



20 June 2017

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Committee on Balance-of-Payments Restrictions

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**NOTIFICATION UNDER PARAGRAPH 9 OF THE UNDERSTANDING
ON THE BALANCE-OF-PAYMENTS PROVISIONS OF THE
GENERAL AGREEMENT ON TARIFFS AND TRADE 1994**

COMMUNICATION FROM ECUADOR

The following communication, dated 16 June 2017, is being circulated at the request of the delegation of Ecuador.

Note No. 4-7-76/2017

Geneva, 16 June 2017

Ambassador Xavier CARIM
Chairman of the WTO General Council
Geneva

Dear Mr Chairman,

By means of Note No. 4-7-42/2015 of 2 April 2015, the Chargé d'affaires of this Mission serving as the Permanent Representative to the WTO notified the Chairman of the WTO General Council of the adoption of a balance-of-payments safeguard pursuant to Foreign Trade Committee (COMEX) Resolution No. 011-2015 that entered into force on 11 March 2015. Copies of the Note and the COMEX Resolution are attached herewith.

Foreign Trade Committee (COMEX) Resolution No. 021, which established the timetable for the phased dismantling of the above-mentioned safeguard, was also notified by means of Note No. 4-7-139/2016 of 10 October 2016. This timetable has been strictly adhered to throughout and the final phase was implemented on 1 June 2017 pursuant to the communication of the Ministry of Foreign Trade to the National Customs Service of Ecuador, attached herewith to provide greater detail and clarity.

Following this brief background and pursuant to paragraph 9 of the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994, I hereby notify you and, through you, the General Council and the Committee on Balance-of-Payments Restrictions that the Ministry of Foreign Trade, by means of Official Circular No. MCE-MCE-2017-0041-O of 25 May 2017 to the National Customs Service of Ecuador, provided for the implementation as of 1 June 2017 of the final phase, corresponding to that month, of the timetable for dismantling the balance-of-payments safeguard measure adopted in March 2015, which has now been fully phased out.

I wish to express the renewed thanks of the Ecuadorian Government and this Mission to you, Mr Chairman, and to the current Chairman of the Committee on Balance-of-Payments Restrictions, Ambassador Tudor ULIANOVSKI, as well as to your predecessors and, it goes without saying, to Mr Willy Alfaro, the Director of the WTO Trade Policy Review Division, for your continued cooperation in the matter of the balance-of-payments safeguard adopted by the Ecuadorian Government in March 2015.

Yours faithfully,

Juan Falconi Puig
Ambassador, Permanent Representative to the WTO

c.c.: Ambassador Tudor ULIANOVSKI
Chairman of the Committee on Balance-of-Payments Restrictions

Mr Willy Alfaro, Director
WTO Trade Policy Review Division

ANNEX 1

**REPUBLIC OF ECUADOR
FOREIGN TRADE COMMITTEE**

No. 4-7-42/2015

2 April 2015

Ambassador Fernando DE MATEO Y VENTURINI
Chairman of the WTO General Council

Dear Mr Chairman,

Upon instructions from my authorities and pursuant to paragraph 9 of the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994, please find attached herewith the notification of the measure adopted pursuant to Foreign Trade Committee (COMEX) Resolution No. 011-2015 and two annexes.

Yours faithfully,

Humberto Jiménez Torres
Chargé d'affaires ad interim

**REPUBLIC OF ECUADOR
FOREIGN TRADE COMMITTEE**

RESOLUTION NO. 011-2015

THE FOREIGN TRADE COMMITTEE IN PLENARY SESSION

WHEREAS:

According to Article 276 of the Constitution of the Republic, one of the objectives of Ecuador's development structure is to build a fair, democratic, productive, supportive and sustainable economic system;

Article 261, paragraph 5, of the Constitution provides that the central State has exclusive jurisdiction over economic, tax, customs, tariff and foreign trade policies, *inter alia*;

Article 284, paragraphs 2 and 7, of the Constitution state that the objectives of economic policy are to encourage national production, systemic productivity and competitiveness, and strategic integration into the world economy, as well as "to uphold economic buoyancy, understood as the maximum sustainable level of production and employment over time";

Pursuant to Article XVIII, Section B, of the General Agreement on Tariffs and Trade 1994 (GATT 1994), a developing country Member may, if experiencing balance-of-payments difficulties and needing to maintain the implementation of its programme of economic development, restrict the quantity or value of merchandise, provided that the import restrictions instituted do not exceed those necessary to forestall the threat of, or to stop, a serious decline in its monetary reserves; that is, it may regulate the general level of its imports in order to safeguard its external financial position and to ensure a level of reserves adequate for the implementation of its programme of economic development;

The Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 of the World Trade Organization (WTO) clarifies the provisions of Articles XII and XVIII, Section B, of the GATT 1994 and of the 1979 Declaration on Trade Measures Taken for Balance-of-Payments Purposes, procedures for consultations, notification and documentation, and conclusions of consultations;

Article 2 of Resolution No. 70 of the Committee of Representatives of the Latin American Integration Association (LAIA) stipulates that member states shall not apply safeguard measures to imports originating in countries with a lower relative level of economic development in order to remedy imbalances in their overall balance of payments;

Pursuant to Article 125 of the Regulation Implementing Book IV of the Organic Code of Production, Trade and Investment (COPCI), the Ministry of Foreign Trade, as the governing body for foreign trade policy, has the authority to handle notifications and other procedures relating to balance-of-payments protection measures required by multilateral, regional or subregional organizations in the framework of which Ecuador has signed trade agreements or treaties;

Article 71 of the COPCI, published in the Supplement to Official Journal No. 351 of 29 December 2010, created the Foreign Trade Committee (COMEX) as the body entrusted with approving national public trade policies;

Article 72(e) and (k) of the COPCI provide that the COMEX, as the governing body for trade policy, is responsible for regulating, facilitating or restricting the export, import, movement and transit of goods that have not been inward cleared or are not Ecuadorian, in the cases provided for in the Code and in the international agreements in force duly ratified by Ecuador;

Article 88 of the COPCI provides that the Ecuadorian State, through the governing body for trade policy, may adopt trade defence measures that restrict imports of products for balance-of-payments protection, such as safeguard measures and any other mechanism recognized by international treaties duly ratified by Ecuador;

Executive Decree No. 25, published in the Supplement to Official Journal No. 19 of 20 June 2013, created the Ministry of Foreign Trade as the State body responsible for trade policy and, in its Third Amending Provision, provided that it should preside over the COMEX;

In Official Circular No. MCPE-DM-O-2015-005 of 4 March 2015, the Ministry responsible for economic policy coordination established that there was a balance-of-payments disequilibrium in Ecuador and recommended the adoption of a measure that would influence the general level of imports for a period of 15 months;

In Technical Report No. 001/2015 of 5 March 2015, the Inter-Agency Panel, made up of officials from the Ministry responsible for economic policy coordination, the Ministry responsible for the coordination of production, employment and competitiveness, the Ministry of Foreign Trade, the Ministry of Industries and Productivity and the Ministry of Agriculture, Livestock, Aquaculture and Fisheries issued recommendations regarding the scope and level of the tariff surcharge needed to safeguard the balance-of-payments equilibrium;

In exercise of the powers conferred upon it under the COPCI, in accordance with Article 70 of the COMEX Operating Regulations, issued pursuant to Resolution No. 001-2014 of 14 January 2014, and other applicable regulations;

HEREBY DECIDES:

Article 1. To introduce a temporary and non-discriminatory tariff surcharge, calculated as an *ad valorem* percentage on imports for consumption of the subheadings listed in the Annex hereto, in order to regulate the general level of imports and thereby safeguard the balance-of-payments equilibrium.

The tariff surcharge shall be applied on top of the tariffs currently in force, in accordance with Ecuador's Tariff and bilateral and regional trade agreements to which Ecuador is a party.

Article 2. The following imports shall be excluded from this safeguard measure:

- (a) goods for import clearance that have been legally shipped to Ecuador, up to the date of entry into force of this Resolution;
- (b) goods covered by Article 125 of the COPCI;
- (c) goods imported under a customs regime other than that provided for in Article 147 of the COPCI;
- (d) goods deriving from international cooperation in favour of beneficiaries in Ecuador who receive such assistance either through the public sector, through non-governmental organizations or through the relevant cooperation agencies;
- (e) goods originating in relatively less developed countries that are members of the Latin American Integration Association (LAIA), in accordance with Resolution No. 70 of the LAIA Committee of Representatives.

The COMEX Executive Committee shall decide on whether or not to exclude the cases mentioned in subparagraph (d) above.

Article 3. The Ministry of Foreign Trade, the Ministry responsible for economic policy coordination and the Ministry responsible for the coordination of production, employment and competitiveness shall be in charge of monitoring and assessing the implementation of this safeguard measure in order to ensure that it is commensurate with ongoing needs to overcome the balance-of-payments situation, the intention being to relax the measure as the balance improves and eliminate it when it is no longer necessary.

Article 4. The Ministry of Foreign Trade shall be responsible for notifying the measure referred to in this Resolution and for undertaking such procedures as may be necessary, subject to the time-frames and conditions set forth in the existing integration and international trade agreements to which Ecuador is a Party.

FINAL PROVISION

This Resolution was adopted at the session of 6 March 2015 and shall enter into force on 11 March 2015, without prejudice to its publication in the Official Journal.

Diego Aulestia Valencia
CHAIRMAN

Iván Ortiz Wilchez
AD HOC SECRETARY

ANNEX 2

Official Circular No. MCE-MCE-2017-0041-0

Quito, Metropolitan District, 25 May 2017

Subject: Implementation of the timetable for the dismantling of the balance-of-payments safeguard measure - June 2017 phase

Mr Mauro Alejandro Andino Alarcón
Director-General
NATIONAL CUSTOMS SERVICE OF ECUADOR
Delivered by hand

Dear Sir,

Resolution No. 021-2016 of the Foreign Trade Committee (COMEX) contains a table setting out the schedule of implementation of the timetable for dismantling the balance-of-payments safeguard measure, whereby surcharges are reduced by one third on a monthly basis as from April and until June of this year. Furthermore, the second paragraph of Article 2 of COMEX Resolution No. 006-2016, adopted on 29 April 2016, provides that:

"(...) The Ministry of Foreign Trade (MCE) shall notify the National Customs Service of Ecuador (SENAE) regarding the implementation of the above timetable".

Accordingly, I should be grateful if you would implement this final phase of the timetable for dismantling the said measure by reducing the 5.0% surcharge to 0.0% and the 11.7% surcharge to 0.0% as of 1 June 2017.

I would appreciate it if you could let us know when this has been done.

Accept, Sir, the assurances of my highest consideration.

Pablo Campana Sáenz
MINISTER OF FOREIGN TRADE
