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Committee on Import Licensing

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**REPLIES TO QUESTIONS FROM THE UNITED STATES CONCERNING
RESOLUTIONS 102 OF THE FOREIGN TRADE COUNCIL (COMEX)
AND 299-A OF THE MINISTRY OF AGRICULTURE, LIVESTOCK,
AQUACULTURE AND FISHERIES (MAGAP)**

REPLIES FROM ECUADOR

The following notification, dated 22 November 2013, is being circulated at the request of the delegation of Ecuador.

Document G/LIC/Q/ECU/3, of 9 August 2013, contains questions raised by the United States in the Committee on Import Licensing on the import licences adopted by Ecuador through Resolutions 102 of the Council on Foreign Trade and 299-A of the Ministry of Agriculture, Livestock, Aquaculture and Fisheries, published on 2 April and 31 July 2013, respectively.

The replies to those questions are set out below:

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".

Question 1: 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.

The non-automatic import licences adopted through Resolution 102 of the COMEX and applied under the procedure of MAGAP Resolution 299-A are used administratively in order to define and determine annual food balances in terms of production chains, as mandated by Ecuador's Constitution and taking into account the non-commercial concern of food security, which makes it necessary to maintain a balance between national production and imports in such a way as to meet food supply requirements on an ongoing basis, by coordinating the country's resources with available supplies on the international market.

The procedure for implementing non-automatic import licences is based on the provisions of Article 3 of the Agreement on Import Licensing Procedures, guaranteeing that the administrative mechanism is predictable, transparent and non-discriminatory.

Question 2: How is the non-automatic licence requirement no more administratively burdensome than absolutely necessary to administer the underlying measure?

The non-automatic import licensing system entails no type of additional administrative burden for importers. In addition, this procedure is fully incorporated in the "Single Window" import system (Ecuapass) which forms part of the national trade facilitation policy, a system which guarantees the transparency and flexibility of administrative trade procedures.

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.

Question 3: What are the Ecuador Government's procedures for verifying such ethical and other responsibilities of its importers?

The procedures and requirements referred to in the MAGAP Resolution, in its ninth preambular paragraph, are connected with the legal obligations provided for in the general Ecuadorian regulations to which business operations are subject; these are regulated by tax and labour laws and compliance is verified by the Internal Revenue Service and the Ministry of Labour Relations, respectively.

Question 4: Are these responsibilities and the procedures for verification published? If so, where?

Yes, these responsibilities are published in Ecuador's Official Journal via the relevant laws, namely: the Law on the Internal Tax Regime and the laws related thereto; the Labour Code, the Organic Code of Production, Trade and Investment, among others.

Question 5: What verification procedures, if any, must domestic producers undergo to sell in Ecuador's market?

Domestic producers are subject to the same legal obligations set out in the above-mentioned laws and regulations.

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.

Question 6: 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.

The non-automatic import licensing procedure described in MAGAP Resolution 299-A is based on Article 3 of the Agreement on Import Licensing Procedures. The technical factors considered in preparing the technical reports for the administration of non-automatic licences are defined in Resolution 299-A and are geared to the analysis of food balances for products covered by the regime, on the basis of a transparent, predictable and non-discriminatory review.

Question 7: How long will the "technical analysis" take?

The technical analysis will take as short a time as possible, but no longer than two months, following expiry of the time-limit for the presentation of import intentions on the part of importers.

Question 8: 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?

The purpose of the technical analysis is to establish overall import quantities, which will result in the determination of individual values for each importer that has requested a licence, on the basis of growth in demand and domestic consumption, national food security objectives, the historical import record of applicants, etc.

Question 9: Will the results and reasoning of the "technical analysis" be published?

The results of the entire technical analysis will be submitted for consideration to all stakeholders in the agricultural production chains covered by this regime, as is expressly stipulated in Article 5 of Resolution 299-A, and the licences will be published through official mass communication media, as stipulated in Article 6 of Resolution 299-A.

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.

Question 10: What role do these consultations play in the decision to authorize imports?

The purpose of making the technical analyses available to the production chain stakeholders through advisory councils, consultation boards and other consultative mechanisms is to maintain absolute transparency in the administration of the regime, provide timely information for decision-making by the stakeholders and obtain recommendations from them, including from importers, as is clearly stated in Article 5 of Resolution 299-A.

Question 11: Are importers required or is it otherwise necessary for importers to disclose confidential information in this consultative process?

No, importers are not obliged to disclose confidential information beyond the information they regularly provide, which is in the public domain.

Question 12: Are domestic stakeholders subject to a consultative mechanism in order to allow domestic sales?

Once the products described in MAGAP Resolution 299-A are produced or imported and enter the market, there is no restriction on their being marketed.

Question 13: Is it possible that, after the results of the "technical analysis", no imports would be permitted?

No, Regulation 299-A does not provide for any possibility of prohibition of imports during a given year.

Question 14: 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?

Ecuador is a developing country whose agricultural sector is dominated by small and medium-sized producers who depend on their productive activity for their survival: however, there are times when factors external to national production which have an influence on quality of products, such as enormous amounts of domestic support for production and export subsidies, make it necessary to count imports outside national harvest periods for these producers, in the case of products whose output is highly seasonal on account of seasonal cycles; and this situation is also reflected in a food security concern. This provision applies solely to plant products covered by the non-automatic licensing regime under Resolution 299-A, which does not provide for any restriction on imports of such products.

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

Question 15: Article 2 of Resolution 299-A appears to require importers to request an import licence 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?

Domestic producers are not subject to a similar procedure of "non-automatic import licensing" prior to domestic marketing; thus, import licensing applies only to imported products.

Question 16: At the same time, Article 6 appears to provide that the allocation of licences will be announced in December, while Article 13 appears to provide that a licence is valid only for 90 days, and only for a single shipment. Please explain how these requirements operate in practice.

Article 6 of Resolution 299-A stipulates that licence authorizations are to be published in December of each year, before the initiation of the documentary procedure from January of the following year, whereby the formal import request will be made. At the same time, Article 13 provides that import licences shall be valid once they have been authorized, in accordance with the periods of validity permitted under the WTO Agreement on Import Licensing Procedures.

Question 17: 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 299-A.

Andean intra-community trade is governed by the Andean regulations set forth in the Cartagena Agreement and the subsidiary supranational legislation, in accordance with WTO rules under the Enabling Clause, since a preferential regime has been established in the shape of a free trade area.
