

# **WORLD TRADE ORGANIZATION**

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**Committee on Safeguards**

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## **NOTIFICATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROCEDURES RELATING TO SAFEGUARD MEASURES**

**ECUADOR**

The following communication, dated 18 April 2012, is being circulated at the request of the delegation of Ecuador.

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In accordance to Article 12.6 of the Agreement on Safeguards, Ecuador hereby submits Resolution No. 43 of the Foreign Trade Committee entitled "Requirements and Procedures for the Application of Safeguard Measures", published in Official Journal No. 677 of 5 April 2012.

**No. 43**

**THE FOREIGN TRADE COMMITTEE**

**Whereas:**

Pursuant to Article 261.5 of the Constitution of the Republic, the central State shall have exclusive jurisdiction, *inter alia*, over economic, tax, customs, tariff, and foreign trade policies;

Ecuador signed the Protocol of Accession to the World Trade Organization in the city of Geneva on 27 September 1995, thereby undertaking to apply the provisions of the Agreement on Safeguards;

The WTO Agreement on Safeguards is a regulatory instrument setting out the criteria and procedures for determining the conditions under which a safeguard measure may be applied;

The Organic Code of Production, Trade and Investment (COPCI) entered into force with the publication of a Supplement to Official Journal No. 351 of 29 December 2010, and Book IV of that Code establishes the regulatory framework for the country's foreign trade policy as well as its bodies and instruments;

Article 71 of COPCI stipulates that the body entrusted with approving national public trade policies shall be the Committee on Foreign Trade (COMEX);

Article 72(i) of COPCI establishes, as one of the duties and powers of COMEX, "the adoption of the rules and measures needed to counteract unfair international trade practices affecting domestic production, exports or, in general, the country's trade interests";

Article 88 of COPCI stipulates that "[t]he State shall promote transparency and efficiency in international markets and shall encourage equal conditions and opportunities. For these purposes and in accordance with the provisions of this Code and of the relevant international instruments, it shall adopt appropriate trade measures to: (b) restrict or regulate any imports that increase significantly and are made under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive products";

Executive Decree No. 733 was issued pursuant to the first general provision of the above mentioned Code and published in Official Journal No. 435 of 27 April 2011, establishing the Regulation to Implement Book IV of the Organic Code of Production, Trade and Investment, Regarding Trade Policy, its Supervisory Bodies and Instruments;

In compliance with the mandate of Article 53 of the Regulations to Implement Book IV of the Organic Code of Production, Trade and Investment, which provides that "[t]he administrative unit established in the Ministry of Foreign Affairs, Trade and Integration shall be the Investigating Authority for trade defence for the purposes of the provisions of Article 75 of the Organic Code of Production, Trade and Investment and these Regulations", the Ministry of Foreign Affairs, Trade and Integration, by Ministerial Decision No. 0000074, published in Official Journal No. 547 of 3 October 2011, appointed the Technical Under-Secretariat for Foreign Trade, through the Directorate of Trade Defence of the Ministry of Foreign Affairs, Trade and Integration, as the new investigating authority for trade defence for the purposes of the Organic Code of Production, Trade and Investment and the Regulations to Implement Book IV;

Article 83 of the Regulations to Implement Book IV of the Organic Code of Production, Trade and Investment stipulates that: "[t]he requirements and procedures for applying for the imposition of safeguard measures shall be set as provided in the relevant international rules and *in resolutions issued by COMEX*";

By Ministerial Decision No. MCPEC-2012-007 of 6 February 2012, Dr Rubén Morán Castro was delegated the powers and duties of the Ministry responsible for coordinating production, employment and competitiveness, for the period from 8 February to 12 February 2012, as substitute for the Minister responsible for the coordination of production;

The Committee on Foreign Trade in plenary session examined and approved technical report No. 02/AI/DDC/2012 of the Ministry of Foreign Affairs, Trade and Integration/Technical Under-Secretariat for Foreign Trade/Directorate of Trade Defence concerning the procedures for the investigation of dumping and the application of safeguard measures recommending, *inter alia*, the approval of "*the requirements and proceedings for the application of safeguard measures*";

In exercise of the powers conferred on it by the law,

**Hereby resolves:**

**To approve the requirements and proceedings for the application of safeguard measures.**

**Article 1 – Definitions:**

- (a) **Investigating authority:** The investigating authority for trade defence is the Directorate of Trade Defence/Technical Under-Secretariat for Foreign Trade/Ministry of Foreign Affairs, Trade and Integration.
- (b) **Sectorial Ministry competent for the determination of serious injury or threat of serious injury:** The institution which, by its powers and areas of competence, governs the domestic industry that has applied for the measure and is hence responsible for conducting the analysis to determine serious injury or threat of serious injury;
- (c) **Domestic industry:** The producers as a whole of the like or directly competitive products operating within the national territory are those whose collective output of like or directly competitive products constitutes at least 40 per cent of total domestic production of those products that are claimed to be affected by the increased imports. In the case of fragmented producers and small and medium enterprises, that share would be 25 per cent;
- (d) **Serious injury:** Significant overall impairment in the position of a domestic industry;
- (e) **Threat of serious injury:** Serious injury that is clearly imminent. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility;

- (f) **Interested parties:** The investigating authority shall consider as interested parties the following, but not necessarily all of the following:
- (f.1) An exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such products;
  - (f.2) The government of the country or countries of origin or provenance of the products subject to investigation;
  - (f.3) A producer of a like or directly competitive product in Ecuador;
  - (f.4) Domestic industrial users and domestic consumers, provided they are representative and it is possible to identify them;
  - (f.5) Those that the investigating authority deems should be interested parties.

**Article 2 – Submission of the application.** The application for a safeguard investigation shall be submitted by the representatives of the domestic industry that produces like or directly competitive products and considers that it is being affected or threatened by the increased imports.

The application for an investigation shall be submitted on behalf of the domestic industry, in writing, to the investigating authority. It shall be clear and precise, and shall contain reasoned information and detailed evidence that the increased imports of the like or directly competitive product are causing or threatening to cause serious injury to the domestic industry.

Together with the application, the interested party shall submit the duly completed form provided by the investigating authority.

The application, the form and the attached documents shall be submitted in the original plus three copies, along with a digital version of the requested information.

**Article 3 – Application requirements.** In addition to the mandatory information to be provided in the form, the application shall contain, as a minimum, the following information:

- (a) General information concerning the applicant(s) and, in the case of a legal representative, the relevant accreditation documents and a certified copy of the power of attorney if the applicant is represented by an attorney;
- (b) Documentary evidence that the applicant is a representative of the domestic industry that produces like or directly competitive products within the meaning of Article 1(c) above;
- (c) Technical description of the imported product or products concerned, with tariff headings and the country of provenance;
- (d) The names and legal addresses of the importers, exporters and foreign producers, if known;
- (e) Data concerning the rate and amount of the increase in imports of the product concerned, in absolute terms and in relation to production; the share of the domestic market taken by increased imports; changes in the level of sales, production, productivity, capacity utilisation, profits and losses and employment;

- (f) Objective elements to establish a causal link, with a description of the causes of the serious injury or threat thereof and the extent to which such injury or threat of injury is attributable to the imports under investigation;
- (g) Statement of the reasons why the application of the measure is in the public interest;
- (h) Express undertaking to submit the relevant documents to the investigating authority for verification of the information supplied;
- (i) Details of the evidence provided with the application;
- (j) Identification of the confidential documentation, justification of its confidentiality and a non-confidential summary or version thereof;
- (k) Evidence of the existence of legal persons appearing among the applicants;
- (l) The information provided with the application shall date from no more than three years prior to the submission of the application for an investigation;
- (m) Domicile of the domestic industry for notification purposes.

**Article 4 – Reception and review of the application.** Upon receiving the application, the investigating authority shall, within a period of no more than 15 days, review it and decide whether the application is:

- (a) **Admissible.** If the application meets all of the requirements laid down in Articles 2 and 3 above, the investigating authority shall declare the application to be admissible and so notify the applicant within the 15 days stipulated in this Article;
- (b) **Incomplete.** If the application is incomplete, the investigating authority shall so notify the applicant, who shall have a period of 30 days from the date of notification to comply with the relevant requirements, during which time the period of 15 days for a decision shall be interrupted;
- (c) **Withdrawn.** If, after the 30-day period referred to in (b) above the domestic industry has not completed the application, the investigating authority shall declare the application to have been withdrawn and shall close the file in its current state.

**Article 5 – Confidential information.** The applicant may request confidential treatment by the investigating authority of part of the information provided, specifying the reason for its request and properly identifying the information concerned. Where such treatment is well founded and justified, the investigating authority shall accept the request provided the requesting party supplies a summary that gives an overall and reasonable understanding of the said confidential information.

In exceptional cases, the interested parties may claim that part of the confidential information cannot be summarized. In such cases, they shall provide the investigating authority with reasons to justify their claim. Should the investigating authority consider that any part of the information is not truly confidential, and the interested party does not wish to publicize or summarize it, nor disclose it in general terms or summarized form, the investigating authority shall treat it with strict confidentiality, but may choose not to take it into consideration in its investigation.

**Article 6 – Acceptance of the application.** The investigating authority shall have a period of 30 days to evaluate, as far as possible, the accuracy and adequacy of the information and evidence provided and to decide whether there are grounds for accepting the application. This 30-day period shall run from the date of reception in accordance with Article 4(a) and (b) above.

During the same period of time, the investigating authority shall appoint the competent sectoral Ministry and transmit to it, within a period of no more than five days, all of the information relating to the application received from the domestic industry, both confidential and non-confidential, in accordance with the third general provision of this Resolution. Within the period of 30 days provided for in this Article, the investigating authority shall proceed as follows:

- (a) If on the basis of the report submitted by the competent sectoral Ministry it is found that there is sufficient evidence to justify the acceptance of the application, it shall proceed in accordance with Article 7 of this Resolution;
- (b) If there are no grounds for initiating investigation, in accordance with the paragraph above, it shall so notify the applicant within a period of 7 days following the time period stipulated in this Article.

**Article 7 – Initiation of the investigation.** According to Article 82 of the Regulations to Implement Book IV of the Organic Code of Production, Trade and Investment, investigations may be initiated ex officio or at the request of an interested party.

In special circumstances, when it is in the public interest, the investigating authority may decide to initiate an investigation without having received an application from or on behalf of the domestic industry. It shall do so only if it has sufficient evidence of serious injury or threat of serious injury to the domestic industry and of the causal link justifying the initiation of an investigation, in accordance with the relevant provisions of this Resolution.

As regards the initiation of an investigation at the request of a party, once it has been established that there is evidence to justify the acceptance of the application in accordance with Article 6 above, the investigating authority shall issue the decision to initiate the investigation.

In the said decision, the investigating authority shall communicate to the interested parties the sectoral Ministry in charge of determining the existence of serious injury or threat of serious injury, which Ministry shall be responsible for dealing with requests for information, verification visits, and other activities necessary to reaching the said determination.

**Article 8 – Adjustment plan.** Once the decision to initiate the investigation has been issued, the applicant, within an additional period of 60 days, shall present to the investigating authority a duly substantiated plan for the adjustment of the domestic industry in accordance with the objectives pursued through the imposition of the requested measure. This adjustment plan shall be transmitted to the competent sectoral Ministry.

To enable to them to carry out their functions properly the investigating authority and the competent sectoral Ministry may, in the course of the investigation, pay visits to the domestic industry and the interested parties in order to verify such information as they deem relevant.

**Article 9 – Publication, notification and initiation of the investigation.** The decision to initiate the prior investigation shall be transmitted to the Official Journal for publication within the stipulated period following the date of the decision. Within that same period, the WTO Committee on Safeguards shall be notified pursuant to Article 12 of the WTO Agreement on Safeguards, together with the governments of the countries whose exports could be affected by the application of a

safeguard measure and the other parties recognized as interested parties. In addition, the said decision shall be published in a newspaper with large circulation in Ecuador, for the information of all concerned.

**Article 10 – Factors.** In the investigation to determine whether increased imports of a particular product or group of products have caused or are threatening to cause serious injury to the domestic industry producing like or directly competitive products, the competent sectoral Ministry shall take account of all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, i.e. the rates and amounts of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment as stipulated in Article 4.2(a) of the Agreement on Safeguards.

**Article 11 – Technical report.** Where the domestic industry has requested the application of provisional measures, the investigating authority shall provide COMEX with a technical report in which due consideration is given to the report establishing serious injury or threat of serious injury provided by the competent sectoral Ministry within a period of no more than 4 months. COMEX shall issue a decision as rapidly as possible, based on the reasoning and conclusions of the investigating authority, providing, where appropriate, for the application of provisional measures in accordance with Articles 88 and 89 of the Regulations to Implement Book IV of the Organic Code of Production, Trade and Investment.

**Article 12 – Application of provisional measures.** Provisional safeguard measures shall be applied in accordance with the Articles 88 and 89 of the Regulations to Implement Book IV of the Organic Code of Production, Trade and Investment.

**Article 13 – Duration of the provisional measures.** The provisional safeguard measures shall be applied for a period not exceeding 200 days, and shall be applied in conformity with Article 6 of the WTO Agreement on Safeguards.

**Article 14 – Publication and notification of provisional measures.** Once COMEX has been presented with the technical report recommending the application of provisional measures, the investigating authority shall notify the WTO Committee on Safeguards of the said recommendation in conformity with Article 12.4 of the Agreement on Safeguards.

Should COMEX decide in favour of applying the provisional measures, the corresponding decision shall be submitted for publication in the Official Journal within a maximum period of 15 days from the date of the decision. During the same period, notification shall be given to the government of the exporting country and the parties that have been recognized as interested parties. The said decision shall also be published in a newspaper of wide circulation in Ecuador for the information of all interested parties.

**Article 15 – Consultations.** Consultations shall take place immediately after the provisional measures are taken as stipulated in Article 12.4 of the WTO Agreement on Safeguards and pursuant to Article 91 of the Regulations to Implement Book IV of the Organic Code of Production, Trade and Investment.

**Article 16 – Public hearing.** The investigating authority shall invite the interested parties to attend a public hearing as provided for in Article 3.1 of the Agreement on Safeguards. The hearing shall take place at least 15 days after the invitation, and in any case a minimum of 60 days prior to the submission of the final report. Each one of the parties shall be given the opportunity it needs to submit evidence, to express its opinions and/or provide explanations, to reply to the statements of the

other parties and to give its views on whether or not the proposed safeguard measure is in the public interest.

**Article 17 – Second round of consultations.** Consultations shall be held with WTO Member countries having a substantial interest as exporters in the proposed definitive safeguard measure. These consultations shall be held within a minimum of 30 days prior to the adoption of the definitive measure.

**Article 18 – Final report.** Once the period for completing all of the different procedures laid down in the decision to initiate the investigation and in subsequent decisions has elapsed, the investigating authority shall provide COMEX with a final report containing the conclusions of the investigation to serve as a basis for a decision unless there are substantiated reports from other sources containing valid evidence to the contrary.

This report shall contain precise details of all of the elements of fact and law on which the recommendation will be based. The recommendation may either:

- (a) Authorize the application of the definitive safeguard measure in conformity with Article 93 of the Regulations to Implement Book IV of the Organic Code of Production, Trade and Investment; or
- (b) Declare that the measure should not be applied and, where appropriate, revoke the provisional measure that has been adopted.

The decision to adopt a definitive safeguard measure shall be notified within a period of 30 days from the date of the decision to the WTO Committee on Safeguards and to the interested parties that participated in the investigation process.

Within that same period, the said decision shall be sent for publication in the Official Journal, and the National Customs Service of Ecuador shall be notified with a view to implementation.

**Article 19 - Time-limit for the investigation.** The investigation shall be concluded within 8 months from the date of publication of the decision to initiate the investigation in the Official Journal. In exceptional cases, as determined by the investigating authority, this period may be extended by an additional four months.

**Article 20 - Definitive safeguard.** The definitive safeguard measure mentioned in Article 18(a) above shall not be applied for a period of more than 4 months, unless it is extended pursuant to Article 93 of the Regulations to Implement Book IV of the Organic Code of Production, Trade and Investment and Article 7 of the WTO Agreement on Safeguards.

**Article 21 - Liberalization of the measure.** In order to facilitate adjustment, if the safeguard measure is applied for over one year, it shall be progressively liberalized, at regular intervals, during the period of application.

Measures that are extended in accordance with Article 7 of the Agreement on Safeguards shall not be more restrictive than those in force at the end of the initial period, and the progressive liberalization shall be continued as established during the period of extension.



## GENERAL PROVISIONS

**FIRST** – The provisions set out in Article XIX of the General Agreement on Tariffs and Trade (GATT 1994) and in the WTO Agreement on Safeguards constitute the general reference framework on safeguards for the COPCI provisions, the Regulations to Implement Book IV thereof, and this Resolution. Should there be any gaps or legal inconsistencies, the said international provisions would prevail, in accordance with the hierarchy of laws applicable in the country.

**SECOND** – The investigating authority shall guarantee that the duly recognized parties that have established a genuine interest in the investigation are given access to non-confidential information in the file and to the non-confidential summary. At the same time, however, it shall guarantee the inaccessibility of the confidential record.

**THIRD** – The investigating authority shall manage, file and dispose of the original non-confidential record, and three identical copies of the non-confidential record as follows:

1. The original confidential and non-confidential records shall be deposited, numbered, reviewed, and filed in the Office of the Investigating Authority.
2. The first certified non-confidential copy shall be preserved and used by the legal department of the investigating authority, which shall conduct the administrative procedures.
3. The second certified non-confidential copy shall be preserved and used by the technical department of the investigating authority.
4. The third certified non-confidential copy and the first and only confidential copy reproduced by the investigating authority shall be transmitted to the competent sectoral Ministry for the analysis and determination of serious injury or threat of serious injury to the domestic industry in question based on technical criteria and provisions of the WTO Agreements. In this case, upon taking delivery, the sectoral Ministry receiving the first and only confidential copy shall undertake to treat the information with the utmost secrecy and shall be responsible for its safe custody.

**FOURTH** – All public institutions or State entities, or public or mixed enterprises shall cooperate with the investigating authority during the investigation. They shall submit reports, analyses, duly completed forms prepared by the investigating authority or whatever is requested of them within the deadline notified by the authority, duly completed and annotated where appropriate, also within the time-limit stipulated by the investigating authority, in conformity with Article 99 of the Regulations to Implement Book IV of the Organic Code of Production, Trade and Investment and pursuant to the legal provisions on administrative responsibility and to the second paragraph of Article 101 of the said Regulations. Likewise, in the same circumstances, all public institutions or State entities, or public or mixed enterprises shall cooperate with the sectoral Ministry responsible for the determination of injury or threat of injury.

**FIFTH** – The investigating authority shall prepare the form to be transmitted to domestic producers and importers and to foreign exporters of the product under investigation.

### **DISABLING CLAUSE**

**FIRST** – Pursuant to Article 83 of the Regulations to Implement Book IV of the Organic Code of Production, which stipulates that COMEX is the entity responsible for establishing the requirements and procedures for applying for the imposition of safeguard measures, the provisions relating to safeguard measures in the Consolidated Legislative Text of the MICIP, issued by Executive Decree No. 3497, published in Official Journal 744 of 14 January 2003, shall be considered repealed.

This Resolution was adopted by the Foreign Trade Committee (COMEX) at its session of 8 February 2012, and shall enter into force as from the date of its publication in the Official Journal.

s.) Dr Rubén Morán Castro, Chairman (E).

s.) Mr Jaime Albuja, Acting Secretary.

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