CHINESE INVESTMENTS IN COLOMBIA:

Revision of cooperation agreements between Colombia and China

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Introduction

Colombia's trade policy has for many years favored attracting foreign investment. This responds to a tendency which, among developing countries, began in the Eighties to open their markets. In Colombia this process began in the Nineties. The tendency made foreign investment a fundamental asset in these countries' growth process, as it established the notion that foreign investment could be used to overcome existing breaches in relation to resources, the transfer of technology and growth potential (Tienhaara, 2009).

The significant capital flow represented by direct foreign investment around the world not only impacts development processes and economic growth but it also generates new challenges in relation to environmental protections and the strengthening of sustainable development. Economic development has palpable effects on our environment. Climatic change, desertification and the loss of biodiversity are current and real phenomena, produced by human beings, which signify serious impacts on the guarantee of human rights. Our generation must respond.

The World Summit on Sustainable Development—held in 2012 in Johannesburg, South Africa— placed major attention on the new dynamics confronted by the world with the mobilization of capital produced by direct foreign investment. In paragraph 14 of the Political Declaration that came from the summit, the participant States declared that the growing waves of investment flows in the world, a product of globalization, have added new challenges for our environment's conservation, given that integrated markets, movement of capital and an increase in investment amounts present new challenges and opportunities for the strengthening of sustainable development (UN, 2002).

Traditionally in Colombia, foreign investment has been concentrated in natural resource extraction industries, oil being the most notable case. Since 1991, the country's new economic[1] policy, which advocated for an opening and internationalization, established more flexible and attractive regulatory frameworks for foreign investors, who little by little increased their participation in the national economy (Garay, 1998).

During President Juan Manuel Santos' first term, when the concept of the "Mining-Energy Engine" (Locomotora Minero-Energética) was introduced as an economic motor, there was a significant promotion of the country as the ideal destination for foreign investment, with favorable conditions for investors.

These conditions meant that in 2014 Colombia's direct foreign investment reached USD 16,054,000,000, of which 40% was concentrated in the mining and oil industry, while the remaining 60% was distributed among other economic sectors (Procolombia, 2014).

In this context, Colombia's increasing economic relationship with China raises many concerns for civil society: what parameters are followed, what norms regulate the relationship, what are the interests of the Asian giant in Colombia; how can we access this information; and how do these investments translate into concrete projects that can satisfy our development needs when they can have negative social and environmental impacts.

To contribute to the search for answers to some of these concerns, this report, developed with support from the Charles Stewart Mott Foundation, looks to review the principal bilateral agreements in force between Colombia and China, offer a preliminary analysis on how the mentioned topics and some specific projects promoted by these legal instruments came to be included, and offer some conclusions in relation to the direction of Chinese investment in Colombia.

The Relationship between China and Colombia

Colombia established diplomatic relations with the People's Republic of China on February 7th, 1980, adhering to the principle of the "One-China policy". That is to say, Colombia recognizes the Beijing Government as the sole and legitimate legal Government of the People's Republic of China.

Since the establishment of diplomatic relations, both countries have signed bilateral treaties and cooperation agreements in different areas. These treaties have served as the foundation for China's current status as Colombia's second largest trade partner,[3] after the United States.

Within China's interests in Latin America, Colombia represents a major realm of opportunities with many connections to be strengthened and, above all, favorable circumstances for Chinese investors to come to the country: a need for infrastructure development, a wealth of natural resources, an improved security situation and the current peace process which the world is watching with high expectations.

Although China has consolidated itself as Colombia's second most important trade partner, if one looks at the economic balance from China's perspective, the trade volume is low. In a column published in the newspaper El Tiempo as a prelude to his Latin American tour, Chinese Prime Minister Li Keqiang recognized that trade between Colombia and China only represents 6% of the total trade between China and Latin America and that there "is still much to be explored" (Keqiang, 2015).

[3] In 2014, bilateral trade between both countries was estimated at 17 billion dollars (Presidency of the Republic of Colombia, 2014).

Legal Framework of the Colombia-China Relationship

Within the legal framework of the recent Colombia-China relationship three important moments should be highlighted for our analysis. A first moment is in 2008 when the Bilateral Investment Treaty was signed between the two countries. The treaty has the regulatory framework for each country's reception of investors from both nations.

A second moment is the round of agreements signed in 2012 during the tour made by Colombian President Juan Manuel Santos through Asia. During his stop in Beijing, Santos signed nine cooperation agreements with China. An Oil Cooperation Agreement was added to this phase, signed by Ecopetrol in October of 2012, during the Fifth Oil and Gas Investment Conference held in Cartagena.

The last moment relative to the legal framework subject to analysis in this report is Chinese Prime Minister Li Keqiang's recent tour visiting four Latin American countries. The tour included Colombia, at which time another nine cooperation agreements and three Exchanges of Letters were signed.

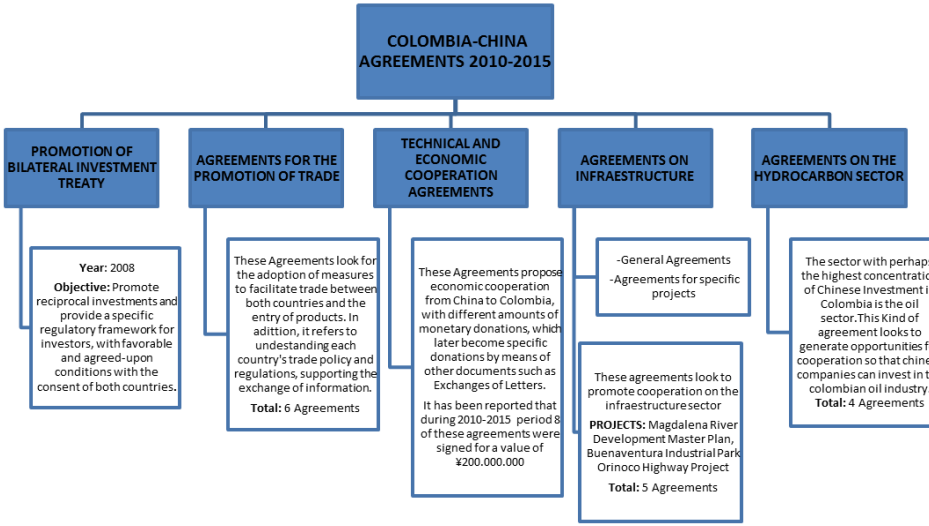

Figure 1. Colombia-China agreements, 2010-2015. Developed by AAS.

The Promotion of Bilateral Investment Treaties

In 2008 Colombia signed a Promotion of Bilateral Investment Treaty with the People's Republic of China. This kind of treaty is an agreement regulated by international law as ratified by both countries, with the objective of promoting reciprocal investments and providing a specific regulatory framework for their investors, with favorable and agreed-upon conditions with the consent of both States.

Even though the clauses in this type of agreement are agreed upon by the countries that sign them, they generally respond to a basic structure pre-established by international investment law and do not vary much from one treaty to another. This basic structure incorporates clauses on the nondiscrimination of foreigners, national treatment, minimum standards for just and equal treatment of investors, conditions the State's authority to expropriate, compensation guarantees in the event of expropriation and mechanisms for the resolution of disputes through diverse arbitration mechanisms.

Perhaps one of the most interesting aspects of this type of agreement is the provision conditioning the State's regulatory capacity: in certain cases addressed by Arbitration Tribunals, a State measure for the protection of health or the environment can be considered an affectation to the investor's economic yields or can even be described as

indirect expropriation, which makes the State responsible on an international level and obligates it to compensate the investor (Tienhaara, 2009).

This has led many experts to describe the investment system as highly unjust, especially for developing countries, which tend to sign more of this kind of agreement. Countries can end up in a situation where their capacity for self-determination is in jeopardy, since the implementation of environmental protection measures can adversely affect an investor covered by this kind of treaty. In addition, for these countries—due to their low response capacity in the case of a controversy with an investor—it is more expensive and difficult to propose a defense strategy. This is an issue that merits more detailed analysis, and acquires even greater importance considering that Colombia has signed 17 such treaties, including the treaty with China.[4]

The Bilateral Investment Treaty (BIT) between Colombia and China was signed on November 22nd, 2008 and took effect on July 2nd, 2012. The treaty responds to the regular structure internationally for this kind of agreement, with standards of "just and equitable treatment" and obligations of "full protection and security" for the investor, in addition to "nondiscrimination" and "national treatment" clauses which obligate the State receiving the foreign investment to grant the investor the same treatment as a national investor would be granted. In addition, in relation to dispute settlement, the treaty establishes that in the face of a dispute, it will be brought before an arbitration panel in which both the State and the investor has the power to choose the judges.

The Colombia-China BIT establishes that investment be understood as all types of assets of an economic character that have been invested by a Contracting Party in the territory of another Contracting Party such as: property rights on movable and immovable assets, stocks, money claims or any other provision, intellectual property rights, the concessions granted by law or administrative act or by virtue of a contract in

[4]In agreement with information from the United Nations Conference on Trade and Development (UNCTAD), Colombia has signed 17 bilateral investment treaties (BIT), of which 2 have concluded and 10 have been signed but have not taken effect (UNCTAD, 2013).

accordance with the law, including concessions on natural resources, and all foreign loans reaching more than three years of maturity, among others as determined by the law of each country. This implies that the treaty covers an ample economic field and is applied to a multiplicity of financial operations.

By means of this international agreement, both Colombia and China are committed to promoting within their territories the investments made by the nationals of the other contracting party, admitting them in accordance to the legislation of each country and providing assistance and ease of entry and obtainment of work permits. Investment promotion implies that current international standards be fulfilled, among them the prohibition of discriminatory measures carried out by a country in relation to investments, the obligation to give just and equitable treatment to the investors of the other contracting party and the obligation to grant full protection and security.

In addition, clauses establish the prohibition of the country receiving investments, in this case Colombia, to implement measures that can be considered an expropriation or nationalization of investments made by Chinese parties.

It would be interesting to see what effects the Colombia-China BIT, effective since 2012, have had on the country's investment flows. Based on statistics from Procolombia (2014) in its Direct Foreign Investment Report, which consolidates information from the 2012-2014 period, we see that China currently occupies the 34th place among countries that

invest in Colombia and its total investments increased to only 0.2%, a number that is still very low.

According to information from the Chinese Colombian Chamber of Investment and Commerce,[5] in spite of the Asian power's major interest in our country, its investment has not been consolidated in Colombia as China has not obtained a concession for a major infrastructure project as it has in other Latin America countries.[6]

However, during the past few years Chinese companies have participated in public bids in Colombia and until now they have not won contract awards. According to the Chinese Colombian Chamber of Investment and Trade, this could be the result of problems in understanding Colombian legislation on subjects such as the necessary documentation to present a bid, tax and customs issues, among others.

Nevertheless, recently, in the concession process for 4G highways in Colombia, the consortium Autopistas Urabá of which the Chinese company Harbour Engineering Company has a 30% share—won the concession bid for the Autopista Mar 2 Project, which will connect the Antioquean municipalities of Cañas Gordas, Uramita, Mutatá and El Tigre. The project will be executed under the modality of a Public-Private

[5]Interview with Jaime Suarez, Commercial and Projects coordinator, September 7th, 2015.
[6]Among the major Latin American infrastructure projects with concessions granted to Chinese companies are the Channel of Nicaragua and the construction of the Atlantic Pacific Train that will unite Brazil with Peru

Partnership with a 1.31 trillion peso investment and include construction along 245 kilometers. This project is the first major infrastructure project with Chinese participation and opens the door for increased development of investment in infrastructure in Colombia (El Tiempo, September 2015).

Infrastructure will be analyzed in greater depth in the section on the agreements that have been signed on this subject.

Table 1. Direct foreign investment flows by country in the 2012-2014 period, in millions of USD

Position*	Country	2012	2013	2014	% of participation in 2014
1	United States	2.476	2.861	2.213	13,8%
2	England	1.357	1.416	1.080	6,7%
3	Panama	2.395	2.055	2.453	15,2%
4	Spain	628	951	2.155	13,4%
5	Bermuda	367	846	1.070	6,7%
6	Anguilla	598	856	-173	-1,1%
7	Switzerland	698	2.084	2.814	17,5%
8	Chile	3.150	319	456	2,8%
9	Mexico	849	565	618	3,8%
34	China	35	7	34	0,2%

* Position according to accumulated investment flows between 2000 and 2014. Taken from Procolombia (2014).

Rounds of Agreements between Colombia and China in 2012 and 2015

As was previously mentioned, the other two moments of the Colombia-China relationship which will be a focus of this analysis correspond to the rounds of agreements carried out in 2012 and 2015.

The first round of agreements took place in the context of Juan Manuel Santos' Asian tour. The visit, which looked to consolidate Colombia's position in the Asia-Pacific region, produced results with nine cooperation agreements with China, in addition to an agreement with Singapore and Colombian's declaration of interest to join the Asia-Pacific Economic Cooperation Forum.

The second round of agreements closed in May of 2015, with Prime Minister Li Keqiang's visit to Brazil, Peru, Chile and Colombia. While in Bogotá the Prime Minister met with President Santos and nine additional cooperation agreements were signed as well as three Exchanges of Letters on diverse issues. These agreements are reflected by diverse economic cooperation agreements signed by both countries at different times. Between 2010 and 2015 seven additional agreements have been registered, in addition to one signed in 2012 and another signed in 2015 (see table 2).

As part of this research, the texts of the agreements signed in the two rounds were collected and recorded. Of the 18 agreements signed between 2012 and 2015, we were able to access 16 of the texts. Most of them were obtained by means of freedom of information requests as State entities do not openly publish this information on their web pages. Regarding the two missing agreements, we were informed that they have a confidentiality clause which prevents the Colombian Government from sharing the text.

Based on the collected texts and information known about the inaccessible texts, the diverse agreements were grouped in certain categories which allow for a clearer overview of how the China-Colombia relationship has developed, in addition to the legal framework created for this purpose. Five thematic categories on the bi-national agreements arose, which respond to the diverse sectors where cooperation will take place between the States.

Table 2. List of cooperation agreements signed between Colombia and the People's Republic of China (PRC), between 2010 and 2015 thus far

Agreement	Date	Value (¥)	Value (USD)
1. Economic and Technical Cooperation Agreement between Colombia and the PRC	19-nov-10	10.000.000	62.103.700
2. Economic and Technical Cooperation Agreement between Colombia and the PRC	28-dec-10	10.000.000	62.103.700
3. Economic and Technical Cooperation Agreement between Colombia and the PRC	26-dec-11	20.000.000	124.207.400
4. Economic and Technical Cooperation Agreement between Colombia and the PRC	23-apr-12	20.000.000	124.207.400
5. Economic and Technical Cooperation Agreement between Colombia and the PRC	09-may-12	20.000.000	124.207.400
6. Economic and Technical Cooperation Agreement between Colombia and the PRC	01-oct-12	20.000.000	124.207.400
7. Economic and Technical Cooperation Agreement between Colombia and the PRC	26-nov-13	50.000.000	310.518.500
9. Economic and Technical Cooperation Agreement between Colombia and the PRC (in this agreement it is specifically established that the cooperation is earmarked for post conflict)	21-may-15	50.000.000	310.518.500

Developed by AAS.

Classification of Colombia-China Agreements

1. Technical and Economic Cooperation Agreements

This type of agreement proposes economic cooperation from China to Colombia, with different amounts of monetary donations, which later become specific donations by means of other documents such as Exchanges of Letters. In table 2 all of the agreements of this type signed in the 2010-2015 period can be seen. The Cooperation Agreement signed in May of 2015 stands out especially, as it has a specific earmark for post conflict related issues in Colombia.

According to the information provided by Colombia's Presidential Agency for International Cooperation (APC in Spanish), these agreements have been developed through multiple donations such as: training on hydraulic technology, the donation of cars for public entities, the donation of computers for the National Tax and Customs Office (DIAN in Spanish), the donation of two aircrafts to the Air Force, the donation of agricultural machinery and medical equipment for the Ministries of Agriculture and Health, a donation for the implementation of the Magdalena River Development Master Plan (Plan Maestro de Aprovechamiento del Río Magdalena), among others.

2. Education or cultural agreements

The Ministries of Culture and Education from each country participate in these agreements. They propose joint cooperation for cultural issues, theft prevention for cultural goods, education, sports, conservation of cultural heritage, etc. The agreements of this type are:

· **Agreement in relation to Theft Prevention, Clandestine Excavation and Illicit Import and Export of Cultural Goods:** signed on May 9th, 2012 between Colombia's Ministry of Culture and China's State Administration of Cultural Heritage.

· **Program for Cultural Exchange between the Republic of Colombia and the People's Republic of China for 2015 to 2018:** signed in 2015 between Colombia and China's Ministries of Culture.

· **Education Work Plan between the Republic of Colombia's National Ministry of Education and the People's Republic of China's Ministry of Education for 2015 to 2018:** signed in 2015.

3. Agreements for trade promotion

These agreements look for the adoption of measures to facilitate trade between both countries and the entry of products. In addition, it refers to understanding each country's trade policy and regulations, supporting the exchange of information. A 2012 Memorandum of Understanding to carry out a feasibility study for a Colombia-China FTA stands out. Among the agreements of this type are the following:

· **Memorandum of Understanding on Agricultural Cooperation:** Signed May 9th, 2012 between Colombia's Ministry of Agriculture and Rural Development and China's Ministry of Agriculture to strengthen cooperation and trade in agriculture, fishing, livestock and rural development. The activities contemplated in the memorandum can be consulted in table 3.

Table 3. Activities anticipated by the Memorandum of Understanding on Agricultural Cooperation, 2012

Technical cooperation and exchange of policies for the trade of agricultural products such as meat and vegetables
Strengthening small scale fish producers
Technology transfer on farming techniques and post harvest management
Capacity building of small scale producers of fruits and vegetables for food processing
Implementation of irrigation techniques for small scale agriculture
Technology transfer to the rice sector
Analysis of the success of coffee cooperatives in Colombia
Exchange on trade regulations and policies

·**Cooperation Agreement on Sanitary and Plant-health Measures:** signed May 9th, 2012 between Colombia's Ministry of Agriculture and Rural Development and the People's Republic of China's General Administration of Supervision on Quality Inspection and Quarantine regarding inspection and quarantine measures for access to foods and agricultural products between both countries.

The agreement's objective is to understand each country's regulations for food importation through the implementation of consultations and cooperation activities related to inspection and quarantine for access to

foods and agricultural products, exchanging experiences in the area of plant and animal health and understanding the technical-administrative requirements of each part for food imports.

·**Memorandum of Understanding to carry out a Joint Study regarding the Feasibility of a FTA between Colombia and China:** Signed May 9th, 2012 between Colombia's Ministry of Trade, Industry and Tourism and China's Ministry of Trade. In this agreement the parties committed themselves to adopting measures to increase cooperation and economic and commercial exchange between countries. For that reason a joint investigation group was created to explore the feasibility of establishing a FTA between Colombia and China.

In accordance with information published by the press (El Universo, 2015), as of last July, after the ex-president of the Colombian Congress, José David Name, visited Beijing to meet with his Chinese counterpart Zhang Dejiang and representatives of China's Ministry of Trade, negotiations accelerated for a Free Trade Agreement.

During a press conference held by the Colombian Embassy in Beijing, Name expressed: "We have made our position clear. Colombia wants a FTA with China, but it wants an agreement where both countries win. Our position is very clear regarding the framework and royalties, and we want it to be established that China invests in Colombia's agricultural technology. That is what we need most". According to the senator, the process of signing the treaty will take only months, not years, and China is very interested in the transference of energy and developing renewable energy.

The Colombian government hopes that new advances on trade matters are "sealed" by the Colombian Ministers of Culture and Mining and Energy during the next visit to China. According to information in the press, they plan to travel to China before the end of 2015. Given this context, it is important that civil society follow this process carefully.

·**Memorandum of Understanding to Strengthen Investment Cooperation:** Signed between Colombia's Ministry of Trade, Industry and Tourism and the People's Republic of China's Ministry of Trade in May of 2015. This memorandum was signed as part of the implementation of the 1985 Cooperation Agreement which created the Mixed Commission on Economy and Trade, and looks to promote an exchange of information regarding investment legislation, policies and opportunities to help investors from both countries.

·**Memorandum of Understanding to Improve Cooperation in Industrial Capacities:** Signed between Colombia's Ministry of Trade, Industry and Tourism and the People's Republic of China's National Development and Reform Commission in May of 2015. This memorandum specifically addresses issues of manufacture and technological parks. It looks to support and create opportunities for companies and financial institutions from both countries, as well as facilitate investment in industrial sectors. Thus, it sets out to identify opportunities to promote investment flow in two specific areas: a) manufacture and b) industrial and technological parks.

This will encourage companies to invest in manufacture sectors such as power generation equipment, metal industries, construction equipment, oil equipment, telecommunications equipment, technology and household appliances products. In addition, it looks to establish a cooperation platform that would convene Government bodies, financial institutions, companies and research institutions to increase industrial capacity.

·**Action Plan regarding the Improvement of Agricultural Cooperation:** Signed in May of 2015 between Colombia's Ministry of Agriculture and Rural Development and the People's Republic of China's Ministry of Agriculture.

By means of this agreement— and the Joint Committee on Chinese-Colombian Agriculture—the parties agreed to materialize the Beijing Declaration of the Latin American-Chinese Forum of Agricultural Ministers through an emphasis in exchange and cooperation in high-priority areas, as well as by promoting investment and bilateral agricultural trade. In addition, they agreed to reinforce policy and regulation exchange and to strengthen exchanges and cooperation on science and agricultural technology.

4. Agreements on infrastructure

these agreements look to promote cooperation in the infrastructure sector. In Latin America there are several major infrastructure projects which are financed and constructed by institutions and companies of Chinese origin. In Colombia it is known that there is interest from many Chinese companies to come into the country; several already have offices and representation in Colombia. One example is Capital Airport Holding which, as of 2008, manages the Medellín, Rionegro, Carepa, Montería, Corozal and Quibdó airports, acting as the Center-North Airport Operating Company.

In addition, the presence of Hydrochina Colombia SAS, China Harbour Engineering Company, China Railway Company, Sinohydro Group Ltda., China Gezhouba Group Company, etc., have been registered in the country. These are companies that have had representation in Colombia

for some time and have participated in diverse public bids, of which only China Harbour Engineering Company recently won a contract award.

In accordance with sources from the Colombian-Chinese Chamber of Commerce and Investment—regardless of major interest from Chinese companies regarding concessions for an infrastructure project and interest from the China Development Bank to provide financing, investment in this sector has not been consolidated, unlike in other Latin American countries where intergovernmental agreements were signed which directly hand concessions for projects over to Chinese companies. In Colombia the public bidding process has represented major difficulties for the Chinese who have yet to understand Colombian legislation and have had problems with documents, taxes, customs and, even, with the labor legislation.

In relation to the infrastructure agreements signed between Colombia and China, we found a subdivision between those agreements that talk about the infrastructure sector in general terms and those that mention specific projects to be implemented in Colombia.

4.1 General agreements on infrastructure

in 2012 two agreements were signed to promote cooperation between Colombia and China in relation to infrastructure:

·**Memorandum of Understanding to Strengthen Investment Cooperation on Infrastructure Construction:** Signed by Colombia's Ministry of Transportation and the People's Republic of China's Ministry of Trade in May of 2015.

The aim of this memorandum is to support Chinese and Colombian public and private entities in the infrastructure sector (design, construction, installation, etc.), and the production of materials and construction machinery. In addition, it looks to promote that Chinese and Colombian public or private entities carry out internal cooperation agreements to implement specific projects.

·**Memorandum of Understanding on Infrastructure Cooperation:** signed between the National Development Finance Agency (FDN or Financiera de Desarrollo Nacional in Spanish) and the China Development Bank (CDB) in May of 2015.

The memorandum's objective is to expand investment and financing cooperation for infrastructure projects in Colombia and China. It specifically refers to productive infrastructure such as highways, power, oil and gas, as well as social infrastructure: hospitals, schools and other priority projects.

Table 4. Description of activities considered by the Memorandum of Understanding on Infrastructure Cooperation, signed between the FDC, FDN, and CDB in May of 2015.

Activity	Description
Identify opportunities	Identify investment and cooperation opportunities in which the parties can participate individual or jointly.
Public-private partnerships (PPP)	It is agreed to collaborate in public-private partnerships that Chinese companies invest in and finance through syndicated or bilateral loans from the CDB with a credit guarantee from the FDN.
Support for Chinese companies	Look for Chinese companies interested in investing in the construction sector in Colombia or in public-private partnerships and support them.
Exchange of information	The CDB will provide information regarding its international credit policies and new policies in favor of Colombia and Latin America. Whereas the FDN will share information on infrastructure projects, project opportunities encouraged by the Colombian Government, and the environmental regulatory framework and foreign investments.
Exchange of experiences	The CDB will share its experiences relating to support for the implementation of infrastructure in China, including business models, credit and financing structures, as well as the selection processes for the projects. On the other hand, the FDN will share information about the model for public-private partnership projects in Colombia, case studies and their experience in relation to projects with other national or international banks.
Private funds	It is agreed to discuss the possibility of establishing private funds for financing infrastructure and the possibilities of the CDB investing in them.

Developed by AAS.

4.2 Agreements on specific infrastructure projects

this type of agreement proposes the implementation of specific infrastructure projects in Colombia. The first agreement of this class within those contemplated in the 2012-2015 rounds was the Memorandum of Understanding between Cormagdalena and Hydrochina, signed in March of 2012.[7] This memorandum was signed in the implementation of two previous cooperation agreements: the first was signed in 2009 and the second in 2011.

The Agreement's aim is to develop the Plan Maestro de Aprovechamiento del Río Magdalena, which was turned in to the Colombian Government in 2014 by the Chinese company Hydrochina. In accordance with information available on Cormagdalena's website[8], the Plan Maestro for the river will cost USD 6,428,750, of which USD 1,859,000 was contributed by Hydrochina, USD 3,859,000 directly from the Chinese Government and the rest from Cormagdalena.

This plan, which contemplates multiple projects with major impacts along the entire riverbank, generates multiple doubts regarding China's participation in its elaboration. These questions have yet to be clarified by the authorities. Although the plan was elaborated by the company Hydrochina, when a bid was opened for the first projects corresponding to the recovery of the river's navigability, it was not awarded to Chinese investors. Thus it is important to closely watch what happens with the development of the Master Plan and the following projects that are opened for bidding.

In 2012 the Cooperation Agreement for the Central Pipeline (Oleoducto Central) Project was also signed. The pipeline seeks to connect the center of the country with the pacific coast. This agreement was signed May 9th, 2012 between Ecopetrol, Sinochem and the China Development Bank.

7 We have not seen the text for this memorandum as the Ministry Foreign Affairs responded that the document is archived at Cormagdalena, which has not responded to the official request for information that was filed.
8 See: http://www.cormagdalena.com.co/

Finally, with the Memorandum of Understanding for the Joint Development of Projects of the Buenaventura Industrial Park and the Orinoco Highway Project—signed in May of 2015 between the Chinese Development and Reform Commission, and the Ministry of Transportation, the National Planning Department (DNP, in Spanish) and the National Infrastructure Agency (ANI, in Spanish) — two important specific projects were established with financing from the China Development Bank:

·**Buenaventura Integrated Economic Activities (Complejo de Actividades Económicas de Buenaventura):** The agreement references the implementation of an integral industrial, commercial, logistic and social development model, to attract public or private investment and to improve the quality of foreign trade services. The National Planning Department (DNP) and the Chinese Development and Reform Commission (CDRC) were in charge of studying the design, structure and operational conditions of the Buenaventura Complex.

·**Implementation of productive projects in the Orinoco and Altillanura (High Plains) region, accompanied by infrastructure projects.** One of the proposed projects in this region is the Puente Arimena-Puerto Carreño highway along with establishing agricultural projects with an investment of approximately 3 billion dollars. The National Infrastructure Agency (ANI) and the Chinese Development and Reform Commission (CDRC) are named as the leading organizations to explore the project's viability.

5 Agreements on the hydrocarbon sector

The sector with perhaps the greatest concentration of Chinese investment in Colombia is the oil sector. The companies Chinese National Petroleum Company, Sinochem, through Emerald Energy, and Sinopec, through New Granada Energy, have concessions in the country and are currently in the processes of oil exploration and extraction. In 2012 the Colombian Government signed four cooperation agreements related to the hydrocarbon sector:

A. Cooperation Agreement in relation to the Central Pipeline (Oleoducto Central) Project which looks to connect the center of the country with the pacific coast and was signed between Ecopetrol, Sinochem and the China Development Bank for a three year period. By means of this agreement, Ecopetrol made a commitment to finish the project's prefeasibility study and, based on the study, decide on the pipeline's contract model. Ecopetrol made the commitment to non-exclusively invite Sinochem, through its affiliate Emerald Energy, to participate in the construction project. The China Development Bank showed interest in granting resources to construct the project, supporting an eventual cooperation agreement between Sinochem and Ecopetrol.

Currently the project's concession was granted to the company Oleoducto of Pacific S.A.S which has shareholders from companies such as Talisman, Vitol, ISA, Zenith, Enbridge and TGI, without information regarding investments of Chinese origin (El País, 2015).

B. **Cooperation Agreement between Sinochem and Ecopetrol.** By means of this three year agreement, the two companies decided to carry out joint activities to strengthen their commercial relationships with the objective of looking for new opportunities in hydrocarbon exploration and extraction in Colombia and other countries. Actions were established to identify potential synergies between the companies, to share information on hydrocarbon exploration and extraction opportunities and to evaluate the legal, technical and environmental framework for investment possibilities.

C. **Memorandum for the Promotion of Cooperation in the Mining and Energy Sector.** The last agreement was signed between the Ministry of Mines and Energy and the China Development Bank. We have not had access to this agreement's text given that the Ministry of Mines indicated that it has a confidentiality clause.

D. **Cooperation Agreement between Ecopetrol and China National Petroleum Company.** The agreement was signed in Cartagena on October 18th, 2012 during the V Conference on Investments in Oil and Gas in Colombia. By means of the agreement the companies made the commitment to analyze opportunities in hydrocarbon exploration and extraction in Colombia and other countries to identify joint business opportunities. In addition, they agreed to identify areas between the two companies with the potential to create synergies among them and structure strategic cooperation lines.

Comparative Analysis between the Agreement Rounds 2012 and 2015

Comparing the agreements signed in the 2012 round and those signed in 2015, it can be observed that in 2012 the cooperation priority, which concentrated the greatest number of agreements, was the hydrocarbon sector (three agreements plus another for the Pacific Pipeline (Oleoducto del Pacífico in Spanish) construction which is connected to the oil and infrastructure sectors). Meanwhile, in the 2015 round, the priority was infrastructure agreements (two general agreements plus one for specific projects) and hydrocarbons were not mentioned - which has already reached a remarkable development with the presence of several Chinese hydrocarbon extraction and oil service companies in Colombia.

It was observed that agreements with an impact on trade promotion, or signed with the Ministry of Trade or the Ministry of Agriculture, were consistent in 2012 and 2015 with 3 agreements signed in both years. In addition, the highest number of signed agreements corresponds to the so called Technical and Economic Cooperation Agreements, nine of which have been signed since 2010, totaling approximately ¥ 200,000,000, equal to USD 1,242,074,000.

From the legislative framework which is valid between the two countries it can be concluded that China's greatest interests in Colombia are infrastructure and the oil industry, with increasing investments, maintained by significant support from the China Development Bank to finance infrastructure projects in the country.

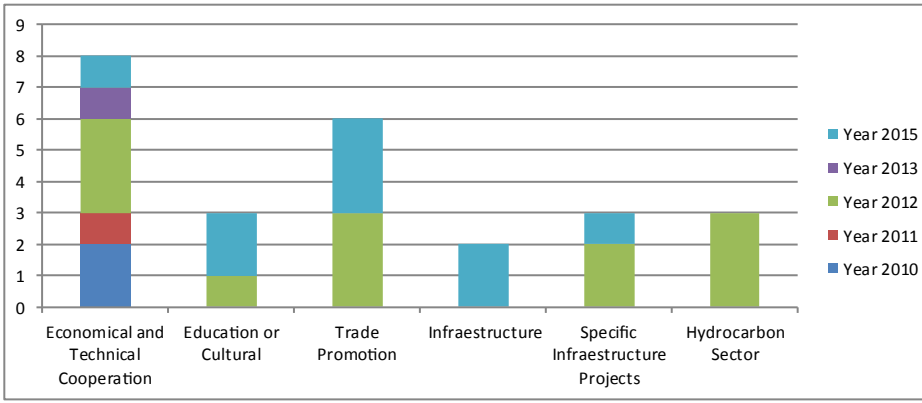

Figure 2. China-Colombia agreements by year and sector. Developed by AAS.

Conclusions

• In addition to multiple cooperation agreements on diverse issues, China and Colombia have a growing commercial relationship which has been supported by the signing of a Bilateral Investment Treaty between the two countries.

• Even though China is Colombia's second trade partner, Colombia represents only 6% of China's trade with Latin America, which is why the Chinese Government looks to increase its economic ties and investment possibilities for its companies. Thus, cooperation agreements become an important tool to solidify the economic relationship and to open opportunities for specific projects, as proposed in the Agreement for Buenaventura's Economic Complex and the productive projects and infrastructure in the Orinoco.

• According to statistics from Procolombia's report on direct foreign investment, China currently holds the 34th spot among countries that invest in Colombia and its investment total only increased by 0.2%, a number that is still very low. It would be interesting to carry out a more in-depth analysis which could establish the effects of the Colombia-China BIT on the trade relationship between these two countries.

• Until now, the sector where there has been the greatest concentration of interest from Chinese investment in Colombia is oil, with multiple Chinese oil companies already operating oilfields and the infrastructure sector in the country.

• Over the last several months the subject of a Free Trade Agreement with China has taken on major relevance. The visit from the President of Colombia's Congress to Beijing last July, as well as the visit from China's Prime Minister to Bogota in May, shows clear signal that both countries are interested in advancing with the process. Nevertheless, given the manner under which these kinds of treaty negotiations are generally carried out, major challenges arise in civil society's ability to exercise its rights to access to information and citizen participation.

• Given the growth of this kind of investment in Colombia and high probability for continued increase, it is important that Colombian civil society is informed and allowed access to documentation related to these kinds of projects. It is crucial that designated governmental bodies carry out strict follow-up regarding fulfillment of environmental and social obligations. Colombia's Access to Information Law consecrates new standards which obligate state entities to publish certain kinds of information proactively; nevertheless, there is still a lot of information on Chinese investments in Colombia which we do not have access to, making it difficult to study.

• It is important to recognize that both China and Colombia see important mutual opportunities in relation to investment. China however, as an economic and political power, would have a greater level of influence in Colombia. This is why Colombian civil society must be very aware and closely follow the development of this relationship.

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1. Colombia- China Bilateral Investment Promotion Treaty 2008.

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3. Cooperation Agreement in relation to the Central Pipeline (Oleoducto Central) Project between Ecopetrol, Sinochem and the China Development Bank. 2012.

4. Cooperation Agreement between Sinochem and Ecopetrol. 2012.

5. Agreement in relation to Theft Prevention, Clandestine Excavation and Illicit Import and Export of Cultural Goods between Colombia's Ministry of Culture and China's State Administration of Cultural Heritage. 2012.

6. Economic and Technical Cooperation Agreement between Colombia and the People's Republic of China. 2012.

7. Memorandum of Understanding on Agricultural Cooperation between Colombia's Ministry of Agriculture and Rural Development and China's Ministry of Agriculture. 2012.

8. Memorandum of Understanding to carry out a Joint Study regarding the Feasibility of a FTA between Colombia and China between Colombia's Ministry of Trade, Industry and Tourism and China's Ministry of Trade. 2012.

9. Program for Cultural Exchange between the Republic of Colombia and the People's Republic of China for 2015 to 2018 between Colombia and China's Ministries of Culture. 2012.

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11. Economic and Technical Cooperation Agreement between Colombia and the People's Republic of China. 2015.

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13. Memorandum of Understanding between Colombia's Ministry of Transportation and the People's Republic of China's Ministry of Trade to Strengthen Investment Cooperation on Infrastructure Construction. 2015.

14. Memorandum of Understanding on Infrastructure Cooperation between the National Development Finance Agency (FDN or Financiera de Desarrollo Nacional, in Spanish) and the Chinese Development Bank (CDB). 2015.

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