

MIB THESIS

Title:

**FINANCIAL LIBERALIZATION IN COLOMBIA AND ITS EFFECT IN THE CAPACITY OF THE
COUNTRY TO ENFORCE ANTI MONEY LAUNDERING POLICIES**

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Introduction

In early 2015, the Swiss branch of the International Bank HSBC was ordered to pay a compensation of 40 million Swiss francs to the Geneva authorities due to “organizational deficiencies which allowed money laundering to take place in the bank’s Swiss subsidiary” (Garside, 2015). Authorities in charge of the investigation decided not to prosecute HSBC or publish the results of their investigation that started after one of the biggest scandals involving the topics of money laundering, tax evasion, tax avoidance and bank secrecy. This started in 2008 with the seizing by French authorities of stolen information regarding thousands of HSBC accounts in Switzerland.

In 2012, the same bank agreed to pay a fine of \$1.9 billion to the U.S authorities for allowing its system to be used to launder drug money generated by the Sinaloa Cartel of Mexico and the Norte del Valle Cartel of Colombia. More than \$881 million were through the bank’s branches to the point that in 2008 the Mexican branch of the bank was considered by drug lords as “the place to launder money” (Viswanatha & Wolf, 2012). Besides the exemplary fine, the bank’s U.S officials did not face justice prosecution besides the reputational blow suffered by the bank.

Some years before, in 2010, another big bank from the U.S was accused of money laundering: Wachovia Bank was found responsible for “looking the other way” when Mexican drug cartels were laundering \$380 billion product of trafficking. The bank was fined

\$160 million and was not prosecuted either (Global Research, 2012) probably making profit after paying the fine.

These three cases have been some of the major scandals regarding money laundering and important international banks and the motivational start point for this research. When looking at the press releases regarding the investigations against these banks and other money laundering scandals the topics that can be seen repeatedly are corruption, bank secrecy, and AML policy failures. Given these cases it is interesting to think about the way AML policies are designed and what factors affect them in such a way that the system can be used by criminals to launder billions of dollars each year.

This paper will address the topic of financial liberalization in Colombia, a country that has recently signed two of its most important trade agreements with the United States and the European Union. The purpose of this research is to find how the liberalization of capital flows and the removal of barriers for transactions through financial institutions can affect the capacity of the country to enforce AML policies. Colombia has been considered a country with one of the most solid and sophisticated AML policies in the world (Thuomi & Anzola, 2011) but given its history with drug cartels also has been victim of money launderers and money from illegal proceeds has found its way to Colombian economy.

In the following section there will be an overview of the crime of money laundering, its modes and characteristics followed by an account of the most important AML regulations in an international level. Due to money laundering being a crime that often crosses borders and jurisdiction, the international take on the subject is important to analyze. After this section there will be an overview of the history of AML policies applied in Colombia and some of the strategies used to fight this crime within the Colombian financial system. In this section there will also be an account of the strengths and weaknesses that may make Colombia more or less vulnerable to being used by money launderers. Next there will be a discussion about the effect of liberalization in the country's efforts to prevent money

laundering. This is a controversial topic and it is expected for several authors to bring different positions to the table that end up in the analysis of the Colombian Free Trade Agreement with the United States and the Free Trade Agreement between the European Union, Colombia and Peru.

This last analysis is expected to raise some concerns over the way FTA's are being negotiated in the chapters that have to do with financial services, also about what could be the priorities for a country that is expecting to further liberalize its economy to encourage growth but at the same time is neglecting key elements like international cooperation and transparency that may hurt their efforts to undermine the sources of funding for drug traffickers and other criminals.

Money Laundering

In general terms, money laundering is not a new topic. The act of collecting, hiding and transforming both illegal and illegal funds can be traced to merchants thousands of years ago trying to hide their wealth in fear that rulers may strip them from their profits, all of this fueled by a sense of distrust of institutions and political turmoil (Morris-Cotterill, 2001; Serio, 2007). The creation in 1934 of the Swiss Banking Act, and with it the Swiss banking secrecy, marked the beginning of money laundering through the financial system. Worried by the capture of Al Capone in 1931 under tax evasion charges rather than for the activities which generated his income, Meyer Lansky, called the "mob's accountant", searched for new ways to hide mafia money in a way that would allow him to evade the same fate of Al Capone. Within a year, Lansky figured out a way to achieve his objective when he discovered that he could use numbered Swiss bank accounts to conceal the proceeds of illegal casinos owned by the mafia he belonged to. The use he gave to these accounts allowed Lansky to implement "one of the first money laundering techniques" the "loan-back" in which illegal money can be disguised as a "loan" provided by a compliant foreign bank or lending company (IMLIB, 2015).

Despite Lansky's formative efforts, the term "money laundering" was not used in a legal context until 1982 in the case *US vs \$4, 225,625.39* and as criminal offence was not mentioned until 1986 by virtue of the Money Laundering Control Act in the US. Finally, the activity gained international visibility "as a result of the international community's attempt to counteract the illegal drugs trade in the 1980s and the establishment of the Financial Action Task Force –FATF- in 1989" (Ryder, 2008, p. 636). This institution was created by a Group of 7 -G7- summit in Paris with the task of examining and developing measures to combat money laundering. The first task of the FATF was to develop a set of recommendations (40 were designed) to lay out the measures and policies that a government should follow in order to implement effective anti-money laundering –AML- policies. Later, in 2001 its mandate was expanded to include efforts to prevent terrorism financing.¹ Colombia, like several other Latin American countries, is not a direct member of the FATF, but it is part to GAFILAT (Latin American Financial Task Force, formerly known as GAFISUD), the regional institution based on the FATF model in charge of coordinating the continuous development of AML policies for Latin America.

The stages of money laundering

Brian Seymour (2008) in his work about *Global Money Laundering* defines the activity as "a process conducted through the use of financial transactions to disguise the origins of large sums of money. When the money is generated by illegal means laundering is designed to make it appear as if it originated from a legitimate business source" (p.374). This definition will be used when referring to money laundering through this article as it is coherent with the historical development of the illegal activity and with definitions provided by other authors.

¹ See FATF official website: <http://www.fatf-gafi.org/>

According to the Financial Action Task Force (2014) there are three basic stages in the process of money laundering: Placement, Layering and Integration. This process allows criminals to enjoy the profits of their illegal activities without endangering the underlying activity. Among the most common illegal practices making wide use of money laundering techniques are drug trafficking, illegal arms sales, smuggling, bribery and prostitution.

Placement refers to the point at which illegal profits are introduced to the financial system. This can be done by splitting large amounts of cash into smaller deposits, which is referred to by some authors as “smurfing,” in order to bypass the system of notifications for deposits exceeding a certain limit (Serio, 2007; Seymour, 2008) or by purchasing several monetary instruments that will be then collected and deposited in accounts in other location (FATF, 2014).

The second stage of money laundering is called layering and is arguably the most complex. In this stage, after the illicit profits have been placed in the financial system, criminals perform a series of transactions that involve “different countries, different banks, and different currencies. The money can move in and out of various shell or front companies. It can also be used to buy luxury goods such as precious stones or metals or real estate” (Seymour, 2008, p. 375) in order to distance the money from the source as much as possible. This is done with the objective of concealing the origin of the funds in a way that they cannot be traced back to the original owner or the illegal activity.

The final stage of money laundering is called integration and it refers to phase in which illegal funds re-enter the economy disguised as legitimate profits. If the layering stage is done in a way that the origin of the money is untraceable for authorities and dedicated institutions, almost any business transaction can integrate this money into the legal

economy of a country. For instance, the criminal organization may choose to “invest the funds into real estate, luxury assets, or business ventures” (FATF, 2014).

Every process of money laundering by individuals or criminal organizations has to go through each of the three stages. However, the techniques used in the placement and layering can vary in myriad ways. The following section will briefly overview the main ways to place or conceal money within the financial system.

Money laundering is a success if it is good enough to “defeat the changing capacity of financial investigation skills and burden of proof in any of the jurisdictions along its economic path” (Levi, 2002, p. 184). Sometimes it does not matter that an illegal transaction is made by a national of a country with good AML policies, given the existence of devices like “walking trust accounts,” a mechanism that moves the account automatically to another jurisdiction to avoid inquiries in the home country, or offshore accounts in havens that offer maximum secrecy with “International Business Companies” –IBC’s- that do not require the filing of any public statement about its shareholders, directors or even basic accounting or financial statements (Silverstein, 2000). Another banking service that helps money launderers is “private banking,” offered by international banks like Citicorp to “high net-worth clients” which often includes the possibility of “offshore accounts, moving large sums of money from one country to another, devising intricate networks of accounts and helping purchase homes, businesses, investments with laundered funds” (Ehlers, 1998).

These devices, of course, are used only by the wealthiest members of the money laundering activity. More common in practice are the “smurfing” and “loan-back” techniques mentioned earlier. Another strategy is the use of the Colombian Black Market Peso Exchange in which a drug trafficker –or a criminal that wants to launder funds-- “turns over dirty US dollars to a peso broker in Colombia. The peso broker then uses these drug dollars to purchase goods in the United States for Colombian importers. When the importers receive those goods and sell them for pesos in Colombia, they pay back the peso broker

from the proceeds” (Seymour, 2008, p. 376). The broker then repays the sum in pesos minus a commission for the service.

The use of cash intensive businesses, shell and front companies² and financial system operations give money launderers a great quantity of options to avoid AML policies and prosecution in many jurisdictions. The increasing number of transactions, both legal and illegal, have made the measurement of international money laundering increasingly difficult. Some authors and institutions say that it may even account for 2 to 5 percent of the world’s economic output, a quantity between 590 billion to 1.5 trillion dollars (Morris-Cotterill, 2001). In 2011 the United Nations Office on Drugs and Crime estimated a quantity of 1.6 trillion dollars in funds available to be laundered (UNODC, 2011, p. 7). These numbers, however, are just guesswork in measuring the extent of money laundering.

How then are international, regional and national institutions coordinating their efforts to combat this activity? In the next section there will be an overview of the regulation framework against money laundering, the involvement of the financial sector in this process and the role and position Colombia is occupying in the design of its own AML policies. This will direct the reader to a further analysis of the challenges and potential contradictions of countries’ policies towards the financial sector and their own efforts to control money laundering.

International Regulations

The FATF was created as an “unelected, intergovernmental body devoid of lawmaking authority” (Sahl, 2014), meaning it would rely on the cooperation of its member states and associate organizations to effectively enforce AML regulations. Even with these limitations, the FATF became the leading institution in designing strategies to identify possible threats,

² Shell companies offer non-existing goods or services in order to create the illusion of a legal business that generates profits. A Front company does provide a service but its real purpose is to launder money (Seymour, 2008).

setting standards and promote the implementation of said rules. As mentioned before, in 1990 they issued their first set of recommendations that would later be expanded to include measures directed to prevent the financing of terrorism following the September 11 attacks. The mandate of this organization is broad, including not only efforts to combat money laundering but also terrorism and proliferation of weapons of mass destruction financing and other threats to the “integrity of the international financial system” (Sahl, 2014).

Emphasized in the FATF’s strategies is the encouragement of countries to impose financial sanctions on “banking institutions that do not perform “customer due diligence,” and thereby allow money launderers to use false identities to transfer money to foreign banking institutions” (Anderson, 2013). The supervision of banking institutions of member or associate countries becomes then one of the main objectives of a government seeking to undermine money laundering. The proposed approach by the FATF encourages the enforcement of the “know-your-customer” –KYC– rule, that is, “the need for financial and banking systems to be transparent: every transaction within the system [should] be traced to an identifiable individual” (Ardizzi et al., 2014). The KYC rule is complemented by several mechanisms and strategies that financial institutions use to identify their customers. One of the most common is the currency transaction report–CTR– initially adopted in the United States but now existing in other jurisdictions, which consists in financial institutions and other certain sensitive businesses reporting transactions beyond a certain threshold to investigative authorities. It is important to mention that even if the sanctions, regulations and goals are set by the government, for their effective implementation they should make key private sector companies responsible for the identification of potential threats (Levi, 2002).

Given the important role of the private sector in enforcing these rules, it becomes more difficult for a government to directly control their AML policies, despite the different measures and rules adopted by countries. In practice there are various concerns of the

capability of governments to effectively enforce these regulations. J.C Sharman (2010) studied how easy it was for a law-abiding individual with a modest budget to create an anonymous shell company and bank accounts using high profile corporate service providers. The results show the high degree of noncompliance with international standards of certain institutions and raise concern about the applicability of International AML policies. Another interesting finding in Sharman's research is how the leading institutions in the US and UK perceive offshore tax havens to be the "greatest threat to the integrity of the financial system by providing strict financial secrecy" (pp. 138) notwithstanding the fact that these countries are supposed to have among the strictest regulations.

Tax heavens and transactions to other foreign accounts are another complex pertaining to AML policies. The FATF puts emphasis on how compliant governments should cooperate and rely on information sharing in order to identify suspicious transactions across borders (FATF, 2013) but the task is not always easy due to financial privacy concerns and differences among national and local opinions on "bank secrecy" (Levi, 2002).

This reflects some of the complexities of dealing with money laundering in the international arena. The weight of the responsibility is mostly laid upon financial sector companies but at the same time these institutions are the most vulnerable to being corrupted by money from illegal activities, destabilizing the system and allowing money launderers to succeed (Anderson, 2013). Another important point is the necessity and corresponding difficulty to create effective international cooperation mechanisms to control suspicious cross-border transactions.

Colombian AML Legislation

Colombia has a deep relationship with money laundering and AML policies due to the growth of illicit operations in the country, especially during the 70's and 80's (Roa-Rojas, 2011). During this time, weak agricultural policies led to the so-called "bonanza marimbera," a short period of time where farmers, indigenous populations and families facing economic difficulties turned to the illicit trade of marihuana to the United States, a

trade that generated an annual income of 2.2 billion USD, even higher than coffee revenues during those years. This process was short-lived as military operations with the financial aid of the US made the marihuana trade more dangerous and expensive (Semana, 1982). However, this period of time set the basis for the development of future money laundering techniques, as the profits generated from this drug trade and other illegal activities like contraband and prostitution took advantage of the weak regulations and scarce jurisprudence to grow more sophisticated (Roa-Rojas, 2011).

Given the impact of drug trafficking in Colombia in subsequent years, the country developed an AML legislation aimed at attacking the assets and money generated by traffickers. This legislation was later expanded to cover money laundered from extortion, corruption and other revenues from illicit activities in the country (Thoumi & Anzola, 2011).

In 1998, the government of Colombia started consultations with the World Bank to establish a Financial Intelligence Unit under the recommendations issued by the FATF. The next year the UIAF-Financial Information and Analysis Unit of Colombia-- was created to oversee the detection, prevention and, in general, the fight against money laundering in all economic activities. This unit is also in charge of centralizing and analyzing the information provided by the SFC --Superintendencia Financiera de Colombia--, the government's control body in charge of supervising financial institutions and making sure reports of suspicious transactions are properly designed and implemented (UIAF, 2016). The unit also works directly with the GAFILAT³ in coordinating the efforts of many countries in Latin America and setting the basis for cooperation in the region.

One of the most important mechanisms in Colombia to fight money laundering is the SARLAFT a system designed to manage the risk of money laundering or terrorism financing (SAF, 2007). This is a system intended for the financial institutions supervised by the SFC, so they can avert the inherent risks of managing thousands of transactions. According to the document that established SARLAFT, the system is also intended to prevent the risks to

³ GAFILAT is an intergovernmental organization in Latin America in charge of coordinating the measures to fight money laundering. It was created to be similar to the FATF and follows the recommendations issued by this organization. www.gafilat.org

financial institutions associated with money laundering: reputational, legal, operational and contagion risks. These are the reasons why financial institutions should be compliant with the measures designed for controlling money laundering. For instance, failing to comply with the legislation could affect a company's reputation and cause bad publicity and a negative impact on public image, causing loss of clients and overall profits. The legal risk would be represented in fines and sanctions issued by the SFC to non-compliant institutions. Operational risk refers to the potential loss of profit due to inefficiencies, failures and bad management of processes, human talent, technology, infrastructure and external events. Finally, contagion risk refers to the potential losses a financial institution may incur due to an action of an associate or business partner (SFC, 2007).

The measures in place in Colombia, combining the efforts of the UIAF and the SFC, make for a comprehensive and complete AML legislation. The government is also an active member of the Latin American Banking Federation –FELEBAN--and the Andean Community, organizations that have helped in the effective implementation of AML policies (Thoumi & Anzola, 2011).

The International Monetary Fund published a Financial System Stability Assessment in 2013 based on the work of a joint mission between the IMF and the World Bank in 2012. In this assessment they also praise the robustness of the Colombian framework for dealing with money laundering and terrorism financing. The report concluded that the “The SFC has a clear scope of activities and seems well versed and up to date with recent developments on the matter. The legal framework, together with the SAR and other regulations set a clear and robust guidance for the allocation of functions and responsibilities for the processes and controls oversight, reporting suspicious activities for banks operating in Colombia” (International Monetary Fund, 2013). However, the same report identified clear problems in the actual monitoring of banks' policies and processes, including the KYC, which would prevent these institutions of being used, intentionally or not by money launderers.

The FATF had already calculated that more than 3.5 billion USD is being laundered annually in Colombia by 2007 (Gerlein et al., 2007) which, if coming from licit activity, would

represent the third income source for the country after oil and remittances. This shows an apparent contradiction between one of the more sophisticated AML frameworks in the world and the actual reality of how these measures are being enforced. This in turn raises questions posed by the aforementioned research of J.C Sherman (2010) regarding the gap between the design and the enforcement of AML strategies across different jurisdictions.

Franciso Thoumi and Marcela Anzola (2011) also point out that despite the Colombian AML legislation being a model for other nations, the results have not been satisfactory. They list the main concern of critics for such lackluster results: “a) problems in the design of the forfeiture norms. b) Lack of political will to provide human and other resources to the agencies charged with the policies’ formulation and implementation. c) Corruption in those agencies” (p.2). However, an important point is that the success of these norms not only depends on the political will of the government but in its capacity to effectively deal with corruption within its agencies and to improve the enforcement of AML legislation in the private sector. In this case, even if Colombia has comprehensive rules and measures, it must build capacity to enforce those rules and design cooperation scenarios that make it easier to identify potential threats and apply necessary sanctions and countermeasures.

Liberalization and AML Capacity Building

Brian Seymour (2008) mentions how one of the biggest obstacles in the fight against money laundering is the “lack of a global standard” (p. 383). The fact that criminals can just move between jurisdictions where it is easier for them to perform their illegal activities hurts the overall performance of AML legislation. Nigel Morris-Cotterill (2001) goes even further and says that “In the absence of effective international cooperation, there will be no realistic chance of defeating or significantly curbing money laundering” (p. 20). Mark Findlay (1999) gives a broader look into the relationship between globalization and crime. For this author globalization in general creates favorable contexts for crime and is in itself an important phenomenon affecting crime enforcement by governments, including that related to money laundering.

Tax heavens were mentioned in a previous section as another factor that makes the scenario of international AML policies even more challenging. The necessity of enhancing international cooperation and transparency between countries has been reinforced by the FATF and several researchers but is not widely practiced. Another important related factor that influences the international efforts against money laundering is liberalization. The systematic removal of barriers to trade and financial services (among others) has the potential to negatively affect the capacity of governmental institutions to enforce AML policies. Most of the academic work seems to agree that liberalization negatively affects this capacity; however, more research needs to be conducted on the specific effects of different levels of deregulation and the precise, quantifiable impact of liberalization.

Before the 1980's there were several restrictions in place on capital flows; these by definition reduced the overall space for illicit money to move between borders. However, after the massive waves of subsequent liberalization, the capacity of countries for effective currency control and cross-border financial flows was undermined, which also facilitated money laundering (Reed & Fontana, 2011). The effect of the liberalization of capital flows does not only impact governmental capabilities but also creates more opportunities for criminals engaging in money laundering. The integration of financial markets facilitates investment in different activities, legal or illegal, while making the monitoring of capital flows more difficult (Andreas, 1998; Stares, 1996; Wisotsky, 1986 in Bartilow & Eom, 2009).

There is limited research to support the idea of liberalization being beneficial to transnational crime enforcement. Moreover, I have not been able to find any work directly studying the topic of financial liberalization in relation to money laundering. Among those who at least address this relationship, Donald Mabry and Raphael Perl (1989) argue that the increased revenues created via foreign investment would increase the government's capabilities of enforcing laws against crime. Another, similar view sees trade openness offering an opportunity to encourage "[...] greater cross-border drug enforcement coordination between law enforcement agencies in different countries." (Bartilow & Eom, 2009; p. 121). Other researchers avoid weighing in on this question, preferring to assume a neutral position by claiming that the extent of trade expansion has not been assessed

properly and that it is completely possible that the ratio of transnational crime (referring more specifically to illicit trade) has not changed in any relevant way (Naylor, 2002).

Given the prevailing academic analysis on the topic it is safe to assume, however, that the negotiation of Bilateral Investment Treaties and the further liberalization of capital flows has the potential to impact, at least, the transparency and information sharing between countries. In Colombia's case, the country has negotiated and implemented several recent trade and investment agreements with business partners as important as the European Union and the United States. It is important for the scope of this thesis to analyze the potential impact of these agreements as a whole or the negotiated elements that could affect the capability of the Colombian government to deal with money laundering.

Colombian liberalization and AML policies.

In March 2003, the Superior Council of International Trade of Colombia decided to start evaluations for a potential Free Trade Agreement with the United States, the main trade partner of Colombia at that time. At the end of that year the U.S Trade Representative announced officially the commitment of his country to start negotiations to further liberalize commerce between the two countries (Ministerio de Comercio Industria y Turismo, 2016). This would be one of the most controversial and talked about topics in Colombia, including sensitive themes like the previous preferential access of Colombian goods to the US through the Andean Trade Preference and Drug Eradication Act -ATPDEA-agreement, the safety issues faced by Colombian labor leaders and the impact on the Colombian agricultural industry among others (Relyea et al, 2011). The Free Trade Agreement was signed in 2006 and the process of approval concluded with its ratification in 2012.

Just after finishing the negotiations with the United States, Colombia started talks about another important trade agreement with a major economy: The European Union. In 2007 in Bogotá, the Andean Community started negotiations for a broad agreement with the EU that after several rounds left only Colombia and Peru among the Latin American countries

willing to sign an agreement as a block. In 2010 the negotiations concluded by highlighting the importance of this new partnership in topics like market access, trade and sustainable development, trade in services, sanitary and phytosanitary measures and intellectual property among others (Ministerio de Comercio Industria y Turismo, 2012). This agreement also was negotiated having in mind the replacement of the unilateral Generalized System of Preferences, GSP- Plus, which was scheduled to end in December of 2013.

These agreements are perceived to mark two of the most important steps in the efforts of Colombia to further liberalize its economy and expand its access to major economies in the world as partners rather than beneficiaries of a preferential access system. However, the signature and entry into force of these agreements broadened the scope of the GSP-Plus and the ATPDEA beyond its original terms. The new partnership agreements went well beyond facilitating the movement of goods and regulating intellectual property, including also the liberalization of financial services, among other areas (Ministerio de Comercio Industria y Turismo, 2012).

The next section will discuss the articles of these agreements related to the liberalization of financial services, the removal of barriers that would otherwise hinder the free movement of capital flows between Colombia, the US and the EU, and how this could potentially affect the measures in place for combating money laundering and preventing terrorism financing.

Chapter 5 of the agreement between Colombia and the European Union specifically discusses Financial Services and establishes the regulatory framework for insurance-related services, banking services and other financial services (Republic of Colombia & the European Union, 2013). The articles mentioned deal with the conditions under which the removal of barriers will take place and the exceptions that any party may access to protect national interests.

It is worth noting, regarding the previous debates about this topic, that in Colombia the communications office of the Trade, Industry and Tourism Ministry has only published interviews and articles answering common questions about the agreement and explaining its main points. However, it has not covered in depth the topic of financial services liberalization, even though the sector is currently the third in receiving financing from the EU after the industrial and transport sectors (Ministerio de Comercio Industria y Turismo, 2012). There is then a lack of open debate within Colombian institutions around this topic; this research intends to cover at least in the subject of financial liberalization and its effect in the enforcement of Colombian AML policies.

Regarding the European Union FTA, Myriam Vander Stichele (2012) has raised some concerns.. According to her research, the removal of capital controls generated great risks for money to be laundered to the EU or by the EU financial sector given the lack of control and cooperation mechanisms in the agreement that would allow Colombia and the countries comprising the Union to deal with criminals willing to use the financial system to their advantage.

Analyzing the agreement, the final text of article 168 requires the parties to authorize any transfer and payment on current accounts in “freely convertible currency,” while article 169 ensures the “free movement of capital relating to direct investments [...] as well as the liquidation and repatriation of these investments and of any profit stemming therefrom” (Republic of Colombia & the European Union, 2013; p. 208), effectively promoting the liberalization of important capital flows for both current accounts and for direct investments. However, the chapter does not include a commitment for dealing with money laundering beyond vague mechanisms that could be put into place only in specific situations. For example, in article 170, which discusses safeguard measures regarding financial services, it is explained how Colombia could adopt mechanisms that affect capital movements only in “exceptional circumstances” (Republic of Colombia & the European

Union, 2013; p. 208) that affect or threaten to affect exchange rate or monetary policy in Colombia.

The general exceptions mentioned in article 167 do include the possibility of designing measures for the prevention of deceptive and fraudulent practices but do not create or constitute said measures. This would effectively mean that there are no preventive regulations in place even when risks have been identified (Stichele, 2012) and cases like the one from HSBC have already occurred involving Colombia and European Union member the United Kingdom. In the same line of thought, when in article 155 the parties make a commitment to make their “best endeavors” (Republic of Colombia & the European Union, 2013; p. 193) to follow and implement the Forty Recommendations by the FATF in their respective countries, there is no clear commitment to implement any mechanism to ensure the measures are effective in their enforcement. Research mentioned in previous sections has found that having a solid regulatory framework, even following the FATF recommendations, may not be enough to prevent money laundering in most of the cases (Thuomi & Anzola, 2011; Sharman, 2010).

A similar situation can be identified in the Agreement signed between Colombia and the United States. Chapter 12, which is dedicated to the regulations of financial services under the FTA, discusses market access for financial institutions, national and most-favored nation treatment and the creation of new financial services. Article 12.7, regarding the treatment of certain information, makes clear that no party can require the other or allow access to: “a.) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers” or “b.) any confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises” (Republic of Colombia & the United States of America, 2012; p. 124). It does, however, mention the possibility to enforce measures that prevent fraudulent or deceptive practices under Article 12.10 regarding exceptions.

The necessity of greater transparency in international transactions seems to be harmed by the liberalization efforts of several countries. Greater controls and cooperation mechanisms are seen as disruptive for financial institutions and the free movement of capital, especially when the agreement protects them from any measure that may harm their commercial interests. This is especially evident in the text of the FTA between Colombia and the US, where the aversion to generate any kind of detrimental effect to particular enterprises is explicitly mentioned in the text. The absence of cooperation mechanisms in both agreements and explicit absence of language facilitating such cooperation undermines the parts of the agreements that do address money laundering.

Such lack of cooperation and transparency strategies are not the condition of every free trade agreement. In the case of the European Union, Myriam Stichele (2012) indeed highlights the difference between the Colombian agreement and previous negotiations. In earlier agreements, some preventive measures have been included and there is no such full liberalization regarding capital flows. For instance, in the EU-South Korea Free Trade Agreement there is also a commitment to liberalize capital movements but not to fully remove the controls to the transfers between current accounts as specified in the FTA with Colombia. In this trade agreement the focus is given to liberalize the capital movements in "Trade in Services, Establishment and Electronic Commerce [...] and to the liquidation and repatriation of such invested capital and of any profit generated therefrom" (Republic of Korea & the European Union, 2011; p. 41) and the free movement of capital relating to credits linked to commercial transactions, financial loans and capital participation in a juridical person of someone with no intent to establish lasting economic links. This kind of detailed liberalization limits the number of transactions after the agreement enters into force while not overtaxing the domestic institutions at the moment of monitoring suspicious capital movements.

Another example of different mechanisms being used within a trade agreement is the final text of the free trade agreement negotiated between Central America and the European Union. Article 36 is specifically called “Money Laundering, including the Financing of Terrorism” and contains the commitment of the parties to cooperate in order to prevent the use of their financial systems by money launderers in relation to illegal proceeds from illicit drugs and terrorism. The second part of the article portrays an even clearer scenario that could help the parties in their fight against money laundering and organized crime. In that part it is specified that the cooperation should “include administrative and technical assistance aimed at the development and implementation of regulations and the efficient functioning of suitable standards and mechanisms. In particular, cooperation shall allow for exchanges of relevant information and for the adoption of appropriate standards to combat money laundering” (Central America & the European Union, 2012; p. 51). This different approach, while not radical, does offer a serious contrast with the Colombian agreement. First, there is specific mention to money laundering, recognizing the threat and the risk that financial institutions suffered in being a target for criminals as corruptible entities. There is also the important component of transparency and information sharing. This agreement, moreover, recognizes the previously-addressed importance of increased communication between countries and institutions in order to set a global standard that can effectively help to deal with money laundering preventing criminals to just “change jurisdiction” (Seymour, 2008).

Analysis

There is then the question of why some other agreements do have serious attempts to fight money laundering from a cooperation approach while the two latest and most important Colombian free trade partnerships fail to address this issue. According to Donald Mabry and Raphael Perl (1989), the income and the employment generated by liberalization would allow countries to invest in design and more effectively control crime within their borders. However, as we have seen in previous sections, a well thought-out AML policy does not

necessarily correlate to an effective money laundering control. The fact that most of the responsibility of issuing the reports of suspicious transactions is put on private banks and that at the same time these banks are susceptible to being corrupted by illegal actors is worrisome. There is also the topic of tax heavens and the necessity of generating a global standard proposed by Brian Seymour (2008); if there is no legislative and intelligence unity between jurisdictions, money launderers have the possibility to just change jurisdiction and bypass any AML policy even if it is well designed. Most AML policies, including the Colombian, have some sort of mechanism that is designed to monitor and control financial institutions so they comply with their AML legislation, but in no way are they able to fully control the increased number of transactions that the removal of barriers promotes, nor can they eliminate the possibility of corruption in certain financial institutions.

After analyzing these issues there are several points that lead to the topic of transparency and cooperation. In the original forty recommendations by the FATF and in the research of several authors, importance is attached to the topic of enforcing AML policies across borders. However, due to bank secrecy policies and a probable negative perception of controls and barriers when trying to liberalize, there is a lack of mechanisms being designed in bilateral and multilateral negotiations that could help countries in the medium term. A stronger KYC policy in financial institutions supervised by a strong cooperation commitment between two or more countries may not have a major effect in the appeal of a financial institution for legal customers. But it could heavily disincentive tax evaders and money launderers to use the financial system as their preferred tool for money laundering.

Conclusions

In the case of Colombia, the government should organize their priorities in order to have a coherent policy towards money laundering and liberalization. In the negotiations that led to the agreements with the United States and the European Union there was a clear emphasis on maintaining market access to these big economies that could have been lost

with the ending of the ATPDEA and the GSP-Plus. However, by doing so they accepted a weak framework in the topic of financial services with two of the economies that have not only big financial centers but also have witnessed big scandals regarding corruption, tax evasion and money laundering. The cases of South Korea and Central America are proof that such mechanisms under a bilateral trade agreement can be enforced without harming the general agreement. If a complete AML policy is not complemented with proper cooperation between countries and with financial institutions, there is always the possibility of money launderers profiting and corrupting institutions.

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