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FREE TRADE TREATY BETWEEN COLOMBIA AND MEXICO (GOODS & SERVICES)

Questions and Replies

The following communication, dated 9 March 2012, is being circulated at the request of the delegations of Colombia and Mexico.

This document reproduces the questions addressed to the Parties and the responses submitted.

Question from the delegation of Japan

1. According to the Factual Presentation by the Secretariat, Article 11-03 of Chapter XI (Telecommunications) of the Treaty provides that Chapter XI does not apply to the supply of basic telecommunications services, while the GATS does not carve out the supply of basic telecommunications services from its scope. Although some of the provisions of the Chapter XI are based on the provisions of the GATS Annex on Telecommunications, there is a significant difference between them in terms of coverage. Japan would appreciate if the Parties could give an explanation on the background of this difference.

With respect to the question raised by Japan, we would like to outline the difference of the coverage between the Treaty and the provisions of the GATS in order to specify the reasons of the differences between Chapter XI of the Treaty and GATS Annex on Telecommunications. The supply of telecommunications services mentioned in Article 11-03 of Chapter XI must be read together with Chapter X "General principles on trade in services" Article 10-02(d) by which the access to public services of telecommunications and the use of its networks of the other Party is allowed. Moreover, Chapter X provides "stand still" and "ratchet" clauses and specific disciplines (NT, MFN among others) for those services. Complementary disciplines are established through Chapter XI, which apply to access to public telecommunications transport networks and its use (Article 11-04) and to value added services. Additionally, this Chapter provides "stand still" for the legal regime that applies for those services. Therefore, the treatment of telecommunications sector in the Free Trade Treaty between Colombia and Mexico is more ambitious with respect to measures affecting access to and use of public telecommunications transport networks and services.

Questions from the delegation of the United States

Goods

2. According to Tables III.1A and B on pages 15 and 16 of the Factual Presentation, and Annex 1 Table AI.1 and AI.2 on pages 66 and 67 of the Factual Presentation:

> **Mexico eliminates duties on 96.7 per cent of all tariff lines covering 96.7 per cent of imports from Colombia under the agreement. While 99.5 per cent of industrial tariffs will be duty-free, only 65.7 per cent of agricultural tariff lines will be duty-free under the Agreement.**
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> **Colombia eliminates tariffs on 94.4 per cent of all tariff lines covering 96.4 per cent of imports from Mexico under the Agreement. However, though 99.6 per cent of industrial tariffs will be duty free, only 60.8 per cent of agricultural tariff lines will be duty-free under the Agreement.**
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> **(a) How do Colombia and Mexico explain the disproportionate liberalization between the industrial and agricultural sectors?**

Some production sectors were excluded during the initial G-3 negotiations because the Parties did not agree on preferential treatment, as was the case for close to 35 per cent of the agri-food sector, due to, *inter alia*, sensitivities in this sector that were recognized by both Parties. The expansion of the Mexico-Colombia FTT through the Amending Protocol, which was signed on 11 June 2010 and entered into force on 2 August 2011, has added partial access, through quotas, for products excluded from tariff preferences during the initial negotiations.

> **(b) Please explain how this Agreement meets Article XXIV's "substantially all trade" requirement when each Party has failed to eliminate duties on approximately one third of their agricultural tariff lines.**

The G-3 FTT that was originally negotiated liberalized more than 96 per cent of the value of imports from Mexico and Colombia, as described in the Factual Presentation. The value of preferential trade has increased with the recent expansion of the Treaty, as indicated in the previous reply.

Technical barriers to trade

3. Paragraph 57 on page 27 of the Factual Presentation states that: "When such registration is required in a Party's territory, the product shall be registered, recognized and evaluated by the competent authority of that Party in conformity with a unique compulsory national system, either at the central or federal level, in order to obtain a certificate of compatibility."

Please clarify the term "competent authorities" and if it includes third party accredited laboratories or only those operated by each Party?

"57. Under Article 14 13, each Party may, on the grounds of protection of public health, subject the following to national registration procedures: medicines; medical equipment and instruments; pharmachemical products and other products intended for human, animal or plant health use. When such registration is required in a Party's territory, the product shall be registered, recognized and evaluated by the competent authority of that Party in conformity with a unique compulsory national system, either at the central or federal level, in order to obtain a certificate of

compatibility. A system of mutual technical cooperation has been created; its monitoring, organization and orientation has been delegated to a Technical Subcommittee. Article 14-17 establishes a "Committee on Standardization Measures", which consists of representatives from each Party's competent authorities (see Section V.E)."

Reply from Mexico

In this case, the competent authority is the Ministry of Health through the Federal Commission for Protection against Health Risks (COFEPRIS), which is responsible for the sanitary registration of medicines and pharmaceutical products, in conformity with Articles 368 and 376 of the General Law on Health (LGS).

Article 376 of the LGS stipulates that medicines, narcotic drugs, psychotropic substances and products containing them require sanitary registration, as do medical equipment, prosthetics, orthotics, functional aids, diagnostic agents, materials for dental use, surgical and dressing materials and hygiene products, as well as pesticides, plant nutrients and toxic or dangerous substances.

Pursuant to Article 68 of the Federal Law on Metrology and Standardization (LFMN), conformity assessments are carried out by the competent agencies, certification entities, testing or calibration laboratories, or verification units that are accredited and approved under this Law.

For conformity assessments, the COFEPRIS works with third parties that are authorized by the Ministry of Health to conduct inspections in order to verify compliance with good practices in the manufacturing and production process of medicines, as well as the certification of their active ingredients, for the purposes of sanitary registration.

Article 2, Section XVIII of the Regulations on Health-Related Inputs defines the authorized third parties as persons authorized by the Secretariat to issue reports on compliance with requirements laid down by the Secretariat itself or the relevant standards, or to conduct studies for sanitary procedures or authorizations. Article 391*bis* of the General Law on Health (LGS) establishes the procedure for authorizing third parties.

Article 222 of LGS stipulates that in order for any medicine to be granted sanitary registration, compliance with good practices in the manufacturing and production process of the medicine, as well as the certification of its active ingredients, must first be verified. Inspections shall be conducted by the Secretariat or by its authorized third parties or, where applicable, the relevant certificate issued by the competent authority in the country of origin shall be recognized, as long as there are recognition agreements on the matter between the competent authorities in both countries.

Therefore, while theoretically speaking there is no recognition of other countries' accredited laboratories, it is possible to recognize their certificates through mutual recognition agreements, in accordance with Article 87-A of the LFMN, which states that the Ministry of the Economy may, either of its own accord or at the request of any competent agency or interested party, enter into agreements with foreign or international official institutions for the mutual recognition of the findings of conformity assessments carried out by agencies, accredited persons or the aforementioned institutions, as well as of the granted accreditations. Accreditation bodies and accredited persons may also enter into agreements with these institutions or other private bodies.

Reply from Colombia

With respect to the implementation of paragraph 57 of the Free Trade Treaty in question, the competent authority in the case of Colombia may vary depending on the type of products that will be subject to national registration procedures.

For example, products such as medicines, medical equipment and instruments, and pharma-chemical products are controlled and monitored by the Colombian National Institute for Food and Medicine Monitoring (INVIMA), which reports to the Colombian Ministry of Health. One of the main functions of the INVIMA, as a monitoring body, is to approve and verify compliance with sanitary standards in the import or export of the products within its sphere of competence that may affect human health in some way. Likewise, the INVIMA is responsible, at the national level, for regulating and accrediting institutions that conduct pharmaceutical and technical assessments, such as quality control laboratories, in order to supervise and closely monitor their operations in accordance with the existing regulations.

In the case of products directly related to animal and plant health, the Colombian Agricultural Institute (ICA), which reports to the Colombian Ministry of Agriculture and Rural Development, is the body responsible for developing and implementing strategies to prevent, control and reduce sanitary, biological and chemical risks to animal and plant species that could affect agriculture, forestry, fishing and aquaculture production in some way at the national level. With regard to trade, the ICA is responsible for negotiating bilateral and multilateral sanitary and phytosanitary agreements that allow agricultural products to be marketed abroad and which endeavour to ensure control and growth of exports and imports. It is also responsible for the technical inspection of imports of agricultural inputs, animals, plants, and animal and plant products in order to prevent the entry of diseases and pests, and for certifying the sanitary and phytosanitary quality of exports.

Relationship with other treaties concluded by the Parties

4. Table V.2 on pages 61-63 of the Factual Presentation list a large number of non-notified RTAs. We request that Mexico and Colombia please clarify whether each of these non-notified agreements is still in force, and if so, when they plan to notify each agreement as required by WTO rules?

The agreements are in force and we are discussing how to notify them with the relevant Parties.

Services

5. Paragraph 104 of the Factual Presentation notes that Chapter XI of the Treaty foresees the "full liberalization" of value-added telecommunications services by July 1995.

Could Parties confirm whether such "full liberalization" was indeed achieved by July 1995, as provided for in the Treaty?

The "full liberalization" of value-added telecommunications services happened at that time according to the Treaty. At that date, we got in force the Treaty and the GATS, so all services had got access.

6. Paragraph 105 of the Factual Presentation notes that, under the Treaty, Parties committed to gradually liberalize, through successive negotiations, "all their restrictions on financial services."

Given the significant passage of time since the entry into force of this Treaty, could Parties confirm whether they have indeed liberalized "all restrictions" on financial services, as provided for in the Treaty?

The Parties have not been involved in further negotiations to liberalize "all restrictions". However, the Mexican legal regime has evolved and Article 12-14 (Elaboración de reservas) regarding the elaboration of list of exceptions provides "ratchet" clause.

Over the time, Colombia has introduced several reforms to the legal framework of the banking sector since 1997 with the purpose to restore national and foreign consumer confidence in the financial system and to liberalize restrictions on financial services related in the bilateral treaties. In 2009, Colombia issued a financial reform (Law 1328), in order to establish the principles and rules that govern the protection of both, nationals and foreign consumers, and their relations with financial entities.

7. Paragraph 114 of the Factual Presentation notes that the Treaty contains no obligation to reduce or eliminate quantitative restrictions on the supply of services. Indeed, the paragraph notes that the Treaty allows for the imposition of new quantitative restrictions. According to the FP, Parties' only commitments on market access are to: (1) list their respective quantitative restrictions; and (2) undertake negotiations, "at least every two years," to liberalize or eliminate existing quantitative restrictions. However, the FP notes that no such list has ever been produced, and no such negotiations have ever taken place.

Why have Parties not fulfilled their obligation under the Treaty to list quantitative restrictions and engage in negotiations toward the elimination of these restrictions?

Both Parties have performed a deep unilateral liberalization of these restrictions over time, which is confirmed by the conclusion of other agreements on services in which commitments go beyond of this approach.

8. Paragraph 115 of the Factual Report notes that the Treaty calls for negotiations to be convened with the purpose of deepening liberalization in services, including with respect to discrimination and quantitative restrictions. However, according to the FP, no such negotiations have ever taken place.

Why have Parties not fulfilled their obligation under the Treaty to engage in negotiations to further liberalize services?

Because of the results of the management committee's meetings created under the Treaty, that have shown a deep unilateral liberalization over time, which is confirmed by the conclusion of other agreements on services in which compromises are set deeper.

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