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Committee on Import Licensing

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REPUBLIC OF ECUADOR IMPORT LICENSING REQUIREMENTS

QUESTIONS FROM THE UNITED STATES

The following notification, dated 6 August 2013, is being circulated at the request of the delegation of the United States.

On 1 March 2013 and 14 June 2013, we understand that the government of Ecuador issued two resolutions establishing new, non-automatic import licensing requirements ("Resolucion No. 102, Comite de Comercio Exterior" and, "Resolucion No. 299-A, La Subsecretaria de Comercializacion del Ministerio de Agricultura, Gandaderia, Acuacultura y Pesca" (MAGAP)). These new non-automatic licensing requirements now apply to imports of a number of products from all WTO Members except the Andean Community. While the United States notes Ecuador's right to determine its own import licensing requirements, we have questions about these resolutions in light of Ecuador's commitments to the WTO Agreement on Import Licensing Procedures.

Based on our knowledge of these resolutions, they contain new requirements which threaten to seriously impair trade by establishing a complicated and discretionary import permit system for the products named in Resolutions No. 102 and 299-A. We note, too, that the new requirements will impair the ability of companies with significant investment in Ecuador to import products that they need to conduct business in Ecuador. In light of the stated desire of all WTO Members, reflected in the preamble of the Import Licensing Agreement, "to simplify, and bring transparency to, the administrative procedures and practices used in international trade, and to ensure the fair and equitable application and administration of such procedures and practices," we respectfully request that the government of Ecuador:

- (1) fully and promptly respond to our questions and concerns outlined below; and,
- (2) promptly publish any measures (including Resolutions No. 102 and 299-A) or changes in measures in accordance with Article 1.4 of the ILA so that governments and traders are able to become acquainted with them and provide comments on them prior to their implementation, and notify such measures or changes to the Secretariat in accordance with Articles 1.4 and 5. We ask Ecuador to take note of Article 5.2(g) of the ILA, which states that "in the case of non-automatic import licensing procedures, indication of the measure being implemented through the licensing procedure" "shall" be included in the notification.

Article 3.2 of the ILA states that "Non-automatic licensing shall not have trade-restrictive or distortive effects on imports additional to those caused by the imposition of the restriction. Non-automatic licensing procedures shall correspond in scope and duration to the measure they are used to implement, and shall be no more administratively burdensome than absolutely necessary to administer the measure."

- Please identify the measure that the non-automatic licensing procedures set forth in Resolutions 102 and 299-A implement, and explain how that measure is consistent with the GATT 1994.

- How is the non-automatic license requirement no more administratively burdensome than absolutely necessary to administer the underlying measure?

Resolution 299-A appears to provide that it is necessary to regulate the procedures and impose requirements on the activities of importers in the country, including verifying the ethical suitability and responsibilities of the business operators with respect to tax matters, labour, and commitments such businesses have undertaken in Ecuador's various Advisory Councils regarding different agro production chains.

- What are the Ecuador government's procedures for verifying such ethical and other responsibilities of its importers?
- Are these responsibilities and the procedures for verification published? If so, where?
- What verification procedures, if any, must domestic producers undergo to sell in Ecuador's market?

Article 1 of Resolution 299-A appears to subject all importers -- without exception—to the non-automatic licensing regime, and provide that the licensing regime is based on whether such imports will "complement" national production's ability to satisfy internal domestic demand. Furthermore, Article 3 appears to require MAGAP to undertake a "technical analysis" in determining the volume of products that Ecuador will permit to be imported, and provide that such analysis will be based on (among other factors) an importer's purchase of domestic products, domestic production, domestic demand and consumption.

- Please explain the legal basis under the WTO for the use of these import licensing procedures, and the factors that apparently are applied in the "technical analysis" in determining the quantity of imports that will be permitted.
- How long will the "technical analysis" take?
- Is the "technical analysis" conducted for individual requests to import? Or is it conducted to determine the overall quantity of imports that will be permitted?
- Will the results and reasoning of the "technical analysis" be published?

It appears that the MAGAP will make its technical analysis available to domestic stakeholders through advisory councils, consultation boards and other consultative mechanisms to seek their recommendations on whether or not to authorize imports.

- What role do these consultations play in the decision to authorize imports?
- Are importers required or is it otherwise necessary for importers to disclose confidential information in this consultative process?
- Are domestic stakeholders subject to a consultative mechanism in order to allow domestic sales?
- Is it possible that, after the results of the "technical analysis", no imports would be permitted?
 - The resolution seems to deny, under any circumstances, the entry of imports into Ecuador in times of output of national production in order to avoid serious damage to domestic producers. How does Ecuador define its "harvest period" for each item and how does Ecuador measure "serious damage" for each item?

Please explain the process by which licenses are granted and the relevant quantities determined.

- Article 2 of Resolution 299-A appears to require importers to request an import license from MAGAP during the month of October of a "given year," in order for them to be able to fulfil "their requirements for the following year." Are domestic producers required to submit to a similar procedure in order to market their products in Ecuador? If so, please describe these procedures in detail. If not, why not?
- At the same time, Article 6 appears to provide that the allocation of licenses will be announced in December, while Article 13 appears to provide that a license is valid only for 90 days, and only for a single shipment. Please explain how these requirements operate in practice.

It appears that imports from the Andean Community are exempt from this licensing regime. Please explain the legal basis under the WTO for this exemption. Please explain, in addition, whether and how imports from the Andean Community are considered in the "technical analysis" under Article 3 of Resolution No. 299-A.
