



Syllabus of the course Policies of International Commerce

March – July 2019

Cycle X

Lecturer

Ricardo De Urioste Samanamud

I. General information of the course

Course name:	Policies of International Commerce		
Prerequisite:	Derecho Financiero y Bancario	Code:	04501
Previous:	Does not have	Semester:	2019-1
Credits	4	Cycle:	X
Weekly hours:	3	Modality of the course:	Presencial
		Type of course:	Mandatory
Career (s)	Corporate Law	Coordinator of the course:	María Camacho Zegarra mcamacho@esan.edu.pe

II. Outline of the course

This course will address various and multiple issues that the law student must know and analyze in depth. We have the International Trading System, the international trade economy, the role of commercial policy within development policy. The methods used in multilateral tariff negotiations, tariff reduction methods, regional and global trade agreements.

The different negotiations that exist on market access, conformity assessment procedures in production, technology transfer, Free Trade Agreements and their national and international regulations. Sanitary and phytosanitary measures, bioenergetic and ecological production.

III. Objectives of the course

At the end of the course, students will be able to understand, question and identify key issues of international economic law such as the advantages and disadvantages of economic globalization, the law and political economy governing the World Trade Organization (WTO), the role of the regional agreements and bilateral trade integration, the role of foreign investment in economic development, the role of international investment agreements and dispute resolution mechanisms in international trade and foreign investment.

The specific objectives of the course, are the following:

- 1- Understand that the promotion of international trade and foreign investment are very important in the economic and social development of developing countries, analyzing from a critical point of view and based on specific cases, settlement mechanisms at the inter - state level, disputes between private parties or investor-state disputes.
- 2- Study the legal framework governing international trade and foreign investment: bilateral, regional and multilateral conventions, uniform laws, customary international law, arbitral case law, general principles of law, among other sources.

- 3 - Analyse, from the point of view of developing countries, the costs and benefits arising from participation in the existing international legal framework regarding trade and investment.
- 4 – Handle the main issues and problems facing regional agreements on trade and economic integration.

IV. Learning results

At the end of the course, the student will be able to:

- Understand the functioning of the international systems regarding trade and foreign investment, as well as the main multilateral, regional and bilateral agreements that have influence on these two main areas pertaining to international economic relations.
- Understand the existing mechanisms for the resolution of international commercial and foreign investment disputes.
- Understand the main agreements regarding the international trade and investment legal frameworks.
- Understand the that are used in the area of the international sale of goods, such as the UN Convention on the International Sale of Goods and all its accessory agreements.
- Develop logical and critical reasoning abilities regarding the rules, doctrine and jurisprudence related to the course.
- Show commitment to ethical conduct and assume responsibility regarding team work related to course assignments.
- Develop oral and written expression skills in work assignments and other academic activities.
- Understands and applies different conciliation techniques and strategies and other conflict solving mechanisms, with impartiality.

V. Methodology

The methodology used will be theoretical and practical, including lectures with active participation by students, presentations, reading tests, midterm exam, final exam and presentation of short papers (monographs), according to research topics suggested by the lecturer and chosen by students in coordination with the lecturer (see list of topics in section IX below). Monographs must be submitted by the date of the final exam.

It will be essential for students to comply with the reading list before each class in order to participate effectively in every class discussion.

VI. Evaluation System

The evaluation system is permanent and comprehensive. The final evaluation grade is obtained as an average of the permanent evaluation (50%), midterm exam (25%) and final exam (25%).

Midterm exam	:	weight 3
Permanent evaluation	:	weight 4 (class participation, reading tests, oral presentations and final paper - monograph)
Final exam	:	weight 3

The concepts and their weight considered for the Permanent Evaluation (PEP) are the following:

PERMANENT EVALUATION (PEP) 50%		
Evaluation	Description	Weight
Reading Tests	Three (3) Reading Tests	25%
Graded Practices	Three (3) Graded Practices	30%
Research Paper	Research Essay Delivery 1 (5%) Final Delivery (10%)	15%
Presentations	Presentations of the Research Paper	10%
Case Studies	2 Analysis of Case Studies	10%
Other activities	Participation during classes, other activities in class	10%

The final average (PF) is obtained as follows:

$$PF = (0,25 \times EP) + (0,50 \times PEP) + (0,25 \times EF)$$

Attendance is compulsory. Students who accumulate a number of absences higher than the number of absences allowed by university regulations will fail the course.

VII. Scheduled content of the course

WEEK	CONTENT	ACTIVITIES / EVALUATION
Unit 1: Realism, Idealism and the Politics of International Trade		
Learning results: To understand the two main competing theories in international political economy and the theoretical framework they propose in order to understand anarchy and cooperation in international economic relations, the principal multilateral economic institutions such as the WTO and the IMF and the North-South divide.		
1° <i>From March 21 to March 30</i>	Topics: <ul style="list-style-type: none"> - The Melian Dialogue - The Prisoner's Dilemma and the possibilities of international cooperation - The Realism vs Idealism Debate and its limitations - The impact of the realism-idealism debate on the main international economic institutions: the case of the WTO and IMF - The impact of the realism-idealism debate on the North-South divide and the struggle of the Third World for development 	Presentation from Lecturer Participation in class

	<p>Reading Tucidides, "Diálogo de los Melios". En Historia de la Guerra del Peloponeso. John J. Mearsheimer. "The False Promise of International Institutions" En: International Security, Winter 1994/95 (Vol.19, No. 3), pp 5-49</p>	
<p>Unit 2: The World Trade Organization (WTO): Structure, principles and special treatment to developing countries</p> <p>Learning Results: The student will understand the principles and objectives of the World Trade Organization (WTO), as well as the special and differential treatment granted to developing countries</p>		
<p>2° <i>From April 1 to April 6</i></p>	<p>Topics:</p> <ul style="list-style-type: none"> - World Trade Organization (WTO). Final Act of the Uruguay Round; origins of the WTO (GATT) and the Agreement establishing the WTO; - Basic operating principles and objectives; Functions of the WTO and basic rules: non-discriminatory clause Treatment and Most Favored Nation; Market Access; - Exceptions to the principle of non-discrimination: recognition of the interests and needs of developing countries; - Special and differential treatment; Generalized System of Preferences-GSP. <p>Reading: Malca, Oscar. "La Organización Mundial de Comercio". En: Comercio Internacional. Universidad del Pacífico, Lima. Pags. 21 – 51. WTO. "Understanding the WTO". Pags. 1 – 116.</p>	<p>Reading Test 1</p> <p>Presentation from Lecturer</p> <p>Participation in class</p>
<p>Unit 3: Unfair Practices in International Trade and other WTO Agreements</p> <p>Learning Results: The student will understand the main Agreements of the WTO, which regulate specific practices of disloyal competition such as antidumping, subsidies and investment trade related measures, among others.</p>		
<p>3° <i>From April 8 to April 13</i></p>	<p>Topics: Unfair practices in the International Trade. Assess of the following WTO Agreements: Antidumping agreement; Agreement on Safeguards Measures, Agreement on Trade-Related Investment measures; Agreement on Subsidies and Countervailing Measures and the General Agreement on Trade in Services (GATS).</p>	<p>Delivery 1 Research Paper</p> <p>Case Study 1</p> <p>Presentation from Lecturer</p> <p>Participation in class</p>

Unit 4: WTO System of Dispute Resolution in International Trade Cases

Learning results:

The student will be in capacity of analyzing and distinguish special features of the WTO system for dispute resolution, compared with the system in GATT, from a theoretical and cases analysis approaches.

<p>4° <i>From April 15 to April 20</i></p>	<p>Topics:</p> <ul style="list-style-type: none"> - The Dispute Settlement System in the WTO. Function of the dispute settlement mechanism of the WTO in the global trading system. Rules and Procedures for Disputes Settlement Understanding (DSU). - Background: The mechanism of dispute settlement in the GATT. Main weaknesses of the GATT system. - Structure and operation of dispute settlement in the WTO. Dispute Settlement Body (DSB), special groups and the Appellate Body Decision making. - Subjective scope and system material. Scope of jurisdiction. - The process: political solution phase and remedy phase. - Phase of implementation or enforcement. Monitoring and implementation of the recommendations and rulings of the DSB. Compensation and suspension of concessions or obligations. - Main weaknesses of the dispute settlement system of the WTO. 	<p>Graded Practice 1</p> <p>Presentation from Lecturer</p> <p>Participation in class</p>
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Unit 5: Free Trade Agreements between Peru and the European Union, United States, China, Chile as well as commercial and investment relations between Peru and these countries or regions.

Learning results:

The student will be able to understand the main international agreement between two economic blocks as well as their impact on the commercial and investment relations between our country and the world.

<p>5° <i>From April 22 to April 27</i></p>	<p>Topics:</p> <ul style="list-style-type: none"> - Regional Integration Processes and their relationship with the multilateral trading system. - Integration movements as factors of economic, social, cultural and political development. - WTO rules that allow the existence of Regional Integration Agreements. - Bilateral Trade Agreements: Peru-USA FTA, Peru- Canada FTA and Peru - China FTA. 	<p>Reading Test 2</p>
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	<ul style="list-style-type: none"> - Oral presentations of the students related to the relationship between Peru and the European Union and the United States of America. 	
	<p>Reading: Bilateral Trade Agreements between Peru – European Union, Peru – United States of America</p>	
<p>Unit 6: Free Trade Agreements between Peru and the European Union, United States, China, Chile as well as commercial and investment relations between Peru and these countries or regions.</p> <p>Learning results: The student will be able to understand the main international agreement between two economic blocks as well as their impact on the commercial and investment relations between our country and the world.</p>		
<p>6° <i>From April 29 to May 4</i></p>	<p>Topics:</p> <ul style="list-style-type: none"> - Regional Integration Processes and their relationship with the multilateral trading system. - Integration movements as factors of economic, social, cultural and political development. - WTO rules that allow the existence of Regional Integration Agreements. - Bilateral Trade Agreements: Peru-USA FTA, Peru- European Union FTA , Peru – Chile FTA and Peru - China FTA. - Oral presentations of the students related to the relationship between Peru and Chile and Peru and China. <p>Reading: Bilateral Trade Agreements between Peru – Chile and Peru – China</p>	<p>Graded Practice 2</p>
<p>7° <i>From May 6 to May 11</i></p>	<p>Free Trade Agreements (cont)</p>	<p>Final Delivery date Research paper Participation in class</p>
<p>8° <i>From May 13 to May 18</i></p>	<p>MIDTERM EXAM</p>	

Unit 7: Concepts of Globalisation and Foreign Investment within International Economic Relations

Learning results:

To understand the main features of Globalisation and Foreign Investment, their advantages and disadvantages, as well as the general characteristics of the international agreements that regulate them.

<p>9° <i>From May 20 to May 25</i></p>	<p>Topics:</p> <ul style="list-style-type: none"> - Role of Foreign Investment in the processes of economic development and in globalisation and economic interdependence - Advantages and disadvantages of foreign investment - Factors influencing investment attraction - Autarky or Free Flow of Investments - Main Features of Multilateral Conventions and Bilateral Investment Treaties - Forms of foreign investment: FDI, Portfolio Investment, Short Term Investment and Technology Transfer 	<p>Presentation from Lecturer</p> <p>Participation in class</p>
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Unit 8: International Investment Law, Free Trade Agreements (FTAs) and Bilateral Investment Agreements (BITs)

Learning results:

To be familiar with the new area of International Investment Law and the main sources of law, such as treaties, custom, doctrine and arbitral jurisprudence.

<p>10° <i>From May 27 to June 1</i></p>	<p>Topics:</p> <ul style="list-style-type: none"> - Specialty of International Investment Law. History, nature, actors and development. - Risks specific to foreign investment. Political Risk: Qualitative and Quantitative aspects. - Rights and obligations of investors and host Governments. Increased recognition of individuals as subjects of international law. - Sources of International Law Investment: treaties, custom, general principles of law, doctrine and arbitral jurisprudence. - International Protection of Foreign Investment: Bilateral agreements for the promotion and protection of investments (BITs) and investment chapters of free trade agreements (FTAs). 	<p>Reading Test 3</p> <p>Presentation from Lecturer</p> <p>Participation in class</p>
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	<p>Reading: González de Cossío, Francisco. "<u>El Fenómeno Económico</u>". En: Arbitraje de Inversión. Capítulo 1. México, pp. 1-16</p> <p>Mann, Howard. "<u>International Investment Law and Development</u>", Pages. 1-24.</p>	
<p>Unit 9: International Standards for Investment Protection</p> <p>Learning results: To understand and evaluate the content of the main international standards for the protection of international investment: Prohibition of Indirect Expropriation, Fair and Equitable Treatment, Full Protection and Security, Most Favoured Nation Treatment and National Treatment. The student will also be able to understand the special circumstance of State of Necessity as an exemption of State international responsibility.</p>		
<p>11°</p> <p><i>From June 3 to June 8</i></p>	<p>Topics:</p> <ul style="list-style-type: none"> - Expropriation of property and investments in international law and national law. Prohibition of expropriation without compensation. Expropriation Requirements: Public Utility, non-discriminatory, Due Process and Compensation. "Hull Formula" prompt, adequate and effective compensation. Direct and Indirect Expropriation. Equivalent Measures. Constructive expropriation or "Creeping Expropriation". Regulatory powers of governments and expropriation. - International Standards of Investment Protection: Principle of National Treatment and Non-Discrimination. Minimum Treatment Principles and Fair and Equitable Treatment. Principle of Full Protection and Security. Most-Favoured-Nation Treatment. - Claims under contract and claims under the Treaty (contract claims vs. Treaty claims). Permissive and restrictive positions. Umbrella clauses. - State of Necessity and International Responsibility. <p>Reading: González de Cossío, Francisco. "<u>Trato Mínimo y Trato Justo y Equitativo</u>". En: Arbitraje de Inversión, Cap. VI. México, pp. 137-169.</p> <p>Herdegen, Matthias. "<u>Derecho Internacional de la Expropiación y Derecho de Inversiones</u>". En: Derecho Económico Internacional. pp. 357 – 374.</p> <p>OECD. "<u>Indirect Expropriation and the Right to Regulate</u>". Pages. 1 -23</p>	<p>Case Study 2</p> <p>Students' Presentations of Research Papers</p> <p>Participation in class</p>

Unit 10: International System for the Resolution of Investment Disputes (ICSID)

Learning results:

To understand in deep the system for the resolution of international investment controversies, the granting of consent by the States, its main features and the existing resources against the award.

<p>12°</p> <p><i>From June 10 to June 15</i></p>	<p>Topics:</p> <ul style="list-style-type: none"> - Dispute on Foreign Investment. Jurisdictional immunity of Governments in investment: absolute Theory and restrictive theory of immunity from jurisdiction. Diplomatic protection in foreign investment and Calvo doctrine. - Origin and history of the International Convention for the Settlement of Investment Dispute (ICSID); legal basis for the submission of the Peruvian Government to ICSID arbitration; objectives of the ICSID Convention; interests in foreign investment; ICSID jurisdiction; requirements <i>ratione personae</i>, <i>materiae</i> and <i>temporis</i>; waiver of immunity from jurisdiction and diplomatic protection; specialization in legal investment disputes; law applicable to the merits of the dispute and sources of International Law on Investment; Role of Bilateral Investment Treaties (BITs); the parties to the ICSID arbitration; ways to give consent to ICSID arbitration; - Autonomy of ICSID arbitration; effectiveness of the system; ICSID arbitration consequences arising from the non- signing of a Multilateral Agreement on Investment. International Arbitration and Corruption. <p>Reading:</p> <p>Carbajal, Christian y otros. <u>“Protección de Inversiones Extranjeras en América Latina y Arbitraje Internacional: La Experiencia del Perú”</u>. En: Revista Brasileira de Arbitragem, Sao Paulo, pp. 235 – 254.</p> <p>Lowenfeld, Andreas F. <u>“The ICSID Convention: Origins and Transformation”</u>. En: Georgia Journal of International and Comparative Law. Fall, 2009, pp. 1-12.</p> <p>Schreuer, Christoph. <u>“The Future of Investment Arbitration”</u>. Pages. 1-25.</p>	<p>Graded Practice 3</p> <p>Students’ Presentations of Research Papers</p> <p>Presentation from Lecturer</p> <p>Participation in class</p>
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Unit 11: Analysis and discussion of arbitration investment cases (ICSID)

Learning results:

Open discussion and simulation of international investment cases, assuming the roles of the Claimants, Respondents and Tribunal. The students will be able to understand in detail the virtues and mistakes of each of the international awards to be discussed.

<p>13°</p> <p><i>From June 17 to June 22</i></p>	<p>Topics: Analysis and discussion of arbitration cases from the Center of Settlement of Investment Dispute (ICSID):</p> <ol style="list-style-type: none"> 1) Metalclad Corporation (American investor) vs. México 2) Lucchetti S.A. and Lucchetti Peru S.A. (Chilean investor) vs. Perú 3) Tza Yap Shum (Chinese investor) vs. Peru <p>Reading: Merits ICSID Award Metalclad Corporation (American investor) vs. México (pages 1 – 38) and judicial annulment in Canadian court.</p> <p>Jurisdictional and annulment ICSID awards Lucchetti S.A. and Lucchetti Perú S.A. (Chilean investor) vs. Peru (pages. 389 – 421 and pages. 1 – 34, respectively).</p> <p>Jurisdictional and Merits ICSID Awards Tza Yap Shum (Chilean investor) vs. Peru (pages 1 – 78 and 1 – AIII-13, respectively)</p>	<p>Students' Presentations of Research Papers</p> <p>Participation in class</p>
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Unit 12: Analysis and discussion of arbitration investment cases (ICSID)

Learning results:

Open discussion and simulation of international investment cases, assuming the roles of the Claimants, Respondents and Tribunal. The students will be able to understand in detail the virtues and mistakes of each of the international awards to be discussed.

<p>14°</p> <p><i>From June 24 to June 29</i></p>	<p>Topics: Continued analysis and discussion of arbitration cases from the Center for Settlement of Investment Dispute (ICSID):</p> <ol style="list-style-type: none"> 1) The Renco Group (Doe Run) (American investor) vs. Peru 2) Consorcio Camisea (Pluspetrol) (American investor) vs. Peru 3) Levy (Banco Nuevo Mundo) (French investor) vs. Peru 	<p>Students' Presentations of Research Papers</p> <p>Presentation from Lecturer</p> <p>Participation in class</p> <p>Oral Presentations</p>
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	<p>Reading:</p> <p>Jurisdictional ICSID Award The Renco Group (American investor) vs. Peru</p> <p>Jurisdictional and Merits ICSID Awards Pluspetrol (American investor) vs. Peru</p> <p>Jurisdictional and Merits ICSID Awards Renée Levy (BNM) vs. Peru</p>	
<p>Unit 13: Criticisms to the System of International Investment Arbitration</p> <p>Learning results: After studying in deep the International Law of Foreign Investment as well as the system for the resolution of investment claims, the student will be in capacity to evaluate critically the existing flaws and make proposals of improvement, being at the same time aware of the countries that are specially critic with the current system.</p>		
<p>15°</p> <p><i>From July 1 to July 6</i></p>	<p>Topics:</p> <ul style="list-style-type: none"> - Criticisms to the System of International Investment Arbitration. Strengths and weaknesses of the ICSID arbitration. - Arbitration and Sovereignty. Application of International Law vs. National law. Problem of Accountability. Transparency problem. Little predictable Arbitral Jurisprudence Problem. Dependency Arbitrators problem. Problem of Single or Double Instance. Judging International Standards for Local Authorities. - Special cases of Venezuela, Argentina, Bolivia and Ecuador. - Positive and remediable aspects of international investment arbitration. - The idea of a regional investment arbitration system in South America <p>Reading</p> <p>Van Harten, Gus. "<u>Five Justifications for Investment Treaties: A Critical Discussion</u>"² (1) Trade Law & Development 2010</p>	<p>Students' Presentations of Research Papers</p> <p>Presentation from Lecturer</p> <p>Participation in class</p>
<p>16°</p> <p><i>From July 8 to July 13</i></p>	<p>FINAL EXAM</p>	

VIII. Referencias

Additional Bibliography

Additional sources of information should be searched directly by the students, such as the following:

FIRST PART – INTERNATIONAL TRADE

Agreements and Regulations

1. Organización Mundial de Comercio (OMC). “Acuerdo de Constitución de la OMC”.
2. Organización Mundial del Comercio (OMC). “Acuerdo sobre subvenciones y medidas compensatorias de la OMC”.
3. Organización Mundial del Comercio (OMC). “Acuerdo sobre salvaguardias de la OMC”.
4. Organización Mundial del Comercio (OMC). “Acuerdo sobre medidas antidumping de la OMC”.
5. Naciones Unidas. “Convención de las Naciones Unidas sobre Compraventa Internacional de Mercancías”.

SECOND PART – FOREIGN INVESTMENT

Agreements and regulations

1. Convenio de Washington sobre Arreglo de Diferencias Relativas a Inversiones entre Estados y Nacionales de otros Estados (CIADI).
2. Convenio Bilateral de Promoción y Protección Recíproca de Inversiones Perú – Chile (BIT).
3. Convenio Bilateral de Promoción y Protección Recíproca de Inversiones Perú – China (BIT).
4. Acuerdo NAFTA. Capítulo 11 sobre Inversiones (buscar en biblioteca).
5. Convenio Bilateral de Promoción y Protección de Inversiones Argentina – España (BIT)
6. Convenio Bilateral de Promoción y Protección de Inversiones Perú – Paraguay (BIT)
7. Ley 28933, Ley que establece el Sistema de Coordinación y Respuesta del Estado en Controversias Internacionales de Inversión
8. DS. 125-2008-EF. Reglamento de la Ley 28933 de Defensa del Estado en Controversias de Inversión.

IX. Soporte de laboratorio

No requiere

X. Lecturer

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XI. Suggested topics for the monograph

The lecturer will explain in class the characteristics and requirements of the monograph.

Students may select a topic from this list or any other topic related to the materials seen in the course:

1. Role of foreign investment in economic development. Different perspectives.
2. Multinational companies and foreign investment.
3. Critical analysis of one or more of the ICSID arbitral awards.
4. Evolution of Treatment for Foreign Investment in Regional Integration Agreements in South America. Andean Community and Mercosur.
5. Role of Bilateral Agreements for the Promotion and Reciprocal Protection of Investments (BITs) and their relationship to the regulatory powers of investment of the host governments.
6. Relationship between "International Law" and the "Internal law of the Host Government" in the regulation and protection of investments.
7. Dealing with regulatory powers of the Governments in tax matters and environmental matters in the investment chapters of FTAs .
8. Feasibility and / or desirability of the signing of a Multilateral Agreement on Investment (MAI).
9. The World Trade Organization (WTO) and the regulation of investment.
10. Main Issues and Chapter Investment news of Peru- USA Free Trade Agreement and Peru - China FTA.
11. The experience of Peru in the International Arbitration of Investment Disputes (ICSID).
12. Direct expropriation and indirect expropriation in arbitrations in foreign investment.
13. Amicus Curiae and the principle of transparency in international investment arbitration.
14. Investment Claims vs. (contract claims) in ICSID arbitrations. The Umbrella Clause.
15. Principle of "full protection and security", investments in mining, social protests, indirect expropriation and international responsibility of Governments.
16. Globalization, international trade, interdependence and autonomy of national policies.
17. Economic North-South relations. EU- Latin America or USA- Latin America. Features.
18. Comparative Study between the GATT and the WTO. Origin, structure and operation.
19. Scope of special and differential treatment to developing countries in the WTO.
20. The international trade in agricultural products and the WTO.
21. National Industry and unfair competition: Analysis of cases of anti-dumping and countervailing duties.
22. Analysis of the Safeguards Agreement. The Peruvian case.
23. Critical analysis of the Vienna Convention on International Sale.
24. Critical analysis of the Dispute Settlement System of the WTO. Strengths and weaknesses. Comparison with the dispute settlement system of the GATT. Compliance and implementation of the recommendations and rulings of the Dispute Settlement Body of the WTO.
25. The Relationship between International Trade and the Environment: Recent Developments.
26. Advantages of international commercial arbitration against national jurisdiction.
27. Multilateralism versus Regional Integration Agreements.
28. Peru -USA FTA, Peru - Canada FTA, or Peru – China FTA.
29. The APEC Forum and the Draft of Asia-Pacific Trade Agreement.