WORKING PARTY ON THE ACCESSION OF ECUADOR

Questions and Replies

The replies submitted by the Permanent Mission of Ecuador in response to additional questions raised by contracting parties are reproduced below.

1. The Government of Ecuador has agreed to revise its Memorandum on Foreign Trade Regime so as to reflect the changes which have occurred since it was written.

The following changes have occurred since May 1993:

(a) Exchange regime

Modifications have been made to the regime as described in the Memorandum on Foreign Trade Regime (document L/7202) and documents L/7301 and L/7301/Add.1.

In pursuit of the objectives of stabilizing and stimulating of the economy, the country’s monetary authorities simplified the exchange system and eliminated both the US dollar fluctuation band that existed in the intervention market of the Central Bank of Ecuador for public sector transactions and the official exchange rate of 390 sucres per dollar which the Central Bank used for accounting purposes and for transactions with the International Monetary Fund.

Thus, a free exchange system has been adopted in which the private sector acquires the foreign exchange it needs for its activities at the market rate. Foreign exchange transactions for foreign trade purposes are no longer carried out through the Central Bank of Ecuador. There are no limits on the purchase or sale of foreign exchange. The system is thus different from that described in L/7202.

To summarize, the current foreign exchange system works as follows:

(i) In accordance with Decree 1353 of 23 December 1993, published in Official Journal No. 349 of 31 December 1993, the official exchange rate is the same rate as that used by the Central Bank of Ecuador in its transactions for the sale of foreign exchange;

(ii) the foreign exchange selling rate of the Central Bank of Ecuador is set weekly at a rate equivalent to the average of the free market interbank exchange rate of the previous week as recorded at the Bank’s Exchange Desk. The buying rate is 250 sucres less than the selling rate;
(iii) the exchange rate parity is determined by supply and demand in the officially authorized private entities. There are no restrictions on the acquisition of foreign exchange or on its remittance abroad;

(iv) the various transactions relating to the purchase and sale of foreign exchange involving the Central Bank of Ecuador are:

- Purchase of foreign exchange from foreign currency earnings by the public sector and activities relating to hydro-carbon exploration, transport and marketing by enterprises that have signed contracts with the State Petroleum Company (PETROECUADOR), under the terms specified in the regulations laid down by the Monetary Board of Ecuador (Regulation No. 858-93, of which copies have been sent to the GATT-Secretariat and the Permanent Mission of the United States of America).

- The Central Bank of Ecuador sells foreign exchange to cover payments abroad by the public sector for any reason, as well as payments relating to activities of hydrocarbon exploration, extraction, marketing and transport by companies that have concluded contracts with the State Petroleum Company (PETROECUADOR).

- Public sector contracts whose obligations must be met in foreign exchange must be registered in the Central Bank of Ecuador.

- With prior authorization from the Monetary Board, public sector entities, bodies and enterprises may maintain foreign currency accounts with the Central Bank of Ecuador provided they have foreign exchange earnings and obligations abroad that are inherent to their operations. A system of control over such operations is in place.

- The Central Bank of Ecuador may participate in the free exchange market by buying and selling foreign exchange to and from the authorized institutions. It establishes the rates, amounts, and other terms for these operations in accordance with the market situation and the requirements of the Monetary Programme. The Bank may issue foreign-currency-denominated exchange stabilization bonds and fix the amounts, maturities and other terms of issue for the trading of these bonds on the market.

- The Central Bank of Ecuador decides on the most appropriate means for participating in the free exchange market in accordance with the objectives of monetary and financial programming, including auctions of negotiable securities and foreign exchange "desks".

- Authorized institutions that carry out foreign exchange transactions must provide weekly to the Central Bank of Ecuador the daily data on the exchange amounts and rates in their buying and selling operations.

- Authorized private finance companies and private banks may carry out forward foreign exchange transactions, swaps and call-and-put operations. The maximum period for such transactions is 180 days.
The Central Bank of Ecuador registers direct foreign investment and reinvestment in the capital stock of enterprises.

The Central Bank of Ecuador also registers external foreign-currency loans incurred by the private sector.

(b) Law on the Modernization of the State, Privatization and Provision of Public Services by Private Enterprise


It lays down the general principles and rules for: achieving administrative efficiency; regulating the provision of public services by private enterprise through the abolition of monopolies, free competition and the delegation of services or activities provided for in the Constitution; and transfer of the State's equity holdings in enterprises.

In accordance with this Law, the exercise of the following activities that were reserved for the State under the Constitution may be delegated by concession to private enterprise:

(a) Production, transport, storage and marketing of hydrocarbons and other minerals;
(b) generation, distribution and marketing of electricity;
(c) telecommunications services;
(d) production and distribution of drinking water.

The Law provides that the abolition of monopolies and privatization of State activities shall be carried out by the following means:

1. National or international public tenders;
2. by offering some or all of the share capital on the securities market; and
3. by public equity subscription or public auction.

The Law does not contain any amendment to the legislation governing transactions between State enterprises and foreign enterprises.

(d) Securities Market Law

The Law entered into force on 28 May 1993 though publication in Official Journal No. 199. It was enacted in order to organize the securities market efficiently and transparently, so that securities trading would be competitive and orderly.

The National Securities Council (CNV), the body responsible for the securities market within the Office of the Supervisor of Companies, establishes general policy for the securities market and regulates its operation.

The Law contains regulations on securities exchanges, securities houses and other intermediaries, investment funds of natural or legal persons, the issue of bonds by public limited companies and limited liability companies, securities market registration and so forth.
As mentioned in the reply to Question No. 78 in document L/7301/Add.1, Article 71 of the Law brought tax treatment of foreign investors into line with that of domestic investors.

2. Could Ecuador describe the provisions of the draft law on the National Customs Service? How would these provisions change the present system? How do the structure and responsibilities of the new organization differ from the present situation?

Brief description of the provisions of the Law

The Law is aimed at simplifying procedures and improving the efficiency of the State in its function of providing services to citizens. It regulates the legal relationship between the State and persons involved in the international movement of goods within the customs territory. It entered into force on 9 March 1994.

The new Law regroups and organizes all provisions relating to the customs service which were previously contained in various legal instruments.

Changes with respect to the previous system

- It simplifies and greatly reduces the formalities and procedures, which also means time-saving and discourages customs corruption.

- It allows for the transfer of various activities to the private sector, such as surveillance, control, valuation, storage and other activities that relate to goods crossing the customs border. In addition, customs obligations may be paid in national banking institutions.

- It establishes the principle of trust in the tax payer, through self-assessment and advance payment of customs charges.

- It classifies violations of the customs regulations into the categories of offences, infringements and faults.

- It introduces a "random customs valuation system" that is exercised as a means of control on the basis of an automatized programme; previously, as a general rule, customs valuation was physical.

- It provides for a single type and kind of customs guarantee, whereas under the previous law there were general, specific and special customs guarantees of varying amounts and with different systems for establishing those amounts.

- It downsizes the customs service by eliminating unnecessary functions and responsibilities, while at the same time establishing the customs career as a means of encouraging professionalization and advancement on the basis of merit for customs officers.

- It provides for the repeal of laws and legal provisions relating to customs matters which have lost practical relevance or hindered the State from acting efficiently.

Structure and responsibilities of the new organization

The administrative structure of the customs service is headed by the Minister of Finance and Public Credit, representing the President of the Republic. The structure also includes a consultative
and advisory body, the Customs Technical Committee, and the National Customs Service Directorate. The functions of the advisory Technical Committee are to give an opinion on draft executive decrees relating to customs tariffs and valuation rules. The National Customs Service Directorate consists of the District Administrations and the Customs Surveillance Service which is responsible for investigating and preventing customs offences. Under the previous legislation, control was exercised by the Customs Military Police.

3. We need much more information on the price-band system. Please could you provide us with a full description of how the system works and what products are covered by it?

Ecuador has carried out a process of trade liberalization and custom integration with the Andean Pact countries without neglecting the advantages offered by trade with the countries of the rest of the world. In this context, the Andean Pact countries have adopted mechanisms to stabilize international prices in order to counteract the variability and instability of world prices of agricultural products.

The tariff adjustment mechanism (price band) is a trade policy instrument used in the context of opening the economy to free trade.

I. GENERAL ASPECTS OF THE PRICE-BAND SYSTEM

The price-band system is a mechanism that acts as a means of stabilizing international prices. Its purpose is to counteract the distortions and variations in international prices caused by guaranteed prices, buying-in of surpluses, storage subsidies, import quotas, stabilization mechanisms, and export bonuses and subsidies which, among others, are part of the agricultural policies of some exporting countries.

It enables clear and transparent signals to be given to the agricultural producing sector so that it can programme its production activities.

The mechanism applies to imports of 138 tariff items from countries not belonging to the Andean Pact. In the application of the mechanism, a distinction is drawn between two kinds of products:

- "Market" product: a product of which the international price is used to calculate minimum and maximum values; and

- Substitutes and derivatives of a marker product: products which replace the marker product in industrial use or consumption; and products obtained from processing or mixing marker products.

A diskette with the tariff subheadings of the marker products and related products is attached.

II. FUNCTIONING OF THE PRICE-BAND SYSTEM

This may be summarized as follows:

(a) If the international price of an agricultural product on importation is below the established floor price, it is subject to an additional charge over and above the ad valorem duty, termed a specific levy.

(b) If the world price is somewhere between the floor and ceiling prices of the established band, then the import pays only the ad valorem duty; and
(c) If the world price is above the ceiling price of the established band, then the import is subject to a reduction in the ad valorem duty.

How are the floor and ceiling prices calculated?

- A series of the last 60 f.o.b. prices of the relevant market is taken.
- The series of the f.o.b. products is inflated by the United States consumer price index.
- The average of the inflated series is calculated.
- A standard deviation is deducted from this average. This new value is called the f.o.b. floor price. The f.o.b. ceiling price is obtained by adding the standard deviation to the average rather than deducting it.
- Finally, c.i.f. prices are obtained by adding freight and insurance values to the floor and ceiling prices.

How are the relevant markets selected?

- The relevant market is the reference market used for taking the international prices to determine the floor and ceiling prices.
- Various criteria are used to select the reference market:
  (i) historical origin of imports;
  (ii) immediate, reliable and continuous availability of international prices;
  (iii) representativeness of the market.

Criteria for including a product in the band:

(a) the product must be produced in the Andean subregion;
(b) the product must be subsidized by exporting countries;
(c) there must be large price variations;
(d) and where the products are substitutes for products that are included in the band system.

How are the additional levy or duty reduction determined?

- They are determined by comparing the reference international c.i.f. price with the c.i.f. floor and ceiling prices.
- The reference international c.i.f. price is the average of the daily prices observed in the relevant market for 15 consecutive days, by a satellite information system, by the Directorate of Internal and External Trade of the Department of Sectoral Policy and Investment of the Ministry of Agriculture and Livestock.
The additional variable levy over and above the ad valorem duty is applicable only when the 15-day reference price is lower than the c.i.f. floor price.

The duty reduction is applied only when the reference price is above the c.i.f. ceiling.

4. Concerning used cars, how does Ecuador plan to handle the issue given the apparent incompatibility of the system with the GATT?

Ecuador’s trade policy allows importation of vehicles classified under tariff heading 8703 and in the following subheadings provided they are new and manufactured in the year in which they are imported or the immediately previous year:

8702.10.00.10
8702.10.00.20
8702.90.10
8702.90.90.10
8702.90.90.20
8704.10.00
8704.21.00.20
8704.21.00.90
8704.22.00 (except with chassis and cab combined)
8704.23.00 (except with chassis and cab combined)
8704.31.00.20
8704.31.00.90
8704.32.00 (except with chassis and cab combined)
8704.90.00
8706.00.10
8706.00.90.91

Ecuador also allows importation of new or used vehicles of a model not more than five years old, provided they are classified under the following headings:

8701.20.00
8702.10.00.30
8702.90.90.30
8704.22.00 (only with chassis and cab combined)
8704.23.00 (only with chassis and cab combined)
8704.32.00 (only with chassis and cab combined)
8706.00.90.19
8706.00.90.99

Under Article XVIII of the General Agreement, protective measures affecting imports may be taken, firstly, to implement programmes and policies of economic development so as to increase investment, generate employment to occupy the growing economically active population and thus increase the general standard of living of the people, and secondly, to reduce a high degree of dependence on production of primary commodities.

Ecuador believes that the importation of used motor-vehicles under conditions other than those detailed above, does not foster real development either of the existing assembly activity in the country - which aims to satisfy part of domestic demand in a context of competition with the supply of foreign manufacturers in other countries - or of the related domestic industries that have developed as a result of the direct and indirect effects of the original industry.
Ecuador therefore considers that its regulations are not incompatible with the GATT provisions, but rather are consistent with Article XVIII of the General Agreement.

Ecuador's motor-vehicle assembly industry began to develop in 1972 and has proved to have a great multiplier effect on the country's economy, by drawing into the national production process a large number of new enterprises or diversifying the production of many other existing industries that supply parts, components or end products for the terminal or assembly industries. This production has in turn boosted activities in such areas as metalworking, rubber, plastics, textiles, painting, glass, grease and oils, lubricants, springs, filters, batteries etc.

In addition, in a country with a high unemployment rate, employment offered by the assembly and allied industries has proved quantitatively significant, as the entire assembly process is labour-intensive. This is also true of the small and medium-scale enterprises providing goods and services for the industry.

Ecuador’s motor vehicle assembly industry doubled its output in the period 1988-1992 compared with the combined output of the 15 previous years. During this five-year period, production rose from 12,137 units in 1988 to 15,242 units in 1989. In 1990 16,830 units were manufactured, and in 1991, 20,342 units. At the end of 1992, output totalled 25,752 units, representing an average annual growth rate of 21 per cent.

With the liberalization of motor-vehicle import policy, imports of vehicles in 1992 were triple the level of 1991. While in 1991 7,569 vehicles were imported, in 1992 22,825 units were purchased abroad. For 1993, imports of vehicles followed a similar growth trend to that of earlier years: 24,158 units were purchased.

The figures for vehicle imports in 1992 and 1993 represented a little over 47 per cent of all units on the domestic market, at a time when the domestic industry was experiencing serious problems in selling the units programmed for that period. This leads to the conclusion that, in a small market like Ecuador's, the free import of used vehicles would complicate the circumstances in which the as yet infant national vehicle assembly industry has to compete, threatening it with extinction.

In 1992, vehicles of the following makes were produced in Ecuador: Chevrolet (Hatch, San Remo, Monza, Swift, Vitara, Trooper Cargo and Suzuki Forza I and Forza II); Toyota Stout; Datsun 1200; Mitsubishi L200 4 x 2 and L200 4 x 4; Mazda (323, B-2,000, B-2,600); Fiat (Uno, Premio, Fiorino and Weekend); and Botar (buses).

Finally, we repeat that all these regulations were submitted to the GATT Secretariat at the appropriate time.

5. It is our understanding that Ecuador maintains restrictions on the importation of some agricultural products which are inconsistent with the GATT. Please describe all import prohibitions, quotas, licensing restrictions, prior authorizations or other quantitative restrictions, by tariff line, that are authorized by Ecuadorian law and/or of current application. Please provide the specific justification that would exist under GATT for each restriction.

A number of provisions are in force in Ecuador allowing official bodies to set quotas and restrict imports of agricultural and agro-industrial products. These are contained in the following laws, decisions (acuerdos) and decrees:
I. Articles 57 of the Industrial Development Law and 51 of the Small-Scale Industry Development Law.

These make it mandatory for industrial enterprises to which these laws apply to acquire domestic products before resorting to imports of like products.

II. Article 31 of the General Implementing Regulation of the Plant Health Law.

This empowers the Directorate-General of Agricultural Development to lay down provisions on the form and modalities of packaging and packing and on the periods of the year in which fresh fruit may be imported.


This provides that the Minister of Agriculture and Livestock will annually authorize import quotas for fresh apples, peaches and grapes. It states that apples and peaches may be imported solely between June and November, while grapes may be imported between April and November.


This provides that the Ministries of Industry, Trade, Integration and Fisheries, and of Agriculture and Livestock, will establish total quotas for raw materials of agricultural origin required by the countries’ industries and individual quotas for each industry with respect to domestic and imported raw materials.


This empowers the Ministries of Industry, Trade, Integration and Fisheries and of Agriculture and Livestock to determine total quotas for the use of raw materials and sets import quotas of local and imported raw materials for enterprises producing edible fats and oils.


This empowers the Ministry of Agriculture and Livestock to establish the import requirements for staple consumer goods for which a shortfall in domestic production is foreseen.


Under these provisions, any public or private entity wishing to import milk, cream, blown or toasted cereal-based products, homogenized compound food preparations for baby feeding, modified milk and dietetic preparations and baby food supplements must be authorized by the Ministry of Agriculture and Livestock.

VIII. Interministerial Decision No. 061 of 31 January 1991

This establishes that the Ministries of Industry, Trade, Integration and Fisheries and of Agriculture and Livestock annually determine the wheat import quotas for the country’s milling enterprises.
The above provisions are applicable to imports of cereals, pulses, oilseeds and oilseed products, powdered milk, sugar and fruit.

The provisions aimed at safeguarding animal health in the country are also maintained. They are not restrictions but rather set health standards for importation that must be observed and complied with for a product to enter the country.

The sanitary measures adopted are based on international standards, guidelines and recommendations that are recognized by the Codex Alimentarius Commission and the International Office of Plant Protection. These measures do not in any way represent a hindrance to free trade.

The price-band system does not establish restrictions for the products it covers. It is a price stabilization mechanism and not a system of trade restriction.

6. With regard to technical standards, we would be grateful if you could provide a copy of the applicable laws or regulations, in particular the recent registration requirements imposed and any new legislation on sanitary certification.

Ecuador submitted to the GATT Secretariat the INEN Technical Standards Catalogue corresponding to Annex H of document L/7301/Add.2; nevertheless an additional copy is submitted for information purposes herewith.

A copy is attached of the General Regulation on Pesticides and Related Products for Agricultural Use (Annex I), which is the only new piece of legislation enacted in this respect. Executive Decree 939 of 2 July 1993, published in Official Journal No. 233 of 15 July 1993, enacted this Regulation, whose Articles 15 to 20 refer to registration of pesticides by procedures that simplify the formalities and streamline the marketing process for such products.

7. Please provide information on the list of minimum prices for textiles and on how the Government of Ecuador considers that there is a GATT justification for such a system.

Ecuador considers that the system of determination of the value of goods on the basis of officially established minimum values has been accepted for developing countries in GATT, as stated in paragraph 3 of Part I of the Protocol to the Agreement on Implementation of Article VU of GATT 1947 and paragraph 2 of Annex III to the Agreement on Implementation of Article VII of GATT 1994.

The list of minimum prices for textiles appears in Ministerial Decision No. 073 of 31 January 1994 signed by the Under-Secretary for Revenue of the Ministry of Finance, a copy of which is attached (Annex J). The minimum customs values used in the country are temporary.

Ecuador has been obliged to establish a system of minimum customs valuation prices for a wide range of fabrics given the increasing tendency to undervalue declared prices of textiles in general and in order to overcome the ensuing difficulty in the application of customs valuation rules.

Thanks to undervaluation it is possible not only to evade taxes and cheat the State but also to capture a market legitimately won by domestic producers of similar products. Consequently, the system of minimum customs values has two objectives: to defend tax interests and counter the unfair competition facing domestic products.
8. Please reply to the questions submitted concerning price setting for pharmaceuticals.

- How is price setting for domestic and imported pharmaceutical products administered?

**Imported products**

To establish the prices of imported products, the following procedures are carried out on a product-by-product basis: to the f.o.b. price are added international transport and import, entry and internal transport costs, which determines the cost up to the warehouse. Operating, administrative, selling, promotion and financial costs are then added to the warehouse cost.

In order to establish the pharmacy selling price, a profit margin of up to 20 per cent of the cost is taken into account, and to establish the maximum selling price to the public, a profit margin of 25 per cent is added to the maximum pharmacy selling price.

**Domestic products**

In order to establish the prices of locally manufactured products, the following procedure is carried out on a product-by-product basis: the f.o.b. price of the main imported active principles is considered, and to the f.o.b. value of the imported raw materials and excipients are added international transport, importation or entry costs and transport costs to the manufacturer's warehouse. A percentage is also added for loss or waste in the production process for each product. In establishing the production cost, account is taken of direct and indirect labour costs and other indirect production costs of the most representative enterprises of the sector established in the country.

Operating costs are added to the production costs, which gives the commercial cost. In order to establish the pharmacy selling price, a profit margin of up to 20 per cent of the commercial cost is taken into account, and to set the maximum selling price to the public a profit margin of 25 per cent of the maximum pharmacy selling price is added for each product.

Pharmaceutical products subject to price setting are listed in the documents submitted to the meeting of the Working Party held on 17 and 18 January 1994.

- What tariff items are subject to these controls?

All headings and subheadings corresponding to medicaments for human use are subject to these controls (Chapter 30 of the National Customs Tariff and of the Harmonized System).

- What percentage of consumption of pharmaceutical products in Ecuador is imported?

The percentage of pharmaceutical products for human use that is imported is shown in the following table:
Ecuador: Imports of Pharmaceutical Products

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage imported</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989</td>
<td>49.0</td>
</tr>
<tr>
<td>1990</td>
<td>45.9</td>
</tr>
<tr>
<td>1991</td>
<td>46.3</td>
</tr>
<tr>
<td>1992</td>
<td>35.5</td>
</tr>
</tbody>
</table>

- What authority sets prices in sectors other than medicaments?

The National Council for the Setting of Prices of Medicaments for Human Use is responsible for setting the prices for medicaments. Price setting for fuels and gas for household use is the responsibility of the Ministry of Finance and of Energy and Mining.

- Does Ecuador plan to extend the price control programme beyond pharmaceuticals, fuels and gas for household use?

Ecuador has made an enormous effort to liberalize domestic prices in its economy over the last few years under a programme to boost efficiency and production. The price-setting policy Ecuador established in the 1970s has been virtually dismantled. The exception to this trend is medicaments, which have social and political implications: social, because regrettably in Ecuador the public health system does not yet provide efficient coverage for the lower income groups of the population; and political, because anything that can affect the more deprived segment of the population is always a potential source of conflict.

9. Please reply to the question submitted on government procurement:

- Provide a list of State enterprises or of State participation in enterprises linked with internal and international trade.

- Provide a list of products they market internationally and indicate the role they play in domestic distribution of the products they produce or import.

- With regard to compliance with the "principle" of Article XVII, Ecuador should provide a list of State enterprises or of State participation in enterprises that would be covered by this Article.

In Ecuador, State-trading enterprises and enterprises in which the State has a majority holding, which have not yet been privatized, do not play a predominant role in the economic sectors in which they operate, and they do not have any monopolistic rights whatsoever; consequently, their buying or selling of goods does not influence the level or trend of imports or exports.

When Ecuador becomes a GATT contracting party, and if it sees fit, especially bearing in mind the future characteristics of the Ecuadorian Telecommunications Company (EMETEL) under the new Law on the Modernization of the State, Privatization and Provision of Public Services by Private Enterprise, published in Official Journal No. 349 of 31 December 1993, that enterprise will be notified. In any event, we repeat that in its procurement involving imports EMETEL complies with the principle of non-discrimination and bases its transactions on purely commercial considerations.
EMETEL operates on an exclusive basis within the telecommunications services sector because this is an area of economic activity reserved for the State under the Constitution. It is possible that the State may delegate the exercise of this activity to private enterprise under the terms of the Law on the Modernization of the State.

- Has the Law on the Modernization of the State entered into force as predicted in the reply to Question 64? If so, please describe how the new Law will affect the provisions governing procurement between State-owned enterprises and foreign firms.

Please refer to Section (b) of Question 1.

10. Please give a full description of the aspects of Ecuador's participation in preferential trade arrangements that affect the conditions of trade for imports from non-preferential trading partners.

Participation in preferential trade agreements

In the opinion of Ecuador, taking into account GATT Article XXIV, its membership of both the Cartagena Agreement and the Latin American Integration Association (LAIA) do not affect the conditions of trade for the imports of non-preferential trading partners.

While the member countries of the two above-mentioned integration groupings regularly inform GATT of their integration process, Ecuador considers that it could supply the following additional information which supplements that provided in document L/7202 and at the Working Party's first meeting.

Ecuador has been participating in these integration processes in the firm belief that they are valid options for speeding up its advancement as well as that of Latin America.

The Cartagena Agreement will have been in existence for 25 years next May. It is the most advanced integration process in Latin America and constitutes an open and competitive rather than a defensive model of integration. It seeks greater participation in the world economy and one of its goals is to become a customs union. For this purpose it envisages the adoption of a Common External Tariff (CET).

In early 1992 the Board of the Cartagena Agreement submitted to the Andean countries for their consideration a proposal providing for four basic levels, in accordance with the guideline laid down at the Presidential Meeting in December 1991 in Cartagena de Indias, Colombia. In October 1992, the Commission of the Cartagena Agreement adopted Decision 324 establishing the structure of the Common External Tariff, which was later adopted, in March 1993, by Decision 335. At the moment member countries have completed most of the technical work for its implementation, which is to take place in April 1994 at the latest.

Andean Free-Trade Area

Within the Cartagena Agreement there is a free-trade area in which four of its five members participate. Within the area goods move freely without tariffs or restrictions of any kind.

Ecuador has participated fully in the Andean Free-Trade Area since 31 January 1993. The Area has boosted trade among Andean countries, which also benefits Ecuador. Trade within the subregion has been growing since 1989, which coincides with the process of trade liberalization pursued
by the Andean countries. The Free-Trade Area involves all products included in the Customs Tariff and constitutes a basic means of reaching a more advanced level of integration.

Latin American Integration Association (LAIA)

Ecuador is a member of the Latin American Integration Association (LAIA) which was set up by the 1980 Treaty of Montevideo to replace the Latin American Free-Trade Association (LAFTA) of 1960. The long-term goal of LAIA is the gradual and progressive creations of a Latin American common market. The instruments provided for achieving the Association’s goals are: regional scope agreements, in which all member countries participate, and partial-scope agreements which concern solely their signatories.

These instruments provide for the negotiation of mutual tariff concessions. They also seek to promote economic complementarity and develop economic cooperation. The Regional Tariff Preference is granted according to the level of development of each member country giving or receiving the preference. The tendency towards opening up the economies of all member countries of the Association, including Ecuador, is a new feature of the Latin American integration process, which contrasts with what prevailed in the 1970s.

As in the case of the Andean Group countries, we must stress the tendency towards liberalization of the economies of LAIA countries, which have reduced national tariffs with respect to the rest of the world and thus improved trade conditions for imports from non-preferential trading partners, often to the detriment of preference margins negotiated among members of the Association and the potential of intrasubregional trade. This is borne out by the fact that in 1993 the total value of imports by LAIA member countries from outside the Association totalled $61,548 million, an increase of 11 per cent compared with 1992.

11. Does the Andean Pact have local content requirements in its rules of origin? Please describe such requirements.

As a signatory of the Cartagena Agreement, Ecuador applies the community rules of origin which are based on the general principles of change of tariff heading, processing and greater incorporation, and indicative lists, which are set out in Decision 293 of the Commission of the Cartagena Agreement issued on 4 April 1993.

12. What provisions of Part IV of the General Agreement will Ecuador make use of in its accession?

Ecuador is aware of the importance of free trade in economic development. It considers that the General Agreement, the instrument that governs world trade, recognizes in Part IV its responsibility for facilitating the economic development of developing countries.

It also takes into account that in Part IV the developed countries agreed to refrain from increasing obstacles to exports of primary products and other products of special interest to developing countries; and that the principle, established in 1965, that developing countries should not be expected to make contributions that are inconsistent with their specific developmental, finance and trade needs remains inviolable.

When signing the General Agreement, Ecuador will do so in full, taking into account that on the one hand it assumes obligations arising from the rules and principles of the General Agreement, and on the other this will enable it, when the time arises, to defend its trade interests and consolidate
its unilateral trade liberalization efforts. These efforts, together with the steady growth of world trade stimulated by GATT, will foster the country's own economic development.

13. **Taxes of 1 per cent and 2 per cent in favour of INNFA.**

   These taxes of 1 and 2 per cent of c.i.f. value intended for the Children's Development Fund and the National Fund for Nutrition and Protection of Ecuadorian Children have been repealed by the new Customs Law.

14. **Justify under Article XVIII and XXI the products subject to an import prohibition and specifically the prohibition on importation of used tyres.**

   The 28 tariff subheadings listed in Annex 2 of document L/7301/Add.1 are justified under Articles XVIII, XX and XXI of the General Agreement, as follows:

**Article XVIII**

In accordance with the provisions of Article XVIII, economies which are "in the early stages of development" and are seeking to industrialize so as to reduce their dependence on the production of primary products may adopt protective or other measures affecting imports.

Ecuador's economy depends for 60 per cent on exports of primary products, and wishes to reduce this proportion through industrial development programmes. Accordingly, for some years Ecuador has considered it necessary to protect some of its infant industries; this is the specific reason for the measures affecting imports of the products falling within the following tariff headings:

- 2008.30.0000;
- 4012.10.1000;
- 4012.10.9000;
- 4012.20.0000;
- 5208.33.0000;
- 7211.11.0000;
- 8707.10.0000;
- 8707.90.10000;
- 8716.10.0000.

**Article XX**

In accordance with Article XX, Ecuador may adopt measures to protect public morals, human or animal life or health, to protect plants, etc. Such is the case of the measure affecting the product classified under the following tariff heading:

- 29.14.110000, a product frequently used for the illegal preparation of narcotics or psychotropic substances.

   Measures relating to the following subheadings and concern the defence and protection of endangered animal species and the environment are also consistent with this Article:

- 29.03.591000, 29.03.592000, 29.10.901000,
- 29.10.902000, 29.20.101000, 29.20.102000,
- 41.03.200000, 41.07.210000, 41.07.290000,
- 96.01.100000, 96.01.900000.
Used tyres

In addition to the justification under Article XVIII for Subheading 40.12.200000, "used tyres", Ecuador considers that in this case Article XX is also applicable.

Article XXI

Finally, Article XXI allows the adoption of all necessary measures for the protection of essential security interests relating to fissionable materials or the materials from which they are derived; the traffic in arms, ammunition and implements of war, and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying the Armed Forces.

Accordingly, the measures relating to the products corresponding to these tariff items are consistent with this Article of the General Agreement:

87.10.000000, 89.06.001000, 93.05.901000, 93.06.901000, 93.07.000000

B. List of public institutions benefiting from import duty exemptions. Further information on the concept "for their specific purposes". Statistics on the total number of such institutions indicating the value of such exemptions.

We repeat what is said in pages 29 and 30 of document L/7202 (English version) and report that, in accordance with Article 23 of the new Customs Law, exclusively the imports carried out for the specific purposes for which they were created, by the following persons or entities, are exempt from payment of customs duties, within the limits and conditions laid down in the said Law:

- The State, the public sector in general (provincial councils, municipalities); private law entities having a social or public purpose, created and regulated by law;

- State-owned enterprises and those owned by regional or local government enjoying administrative and economic independence, as public or private law entities, for the provision of public services;

- Private-law entities that have signed contracts with public sector agencies or bodies for public works for the provision of welfare, public assistance or educational services;

- Legally-authorized universities, polytechnical schools and institutions of higher education, public or private;

- Diplomatic and consular missions, international or technical assistance organizations and their members within the limits and under conditions set forth in the "Law on the Immunities, Privileges and Exemptions Pertaining to Diplomatic, Consular and International Organizations" or in other relevant agreements that the Government may have signed;

- National or foreign travellers entering the country, with respect to their baggage and household effects;

- Immigrants, with regard to their baggage and used household effects and work equipment.
The Ministry of Finance is responsible for the prior authorization of duty-free imports of goods by public or private entities eligible for such exemption, and may restrict such authorization to urgent needs of such entities. No importation of this type may be carried out without this prior qualification and authorization.

Customs-duty exemptions may be established only by law.

Ecuadorian law explicitly requires, in order that free competition should not be affected, that ownership of goods entering the country duty free may be transferred only after a specified period of time has elapsed and payment (total or partial as the case may be) has been made of the duties from which they were initially exempted.

Public sector: duty-free imports

<table>
<thead>
<tr>
<th>Years</th>
<th>Ecuador: total imports</th>
<th>Public sector imports</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989</td>
<td>1,805.8</td>
<td>25.1</td>
<td>1.38</td>
</tr>
<tr>
<td>1990</td>
<td>1,804.6</td>
<td>20.5</td>
<td>1.13</td>
</tr>
<tr>
<td>1991</td>
<td>2,327.8</td>
<td>33.0</td>
<td>1.01</td>
</tr>
<tr>
<td>1992</td>
<td>2,416.8</td>
<td>36.0</td>
<td>1.49</td>
</tr>
<tr>
<td>1993</td>
<td>2,552.7</td>
<td>96.0</td>
<td>3.76</td>
</tr>
<tr>
<td>TOTAL</td>
<td>10,907.7</td>
<td>210.6</td>
<td>1.93</td>
</tr>
</tbody>
</table>

A. Government procurement procedure

The following is a summary of the Government Procurement Law enacted on 2 August 1990 and published in Official Journal No. 501 of the same month and year. The provisions described below must be consulted in that legal instrument and must not be interpreted modifying the provisions establishing the following procedures for the pre-contractual and contracting stages for the performance of works, purchase of goods and provision of services for the public sector:

1. Common pre-contractual procedures (Chapter II):

Where the performance of works, purchase of goods and provision of services have the following characteristics, there shall be:

- Open invitation to tender, if the amount exceeds the value of 10,000 times the general minimum wage. The bidder shall submit his tender within the time-limit established by the Procurement Committee (between 18 and 48 days from the invitation to tender);

- A public limited imitation to tender, if the amount does not exceed 10,000 but is over 4,000 times the general minimum wage. Submission of bids is governed by the provisions of Article 37 of the Law;
Open price tendering, if the amount is over 1,500 but not more than 4,000 times the general minimum wage. The submission of bids is governed by Article 39 of the Law; and

Selective price tendering, if the amount is over 150 but not over 1,500 times the general minimum wage. Submission of bids is governed by Article 41 of the Law.

Bids are submitted to the Secretary of the Procurement Committee, in a sealed envelope, in the Spanish language. Bidders may be present at the opening of the envelopes.

2. Special pre-contractual procedures (Title V, Chapter I) for procurement relating to:

- Purchase of real estate: every institution must have a declaration of public or social interest of the property concerned, and the price is fixed in accordance with the valuation;

- Renting of immovable property;

- Leasing with option to purchase;

- Other contracts financed by international loans granted by: multilateral institutions (the provisions of the respective agreements must be observed); and by foreign governments. In each case presidential authorization is required, together with prior reports by the following institutions: CONADE (on the priority of the project and its compatibility with Ecuador’s development policies); the External Credit Committee (on the advantages of the terms of the financing offer); and the contracting ministry or entity (on the competitiveness of the prices).

3. The Law provides for a Procurement Committee in each Ministry, dependent body or entity of the public sector. The Committee orders publication of the initiations to tender or public competition; fixes the date for submission of bids; delivers the relevant documents against payment; responds to queries by bidders, etc. The Committee appoints a technical commission to assess the bids, which is formed in accordance with the nature of the contract. The Committee decides on the award of the contract.

4. Requirements to initiate any pre-contractual procedure:

- Every public sector institution must show that it has budgetary funds available and all necessary authorizations;

- Every bidder must possess, inter alia, the following pre-contractual documents: certificates of the State Comptroller’s Office on performance of contracts, economic and financial status, certificate of legal personality and compliance with the obligations laid down by the Office of the Superintendent of Companies, letter of presentation and commitment; bid form; draft contract; general and technical specifications and plans; estimated value; period of execution; equipment to be used; and certificate that it is not disqualified from concluding contracts with the public sector;

- In the pre-contractual processes, the Government Procurement Law provides that if the bidder is a legal person incorporated in Ecuador it must present a certificate of legal personality and of compliance with all obligations laid down by the Office of the Superintendent of Companies or the corresponding supervisory entity; if the bidder
is a foreign enterprise, it must submit a certificate issued by the Consul of Ecuador, based on the attestation of the competent authority of the country in which the enterprise has its main place of business, concerning its legal personality and capacity to enter into contracts in Ecuador. In addition, every legal person must submit evidence of the appointment of a legal representative or attribution of power of attorney in Ecuador, duly legalized and registered and valid on the date of submission of the bid.

5. Contracts are formalized by public deed. The bidder or contractor must provide guarantees in accordance with the law (tender bond, performance, advance and technical guarantees). The Government Procurement Law does not discriminate between imported products nor in the charging of taxes or fees or presentation of guarantees as between national or foreign bidders. National suppliers are not given special treatment.

B. Telecommunications

Telecommunications are a service of public necessity and utility and are a matter of public security, and hence exclusively the responsibility of the State. Consequently, the State must direct, regulate and control all telecommunications activities, in accordance with the Constitution and the Special Law on Telecommunications, No. 184 of 8 August 1992 (Official Journal No. 996 of 10 August 1992).

For the importation of certain items of telecommunications equipment, prior authorization is required from the Telecommunications Department, and the enterprise must have the necessary concession to install the equipment.

Ecuador has established a legal framework that is in keeping with the importance, complexity, scale, technological level and specificity of telecommunications services. The Special Law on Telecommunications was enacted in 1992, establishing the State Telecommunications Company, EMETEL, with its own legal personality, equity and resources, and administrative, economical, financial and operational autonomy. Company management is subject to this Law, to the regulations issued for the purpose, to the standardization, certification and control of the Telecommunications Department, and to other operational standards established by the various organs of the State company.

The EMETEL Executive Committee is responsible for setting and approving the administrative, financial and technical standards, rules and procedures, while the Executive Director is responsible for planning and development of the company’s telecommunications systems. The technical standards applied by EMETEL for the procurement of goods and services are based on the standards laid down by the CCITT and the CCIR.

According to the Law, the contracts concluded by EMETEL are not subject to the government procurement laws and regulations; in other words, the company carries on its activities in accordance with business management criteria.

Ecuador assures the contracting parties that its standards are consistent with international standards within the framework of the International Telecommunications Union.

C. Restrictions on shareholding in industry

As a general rule, current Ecuadorian legislation does not establish restrictions on foreign shareholding in industry. Investments in the fishery sector are an exception to this rule.

In accordance with Article 19 of the Law on Fishing and Fishery Development, this activity is reserved to national enterprises or joint ventures (in which foreign shareholding must not exceed 49 per cent). For a foreign enterprise to engage in non-traditional fishery activity, it must obtain authorization from the National Council for Fishery Development.