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WTO Trade Policy Review: Colombia*

Note: This text provides brief description of the conditions foreign business will encounter in trade with Colombia. It is based on a WTO Trade Policy Review for Colombia, late June 2012. Readers wishing for deeper analysis should turn to the original Trade Policy Review available on the WTO website. (www.wto.org/english/tratop_e/tp_r_e/tp365_e.htm)

Trade Policy Reviews are an exercise, mandated in the WTO agreements, in which member countries' trade and related policies are examined and evaluated at regular intervals.

• INTRODUCTION

Since the last Trade Policy Review conducted in 2006, Colombia has continued steering its trade policy towards greater openness, setting its sights on closer integration with Latin America and the Caribbean, as well as with the rest of the world, through the negotiation of preferential agreements to increase external trade and foreign investment flows. To this end, Colombia has participated in various negotiations to consolidate existing bilateral and regional agreements, and has signed and continues actively negotiating new agreements with the aim of ensuring preferential access to strategic markets. This does not detract from the particular importance that Colombia attaches to participation in the WTO as part of its trade policy strategy. Colombia therefore places great emphasis on maintaining an open trade regime in the framework of a transparent multilateral system complemented by regional and bilateral efforts.

Colombia has a substantially open trade regime, with an average tariff which declined considerably during the period under review. Although the general trend is towards greater openness and reduced obstacles to foreign trade, some non tariff restrictions remain in place, mainly related to registration and import licensing requirements. The trade regime is also somewhat complex, owing to the large number of regulations.

• ECONOMIC ENVIRONMENT

During the period under review, Colombia's GDP grew at an annual average rate of 4.8 per cent. Economic growth picked up speed between 2005 and 2007, but the global financial crisis caused a loss of momentum in 2008 and 2009. However, given the combination of countercyclical policies and the strong performance of some export products, Colombia did

not fall into recession and the economy rebounded again, reaching 4 per cent growth in 2010 and 5.9 per cent in 2011. As a result of solid economic performance, per capita GDP grew rapidly, from US\$3,417 in 2005 to US\$7,236 in 2011. Despite this improvement, poverty levels, although they have reduced, remain high and there is a continued lack of equity in income distribution. In addition, despite trending downwards, the unemployment rate in 2011 was still some 9.8 per cent.

During the financial crisis, Colombia used fiscal policy as an instrument to boost medium term growth and reduce unemployment, and this led to an increase, albeit a modest one, in expenditure and fiscal deficit levels. At the same time, however, Colombia has committed itself to maintaining fiscal discipline, a commitment enshrined in the Constitution. Accordingly, 2011 saw the introduction of a fiscal regulation to enhance public sector discipline and a reform of the system of royalties to improve their management and distribution. This countercyclical fiscal policy was also accompanied by an expansive monetary policy, resulting in a sharp decline in the intervention interest rate between late 2008 and mid 2010. With the rise in inflation in 2011, however, a contractionary monetary policy was adopted.

Colombia maintains a floating exchange rate. During the period under review and partly because of substantial capital inflows into Colombia, a real appreciation of the peso took place which, while lowering the cost of imports, made exports less competitive. To address that situation, the Bank of the Republic intervened repeatedly on the exchange markets and adopted measures to deal with exchange rate pressures.

International trade in goods and services in the review period showed dynamic growth: imports, in US dollar terms, increased at an annual average rate of 17.1 per cent between 2005 and 2011, and exports at an annual average rate of 17.9 per cent, with both indices practically doubling during the period. Colombia's trade is relatively concentrated, both geographically and in terms of export products. The United States continues to be the main market for Colombian goods and mining products accounted for approximately 65 per cent of Colombian exports in 2011.

Colombia's current account balance has traditionally been in deficit, owing to the negative balances in income and services. Nevertheless, the balance of trade in goods remained in surplus for most of the period under review, and more particularly as from 2008, because of strong export growth. Colombia has also benefited from improved terms of trade and strong demand for raw materials. The continuous increase in investment flows has also played a major role and

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reflects greater investor confidence in the country.

• TRADE AND INVESTMENT POLICY

During the period under review, Colombia's trade policy focused mainly on the negotiation of preferential agreements. The Trade Promotion Agreement between Colombia and the United States, signed in November 2006, was incorporated in Colombian legislation in 2007 and approved by the United States Congress in 2011; it is currently at the stage of implementation. Nevertheless, as a founding Member of the WTO, Colombia recognizes the importance of having a multilateral trading system with clear and transparent rules that support the integration of developing countries into the global economy. Colombia supported the swift and balanced conclusion of the Doha Development Agenda, which it considers necessary in order to achieve more open, undistorted markets and to strengthen the multilateral system. Colombia continues to have observer status in the Committee on Government Procurement and recently acceded to the Information Technology Agreement.

Colombia grants national treatment to foreign investment in all but a few sectors where it maintains limitations or prohibitions. In addition, the State may determine that only one enterprise may exclusively provide services in a particular sector for a specified period of time. No prior authorization is required for foreign investment, subject to some exceptions (financing in the hydrocarbons and mining sectors, and portfolio investment); such investment must be registered with the Bank of the Republic in order to make it possible for earnings to be repatriated and/or reinvested. Both domestic and foreign direct investors may sign a legal stability contract with the State, which guarantees that, for the duration of the contract, there will be no change in the legal rules under which the investment was made.

• TRADE POLICY BY MEASURE

Colombia has a substantially open trade regime, and the average tariff rate has been decreasing. Some non tariff restrictions still remain in place, however, mainly related to import registration and licensing requirements. The regime is also somewhat complex on account of the large number of regulations. During the review period, Colombia simplified its customs and administrative procedures by establishing a single window for imports and exports and a system of risk analysis, which has reduced the frequency of inspection. But further efforts are needed to facilitate trade, including the improved functioning of the single window. Colombia continues to use reference prices as parameters for checking the value reported by importers during the customs inspection process.

Since its last review, Colombia has considerably reduced tariff protection. It has implemented a tariff reform aimed at reducing the levels and dispersion of tariffs, which also ad-

dresses the anti export bias manifest in the Colombian tariff. As a result of this reform, the average tariff has fallen to 6.2 per cent, compared with 12 per cent in 2006. Apart from tariff reductions effected in late 2010 and early 2011, in August 2011 Colombia lowered its applied tariffs on a large number of products (mainly industrial inputs and capital goods) for a period of 12 months. In general, the tariffs applied by Colombia are ad valorem. Colombia continues to use the Andean Price Band System (SAFP) to apply import duties on a number of agricultural products; the duties vary according to the international prices of the products concerned.

Imports are also subject, as a rule, to value added tax (VAT). Both domestic and imported products attract VAT which is applied at the same rates in both cases. However, certain imports not produced in Colombia are exempted or excluded from the payment of VAT. In order for an importer to be eligible for VAT exemption, the Ministry of Commerce, Industry and Tourism (MCIT) must certify, prior to import, that the product to be imported is not produced domestically. A consumption tax is also applied to some imported and domestic products. The various import procedures or customs regimes and the different export promotion programmes provide, under certain conditions, for relief from the payment of customs duties and other taxes applicable to goods imports.

As regards non tariff measures, Colombia prohibits imports of certain goods on grounds of public health or morality, as well as to protect the environment or national security and to meet the commitments contained in international agreements to which it is a signatory. Colombia also applies an automatic ("free import") and non automatic ("prior licence") licensing system. During the period under review, the import licensing system, as notified to the WTO by Colombia, underwent no substantial changes. The number of tariff lines subject to automatic and non automatic licensing has increased since 2006 due to a change in the tariff classification in the case of automatic licensing, and in the case of non automatic licensing to the fact that, as from 2010, a non automatic licence is required to import certain precursors for the production of narcotic drugs.

Colombia continued having recourse to anti dumping measures during the period reviewed. Between 2006 and 2011, Colombia initiated 25 anti dumping (AD) investigations and applied ten new definitive measures; provisional measures were imposed in 13 of the 25 investigations initiated. Most of the measures were applied in 2007. As at 31 December 2011, Colombia had 12 AD measures in force, all of which were applied to imports from China. In the same period, no countervailing or safeguard measures were applied and no related investigations were initiated.

The task of preparing technical regulations is not centralized in a specific body; such regulations may emanate from the standardization institute ICONTEC, or from ministries, regulatory commissions and decentralized bodies. Although each

entity has its own internal procedure for the establishment of technical regulations, since 2009 a procedure for elaborating and issuing them has been agreed, on the basis of good practice recommendations. Most technical regulations reflect or are based on international standards. During the period 2006-2011, Colombia made 207 notifications to the WTO Central Registry, including notifications of draft technical regulations and their implementation, amendment or rejection. Important changes have taken place in the accreditation process since the last review. The responsibility for formulating policy on sanitary and phytosanitary (SPS) measures in Colombia is shared by various ministries. The SPS system operates on the principle of the harmonization of policy in the different sectors. SPS measures are adopted by the body responsible for risk assessment, where appropriate.

Export freedom is the general rule in Colombia, subject to the limitations or prohibitions established by laws or international agreements in force. However, the Government may issue standards to regulate trade, so as to enable the economy to overcome any external or internal circumstances that are adverse to Colombia's trade interests. Consequently, during the period under review, Colombia applied temporary quotas for exports of cattle (female) on the hoof in order to guarantee national herd replenishment and thereby improve the exportable supply of meat and meat products. Colombia maintains special charges on the exportation of certain products (including mild coffee, unset emeralds and coal) to finance development funds.

Colombia continues to run a number of export support and promotion programmes. The free zone programme was reviewed to bring it into line with the provisions of the Agreement on Subsidies and Countervailing Measures (SCM Agreement). The new regime is designed to promote the production of goods and services intended primarily, but not exclusively or necessarily, for foreign markets. Exporters of goods and services are also eligible for the total or partial refund of indirect taxes, charges and contributions through applications for the tax reimbursement certificate (CERT). In addition, exporters may be eligible for other export support and promotion programmes such as the special export programmes (PEX) and the Vallejo Plan.

In 2009, with a view to updating the rules on protection of competition, Colombia adopted a new law on the subject. The Supervisory Authority for Industry and Trade (SIC), which was restructured in 2011, is now the National Authority for the Protection of Competition; its function is to conduct investigations, impose fines and adopt other decisions concerning infringements of the competition protection regulations. During the period reviewed, the SIC made considerable progress with regard to the average duration of the investigation and decision making process. The Special Administrative Unit for Civil Aviation (air transport) and the Financial Supervisory Authority currently deal only with business mergers in their respective sectors. There is a special competi-

tion regime for the agricultural sector, considered a sector of basic importance to the economy, in which some anti-competitive agreements are therefore allowed for stabilization purposes. Similarly, the following are exempted from the application of the competition law: price stabilization funds, parafiscal funds for agricultural development, establishment of minimum guaranteed prices, regulation of domestic markets for agricultural products, supply chain agreements in the agricultural sector and the agricultural safeguard regime.

Colombia continues using fiscal incentives as an instrument to promote national and foreign investment, as well as other support programmes to promote development in specific sectors and to contribute to social and political equality. Colombia has observer status in the context of the Plurilateral Agreement on Government Procurement. During the period under review, Colombia strengthened the legal and institutional framework for government procurement, particularly for the purpose of increasing transparency, through the introduction, in 2007, of legal changes in the public procurement regime. However, procurement is also used as a tool to boost domestic industry and employment, mainly through the use of preferences.

During the period under review, Colombia made no important changes to the legal framework of its intellectual property protection regime; changes were, however, made in the regulatory area to facilitate formalities through automation and, at the institutional level, through the establishment of the Intersectoral Commission on Intellectual Property (CIPI), with a view to coordinating the policies, activities and programmes of public and private institutions relating to intellectual property.

• TRADE POLICY BY SECTOR

The period under review saw the introduction of some changes in the sectoral composition of the Colombian economy. The mining sector substantially increased its share of GDP, from 6.3 per cent in 2005 to 10.3 per cent in 2011. This was due partly to increased oil and coal production and the rise in international prices. The share of the agricultural and manufacturing sectors contracted, reflecting a relative increase which, though solid, was less pronounced than for the more dynamic sectors of the economy. The contribution of financial and real estate services to GDP declined only slightly in spite of the financial crisis, while the share of the construction sector increased, partly under the impetus of increased public spending. The agricultural sector is of key importance to the Colombian economy on account of its contribution to GDP, employment and exports. The current focus of agricultural policy is on promoting development in rural areas, increasing competitiveness and market diversification. Colombian agricultural policy is also aimed, albeit not explicitly, at contributing to food security. Agricultural products (WTO definition) have a higher tariff protection level (14.5

per cent) than other sectors such as manufacturing (4.9 per cent), and this has been accentuated by the recent tariff reduction. The agricultural sector also benefits from programmes of domestic support, preferential access to credit and debt refinancing programmes, subsidization of agricultural insurance and mitigation of exchange rate risk. Colombia also uses other mechanisms to help producers cope with fluctuating world prices, such as price stabilization funds.

Colombia's mining policy is geared to guaranteeing supplies of hydrocarbons and electric power, and to generating the resources needed to promote national development. Colombia grants national treatment to foreign investment in the mining and hydrocarbons sectors, as well as in other sectors. Foreign enterprises must establish a subsidiary domiciled in Colombia in order to be granted exploration concessions. In the hydrocarbons sector, a significant earner of foreign exchange, the State owned company ECOPETROL S.A. continues to play a predominant role in the extraction, refining, trade, distribution and transportation of petroleum and petroleum products. Colombia continues to grant a sales subsidy on fuel in the domestic market, which, despite having been reformed, still represents a substantial fiscal burden. Private sector participation in the electricity sector accounts for 45 per cent of total generation. Although the State retains a major stake in the sector, reforms have been introduced to promote the functioning of market mechanisms. Thus, during the period under review, Colombia established the Wholesale Electricity Market as an entity responsible for granting concessions for electricity generation, interconnection and transmission networks between regions. The Wholesale Electricity Market has also been used for the adoption of mechanisms to address possible electricity shortages. A subsidy regime is applied to residential users in the most vulnerable sections of society, in accordance with the level of core or subsistence consumption.

The manufacturing sector's contribution to GDP declined during the period under review, albeit largely as a result of the accelerated growth of mining. The authorities are seeking to implement a Productive Transformation Programme, by identifying and developing emerging sectors and defining a new industrial strategy structured around sectoral committees. The aim is to promote the development of human capital and improve management and infrastructure, as well as to attract greater foreign investment and to formalize the activities of the informal sector.

Services accounted for some two thirds of Colombian GDP in 2011. The main contributors were financial and trade services. Colombia is a net importer of services. However, both imports and exports grew during the period under review.

The Constitution characterizes financial, stock exchange and insurance activities as being in the public interest; these activities can therefore only be exercised with prior State authorization. The financial sector is open to foreign investment

and there are no legal limitations on foreign capital holdings in commercial banks or insurance companies. Nevertheless, special authorization is required to take out insurance with companies domiciled abroad. During the review period, the financial institutions' prudential indicators remain sound, on account of the reforms introduced in the regulatory framework and in prudential criteria. Colombia satisfactorily weathered the global financial crisis of 2008 and 2009 through increased surveillance and the application of specific measures to increase reserves in order to meet any deterioration in the financial status of institutions.

Foreign companies are required to establish a subsidiary in Colombia in order to operate in the national telecommunications market. In 2009, Colombia introduced a new law to promote investment in the sector, which established a general approval regime and abolished the subsidy regime for low income populations, subject to a transition period. Suppliers of telecommunications services are allowed to set their tariffs freely, except in cases where competition is deemed inadequate or where the quality or supply of services is not acceptable. However, some tariffs are monitored and a tariff ceiling is currently imposed on calls from fixed to mobile telephones.

Air transport policy is aimed at providing flexible market access in order to promote competition. Air cabotage services are the preserve of Colombian aircraft, and a nationality requirement is applied, whereby 90 per cent of the staff employed by Colombian airlines and agencies/subsidiaries of foreign airlines established in Colombia must be Colombian nationals. This restriction is applied on a basis of reciprocity. Airports are operated under a concession regime or by the departments/municipalities where they are located.

Access to the maritime transport market is based on the principle of reciprocity. In the area of maritime transport, cabotage is reserved for Colombian flagged ships, although the chartering/hire of a foreign flagged ship may be authorized if no Colombian vessels are available or suitable for the purpose. The captain, officers and 80 per cent of the crew on ships registered in Colombia must be Colombians. International maritime transport and cabotage companies set their own tariffs and freight rates but must notify them to the authorities, which may review them and raise objections. The construction, maintenance and administration of ports are entrusted to port companies under a 20 year concession regime.

The provision of certain types of tourism services is subject to registration requirements. Providers of certain tourist services must pay a parafiscal contribution for the promotion of tourism, which has also been applied to commercial centres since 2011. A range of incentives are offered for investment in the sector, mainly for the renovation or construction of hotels and the provision of ecotourism services.