⁴¹ In using this criterion the report distances itself of the clear-cut separation that the HMS methodology and the HOM methodology try to draw for quantitative purposes between enforceable and non-enforceable provision.

of expected commercial benefits (NIBs). The latter offers a party recourse to a PTA's dispute settlement mechanism in instances where, without being an explicit violation of an agreement, the claimant can document a legitimate deprivation of expected benefits due to the other party's actions.

Two caveats apply regarding the Report's proposed typology. First, it only aims to provide a broad picture of how far the Commercial Protocol goes in terms of policy areas covered. In doing so, the Report neither undertakes a micro-level analysis of various enforceable and non-enforceable provisions within each policy area nor does it account for the depth of individual provisions and commitments. Second, the typology falls short in fully assessing the degree of market opening on offer (i.e. the commercial value of commitments on market access and national treatment) since it does not explore the Commercial Protocol's annexes of non-conforming measures. Deeper analysis along such lines would be desirable in assessing the WTO+ and WTO-X nature of PA advances.



Table 15 below characterizes the provisions of the CP as GATS+ or GATS-X according to the policy areas covered in the agreement.

Table 15. PA GATS+ and GATS-X Commitments under the Commercial Protocol

Policy Area	Scope	Location	GATS+	GATS-X	Enforceable	+Nibs
Cross border trade in Services	Hard-Law	Ch 9 CP	X		X	X
Domestic regulation	-Mostly soft-law except when commitments under GATS art VI reaffirmed - Subjected to NCMs	Ch 9 CP	X		X(-)	X
Subsidies	Soft-law except when commitments under GATS art XV reaffirmed Scope: exchange of information	Ch 9 CP	X		--- ¹⁴³	---
Transparency	Soft-law	Ch 9 CP art 9.8	X		X(-)	X
	Mostly soft-law Hard-law: revision and appeal of administrative decisions.	Ch 15	X		X	
Telecommunications	Hard-law - Additional soft law commitments included in the First Amending protocol to the CP	Ch 14 CP (with amendment not in force)	X		X	---
Transparency on Telecommunications services	Mainly hard-law on transparency for authorization requirements and some soft-law commitments	Ch 14 CP 14.16, 14.19	X		X	---
Financial Services	Hard-law	Ch 11 CP	X		X (subjected to art 11.20)	---
Transparency in Financial Services	Hard-law and soft law	Ch 11 CP 11.13	X		X (subjected to art 11.20)	---
Movement of persons	na	na	na	na	na	na
Maritime transport	Soft-law cooperation type Hard-law: the recognition of: nationality of the vessels of the other party; documents issued by the authority of the other party; travel documents of the crew (passport or seaman book)	Ch 12	X		X	X (art 12.22)
Professional services	Soft- law	Ch 9 Annex 9.10	X		X(-)	X
Trade related Investment measures (TRIMS) (i.e local content, and export performance requirements in services)	Hard-law	Ch 10, art 10.8	X		X	---
Investment measures	Hard-law	Ch 10		X	X (except section C)	---
Labor market regulation (i.e regulation of the national labor market; affirmation of (ILO) commitments; enforcement)	na	na	na	na	na	na
Movement of capital (i.e Liberalization of capital movement; prohibition of new restrictions)	Hard-law	Ch 10.11		X	X	---
	Hard-Law	Ch 9.13		X	X	X
Consumer protection	Soft-law provisions on e-commerce	Ch 13(6) e-commerce Ch 13 (3) (f)		X	X(-)	---
Final users of telecommunications services	Hard-law protection of rights of final users of telecommunications services	Ch 14 14.21 Bis (Not yet in force)		X	X	---
Data protection	Hard-law on adoption of measures to protect personal information	Ch 13 (8) e-commerce		X	X	---
Localization disciplines (i.e preventing parties to request localization of computing facilities)	Hard-law subject to public policy objectives	Ch 13. 11 Bis Not yet in force		X	X (Not yet in force)	---
Cross-border transfers of information	-Hard-law subject to public policy objectives -Soft-law cooperation to maintain cross-border flows of information	Ch 13. 11 Bis (Not yet in force) Ch 13. 12(c)		X	X (Not yet in force)	---
E-commerce	Soft law and hard law including: non-discrimination of digital products and prohibition of customs duties to digital products imported or exported; adoption of measures against non-requested electronic commercial messages; and preventing parties to adopt measures against electronic authentication.	Ch 13 (+amendment not in force yet)		X	X	---

Audiovisual (i.e Promotion of the industry; encouragement of co-production)	na	na	na	na	na	na
Innovation policies (i.e Participation in framework programs; promotion of technology transfers)	na (in the context of services)	na	na	na	na	na
Information society ¹⁴⁴ (Exchange of information; dissemination of new technologies; training; joint research)	na	na	na	na	na	na
Education and training (i.e Measures to improve the general level of education)	na	na	na	na	na	na
Statistics	Soft-law: 'shall make efforts to encourage authorities' scope: joint work and information exchange and sharing.	Ch 9, CP art 9.14		X	X(-)	X
Taxation	na	na* bilateral agreements on double taxation avoidance	na	na	na	na
SMEs (i.e Technical assistance, facilitation access to finance)	-Government procurement Scope on Services Section E Ch 8. Soft-law provisions for facilitation on government procurement participation and cooperation	Ch 8, art 8.21- 8.22(b)		X	X(-)	---
	Soft law cooperation provisions to work jointly to encourage the use of electronic commerce by SMEs	Ch 13, art 13.12		X	X(-)	---
	Soft-law criterion on good regulatory practices: the consideration of the impact that a regulatory proposal could have on Micro and SMEs (optional). Cooperation on dialogue with stakeholders, including Micro and SMEs.	Ch 15.Bis (No yet in force) Art 15.Bis 5 & 15.Bis 7 (a)		X	---	---
Research and technology (i.e Joint research projects; exchange of researchers; development of public-private partnership)	na (in the context of services)	na	na	na	na	na
Competition	na	na	na	na	na	na
Air transport	na	na** bilateral agreements in place	na	na	na	na
Road Freight transport	na	na	na	na	na	na
Regulatory cooperation (Regulatory Improvement)	Soft-law language application to services measures subject to listing types of measure	Ch 15 Bis (No yet in force)		X	---	na
Energy	na	na	na	na	na	na
Competitive delivery services	na	na	na	na	na	na
Localization disciplines: commercial presence, residency	Hard-law: Limited to commercial presence subjected to NCMs	Ch 9, art 9.5	x		x	x
Local management not preventing exercise of control	Hard-law: Subjected to NCMs	Ch 10, art 10.9	x		X (except section C)	---
State Trading Enterprises	na	na	na	na	na	na

Source: own elaboration

Na: no provisions in place; NCMs: Non-conforming measures; X: applicable; X (-): weak enforceability due to the framing of the commitment; (---): non enforceable

142 Takes elements from the WTO disciplines on domestic regulation for the accountancy sector on licensing, qualification requirements and procedures extending the scope to all sectors, according to the NCMs.

143 Subsidies are excluded from the scope of the chapter except for the exchange of information.

144 For an example of this type of provisions see: Agreement establishing an association between the European Community and its Member States, and the Republic of Chile. Art 37.

b) Developments in the Commercial Protocol

The PA's Commercial Protocol breaks new ground in trade governance by featuring treaty language on value chains. This, however, takes the form of soft-law commitments on the publication, updating and exchanging of information on services supplied to businesses in the context of specific value chains.¹⁴⁵ The provision, although limited in scope, plants the seeds for the parties to explore the topic further with a view to developing fuller provisions that could promote heightened participation in - and better governance of – regional value chains in services.

Another innovative approach concerns the scope that the Protocol makes to associate private sector representatives to meetings of the PA's sub-committee on services. Nurturing improved public-private dialogues on selected integration challenges could help to identify and rank order reform priorities and identify policy issues ripe for collective action among PA members.

Further innovative provisions can be found in the investment chapter in the form of soft-law provisions on corporate social responsibility (CSR), including calls encouraging the Parties' to adopt international CSR standards applicable to enterprises operating in their territories.¹⁴⁶

The First Amending Protocol to the Commercial Protocol, which is not yet in force, also incorporates innovative provisions on telecommunication services. Evidence of policy granularity in this area includes the obligation each Party undertakes to establish procedures for exchanging and blocking in their networks IMEI (International Mobile Equipment Identity) codes for mobile devices that are reported as stolen in the territory of another party.¹⁴⁷ It further includes commitments on the regulation, monitoring and inspection of the quality of public telecommunications services, as well as commitments to guarantee specific rights to the final users of telecommunications services.¹⁴⁸ Additionally, the First Protocol features soft law provisions for the use of networks in emergency cases and the promotion of infrastructure development and connectivity.¹⁴⁹ The Amending Protocol to the Commercial Protocol also provides a framework for dialogue and information exchange on best regulatory practices and technical cooperation in telecommunication services, without however referring to any institutionalized mechanism through which such cooperation is to be pursued on a regular basis.¹⁵⁰

Taking on board some of the developments of mega-regional negotiations,

¹⁴⁵ Additional Protocol to the Framework Agreement of the Pacific Alliance, signed 10 February 2014 (entered into force 01 May 2016) art 9.12.

¹⁴⁶ Additional Protocol to the Framework Agreement of the Pacific Alliance, signed 10 February 2014 (entered into force 01 May 2016) Ch 10, Section C, art 10.30.

¹⁴⁷ First Amending Protocol to the Additional Protocol of the Framework Agreement for the Pacific Alliance, Annex 3, Ch 14, art 14.6 Bis.

¹⁴⁸ First Amending Protocol to the Additional Protocol of the Framework Agreement for the Pacific Alliance, Annex 3, Ch 14, art 14.21 Bis.

¹⁴⁹ First Amending Protocol to the Additional Protocol of the Framework Agreement for the Pacific Alliance, Annex 3, Ch 14, art 14.19 Bis.

¹⁵⁰ First Amending Protocol to the Additional Protocol of the Framework Agreement for the Pacific Alliance, Annex 3, Ch 14, art 14.15 Bis.

particularly the Transpacific Partnership Agreement (TPP), the Commercial Protocol includes provisions on local presence where PA members undertake the obligation not to request to services suppliers of the other party to establish or maintain representation offices or any form of enterprise, or to be a resident in its territory as a condition for the cross border supply of a service, subjected to the corresponding non-conforming measures.¹⁵¹ In the area of telecommunications services the Commercial Protocol includes provisions on roaming (with a more limited scope than the TPP provisions), and additional transparency measures regarding authorization, when required for the supply of a service; fees for final users; and publication of regulations.

Also following the TPP approach the First Amending Protocol to the Commercial Protocol incorporates provisions preventing parties from adopting measures requesting the localization of computing facilities as a condition to develop an economy activity.¹⁵² It also commits the parties to allow cross-border transfer of information by electronic means.¹⁵³ In both cases these commitments do not prevent parties from taking measures in pursuance of public policy objectives as long as they are not a means of unjustifiable and arbitrary discrimination or a disguised restriction to trade.

The chapter on financial services allows financial institutions established in the territory of a party to provide financial advice to collective investment schemes in the territory of another party. However, the parties may apply restrictions on the delegation of the administration of the investment fund or the funds it manages. Moreover, liberalizing provisions are also incorporated in regard to new financial services providing for national treatment. It is worth noting that parties made no commitments regarding electronic payments and card services on a cross border basis.

In responding to the need for international regulatory cooperation and convergence in reducing the incidence of behind the border restrictions to trade and investment,¹⁵⁴ the First Amending Protocol to the Commercial Protocol incorporates a new chapter on regulatory improvement providing for several soft-law commitments regarding regulatory practices and procedures as well as regulatory impact assessments and future cooperation for the implementation of the chapter. This is a cross-cutting area applicable to rule-making in both goods and services alike.¹⁵⁵ Over the medium-term, services governance in the PA would benefit from greater clarity on the central role that regulatory improvements can

151 Additional Protocol of the Framework Agreement for the Pacific Alliance, arts 9.5 and 9.7.

152 First Amending Protocol to the Additional Protocol of the Framework Agreement for the Pacific Alliance, Ch 13, art 13.11 Bis.

153 First Amending Protocol to the Additional Protocol of the Framework Agreement for the Pacific Alliance, Ch 13, art 13.11 (amended).

154 Particularly, the 2012 OECD Recommendation of the Council on Regulatory Policy and Governance and the APEC-OECD Integrated Checklist on Regulatory Reform. See Rodrigo Polanco and Pierre Sauvé, 'The Treatment of Regulatory Convergence in Preferential Trade Agreements' (unpublished). The authors highlight several approaches towards regulatory convergence - substantive or procedural convergence- taken in recent PTAs, including the First Amendment to the Commercial protocol.

155 First Amending Protocol to the Additional Protocol of the Framework Agreement for the Pacific Alliance, Ch 15 Bis.

play in tackling impediments to trade in services and investment through steps designed to achieve equivalence of regulations and/or the regional recognition of certifications, licenses or authorizations for the supply of a service granted by a PA member in the territory of another member.

The Commercial Protocol and its first amending protocol constitute building blocks toward deeper integration. They can be seen as a process rather than a final result so long as three conditions are satisfied: (i) soft law commitments are implemented and respected regardless of their non-enforceable or limited enforceable nature; (ii) cooperation frameworks deliver tangible results beyond the exchange of information and experiences and achieve more convergent regulatory frameworks capable of facilitating cross-border trade and investment in services either through the institutionalized instances of the protocol (i.e. Joint Committee on Services and Investment, sub-committee on services, sub-committee on investment) or through ad hoc working groups (i.e. in education, innovation, movement of persons, digital agenda sub-committee, SMEs, etc.); and iii) high level oversight and monitoring of implementation is in place.

c) Promoting Forward Movement

A possible way forward in promoting deeper integration levels between PA members would consist of launching and undertaking programmatic and periodic negotiations that could take the Commercial Protocol further. This could include:

- i. Making hard-law commitments over policy areas where the parties have previously only undertaken soft-law commitments. Some examples could include areas such as recognition and domestic regulation requirements and procedures. The possibilities are wide-ranging (see table 15).
- ii. Extending the Protocol's scope to 'new' policy areas, according to the typology discussed, which could be addressed: under a soft law approach as a starting point; or could further define hard-law commitments on a progressive basis.
- iii. When general application provisions are limited in scope by some countries for instance through footnotes, parties should consider removing such limitations.
- iv. (The removal of some of the Members' non-conforming measures (either on an individual country basis or on the basis of sector- or mode-specific formulas common to all members) would impart forward momentum to liberalization efforts and keep the Commercial Protocol alert to changes in underlying market, political and technological conditions. In this regard this process could include for example the revision of non-conforming measures under Section A of Annex III (non-conforming measures in financial services)
- v. When specific services are listed for the application of commitments on cross-border trade in services (i.e. Annex 11.6 Financial Services), the

PA member could consider extending the scope to other services not originally covered in the lists.

Such an approach would appear well suited to the PA's intergovernmental governance, whose institutional DNA does not envision the delegation of powers to supranational regional institutions in driving the integration process. Undertaking periodic negotiations and revisions of the Protocol would allow for a more organic approach to emerge where trade-offs between members, policy domains and sectors are likely to occur in reaching adaptive agreements. Furthermore, it would contribute to reach further commitments on issue areas that although covered in the protocol do not provide for committees or sub-committee structures to follow-up on implementation avenues on a regular basis. In addition, it could be a cost-effective way to pass measures through the internal process of congressional approval by national congress when required according to the type of measure.

Soft-law approaches to certain areas may often reflect a lack of technical capacity, inadequate familiarity with a novel policy challenge, or even a lack of trust or knowledge about the regulatory systems that other PA members have in place. Cooperation among sectoral regulators and steps taken to achieve greater regulatory coherence and convergence may well prove essential to addressing information asymmetries and promote the progressive transition from soft- to hard-law outcomes. Soft-law approaches are typically useful pathways towards hard-law commitments. However, this may not always be the case, it may be that soft-law approaches represent optimal paths towards regional collective action.

Where soft law approaches prevail, it will still be desirable to generate heightened forms of policy accountability.¹⁵⁶ Soft law provisions pursued on a best endeavors basis require explicit monitoring and information exchange to achieve greater buy-in and political legitimacy. At the institutional level, the PA's intergovernmental model and the Commercial Protocol offer several platforms such as the Subcommittee on Services, the Joint Committee on Services and Investment, the Free Trade Commission or even the PA Council of Ministers where such monitoring could be vested and take root. However, experience at the OECD, whose instruments are for the most part hortatory in nature, suggests that there are clear limitations to what a peer-to peer (country to country) review can deliver in accountability terms. For this reason, elevating the political level at which monitoring occurs and PA members are held accountable for their soft law implementation efforts would appear desirable.

Finally, the process of deeper integration will also benefit from a better understanding of the legal pathways required to adopt other hard-law and soft law commitments that fall within the scope of the implementation of the commercial protocol and the objectives of the Pacific Alliance. The Council of Ministers is entrusted with the role of adopting the decisions to develop the objectives of the Framework Agreement and also the mandates of the presidential declarations. A

¹⁵⁶ Patrick Low, Rethinking Services in a Changing World. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum, 2016 <www.e15initiative.org/> 7.

greater clarity on the legal status of those decisions will help in moving forward to consolidate a governance regime in the context of the PA. A starting point would be more transparency on the decisions taken to this point.

In parallel the Free Trade Commission (FTC) is entrusted with the administration of the Commercial Protocol and it is responsible for its compliance and correct application. In doing so the FTC may adopt certain types of decisions that at the moment seem to refer to aspects related to the trade in goods, but not so much decisions related to trade in services. Although the FTC can take other actions to ensure the compliance of the objectives of the protocol its powers to adopt further decisions seem limited in light of an ongoing process for deeper integration. Executive agreements offer an expeditious way to implement provisions of the protocol, but their legal scope and capacity to create international obligations varies from country to country according to their constitutional limitations.

Further progress in the services governance is an area where the governments of the PA members could lead by example by introducing digital tools tailored to fulfill several aims: First, tracking and monitoring the progress on the implementation of the several commitments, particularly of soft-law commitments and cooperation efforts (technology as an enabling factor of these interactions). A digital platform could help assess progress and aid coordination among the several national authorities through the exchange of ideas and information. Since governments may have different ideas as to how soft-law commitments could be implemented digital tools could help in articulating those views. Second digital collaborative construction of future pathways engaging governments of the PA members and the different stakeholders through public e-participation on ways to implement the cooperation initiatives envisioned in the Commercial Protocol. This would mean taking digital interactions beyond twittering with more robust online tools.





IV. Collaborative Economy: Prospects and Challenges for the PA

IV The Collaborative Economy: Prospects and Challenges for the PA

The collaborative or "sharing" economy as it is also often called is evolving at great speed thanks to the Internet, technological innovation and new business models, developments that have scaled and multiplied it exponentially to become a disruptive, Schumpeterian, economic force in its own right.¹⁵⁷ Its model allows for the generalization and mass use of intermediation platforms that bring users/consumers and providers more closely together, thus reducing transaction costs.¹⁵⁸ The collaborative economy operates in services fields as diverse as tourism, transport, finance, health and personal care, education and business services.

For PA members, the challenge that the collaborative economy poses is twofold. First, how to deal with the tensions emerging from the need to protect consumers and achieve other legitimate regulatory objectives, while providing a regulatory framework in which new business models can emerge and thrive? The demarcation lines between protectionist and legitimate policy objectives are often fuzzy and remain a sensitive issue. In the particular case of the collaborative economy the tension could be exacerbated by the interests of traditional economy operators that tend to regard the new business models of the collaborative economy as the source of unfair predatory competition in the services marketplace. Second, how to use the collaborative economy as an underlying vehicle through which new businesses and innovative entrepreneurial initiatives can emerge?

Studying the evolving contours of the collaborative economy and the business and policy opportunities and risks it raises in the PA is important as it represents a new means through which intra-regional trade and investment in services can be enhanced. The collaborative economy holds considerable potential to attract a new generation of entrepreneurs whose ability lies in developing new business models and delivering platforms that can improve, adapt and add value to existing (traditional) ones. Thanks to its crowd-based nature and extensive use of digital platforms, the sunk costs of operating in the collaborative economy are generally low, as is the minimum efficient scale of operation. Such characteristics are ideal for PA SMEs, empowering them to access a market of over 210 million

157 Jacques Bulchan Gidumal y Santiago Melián González, *Una Guía para Entender la Economía Colaborativa* (Fundación Universitaria de las Palmas, 2016) [Jacques Bulchan Gidumal and Santiago Melián González, *A Guide to Understanding the Collaborative Economy* (Fundación Universitaria de las Palmas, 2016)].

158 María Sobrino Ruiz y Antonio Maudes Guitiérrez, 'La regulación debe justificarse por fallos del mercado como la información asimétrica o la existencia de externalidades' en Instituto de Empresa de Madrid (para el Fondo Multilateral de Inversiones, BID) *Economía Colaborativa en América* (2016) 26 [María Sobrino Ruiz and Antonio Maudes Guitiérrez, 'Regulation must be justified by market failures such as asymmetrical information or existing externalities' in Instituto de Empresa de Madrid (for Multilateral Fund for Investments, IDB) *The Collaborative Economy* (2016) 26].

consumers. Cultural and language affinities can lower the costs of operating in other PA member countries, allowing in turn for scaled-up digital innovation able to overcome the twin tyranny of distance and geography afflicting cross-border trade in goods. The attraction of a large regional consumer market and the scope that exists for harnessing a regional pool of suppliers to enhance competition and innovation offer strong reasons for PA members to consider various cooperation avenues through which to benefit from the collaborative economy's growth on a regional scale. Tackling the core policy challenges of the collaborative economy on a regional scale early on would obviate the need for costly and always challenging ex-post efforts at policy harmonization.

The report suggests a coordinated multi-level approach between the regional and national (and even local/municipal) level in addressing the opportunities and challenges of collaborative economy growth in the PA. The extent to which the collaborative economy can flourish at the regional level further depends on the ability of PA members to supply needed regional public goods, such as digital connectivity and literacy and convergent consumer protection policies.

This report's closing section explores some of the main public policy challenges and opportunities flowing from the growth of the collaborative economy and what it portends for PA members. It explores the concept of the collaborative economy and its relation to other notions, such as the sharing economy and collaborative consumption, identifying the key characteristics that underpin this recent phenomenon. Finally, the section maps the current state of affairs of the collaborative economy in the context of the PA sub-region and draws out some basic public policy implications of this budding economic model.

1. What the Collaborative Economy is about

a) Conceptual Distinctions

The notion of 'sharing economy' has been used interchangeably with other concepts, such as 'collaborative consumption' and 'collaborative economy.' Several authors have attempted to shape boundaries between one and the other by referring to differences in motivations, interests, the nature of the interaction between peers, the payment of a charge, and so on.

Bulchand and Melián refer to the 'collaborative economy' as an overarching phenomenon that encompasses the entirety of digital platforms allowing connection between individuals that provide goods or services, and those that benefit from them.¹⁵⁹ They also mention that the terms 'collaborative consumption' and 'sharing economy' are concepts that fit into this broader concept.

¹⁵⁹ Bulchand-Gidumal above n 157 [Kindle version].

The above authors understand 'Collaborative consumption' as a process by which people share their belongings in order to avoid an unnecessary purchase (or production) of goods that, perhaps later on, are not going to be used. The ultimate purpose of collaboration is thus to avoid wasteful or unnecessary production or consumption.¹⁶⁰ Codagnone and Martens refer to the concept of collaborative consumption, popularised by Botsman & Roger,¹⁶¹ as encompassing activities such as 'bartering, lending, renting, gifting, and swapping' in three broad categories. First, 'product-service systems,' which allow for access to products or services without the need to own underlying assets. Second, redistribution markets, such as the re-allocation of goods, and third, collaborative lifestyles' such as the exchange of intangible assets.

Bulchand and Melián describe the sharing economy as a concept that operates only for a limited number of cases where products or services are really shared without expecting, in principle, something in return. This is the case, for instance, when people offer a place to stay in their home via couch surfing. Both authors question the use of this concept as an all-encompassing notion of the new economy reality, because in the most prominent examples, there is a financial payment in exchange for the services rendered without having a 'sharing' dimension *stricto sensu*.¹⁶² In a similar vein, Eckhard and Bardhi question the use of the word 'sharing' when referring to this economic system and suggest the notion of 'access economy' instead.¹⁶³ They argue that sharing conveys familiarity and a sense of communal identity that is not in place in the access economy where consumers are looking for utilitarian rather than social value. Consumers are, according to Eckhard and Bardhi, looking for the access to someone else's asset in a convenient and cost-effective way with no interest for enhancing social relations.¹⁶⁴

Other authors such as Peña for example, also agree that the term 'sharing economy' is somehow misleading. He asserts that the concept of collaborative economy is broad enough to cover both activities with financial and no interests underlying the P2P interaction.¹⁶⁵ He asserts as distinctive characteristics of the collaborative economy: (i) the democratization of resources; (ii) the more fluid exchange between providers and consumers; (iii) the use of technological developments to communicate; (iv) use of underexploited goods (v) development of a system based on trust.

160 Ibid.

161 Cristiano Codagnone and Bertins Martens, 'Scoping the Sharing Economy: Origins, Definitions, Impact and Regulatory Issues' (European Commission, 2016) 6. Quoting Botsman, R., & Rogers, R., 'Beyond zipcar: Collaborative consumption' (2010) 88 (8) Harvard Business Review 30.

162 Bulchand-Gidumal above n 157 [Kindle version].

163 Giana M Eckhard and Fleura Bardhi, Harvard Business Review (online, 28 January 2015) < <https://hbr.org/2015/01/the-sharing-economy-isnt-about-sharing-at-all> >.

164 Ibid. The authors even suggest that developing a business model oriented toward building and fostering social relations among consumers may not be the right approach for access economy businesses to scale up.

165 See Javier Peña Capobianco, 'La Alianza del Pacífico en el Comercio Global de Tareas' (Banco Interamericano de Desarrollo y Ministerio de Comercio Exterior de Costa Rica,) (proxima publicación) 13 [Javier Peña Capobianco, 'The Pacific Alliance in the Global Trade of Tasks' (Inter-American Development Bank and Ministry of Foreign Trade of Costa Rica) (Forthcoming) 13].

In contrast, Hamari, Sjöklint, and Ukkonen suggest that the sharing economy is actually an umbrella concept encompassing several ICT developments that include sharing consumption of goods and services through online platforms.¹⁶⁶ They define the collaborative consumption (CC) as the 'the peer-to-peer-based activity of obtaining, giving or sharing the access to goods and services, coordinated through community-based online services'.¹⁶⁷

In addition, even today the Oxford Dictionary refers to the sharing economy as 'an economic system in which assets or services are shared between private individuals, either free or for a fee, typically by means of the Internet'.¹⁶⁸

In what follows, we refer to the concept of "collaborative economy" as a more accurate and encompassing notion of the phenomena taking place. This runs counter to more widely spread concept of "sharing economy". The collaborative economy notion is broad enough to comprise the distinctive features of this economic system, the manifold variations in operating models, and the differences in motivations. Regardless of the differences in the operating models, they all seem to share a number of distinctive features explored below.

b) Characterization and Motivations of the Collaborative Economy

While several features characterise the collaborative economy's novel landscape, four salient aspects are addressed in what follows.¹⁶⁹ First, it relies on peer-to-peer (P2P) interaction. It is also possible that small businesses and individual entrepreneurs use the collaborative economy platforms to offer goods and personal services. Second, it typically operates through 'crowd-based' networks, given that the supply of capital and labour comes from groups of individuals rather than from corporations or state-run entities within 'traditional' economic activities. Third, it involves the use of digital intermediation platforms to scale up the model to reach broader audiences. Fourth, business models operating under this system rely on building trust, often in the form of peer reviews that would provide information on the quality of the product or the service offered.

Some of the above features can be the source of significantly disruptive effects in areas such as labour market regulation and consumer protection, among others, particularly in countries where regulatory policies are poorly adapted to the speed of change arising from novel economic trends that blur long-established

¹⁶⁶ Juho Hamari, Mimmi Sjöklint, and Antti Ukkonen, 'The sharing economy: Why people participate in collaborative consumption' (2016) 67 (9) *Journal of the Association for Information Science and Technology* 2047, 2047.

¹⁶⁷ Niam Yaraghi and Shamika Ravi, 'The current and future state of the sharing economy', *Brookings Report*, (29 December 2016) 1. Authors quoting Hamari and Ukkonen.

¹⁶⁸ See also Cambridge Dictionary definition for Sharing Economy: 'an economic system that is based on people sharing possessions and services, either for free or for payment, usually using the Internet to organize this'

¹⁶⁹ Arun Sundararajan, *The Sharing Economy: The End of Employment and the Rise of Crowd-Based Capitalism* (The MIT Press, 2016) 26-27.

lines of demarcation between the personal and the professional or between full-time, formal, employment and casual labour.

According to Munger,¹⁷⁰ one of the driving forces behind the emergence of the collaborative economy is the need (consumer demand) to reduce transaction costs. As consumers, people have traditionally relied on ownership. However, the main disadvantage of ownership is that individuals often end up with things they seldom need or use even as they always need the space to store them. Examples that readily come to mind are cars for urban dwellers or tools. The same logic applies to housing. People have to pay fixed costs for rent and mortgages, sometimes for several years, or even their whole lifetime. The collaborative economy allows individuals to make productive use, for example, of a spare bedroom by renting it out to someone who is willing to use it on a time bound basis,¹⁷¹ helping them deal with fixed monthly mortgage payments. This is the likely rationale behind business models arising within the so-called "collaborative consumption" sphere, which affords individuals the possibility of maximizing economic the welfare of providers and users through the temporary provision (or rental) of goods and services that a person owns or can supply — and that someone else needs. The collaborative economy is at its core a service economy, intermediating between the needs and supply capacities of users and providers.

Several other reasons underpin the surge of collaborative consumption: discontent with traditional consumption patterns and with certain types of market-based transactions, or the simpler spectre of economic gains are other important motivations behind the collaborative economy' rise.¹⁷² The sharing economy's propensity to disrupt traditional market structures and erode long-held rents has spawned a lively debate between supporters and opponents of this new economic model, leading in some instances to outright bans on some activities or to calls for much more stringent regulation of such new service providers so as to ensure that they do not gain an unfair or undue advantage over their traditional competitors (for example in urban transport or in the hotel sector). The above issue has proven to be most contentious within the taxi industry in several cities around the globe.¹⁷³

Other motivations include the scope for gaining access (through crowd-funding) to sources of capital that are either unavailable or unduly costly when intermediated within traditional financial channels. The sharing and dissemination of knowledge and expertise in areas of social or economic interest lays behind the emergence of yet other collaborative economy platforms. Governments are also beginning to harness digital platforms to better engage communities, particularly those that are remote, and to better manage the delivery of public services in a more decentralized and participative manner.¹⁷⁴ All of the above examples dot the

170 Michael C Munger, 'Tomorrow 3.0: The Sharing Economy' (2016) 20(3) *The Independent Review* 393.

171 *Ibid.*

172 Codagnone, above n 161, 19, 20. Quoting Hamari.

173 *Ibid.* 4.

174 Bulchand, above n 157 [Kindle version].

diverse landscape of the collaborative economy.

c) Benefits and Downsides of the Collaborative Economy

The collaborative economy produces undeniable benefits for both consumers and providers of services and goods, given the ubiquity of the Internet and other technologies which make collaborating and sharing possible at lower costs and higher scale.¹⁷⁵ It further allows underutilised resources to be monetised.¹⁷⁶ In addition, it has the potential to create new markets or to revitalise 'traditional' ones through disruptive innovations.¹⁷⁷

Furthermore, the collaborative economy affords greater flexibility and autonomy to economic agents while also helping individuals or households find additional sources of income, given the possibility to use multiple platforms.¹⁷⁸ A further advantage of this new economic system lies in the existence of digital platforms able to document and continuously inform on the quality of the service (to be) provided, prior to its acquisition or use, which increases trust between providers and users and ensures greater supplier accountability and reliability given real-time reputational risks.¹⁷⁹

Authors such as Peña have argued that the collaborative economy has empowered a new class of micro-entrepreneurs who are economically rewarded by sharing their abilities, resources, products and services.¹⁸⁰ For example, Airbnb started in 2007, when two roommates living in San Francisco, who couldn't afford to pay their rent, decided to offer three air mattresses in their loft as accommodation along with the promise of a free breakfast to any potential guest.¹⁸¹ Uber, for its part, took off in 2008, when Travis Kalanick and Garrett Camp, its two co-founders, experienced trouble in hailing a cab in Paris and came up with a simple idea: tap a button, get a ride.¹⁸² Most examples of collaborative economy advances within the PA also started as simple ideas, or as small businesses that achieved success through the innovative use of digital platforms.

The collaborative economy can also exert positive effects on the supply of public goods, notably in terms of positive environmental spillovers through clean air or reduced resource use resulting from the lowered production of shared goods. One recent study suggested that every car-sharing vehicle removed between 9 and 13 other vehicles from the road, which reduces urban pollution and congestion.¹⁸³

175 Wolfgang Kathan, Kurt Matzler and Viktoria Veider 'The sharing economy: Your business model's friend or foe?' (2016) 59 *Business Horizons* 664.

176 Salman Dostmohammad and Jude Long, 'Regulating the Sharing Economy: Applying the Processes for Creative Destruction', Dalhousie University (21 December 2015) 4.

177 Codagnone, above n 161, 18.

178 Peña Capobianco, above n 165, 31.

179 Kathan, above n 175.

180 Peña Capobianco, above n 165, 31.

181 Biz Carson, 'How 3 guys turned renting an air mattress in their apartment into a \$25 billion company', *Business Insider* (23 February 2016).

182 Uber, 'Our Trip History' <https://www.uber.com/en-AU/our-story/>

183 Dostmohammad, above n 175, 4-5 (footnotes omitted).

Likewise, in the case of hospitality services, the use of pre-existing housing reduces the need for more commercial hotels, which recent research has shown to be responsible for more than a fifth (21 percent) of carbon emissions from the tourism industry.¹⁸⁴ It is clear that, thanks to the collaborative economy, and especially collaborative consumption models, the energy used in manufacturing and the amount of waste produced from packaging and discarding broken or unused products will drop.¹⁸⁵

The collaborative economy further holds significant scope for containing price inflation and thus facilitating macroeconomic policy (through increased consumption and lower fixed costs of delivery), promoting environmental sustainability, enhancing convenience and promoting socially attractive consumption experiences (by encouraging more social interaction between users and suppliers). The collaborative economy's growth is seen by many as essentially unstoppable.¹⁸⁶ Recent projections by PwC of the expected growth of key segments of the collaborative economy in areas such as travel, car sharing, finance, staffing, music and video streaming see it rising from an estimated \$15 billion today to \$335 billion by 2025.¹⁸⁷ Such projections however, remain highly dependent on the ability of states or regions to enact policies and regulations that allow sufficient scope for innovative collaborative activities to flourish whilst also addressing the likely distributional downsides and possible anti-competitive risks arising from the inevitable market disruptions flowing from the sharing economy's continued rise.

The scale of growth for market leaders (first movers) in the collaborative economy is unprecedented. Barely eight years old, Uber supplies urban transport solutions in more than 250 cities worldwide and was valued at \$41.2 billion in mid-2015, a market capitalization larger than transport behemoths Delta Air Lines, American Airlines and United Continental.¹⁸⁸

A further defining characteristic of collaborative economy business models lies in their ability for firms to set-up and expand with very low sunk costs. This is possible because they can operate without the need for big investments in physical assets and infrastructure. Uber does not own cars to run its core business, Airbnb, the largest player in shared accommodation, owns no hotels and the highest-valued retail company in the world, Alibaba, holds no inventory.¹⁸⁹

Beyond the undeniable advantages noted above, the collaborative economy is not without its risks and potential downsides. For one, since many collaborative economy

184 Ibid.

185 Munger, above n 170.

186 Kathan, above n 175.

187 The Sharing Economy, PwC <<https://www.pwc.com/us/en/technology/publications/assets/pwc-consumer-intelligence-series-the-sharing-economy.pdf>> 14.

188 Ibid.

189 Juan Carlos Arroyo, 'La Economía Colaborativa en FinTech, una oportunidad de reinención...' en Instituto de Empresa de Madrid (para el Fondo Multilateral de Inversiones, BID) Economía Colaborativa en América, (2016) 34 [Juan Carlos Arroyo, 'The Collaborative Economy in FinTech, an opportunity for reinvention...' Instituto de Empresa de Madrid (eds) (for Multilateral Fund for Investments, IDB) The Collaborative Economy (2016) 34].

business models involve the optimized use of pre-existing, under-exploited, goods and assets and given that the logic behind this economic concept is to possess less — manufacturers (and manufacturing employment) could be adversely impacted, because there will be less demand for goods. A derivative effect of the lessened demand for goods would indeed be lesser production and possibly lesser cross-border trade, which could ultimately be reflected in higher prices for scarcer goods because of reduced scale effects. For example, instead of 100 million power drills stored in closets and garages, people will need only, say, 10 million because they will be able to rent rather than own a drill.¹⁹⁰ The loss of jobs in manufacturing may well lead to a commensurate rise of the so-called 'gig' economy characterized by "owner-operator" service sector jobs with lesser job security and social protection and a greater propensity towards informal sector work and tax avoidance.¹⁹¹

The winner take all properties of the digital economy has tended to be especially kind to first movers with adequate scale and a capacity to absorb novel (and potentially) rival innovators. This entails the non-trivial risk of excessive market concentration to which competition policy and enforcement practices will need to adapt and respond to.¹⁹² Similarly, the growth of the sharing economy requires that particular vigilance be placed in adapting consumer protection, taxation, cyber-security, privacy and data protection as well as labour laws to the downside risks noted above.

2. Development of the Collaborative Economy in the PA

A recent report commissioned by the Inter-American Development Bank provides a snapshot of the state of advancement of the collaborative economy in PA member countries.¹⁹³ The report allows for cross-country comparisons and provides useful empirical insights on the geographic distribution of collaborative economy activities per country, the areas in which it operates, and the reasons why they have or have not achieved the desired level of success, among others.

Pérez Garrido's work shows that the collaborative economy has experienced sustained growth in PA countries.¹⁹⁴ As Figure 22 below shows, the four PA countries account for 41 percent of total collaborative economy entities in Latin America. Of the total, and among the PA, Mexico has contributed the most, hosting 13 percent of sharing economy entities, followed by Peru, Colombia and Chile with 11, 9 and 8 percent of entities respectively. Within Latin America as a

190 Munger, above n 170.

191 Ibid.

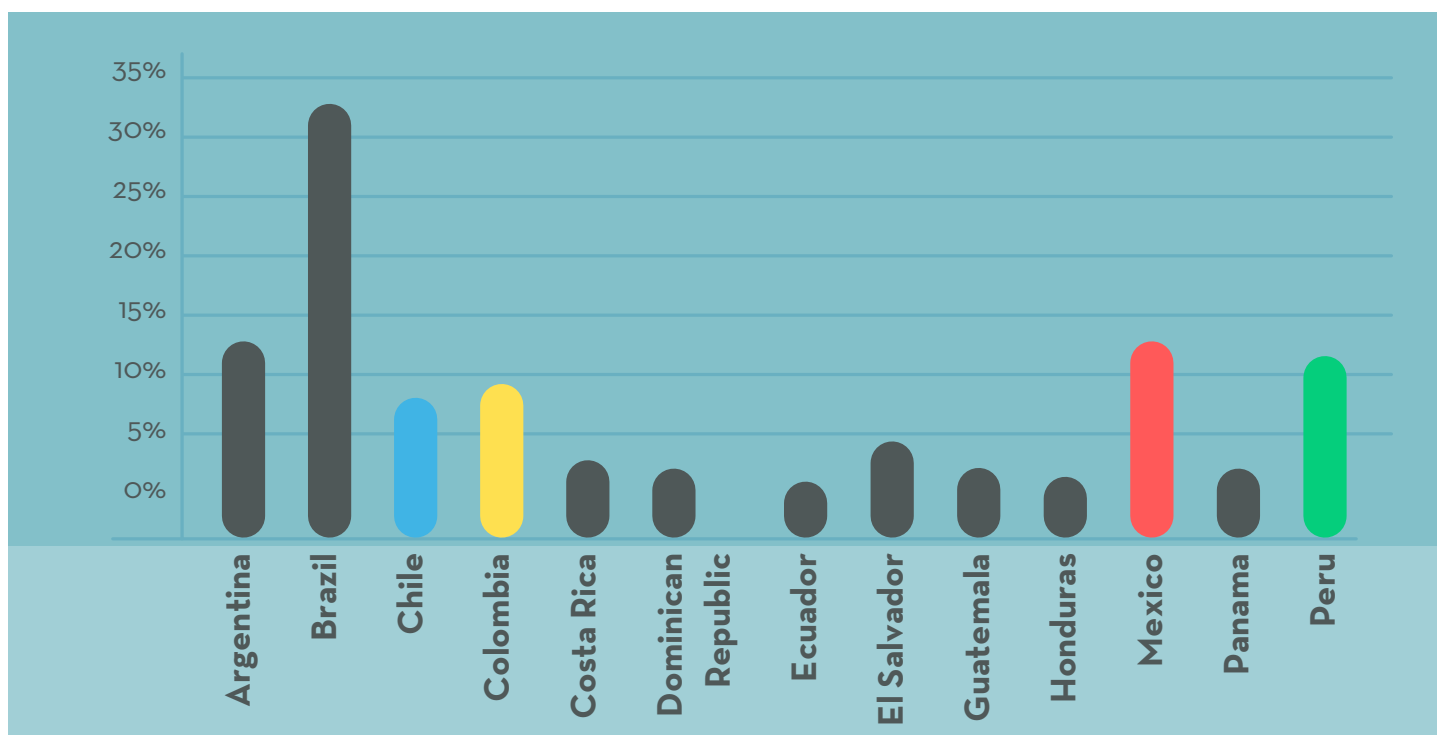
192 Codagnone, above n 161, 19.

193 Instituto de Empresa de Madrid (eds) para el Fondo Multilateral de Inversiones, Economía Colaborativa en América Latina (Banco Interamericano de Desarrollo, 2016) [Instituto de Empresa de Madrid (eds) (for Multilateral Fund for Investments, IDB) The Collaborative Economy (2016)].

194 Ricardo Pérez Garrido, 'Caracterizando la Economía Colaborativa: la visión de los fundadores' en Instituto de Empresa de Madrid (eds) para el Fondo Multilateral de Inversiones, Economía Colaborativa en América Latina (Banco Interamericano de Desarrollo, 2016) 5-6 [Ricardo Pérez Garrido, 'Characterizing the Collaborative Economy: the view of the founders' Instituto de Empresa de Madrid (eds) (for Multilateral Fund for Investments, IDB) The Collaborative Economy (2016) 5-6].

whole, Brazil leads the way with 32 percent of identified initiatives originating there. Mexico stands second thanks to the size of its internal market and its higher level of technological maturity.¹⁹⁵ From the total pool of businesses identified as operating under the collaborative economy model in Latin America, 26 percent are found in various business services operate while 24 percent operate in transport services.¹⁹⁶ A growing number of collaborative economy entities operate in education, training and cultural services (17 percent). The observed trend is somewhat different within the PA. For instance, in Mexico around 45 percent of collaborative economy initiatives operate in the transport sector while 18 percent are nested in the financial sector.¹⁹⁷

Figure 14. Latin America: Share of Collaborative Economy Initiatives per Country



Source: Instituto de Empresa de Madrid, (2016)

Table 16 shows an indicative list of collaborative economy initiatives currently developing in every PA member:

195 Instituto de Empresa de Madrid, above n 193, 19.

196 Pérez-Garrido, above n 194, 7.

197 Ibid, 19.

Table 16. PA: Collaborative Economy Initiatives¹⁹⁸

	Mexico	Chile	Colombia	Peru
Transport	BlaBlaCar, CarrotMX, Cabify, EcoBici, Bikla, DameUnAventon, EConduce, Rutanet, Pack-andPack, Parkeo	Rides.cl, ViajaConmi-go, Carpooling.cl, Joldit	ShareColab, Alamaula, MiAguila, LittleBigMoney, Nerdbooks, 5Bogota,	Pusakuy, StarsCamp, Comunal Coworking, San Borja en Bici
Crowdfunding; P2P Finances	KuboFinanciero, Crowdfunder.mx, Prestadero, Doopla, PlayBusiness	Cumplo, MerFac, BeCual, Broota, TuVakita; Tutanda	Parqueate, Lenddo, HubBog, TareaPlus,	
Hospitality, Tourism and Co-working	HackerGarage, Mandarin-Hub, Central	Sinbad, LocalGuiding, TouristLink	TodosEn4, Ropateka, EnCicla;	
Others	Vivanuncios, DadaRoom, TradeSchool, Mutuuo, Prentige, Zolvers	Tdoy, Conectas, Tu Closer, CanUBring, JunkStr, Poliglota; Prilov; Alba Babysit- ters, The Not Company	Colaboratorios	

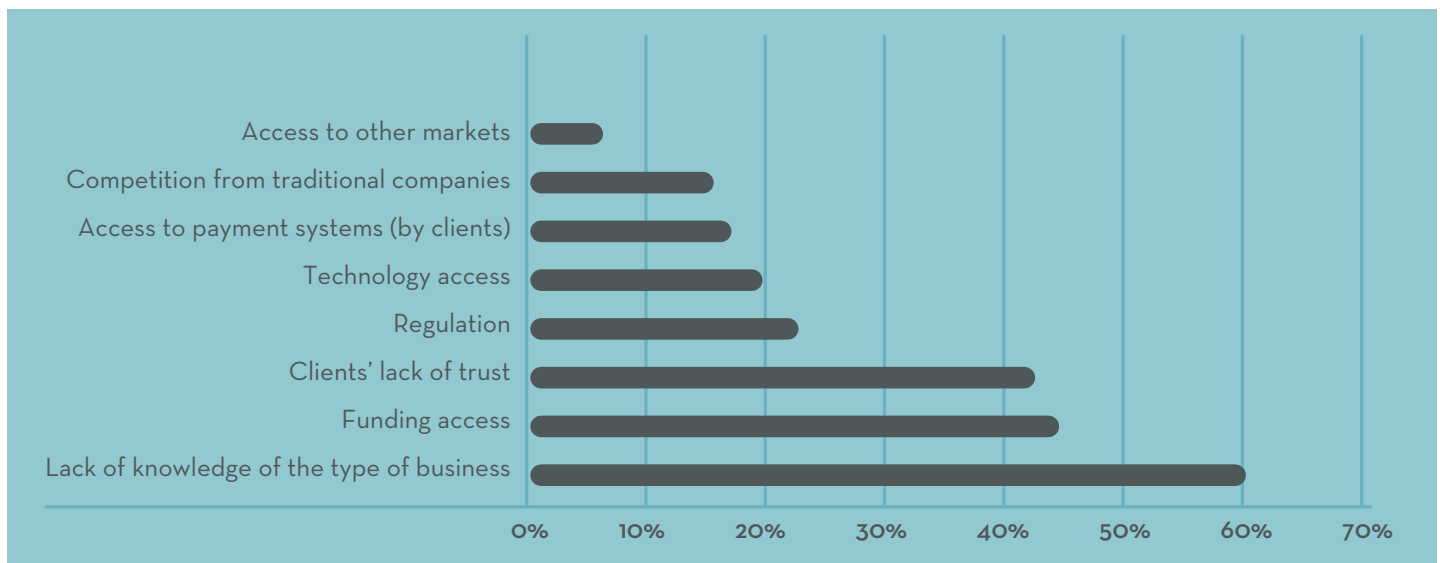
Source: Consumo Colaborativo and others

Despite the advances noted above, several factors continue to weigh on the collaborative economy's growth in Latin America. Figure 15 below identifies some of the main limitations highlighted by Latin American entrepreneurs operating collaborative economy business models.

Several factors continue to weigh on the collaborative economy's growth

¹⁹⁸ Collaborative Consumption Projects in Latin America, Collaborative Consumption (January 2017) <<http://www.consumocolaborativo.com/directorio-de-proyectos/directorio-de-proyectos-america-latina/>>.

Figure 15. Main Limitations of the Collaborative Economy to Growth in LA¹⁹⁹



Source: Instituto de Empresa de Madrid, (2016)

Lack of knowledge and trust, especially among potential users, in 'newly' proposed business models, together with inadequate seed finance and deficient regulatory frameworks are considered as the main limitations to the growth of collaborative economy activities.²⁰⁰ Of particular concern to operators are recurring conflicts between regulatory authorities over jurisdictional competence, regulatory overlaps across different levels of government, and lack of clarity on how to regulate, tax and protect consumers in such new activities. All appear ripe for deepened cooperation among relevant PA regulatory entities and key collaborative economy stakeholders.²⁰¹

In responding to the above hurdles and putting in place a PA-wide regulatory framework that balances potentially competing public policy objectives, greater collaborative initiatives and policy coordination among PA members will be required. Such intensified policy coordination will entail innovative approaches to tackling the freedom to trade and the protection of consumers, ensuring fairness in taxation and regulatory burdens, avoiding the emergence of anti-competitive conduct, protecting the privacy of data, etc. Several such initiatives are already in place through various PA-wide regulatory dialogues. Greater cooperation and coordination should be aimed at promoting the emergence of collaborative economy activities and the economic and social benefits they portend whilst also addressing inevitable distributional downsides.

199 Pérez-Garrido, above n 194, 11.

200 Ibid 6.

201 See '¿Por qué peligra la Plataforma Uber?' *Semana* (online), 3 April 2017, <<http://www.semana.com/nacion/articulo/demanda-del-ministerio-de-transporte-a-uber/520506>> [Why does the Uber Platform is in Danger? *Semana Magazine* (online) 3 April 2017 <<http://www.semana.com/nacion/articulo/demanda-del-ministerio-de-transporte-a-uber/520506>>].

3. Policy Challenges and Responses: Issues to Consider

a) Consumer protection

The collaborative economy raises multiple consumer protection concerns to which public policy needs to respond with a view to raising trust. Liability claims in cases of accidents and the provision of goods or services that do not match online depictions are two of the most common problems. Additional concerns relate to the fact that suppliers operating on collaborative economy platforms do not require adequate ex ante form of certification.²⁰²

Leading collaborative economy operators are keenly aware of such problems, all the more so as their materialization can entail damaging reputational risks. Most leading firms have thus adopted measures – most in the way of self-regulation – aimed at mitigating negative perceptions and genuine risks as seen by both the general public and regulatory authorities. Examples include the implementation of a US \$1 million host guarantee, which covers a host's property in the rare event of damages (Airbnb),²⁰³ and the possibility to get a refund if buyers receive an item different from the one placed on a selling list (eBay).

Interestingly, these are not the only examples of self-regulation. Companies such as Uber and Lyft allow consumers to see the GPS path of their rides, thus permitting users to find out whether the driver has followed the shortest route, whereas Airbnb guests can leave the accommodation on the first day if they are dissatisfied and need only pay for the first night's stay.²⁰⁴ Moreover, a growing number of collaborative economy operators are putting in place safety-related procedures such as background checks and harnessing digital feedback loops allowing clients to review the quality of services provided.

The nature of the collaborative economy activities and its use of digital platforms allows the screening of any unwanted, discriminatory behavior, entailing that such conduct is more likely to be policed.²⁰⁵ However, it remains the case, including within the PA, that self-regulatory approaches have been adopted and effectively implemented by only a handful of operators. Many still try to take advantage of loopholes arising from outdated or inadequate regulatory measures that tend to leave governments with many unanswered questions regarding the rights of consumers in the collaborative economy.²⁰⁶

202 Codagnone, above n 161, 22-23.

203 'AirBnB hosts return to find home trashed after "drug-induced orgy"', The Guardian (online), 1 May 2015 <<https://www.theguardian.com/technology/2015/apr/30/airbnb-calgary-home-trashed-drug-induced-orgy>>.

204 Codagnone, above n 161, 23.

205 For example, if a particular yellow cab in New York steadily doesn't pick up passengers of a particular ethnicity, its likely to go unpunished; however, if a Lyft driver does the same, the ensuing data trail might make it relatively easy to track and correct. See, in this regard Sundararajan, above n 169, 141-142.

206 Dostmohammad, above n 175, 2.

b) Taxation

Taxation has been and remains a major bone of contention and public policy headache in the collaborative economy. Tax authorities worldwide regularly announce crackdowns on collaborative economy operators in an effort to reduce tax leakage from individuals and firms who do not declare or do not declare fully) the income derived from sharing economy activities.²⁰⁷ As the sector develops, it will prove imperative for PA governments to develop clear guidance on whether and how the activities carried out by any natural or juridical person profiting from the collaborative economy have to be declared and/or subject to taxation. Such an assessment may in some instances require that a distinction be drawn between running a business and engaging in a pastime. The distinction depends on the frequency of the activity, and perhaps on the interest shown in engaging in remunerative activities (i.e. to earn a profit).²⁰⁸

There are quite clearly numerous collaborative economy activities that need to be reported for taxation purposes. Following Yuan, the tax treatment of every short-term stay in a private property should be the same as a longer-term residential rental. Therefore, '...all income must be declared in the person's income tax return and all expenses incurred directly relating to earning the rental income may also be claimed as deductions'.²⁰⁹

Any approach towards taxation of collaborative economy activities has to be taken considering the very nature of payments made through the use of digital platforms. This is important because, even though the collaborative economy business model is similar in many ways to traditional rentals or sales '...the method in which the transaction originates differs, making the tax consequences less clear'.²¹⁰ Such problems may be compounded when transactions are initiated across borders, calling once more for deepened dialogue among the region's tax authorities with a view to ensuring the respect of tax neutrality as between traditional and collaborative economy transactions.

c) Regulation and the Collaborative economy

One of the main problems related to the potential development of the collaborative economy is the existence of a multiplicity of often overlapping regulatory policies, some developed for traditional activities, others applied specifically to digital transactions. Given that the collaborative economy offers new ways of providing

207 Helena Yuan, 'The Sharing Economy and Taxation' (2016) 51(6) *Taxation in Australia* 293. In a similar vein, in March 2016, the British Government announced a new sharing economy tax break to let people earn £2,000 tax free from sites like Airbnb and eBay. This means that taxpayers who profited from an explosion of activity in the sharing economy last year, will get no tax break, and will be expected to pay tax on all of their earnings.

See 'AirBnB tax chaos: Sharing economy boom to push fines for late tax returns above 1 million', *The Telegraph* (online), 5 October 2016, <<http://www.telegraph.co.uk/news/2016/10/05/airbnb-tax-chaos-sharing-economy-boom-to-push-fines-for-late-tax/>>.

208 Yuan, above n 207.

209 Yuan, above n 207.

210 Taxing the sharing economy Introduction to the tax issues that may arise from the new sharing economy, PwC, <<https://www.pwc.com/us/en/industry/entertainment-media/publications/assets/pwc-taxing-the-sharing-economy.pdf>> 2.

and consuming services, many of which have traditionally been subject to high regulatory compliance burdens, the possibility of conflict is clear.²¹¹ For example, the operation of Uber in urban transport markets has triggered the opposition of local authorities looking to enforce taxi licensing laws in highly regulated markets.

A recurring challenge in adapting existing regulatory policies to new market realities is that prevailing regulations were typically (and naturally) established without the participation of new market players, but set regulatory authorities on the basis of traditionally supplied economic activities. New forms of participative regulatory dialogues are needed to address today's more complex environment. As Gasser notes '...the laws written to regulate taxicabs, hotels, and other industries fit poorly with the new platforms, providers, and consumers using the sharing economy'.²¹²

As noted earlier, regulatory deficiencies abound in areas such as worker safety rules and consumer protection. For example, in classifying workers as 'independent contractors,' Uber does not consider itself responsible for the behavior of its drivers, and Airbnb assumes no responsibility with regard to the maintenance, repair or cleaning of rental units.²¹³ At the same time, trying to impose existing regulations to new business models in the collaborative economy sphere without due consideration to differing characteristics could hinder the use of digital trade and its manifold economic and social benefits.

More effective regulatory approaches are needed to promote self-regulatory practices among the companies operating within collaborative economy ecosystems. Seen this way, self-regulation need not be tantamount to deregulation but rather involve 'a reallocation of regulatory responsibilities to parties other than the government'.²¹⁴

Better identifying the above challenges and responding to them through appropriate stakeholder dialogue architectures are needed within the PA for the full developmental potential of the collaborative economy to be reaped and its distributional downsides properly mitigated. Table 17 below lists some of the key regulatory challenges arising from the growth of the collaborative economy and identifies potential public policy approaches.²¹⁵

Table 17. Regulatory Challenges of the Collaborative Economy

211 Sundararajan, above n 169, 137.

212 Urs Gasser, 'The Sharing Economy: Disruptive Effects on Regulation and Paths Forward', <http://institute.swissre.com/research/risk_dialogue/magazine/Digital_Economy/sharing_economy_disruptive_effects.html> (06 Jun 2016) 1.

213 Dostmohammad, above n 175, 2. Note that, according to these authors, 'this makes these companies highly profitable as they are able to offload the responsibility for liability, regulatory compliance, and taxes onto private contractors'.

214 Ibid 2-3.

215 For the drafting of the column 'possible approaches', some recommendations made by the European Commission have been taken into account. See, in this regard, European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European agenda for the collaborative economy' Document COM(2016) 356 final, Brussels 2 June 2016.

Regulatory Challenges	Issues to be considered	Possible public policy responses
Consumer Protection	<ul style="list-style-type: none"> - Asymmetrical information - Security - Quality of the service 	<ul style="list-style-type: none"> - To make compulsory the implementation of rating and reputational systems or other mechanisms to discourage harmful behavior by market participants. - This may in some cases reduce risks for consumers stemming from information asymmetries.
Taxation	<ul style="list-style-type: none"> - Tax compliance and enforcement - Difficulties in identifying the taxpayers and the taxable income 	<ul style="list-style-type: none"> - Local governments should conclude agreements with platforms for the collection of taxes. For example, in the European accommodation sector, platforms facilitate the payment of tourist taxes on behalf of service providers. - To raise awareness on tax obligations, making tax administrators aware of collaborative business models. - Information about national tax obligations, including those linked to employment status, should be clearly communicated to stakeholders.
Labour rights and entitlements	<ul style="list-style-type: none"> - Lack of clear criteria as to whether an employment relationship exists. 	<ul style="list-style-type: none"> - Private individuals who offer collaborative economy services should not be automatically treated as professional service providers. - The establishment of guidelines as to how to qualify a person as a trader. At least three criteria must be taken into account: Frequency of the service, profit-seeking motive and level of turnover . - The establishment of guidelines in order to find out whether an employment relationship exists; focused on the following three criteria: the existence of a subordination link; the nature of work, and the presence of remuneration.
Self-regulation	<ul style="list-style-type: none"> - Limited number of cases of self-regulatory measures by collaborative economy companies. - Lack of clear rules from the government. 	<ul style="list-style-type: none"> - Collaborative platforms are encouraged to continue taking voluntary action to fight illegal content online and to increase trust (for example by helping to ensure the quality of the services offered by providers of underlying services on their platform). - Such voluntary measures should not automatically be taken to mean that collaborative platforms that benefit from the exemption from intermediary liability no longer do so.

Source: own elaboration

216 According to the European Commission, an example of good cooperation between tax authorities and collaborative businesses comes from Estonia. In this country, transactions between the driver and the customer are registered in the collaborative platform, which then sends the

PA governments (at the national and sub-national (including municipal levels), in partnership with key civil society stakeholders active within and outside the collaborative economy should consider establishing a taskforce aimed at periodically conducting an audit of the adequacy of prevailing regulatory and taxation structures in the context of the collaborative economy and recommend needed adaptations. The proposal has been made that citizen advisory committees be created to provide meaningful contributions to the work of such a taskforce.²¹⁷

Another successful regulatory strategy would aim to encourage active cooperation between collaborative economy operators and governments. Airbnb for example has worked with regulators in cities such as London and Amsterdam in approving 'Airbnb friendly laws' and Uber has received regulatory approvals in a number of US cities as well as in the Philippines.²¹⁸

The Director General of the International Labour Organization recently pointed out the need to devote greater regulatory scrutiny to sharing economy activities, noting how operators in this new market sphere have to be regulated according to the (differing) values of each society.²¹⁹ The latter observations, pertinent as they are, must be set against the reality of business models whose protagonists typically expect them to be deployed and grow in a relatively homogeneous manner on a global scale. While overly idiosyncratic and contextualized regulatory approaches to the collaborative economy may hinder efforts at scaling up product offerings, regulatory responses must adapt and respond to cross-country differences in collective preferences. Efforts are needed within the PA to determine whether significant cross-country differences exist in attitudes towards the sharing economy and whether scope exists to adopt convergent regulatory responses to its growth. Doing so would help nurture the sector's vibrant entrepreneurial spirit whilst also responding pro-actively to attendant dislocation forces.

4. Summary Findings

- i. Despite the number of challenging regulatory and tax-related issues that come in the wake of the collaborative economy's growth, its further development promises interesting business opportunities and the development of new digital platforms likely to promote enhanced trade and investment in services within individual PA members and the regional grouping as a whole. Initiatives launched at the level of individual members could usefully be tested, expanded and escalated

relevant data (for taxation purposes) to the authorities, who will then pre-fill taxpayer tax forms. See European Commission, above n 215, 14.

217 Dostmohammad, above n 175, 5.

218 Ibid 5-6.

219 'Guy Ryder, director de la OIT: Cada sociedad debe regular la economía colaborativa', La Nación (online), <http://www.nacion.com/economia/politica-economica/economia-colaborativa-OIT-Guy-Ryder_o_1557044309.html> [Guy Ryder, director of the ILO: Each society should regulate the Collaborative Economy,' La Nación (online), <http://www.nacion.com/economia/politica-economica/economia-colaborativa-OIT-Guy-Ryder_o_1557044309.html>].

to an enlarged regional market of PA consumers and service suppliers. The existence of a common language, similar values and cultural identities all favor the growth of region-wide entrepreneurial initiatives within the sharing economy, provided that regulatory frameworks framed in the analog age adapt and converge on a regional scale.

- ii. Among the main limitations retarding the development of the collaborative economy within the PA and in Latin America more broadly are: (i) a lack of updated regulatory policies, owing to the still predominant focus of governments on more 'traditional' economic activities; (ii) the absence of clear rules and procedures with regard to taxation, where significant scope for leakage prevails, and labor market regulation, notably as regards the nature of employment relationships between firms and independent workers and their social protection; (iii) the scope for potential prejudice to consumers in the presence of information asymmetries between providers and consumers of services in the sharing economy.
- iii. A large and growing number of sharing economy initiatives are already being deployed in several Latin American countries, and many others are in the pipeline. Numerous avenues exist with which to lend further support to such initiatives across the PA. First, steps can be taken to bolster the quality, geographical spread and speed of countries' Internet infrastructure with a view to securing universal Internet access along with access to technology and wider use of smartphone and other mobile devices.²²⁰ Equally important in this context is the need for enhanced levels of trust between suppliers and consumers truncating over collaborative economy platforms. Such trust tends to be lower in Latin America than in other regions in the world, though efforts at increasing digital literacy for consumers and entrepreneurs are afoot throughout the regional grouping. Better access to secure digital payments systems and to deeper sources of finance for individuals or SMEs wishing to start a business under this model are some of the tools required to enhance the development of collaborative economy initiatives throughout the PA.²²¹
- iv. Cross-country differences in innovation capabilities can also affect the emergence and growth of sharing economy initiatives, as can the supply (or lack thereof) of venture capital able to bet on and fund the emergence of novel business models. The development of common curriculum devoted to sharing economy characteristics in PA business schools would be desirable, as would efforts at deepening financial markets with a view to nurturing the growth of a vibrant venture capital sector. Finally, much greater analytical granularity is required on the potential

220 Perez-Garrido, above n 194, 11, 13.

221 Albert Cañigüeral, 'La era y la hora del modo de producción ciudadano' en Instituto de Empresa de Madrid (eds) Instituto de Empresa de Madrid (eds) (para el Fondo Multilateral de Inversiones, BID) Economía Colaborativa en América, (2016) 37 [Albert Cañigüeral, 'The era and the time for the citizen production mode' in Instituto de Empresa de Madrid (eds) (for Multilateral Fund for Investments, IDB) The Collaborative Economy (2016)].

benefits and downsides for employment, earnings, gender, labor market participation, as well as social and consumer protection arising from the expected growth and spread of the sharing economy in sectors such as education, financial services, health and business services, issues that remain poorly explored in public policy research in the PA and beyond.

V Concluding Remarks and Recommendations

There is growing interest throughout much of Latin America, and particularly in the like-minded setting of the PA countries, on the potential that services trade holds for the diversification of exports alongside increasing awareness of the relevance that the sector has as an engine for economic growth and competitiveness. This concluding section outlines, based on the assessment above, several policy areas and potential ways to move forward to create a nurturing regional environment for the services economy in the PA.

Data availability

The greater availability of disaggregated statistical information on services output, trade and investment continues to be a challenge that holds back the development of properly informed public and private decision-making. Within the PA, this is particularly the case of Mexico and Peru, where data is not disaggregated enough to allow for an assessment of intra-regional patterns of services production and trade. This situation suggests the usefulness of a PA-wide work program that could facilitate the comparability of statistics and provide access to more disaggregated bilateral trade data. Such an initiative is already in place, albeit with limited resources, at the regional level within the Latin American Integration Association (ALADI). However, the small number of PA members should enable faster progress in targeted data collection efforts in this area, providing a key input to enhanced public policies supportive of the service economy.

The current paucity of data on the sharing economy arguably hinders efforts to allocate public resources to the areas that need it most. The lack of suitably disaggregated data at the firm level within PA members makes it difficult to assess and monitor current policies and strategies tackling services sectors. The challenge for PA members is not just to develop services-oriented strategies and policies, an area in which the region in many regards has done better than most other parts of the developing world. Still, greater efforts need to be directed to developing and enacting smarter, evidence-based policies, which in turn demand better monitoring and evaluation metrics.

Regional Policy on Services

Efforts could usefully be directed to identifying service sector niches where scope exists to develop or deepen PA-wide value chains and increase intra-regional trade and investment in services. Doing so would also help gauge the potential that service inputs originating in the PA hold for heightened insertion into manufacturing value chains throughout the region and globally. This report has identified a range of services exports that are common to all PA members. The level of intra-regional trade in services is highest in ICT-related services as well as business services. A deepening of regional value chains in services can further be promoted through greater cross-border investment of trans-Latina corporations operating throughout the PA.

A regional policy on services would need to consider the following aspects:

(i) **Institutional coordination at the regional level:** a multiplicity of governmental institutions are involved in the regulation, supervision and promotion of the service economy at the national level. The development and implementation of PA-wide policies would require the establishment of a flexible coordination and consultation architecture at the regional level able to mobilize broad stakeholder buy-in and identify areas where pooled efforts can best support a deepening of regional ties. Government agencies from the PA in charge of developing education, vocational training, trade, immigration, ICTs and infrastructure policies all have a role to play in formulating a regional policy for the services economy in the PA. Moreover, its definition will benefit from dialogue and participation of the private sector and other voices in civil society through national services coalitions and other institutionalized instances such as the Pacific Alliance Business Council (CEAP).

(ii) **Facilitating the temporary mobility of vocationally-trained technicians and professionals within the PA.** The increased mobility of talents – meaning students, researchers and workers - would help promote knowledge transfers within the region. It would also help to address labor market bottlenecks and skills mismatches that are common to many PA members.

(iii) **Advancing a concrete agenda of mutual recognition of higher educational degrees, professional licenses as well as other forms of vocational and practical training certifications.** Securing convergence and equivalence in national accreditation systems forms an essential component for achieving the mutual recognition of education degrees, professional licenses and training certifications within the PA. Mutual recognition efforts need to focus on a number of regulated professions where obstacles, both formal and informal, to region-wide mobility are often significant. These include architecture, engineering, accounting, law and health professions. PA members also need to explore the means through which temporary licensing systems for technicians and professionals could be implemented within the region in instances where full-fledged mutual recognition agreements may not prove feasible or unduly ponderous. Interesting lessons could be drawn from the Australia-New Zealand experience in this field.

(iv) More broadly, PA members should agree on an agenda aimed at achieving the progressive alignment of service sector regulation through regulatory convergence, approximation and equivalence (given that regulatory harmonization is often politically challenging to achieve). The PA was an early innovator in this regard, and steps need to be taken to identify a series of sectors, perhaps starting with the backbone ones identified in this report, where PA-wide regulatory regimes can be progressively aligned with a view to lowering trade and investment costs and promoting greater competition and resulting international competitiveness of the PA's service economy.

Small and Medium-Size Enterprises

- The promotion of PA SME clusters should be encouraged to identify potential synergies among PA members. Each PA member currently has several services clusters in operation. This should ease the promotion of region-wide collaboration with several existing national clusters.²²²
- Joint supplier development programs between lead foreign investors and PA-based SMEs should be nurtured by host country investment promotion agencies along with integrated support programs to help innovative, knowledge-based SMEs to scale up through better access to finance, business services, knowledge transfers, access to input and distribution networks as well as the development of entrepreneurial skills.²²³
- Efforts should also be directed towards promoting the greater participation of PA SMEs in the public procurement system of individual member countries on the basis of transparent criteria and performance indicators. Service-sector SMEs could benefit from joint participation in public bids and incentives could be developed to encourage joint bids by service-sector SMEs from different PA members.
- A sectoral mapping of SMEs operating within key sectors of the PA economy could be done with a view to gaining a better understanding of competitive strengths and weaknesses, the range of services on offer, development bottlenecks, etc. This would help to develop PA-wide policies aimed at overcoming key SME growth hurdles and identify SME-related areas where closer cooperation should be pursued.²²⁴
- Steps are needed to help with the development of Internet platforms allowing service sector SMEs within the PA to connect with other service suppliers, business partners and clients and access relevant information (i.e financing programs, regulations). Such efforts could be rolled into already existing PA-wide platforms (i.e Connectamericas.com and Observatorio Regional PYME Alianza del Pacífico) to

222 See, eg, Chile has a specialized cluster on 'global services' and another cluster on 'tourism with special purposes.' Colombia has the Red Cluster Colombia/Colombia Cluster Network < <http://redclustercolombia.com/clusters-en-colombia/mapa-de-clusters> > This is a network including several services as well as industrial clusters. Similar clusters are in place in Mexico < www.icluster.inadem.gob.mx > and Peru < https://www.cnc.gob.pe/images/cnc/LAvance_12_13/archivos/Informe-Final-Mapeo-Clusters.pdf >. They include clusters in: aero spatial and air; telecommunications; BPO&O and KPO; construction and real state; editorial and media, energy and related services and goods; logistics transport and distribution; entertainment and creative industries; health and social services; business services; financial services; software & IT; tourism, hotel & restaurants.

223 OECD Global relations Secretariat, above n 7, 9.

224 Lejarraga, above n 31, 5-6.

avoid duplication and facilitate one-stop online research. Particularly useful would be an Internet platform responding to the particular needs of service-sector SMEs in providing trust-enhancing information to consumers. Efforts are needed to address genuine information asymmetries affecting SMEs that often lack established brands. As such a public-private initiative is consolidated, SMEs in PA-observer states could also join such platforms and enlarge online networks.

- Greater promotion of the Internet and stepped-up efforts at enhancing digital literacy would help SMEs to expand sales in regional markets and beyond and better interact with foreign consumers.²²⁵ Although some SMEs readily use the Internet to provide information about their products, a limited number have enabled online systems for ordering and payments.²²⁶
- Soft-lending programs for SMEs to help them open new export markets, notably in the Asia-Pacific region, and allowing them to establish contacts and create networks through repeat visits and participation in incubators, start-ups and trade fairs in other PA countries represents a further form of desirable pooled support. Such an initiative could also be extended to PA observer states once in place.²²⁷
- Equally worthy of regional buy-in is the issue of encouraging the scaled up participation of joint and collaborative projects involving SMEs in several PA to the Entrepreneurial Capital Fund of the Pacific Alliance. The fund, whose establishment is expected to be completed in 2017, will have a significant focus on services entrepreneurs including in areas such as ITC, health sciences, engineering services, financial mobility, biotechnology, renewable energies, education and crowdfunding platforms.
- Dedicated support policies for SMEs require credible information on the resilience of service sector exporting firms. Documenting such performance would provide better indications of targets in public policy interventions. There is anecdotal evidence suggesting that once service sector SMEs start to export, they are prone to continuing down such a path. If such a trend is found to obtain in the PA, SME support could focus on allocating resources towards supporting SMEs' first export relationships.²²⁸ Efforts are currently afoot to develop a general index for public policies on SMEs in Latin America and the Caribbean (IPPPALC by its Spanish acronym), which is an adaptation of the OECD Index on Public Policies for SMEs. Because the IPPPALC Index does not attempt to assess SME policies in relation to service sector activities, PA governments and the policy research community within it could usefully pool their resources in undertaking such analytical work given the preponderance of SMEs in the service economy and their centrality to employment creation.²²⁹

225 Meltzer, above n 31, 16.

226 Ibid 7, 16. The assertion is based on studies into the SMEs in Canada and the European Union.

227 Ibid 21.

228 Lejárraga, above n 31, 67.

229 See Estudio de Actualización del Índice de Políticas Públicas para PYMES en América Latina y el Caribe (IPPPALC) (SP/RREAIPP-PYME-ALC/DT N° 2-16 SELA, 8 Julio 2016) [Updating Report of the Public Policies Index for SMEs in Latin America and the Caribbean (PPISLAC) (SP/RREAIPP-PYME-ALC/DT N° 2-16 SELA, 8 July 2016)]. Cf Rubalcaba, above n 49, 39, 46. The latter supports the view on the need to recalibrate policy assessment indicators when it comes to services innovation.

- A further area ripe for closer cooperation among PA members in a collaborative economy context concerns the need for convergence in consumer protection norms and enforcement procedures. This should include effective consumer dispute resolution systems for cross-border disputes involving PA consumers and/or firms.

Services Governance in the PA

The PA's Framework Agreement and particularly the Commercial Protocol represent the main sources of a regional regime in services emerging in the context of the PA. Hard-law commitments as well as soft-law provisions and cooperation efforts comprise the regional regime governing the service economy. Despite the many innovative provisions of the Commercial Protocol, which is widely considered as a new generation PTA, it is still far from exhaustive and Members still have considerable space in which to experiment further in areas such as regulatory convergence, trade facilitation in services, and further liberalization that could deepen intraregional trade and investment ties in services. For example, several measures governing various logistics sub-sectors remain unduly restrictive across the PA. This is also the case for maritime transport and courier services.

Restrictions on foreign equity participation remain arguably excessive in maritime and air transport services in Mexico Peru, and Chile. FDI restrictions and other regulatory limitations are also significant in the broadcasting sector in Colombia and Mexico. Furthermore, some PA members continue to apply labor market tests to natural persons seeking to supply services on a temporary basis in particular sectors. Differences in procedural and substantive authorization requirements to supply services also create additional hurdles to services suppliers to operate on a regional scale. This is notably the case of regulated professions where PA members maintain differing regimes that hamper cross-border mobility. In a limited number of cases, residency and nationality requirements still apply to some regulated professions. Differences in consumer protection regimes can also hinder recourse to foreign (non-established) service suppliers through digital or other means.

This report suggests a number of forward-looking initiatives worthy of consideration in this regard:

- Launching and undertaking programmatic and periodic negotiations that could take the Commercial Protocol further including: (i) considering the scope for hard-law commitments in policy areas where the Parties are currently bound by soft-law undertakings; (ii) extending the Protocol's scope to 'new' policy areas; (iii) revising (and reducing the number of) non-conforming measures; and (iv) removing limitations on the scope of general obligations provided by some members.
- Where soft law approaches are maintained, it will still be desirable to secure higher levels of policy accountability through proper monitoring and evaluation and regulatory impact assessment efforts. As the Protocol breaks new ground addressing areas not previously covered in other PTAs, PA members need to develop high level monitoring and oversight procedures governing the implementation of soft-law commitments and cooperation activities to ensure that they yield intended outcomes.

The Collaborative Economy

The collaborative economy holds considerable potential to leverage the development of new business models and the emergence of new service offerings over region-wide digital platforms. Such platforms can facilitate the emergence of a new generation of entrepreneurs in the PA and hold significant promise for consumers. For PA members to take full advantage of the opportunities arising from the growth of the collaborative economy, a series of enabling conditions and flanking policies need to be in place. These include:

(i) **Digital connectivity:** Improving the level and quality of access to the Internet and to mobile and smart technologies, thereby allowing for P2P interactions to take place on a broader scale. Online crowd-based networks are the operating principle of the collaborative economy, relying on the ability of buyers and sellers to connect to the Internet and use novel applications.

(ii) **Digital literacy:** Advancing the levels of digital literacy that would enable more consumers and people to trust and use the collaborative economy's digital platforms. Lack of public knowledge about the business models operating in the collaborative economy prevents their growth. Building trust online also requires that steps be taken to address a range of issues revolving around the security, transferability across borders and confidentiality of data and of cross-border online payments. Scaling-up product offerings is also contingent on the absence of measures that unduly fragment digital markets, such as data localization requirements.

(iii) **Skills development:** many of the labor market deficiencies that hold back the growth of traditional services transactions are present in the collaborative economy and weigh equally on its development. This includes a lack of entrepreneurial skills, of adequate managerial skills, particularly within SMEs, and weak innovation capabilities, all of which can hinder the adoption and use of new business models.

(iv) **Regulatory environment:** the quality of domestic regulatory frameworks and institutions affects all agents participating in the collaborative economy - from operators of digital platforms to providers of goods and services over them as well as consumers. In several market segments where the collaborative economy operates, antiquated or poorly adapted regulatory frameworks can be sources of friction, creating uncertainty over legal rights, tax and disclosure obligations and liability towards users. Promoting greater convergence on regulatory approaches to the collaborative economy among PA members will benefit nascent entrepreneurial initiatives and help them to operate on a regional scale. At the same time, efforts are needed to align common policies aimed at dealing with the distributional downsides certain to flow from the collaborative economy's further growth for specific categories of workers and industries whose business models and long-held modus operandi are upended by new technologies and market players.

Annex: The State of Play of Backbone Services in the PA

The efficient and competitive supply of goods and services relies heavily on a broad range of service inputs. Adequate telecommunications and transport infrastructure, health services, logistics, as well as financial services, education services, and public utilities provision all form key underlying determinants of the efficient supply of other services and of overall allocative efficiency.²³⁰ Such services form a core part of the domestic enabling factors providing appropriate conditions to nurture international trade (of goods and services), influence investment climates and determine overall economic performance.²³¹

PA countries have in recent years all put in place significant strategies to improve the competitiveness of their service economy. Such efforts include significant investments in infrastructure and human capital, better risk management and deepening Internet access and usage among others.²³² However, significant challenges remain for PA members, with substantial cross-country differences in performance metrics.

The annex that follows explores the present day situation of key backbone services that underpin country and region-wide levels of competitiveness and internationalization: (i) education, (ii) financial services, (iii) ICT and (iv) transport services. From a regulatory standpoint, the following section briefly characterizes the regulatory environments underpinning backbone services in each of the PA members. Sectoral strategies used to develop services sectors in each PA member are reviewed to identify the extent to – and manner in - which they converge and overlap.

Gaining an understanding of the current state of these backbone services and their regulatory environments in the individual PA members is relevant for two reasons. First, because regulatory heterogeneity and differences in licensing, authorization, and other requirements to supply services hinder the ability of services firms to trade and invest, depriving users of services of access to embedded knowledge and to a more efficient pool of suppliers of intermediate and final products, both goods and services. Second, because the performance of PA members' services economy not only has far-reaching implications for overall resource use but is also shaped by the quality of policies and implementation capacities deployed at the country level and regionally.

230 Massimiliano Cali, Karen Ellis and Dirk Willem te Velde (Working Paper No 298, Overseas Development Institute December 2008).

231 Sáez, above n 21, 8.

232 Duran-Lima, above n 80, 27. See also Hernández, above n 55, 14.

1. Chile

In overall terms, backbone services can be said to perform well in Chile. Chile scores highest among PA members in most international rankings assessing factors such as the institutional environment, economy-wide competitiveness, the level of regulatory restrictions in services, the quality of infrastructure on which service sector supply relies as well as in terms of human capital formation. Chile leads all of Latin America in the World Economic Forum's (WEF) Global Competitiveness Index and is a regional leader in higher education and training. Still, the country ranks below the OECD average levels in many education-related and other service-centric indicators.²³³

Chile's public spending in **education** accounts for 4.6 percent of GDP, the second lowest within the PA and lower than the level prevailing in the top 10 countries in the human capital index.²³⁴ While levels of student enrolment up to middle school stand at 93 percent, the country fares poorly in several key education-related metrics when compared to many other developed and developing countries. Based on a perception indicator, the quality of Chilean primary schools is low and the country ranked 95th out of 130 countries in this category. Student enrolment in secondary education is around 79 percent. However, the performance of 15 year old Chilean students under the OECD's PISA student assessment metric remains poor relative to their brethren in other OECD member countries.²³⁵

Enrolment in tertiary education in Chile is high by regional standards, while the level of vocational/technical schooling is rather low, reflecting more a personal preference of students towards tertiary (university) education. The Chilean population's perception of the quality of the country's tertiary system of schooling and how well it meets the needs of a competitive economy remains low. Only three Chilean universities featured in the QS ranking of the world's top 500 universities in 2016.²³⁶

Regarding skills diversity, Chile is generally considered to have a good distribution of graduates across disciplines and performs well, ranking 23rd out of 130 countries. In terms of the degree to which the country is actually leveraging its core working-age population's skills and learning in its economic activity, significant challenges remain, particularly as regards the medium skilled workers.²³⁷ Chile nonetheless leads the region in regard to the supply of

233 Education at a Glance 2016/OECD Indicators, (OECD, 2016) < http://www.keepeek.com/Digital-Asset-Management/oecd/education/education-at-a-glance-2016_eag-2016-en#.WPPrx_o4IHXE#page18 > 16.

234 Chile/ Economy Profile, World Economic Forum < <http://reports.weforum.org/human-capital-report-2016/economies/#economy=CHL> >.

235 Economic Policy Reforms 2017: Going for Growth/Chile, (OECD, 2017) < http://www.keepeek.com/Digital-Asset-Management/oecd/economics/economic-policy-reforms-2017/chile_growth-2017-13-en#.WP3FTo4IHXE#page2 >.

236 QS Top Universities, (2016) < <https://www.topuniversities.com/university-rankings/world-university-rankings/2016> >.

237 In a recent report, the IMF called for more targeted efforts at professional and vocational training to ensure better labor market outcomes.

technology-related skills.²³⁸

Chile's **financial sector** is generally viewed as sound and stable.²³⁹ The country's financial sector is large for the size of the economy, and is characterized by a significant degree of foreign participation across all market segments: banking, insurance, securities and pension fund management.²⁴⁰ Financial sector assets stood at 171 percent of Chilean GDP in 2015.²⁴¹

The country is still making internal and regulatory adjustments towards the implementation of Basel III regulations for banks, a process that commenced in 2013. The Achilles' heel of the Chilean financial system lies in weaker corporate governance practices. Compliance with best corporate governance (including public disclosure) practices tends to be low and ownership patterns within large conglomerates reveal high levels of market concentration. The financial sector in Chile displays clear oligopolistic tendencies, and would generally benefit from improvements in corporate governance and investor protection as well as in more stringent competition law enforcement.²⁴²

The solvency of the Chilean banking system is generally deemed sound and levels of bank profitability are high. The current legislation allows Chilean nationals and residents to make deposits in and obtain loans from banks located abroad. However, the cross-border supply of banking services is not allowed.²⁴³

The insurance sector in Chile is considered fairly well developed with a 'relatively high insurance density'²⁴⁴ (US \$ 631 in premia paid per household in 2015).²⁴⁵ Chile's insurance density is the highest of the four PA members. Foreign insurance companies need to establish as subsidiaries in Chile and the branches of foreign-established insurance companies must be separately capitalized. Insurance services can be purchased abroad, except in two cases: compulsory insurance for personal accidents, and pension and social welfare-related insurance.²⁴⁶

Pension funds represent the second most important pillar of the Chilean financial system in terms of absolute assets and their share in GDP. The country's leading pension fund management companies are the largest institutional investors in the Chilean financial market. Foreign investors can take equity stakes in Chilean

238 The Human Capital Report 2016, (World Economic Forum, 2016) < <https://www.weforum.org/reports/the-human-capital-report-2016> > 21.

239 Staff Report for the 2016 Article VI Consultation (Country Report No 16/376, International Monetary Fund, November 23 2016) < <http://www.imf.org/external/pubs/cat/longres.aspx?sk=44448.0> > 1.

240 Report by the Secretariat/Chile, WT/TPR/S/315 (5 May 2015) (Trade Policy Review) 123.

241 IMF 'Staff Report for the 2016 Article VI Consultation (Chile),' above n 239, 44.

242 Ibid 20, 28.

243 Report by the Secretariat/Chile, WT/TPR/S/315 (5 May 2015) (Trade Policy Review) 124, para 4.143.

244 Report by the Secretariat/Chile, WT/TPR/S/315 (5 May 2015) (Trade Policy Review) 130, para 4.152.

245 Insurance Indicator/Density, OECD < <https://stats.oecd.org/Index.aspx?DataSetCode=INSIND> >.

246 Report by the Secretariat/Chile, WT/TPR/S/315 (5 May 2015) (Trade Policy Review) 131, para 4.155.

pension fund companies. Table 18 below traces the evolution and structure of Chile's financial system from 2005 to 2015.

Table 18. Chile: Evolution of the Financial System Structure, 2005–15²⁴⁷

	2005			2010			2015		
	Number of institutions	Assets (% Total)	Assets (% of GDP)	Number of institutions	Assets (% Total)	Assets (% of GDP)	Number of institutions	Assets (% Total)	Assets (% of GDP)
Banks	26	50.7	92.7	25	47.9	97.5	24	51.4	129.3
Domestic banks	13	22.7	41.5	11	20.8	42.4	11	25.1	63.2
Foreign banks	12	19.2	35.2	13	18.7	38.2	12	18.1	45.4
Subsidiaries	6	16.6	30.3	8	18.4	37.5	8	17.8	44.9
Branches	6	2.7	4.9	5	0.3	0.6	4	0.2	0.5
State-owned	1	8.7	16.0	1	8.3	17.0	1	8.2	20.7
Insurance companies	51	11.0	20.1	57	9.5	19.4	66	9.4	23.6
Property and casualty	22	0.5	1.0	26	0.7	1.4	30	1.0	2.4
Life	29	10.4	19.1	31	8.8	17.9	36	8.4	21.1
Pension fund administrators	6	31.7	58.1	6	30.8	62.6	6	27.6	69.5
Other fund administrators	43	6.6	12.1	43	11.8	24.0	52	11.6	29.3
Investment funds	19	1.0	1.9	21	3.8	7.7	34	4.5	11.3
Mutual funds	20	5.3	9.6	18	7.9	16.1	18	7.1	18.0
Investment funds, foreign capital	4	0.3	0.6	4	0.1	0.2
Total	126	100.0	183.0	131	100.0	203.5	148	100.0	251.6

Source: IMF-Country Report 2016

Telecommunications services are wholly owned and operated by private entities in Chile. While the Chilean state is not involved in the supply of telecommunications services, it is responsible for financing universal access through the Telecommunications Development Fund (FDT according to the Fund's Spanish acronym). The country promotes vibrant competition across all telecommunications market segments.²⁴⁸

The country's telecoms sector continues to expand, particularly in the mobile telephone and Internet access segments. By December 2016, the number of mobile telephone subscribers stood at 23.3 million people,²⁴⁹ yielding a penetration index of 127.5 mobile lines per 100 inhabitants. Meanwhile, the number of fixed

247 IMF 'Staff Report for the 2016 Article VI Consultation (Chile),' above n 239, 45.

248 The segments assessed by the ITU include: local fixed line services, domestic fixed long distance, international fixed long distance, mobile, IMT (3G, 4G, etc), wireless local loop, DSL, cable modem, fixed wireless broadband; leased lines, international gateways, Internet services, cables television, fixed satellite services, mobile satellite services and VSAT.

249 Statistics Mobile Telephony, Telecommunications Secretariat (Chile) < <http://www.subtel.gob.cl/estudios-y-estadisticas/telefonía/> >.

Internet connections reached 2.9 million in 2016, representing a penetration index of 15.9 percent,²⁵⁰ while the number of mobile Internet connections stood at 13.9 million.²⁵¹ The number of mobile Internet connections jumped by 20.7 percent in 2016, with total Internet penetration per 100 inhabitants reaching 88.2 percent.²⁵² 4G technology accounts for close to half (47,6 percent) of Internet use and more than 90 percent of mobile connection usage in Chile is through smartphones. The percentage of Internet users in Chile stood at 64.3 percent in 2015, according to data by the International Telecommunications Union (ITU). The percentage of households with Internet access was 59.7, with 63.6% of households possessing a computer in 2015.²⁵³

At the end of 2016, Chile had 11 mobile telephony operators. Of the total, the companies - Claro, Entel PCS and Movistar account for a combined market share of 91 percent.²⁵⁴ The country counts nine providers of mobile Internet services and five main providers of fixed Internet services.

To provide telecommunications-related services, an enterprise must be incorporated in Chile regardless of the source of its equity capital. In the case of radio broadcasting concessions, foreign capital participation above 10 percent is allowed only on a reciprocity basis, according to the country of origin of the foreign capital. One important downside of Chilean telecommunications regulation concerns the lack of mandatory access to the incumbents' public telecommunications network, as pointed out in the most recent OECD economic survey of the country.²⁵⁵ Moreover, the prevailing regulatory regime does not foresee the unbundling of the local loop.



250 Statistics Fixed Internet, Telecommunications Secretariat (Chile) <<http://www.subtel.gob.cl/estudios-y-estadisticas/Internet/>>.

251 Statistics Mobile Internet, Telecommunications Secretariat (Chile) <<http://www.subtel.gob.cl/estudios-y-estadisticas/Internet/>>.

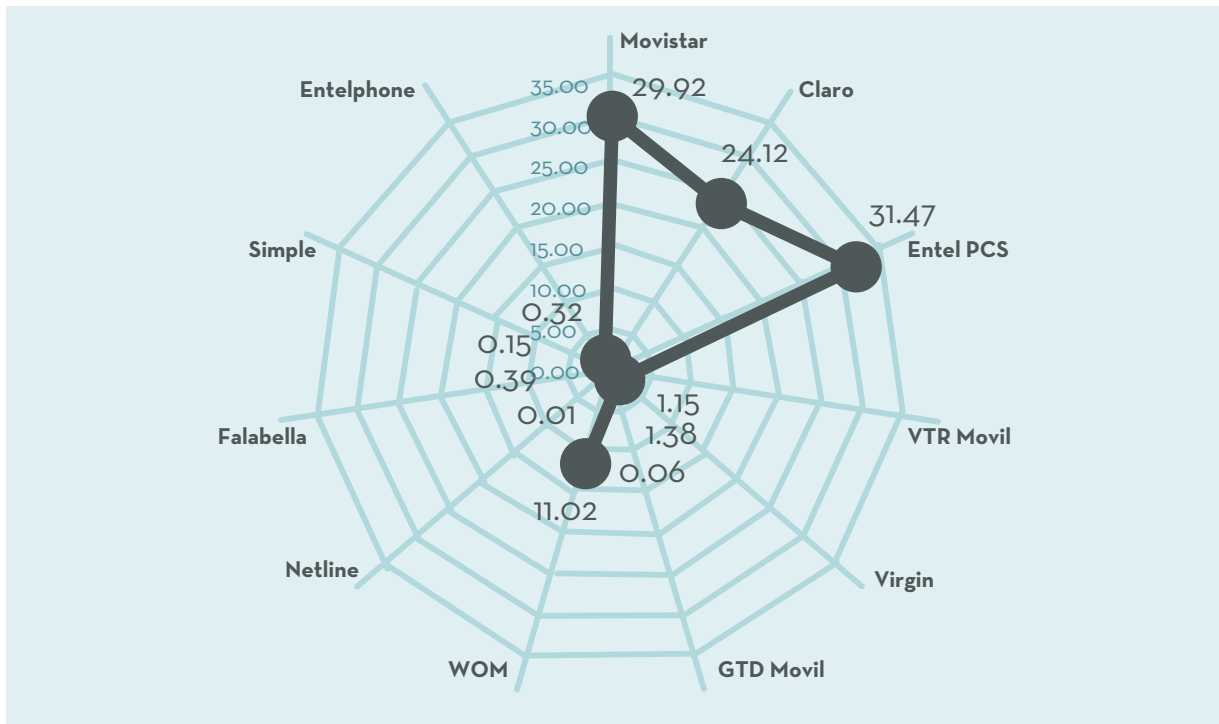
252 Closing Report of the Telecommunications Sector, Telecommunications Secretariat (Chile, March 2017) <http://www.subtel.gob.cl/wp-content/uploads/2016/12/PPT_Series_DICIEMBRE_2016_V3.pdf>.

253 Country Profile/ Chile, International Telecommunications Union (2015) <<http://www.itu.int/net4/itu-d/icteye/CountryProfile.aspx>>.

254 Telecommunications Secretariat, 'Statistics Mobile Telephony,' above n 249.

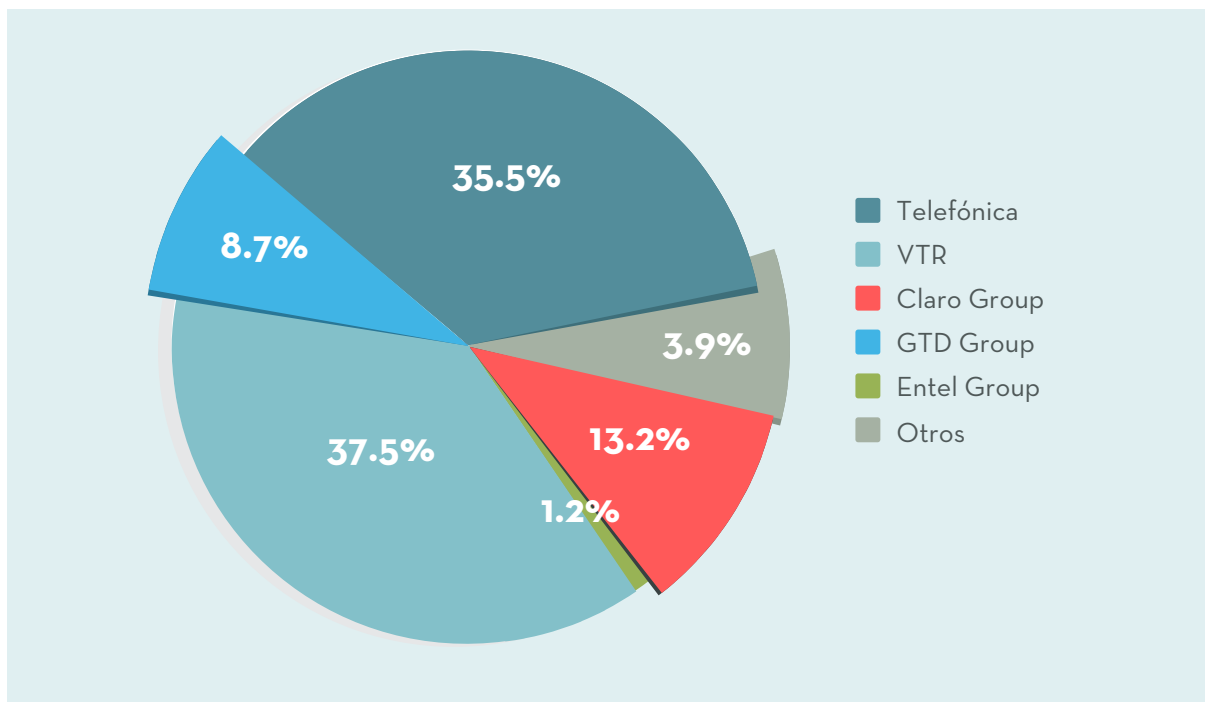
255 OECD Services Trade Restrictiveness Index (STRI): Chile, OECD <https://www.oecd.org/tad/services-trade/STRI_CHL.pdf> 2.

Figure 16. Chile: Market Structure in Mobile Internet Services (%) for 3G-4G, 2016²⁵⁶



Source: Authors based on Telecommunications Secretariat (Chile) data

Figure 17. Chile: Market Share of Fixed Internet Providers, 2016²⁵⁷



Source: Telecommunications Secretariat (Chile)

²⁵⁶ Telecommunications Secretariat, 'Statistics Mobile Internet,' above n 251.

²⁵⁷ Telecommunications Secretariat, 'Statistics Fixed Internet,' above n 250.

Chilean telecommunications reforms allow for number portability in mobile and fixed line services. Adjustments to the legal framework have also reinforced the principle of network neutrality. Chile furthermore recently adopted a digital agenda providing a national road map of strategic activities to be implemented over the 2013 to 2020 period.²⁵⁸

Chile scored best among PA members in 2016 edition of WIPO's Global Innovation index, ranking 44th out of 128 countries assessed.²⁵⁹ Although Chile's overall innovation performance is favorable in sub-regional terms, aspects such as investment in R&D as a share of GDP, educational performance, access to ICTs, international trade in ICTs, the state of cluster development, and the number of venture capital deals, continue to hold the country's innovation potential in check. Conversely, Chile performs well in regards to e-governance, which measures aspects such as the quality of the government's online services (16th), e-participation of the government (7th), as well as information sharing, interaction with stakeholders (e-consultation) and engagement in the decision making process (e-decision making). Moreover, joint venture or strategic alliances in innovation-rich activities are a positive feature of the country's innovation landscape, as are the number of firms offering formal training to full-time employees.²⁶⁰

Regarding **air transport services**, Chile's domestic air transport market is highly concentrated, with one dominant group (LAN). The second player in the market has a 23.6 percent market share alongside a number of smaller firms. The international market is more contestable, with some 27 providers of passenger and cargo services operating in 2015.²⁶¹ Most of the services relate to passenger transport because, according to 2013 figures, less than 1 percent of Chile's foreign trade is moved through air cargo. The number of international passengers registered in and out of Chile was 9.2 million in 2016.²⁶²

The Chilean airport network comprises 350 airports and airfields.²⁶³ The country's 16 main airports are state-owned, though 11 of them operate under concessions granted to private operators.²⁶⁴ There are no restrictions applied to private or foreign ownership in Chilean airports or firms supplying airport services or auxiliary air transport services. In 2012, Chile implemented measures to strengthen the country's cabotage policy, including the elimination of reciprocity requirements

258 Agenda Digital 2020 (Chile) <<http://www.agendadigital.gob.cl/#/>> [Digital Agenda (Chile) <<http://www.agendadigital.gob.cl/#/>>].

259 Soumitra Dutta, Bruno Lanvin and Sacha Wuncsh-Vincent (eds), *The Global Innovation Index 2016/ Winning with Global Innovation*, (Cornell University, INSEAD, WIPO, 2016) <http://www.wipo.int/edocs/pubdocs/en/wipo_pub_gii_2016.pdf> 198.

260 Ibid 198.

261 Report by the Secretariat/Chile, WT/TPR/S/315 (5 May 2015) (Trade Policy Review) <https://www.wto.org/english/tratop_e/tpr_e/tp415_e.htm>, para 4.189.

262 Statistics Year 2016, Civil Aeronautics Board (JAC) <<http://www.jac.gob.cl/estadisticas-ano-2016/>>.

263 Report by the Secretariat/Chile, WT/TPR/S/315 (5 May 2015) (Trade Policy Review) <https://www.wto.org/english/tratop_e/tpr_e/tp415_e.htm> 137, para 4.191.

264 Ibid 137, para 4.187, 4.197.

previously applied to the supply of cabotage services by foreign carriers.

According to the international agreements that Chile has in place with other PA members, the rights for foreign airlines in Chile are summarized in Table 19 as follows:

Table 19. Chile: Rights for Foreign Airlines²⁶⁵

PA Member	Year Agreement	Between territories of the Parties 3rd and 4rd Freedoms	Between counter party territory and third countries 5th and 6th freedoms	From counter party territory to third countries 7th freedoms
Colombia	1993	Open skies	Open skies (within LA; up to 3 scheduled flights outside the region)	Without rights
Mexico	2012	Open skies	Without rights - Open skies within LA for scheduled cargo flights	Without rights
Peru	2007	28 flights/week	14 flights/week	Open skies for cargo

Source: WTO Secretariat

Maritime transport plays a vital role for Chile since more than 90 percent of its foreign trade is carried by ships.²⁶⁶ Generally speaking, maritime transport is governed on a reciprocal basis, although the country applies flexible criteria in this respect.²⁶⁷ Registration of a vessel in Chile requires ownership by a Chilean natural or juridical person. The law requires that if the owner is a legal person, its principal domicile and principal place of business must be in Chile. The chairman, manager and a majority of directors must be Chilean natural persons. A Chilean natural or juridical person must hold the majority of equity capital in any company that owns a merchant ship registered in Chile.²⁶⁸

National maritime cabotage is reserved for vessels registered in Chile. Foreign merchant vessels are allowed to participate in national cabotage if the volumes of cargo exceed 900 tonnes, subject to a public tender procedure. Foreign merchant ships may be allowed to engage in cabotage for cargo volumes equal to or less than 900 tones, when Chilean flag vessels are not available.

The Chilean port system features fifty-six ports. Ten of them are publicly owned and used for public purposes. Fourteen are privately owned but used for public purposes and 32 are privately owned and used entirely for private purposes. The country has 7 state port enterprises operating under concession contracts²⁶⁹ and

²⁶⁵ Ibid 141.

²⁶⁶ Ibid 143, para 4.206.

²⁶⁷ Ibid 144, para 4.212.

²⁶⁸ Ibid 143, para 4.210.

²⁶⁹ Sectoral Background, Ministry for Transport and Telecommunications < <http://www.mtt.gob.cl/pdl/maritimo-portuario/maritimo-portuario-antecedentes-del-sector>>.

does maintain any restrictions on foreign participation in Chilean ports. More than 65 percent of Chilean cargo (mainly bulk) is handled through privately owned ports and the rest by state-owned ports.

Transport services and infrastructure in Chile show significant gaps when compared to conditions prevailing in other OECD countries. It is estimated that closing such gaps would require investment in infrastructure of around 5 percent of GDP.²⁷⁰

Chile's performance in the World Bank's 2016 Logistics Performance Index is above average, placing the country 46th globally, 8 ranks above Mexico, the PA's second best performer. Chile is, after Panama, the second best performing country in Latin America. However, the quality of trade and transport infrastructure continues to hinder the country's ability to scale up its logistics performance.²⁷¹ Similarly, much room remains to improve the quality and competence of logistics services.²⁷² Chile has kept a stable overall LPI score since the start of the metrics in 2007.²⁷³

Chile's Logistics Performance Index is above average, placing the country 46th globally

Table 20 provides a snapshot of basic indicators of Chilean performance related to the supply of backbone services in Chile.

Table 20. Chile: Performance Indicators in Backbone Services, 2016

270 IMF, Staff Report for the 2016 Article VI Consultation (Chile), above n 239, 9.

271 Jean-Francois Arvis, et al, Connecting to Compete/Trade Logistics in the Global Economy/The Logistics Performance Index and its Indicators (The World Bank, 2016) < https://wb-lpi-media.s3.amazonaws.com/LPI_Report_2016.pdf > 39.

272 Ibid.

273 Logistics Performance Index: Quality of trade and transport-related infrastructure (1=low to 5=high) (The World Bank, 2016) < <http://data.worldbank.org/indicator/LP.LPI.INFR.XQ> >.

International Indicator/Ranking		Score/Place
Ease of doing business 2017 ²⁷⁴		57 (1 to 190 countries)
WEF Competitiveness Index 2016-2017 (overall index) ²⁷⁵		33 (out of 138 countries)
(Program for international student assessment) PISA Performance 2015 ²⁷⁶ Assessment of 15 year old secondary students	Reading	459 (OECD Average 493)
	Mathematics	423 (OECD Average 490)
	Science	447 (OECD Average 496)
WEF Competitiveness Index	Higher Education and Training ²⁷⁷	28 (out of 138 countries)
WEF Human Capital Index	Overall Rank	51 (out of 130 countries)
WEF Human capital maximization threshold		71% (out of 100%) Maximum score attained 85.8%
WIPO Global Innovation Index 2016 ²⁷⁸		44th (out of 128 countries) 38.41 (0 to 100) Maximum score attained 66.28)
Services Trade Restrictiveness Index Overall (WB) ²⁷⁹		23.4 ²⁸⁰ (0 to 100 meaning no foreign entry is allowed at the highest score)
Services Trade Restrictiveness Index 2016 (OECD) Assessment of Regulatory Measures ²⁸¹ (0 to 1)	Telecommunications ²⁸²	0.270 (OECD Average 0,24)
	Air transport (cargo and passenger transport) ²⁸³	0.196 (OECD Average 0,42)
	Maritime transport ²⁸⁴	0.214 (OECD Average 0,26)
	Road freight transport ²⁸⁵	0.127 (OECD Average 0,21)
	Rail freight transport ²⁸⁶	0.218 (OECD Average 0,30)
	Commercial banking ²⁸⁷	0.208 (OECD Average 0,24)
	Insurance ²⁸⁸	0.164 (OECD Average 0,22)
OECD FDI Regulatory Restrictiveness Index	0.057 (OECD average 0.067)	
Global Findex 2014 (Global Financial Inclusion WB) ²⁸⁹	Account penetration (adults)	63 (%) of adult population in the country
WEF Competitiveness Index	Financial market development pillar ²⁹⁰	23 (out of 138 countries)
WEF Competitiveness Index	Overall infrastructure ²⁹¹	44 (out of 138 countries)
WB Logistics Performance Index 2016 ²⁹²		46 (out of 160 countries) 3.25 (Maximum attained 4.23 on a scale from 1 to 5) - 69.7% out of 100%) percentage of highest performance 100%)

Source: own elaboration based on multiple indexes



- 274 Economy Rankings, World Bank (2017) < <http://www.doingbusiness.org/rankings> >.
- 275 Klaus Schwab (ed), The Global Competitiveness Report 2016-2017 (World Economic Forum, 2016) <<https://www.weforum.org/reports/the-global-competitiveness-report-2016-2017-1>>.
- 276 Program for International Student Assessment (PISA) Results 2015, OECD < <http://www.compareyourcountry.org/pisa/country/CHL> >.
- 277 Includes an assessment of the following criteria: secondary education gross enrolment percentage; tertiary education gross enrolment percentage, quality of the education system; quality of math and science education; quality of management schools; Internet access in schools; local availability of specialized training services and extent of staff training. See Schwab above n 275.
- 278 The index is based on 82 different indicators in seven key areas. It assesses areas such as general institutional environment, human capital and research, general infrastructure and ICTs infrastructure; market sophistication, business sophistication; knowledge and technology outputs and creative outputs.
- 279 Sectoral coverage on: financial services, telecommunications, transportation, retail and professional services. The sample includes 103 countries. Country scores are from 0 comprising a scenario of no restrictions to 100 where no foreign entry is allowed. See Ingo Borchert, Batshur Gootiiz, and Aaditya Mattoo 'Guide to the Services Trade Restrictions Database' (WPS 6108, World Bank, June 2012) < <http://documents.worldbank.org/curated/en/878251468178764639/pdf/WPS6108.pdf> >.
- 280 Services Trade Restrictions Database, World Bank < <http://iresearch.worldbank.org/servicetrade/> >.
- 281 Assessment of regulatory restrictions from 0 to 1 being the most restrictive. Includes restrictions on: foreign entry, restrictions to the movement of people, barriers to competition, regulatory transparency, and other discriminatory measures.
- 282 See STRI Sector Brief: Telecommunications, (OECD) <http://www.oecd.org/tad/services-trade/STRI_telecommunications.pdf>.
- 283 See STRI Sector Brief: Air Transport Services, (OECD) < http://www.oecd.org/tad/services-trade/STRI_air_transport_services.pdf >.
- 284 See STRI Sector Brief: Maritime Freight Transport Services, (OECD) < http://www.oecd.org/tad/services-trade/STRI_maritime_transport_services.pdf>. It does not include transport on internal waterways, and services necessary to execute the maritime transport movement.
- 285 See STRI Sector Brief: Road Freight Transport Services, (OECD) <http://www.oecd.org/tad/services-trade/STRI_road_freight.pdf>.
- 286 See STRI Sector Brief: Rail Freight Transport Services, (OECD) <http://www.oecd.org/tad/services-trade/STRI_rail_freight_transport_services.pdf>.
- 287 See STRI Sector Brief: Commercial Banking Services, (OECD) <http://www.oecd.org/tad/services-trade/STRI_commercial_banking.pdf>.
- 288 See STRI Sector Brief: Insurance Services, (OECD) <http://www.oecd.org/tad/services-trade/STRI_insurance.pdf>.
- 289 Asli Demirguc-Kunt, et al, 'Measuring Financial Inclusion Around the World' (Policy Research Working Paper 7255, World Bank April 2015) <<http://documents.worldbank.org/curated/en/187761468179367706/pdf/WPS7255.pdf#page=3>>.
- 290 This pillar takes into account the following criteria: financial services meeting business needs; the affordability of financial services; financing through local equity market; easy of access to loans; venture capital availability; soundness of banks; regulation of securities; legal rights index. See Schwab above n 275, 144.
- 291 Assessing the quality of roads, rail, ports and air infrastructure along other factors.
- 292 Arvics, above n 271, 39.

Overall, the regulatory framework governing services in Chile is liberal and liberalizing. Relative to its developed country peers, Chile registers below average scores in 18 of the 22 sectors examined under the OECD's Services Trade Restrictiveness Index (STRI).²⁹³

Chile recently embarked on much needed policy reforms in education comprising all levels of the country's education system. The reforms include Law 20.845 of 2015 aimed at promoting greater inclusiveness in primary and secondary education. Law 20.903 of 2016 frames reforms for the professional development of teachers. Regarding tertiary education, Law 20.890 of 2016 grants universal access to education conditioned on the availability of public resources, while draft legislation envisages system-wide reforms in tertiary education, notably in regard to tuition charges. It is expected that later reforms will provide for free access to technical and vocational education in the short term. A bill on a new public education system is also being discussed in the Chilean Congress.²⁹⁴ Finally, to ensure that the qualifications achieved by workers and students match the skills that real economy demands, Chile is currently working on the development of a technical-professional qualifications framework.²⁹⁵

In the financial sector, Chile issued law 20.789/2014 to formalize the establishment of a committee of financial supervisory authorities called the Financial Stability Council (CEF), with the aim of enhanced technical coordination and information exchange.²⁹⁶ Chile is currently working on a new banking law aimed at increasing the minimum solvency requirements to reach Basel III levels, providing new resolution and financial stabilization tools to its regulators and promote better governance of the newly-created supervisory agency.

Law 21.000 establishing a Financial Markets Commission was approved in February 2017. This supervisory authority will replace the current Securities and Insurance Superintendence (SVS under its Spanish acronym). It includes for the moment insurance and capital market supervision but is expected to include banking and pension supervision in the future (the latter supervisory functions are today held respectively by the Superintendence for Banks and Financial Institutions (SBIF) and the Pensions Superintendence (SP). This step could lead to a more integrated view on financial supervision and better oversight of financial conglomerates.²⁹⁷ Furthermore, there is a draft law underway to make changes to the supervision of the insurance sector to make it risk-based and to change solvency requirements. The country has been working on the passing of such

293 OECD, STRI Chile, above n 255.

294 See Proyecto de Ley del Sistema de Educación Pública, Ministerio de Educación (Chile) <<http://educacionpublica.mineduc.cl/proyecto-de-ley/>> [Draft Law for the Public Education System, Ministry of Education (Chile) <<http://educacionpublica.mineduc.cl/proyecto-de-ley/>>].

295 See Marco de Cualificaciones Técnico Profesional, Ministerio de Educación, (Chile, octubre 2016) <<http://media.mineduc.cl/wp-content/uploads/sites/28/2016/12/Marco-de-Cualificaciones-T%C3%A9cnico-Profesional.pdf>> [Technical-Professional Qualifications Framework, Ministry of Education, (Chile, October 2016) <<http://media.mineduc.cl/wp-content/uploads/sites/28/2016/12/Marco-de-Cualificaciones-T%C3%A9cnico-Profesional.pdf>>].

296 Report by the Secretariat/Chile, WT/TPR/S/315 (5 May 2015) (World Trade Organization, Trade Policy Review) 124, para 4.128.

297 IMF, 'Staff Report for the 2016 Article VI Consultation (Chile),' above n 239, 20.

legislation since 2013.

Other significant reforms impacting the Chilean service sector, particularly as regards access to finance for SMEs, is the implementation of a unified system for collaterals. While Chile already has some regulations in place, more granular adjustments are required, including the establishment and implementation of an electronic general registry.²⁹⁸

As regards improvements to the nation's physical infrastructure, an initiative is under discussion for the establishment of an Infrastructure Fund to support investments on this front. The envisaged structure would be 99 percent state-funded, but would have independent corporate governance under the rules of a joint stock company.²⁹⁹

Among Chile's key forward-looking challenges is the overdue reform of the country's pension system which today is widely seen as falling short in terms of mandatory coverage, rates for individual contributions, coverage of the solidarity pillar, and in ensuring adequate income for retirees.³⁰⁰ The current system is based on a contributory scheme of individual savings accounts administered through private-owned corporations.

2. Colombia

Colombian expenditure on **education** represents 4.7 percent of the country's GDP, the second highest level among PA members but lower than the average level of countries topping the Human Capital Index (HCI).³⁰¹ Levels of enrolment in primary education (0-14 age group) stand at around 97 percent, placing Colombia in 58th position (out of 130 countries) in the HCI. While higher than in Chile, public perceptions of the quality of the country's education system rank poorly, with Colombia in 92nd position.

Enrolment in secondary education stands at 78 percent. While improving, the performance of Colombian 15 year-old students in the OECD's PISA test is

298 Mesa de Financiamiento: Avance Proyecto Registro Garantías Mobiliarias, Gobierno de Chile (2015) <<http://www.consejoconsultivoemt.cl/wp-content/uploads/sites/23/2015/04/Presentaci%C3%B3n-Proyecto-de-garant%C3%ADas.pdf>>. [Financing Round Table: Progress on the Project for a Movable Collaterals Registry, Government of Chile (2015) <<http://www.consejoconsultivoemt.cl/wp-content/uploads/sites/23/2015/04/Presentaci%C3%B3n-Proyecto-de-garant%C3%ADas.pdf>>].

299 Proyecto de Ley que crea el Fondo de Infraestructura SA, Ministerio de Hacienda (Chile, 4 Mayo 2016) <<http://www.hacienda.cl/sala-de-prensa/infografias/proyecto-de-ley-que-crea-el-fondo-de.html>>. [Bill Establishing the Infrastructure Fund, Ministry of Finance (Chile, 4 May 2016) <<http://www.hacienda.cl/sala-de-prensa/infografias/proyecto-de-ley-que-crea-el-fondo-de.html>>].

300 Staff Report for the 2016 Article VI Consultation (Country Report No 16/376, International Monetary Fund, April 18 2016) <<http://www.imf.org/en/Publications/CR/Issues/2016/12/31/Colombia-2016-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-the-43911>> 13.

301 Colombia/ Economy Profile, World Economic Forum <<http://reports.weforum.org/human-capital-report-2016/economies/#economy=COL>>.

significantly lower than the OECD average.³⁰² Completion rates in basic education stand at 69 percent. Of every 10 students enrolled in primary education, 8.5 make it to secondary education but only half of these complete their studies.³⁰³ Although participation in early childhood education has doubled over the past decade, significant challenges remain in closing existing gaps in levels of participation and the quality of the country's basic education system.³⁰⁴

As in Chile, there is a tendency towards greater enrolment in tertiary education relative to vocational education within students in the 15-24 age group. Such trends mirror the generally adverse social perceptions towards vocational training. Enrolment in tertiary education stands at 51 percent, twice the level of technical and vocational training (26 percent). The latter rate is significantly lower than that in Chile but higher than in Mexico and Peru. Colombians harbor generally negative perceptions of their country's ability to supply the domestic labor market with the skills it requires. Retention rates in tertiary education as well as in technical and vocational education remain low,³⁰⁵ with one in every two enrolled students failing to secure a degree in higher education. The country has recently adopted a range of measures aimed at reversing the above trend (Policy for the Promotion of Continuity in Higher Education).³⁰⁶

Four universities in Colombia, mainly located in the country's capital, appear in the QS ranking of the world's top 500 universities.³⁰⁷ The number of universities and higher education institutions that have been granted voluntary high quality accreditation (VHQA) under the national system for accreditation is still limited. A total of 286 Colombian institutions are currently accredited, comprising only 11 percent of the current pool of institutions offering higher education services in the country.³⁰⁸ The mandatory system for quality assurance in education (Registro Calificado) sets minimum quality requirements for institutions delivering higher education programs. However, a joint 2012 report by the World Bank and the OECD noted the low level of the requirements to be admitted into the registry.³⁰⁹

Furthermore, Colombia shows marked disciplinary bias in the set of skills produced by its educational system. More than half of Colombian students graduate with degrees in business or social sciences, while only 4 percent complete scientific

302 PISA 2015/Colombia, (OECD, 2017) < <http://www.compareyourcountry.org/pisa/country/col>>.

303 Informe Nacional de Competitividad 2016-2017, Consejo Privado de Competitividad, (Colombia) < http://compite.com.co/wp-content/uploads/2016/11/CPC_Libro_Web_2016-2017.pdf > 29 [National Competitiveness Report 2016-2017, Private Council for Competitiveness, (Colombia) < http://compite.com.co/wp-content/uploads/2016/11/CPC_Libro_Web_2016-2017.pdf > 29].

304 Education in Colombia, (OECD, April 2016) < <http://www.oecd.org/countries/colombia/education-in-colombia-9789264250604-en.htm> >.

305 Higher Education in Numbers/ Bulletin, Ministry of Education (Colombia, May 2016) < http://www.mineduacion.gov.co/1759/articles-357094_recurso.pdf > 2. See also Private Council for Competitiveness, above n 303, 36.

306 Higher Education in Numbers/ Bulletin, Ministry of Education (Colombia, November 2016) < http://www.mineduacion.gov.co/1759/articles-359642_recurso.pdf > 3.

307 QS Top Universities, (2016) < <https://www.topuniversities.com/university-rankings/world-university-rankings/2016> >.

308 Private Council for Competitiveness, above n 303, 35.

309 OECD, 'Education in Colombia,' above n 304, 255.

degrees.³¹⁰ According to the latest assessment by the WEF, Colombia presents a significant skills mismatch for students in the 15 to 24 age group, a third of whose members are classified as overeducated for the work they perform.³¹¹ The country continues to face important challenges in leveraging the skills of its working-age population, particularly in medium- and high-skilled jobs. Roughly half of the country's businesses complain about the difficulties they encounter in recruiting workers with the right skills profile. Such difficulties are reflected in Colombia's HCI ranking placing the country in 56th position globally.

The **financial sector** in Colombia is considered stable³¹² and the generally smooth functioning of the country's financial markets has contributed to the country's resilience in recent years. Aggregate financial system assets stood at COP \$ 1,417.5 billion (b) in January 2017.³¹³ The country has 576 credit institutions, 439 trust companies, 225 pension and severance funds, 61 insurance companies, 60 specialized State-Owned Institutions (IOE under the Spanish Acronym) and 56 other financial institutions.³¹⁴

The Colombian Constitution provides that banking, securities and insurance-related activities are all public interest activities in so far as they involve the management, exploitation and investment of resources from the public.³¹⁵ No single financial institution is allowed to provide the full range of financial services, but they can operate through financial conglomerate structures to provide several financial services. The country does not impose foreign equity limitations in commercial banking.³¹⁶

The structure of the Colombian financial system is depicted in Figure 18 below, while Figure 19 provides a snapshot of the assets held by various segments of the country's financial system.

310 WEF, 'The Human Capital Report 2016,' above n 238, 18. See also Colombia/Country Profile, World Economic Forum < <http://reports.weforum.org/human-capital-report-2016/economies/#economy=COL> >.

311 WEF, 'The Human Capital Report 2016 above n 238,' 7.

312 IMF, 'Staff Report for the 2016 Article VI Consultation (Colombia),' above n 300.

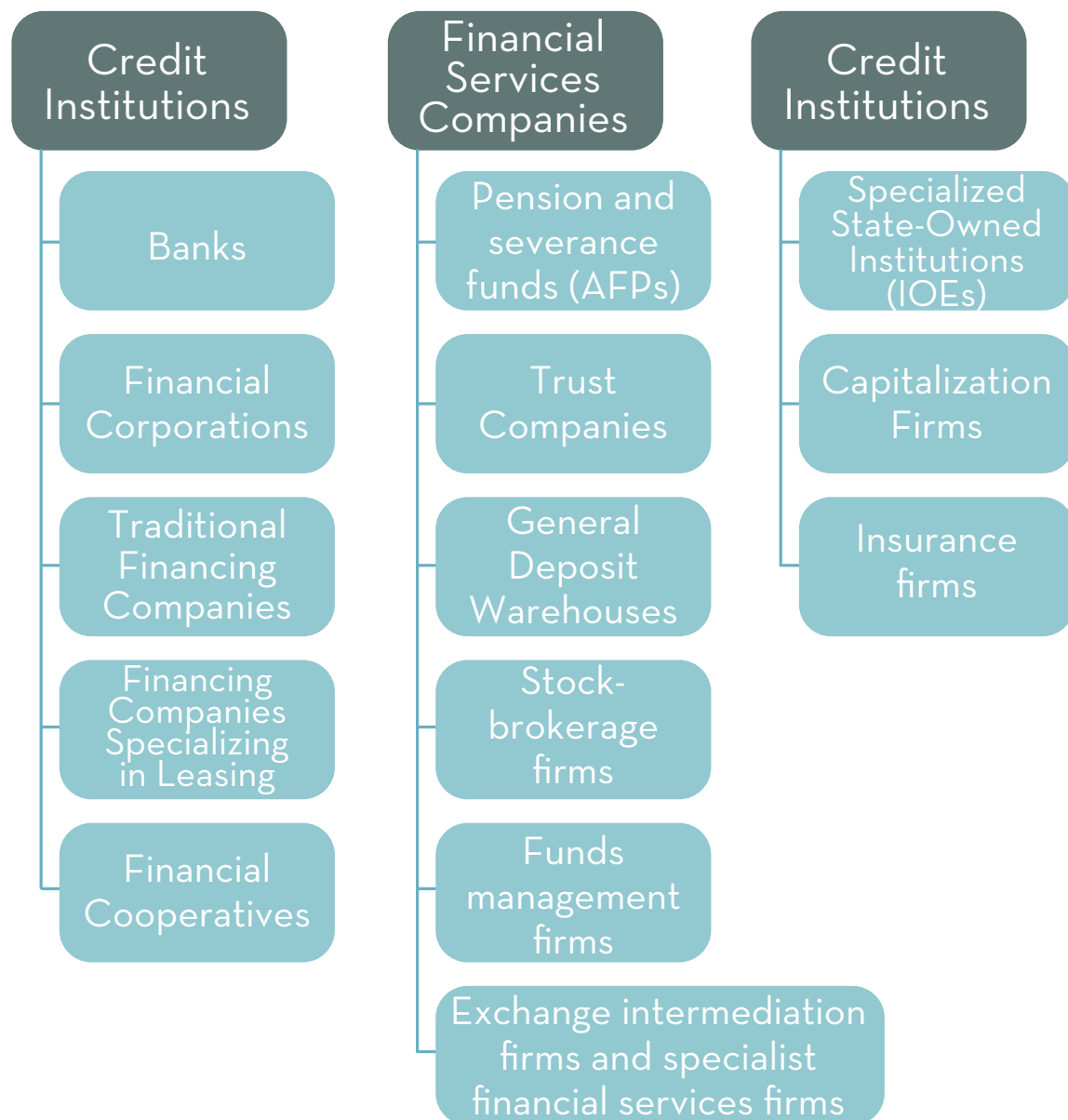
313 Current Affairs in the Colombian Financial Sector, Financial Superintendence of Colombia (January, 2017) < <https://www.superfinanciera.gov.co/jsp/loader.jsf?lServicio=Publicaciones&lTipo=publicaciones&lFuncion=loadContenidoPublicacion&id=10088640> > 3.

314 Ibid 12.

315 National Constitution (Colombia), Art 335.

316 Report by the Secretariat/Colombia, WT/TPR/S/265 (2012) (World Trade Organization, Trade Policy Review) 158, para 120.

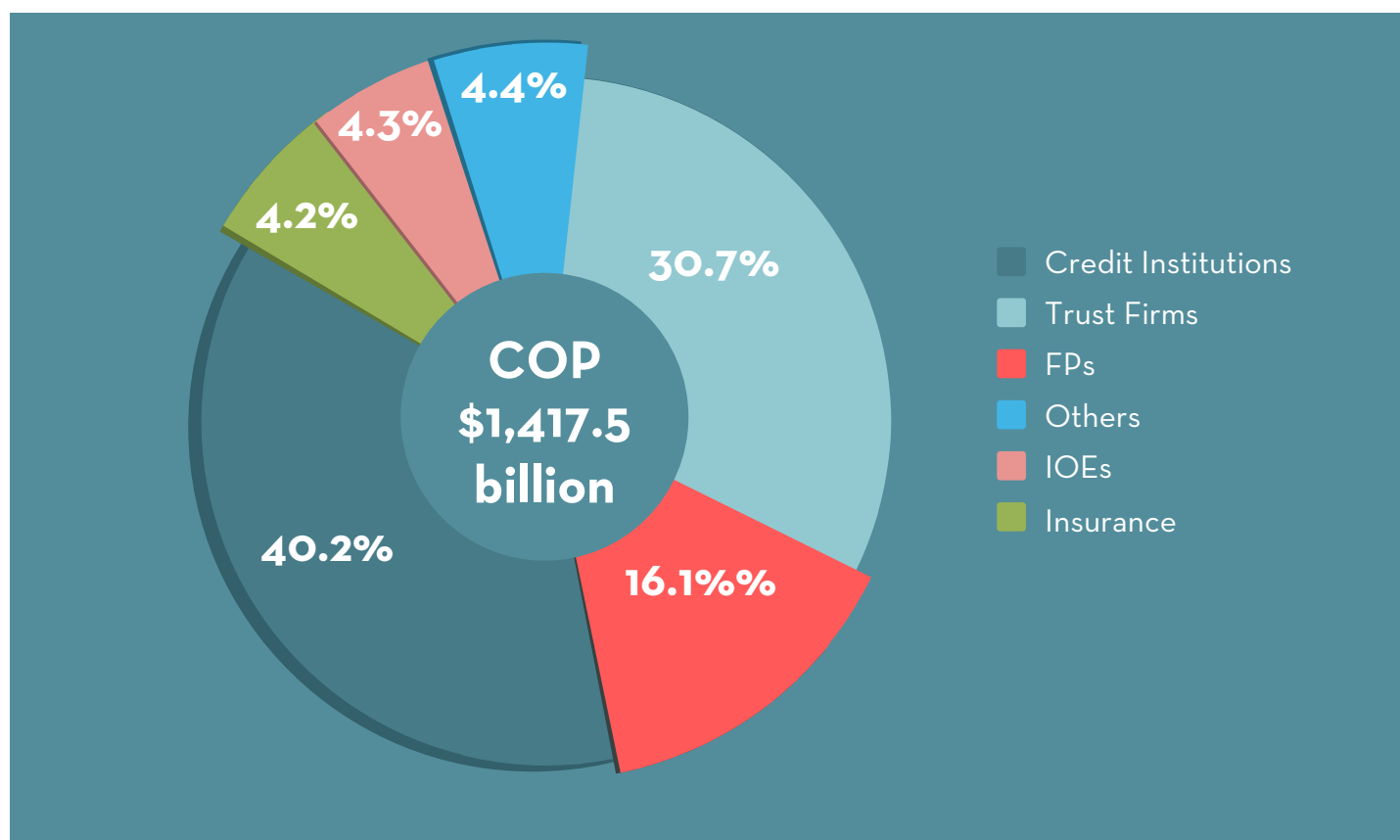
Figure 18. Colombia: Structure of the Financial System³¹⁷



Source: BanRep (2013)

317 Revista Banco de la República (Nota Editorial, Enero 2013) < http://www.banrep.gov.co/sites/default/files/publicaciones/archivos/rbr_nota_1023.pdf > 6 [Bank of the Republic Journal (Editorial Note, January 2013) < http://www.banrep.gov.co/sites/default/files/publicaciones/archivos/rbr_nota_1023.pdf > 6].

Figure 19. Colombia: Share of Institutions in the Assets of the System, 2017³¹⁸



Source: Superintendencia of Finance, (SFC)

The Colombian banking system is considered robust,³¹⁹ with capital adequacy levels in 2016 standing at almost double the level required by law.³²⁰ Bank loans are the main source of corporate financing in Colombia. Colombian banks have undertaken significant outward investments in Central America since the mid-2000s, in countries such as Panama, Costa Rica and Guatemala. Such developments have prompted calls for tighter supervisory standards directed towards Colombian financial conglomerate.

Current legislation allows Colombian residents to make deposits in foreign banks without an official authorization, but they must register with the Bank of the Republic, the country's central bank, when securing a loan from a foreign bank. The latter is for the purpose of registering the loan and transferring funds.³²¹ Colombia has yet to fully implement Basel III rules in banking, with no clear

318 Relevance of the AFPs in Colombia, Colombian Superintendencia of Finance (April 2017) < <https://www.superfinanciera.gov.co/jsp/loader.jsf?lServicio=Publicaciones&lTipo=publicaciones&lFuncion=loadContenidoPublicacion&id=60913>> 4.

319 IMF, 'Staff Report for the 2016 Article VI Consultation,' above n 300, 14.

320 Colombia: Staff Concluding Statement of the 2017 Article IV Mission, International Monetary Fund, (March 17 2017) < <https://www.imf.org/en/News/Articles/2017/03/17/mcs31717-colombia-staff-concluding-statement-of-the-2017-article-iv-mission>>.

321 External Notice DCIN 83 Ch 5, Bank of the Republic of Colombia, (March 2017) < http://www.banrep.gov.co/sites/default/files/reglamentacion/archivos/DCIN_83_Capitulo5_1.pdf > 1.

timeframe to do so.

Colombia levies a tax on financial transactions (called GMF under its Spanish acronym). The GMF rate is 0.4 percent and it applies to banking operations such as withdrawing cash or transferring resources between financial products. Nevertheless, withdrawals from one designated account for up to US\$ 3800 per month are exempted from the tax.³²² The recent tax reform foresees the gradual reduction of the GMF rate to 0.1 percent by 2021, after which it will be abolished.

Decree 2555/2010 and its amending regulation set out the treatment of foreign financial services in Colombia.³²³ External Notice (Circular Externa) 027/2016 of the Superintendence of Finance further regulates the cross-border supply of financial services. Colombian regulation define any entity incorporated outside of the country's territory as a foreign institution, including overseas agencies belonging to financial institutions established in Colombia, that have as a corporate purpose the supply of banking, reinsurance and securities services. Colombian regulation requires that financial institutions located abroad establish a representative office in the country in order to promote and advertise financial services in Colombia or to Colombian residents. The Superintendence of Finance (SFC by the Spanish acronym) must authorize representative offices.

Reinsurance institutions located overseas with an interest to offer or promote their products in Colombia or to Colombian residents have two options, either to register in the National Registry For Overseas Reinsurers and Reinsurance Brokers (REACOEX by the Spanish acronym) or to open a representative office with previous authorization from the Superintendence of Finance.

Foreign securities firms wanting to advertise or sell their services or products in the Colombian market or to Colombian residents should open a representative office or operate via a contract-based local correspondent institution.

Foreign banks or insurance firms (non-resident enterprises) wanting to conduct banking or insurance activities in Colombia can do so through direct branching in the country.³²⁴ In both cases, this requires prior authorization of the Superintendence of Finance. Foreign bank and insurance branches in Colombia enjoy national treatment.³²⁵ Other financial entities that wish to provide non-bank financial services, securities services, investment management, trust companies, securities agents, and other financial services all need to establish a subsidiary in Colombia.³²⁶ The country has not been willing to allow non-resident providers of financial services other than banking and insurance to operate through direct branches.³²⁷

322 UVT 350 (Units in Taxing Value) 1UVT: 31859 COP. Art 879 of the Taxation Statute.

323 Decree 25510/2016, Part 4 (Colombia).

324 See Law 1328/2009 (Colombia), arts 65, 66

325 See Law 1328/2009 (Colombia), arts 65, 66.

326 See Law 1328/2009 (Colombia), arts 66.

327 Colombia: Review of the Financial System, (OECD, 2016) < <https://www.oecd.org/finance/Colombia-financial-markets-2016.pdf> >42 para 120.

Insurance services need to be provided by insurance suppliers authorized by the Superintendence of Finance. However, foreign insurance companies may provide in the Colombian territory or to Colombian residents insurance services relating to: international maritime shipping, international commercial aviation and space launching and freight (including satellites) insurance. Such insurance coverage relates exclusively to risks relating to goods being transported, the vehicle transporting the goods and any liability arising therefrom, as well as insurance covering goods in international transit.³²⁸

Companies authorized to provide life insurance or reinsurance services are not allowed to offer other types of insurance in Colombia. Colombian natural or juridical persons can purchase insurance coverage abroad, except in a few cases: compulsory insurance schemes (such as automobile insurance), pension and social welfare insurance, and insurances where the policyholder, the insured person or the beneficiary need to provide evidence, prior to receiving the insurance, that they have another mandatory insurance or that they are up to date in their payments to the country's social welfare system. Insurance cannot be purchased abroad if the policyholder, insured person or the beneficiary is an institution of the Colombian state. However, the government could define conditions under which State entities could purchase insurance coverage with foreign insurance companies.

In recent years, Colombia has implemented reforms aimed at increasing the solvency ratio of locally established companies and ensuring compliance with the principles and requirements of Solvency II rules.³²⁹

Pension and severance funds (AFPs) are Colombia's leading institutional investors. Assets under AFP management represent 21 percent of Colombian GDP.³³⁰ The current number of AFP members is 20.7 million. Investments by the AFPs are regulated under law based on the type of fund.

The **ICT market** in Colombia has experienced sustained growth in recent years and represents an attractive market in terms of size and entrepreneurial dynamism. By the end of 2016, the number of subscribers to mobile telephony services stood at 58.6 million, as opposed to 7.1 million subscribers (lines) in fixed telephony.³³¹ The penetration index for mobile telephony was 120.4 percent per 100 inhabitants in 2016.³³² For fixed telephone services, the penetration index was 14.6 percent the same year.³³³

Nine operators serve the Colombian mobile telephony market, with the country's three leading operating accounting for a combined market share of 86 percent

328 See Law 1328/2009 (Colombia), arts 61 para 1.

329 This is the new EU Directive (Directive 2009/138/EC) on insurance regulation that came into effect since January 2016. The directive codifies and harmonizes the insurance regulation in the EU.

330 Colombian Superintendence of Finance, above n 318, 4.

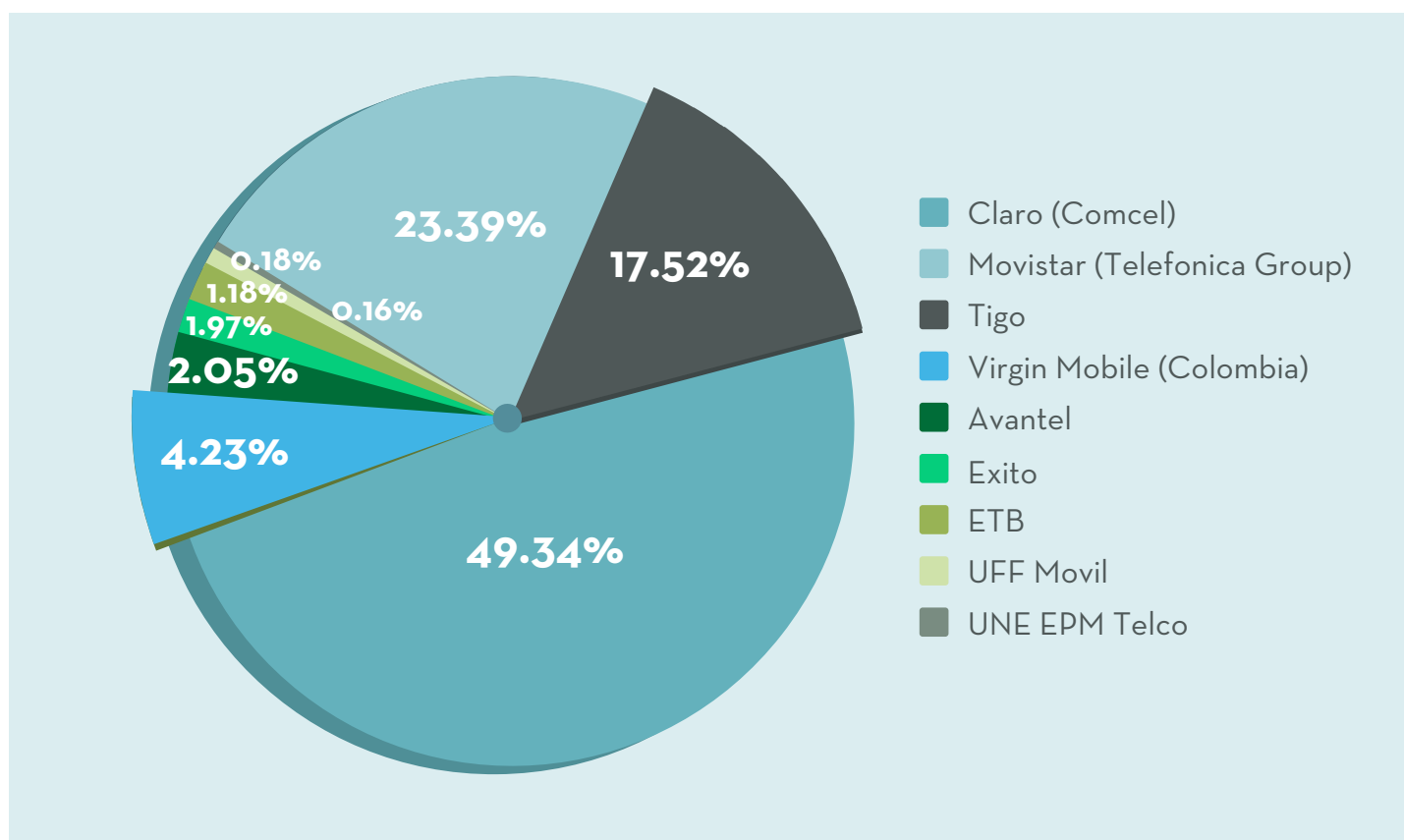
331 Quarterly Bulletin for ICTS, Ministry of Communications and Information Technologies (Colombia) < http://colombiatic.mintic.gov.co/602/articles-51235_presentacion_cifras.pdf > 11, 18.

332 Ibid 11.

333 Ibid 18.

(see Figure 20 below).

Figure 20. Colombia: Share of Subscribers by Operator³³⁴



Source: Ministry of ICTs (Colombia)

Internet penetration levels reached 31.4 percent in 2016, with around 15.3 million subscribers to broadband services.³³⁵ Penetration rates in mobile Internet services stood at 20.3 percent at the end of 2016, with 9.9 million subscribers.³³⁶ The country has 5.9 million subscribers of fixed (broadband) Internet services that are primarily served by four operators - Telmex-Comcel,³³⁷ Colombia Telecomunicaciones (Telefonica Group), ETB, and UNE EPM.

Internet services in Colombia are predominantly accessed via desktop computers (58.9 percent), followed by smartphones (55.5 percent).³³⁸ However, the use of smartphones devices to access the Internet has grown significantly in recent years.

The market of mobile Internet has currently six operators (Avantel, Tigo

³³⁴ Ibid.

³³⁵ Ibid 6.

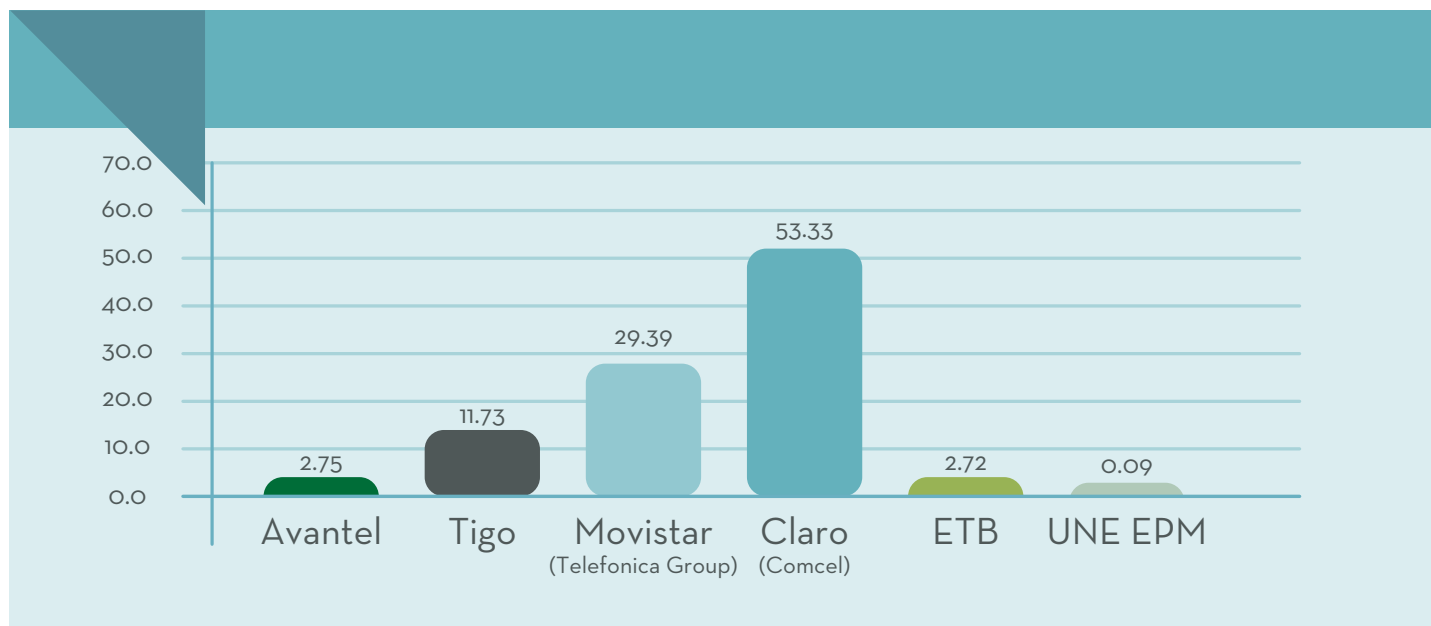
³³⁶ Ibid.

³³⁷ 99.3 percent equity by America Movil.

³³⁸ Joshua P Meltzer and Camila Perez-Marulanda, 'Digital Colombia: Maximizing the Global Internet and Data for Sustainable and Inclusive Growth' (Working Paper 96, Brookings/Global Economy and Development, October 2016) 36.

(Colombia Movil), Movistar,³³⁹ Claro-Colombia,³⁴⁰ ETB and UNE-EPM) with two of them holding around 83 percent of the market as showed in Figure 21 below.

Figure 21. Colombia: Market Share for Mobile Internet (%), 2016³⁴¹



Source: MinTICs (Colombia)

According to the ITU, the percentage of individual Internet users per 100 inhabitants stood at 55.9 in 2015, a level below that found in Chile but above levels prevailing in Mexico and Peru. The percentage of Colombian households with Internet access stands at 41.8 percent, while the percentage of households with a computer reached 45.6 in 2015.³⁴²

Colombia has recently undertaken major initiatives aimed at broadening coverage and reducing gaps in access to Internet services under the guise of a national digital strategy. The country's 'Vive Digital' plan, which was initiated in 2010, saw a second phase implemented between 2014 and 2018.

A general authorization regime for the supply of telecommunications networks and services has been in place since 2009.³⁴³ Use of the country's radio spectrum requires prior authorization, which can be granted for up to 10 years through an objective selection process. The offsets paid by authorized suppliers go to the Information and Communications Technology Fund (FONTIC) to finance universal access to telecommunications services.

Colombia maintains no restrictions on foreign equity participation in companies

³³⁹ 70 percent equity by Telefonica.

³⁴⁰ 99.4 percent equity by America Movil.

³⁴¹ Ministry of Communications and Information Technologies, above n 331.

³⁴² Country Profile/ Colombia, International Telecommunications Union (2015) < <http://www.itu.int/net4/itu-d/icteye/CountryProfile.aspx>.

³⁴³ Law 1341/2009 arts 10-12 (Colombia).

supplying telecommunications services.³⁴⁴ However, foreign telecommunications operators must set up a branch in Colombia to sell in the domestic market.³⁴⁵ The adoption of pro-competitive regulatory reforms has promoted greater levels of foreign investment in the telecommunications sector in recent years.

The general rule is free pricing by suppliers but the CRC may regulate prices in instances of inadequate competition, market breakdowns or qualitative shortcomings in provided services.³⁴⁶

According to the latest assessment by the OECD, Colombia's regulatory framework in telecommunications is sophisticated and features the policy tools needed to address situations of market dominance in sector. Colombian regulations provide for the ability to impose wholesale obligations on dominant operators, potentially including local loop unbundling.³⁴⁷ However, calls are being heard to reform the funding of FONTIC through offsets from the operators and by moving towards a public revenue fund to avoid inefficiencies.³⁴⁸

Colombia's innovation performance remains somewhat modest. The country ranked 63th out of 128 countries included in WIPO's 2016 metrics.³⁴⁹ The country's innovation outputs continue to be low, placing it 74th globally. Its innovation efficiency ratio, which measures the relation between innovation inputs and outputs is particularly low (98th rank globally). Obstacles to innovation in Colombia include: deficient innovation linkages (107th), including low levels of joint ventures or strategic alliances (73rd) and limited gross expenditure on R&D with foreign financing (73rd). Regarding investment, Colombia features an inadequate venture capital ecosystem. Lack of research talent also holds back the level of business sophistication in Colombia. Despite recent reforms increasing public spending on innovation, the country's gross expenditure in R&D continues to be comparatively low (88th). However, a positive note for the country concerns e-governance, where it scores well on online services (17th) and E-participation (11th).³⁵⁰

The **air transport** sector accounted for 0.5 percent of Colombian GDP in 2014 and has experienced stable growth since 2010.³⁵¹ According to data from 2014,

344 OECD Review of Telecommunication Policy and Regulation in Colombia, (OCDE, 2014) 46, 108.

345 Report by the Secretariat/Colombia, WT/TPR/S/265 (28 June 2012) (World Trade Organization, Trade Policy Review) < https://www.wto.org/english/tratop_e/tpr_e/tp365_e.htm > 165, para 150. The supply of fixed-switched telephony is considered a domiciliary public utility where suppliers need to be incorporated under Colombian law as public utilities enterprises (ESPs) with equity shares, and have a domicile in Colombia.

346 Report by the Secretariat/Colombia, WT/TPR/S/265 (28 June 2012) (World Trade Organization, Trade Policy Review) < https://www.wto.org/english/tratop_e/tpr_e/tp365_e.htm > 168, para 157.

347 OECD, 'Review of Telecommunication Policy,' above n 344, 10.

348 Ibid 11.

349 Dutta, above n 259, 200.

350 Ibid 200.

351 Astrid Martínez-Ortiz, Helena Garcia Romero, 'Competitividad en el Transporte Aéreo en Colombia' (Fedesarrollo, 2016) < http://www.repository.fedesarrollo.org.co/bitstream/11445/3280/1/Repor_Junio_2016_Martinez_y_Garcia.pdf > 4 [Astrid Martínez-Ortiz, Helena Garcia Romero,

the domestic civil aviation market is highly concentrated, with two main airlines – Avianca and LAN – controlling 77 percent of the market.³⁵² There are five more companies operating in the domestic market, including one state-owned company (Satena), two low-cost airlines (Viva Colombia and Easy Fly) and one regional carrier (ADA). A larger pool of airlines serves Colombia's international aviation market, although once more with a high degrees of market concentration between the country's two leading carriers – Avianca, which holds almost 40 percent of the market, and Copa, with around 17 percent.³⁵³ The number of international passengers transported in 2014 stood at 9.9 million.

Similar trends characterize the market for air cargo services, where the national segment is served primarily by Avianca Cargo (with a 45 percent market share) and Aerosucre (with a 22 percent market share). Other transporters also operate in the domestic market, among which LAN, LAS and Satena. Three companies supply a predominant share of international air cargo services, with Avianca Cargo accounting for a 42 percent share of the market, followed by LAN (13.5 percent) and Centurion (12 percent).³⁵⁴ Air cargo represents a very limited share – 0.4 percent in 2016 – of the total amount of cargo transported to and from Colombia.³⁵⁵

There are no restrictions affecting neither foreign ownership nor maximum thresholds on foreign equity in firms supplying air transport services in Colombia. Domestic and foreign airlines wishing to provide scheduled or non-scheduled commercial transport services must obtain an operating permit from Aerocivil. There is a requirement for air transport companies to incorporate in Colombia in order to supply air transport services.

Only Colombian natural or legal persons owning and/or operating aircraft may register aircrafts to operate in the Colombian airspace. Moreover the country only allows aviation cabotage to occur on Colombian aircraft.

Colombia currently has 591 airports and airfields. Seventy-five of these are public airports owned by Aerocivil, 18 of which operate under concession contracts. 214 airports or airfields are privately owned. No restrictions apply to foreign investment in firms supplying airport services or auxiliary air transport services, nor any foreign equity limitations applied to firms operating concession contracts for airports.

The general principle governing air transport in Colombia is that of reciprocity, applicable when no specific agreement is in place. This means that the Colombian

'Competitiveness in Air Transport in Colombia' (Fedesarrollo, 2016) < http://www.repository.fedesarrollo.org.co/bitstream/11445/3280/1/Repor_Junio_2016_Martinez_y_Garcia.pdf > 4].

352 Ibid 10.

353 Ibid 12.

354 Ibid 10.

355 Statistics on Cargo Imports and Exports in Colombia, National Directorate for Taxation and Customs (DIAN) (January December 2016-2015) < http://www.dian.gov.co/descargas/cifrasgestion/EEconomicos/Productos_y_Servicios/EstadisticasCarga/2016/Estadisticas_Carga_Importaciones_y_Exportaciones_Colombia_Enero_Diciembre_2015_2016.pdf > 6;16.

Authority – Aerocivil – authorizes foreign airlines to operate as long as the country of origin of the airline provides reciprocal treatment to Colombia airlines.

Members of the Andean Community (CAN) have since 2004 mutually agreed to grant each other fifth freedom rights for scheduled and non-scheduled freight services within the Andean sub-region.³⁵⁶ The decision grants the free exercise of fifth freedom traffic rights for scheduled passenger flights within the sub-region. Fifth freedom traffic rights for non-scheduled passenger flights in the sub-region are subject to conditions governing the availability of scheduled flights between the points for which the rights would be granted. The decision establishes the free exercise of fifth freedom traffic rights for non-scheduled freight services between CAN members and third countries. There is also a special agreement between Colombia and Chile, as noted earlier, as well as one between Colombia and Mexico

Colombia's Aerocivil has since 2012 undertaken a series of reforms to promote competition in air transport services. These include free pricing and the elimination of ceiling rates for air tickets.³⁵⁷ Moreover, the country eliminated quotas on the maximum number of suppliers of air transport that could operate in Colombia. The latter allows for free access by airlines to operate on national routes.

In **maritime transport**, the principle of reciprocity governs access to the Colombian market.³⁵⁸ Maritime transport services can only be supplied by companies incorporated in Colombia. Maritime cabotage is reserved for vessels registered in Colombia. Foreign merchant vessels are allowed to participate in cabotage services if no domestic vessel is available or suitable. The concept of national registration extends to CAN countries on the basis of reciprocity.

Pilots for the supply of maritime transport services must be nationals of Colombia when operating in Colombian territorial waters. The country also applies nationality restrictions to vessels (except fishing) registered in Colombia or with a foreign flag operating in Colombian jurisdictional waters for longer than six months. In such cases, captains and at least 80 percent of the ship's crew must be Colombian nationals.

Registration of a vessel in Colombia requires ownership by a Colombian natural or legal person.³⁵⁹ Every registered vessel in Colombia has Colombian nationality.³⁶⁰ Every foreign vessel arriving at a Colombian port must have a representative with a Colombian domicile legally responsible for the activities undertaken by the vessel in Colombia. Colombian and foreign international maritime transport companies, as well as Colombian cabotage companies, require prior authorization

356 Andean Decision 589/2004.

357 Resolution 904/2012 Special Administrative Unit for Civil Aeronautics (Colombia). See also Martinez-Ortiz, above n 351, 31.

358 Report by the Secretariat/Colombia, WT/TPR/S/265 (28 June 2012) (World Trade Organization, Trade Policy Review) < https://www.wto.org/english/tratop_e/tpr_e/tp365_e.htm > 178, para 193.

359 Commercial Code, (Colombia) art 1458.

360 Commercial Code, (Colombia) art 1437.

and an operating permit issued by the country's General Maritime Directorate (DIMAR).³⁶¹ In the case of non-scheduled transport of passengers or cargo, a special operating permit applies.³⁶² International maritime transport operates under a controlled freedom regime regarding rates. These need to be divulged to DIMAR. The Ministry of Transport and the Ports and Transport Supervisory Authority control domestic maritime transport rates.

Around 98 percent of cargo entering Colombia in 2016 involved maritime transport.³⁶³ The country has 8 main maritime ports forming part of the national port system. Foreign legal persons granted port concessions must be legally incorporated in Colombia and can only undertake activities relating to the construction, management and maintenance of ports.

Colombia ranked lowest among PA members in the World Bank's 2016 Logistics Performing Index, ranking 94th globally. More troublesome is the fact that the country's ranking has deteriorated since the Index began in 2007 (when it ranked 82nd).³⁶⁴ From the six-pillars of logistics performance assessed by the WBG, the Colombia's most salient shortage related to the inefficiency of its customs clearance procedures in which it ranked 129th globally.³⁶⁵ The quality of Colombia's trade and transport infrastructure also leaves to be desired despite some improvements in the country's score over the last decade. Moreover, the country's logistics performance is hampered by the difficulty in securing competitive pricing in shipments, where the country ranks 103rd.³⁶⁶ The development of adequate infrastructure including transport infrastructure is key to making sustained improvements in logistics performance.³⁶⁷ A further Colombian weakness relates to the excessive cost of transport services for imports as well as exports. To tackle these multiple deficiencies, the country recently launched a Logistics Master Plan.

Table 21 offers a summary view of performance metrics on key backbone services in Colombia.

Table 21. Colombia: Performance Indicators in Backbone Services, 2016

361 Decree 804/2001 (Colombia).

362 Report by the Secretariat/Colombia, WT/TPR/S/265 (28 June 2012) (World Trade Organization, Trade Policy Review) < https://www.wto.org/english/tratop_e/tpr_e/tp365_e.htm > 179, para 198.

363 DIAN, above n 355, 6.

364 Private Council for Competitiveness, above n 303, 132.

365 Arvics, above n 271, 40.

366 Ibid 40.

367 Private Council for Competitiveness, above n 303, 131.

International Indicator/Ranking		Score/Place
Ease of doing business 2017 ³⁶⁸		53 (1 to 190 countries)
WEF Competitiveness Index 2016-2017 ³⁶⁹		61 (out of 138 countries)
(Program for international student assessment) PISA Performance 2015 ³⁷⁰ Assessment of 15 year old secondary student	Reading	425 (OECD 493)
	Mathematics	390 (OECD 490)
	Science	416 (OECD 496)
WEF Competitiveness Index	Higher Education and Training	70 (out of 138 countries)
WEF Human Capital Index	Overall Rank	64 (out of 130 countries)
WEF Human capital maximization threshold		69.58% (out of 100%) Maximum score attained 85.8%
WIPO Global Innovation Index 2016		63rd (out of 128 countries) 34.2 (0 to 100) Maximum score attained 66.28)
Services Trade Restrictiveness Index Overall (WB)		18.3 (0 to 100 meaning no foreign entry is allowed at the highest score)
Services Trade Restrictiveness Index 2016 (OECD) Assessment of Regulatory Measures	Telecommunications	0.309 (OECD Average 0,24)
	Air transport (cargo and passenger transport)	0.282 (OECD Average 0,42)
	Maritime transport	0,253 (OECD Average 0,26)
	Road freight transport	0.193 (OECD Average 0,21)
	Rail freight transport	0.255 (OECD Average 0,30)
	Commercial banking	0.310 (OECD Average 0,24)
	Insurance	0, 257(OECD Average 0,22)
OECD FDI Regulatory Restrictiveness Index		0.026 (OECD average 0.067)
Global Findex 2014 (Global Financial Inclusion WB)	Account penetration (adults)	39 (%) of adult population in the country
WEF Competitiveness Index	Financial market development pillar	25 (out of 138 countries)
WEF Competitiveness Index	Overall infrastructure	84 (out of 138 countries)
WB Logistics Performance Index 2016 ³⁷¹		94 (out of 160 countries) 2.61 score (Maximum attained 4.23 on a scale from 1 (low) to 5(high)) - 50% out of 100%) percentage of highest performance 100%)

Source: own elaboration based on multiple indexes

368 Economy Rankings, World Bank (2017) < <http://www.doingbusiness.org/rankings> >

369 Schwab, above n 275, 150-1.

370 Program for International Student Assessment (PISA) Results 2015, OECD <<http://www.oecd.org/pisa/pisa-2015-Colombia.pdf>>.

371 Arvics, above n 271, 40.

The regulatory framework for services in Colombia operates for the most part under pro-competitive principles in major sectors. Colombia scores below the OECD average in 10 of the 22 sectors ranked in the OECD Services Trade Restrictiveness Index.³⁷²

To meet social spending goals and achieve a balanced fiscal situation, Colombia reformed its tax structure at the end of 2016. The reforms aimed at broadening the country's tax base and enhancing the performance of the tax administration whilst addressing the revenue shortage consecutive to a marked drop in commodity prices. The reforms also aimed at securing the resources needed to finance the nationwide fourth generation (4G) infrastructure program and the implementation of commitments under the peace agreements endorsed through Congressional Approval in November 2016. The tax reform further provides for a simplification of the tax code and a reduction of corporate tax rates.

Colombia has also been implementing reforms aimed at strengthening the independence and powers of the country's banking supervisory authority. In 2016, draft legislation was making its way through the Colombian Congress that aimed to adopt international standards and strengthen the supervision and regulation of Colombian financial conglomerates. However, the bill has yet to receive congressional approval. The adoption of Basel III standards and the strengthening of the resolution framework are still works in progress with a view to ensuring the soundness of the Colombian banking system.

Colombia continues to face high levels of labor market informality, despite a decrease since 2012 in the wake of legal and policy reforms directed at this issue. Colombia ranks amongst Latin American countries with the highest level of informal labor market activity, though Peru fares even worse within the PA. Services feature prominently in the sectoral categories with above average labor market informality. This is notably the case in the trade sector (32.76 percent), communal services (13.2 percent), transport services (8.1 percent) and construction (7.2 percent).³⁷³ In tackling this issue, Colombia introduced a set of reforms aimed at lowering hiring costs and extended tax incentives for 'young businesses.'

Despite significant progress in enlarging access to and use of the Internet, Colombia faces further challenges to reduce the gap between urban and rural access as well as that driven by differences in income levels. The Colombian telecommunications market would benefit from greater competition in mobile and fixed telephony services in order to increase adoption rates and spread ITC benefits to the larger population. The same situation prevails regarding regional and local fixed line markets where incumbent operators hold dominant positions. Internet rates and prices for devices continue to be high by regional and world standards, hindering access by lower income citizens and retarding digital uptakes. Increasing the level Internet access and use by SMEs, which currently

372 Services Trade Restrictiveness Index (STRI Colombia), (OECD, 2016) <https://www.oecd.org/countries/colombia/STRI_COL.pdf>.

373 Private Council for Competitiveness, above n 303, 89.

stands at 26 percent, is also key to promoting the further development of the Colombian digital economy.³⁷⁴ Colombia further needs to improve the coverage and quality of its telecommunications infrastructure. Efforts are under way to tackle such deficiencies, notably through the national fiber network program.

Transport services and infrastructure continue to represent significant bottlenecks affecting the competitiveness of firms operating in Colombia. A modernization plan of the country's airport infrastructure is under way and investment in this area has increased substantially since 2014. Nevertheless, the schedule and pace of the modernization process and the execution of the Master Plan for the country's main airport (El Dorado, Bogota) require speedier implementation.³⁷⁵ Moreover, significant investments are in place to address deficiencies in the country's port infrastructure with additional concessions recently granted. Following the peace deal, an ambitious construction plan for national roads under a project known as 4G is being implemented. However, additional institutional strengthening and reforms are needed to provide for long-term planning in infrastructure policy and development, adequate supervision and more effective interaction between the public and the private sector.

3. Mexico

Mexico is, after Brazil, the second largest economy in Latin America.³⁷⁶ The country's steadfast commitment to market opening since joining the GATT in the mid 1980's and subsequently through its membership of the North American Free Trade Agreement (NAFTA), has resulted in sharp increases in trade- and investment-related openness indicators and its closer integration with its northern neighbors. Mexico's geography and the high level of participation in North American value chains it affords, makes the country a somewhat more remote, less intra-regionally connected, PA member. Mexico ranks among the world's major exporters of services, a significant share of which relate to worker remittances.³⁷⁷ Of the four PA members, Mexico ranked second (behind Chile) in the World Economic Forum's (WEF) 2016 Global Competitiveness Index.³⁷⁸

At the end of 2013, the Mexican government enacted an ambitious package of pro-competitive reforms in several key areas, such as competition and tax policy, energy, financial services and telecommunications. These reforms have exerted significant effects on the delivery of backbone services, contributing to strong inward FDI growth and the supply of a broadened range of services exports.

Mexico allocates 5.2 percent of aggregate spending to its **education sector**,

374 Meltzer, above n 388, 32.

375 Private Council for Competitiveness, above n 303, 139.

376 Mexico/Country at Glance, World Bank < <http://www.worldbank.org/en/country/mexico>>.

377 Staff Report for the 2016 Article VI Consultation (Country Report No 16/359, International Monetary Fund, November 4 2016) < <https://www.imf.org/external/pubs/cat/longres.aspx?sk=44419.0>> 2.

378 Schwab, above n 275.

the highest share among the PA.³⁷⁹ Levels of enrolment in primary education (0-14 age group) stand at 97 percent.³⁸⁰ However, based on perception indicators, the quality of primary schools is low and the country ranks 103rd out of 130 countries under this criterion. The poor performance of primary education is generally regarded as weighing on Mexican competitiveness.³⁸¹ This is confirmed in the WEF report, which draws attention to such deficiencies.³⁸²

Enrolment in secondary education stands at just under 80% (78 percent). However, the performance of 15-year-old Mexican students under the OECD's PISA tests yields results that are significantly lower than the OECD average.³⁸³ Differences in students' socioeconomic backgrounds are seen as playing a particularly big role in the performance differences among students. It is estimated that 89 percent of Mexican students complete their secondary education, placing the country in 67th place in global rankings in this area. Despite the country's relatively high level of enrolment in secondary education, more than half of young Mexican adults do not have post-secondary qualifications.³⁸⁴ The country suffers from significant income gaps, with adults working full-time without upper-secondary education earning 40 percent less than their more educated counterparts.³⁸⁵ To mitigate such problems, the Mexican government has promoted the participation of young people in programs that offer technical training while completing upper-secondary education.

Access to higher education is an important bottleneck in Mexico, with only 29 percent of gross coverage. This stands significantly below the Latin American average (45 percent) and a far cry from the average performance in the OECD area (more than 70 percent).³⁸⁶ A further weakness of the Mexican educational landscape concerns the low level of enrolment in vocational and technical enrolments, which stands at around 9 percent. Public perceptions of the quality of the Mexican educational system and how well it meets the labor market needs of a competitive economy is low at 31 percent.³⁸⁷ Only two Mexican universities appeared in the QS ranking of world's 500 best universities in 2016.³⁸⁸

Only 16 percent of Mexican adults have completed tertiary education, a level significantly below the OECD average (which stood at 36 percent for people under the age of 30).³⁸⁹ This has a significant impact on labor market outcomes and income inequality, as adults with completed tertiary education earn on average more than twice as much as adults with upper secondary education in

379 WEF, The Human Capital Report 2016/Mexico, World Economic Forum < <http://reports.weforum.org/human-capital-report-2016/economies/#economy=MEX> >.

380 Ibid.

381 Schwab, above n 275.

382 Ibid 30.

383 Mexico/Country Overview, < <http://www.compareyourcountry.org/pisa/country/mex> >.

384 OECD, 'Education at a Glance 2016,' above n 233, 36.

385 Ibid.

386 Private Council for Competitiveness, above n 303, 33.

387 WEF, 'Human Capital Report 2016,'/Mexico' above n 379.

388 QS World University Rankings < <https://www.topuniversities.com/university-rankings/world-university-rankings/2016>>.

389 OECD, 'Education at a Glance 2016,' above n 233, 62.

full-time jobs. The above trend is equally salient in Colombia and Chile.³⁹⁰

Mexico still faces significant challenges in fully leveraging its core working-age population's skills. The country ranks 106th globally (out of 130 countries) for medium-level skills in the Human Capital Index.³⁹¹

Despite the qualitative shortcomings in secondary and tertiary education noted above, Mexico performs better than its PA partners in productive knowledge and skills as the country ranks first within the regional grouping in terms of economic complexity, doubtless a reflection of the higher share of manufacturing in output and the strong pull it exerts on the service economy (and attendant skills).

While currently faced with a challenging external environment that has weighed on its exchange rate, Mexico has in recent years pursued a number of **financial sector** reforms aimed at strengthening its banking system with a view to widening access to credit at lower costs.³⁹² Financial reforms have also aimed at ensuring compliance with Basel III requirements on liquidity coverage ratios and the quality of capital.³⁹³ Steps have also been taken to promote greater competition in the country's financial system by enlarging the number of licensed operators.

Foreign investors face no restrictions on equity holdings in Mexican insurance institutions, bonding institutions, currency exchange houses, general bonded warehouses, pension fund management firms, credit information companies, securities rating institutions and insurance agents.³⁹⁴ In the banking sector, FDI restrictions concern only second-tier banks that are state-owned excluding participation by foreigners.³⁹⁵

The financial sector represents 103 percent of the country's GDP, roughly half of which relate to bank assets, followed by pension fund management institutions at 16 percent.³⁹⁶ Mexican financial system comprises an estimated 2200 entities.³⁹⁷ A majority of the country's commercial banks, brokerage firms and investment funds belong to financial holding groups.

Despite recent improvements in the country's financial sector performance, a

390 Ibid 117.

391 WEF, 'Human Capital Report 2016/Mexico,' above n 379.

392 Oportunidades de la Reforma Financiera, (Banco de México August 2014). <http://www.banxico.org.mx/dyn/publicaciones-y-discursos/discursos-y-presentaciones/presentaciones/%7BCF35330A-4A30-470E-F583-FO547C25F57B%7D.pdf> [Oportunities arising from the Financial Reform (Bank of Mexico, August 2014) <<http://www.banxico.org.mx/dyn/publicaciones-y-discursos/discursos-y-presentaciones/presentaciones/%7BCF35330A-4A30-470E-F583-FO547C25F57B%7D.pdf> >].

393 Report by the Secretariat/Mexico, WT/TPR/S/352 (15 February 2017) (Trade Policy Review) 131.

394 The amendment to Article 7 Foreign Investment Law was published in Official Gazette in January 10, 2014. Before this amendment the participation of Foreign Direct Investment was subject to a 49%

395 Ley de Inversion Extranjera [Foreign Investment Law] (Mexico) art 6.

396 National Financial Report, Nacional Financiera (Development Bank) (April 2017) < https://www.gob.mx/cms/uploads/attachment/file/215790/Estudio_de_Evaluaci_n_Nafin_2016_Art_55_bis_2.pdf > 16.

397 The full catalogue of financial institutions operating in Mexico is available at: < <http://www.gob.mx/shcp/documentos/catalogo-del-sistema-financiero-mexicano>>.

fully functioning consolidated supervisory framework is not yet in place.³⁹⁸

In the **telecommunications** sector, following a review conducted by the OECD, Mexico enacted important pro-competitive reforms starting in 2013. The OECD's diagnosis showed that the excessive degree of market concentration in telecommunications imposed significant costs on the economy, and held back needed infrastructural development.³⁹⁹ The country's reform agenda has aimed at achieving greater competition, reducing prices and attracting a greater amount of FDI in the sector.⁴⁰⁰

The recent reforms allow greater foreign participation in the mobile and fixed-line service market segments. In broadcasting, the reservation to Mexican nationals and to Mexican companies protected by a foreign exclusion clause was eliminated.⁴⁰¹ Moreover, a Federal Telecommunications Institute was established as the exclusive regulatory authority over the sector with sanctioning powers.⁴⁰²

The Mexican telecommunications sector has experienced sustained growth in the wake of the recent reforms. The sector grew at an average annual rate of 8.4 percent from 2013 to 2016.⁴⁰³ Telecommunications contribute 3.4 percent of Mexican GDP.⁴⁰⁴

In Mexico, more than 40 percent of households enjoy Internet services.⁴⁰⁵ The recent past has seen a significant improvement in Internet speed. Mobile Internet services have also experienced strong growth, with 54 percent of Mexicans having access to mobile Internet services in 2016.⁴⁰⁶ In 2015, penetration levels in mobile broadband services stood at 50.4 per 100 inhabitants, while fixed (wired) broadband penetration reached 10.5 per 100 inhabitants. Mobile phone penetration is high in the country, standing at 85.3 per 100 inhabitants.⁴⁰⁷

Mexico's innovation performance has shown improvement, with the country ranking 61st in 2016 by WIPO estimates.⁴⁰⁸ The country's innovation outputs are modest placing, it 62nd under this criterion. Issues hampering Mexico's innovation are in some respects similar to those of Colombia and chiefly concern deficient innovation linkages (91st), including limited gross expenditure in R&D with foreign financing (94th) and low levels of joint ventures or strategic

398 Mexico: Financial System Stability Assessment (Country Report No. 16/361, International Monetary Fund, November 22, 2016) <<https://www.imf.org/external/pubs/ft/scr/2016/cr16361.pdf>> 6.

399 OECD Review of the Telecommunication Policy and Regulation in Mexico, OECD <https://www.oecd.org/tad/services-trade/STRI_CHL.pdf> 11.

400 Telecommunications in Mexico. Three Years after the Constitutional Reform. (Federal Institute for de Telecommunications, June 2016) <<http://www.ift.org.mx/sites/default/files/contenidogeneral/unidad-de-competencia-economica/a3anosdelareforma-ingles.pdf>> 4.

401 Report by the Secretariat/Mexico, WT/TPR/S/352 (15 February 2017) (Trade Policy Review) 2.35.

402 Ibid 4.149.

403 Ibid 4.148.

404 Ibid.

405 Federal Institute for de Telecommunications, above n 400, 7.

406 Federal Institute for de Telecommunications, above n 400, 8.

407 Country Profile, Mexico (ITU) <<https://www.itu.int/net4/itu-d/icteye/CountryProfile.aspx>>

408 Dutta, above n 259, 249.

alliances (60th). The country also lacks adequate levels of venture capital (69th). Education performance also arguably holds back Mexico's potential for innovation although the country produces a better pool of graduates in science and engineering (17th) than most countries.⁴⁰⁹ Creative goods exports from Mexico perform exceptionally well at the global level, placing the country 3rd globally. However ICT services exports remain low, a trend that partially reflects the country's commodity composition of trade which is heavily slanted towards manufactured products.⁴¹⁰

In the **air transport** sector, Mexico had entered into 51 bilateral agreements governing international flights to and from its territory by 2016.⁴¹¹ The air transport sector employs an estimated 230 000 workers.⁴¹² Mirroring patterns found in most countries, foreign investment in the sector is capped at 25 percent of voting equity in domestic airlines. Airport management services can be supplied by foreign entities on a concession contract basis.⁴¹³

The Mexican airfreight sector is open to domestic and foreign companies. The market is supplied by 15 national carriers, with Aeromexico maintaining the highest market share. The largest foreign operators are FedEx, UPS and Air France. Mexican low- cost carriers such as Interjet, Volaris and VivaAerobus have in recent years increased their participation in the domestic civil aviation market.

Mexico features seventy-six airports.⁴¹⁴ According to the 2014-18 National Infrastructure Program, several Mexican airports operate at or near their capacity limits.⁴¹⁵ The government has begun the construction of a new international airport in Mexico City to address the growing demand for air travel. The country's expanded main airport is set to open in 2020.

In **maritime transport** services, foreign investment is allowed up to 49 percent in the following services: port operators, shipping companies engaged in maritime transport in territorial waters,⁴¹⁶ and port- related services. Higher levels of FDI can be secured through authorization by the General Coordinating Office for Ports and the Merchant Marine.⁴¹⁷ Harbor pilots must be Mexican nationals and cabotage is reserved for Mexican shipping companies with Mexican vessels, although foreign vessels may be given temporary permission to provide cabotage services.⁴¹⁸

Generally speaking, maritime transport is governed by the principle of reciprocity, except for cabotage. Foreign shipping companies need a permit to operate in territorial waters. This permit is granted for six years and is renewable. However, foreign shipping companies do not require any kind of authorization to provide

409 Ibid 249.

410 Ibid 386.

411 Aviación Mexicana en Cifras 1991- 2016 (Secretaria de Comunicaciones y Transportes, 2016) <<http://www.sct.gob.mx/fileadmin/DireccionesGrales/DGAC-archivo/modulo5/amc-2016-i.pdf>> 88.

412 Ibid 130.

413 Report by the Secretariat/Mexico, WT/TPR/S/352 (15 February 2017) (Trade Policy Review) 29.

414 Ibid 145, para 4.179.

415 Programa Nacional de Infraestructura 2014-2018 (Secretaria de Comunicaciones y Transportes). <<http://presidencia.gob.mx/pni/consulta.php?c=1>> 24.

416 Except for cruise ships, dredgers and port construction/maintenance.

417 Report by the Secretariat/Mexico, WT/TPR/S/352 (15 February 2017) (Trade Policy Review) 147 para 4.189.

418 Ibid para 4.190.

transport services in Mexico if reciprocal treatment prevails. . It is mandatory for foreign shipping companies to have a shipping agent in each port in which they operate.⁴¹⁹ Maritime freight transport has become one of the largest import categories in services for Mexico.⁴²⁰

Mexico had 117 ports and terminals in 2013. Port management services are open to foreign investment on the basis of concession contracts.

Four ports are considered national hubs: Manzanillo and Lazaro Cardenas on the Pacific Coast and Altamira and Veracruz on the Gulf Coast. The National Infrastructure Program asserts that all four ports currently operate at the limit of their capacity.

Mexico's LPI performance stood above the world average in 2016, with the country 54th out of 160 countries.⁴²¹ The country's main LPI shortcomings relate to deficiencies in the quality of trade and transport infrastructure as well as in customs clearance efficiency. Conversely, the median lead-time for imports and exports reduces Mexico's overall logistics ranking as the country ranks 68th globally.⁴²² Mexico's LPI has been relatively stable since 2014 (50th rank globally).⁴²³



Table 22 provides a snapshot of basic indicators of Mexican performance in backbone services:

Table 22. Mexico: Performance in Backbone Services, 2016

419 Ibid 147 para 4.197.

420 OECD Services Trade Restrictiveness Index (STRI): Mexico, OECD < https://www.oecd.org/tad/services-trade/STRI_MEX.pdf > 1.

421 Arvics, above n 271, 39.

422 Ibid 39

423 Global Rankings 2014/ International LPI Global Ranking, The World Bank <<http://lpi.worldbank.org/international/global/2014>>.

International Indicator/Ranking		Score/Place
Ease of doing business 2017 ⁴²⁴		47 (1 to 190)
WEF Competitiveness Index 2016-2017 ⁴²⁵		51 (out of 138 countries)
(Program for international student assessment) PISA Performance 2015 ⁴²⁶ Assessment of 15 year old secondary student	Reading	423 (OECD 493)
	Mathematics	408 (OECD 490)
	Science	416 (OECD 496)
WEF Competitiveness Index	Higher Education and Training	82 (out of 138 countries)
WEF Human Capital Index	Overall Rank	65 (out of 130 countries)
WEF Human capital maximization threshold		69.25% (out of 100%) Maximum score attained 85.8%
WIPO Global Innovation Index 2016		61st (out of 128 countries) 34.6 (0 to 100) Maximum score attained 66.28)
Services Trade Restrictiveness Index Overall (WB)		29.5 (0 to 100 meaning no foreign entry is allowed at the highest score)
Services Trade Restrictiveness Index 2016 (OECD) Assessment of Regulatory Measures	Telecommunications	0.227 (OECD Average 0,24)
	Air transport (cargo and passenger transport)	0.382 (OECD Average 0,42) 0.348 (OECD Average 0,26)
	Maritime transport	0.203 (OECD Average 0,21)
	Road freight transport	0.286 (OECD Average 0,30)
	Rail freight transport	0.346 (OECD Average 0,24)
	Commercial banking	0.227 (OECD Average 0,22)
	Insurance	0.193 (OECD average 0.067)
OECD FDI Regulatory Restrictiveness Index		39 (%)of adult population in the country
Global Index 2014 (Global Financial Inclusion WB)	Account penetration (adults)	35 (out of 138 countries)
WEF Competitiveness Index	Financial market development pillar	57 (out of 138 countries)
WEF Competitiveness Index	Overall infrastructure	54 (out of 160 countries)
WB Logistics Performance Index 2016 ⁴²⁷		3.11 score (Maximum attained 4.23 on a scale from 1(low) to 5(high)) - 65.5% out of 100%) percentage of highest performance 100%)

Source: own elaboration based on multiple indexes

424 Economy Rankings, World Bank (2017) < <http://www.doingbusiness.org/rankings> >.

425 Schwab, above n 275, 262-3.

426 Program for International Student Assessment (PISA) Results 2015, OECD <<http://www.compareyourcountry.org/pisa/country/MEX>>.

427 Arvics, above n 271, 40.

Reforms undertaken of late by Mexican authorities signal a significant interest in strengthening competitiveness in telecommunications and finance. The country removed foreign equity restrictions and introduced pro-competitive ex-ante regulation on suppliers with significant market power. However, some regulatory restrictions still remain on the entry of foreign investors in certain sectors and thresholds on equity participation remain. In 2016, Mexico held the highest score out of the four PA countries in the FDI Regulatory Restrictiveness Index of the OECD metrics, and it is significantly above OECD average levels.⁴²⁸

Moreover, Mexico still applies economic needs tests to the supply of services by technicians and professionals while the country's labor requires that 90 percent of Mexican nationals form the employee base of any company, although this requirement does not apply to members of company boards nor to managers or general managers.⁴²⁹ Professional services, construction, and computer services are highly liberalized, with STRI scores below the OECD average.⁴³⁰

4. Peru

Backbone services in Peru are generally considered to perform well. Buoyed by above average commodity prices over the last decade, Peru experienced sustained growth, macro-economic stability, growing exports, particularly to China, rising levels of FDI, and improvements in both social indicators and the country's overall level of competitiveness.⁴³¹

At 3.7 percent of GDP, public expenditure in education in Peru is the lowest among the PA and a far cry from the OECD average to which the country aspires.⁴³² Still, the country's human capital endowments are widely seen to have improved over the past decade.⁴³³

Levels of enrolment in primary **education** within the 0-14 age group stand at around 95 percent, placing Peru in 81st place in the Human capital index for this criterion. Base on a perception indicator, the quality of primary schools is low and the country is ranked 122nd out of 130 countries for this criterion, placing it at the bottom of the PA class. Enrolment in secondary education stands about 78 percent whilst the share of students completing secondary education is good at 88 percent.⁴³⁴

428 OECD FDI Regulatory Restrictiveness Index, 2016 <<http://stats.oecd.org/Index.aspx?datasetcode=FDIINDEX#>>.

429 Federal Law for Employment, art 7 <http://www.stps.gob.mx/bp/secciones/junta_federal/secciones/consultas/ley_federal.html>.

430 OECD, STRI Mexico, above n 420.

431 United Nations Conference of Trade and Development (UNCTAD), 'Services Policy Review: Peru 2015' <<http://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=802>>.

432 Programme for International Student Assessment, OECD, <<http://www.compareyourcountry.org/pisa/country/per>>.

433 Peru/ Economy Profile, World Economic Forum <<http://reports.weforum.org/human-capital-report-2016/economies/#economy=PER>>.

434 WEF, The Human Capital Report 2016/Peru, World Economic Forum <<http://reports.weforum.org/human-capital-report-2016/economies/#economy=PER>>.

Enrolment in Peru's tertiary education sector stands at 40.5 percent, a level lower than that obtaining in Chile and Colombia but higher than in Mexico. Only one Peruvian university could be found in the QS ranking of the world's top 500 universities in 2016.⁴³⁵ Unemployment rates within the 15-24 age group are high at around 15 percent.

Evidence of persistent mismatches in the Peruvian market for skills is evidenced in the fact that 46 percent of employers encounter difficulties in filling positions.⁴³⁶ Among the reasons behind such difficulties are the lack of experience, technical competences and the dearth of available candidates, all of which call for stepped up efforts at addressing gaps in vocational training.⁴³⁷ The most sought after skills that are hard to find in Peru are: Technicians, Engineers, Machinery Operators, Drivers and Accountants, among others.⁴³⁸

Professionals are required to register with specialized licensing bodies (boards) to exercise in Peru. Even though registration in a professional board flows from domestic regulations that are consistent with international trade agreements,⁴³⁹ the Peruvian competition authority ruled in February 2017 that the fees that have to be paid in order to join professional associations/boards, in particular the Lima Bar, amounted to an 'disproportionate bureaucratic barrier',⁴⁴⁰ and thus had to be eliminated.

The Peruvian **financial** system is comprised of several types of financial and non-financial institutions, as depicted in Table 23 below.



435 QS Top Universities (2016) <<https://www.topuniversities.com/university-rankings/world-university-rankings/2016>>.

436 Survey on Human Talent Shortages: Results for Peru 2016-2017, Manpower Group, <https://www.manpower.com.pe/detalles-noticias2.aspx?Noticia=4446>>.

437 Ibid.

438 Ibid.

439 (UNCTAD), Services Policy Review, above n 431.

440 Indecopi ordered the elimination of fees for incorporation to the Lima College for Lawyers, *Semana Económica* (Newspaper), 27 February 2017: <<http://semanaeconomica.com/article/legal-y-politica/sector-publico/216552-indecopi-ordeno-eliminar-pagos-por-incorporacion-al-colegio-de-abogados-de-lima/>>.

Table 23. Peru: Structure of the Financial System, 2016

Type of Institutions	Number of Entities in 2016
Banking institutions	16
Financial institutions	11
Non-banking microfinance institutions	
- Municipal funds	12
- Rural savings and loan funds	6
SMEs development institutions	10
Financial leasing institutions	2
Total	57* without state-owned banks ⁴⁴¹
State-Owned banks	4
Investment Bank	1
Insurance institutions	21 (+one to start operations)
Pension Management Funds (AFPs)	4

Source: SBS and BCRP (Peru)

Banks account for more than 50 percent of total financial system assets in Peru, followed by pension management funds (AFPs). The country applies prudential requirements drawn from Basel II and III. The state is not allowed to participate in the Peruvian financial system, with the exception of the state-owned development Bank (COFIDE), The Bank of the Nation, The Agricultural Bank and the Mivivienda Fund.

The country does not impose limitations on foreign participation in financial and capital markets. Rules applied on a non-discriminatory basis prohibit majority shareholders operating in the financial system from holding, directly or indirectly, more than 5 percent of the shares of another company of the same type. Furthermore, the transfer of more than 10 percent of the shares of a financial institution requires the prior authorization of the country's relevant supervisory bodies. . It is mandatory for both Peruvian and foreign companies operating in the financial sector to establish as locally incorporated subsidiaries to undertake certain types of financial activities defined under Law 26702. Such subsidiaries are to be established with a sole purpose.⁴⁴² In the case of banking services, foreign banks are allowed entry through direct branching, but branches are required to hold capital placed in Peru to underpin their local operations.

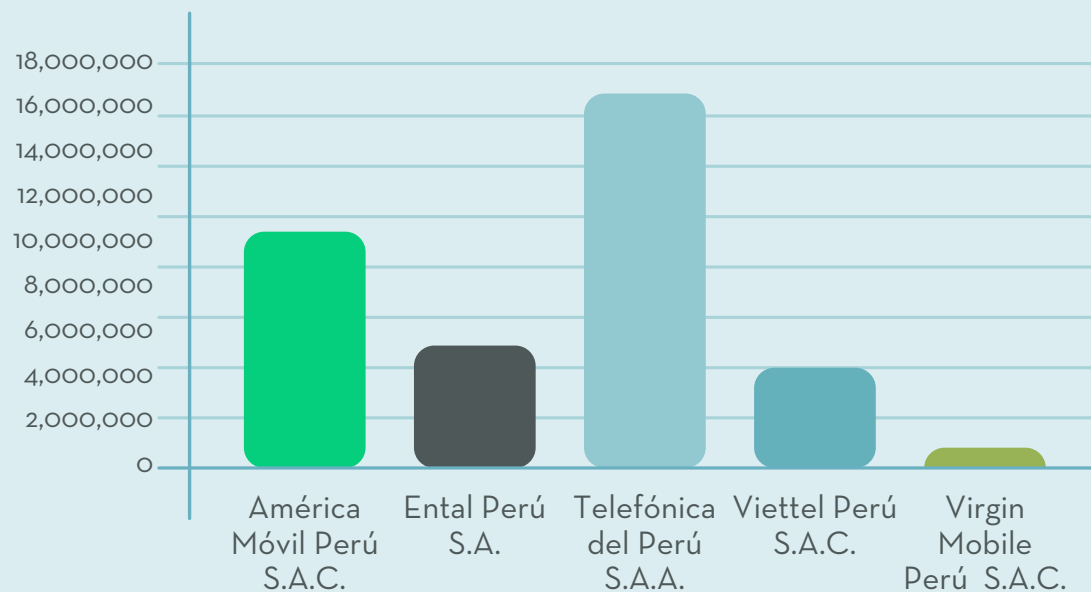
The Peruvian **ICT market** has experienced sustained growth in recent years. The

⁴⁴¹ Evolution of the Financial System, Superintendence of Banks, Insurers and Pension Funds (December 2016) < <https://intranet2.sbs.gob.pe/estadistica/financiera/2016/Diciembre/SF-2103-di2016.PDF>> 2.

⁴⁴² Law 26702, art 224 (Peru). These activities include: real estate capitalization companies; general deposit warehouses; brokerage firms, subject to the law on the Securities Market; mutual funds and investment funds programs; companies that provide safe deposit, transport and management services for cash and securities, provided that they have authorization from the SBS and the Ministry of the Interior; and securitization trustees, subject to the provisions of the law on the securities market.

number of mobile telephony subscribers (lines) stood at 37 million in 2016.⁴⁴³ Five operators serve the market for mobile telephony services in Peru, with two companies - América Móvil Perú S.A.C. and Telefónica del Perú S.A.A. - holding a combined 77 percent market share.⁴⁴⁴ Mobile telephony penetration stood at 110 lines per 100 inhabitants, in contrast to declining penetration levels for fixed telephony, which stood at 9.3 lines per 100 inhabitants in 2015.⁴⁴⁵

Figure 22. Peru: Share of Lines by Operators



Source: OSIPTEL (National Regulator of Telecommunication Services in Peru)

Mobile Internet penetration levels reached 59 subscriptions per 100 inhabitants in 2016, showing an increase of more than 50 percent over the last two years. Most such connections operate through mobile phones.⁴⁴⁶ The total number of lines accessing the Internet reached 17.9 million in 2016. Telefónica del Perú S.A.A. serves 48 percent of the market, followed by América Móvil Perú S.A.C. with 37 percent. The penetration for fixed (wired) broadband was only 5.7 per 100 inhabitants in 2015, while the number of connections reached just over 2.1 million in 2016.⁴⁴⁷ Although there are over 30 providers in the fixed Internet market segment, Telefónica del Perú S.A.A. dominates with approximately 77 percent of the market.

443 Indicators for Mobile Telephony Services, OSIPTEL (December 2016) < <https://www.osiptel.gob.pe/documentos/2-indicadores-del-servicio-movil>>.

444 Ibid.

445 Country Profile/Peru, ITU < <https://www.itu.int/net4/itu-d/icteye/CountryProfile.aspx> >.

446 Indicators for Mobile Internet Services, OSIPTEL (December 2016) < https://www.osiptel.gob.pe/repositorioaps/data/1/1/1/par/63-suscripciones-de-Internet-movil-segun-empresa/IntMovil_C6.3_Penetracion.pdf>.

447 Indicators for Fixed Internet Services different technologies, OSPITEL (December 2016) < <https://www.osiptel.gob.pe/documentos/5-indicadores-de-Internet-fijo> >.

The above figures reveal a highly concentrated Peruvian telecommunications landscape. However, pro-competitive measures have recently been implemented to ensure fair conditions of access to essential infrastructure.

The percentage of Peruvian households with Internet access was low at around 23 percent in 2015, a level almost three times as low as that prevailing in neighboring Chile. The percentage of Peruvian households possessing a computer is also low at 32 percent, barely half the level found in Chile.⁴⁴⁸

Peru's innovation performance is the lowest within the PA, and the country ranks 71st globally. The country's innovation outputs are low as well as its efficiency ratio of innovation outputs over innovation inputs, which placed it in 109th position globally in this area.⁴⁴⁹ Important bottlenecks affecting the country's innovation performance concern education (where it ranks 97th), which hampers prospects for human capital development and research (81st), and levels of Internet access (83rd) along with low Internet use (93rd). Also problematic are limited business sophistication levels, which are partly attributed to low levels of knowledge-intensive employment, as well as deficient innovation linkages (97th). Regarding innovation linkages, the country faces important challenges in promoting research collaboration between universities and industry and in promoting the development of knowledge clusters (95th).⁴⁵⁰ ICT services exports from Peru are low, which hold back the country's knowledge- and technology-related outputs. Despite the above shortcomings, exports of printing and publishing manufactures are comparatively high for the country, as are creative industry exports, reinforcing the country's trade performance in this strategic sector of the Peruvian economy.⁴⁵¹

Peruvian **air transport** services, show a high degree of concentration, with three main firms: LAN Perú S.A. (now LATAM Perú) with a 32 percent market share, followed by Taca Perú with 10 percent of the traffic and LAN Airlines (now LATAM Airlines Group S.A.) with 9 percent of international traffic.⁴⁵²

The Peruvian State grants routes, time-slots and commercial air rights to foreign carriers on the basis of 37 bilateral agreements.⁴⁵³ If there is no bilateral agreement, access to the Peruvian air space is granted on the basis of reciprocity or subject to equivalent economic compensation for Peru.⁴⁵⁴

Regarding **maritime transport**, the national network is comprised by 45 ports, of which 40 are on the sea, four on rivers and one on a lake. The port of Callao

448 Country Profile/ Peru, International Telecommunications Union (2015) < <http://www.itu.int/net4/itu-d/icteye/CountryProfile.aspx>>.

449 Dutta, above n 259, 267.

450 Ibid 267.

451 Ibid 267.

452 Ministry of Transport and Communications: Passengers' Statistics 2017 <http://www.mtc.gob.pe/transportes/aeronautica_civil/estadistica/pasajeros.html>.

453 Final Report, Monitoring International Agreements on Air Matters Subscribed by Peru, Congress of the Republic of Peru (2014) < [http://www2.congreso.gob.pe/sicr/comisiones/2013/com2013relext.nsf/pubweb/2A5A9A883784DB1105257C91006AC6FC/\\$FILE/AEREO.PDF](http://www2.congreso.gob.pe/sicr/comisiones/2013/com2013relext.nsf/pubweb/2A5A9A883784DB1105257C91006AC6FC/$FILE/AEREO.PDF)> 18.

454 Report by the Secretariat/Peru, WT/TPR/S/289 (9 October 2013) (World Trade Organization, Trade Policy Review) < https://www.wto.org/english/tratop_e/tp_r_e/tp365_e.htm> para 4.136.

moves about 70 percent of total cargo and 90 percent of national container port traffic. This port, the most important container transshipment port on the west coast of South America, and is currently being modernized.⁴⁵⁵ In 2015, the Peruvian port infrastructure deficit was estimated at US\$ 6,844 million.⁴⁵⁶

Maritime cabotage is restricted due to the limited traffic between the main cargo generating and receiving centres in Peru. As of 2012, there were nine foreign companies operating vessels involved in Peru's foreign trade. In the case of maritime cabotage, 12 Peruvian shipping companies have operating permits for domestic and international transport and two Peruvian companies have operating permits for international transport.⁴⁵⁷ It bears noting that member states of the Andean Community are given preferential treatment for cabotage services within the Andean region, which includes Colombia.⁴⁵⁸ Cabotage services are not subject to regulated rates because of the prevailing competitive reality between such services and land transport.

Peruvian ship owners and Peruvian shipping companies must be natural person with Peruvian nationality or legal persons established in Peru, with their principal domicile and actual and effective head office in Peru.⁴⁵⁹ Peru operates restrictions on (paid-up) equity holdings that must be held by Peruvian nationals of at least 51 percent. Moreover, Peruvian-registered ships must have a Peruvian captain, although in exceptional circumstances foreign captains are allowed. At least 85 percent of ship's crew must be composed of Peruvian nationals.

A further restriction is that commercial water transport for domestic traffic is exclusively reserved for Peruvian-registered merchant vessels owned by Peruvian ship owners or Peruvian shipping companies.⁴⁶⁰ However, if there are no available Peruvian ships, Peruvian shipping companies or Peruvian ship owners can operate foreign ships for up to six months. In contrast, Peruvian ship owners and Peruvian shipping companies could carry out international transport by water through chartered foreign-registered vessels without the need for prior authorization.

Peru performed modestly in the WBG's 2016 LPI, ranking 69th globally in a sample of 160 countries.⁴⁶¹ Two main factors hinder the country's LPI performance as a logistics hub. First, the quality of trade and transport related infrastructure, in which it ranks 75th globally, as well as with regard to median lead-times to export and import.⁴⁶² The country's LPI ranking has deteriorated since the launch of the Index, when the country was ranked 59th globally. However, Peru

455 Ibid para 4.140.

456 Asociación para el Fomento de la Infraestructura Nacional, 'Plan de Infraestructura 2016-2025' < <http://www.lampadia.com/assets/uploads/documentos/O2ffe-afin-estudio-plan-nacional-de-infraestructura-2016-2025-documento-politica-de-financiamiento.pdf> >. 3

457 Report by the Secretariat/Peru, WT/TPR/S/289 (9 October 2013) (World Trade Organization, Trade Policy Review) < https://www.wto.org/english/tratop_e/tpr_e/s289_e.pdf > para 4.146.

458 Ibid paras 4.152, 4.154.

459 Ibid para 4.150.

460 Ibid.

461 Arvics, above n 271, 39.

462 Ibid 39.

has recovered two positions since 2014 (71th).⁴⁶³

Table 24 provides a snapshot of key backbone service metrics in Peru.

Table 24. Peru: Performance Indicators in Backbone Services, 2016

International Indicator/Ranking		Score/Place
Ease of doing business 2017 ⁴⁶⁴		54 (1 to 190)
WEF Competitiveness Index 2016-2017 ⁴⁶⁵		67 (out of 138 countries)
(Program for international student assessment) PISA Performance 2015 Assessment of 15 year old secondary student	Reading	398 (OECD 493)
	Mathematics	387 (OECD 490)
	Science	397 (OECD 496)
WEF Competitiveness Index	Higher Education and Training	80 (out of 138 countries)
WEF Human Capital Index	Overall Rank	79 (out of 130 countries)
WEF Human capital maximization threshold		66,31% (out of 100%) Maximum scored attained 85.8%
WIPO Global Innovation Index 2016		71th (out of 128 countries) 32.5 (0 to 100) Maximum score attained 66.28)
Services Trade Restrictiveness Index Overall (WB)		16,4 (0 to 100 meaning no foreign entry is allowed at the highest score)
Services Trade Restrictiveness Index 2016 (OECD) Assessment of Regulatory Measures		na
OECD FDI Regulatory Restrictiveness Index		0.077 (OECD average 0.067)
Global Findex 2014 (Global Financial Inclusion WB)	Account penetration (adults)	29 (% of adult population in the country)
WEF Competitiveness Index	Financial market development pillar	26 (out of 138 countries)
WEF Competitiveness Index	Overall infrastructure	89 (out of 138 countries)
WB Logistics Performance Index 2016 ⁴⁶⁶		69 (out of 160 countries) 2.89 score (Maximum attained 4.23 on a scale from 1(low) to 5(high)) - 58.7% out of 100%) percentage of highest performance 100%)

Source: own elaboration based on multiple indexes

463 Global Rankings 2014/ International LPI Global Ranking, The World Bank <<http://lpi.worldbank.org/international/global/2014>>.

464 Economy Rankings, World Bank (2017) <<http://www.doingbusiness.org/rankings>>.

465 Schwab above n 275.

466 Arvics, above n 271, 40.

Despite steady economic growth and social progress over the past decade, Peru still faces important challenges relating to its external competitiveness and the diversity of its export basket outside the extractive sector. . The country needs to maintain a GDP growth rate of at least 6 percent over the next decade to uphold its place as 'the fastest-growing economy in the region and the one exhibiting the best record in terms of poverty alleviation and the reduction of inequality.'⁴⁶⁷ A number of reforms are being enacted in an external environment characterized by lower commodity prices and a slowdown in export growth with a view to enhancing productivity and competitiveness and diversifying the country's export basket.⁴⁶⁸ These include: investments in education so as to achieve substantial improvements in the supply of human capital; addressing infrastructure gaps through public-private partnerships; simplification of administrative procedures, in order to promote investment and facilitate entrepreneurship; fostering financial deepening and the development of capital markets; and improving environmental sustainability.⁴⁶⁹

5. Sub-Sectoral Services Strategies in the PA Members

The PA members have a series of national programs targeting the promotion of services exports in specific sectors in place. Table 25 below summarizes the programs and services exports being promoted.

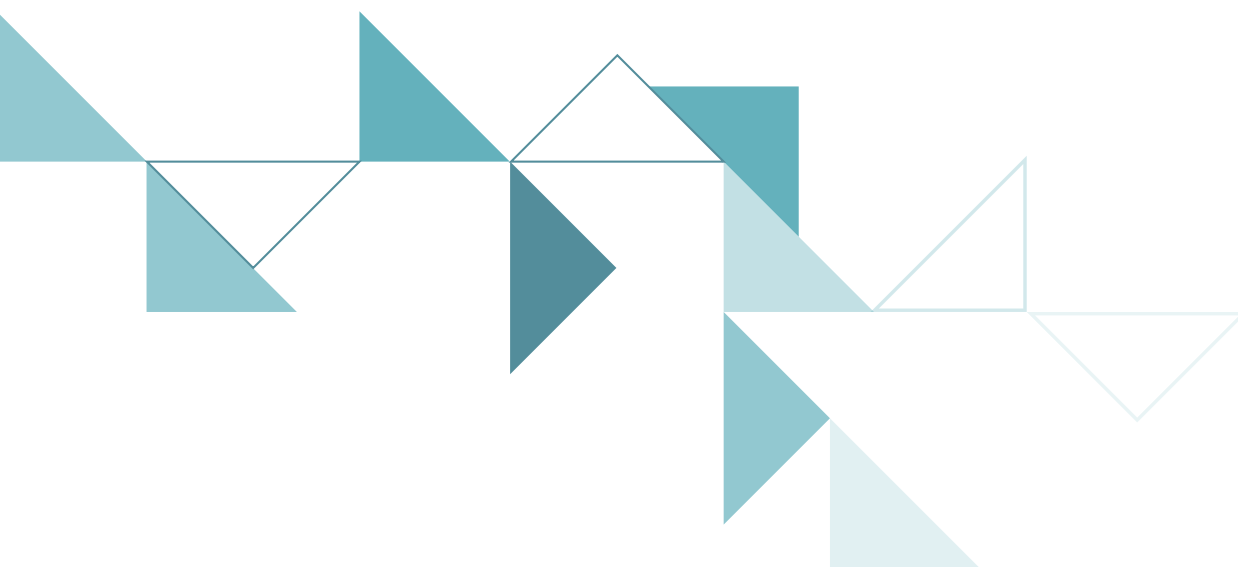


Table 25. PA Members Export Promotion Programs in Services

467 Multi-year Macroeconomic Framework, Ministry of Economy and Finances 2013-2015 (30 May 2012) < https://www.mef.gob.pe/contenidos/pol_econ/marco_macro/MMM2013_2015.pdf >8

468 (UNCTAD), Services Policy Review, above n 431, 14.

469 469 (UNCTAD), Services Policy Review, above n 431, 13.

PA member	Strategy / Program	Services Exports Promoted	
Chile	ProChile Chileservicios (electronic platform) Institutional Coordination Channel: Public-Private Technical Committee on Services Exports	ITCs	-ITO offshoring -Tailored software developments -Integrated projects and IT solutions -Telecommunications -Software testing -Software consultancy
		BPO and call centers	-
		Biotechnology	R+D in areas such as health, environment, food, mining, agriculture and energy
		Architecture	Building services for hospitals, public housing, residential housing, urban planning, education and sports facilities, interior architecture and consultancy services
		Engineering and construction	-Engineering design -Project management -Engineering more broadly
		Educational services	-Tertiary education services -Exchange and short stay programs
		Creative Industries	-Videogames, -Audiovisual services -Cinematographic services, -Production and content development for digital and printed materials.
		Other Services	-Professional Services - Consultancy and Advisory Services -Environmental Services - Services related to agriculture, mining and forestry industries -Franchising
	Tourism		
Colombia	-ProColombia -Transformative Production Program -National Strategy on Services Exports Institutional Coordination Channel: Technical Committee on Services	Engineering	-Technical advise -Engineering design -Technical worksite inspection and supervision services -Project construction -Project management -Project operation -Project structuring
		Architecture	Architectural services for commercial, residential and other types of buildings.
		Tourism	-General tourism -Wellness tourism -Nature tourism -Health tourism -Business tourism
		Software and IT	-Technology software services -Technical and integration services -Data center management -Helpdesk services
		Digital Animation and video games	-Animated contents -Interactive developments for social networks -Animated movie production
		Mobile Applications (for smartphones)	For various purposes (ie financial transactions, entertainment, marketing) and costumers (ie companies, governments)
		Audiovisual content development	Production and postproduction services for audiovisual content in films and television
		Business process Outsourcing (BPO)	-Contact Center, call center, back office, human resources
		Information technology Outsourcing (ITO)	-Cloud services, Data centers, -Software (for outsourcing)
		Knowledge Process Outsourcing (KPO)	-Telemedicine -Engineering services (outsourced) -Marketing research
	Graphic communications (GC) and editorial services	- Printing for marketing, commercial purposes, packaging or editorial. -Editorial: Production of children's books, technical books and textbooks	
Mexico	ProMexico ⁴⁷⁰	TCs and software	-IT outsourcing. -Tailored software developments. -Support services. -Software design. -Software support.
	Prosoft3.0 TechBA MexicoIT MexicoFirst	Biotechnology	-Share service center.

		Biotechnology	-Clinical trials -R+D in biotechnology -Product testing -Pharmaceutical manufacturing
		Services related to aerospace industry	Maintenance, repair, customization, engineering, design and auxiliary services
		BPO and call centers	-Contact Center
		Renewable energy	-Generation and commercializing of renewable energy.
		Pharmaceutical	-Research and development of pharmaceutical products.
		Creative Industries	-Development of audio-visual and interactive content. -Videogames -Digital postproduction -Animation
		Medical services	Medical tourism
		Tourism	Tourism services
		Maquila services	For various industries
Peru	Promperu ⁴⁷¹ Internationalization Plan	Technological solutions)	-Specialized software -Software manufacturing
		Software	For the following sectors: Financial sector telecommunications, mining, energy and oil, retail, tourism, commerce, industry and health.
		(Technological solutions)	-Casual games
		(Technological solutions)	-Advertgames
		Video games	-Games with Peruvian themes
		BPO	-Movie games -New digital formats
			Contact Centers for: -Collection services -Customer service -Telemarketing -Loyalty programs -Customer recovery -Satisfaction surveys -Back office
		Engineering and Consultancy	-Project design -Supervision of works and concession contracts -Project management, road works and ports
		Architecture	-Undertake commercial and business construction projects carried out in the country (commercial and business centers) -Development of differentiated proposals in architectural designs
		Graphic Industries	-Commercial catalogues -Editorial prints -Dictionaries -Magazines and journals
		Digital Marketing	-Packaging -Prints on demand
			-Content creation -Social networking manager -Branding -E-commerce sites -Web portals -Mobile solutions
		Franchising	-Gastronomy -Coffee shops -Clothing -Jewelry -Handicrafts -Aesthetics -Specialized services, -Photography
		Tourism	

Source: own elaboration based on multiple sources

This section has identified a number of key challenges, both regulatory and

470 Strategic Industries Supported by Promexico, Promexico (March 2016) < <http://www.gob.mx/promexico/documentos/sectores-23157>>.

471 David Eredy Muñoz, Report on Services Exports, PromPeru < <http://www.siicex.gob.pe/siicex/resources/sectoresproductivos/Reporte%20de%20las%20exportaciones%20de%20servicios%202015.pdf>>. See also PeruTradeNow, PromPeru < http://www.perutradenow.com/en/sector/exportable_services>.

structural in character, faced by PA members at the national level in regard to key backbone services. The analysis on offer confirms that PA members all confront distinctive bottlenecks holding back the optimal supply of backbone services. At the same time, it highlights a number of common challenges calling for pooled, region-wide, policy responses through deepened cooperation among relevant stakeholders. Public-private initiatives geared towards supporting service sector innovation and infrastructure development need to be at the center of national discussions on ways to boost competitiveness.⁴⁷² Adding a regional dimension to such discussions will benefit the PA's integration process.

Cooperation aimed at favoring convergent policy approaches would be particularly desirable in regard to standards of corporate governance, oversight of conglomerates and financial groups, the deployment of competition law in markets prone to high levels of market concentration, cross-border infrastructure projects, implementation of Basel III requirements in banking, the speedier development of fintech services as well as the promotion of entrepreneurship among the region's SME clusters. Greater convergence approaches in national qualification frameworks, and stepped up efforts at cross-country educational cooperation, will also benefit the integration process by enhancing the mobility of skills and ideas across the PA.

Moreover, from the above depiction of those sectors in which export promotion efforts in services concentrate, it is clear that PA export baskets and strategic service sectors share many commonalities. PA countries not only operate as lead destination markets for some of these services exports, but also increasingly compete for markets in the United States, Europe, and other parts of Latin America and, to a lesser degree, in Asia.

The 2016 edition of the A.T. Kearney Global Services Location Index positioned three of the four PA countries in the world's top 20 destinations for offshoring.⁴⁷³ In pursuing such export opportunities, PA members face two options: intensified competition for offshoring services among or regional co-operation of offshoring services among the PA. Pursuit of the latter route would require smart specialization, mapping country-specific niches where firms or service clusters in PA members possess clear comparative advantages, and the development of regional innovation policies aimed at nurturing ecosystems able to develop integrated (i.e. region-wide) offers in services.

Furthermore, the growing markets of FinTech and RegTech offer underexplored opportunities for technology-based companies in the PA to partner in creating solutions across the region.

472 Schwab, above n 275, 22.

473 ATKearney, 2016 AT Kearney Global Services Location Index/ On the Eve of Disruption (2016) < <https://www.atkearney.com/strategic-it/global-services-location-index>>. 4. Peru was ranked as 47th. The index gauges three fundamentals: financial attractiveness, people skills and availability and business environment. Mexico was ranked the highest in eight place closely followed by Chile in ninth place and Colombia ranked twentieth. The latter made an impressive jump moving 23 positions up from the 2014 edition of the index.

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