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Committee on Technical Barriers to Trade

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**SPECIFIC TRADE CONCERNS RELATING TO ACCESS OF MISCELLANEOUS  
MANUFACTURED ARTICLES TO THE ECUADORIAN MARKET**

**COMMUNICATION FROM COLOMBIA**

The following communication, dated 16 October 2013, is being circulated at the request of the delegation of Colombia.

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**1 BACKGROUND**

1.1. Colombia draws the Committee's attention to the specific trade concern first raised on 18 March 2009 by Chile, Colombia, Korea, the Republic of Mexico, the United States, and the European Union regarding the conformity assessment requirements established by Ecuador for a wide range of products, which were not notified to the Members of the World Trade Organization in draft form, as required under Article 5.6.2 of the Agreement on Technical Barriers to Trade (TBT Agreement).

1.2. On that occasion, the Ecuadorian Government did not give WTO Members any opportunity to examine the conformity assessment requirements and make written comments on them or hold discussions on their observations; nor did it provide any opportunity for such comments or discussions to be taken into account during the final drafting of the Conformity Assessment Procedure.

1.3. It is clear that Ecuador is notifying its Conformity Assessment Procedures after they have been adopted. This is evident when comparing the date of document G/TBT/N/ECU/42 notifying the "Regulation on the control of imported goods required to comply with the mandatory technical regulations (RTE INEN) and mandatory technical standards (NTE INEN) of the Ecuadorian Standardization Institute" (29 January 2009) with the date of adoption indicated in the Supplement to Official Journal No. 478 (1 December 2008).

1.4. The situation described in the paragraph above was repeated upon the notification to WTO Members of Resolution No. 009-2009: "General conformity assessment framework for Ecuador" and Resolution No. 010-2009: "Procedure for obtaining a Certificate of Recognition (form INEN 1)", which were published in the Special Supplement to Official Journal No. 563 of 3 April 2009 and notified in document G/TBT/N/ECU/44 of 16 April 2009.

1.5. Neither notification G/TBT/N/ECU/42 nor notification G/TBT/N/ECU/44 indicated, in point 10, a final date for comments on the notified documents, despite being made under Article 5.6.2, which states that Members shall "notify other Members through the Secretariat of the products to be covered by the proposed conformity assessment procedure, together with a brief indication of its objective and rationale. Such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account".

1.6. The same procedure was followed for the notification of Resolution No. 004-2008 of 29 December 2008, Resolution No. 005-2009 of 7 January 2009, Resolution No. 006-2009 of 14 January 2009, CONCAL Resolution No. 007-2009 of 27 January 2009, and Resolutions Nos. 013, 014, 016 and 018, published in Official Journals No. 196, No. 310, No. 346 and No. 366 of 19 May 2010, 28 October 2010, 22 December 2010 and 19 January 2011, respectively,

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which were notified to the WTO in documents G/TBT/N/ECU/42/Add.1, G/TBT/N/ECU/42/Add.2, G/TBT/N/ECU/42/Add.3, G/TBT/N/ECU/42/Add.4, and G/TBT/N/ECU/44/Add.1.

1.7. It should be noted that neither notification G/TBT/N/ECU/42 nor notification G/TBT/N/ECU/44, nor their addenda, indicated that these notifications were being made as a matter of urgency, and when the Resolutions mentioned in points 3, 4 and 6 were examined, neither their preambular nor operative parts were found to be of an urgent nature.

## **2 SPECIFIC TRADE CONCERN**

2.1. Ecuador once again violated Article 5.6.2 of the TBT Agreement when notifying WTO Members of Resolution No. 001-2013-CIMC of 2 May 2013: "General conformity assessment framework for Ecuador and the handbook of procedures to be observed prior to all stages of the customs clearance, marketing and market surveillance of manufactured, imported and marketed goods subject to Ecuadorian technical regulations" and Resolution No. 002-2013-CIMC of 11 July 2013, which were issued by the Interministerial Quality Council, published in Official Journal No. 4 of 30 May 2013 and the Supplement to Official Journal No. 64 of 22 August 2013, and notified in documents G/TBT/N/ECU/44/Add.2 of 5 June 2013 and G/TBT/N/ECU/44/Add.3 of 30 August 2013. For this reason, Colombia is bringing this previously raised specific trade concern before the TBT Committee.

2.2. Colombia does not believe there is any direct correlation between the requirements established in the general conformity assessment framework for goods subject to Ecuadorian technical regulations and the protection of human life, safety, environmental protection, and the protection of consumers against deceptive practices; nor is it clear whether a certification requirement can guarantee these objectives, which are instead met by meeting specific product requirements.

2.3. In Colombia's view, the fourth transitional provision of Resolution No. 001-2013-CIMC of 2 May 2013 discriminates against foreign products and is inconsistent with Article 5.9 of the TBT Agreement, which states that "Members shall allow a reasonable interval between the publication of requirements concerning conformity assessment procedures and their entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products or methods of production to the requirements of the importing Member".

2.4. Accordingly, Colombia requests the Republic of Ecuador to suspend Resolution No. 001-2013-CIMC of 2 May 2013: "General conformity assessment framework for Ecuador and the handbook of procedures to be observed prior to all stages of the customs clearance, marketing and market surveillance of manufactured, imported and marketed goods subject to Ecuadorian technical regulations" until WTO Members have been able to examine the Resolution and make written comments on it.

2.5. Resolution No. 001-2013-CIMC of the Interministerial Quality Council, published in Ecuadorian Official Journal No. 4 of 30 May 2013, is causing problems for our exporters in connection with the recognition of conformity certificates accompanying exports of our products, despite Colombia and Ecuador having signed, on 5 March 1997, an Agreement on Mutual Recognition (MRA) of Certificates of Conformity with Standards, which was subsequently modified by the Addendum of 19 July 2000 and renewed for the third time on 28 March 2012. In practice, Ecuador is not complying with this MRA.

2.6. In addition to the Certificate of Product Conformity, Colombian exporters are required to obtain a Certificate of Recognition (form INEN 1) from the Ecuadorian Standardization Institute (INEN), all of which renders ineffective the Agreement on Mutual Recognition of Certificates of Conformity, which provides for the "recognition and automatic acceptance of Certificates of Conformity with Mandatory Official Technical Standards".

2.7. The requirements established in the "General conformity assessment framework for Ecuador and the handbook of procedures to be observed prior to all stages of the customs clearance, marketing and market surveillance of manufactured, imported and marketed goods subject to Ecuadorian technical regulations" have delayed the entry into Ecuador of many of Colombia's

manufactured products and on numerous occasions these products have been held at the border until the importer demonstrates their compliance with Ecuadorian technical regulations or until the INEN 1 form has been obtained from the Ecuadorian authorities.

2.8. In conclusion, the replies that Ecuador provided bilaterally in official letters and e-mails in response to the concerns expressed by Colombia regarding good notification practices and conformity assessment requirements did not adequately address those concerns and we do not believe that the parameters and provisions of the TBT Agreement have been observed. We therefore call upon Ecuador to hold bilateral discussions at the level of the Binational Committee on Standardization, Technical Regulations, Certification and Metrology with a view to resolving this issue. We also urge it to comply with the Ecuador-Colombia Agreement on Mutual Recognition of Certificates of Conformity, in accordance with the agreed terms and conditions.

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