

**PART 2**  
**LIBERALIZATION OF TRADE AND INVESTMENT**

## PART 2 LIBERALIZATION OF TRADE AND INVESTMENT

### I. Trade in Goods

1. Mexico is bestowed with rich natural resources, land, a comparatively skilled and productive labor force, while Japan possesses accumulated capital and technology. Both countries can give great benefit to producers and consumers of each country by fostering complementary economic relationship through trade, making use of the sectors in which each country has comparative advantages. However, the producers of both countries, each having a population of more than one hundred million, are hindered from penetrating into the markets of specific sectors in which each country has comparative advantages because of tariffs and non-tariff barriers to trade in both countries.

The expansion of bilateral trade through the reduction or elimination of tariffs and non-tariff barriers, and resolving trade-related institutional problems in both countries, can further benefit the producers and consumers of both countries, promote efforts toward industrial restructuring as well as social effectiveness, and enhance the economic development of both countries.

(For trade statistics in recent years of Japan and Mexico are detailed in the APPENDIX)

2. The Joint Study Group studied the following points as areas for improvement in order to strengthen bilateral economic relations.

#### **A . Points raised by Japanese members**

##### **A-1. Tariffs in general**

3. At the meetings of the Joint Study Group, the following concerns were identified by the Japanese members in relation to Mexico's tariff system.

① The simple average bound tariff rate of Mexico is 36.24%, while its simple average applied tariff rate is 16.23% (APEC IAP 2000). Meanwhile, the Japanese tariff rate is 8.7%, in terms of the simple average bound tariff rate, and 8.1% in terms of the simple average applied tariff rate (APEC IAP 2000). Generally speaking, Mexico's tariff rates are higher than those of other countries at similar economic levels. Further, Mexico is not participating in ITA (Information Technology Agreement), a group of 57 major countries that have agreed to remove tariffs on information technology products.

② As a result of the conclusion of NAFTA and the FTA between Mexico and EU, enterprises of countries that are parties to such agreements do not incur the disadvantage of high tariff rates of Mexico stated in ① above, so that Japanese enterprises are placed in a seriously disadvantaged position compared with such enterprises.

As for ① above, the Mexican side responded that, i) given the differences in level of development, the fact that Mexico has maintained its tariff rates at only twice those of Japan was a signal of Mexico's consciousness of the importance of trade liberalization, and ii) another signal in this direction was the fact that Japanese figures showed that Mexico's current tariffs were half those to which Mexico has a right under the WTO. Mexico commented that Mexico's bound tariffs in industrial goods were similar to those of other Latin American countries of similar level of development, and that one of the main reasons why Mexico did not participate in the ITA was that other major Latin American economies with which Mexico was negotiating preferential tariffs also refused to participate in it.

4. The aforementioned points ① and ② give rise to the following concerns and problems of the producers and consumers of Japan and Mexico.

- ① Access to the Mexican market of Japanese products has been affected by the preferential treatment offered to the goods of the member countries of NAFTA and the Mexico-EU FTA. Negative impact on exports of electric equipment (finished products) and power plant-related items, for example, were identified.<sup>1 2</sup>
  - ② When Japanese companies based in Mexico import parts from Japan or ASEAN countries, high tariffs are imposed if not imported through the temporary or preferential regime, so that the Japanese companies lose price competitiveness. At the Joint Study Group meetings, problems related to automobiles and electric/electronic parts, for instance, were identified.<sup>3</sup>
  - ③ The current state of tariffs will prove to be a serious preventive factor when Japanese enterprises using parts and machinery made in Japan in high proportions conduct new investments in Mexico.
  - ④ High tariffs on finished products decrease the economic welfare of Mexican consumers, as they prevent these consumers' access to low-priced and high-performance products, while high tariffs on parts diminish the competitiveness of Mexican producers because of increased production costs. In this sense, the reduction of high tariffs and the elimination of disparities in tariffs between inside and outside the FTA areas generally produce favorable effects on the Mexican economy.
5. At the meetings of the Joint Study Group, it was pointed out that frequent changes or increases of Mexican tariff rates have been carried out; that the Mexican tariff system needs to be more transparent, predictable and stable, and that improvement of the system is necessary.<sup>4</sup> These have serious effects on the further penetration of Japanese enterprises to Mexico. Addressing this would also have a positive influence on Mexican economy.

## A-2. Individual Measures

6. At the meetings of the Joint Study Group, the following issues were pointed out with regard to Mexico's modification of the Maquiladora system, in connection with the conclusion of NAFTA and the subsequent introduction of PROSEC (Program of Sectorial Promotion).
- ① Only specific parts are covered and no finished products are included as target items for which a tariff reduction is implemented. Accordingly, coverage of the system over target items is insufficient, and the degree of tariff cuts is insufficient.
  - ② Under PROSEC, government directives determine the products to be covered, so it is relatively easy for the list of items to be revised based on decisions by the Mexican Government. Japanese manufacturers who rely on favorable tariff rates provided by PROSEC are subject to unforeseeable increases in manufacturing costs. This poses a problem, since Japanese enterprises, which are engaged in business activities based on the premise of parts imported at preferential tariff rates in accordance

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<sup>1</sup> Japan's share in the imports of Mexico has been declining since the entering into force of NAFTA. The estimate, which was conducted by the Ministry of Economy, Trade and Industry of Japan based on the investigations by JETRO Mexico Center and Japanese Chamber of Commerce and Industry of Mexico, indicates that the loss of Japan's exports (i.e. the gap between real exports and the estimated exports on the hypothesis that the Japan's share were maintained at the same level as that just before NAFTA came into effect) would be equivalent to approximately 395.1 billion yen. This loss would cause a decrease of 621 billion yen in Japan's GDP, which would, theoretically, result in the loss of employment for 31,824 persons.

<sup>2</sup> Japanese enterprises have difficulties in winning tenders in power plant projects in Mexico partly because of the tariff burden as a result of the absence of an FTA between Japan and Mexico. The same estimate as footnote 1 indicates that its effect would be a loss of 120.1 billion yen per year. This loss would cause a reduction of 196.6 billion yen of Japan's GDP, which would result in the loss of employment for 10,571 persons.

<sup>3</sup> A Japanese manufacturing company in Mexico changed the source of procurement of its parts amounting to 13 billion yen from Japan to NAFTA member countries in 2000. The effect of this is estimated to be equivalent to a decrease of 33 billion yen of Japan's GDP, which would result in the loss of employment for 1,381 persons according to the same estimation as in footnote 1.

<sup>4</sup> For instance, in general import tariff increases of January 1999, general import tariff rates applicable to countries and regions that do not have FTA with Mexico were raised by 3 to 10 percentage points, and the increase covered approximately 10,000 items (about 85% in terms of customs classification numbers). Also, in September 2001, general tariffs for steel products were raised by 25 percentage points.

with the system would be forced to face unexpected manufacturing cost increases.<sup>5</sup> Regarding the amendment of government directives, their effectuation on the day following its promulgation, with no transit steps admitted, was pointed out as another problem. Further, there is a problem of inconsistent application of tariff classifications, with different products receiving the same classification.

③ In addition, the following difficulties in the operation of the system can be mentioned:

- i) Tariff payment procedures are complicated.
- ii) Different tariff rates are applied to the same parts when used in different sectors.
- iii) Applying for additions to the list of designated items takes a long time.
- iv) With the registration procedure remaining unclear, a delay in registration authorization continues.

The Mexican side pointed out that PROSEC was created to reduce or eliminate tariffs on imported inputs, components and machinery and to maintain the competitiveness of the industry. The beneficiaries of PROSEC are all the participants in the productive chains of the sectors covered since they are able to import into Mexico machinery and equipment, inputs, parts and components duty free or with very low tariffs from non-FTA countries. It should be noted that, with PROSEC, Mexico is undertaking an ambitious unilateral liberalization on hundreds of tariff lines for 22 productive sectors.

In addition, the Mexican side expressed that PROSEC is a dynamic instrument, which can be constantly improved to the benefit of the industry established in Mexico. However, an FTA would constitute a better instrument to address the bilateral tariff issues between Mexico and Japan given the legal certainty that it would provide.

7. At the meetings of the Joint Study Group, Japanese members pointed out the following problems with regard to the Regla Octava system of Mexico, which was introduced to allow the imports of parts at preferential tariff rates, as in the case of PROSEC: rigidity of the system that requires extension procedures at the end of the six-month period, as well as instability and unpredictability, stemming from the burden of uncertainty about the receipt of authorization even when an application is filed, or from unexpected post-development costs for Japanese enterprises that operate based on the premises of the said system. The Mexican side explained that Regla Octava is a step of a provisional nature, designed to be applied during a period until the said import items are specified as target items of PROSEC.

### **A-3. Non-Tariff Measures**

8. At the meetings of the Joint Study Group, Japanese members identified the following problem with regard to the Mexican Aviso Automatico system (a notification system designed for monitoring): The system sets high reference prices for imports of designated products from specific countries, without any consideration of different production costs of the country concerned.<sup>6</sup> It was pointed out that unilateral setting of reference prices for the imported goods from specific countries places the company in question in a disadvantageous position, compared to the companies of those countries with which Mexico concluded FTAs.

The Mexican side responded that the Aviso Automatico system is designed for statistical monitoring purposes in relation to goods that could be imported in underinvoicing conditions, and therefore could

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<sup>5</sup> For instance, in the revised PROSEC announced on December 31, 2000, more than 2,500 items in the electric and electronic sectors that are used as parts were removed from the list of items subject to favorable PROSEC tariff rates. In addition, among some items that remained on the PROSEC list, the applicable tariff rate was raised from 0% to 5%. After the amendment implemented in December 2001, and even at present, prospects for continuation of the system, as well as its revision, are unstable, causing serious restrictions to corporate activities.

<sup>6</sup> The reference price for tinplate, for example, is 650 US dollars while the FOB price of Japanese tinplate is about 500 US dollars. Consequently, Japanese enterprises have to deposit the amount equivalent to the import tariff to customs authorities, calculated on the basis of this disparity between the reference price and the effective price (150 dollars in this specific case), for a period of three months.

affect national production. Besides, the Mexican side expressed that the Aviso Automatico System operates in a neutral, transparent, and expedite manner, according to the provisions of the Agreement on Import Licensing Procedures of the WTO, since it only requires the importer to present to the customs authorities acknowledgement of receipt by the Ministry of Economy of the requested format properly filled out. Finally, it should be noted that this system applies, in the case of Japan, for very few products, as established in Mexico's publication in the Official Gazette of March 26, 2002.

## **B. Points raised by Mexican members**

### **B-1. Tariffs in general**

9. The Mexican side pointed out the uncertainty of Japan's Generalized System of Preference (GSP). Under the GSP scheme, Japan grants preferential tariff treatment to products originating in developing countries, including Mexico, recognizing the difference in levels of development between both economies. This GSP scheme allows Mexico to find market niches in Japan without affecting other sensitive products. Mexican side argued that its exporters lack certainty in developing a permanent export markets in Japan because the preferential tariff treatment on certain products with quantitative limitations is suspended if imports of such products exceed pre-determined values or volumes.

The Japanese side responded that according to the non-reciprocal and non-discriminatory nature of the GSP based on international norms, a preference-giving country unilaterally determines the coverage of countries and products in the scheme, and also that the preferential tariff treatment must be extended on a non-discriminatory basis to all beneficiary developing countries.

10. At the meetings of Joint Study Group, the Mexican side noted that Japan has in general a structure with low average tariffs, but has tariff peaks for certain sectors in which Mexico might have an export interest.

11. With regard to trade in agricultural products, in particular, the Mexican side referred to the following points<sup>7</sup>:

① The enhancement of agricultural trade relations between Japan and Mexico would support the development of the Mexican agricultural sector and diversify Mexico's risk of depending on just one market for its agricultural products.

② Japan imports 60% of its food consumption, but the Mexican share in the total food imports of Japan is negligible. Therefore, the possible influence of elimination of tariffs on Mexican agricultural products would not constitute any threat to Japanese agriculture, although it is recognized that a product by product analysis is necessary. The result of this analysis might lead to specific recommendations on modalities that are best suited to grant preferential treatment to those Mexican agricultural products that are already exported and those with export potential to Japan, in order to prevent any type of disruption to the Japanese agricultural sector.

③ From the Mexican perspective, strengthening trade relations with Japan will necessarily involve exports of high value added products. Mexico considers that trade in agricultural products requires medium- to long-term partnerships between importers and exporters to satisfy consumer preferences and concerns, such as food safety and quality. Moreover, the Japanese consumers are highly sophisticated and they seem to demand increasingly a greater variety of products on a year round supply basis.

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<sup>7</sup> Mexico is fully conscious that subsidies in agriculture can not be addressed at a bilateral level, that current distortions in world agricultural markets are mainly caused by the large exporting countries which heavily support their agricultural sectors and not by net food importing countries. This issue should be discussed in WTO negotiations.

- ④ Both countries are net importers of cereals, forages, oilseeds, dairy products and meats, thus relying on third countries imports to meet domestic demand. Mexico expressed that the areas of complementarity are located in sectors such as tropical products, fruits and vegetables, poultry, beef and pork meat, beverages and processed products. It is necessary to concentrate on areas of economic complementarity and potential for mutually beneficial trade, and both Japan and Mexico can complement domestic agricultural production through imports.
- ⑤ Mexico is fully aware that Japan produces a wide range of agricultural products, including some of those in which Mexico has export potential. Complementarity arises due to the fact that Japan relies heavily on the import of some of those products. A preferential trade agreement would strengthen Mexico's position as a sound and reliable supplier to the Japanese market. Even though, full liberalization in all products of interest is not necessarily envisaged.
- ⑥ Mexico pointed out that in general Japanese import duties are not so high, but several tariff peaks are in place.

12. In this regard, from the Japanese side a view was introduced that:

- ① The tariff rates on agricultural products that are exported from Mexico to Japan are already at considerably low level and they do not constitute any barrier for the Mexican agro industry.
- ② The increase in Mexican agricultural exports to the Japanese market in recent years is a result of the fact that Mexico properly identified the needs and demands of Japanese consumers. In order to enhance export opportunities to Japan, it is important to make further efforts to collect such information on the Japanese market.
- ③ There is little complementarity between Japan and Mexico in the agricultural sector. Japan imports many agricultural products but exports few. In this sense, Japan and Mexico do not complement each other in the agricultural trade, as Mexico and some other countries do.
- ④ With regard to the Japanese market, consumption of fruit, for example, has recently been saturated in Japan, while few Japanese fruits are exported. Therefore, an increase in imports of any fruit, even tropical fruits that are not produced domestically in Japan, is very likely to affect consumption of domestic fruits. This shows that even tropical fruits are in a competing position with domestic fruits by substitution. Vegetables, poultry meat, beef, pork, and beverages etc. are indeed in a competing position with Japanese domestic products. In this context, Japan and Mexico do not complement each other within agricultural trade.
- ⑤ From the viewpoint of ensuring food security and securing the benefits of the multifunctionality of agriculture, sufficient attention should be directed towards a harmonization between agricultural trade and the sound development of domestic agriculture.

## **B-2. Non-tariff measures**

13. Representatives of the Mexican Government highlighted good working experience, and stated that they wished that Japan would recognize Mexico's inspection system. According to the Mexican experience, they considered it important to mention the example of mango, in which other countries recognize Mexico as a country free of fruit diseases in several regions, while Mexico is still waiting for a reply from Japan. It is an example where more expedite bilateral mechanisms would prove very useful.

The Japanese side responded that, if Mexico is interested in any specific aspects of SPS, it would be important that specialists of both countries have scientific and technical consultations for each item and that Japan is ready to conduct such consultations at any time, as necessary. The Japanese side also explained that it cannot apply any special procedures to any specific country because it has standard SPS clearing procedures which are published and applied equally to all countries in the world.

Concerning the export of mango from the State of Chiapas, Japanese side also explained that Japan was waiting for the current data from Mexico with regard to the accreditation of free status on Mediterranean Fruit Fly in the region, and had already admitted that the other states of Mexico do not have any problem of Mediterranean Fruit Fly.

### **C. Solutions**

14. At the meetings of the Joint Study Group, it was pointed out that it is necessary to cope with the aforementioned issues in order to further strengthen bilateral economic relations in the domain of trade in goods. It is the view of the Joint Study Group that it is important to realize a desirable state of tariffs and non-tariff measures, while paying attention to the mutually complementary nature of the Japanese and Mexican economies, as well as to the effects of competitiveness and welfare of their economy. It was also urged that this will be essential not only for producers of both Japan and Mexico but also for the enhancement of the economic welfare of their consumers and for the development of the Japanese and Mexican economies, based on their mutually complementary nature.

15. The Joint Study Group studied, in a comprehensive manner, several concrete measures, which are summarized hereafter, to further improve Japan-Mexico bilateral economic relations, a possible bilateral free trade agreement (FTA) between Japan and Mexico being one of them.

Moreover, the government of Mexico indicated its willingness to attend to all the issues raised by the Japanese side in Section A above.

#### **C-1. FTA**

16. It is the view of the majority of the members of the Joint Study Group that the conclusion of an FTA between Japan and Mexico is the most desirable and effective measure, compared to individual domestic measures or the new round of negotiations of the WTO, in the following aspects.

- ① An FTA provides for the elimination of duties and other restrictive regulations of commerce with respect to substantially all trade and it would become possible through the FTA to make the best use of the mutually complementary relations between two or more economies, taking account of their domestic concerns and sensitivities for individual items.
- ② Since an FTA can be concluded between/among a small number of countries, it may become an effective measure to promptly solve the present tariff problems under the situation in which Japanese enterprises are subject to serious disadvantages due to Mexico's conclusion of NAFTA and the effectuation of the EU-Mexico FTA.
- ③ The Mexican side indicated that Mexico hopes to conclude an FTA with specific countries because, with the tariff reduction on an MFN basis, it is difficult to take care of the difficulties of several specific sectors where competing countries maintain high tariff rates. Moreover, Mexico considers that it is also difficult to deal with issues, such as tariff peaks and the uncertainty of GSP systems, without an FTA.
- ④ With regard to possible rapid increases in imports after the conclusion of an FTA, damage to industries affected in both Japan and Mexico can be mitigated by establishing bilateral safeguard provisions within the FTA.
- ⑤ Mexico is studying the conclusion of a government procurement agreement and/or the according of national treatment in investment agreements, based on the premise of concluding an FTA.

17. The Joint Study Group stated that, in the eventual process of concluding an FTA, it will be necessary to establish the rules of origin so that only the goods of Japan and Mexico can enjoy benefits of such tariff elimination.

Mexico and Japan recognize the importance of having a specific set of rules of origin, as each country established in its respective FTAs the requirements for determining the country of origin of goods.

With regard to country of origin rules, Japan has basically adopted the criterion of change of tariff classification (CTC) in connection with the Japan-Singapore New Age Economic Partnership Agreement and GSP. Meanwhile, in all FTAs negotiated by Mexico, there are rules of origin of CTC, regional value content and rules with both criteria.

The Joint Study Group shared the view that, in the case of Japan and Mexico, the criterion of CTC should be principally used, and only in particular cases where it is difficult to use the criterion of CTC, it is possible to have a regional value content option.

The Joint Study Group also shared the view that rules of origin shall be consistent with the following disciplines and principles:

- a) not to create unnecessary obstacles to trade;
- b) to be developed and applied in an impartial, transparent, clear, predictable, consistent and neutral manner; and
- c) easy to administer for both users and Customs.

Additionally, the Joint Study Group considered it important to establish a specific set of clearly-defined customs procedures in order to have the certification requirements that importers and exporters must meet.

In order to strengthen co-operation and to enhance mutual understanding of the rules of origin and related procedures, the Joint Study Group recognized the importance of exchanging information relating to these issues.

18. The Joint Study Group indicated the need for securing consistency with the WTO Agreement if an FTA is to be concluded. Specifically, Article 24 of the General Agreement on Tariffs and Trade (GATT) calls for the elimination of "duties and other restrictive regulations of commerce" with respect to "substantially all the trade."<sup>8</sup> The same Article also allows for the gradual elimination of restrictive regulations of commerce, including tariffs, within a reasonable length of time (within 10 years, in principle, in accordance with the Understanding of Interpretation).<sup>9</sup>

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<sup>8</sup> Although there is no internationally established criterion to measure what constitutes "substantially all the trade," the EU seems to understand, for example, that "substantially all trade" has both a quantitative and a qualitative dimensions, meaning that 90% of all trade between the parties is covered, with no major sector being excluded.

(N.B.) Source: 5.1.1. of the European Commission's staff working paper concerning the establishment of an inter-regional association between the EU & Mercosur.

<sup>9</sup> In the case of NAFTA, signed by Mexico, 99% of the bi-directional trade volume between Mexico and the U.S. and Canada are bound at zero tariff, while under EU-Mexico FTA, 97.1% of the total bi-directional trade volume (96.8% of the EU's total exports to Mexico, and 97.6% of Mexico's total exports to the EU) are bound at zero tariff. In the case of the Japan-Singapore New-Age Economic Partnership Agreement, an FTA signed by Japan, 98.5% of the bi-directional trade volume (100% of Japan's total exports to Singapore, and 93.8% of the Singapore's total exports to Japan) are bound at zero tariff. (Table 1)

(N.B. These are the figures communicated to the WTO-CRTA from the FTA member countries, except for the figures on the Japan-Singapore New-Age Economic Partnership Agreement, which are calculated by Japan's side. These figures show the percentage to be finally achieved after various interim measures such as staging.)



19. The Joint Study Group recognized the need to give consideration to the sensitive sectors of each country in the study of tariff removal. For instance, the Mexican side expressed its desire to expand its shares of agricultural products, particularly fruits, vegetables, pork, etc., in the Japanese market, and at the same time presented its view that agriculture in Mexico also has sensitivities and that a possible Japan-Mexico FTA would need to respect the profound sensitivities existing in both countries.

20. It was introduced from the Japanese side, however, that there is an argument that it is difficult to further reduce or eliminate the tariffs on agricultural, forestry and fishery products under bilateral agreements because of sensitivity that specific agricultural, forestry, and fishery products have.

It was explained that, in the Japan-Singapore New-Age Economic Partnership Agreement, agricultural, forestry and fisheries products that are subject to tariff elimination are those that are already applied with zero tariff (those currently bound at zero under WTO and those currently duty-free but are not bound at zero under WTO). In this connection, furthermore, the decision of the Research Commission on Trade in Agriculture, Forestry, and Fishery Products of the Liberal Democratic Party (of September 3, 2001) was introduced. In the decision, it is stated, as basic policies with regard to the Japan-Singapore New-Age Economic Partnership Agreement, that (1) we must be careful not to have negative impacts on the domestic agricultural, forestry and fishery industries, and that (2) as a specific issue, the tariffs on agricultural, forestry, and fishery products are not to be further curtailed or revoked under bilateral agreements, because this subject has to be discussed at WTO, and that the same kind of bilateral agreements that will be negotiated in the future are to be dealt with under the same policy.

21. In connection with this argument, the Mexican side made it clear that agricultural products are indispensable in the final package of the bilateral agreement, if any, and that it is ready to take a flexible approach to address Japanese sensitivities. The Mexican side pointed out that the element of the Liberal Democratic Party stating “we must be careful not to have negative impacts on the domestic agricultural, forestry and fishery industries....”, is an approach that might be addressed within the Mexico-Japan bilateral talks. Finally, the structure of the Mexican economy, and the social and economic importance of the Mexican agricultural sector is much different from that of Singapore.

22. The Joint Study Group recognized the need to overcome the difficulties over sensitive sectors and to study concrete measures in this sense. In this connection, the Joint Study Group noted that the following measures are included in some of the existing FTAs, for instance.

In EU-Mexico FTA, consideration is given to sensitive sectors through tariff reduction/elimination in different staging processes, or the "waiting list method" in which the reduction/elimination of tariff rates can be considered after a certain period of time. (However, liberalization of 97% of trade volume between EU and Mexico is provided for in any case (See fn. to 18. above)). Further, in NAFTA and Japan-Singapore New-Age Economic Partnership Agreement, bilateral safeguard arrangements were introduced as safety nets against the impact of tariff reduction/elimination.

## **C-2. Reduction/elimination of applied tariff rates through individual domestic measures**

23. Individual domestic measures make it possible to cope with tariff issues in a flexible manner, such as the coverage of items and an applicable period, based on the specific needs and requests of the industrial sectors concerned. Accordingly, the Joint Study Group underlined the necessity to continue to properly implement individual tariff measures, taking into account the real situation of the economy. The Group

also stressed the importance of securing that transparency of the procedures in relation to the modification of items or tariff rates and the publication of such modification.

24. The Joint Study Group pointed out the need to take transitory measures to lower tariffs on an MFN basis without waiting for tariff reduction measures to be agreed upon in a possible FTA or the new round of WTO.

### **C-3. Reduction of bound tariff rates in the New Round Negotiations of the WTO**

25. A new round of negotiations were launched at the 4th WTO Ministerial Conference held in November 2001. Concerning agricultural products, negotiations had already commenced in order to continue the reform process in conformity with Article 20 of the WTO Agreement on Agriculture. In the Declaration of the above mentioned 4th WTO Ministerial Conference, it is stipulated that agricultural negotiation modalities shall be established no later than 31 March 2003, and that the negotiations to be pursued under the terms of the Declaration, including negotiations on agriculture, shall be concluded no later than the 1st of January 2005.

26. The results of the round negotiations will be applied to imports from all WTO member countries, and it is also profitable for the Japanese enterprises in Mexico that use parts imported from such WTO member countries.

27. However, the Mexican side expressed its views that products such as textiles, shoes, and steel are sensitive items for tariff reductions on an MFN basis and that it preferred to discuss these issues on a bilateral basis, since multilateral discussions take much more time than bilateral negotiations before a consensus is achieved, as multilateral discussions require negotiations with the many countries concerned, giving due consideration to the sensitivities of each nation.

28. Based on the aforementioned viewpoints, it was the view of the majority of the members of the Joint Study Group that a bilateral approach in the form of an FTA is a better solution to resolve the problems existing between Japan and Mexico in the short term compared with multilateral negotiations.

### **C-4. Aviso Automatico**

29. The Japanese members stated, with regard to the Aviso Automatico system, that it is necessary to improve operational aspects in Mexico and to mutually monitor the application of the system in an appropriate way in order that the scheme, whose objective is essentially price monitoring, is not implemented in trade-restrictive manner.

## **II. Government Procurement**

1. Japan is a contracting party to the WTO Agreement on Government Procurement, and Mexico is a non-contracting party to that agreement. Accordingly, from Japan's point of view, Japanese corporations are deprived of business opportunities in Mexico and this constitutes an obstruction to investment. This could result in an increase in procurement costs within Mexico, which runs counter to the interests of both consumers and manufacturers in Mexico. These issues were pointed out and the Joint Study Group agreed on the necessity of addressing this situation. The Mexican side provided overall information on its government procurement procedures
2. The Joint study Group pointed out the following issues to be addressed in the government procurement procedure in Mexico and Japan.
  - 1) The Japanese side pointed out that national treatment is granted to corporations of contracting parties to FTAs with Mexico, whereas such treatment is not granted corporations of other nations. There are some projects to which bidding participation is permitted only to Mexican corporations and the corporations of parties contracting FTAs with Mexico. In addition, corporations from Japan, which is not a contracting party to an FTA with Mexico, are disadvantaged against Mexican companies by the 10% discount on the tendering price competition. As a result, Japanese companies have been handicapped and this constitutes an obstruction to investment from Japan to Mexico, and effective government procurement having been hindered in Mexico.
  - 2) The Japanese side pointed out that bidding qualification requirements in government procurement procedures in Mexico are unclear and the procedures are complicated. This has discouraged Japanese companies from participating in bidding for government procurement in Mexico. The Mexican side pointed out that the Mexican government procurement procedures are clear and functional, considering the fact that there were more than 2,900 millions US\$ participation of goods and suppliers from non-FTA member countries in the Mexican government procurement market in 1997.
  - 3) The Mexican side expressed its concern that, according to the available information on Japan's TPR-2000, the participation rate of foreign suppliers in the Japanese government procurement market remains low, and this shows that the market is difficult to access by potential Mexican suppliers. The Japanese side pointed out that i) the Government Procurement regime of Japan is non-discriminatory for domestic and foreign suppliers and there is no restraint specific to procurement from foreign suppliers, and ii) potential Mexican suppliers are provided with the same opportunity as any other suppliers to enter the Japanese market, due to the principle of open tendering, though only the WTO GPA members can make use of the dispute settlement procedures provided therein.
3. Recognizing the importance of providing opportunities under transparent and fair procedures to all corporations, the Joint Study Group agreed on the need for non-discriminatory procedures in government procurement both in Japan and Mexico, and studied the ways and means for improvement for the above-mentioned issues, including a possible bilateral agreement between Japan and Mexico on government procurement.
4. Bilateral agreement linked with an FTA.

The Joint Study Group pointed out that concluding a bilateral agreement linked with an FTA would be a more effective and desirable approach than other means, in order to overcome the current discriminatory situation in the government procurement procedure in Mexico. In the case of government procurement in Japan, a bilateral agreement linked with an FTA would provide the Government of

Mexico with dispute settlement procedures to be provided in that agreement. A bilateral agreement on its own not linked with an FTA is not a feasible option, because government procurement is a sensitive area for Mexico and it would be difficult to provide preferential measures such as granting national treatment.

5. Mexico's accession to the WTO Agreement on Government Procurement.

Among the signatories that have acceded to the WTO Agreement on Government Procurement (twenty-eight countries and regions), Mexico has concluded FTAs with all the signatories, except for three countries and a region: Japan, the Republic of Korea, Singapore, and Hong Kong, China Special Administrative Region. Within the framework of each FTA, national treatment in government procurement is already granted. Thus, theoretically speaking, it would not be too difficult for Mexico to join the Agreement and thereby expand granting of national treatment to the said three countries and region, but Mexico has great difficulty in doing so due to its domestic sensitivity concerning government procurement.

It was the view of the majority of the members of the Joint Study Group that a bilateral agreement on government procurement linked with an FTA is an easier and more convenient solution for Mexico, in order to resolve the problems existing between Japan and Mexico in terms of government procurement.

6. The Japanese side pointed out that it was important to establish transitional measures for granting national treatment to Japanese corporations without waiting for the actual implementation of the possible measures stated above, in order to promptly resolve existing problems.

7. The Japanese side pointed out that the current actions taken by the Mexican Government for improving and making clear the bidding qualification requirements in government procurement procedures in Mexico should be accelerated<sup>10</sup>

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<sup>10</sup> The Mexican government provides advanced public information to the business community on procurements opportunities through the Internet ([www.economia-paasop.gob.mx](http://www.economia-paasop.gob.mx)), where the Annual Acquisition Program of Goods, Leases and Services (PAAAS), containing the government procurement preliminary program, is published. For transparency purposes, the Mexican government has a website ([www.compranet.gob.mx](http://www.compranet.gob.mx)) with information regarding public tenderings (from invitations to participate to the result of each public tendering).

### **III. Anti-dumping (AD), Countervailing Duties (CVD) and Safeguards (SG)**

1. The Joint Study Group held the common recognition that, although both anti-dumping and countervailing measures are valid actions to be taken against unfair trade, trade partners must avoid protectionism and arbitrary abuse of these measures. The group requested the governments of both Japan and Mexico to recognize such needs, and to give careful consideration to conformity with the WTO agreement in the implementation of such measures in order to contribute to the WTO's objective of promoting free trade.
2. Discussions on anti-dumping measures are to take place within the framework of the WTO. The Joint Study Group shared the view that in the discussions in the WTO, the governments of Japan and Mexico should cooperate and make efforts with a view to clarifying the necessary conditions that accurately legitimate the application of anti-dumping measures.
3. The Joint Study Group expressed its concern that there may be differences in the application of anti-dumping measures by Mexico between contracting parties to FTAs with Mexico on one hand and non-contracting parties to such agreements on the other. In addition, the group concurred in recognition that such measures should be implemented under transparent and fair procedures.
4. Members of the Joint Study Group shared the view that it is necessary to consider to incorporate effective and WTO-consistent bilateral emergency measures in a possible Japan-Mexico FTA, and that some of the procedural elements such as relationship with the global safeguard measures could be discussed in possible negotiations.
5. Regarding AD and CVD, the Mexican side pointed out that discussions could take place between Mexico and Japan in order to consider the improvement of the provisions related to the transparency and procedural fairness in a possible Japan-Mexico FTA.  
The Japanese side showed its view that such issues should be dealt with in WTO negotiations.

#### IV. Services

1. The characteristics of trading in services are that it is accompanied by the movement of production factors, such as capital, labor, technology, and managerial resources. Activation of trade in services will produce new combinations of production factors in different countries, promoting international division of labor and creating opportunities to enhance productivity through competition.

In particular, improving the efficiency of service fields that provide infrastructures for industrial activities, such as finance, transportation, telecommunications, distribution, construction, and energy, will not only contribute to these fields but will also enhance the efficiency of other services and manufacturing industries. Considering this, the benefits of the liberalization of trade in services of these sectors will not be limited to efficiency enhancement of the said industries.

Moreover, it is important to note that electronic commerce, which eliminates geographical and time-related restrictions between trading partner countries, and audiovisual services that increase a sense of closeness to the other country by communicating language, culture and art, will also have positive impacts on the expansion of trade and investment.

2. At the meetings of the Joint Study Group, the following issues were pointed out by the Japanese members as requiring improvement with regard to regulations in the Mexican service field.

- (1) There is an upper limit of 49% on the ratio of foreign capital in fields such as bonded warehouse firms, integral port administration, insurance and security companies, financial factoring companies, and non-bank financial institutions.
- (2) Prior governmental approval is required for foreign capital participation in excess of 49%, regarding high seas traffic service.
- (3) There are nationality requirements in the domain of recognition of qualifications for tax/audit services, and notary publics.
- (4) According to Mexico's list of specific commitments in GATS, there remain various restrictions on foreign investment, including minority restrictions in the third mode, in such sectors as professional service, telecommunications, construction, and transport. In the absence of commitment in GATS, there is a possibility of sudden regulatory changes.
- (5) For service suppliers in countries that are signatories to FTAs with Mexico, market access and national treatment have been guaranteed for the financial service sectors, while Japanese service suppliers are accorded disadvantageous treatment. This also means that Japanese manufacturing firms located in Mexico have limited access to the services provided by Japanese service suppliers.

3. The Mexican side explained that *de facto* liberalization of services has taken place through two mechanisms:

- Autonomous actions of national governments to remove regulatory limitations and restraints on trade and foreign investment, and
- Measures adopted by virtue of technological advances that facilitate trade in services (for example, Internet, professional services, data transmissions, video conferences and fund transfers).

However, the Mexican side also pointed out that there is no certainty that the unilateral liberalization observed in recent years would be maintained in the future and its unilateral liberalization should not be taken for granted.

4. At the meetings of the Joint Study Group, various ways and means of improvement were comprehensively studied, together with their merits and demerits.

## 5. ① FTA

It is the view of the Joint Study Group that the conclusion of a services trade FTA is a more effective measure compared to the liberalization commitment through the New Round Negotiations of the WTO, for the improvement of bilateral economic relations in the following aspects.

Agreements liberalizing trade in services between the two countries which meet the requirements stipulated in Article 5 of GATS ((a) to have "substantial sectorial coverage," and (b) to provide for "elimination of substantially all discrimination") would enhance the merit of mutually complementary relations between their economies, taking account of the sectorial interest and sensitivities of each country.

Thanks to Mexico's participation in NAFTA, liberalization in services sectors has progressed considerably in the country, so that it is considered possible to commit such liberalization in an FTA with other countries in conformity with Article 5 of GATS. With such an FTA, the legal stability of liberalization will be further secured.

In the financial service sector, Mexico has already granted foreign affiliates of NAFTA and EU countries 100% capital participation. It is, therefore, considered possible for Japanese enterprises to be granted the same treatment by concluding an FTA.

The Mexican side showed their preference on a possible FTA based on a negative list approach, considering its experience in the liberalization of its services sectors through FTAs signed with North American and Latin American countries. The Mexican side explained the following points:

- FTAs can provide certainty to services providers through transparent limitations identified in ANNEXES and,
- Through Mexico's experience in its different FTAs, areas were identified in which restrictions exist but can be removed or changed in order to benefit the national economy through liberalization, and others that should be maintained for justified reasons.

With regard to the exemptions to services liberalization, the Japanese side explained that it had adopted the positive list formula in the Japan-Singapore New Age Economic Partnership Agreement. The Mexican side explained that it adopted the negative list approach in NAFTA and that it foresees a negotiation of an FTA in the future based on a negative list approach that will allow the countries to include all services sectors in the negotiation, with the possibility of maintaining reservations in sectors that are very sensitive for both economies, and establishing further liberalizing commitments.

## 6. ② Liberalization commitment through the New Round Negotiations of the WTO

Negotiations on trade in services have been proceeding since 2000. With the target date for conclusion of negotiations set at January 1, 2005, it has been decided that initial requests be presented by June 30, 2002, and the first commitment offer by March 31, 2003.

The Mexican side explained that it would be able to make further commitment in trade in services through an FTA than through WTO negotiations where the contributions from 144 member countries need to be negotiated through bilateral, plurilateral and multilateral negotiations. This would require a much longer period of negotiations with more limited results.

It was the view of the majority of the members of Joint Study Group that a bilateral approach of a services trade FTA is a better solution for the problems existing between Japan and Mexico in terms of trade in services that should be resolved promptly, than liberalization commitments through the New Round Negotiations of the WTO.

## **V. Investment**

1. After the mid-1980s, direct overseas investment by principal countries/regions in the world attained remarkable growth. In some investment-receiving countries, however, various requirements are imposed on foreign investments from the viewpoint of protecting and cultivating domestic industries and preventing the outflow of their foreign currencies. Local content requirements, balance of payments requirements, and money remittance controls are examples of such requirements.

There is no multilateral comprehensive agreement on investment that provides for liberalization of foreign capital investment or protection of investors and invested assets.

2. It is widely recognized that Foreign Direct Investment (FDI), along with national domestic capital can perform an important role in the development strategy of many countries by acting as a catalyst in the production and generation of employment and as a vehicle for the transfer of technology. Generally, FDI contributes to capital formation, the expansion and diversification of exports, increasing competition, providing access to state-of-the-art technology, and improving management systems. (Graphs 1 and 2.)

3. Mexico and Japan are attractive trading partners. For Japanese investors, investing in Mexico is attractive not only due to the size of Mexico's domestic market, but also because of the vast network of Free Trade Agreements (FTAs) that renders Mexico a key export platform for world trade, having preferential access to the main markets of North America, Latin America and Europe.

4. The Study Group shared the view that both Japan and Mexico have the opportunity to inaugurate a new form of relationship for Japanese and Mexican investors through the creation of a balanced investment framework for both countries.

5. The Joint Study Group identified and categorized the following issues related to Japan's investment in Mexico, from the viewpoints of promoting investment between Japan and Mexico and creating more attractive conditions for economic activities between the two countries.

(1) As to investment by Japanese companies, the Japanese side referred to some restrictions on foreign investment in the Services Sector.

- There is an upper limit of 49% on the ratio of foreign capital such as bonded warehouse firms, integral port administration, insurance and security companies, financial factoring companies, and non-bank financial institutions.
- Prior governmental approval is required for foreign capital participation in excess of 49%, regarding high seas traffic services.
- According to Mexico's list of specific commitments in GATS, there remain various restrictions to foreign investment, including minority restrictions in the third mode, in such sectors as professional service, telecommunications, construction, and transport. In the absence of commitment in the GATS, there is a possibility of sudden regulatory changes.

The Japanese side further stated that the level of restraint on foreign investment imposed on the enterprises of signatory nations of NAFTA and other FTAs is generally lower than those restrictions pointed out above, except for the areas in which universal foreign capital restraint is imposed under the Foreign Investment Law. Accordingly, Japanese enterprises are receiving disadvantageous treatment compared with the enterprises of NAFTA member countries and other states with which Mexico has concluded FTAs. Mexican side explained that it grants preferential stand still to the service suppliers of countries that are signatories to FTAs with Mexico.



(2) The Japanese side pointed out that with regard to the dispute settlement cases where foreign investments are involved, experience shows that there are certain restraints on bringing cases to international arbitration because of the ideas derived from the Calvo principle. Under the provisions of NAFTA, an investor on its own behalf or on behalf of an enterprise that it owns or controls may submit to international arbitration a claim that the host party has breached an obligation under the principles and disciplines comprised in the chapter of investment only if the investor or the enterprise has incurred loss or damage by reason of, or arising out of, such a breach. In the case of Japan and Mexico, Japan considered that it is also necessary that investment disputes can be submitted directly to international arbitration in order to secure a neutral judgment.

With this regard, Mexican side stated the following:

- ① The Calvo clause means that foreign companies or foreign nationals making investments in corporations in Mexico are dealt with in the same way as Mexican companies or nationals, and that those foreign companies or foreign nationals cannot resort to the relief measures of the government of its nationality in case of dispute settlement.
  - ② The Mexican side believes that the creation of an international instrument comprising a balanced investment framework between Japan and Mexico could be supplemented with a mechanism for the settlement of disputes between an investor and a Party that would provide legal certainty to investors.
- (3) The Mexican Automobile Ordinance provides for local content requirements, balance of payments requirements, and other performance requirements. The Automobile Ordinance also stipulates that, unless a firm produces finished automobiles in Mexico, it cannot import automobiles as a dealer. However, the Automobile Ordinance is scheduled to be abolished at the end of 2003.
- (4) Foreign as well as national investment is prohibited in certain areas of energy sectors. Regarding the downstream sectors of natural gas (transport, distribution, and storage), participation of foreign capital was reportedly permitted, but such participation is still prohibited with regard to the upper stream sectors of the said field (refining and development), as well as the petroleum sector. The Mexican side clarified that private investment restrictions in certain energy sectors is mandated in the Mexican Constitution.
- (5) The Japanese side considered that amending or abolishing the Mexican tariff system under which tariffs of certain sectors were eliminated has significant negative influences on Japanese investors willingness to invest in Mexico, from the viewpoint of legal stability, as well as predictability.
6. Members of the Joint Study Group concurred in recognizing that it is important to establish a legal framework on investment as an effective way to improve the aforementioned issues, and the Group comprehensively studied ways and means for improvement, together with the merits and demerits of respective measures.
7. ① Bilateral investment rules linked with an FTA

Investors take into account certainty and legal security when undertaking investments. Investment Rules between Japan and Mexico would provide such elements, since they would establish a framework of principles and disciplines oriented to the promotion and protection of FDI.

It was the view of the Joint Study Group that investment rules linked with an FTA would be a more effective measure to strengthen bilateral economic relations in terms of investment, and to solve issues

such as accordance of national treatment and most-favored-nation treatment to investment both in pre-establishment and post establishment of investment, prohibition of performance requirements and securing free transfers and the clarification of the conditions for expropriation and compensation.

Japan and Mexico have been negotiating an investment agreement since 1999. The Mexican position is that the national treatment and the most-favored-nation treatment regarding permission for investment can be accorded solely in the case of investment rules linked with an FTA.

Meanwhile, with regard to the conclusion of an FTA, including trade in goods, it is necessary to take into consideration the issues pointed out in Chapter 1. "Trade in Goods."

The Mexican side considers that such investment rules would be an incentive for reciprocal investments because they would directly reflect a cost reduction for investments, expanding the bilateral investment flows under conditions of transparency and legal certainty. Particularly the guarantees afforded to such investments would be especially valuable to small and medium-sized companies. These companies could then consider investing directly in Mexico.

#### 8. ② Formulation of new rules through the New Round Negotiations of the WTO

Multilateral rules in the domain of investment are to be negotiated after the decision made on a consensual basis in the 5th Ministerial Meeting of the WTO scheduled for September of 2003 in Mexico, before which the current work is to be continued.

The Mexican side, however, presented their view that the elaboration of multilateral rules on investment would take longer and that bilateral investment rules would be a more effective measure in order to guarantee legal certainty and better market access in terms of investment in Mexico.

It was the view of the majority of the members of Joint Study Group that investment rules linked with an FTA would be a better solution in the short term than formulation of new rules on investment through the New Round Negotiations of the WTO, in order to resolve the problems existing between Japan and Mexico in terms of investment.

## **VI. Movement of natural persons (business people)**

1. Undertaking investment and/or trading in services are usually accompanied by the movement of persons involved in these activities. Without the smooth movement of natural persons, timely business activities will be blocked. From the viewpoint of strengthening economic relations between Japan and Mexico, the Joint Study Group studied the issues related to the movement of natural persons between the two countries. In particular, the Japanese side pointed out the topics of Mexican procedural delays regarding the issuance, change, and extension of visas.
  2. At the Joint Study Group meetings, ways and means for improvement concerning the movement of natural persons were studied.
    - (1) At the Joint Study Group meetings, the Mexican side explained that, with regard to the procedures for issuance, changes and extension of visas, Mexico ensures the visa issuance period does not exceed 30 days, and that Mexico will study further improvement if a specific problem is pointed out hereafter.
    - (2) From the viewpoint of promoting the movement of experts or technicians, mutual recognition of licenses or certifications can be considered. To promote efforts in this direction, it is necessary to proceed with discussion between respective vocational groups of the two countries.
    - (3) The Joint Study Group shared a view on the convenience of the creation of a coordinated mechanism for the exchange of information and experiences related to migratory issues, including mutual recognition of licenses and certifications in order to clarify doubts regarding the requirements of each country for the entry of business people, as well as for identifying the remaining major problems.
- (N.B. Such issues could be dealt with in the context of trade in services)