

**WORLD TRADE  
ORGANIZATION**

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**Committee on Anti-Dumping Practices**

Original: Spanish

**NOTIFICATION OF LAWS AND REGULATIONS UNDER  
ARTICLES 18.5 OF THE AGREEMENT**

ECUADOR

The following communication, dated 18 April 2012, is being circulated at the request of the delegation of Ecuador.

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In accordance with the provisions of Article 18.5 of the Anti-Dumping Agreement, Ecuador hereby submits the text of Resolution No. 42 of the Foreign Trade Committee "Requirements and procedures for dumping investigations and the application of anti-dumping measures", published in Official Journal No. 677 of 5 April 2012.

**No. 42**

**THE FOREIGN TRADE COMMITTEE**

**Whereas:**

That, pursuant to Article 261.5 of the Constitution of the Republic, the central Government has exclusive competence for economic, taxation, customs, tariff and foreign trade policies, *inter alia*;

That Ecuador signed the Protocol of Accession to the Agreement establishing the World Trade Organization in Geneva on 27 September 1995, under which it undertook to implement the Agreement on Implementation of Article VI of the General Agreement and Tariffs and Trade concerning anti-dumping duties;

That the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade constitutes a regulatory instrument that contains criteria and procedures enabling the conditions for application of anti-dumping duties to be determined in order to counter unfair trade practices and remedy the distortions caused by dumping;

That, by means of the Supplement to Official Journal No. 351 of 29 December 2010, the Organic Code of Production, Trade and Investment (COPCI) entered into force and Book IV thereof determines the regulatory framework for foreign trade, its bodies and instruments;

That Article 71 of the Organic Code of Production, Trade and Investment provides that the body entrusted with approving national public policies on trade shall be the Foreign Trade Committee, COMEX;

That Article 72(i) of the COPCI determines that it shall be COMEX's duty and authority "*To adopt the rules and measures needed to counter unfair international trade practices that affect domestic production, exports or, in general, the country's trade interests*";

That Article 88 of the COPCI provides that the "State shall promote transparency and efficiency in international markets and shall encourage equal conditions and opportunities. For these purposes and in accordance with the provisions of this Code and of the relevant international instruments, it shall adopt appropriate trade measures to: a. Prevent or remedy any injury or threat of injury to domestic industry caused by unfair dumping practices (...)"

That, in fulfilment of General Provision PRIMO in the aforementioned Code, Executive Decree No. 733 was issued and published in Official Journal No. 435 of 27 April 2011, establishing Regulation to Implement Book IV of the Organic Code of Production, Trade and Investment in relation to trade policy, its supervisory bodies and instruments;

That, in fulfilment of the mandate given by Article 53 of the Regulation to Implement Book IV of the Organic Code of Production, Trade and Investment, which provides that "*The administrative unit established in the Ministry of Foreign Affairs, Trade and Integration, shall be the investigating authority for trade defence for the purposes of the provisions of Article 75 of the Organic Code of Production, Trade and Investment and these Regulations*" by means of Ministerial Decision No. 0000074, published in Official Journal No. 547 of 3 October 2011, the Minister of Foreign Affairs, Trade and Integration appointed the Technical Under-Secretariat for Foreign Trade, through the Directorate of Trade Defence of the Ministry of Foreign Affairs, Trade and Integration, to be the new investigating authority for trade defence, for the purposes of the Organic Code of Production, Trade and Investment and the Regulation to Implement Book IV;

That Article 69 of the Regulation to Implement Book IV of the Organic Code of Production, Trade and Investment prescribes that in "[P]roceedings for a dumping investigation (...) The requirements and other procedural aspects of the investigation shall be established in a resolution issued by COMEX";

By Ministerial Decision No. MCPEC-2012-007 of 6 February 2012, Dr Rubén Morán Castro was delegated the powers and duties of the Ministry responsible for coordinating production, employment and competitiveness, for the period from 8 February to 12 February 2012, as substitute for the Minister responsible for the coordination of production;

That the plenary session of the Foreign Trade Committee considered and approved technical report No. 02/AI/DDC/2012 of the Ministry of Foreign Affairs, Trade and Integration/Technical Under-Secretariat for Foreign Trade/Directorate of Trade Defence concerning the procedures for dumping investigations and application of safeguard measures, which recommends, *inter alia*, approval of "*the Requirements and Procedural Aspects for Dumping Investigation Procedures*";

In exercise of the powers conferred by the law,

**Hereby resolves:**

**To approve the requirements and procedures for dumping investigations and the application of anti-dumping measures.**

**Article 1 - Definitions:**

- (a) **Investigating authority:** The Directorate of Trade Defence/Technical Under-Secretariat for Foreign Trade in the Ministry of Foreign Affairs, Trade and Integration, shall be the investigating authority for trade defence matters.
- (b) **Sectoral Ministry for determination of injury:** The institution which, because of its powers and competence, supervises the domestic industry requesting the measure, and is therefore responsible for examining the determination of material injury or threat of material injury.
- (c) **Dumping:** Dumping is deemed to occur when a country's products are introduced into the Ecuadorian market at less than their normal value, as determined in Articles 59 to 63 of the Regulations, if their sale causes or threatens to cause material injury to an established industry in Ecuador or materially retards the establishment of a domestic industry.
- (d) **Domestic industry:** For the purposes of initiating anti-dumping proceedings by the investigating authority, the domestic industry shall mean the industry that can prove it comprises domestic producers as a whole of the product in question or like products which support the application and represent 50 per cent of the domestic industry, provided that the application is submitted and supported by at least 25 per cent of total domestic production of the said products.
- (e) **Interested parties:** The investigating authority shall consider the following to be interested parties, but not necessarily all of them:
  - (e.1) Exporters, foreign producers or importers of the product subject to investigation, trade or business associations in Ecuador or other countries whose members are producers, exporters or importers of such product;

- (e.2) The government of the exporting member;
- (e.3) Producers of the like product in Ecuador or trade or business associations in which Ecuador or other countries are producers of the like product;
- (e.4) Industrial users and domestic consumers provided that they are representative and they can feasibly be identified; and
- (e.5) Others which, in the view of the investigating authority, should be considered interested parties.

**Article 2 – Submission of the application:** Applications relating to dumping, material injury and the causal link shall be submitted to the investigating authority by the domestic industry or on its behalf.

The application shall have the required level of support and endorsement of domestic producers of the like product allegedly imported at "dumped" prices", for which purpose it shall be accompanied by a certificate from the competent association or by other proof that it represents a domestic industry, in accordance with the definition given in Article 1 of this resolution, in order to determine the legitimacy of the applicant.

The application shall be submitted in writing and shall be deemed acceptable by the investigating authority's office.

The application shall include verifiable evidence available to the applicant concerning the "dumping", the material injury and the causal link between the "dumped" imports and the material injury.

Together with the application, the applicant shall submit the completed dumping investigation form, which shall be prepared and handed in at the offices of the investigating authority, correctly filled in and providing the required information and evidence.

Both the application and the form shall indicate whether the introduction of the product from a country into the Ecuadorian market at less than its normal value is causing or threatening to cause material injury to an established domestic industry in Ecuador or is materially retarding the creation of an Ecuadorian domestic industry. Simple assertion, unsubstantiated by relevant evidence, shall not entitle the investigating authority to initiate an investigation.

The application, the form and the supporting documents shall be submitted in one original and three copies; and the information shall also be attached in a digital file.

**Article 3 - Application requirements:** In addition to the information compulsorily to be entered on the relevant form, applications shall contain at least the following information:

- (a) General information on the applicant(s); in cases of legal representation, the substantiating documents shall be attached, together with a copy of the power of attorney if the application is being made through an attorney;
- (b) Proof that the applicant represents the domestic industry producing the like product, as required by Article 1(d) of this resolution;

- (c) Description of the domestically produced product allegedly the subject of "dumping", showing its tariff classification, the country of origin and of export;
- (d) Description of the imported product allegedly "dumped", indicating the tariff classification commonly used;
- (e) Name and domicile of the known importers, exporters and foreign producers;
- (f) Information on the prices at which the product in question is sold for consumption on the domestic market and markets in the country of origin, or markets in third countries, or on the constructed value;
- (g) Information on the export prices or, where applicable, on the prices at which the product is first sold to an independent buyer in Ecuador;
- (h) Data on the trend in the volume and value of imports of the product allegedly "dumped", their effect on various factors that affect the situation of the domestic industry such as actual or potential decline in sales, profits, market share, productivity, return on investment or utilization of capacity, factors affecting domestic prices, the magnitude of the margin of dumping, actual or potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments, as well as other variables, and their consequent impact.
- (i) Objective elements to determine the causal link between the "dumping" and the material injury;
- (j) Specific declaration to submit the relevant documents to the investigating authority for verification of the information supplied;
- (k) Details of the evidence attached to the application;
- (l) Identification and substantiation of confidential documentation and a summary or non-confidential version thereof;
- (m) Proof of the existence of the legal persons appearing as applicants; and
- (n) Domicile of the applicant domestic industry for the purpose of the respective notifications.

**Article 4 - Receipt and review of the application:** After the application has been submitted to the investigating authority, it shall be examined within a period not exceeding fifteen (15 days) and a decision taken:

- (a) **Receipt of the application.** If the investigating authority, on examination of the application, finds that it meets the requirements indicated in Articles 2 and 3, it shall be accepted. Acceptance shall be notified to the applicant within the 15-day period determined in this Article;
- (b) **Incomplete application.** If the investigating authority finds it necessary to request missing information for the purpose of accepting the application, it shall ask the applicant to provide it. This request shall interrupt the period established in the preceding paragraph, which shall start anew when the applicant supplies the information requested; and

- (c) **Withdrawal of the application.** If, after one month following the request for missing information, such information has not been supplied in full, the applicant shall be considered to have withdrawn the application and the investigating authority shall dismiss the application and file it together with the accompanying documents.

**Article 5 – Confidential information:** The applicant may request the investigating authority to treat some of the information submitted as confidential and must give grounds for its request, correctly identifying the information concerned, which shall be accepted by the investigating authority in accordance with the merits and justification for such classification and provided that the requesting party submits a summary that permits an overall and reasonable understanding of the said confidential information. In exceptional circumstances, the interested party may claim that part of the confidential information is not susceptible of summary, in which case it must provide the investigating authority with a statement of the reasons why summarization is not possible.

If the investigating authority considers that part of the information is not in fact confidential and the interested parties are either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the investigating authority shall deal with the information strictly confidentially but may decide not to take it into account in the investigation.

**Article 6 – Acceptance of the application:** The investigating authority shall have a period of 30 days to evaluate, as far as possible, the accuracy and adequacy of the information and evidence provided and to decide whether there are grounds for accepting the application.

This period of 30 days shall be calculated from the date of dispatch of the notification of acceptance in accordance with Article 4(a) and (b) above.

Within the first five days following the 30-day period, the investigating authority shall appoint and transmit to the competent sectoral Ministry all the information received from the domestic industry in relation to the application, whether confidential or non-confidential, in accordance with general provision 5.4 of this resolution.

Within the same period, if the investigating authority finds that there is not sufficient evidence of either dumping or of injury to justify acceptance of the application or determines that the dumping is *de minimis* in accordance with Article 5.8 of the Agreement on Implementation of Article VI of the GATT 1994, it shall reject the application, notifying the applicant of the inadmissibility of the application, within a further period of seven days.

**Article 7 - Notification of acceptance of the application to the government of the exporting country:** After expiry of the aforementioned period, if the investigating authority finds that there are grounds for accepting the application, prior to initiating the investigation it shall notify the government of the exporting country concerned within a period of 30 days that it has received a properly documented application to initiate an anti-dumping investigation, in accordance with Article 71 of the Regulation to Implement Book IV of the Organic Code of Production, Trade and Investment, and Article 5.5 of the Agreement on Implementation of Article VI of the GATT 1994.

**Article 8 - Initiation of the investigation:** If the investigating authority finds that there are grounds for initiating the investigation, it shall give notice of the initiation in a reasoned resolution. The resolution on initiation of the investigation, and any future resolutions by the investigating authority throughout the investigation procedure, shall indicate the procedural practices it deems appropriate to follow and determine the time limits for these practices or new practices, and interested parties wishing to submit reports shall return duly completed questionnaires and attachments to the

investigating authority; the investigating authority shall also determine the period for oral public hearing(s) to explain the grounds.

In the resolution on initiation of the investigation, the investigating authority shall determine the maximum time limit for submitting to COMEX the final report on the investigation containing its conclusions, which shall not exceed 12 months from initiation of the investigation; if provisional measures are requested in the application, the investigating authority shall submit the preliminary technical report not earlier than two months following initiation of the investigation.

In the resolution on initiation of the investigation, the investigating authority shall inform the interested parties which sectoral Ministry has competence to determine material injury or threat of material injury; the Ministry shall exercise its relevant powers to seek information, conduct verification visits and other activities required to make such a determination.

If necessary, by means of a resolution, the investigating authority may extend to 18 months the time limit for submitting to COMEX the final report on the investigation containing its conclusions.

**Article 9 - Publication and notification of the initiation of the investigation:** After the initiation of the investigation has been declared, the investigating authority shall transmit the resolution on initiation of the dumping investigation for publication in the Official Journal and in a national newspaper, in accordance with Article 71 of the Regulations to Implement Book IV of the Organic Code of Production, Trade and Investment; likewise, it shall notify the World Trade Organization's Committee on Anti-Dumping Practices accordingly if the country concerned is a member of the Organization; it shall transmit the text of the application to interested parties. Publication and notification shall take place within 30 days of the date of the resolution initiating the investigation.

The aforementioned notifications shall take into account the provisions on confidential information.

**Article 10 - Verification of information:** In order to verify the accuracy of the information provided by the interested parties or to obtain further details, the investigating authority may conduct verification visits in the country exporting the dumped product, if necessary, provided that it obtains the agreement of the enterprises concerned and has notified the government in accordance with Articles 7 and 9 above. If the enterprise to be visited fails to give its agreement, the investigating authority shall proceed in accordance with Annex II to the Agreement on Implementation of Article VI of the GATT 1994. Likewise, together or separately with the competent sectoral Ministry, technical verification visits may be made to the domestic industry and/or interested parties as considered necessary, for which the interested parties shall provide all the required facilities.

**Article 11 - Determination of the margin of dumping, injury and the causal link:** During the investigation, the investigating authority shall examine and determine the margin of dumping and the causal link; and the competent sectoral Ministry shall determine the existence of injury. This is in accordance with Articles 53 and 64 to 68 of the Regulation to Implement Book IV of the Organic Code of Production, Trade and Investment, the information contained in the application and the forms, and the provisions in the Agreement on Implementation of Article VI of the GATT 1994.

When determining the existence of a threat of material injury, the competent sectoral Ministry shall consider, *inter alia*, the following factors:

- (a) A significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;

- (b) Sufficiently freely disposable, or an imminent, substantial increase in, capacity of the exporter, indicating the likelihood of substantially increased dumped exports in the Ecuadorian market, taking into account the availability of other export markets to absorb any potential additional exports;
- (c) The fact that imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would be likely to increase demand for further imports;
- (d) Inventories of the product being investigated.

**Article 12 - Technical report:** If the domestic industry has requested the application of provisional measures, the investigating authority shall submit a technical report to COMEX, for which purpose it shall take into account the report determining material injury or threat of material injury presented by the competent sectoral Ministry; this technical report shall be submitted within a period not exceeding four months. COMEX shall issue a resolution as soon as possible, basing itself on the merits and conclusions of the investigating authority, in which it shall be determined whether provisional measures are needed, their level and time limit, in accordance with Articles 72 to 75 of the Regulations to Implement Book IV of the Organic Code of Production, Trade and Investment.

**Article 13 – Time-limit and publication of provisional measures:** In accordance with Article 74 of the Regulations and Article 7.4 of the Agreement on Implementation of Article VI of the GATT 1994, provisional measures shall be applied if there is a positive preliminary determination of the existence of dumping and the consequent material injury to the domestic industry, for a period of four months or, upon a duly substantiated request by the interested party, for a maximum period of six months. This resolution on the application of provisional measures shall be published in the Official Journal.

**Article 14 - Meetings:** At the request of a party and prior to the submission of the report on the essential facts, the investigating authority shall convene meetings for the purpose of allowing interested parties to explain their positions or arguments to those with conflicting interests. Parties, either by themselves or at the suggestion of the investigating authority, may, however, consult with each other at any time during the investigation procedure in order to reach a mutually agreed solution, in which case the provision in the second paragraph of Article 70 of the Regulation to Implement Book IV of the Organic Code of Production, Trade and Investment shall apply.

**Article 15 - Essential facts:** Before the investigating authority submits its final report, all interested parties shall be informed of the essential facts taken into account and used as the basis for preparing the final report so that they may defend their interests.

Within 30 days following receipt of the essential facts, interested parties may transmit their comments to the investigating authority.

**Article 16 - Final report:** Following expiry of the time limits and deadlines for all the procedures determined in the resolution on initiation of the investigation and in subsequent resolutions and all the proceedings, within the period indicated in Article 8 of this resolution, the investigating authority shall submit a final report to COMEX containing the conclusions of the investigation.

As provided in Articles 76 and 77 of the Regulation to Implement Book IV of the Organic Code of Production, Trade and Investment, COMEX shall take a decision in the light of the final report submitted by the investigating authority, unless it receives substantiated reports from other sources which contain valid evidence proving the contrary.



COMEX's resolution shall be published in the Official Journal and notified to interested parties and to the government of the exporting country, and shall be communicated to the World Trade Organization's Committee on Anti-Dumping Practices if the country is a member of the Organization. Likewise, SENA E shall be notified for the corresponding application.

COMEX's resolution may provide for anti-dumping duties that shall remain in effect for the period and to the extent necessary to counter the dumping that is causing injury. Following expiry of the period indicated in Article 78 of the Regulation to Implement Book IV of the Organic Code of Production, Trade and Investment, either ex officio or at the request of a party, the authorities shall examine the need to maintain the anti-dumping duty. The examination may find that it is necessary to maintain the duty to offset the dumping or, on the basis of the examination, the authorities may determine that the anti-dumping duty is no longer justified, in which case COMEX shall decide to terminate the said duty immediately. Despite the foregoing, any definitive anti-dumping duty shall be terminated at the latest within a period of five years as of the date of its imposition, in accordance with Article 11, and in particular Article 11.3, of the Agreement on Implementation of Article VI of the GATT 1994.

### GENERAL PROVISIONS

**FIRST** - The regulations in the Agreement on Implementation of Article VI of the GATT 1994 (WTO Multilateral Trade Agreement), in Article VI of the General Agreement on Tariffs and Trade (GATT 1994) and in the Note and Supplementary Provision to Article VI of the GATT 1994 constitute the overall reference framework in relation to anti-dumping as provided in the COPCI, the Regulation to Implement Book IV or in this resolution, hence in case of any omissions or legal inconsistencies the international regulations shall prevail, in accordance with the precedence of laws in Ecuador.

**SECOND** - The investigating authority shall guarantee access to the non-confidential information in the file and to the summary of the confidential information to parties duly accredited and proving a real interest in the investigation. It shall also guarantee that no access is given to the confidential file.

**THIRD** - Where the number of exporters, producers, importers or the types of products involved is so large as to make it impracticable to conduct investigations or to determine individual dumping margins, the investigating authority may limit its examination to a prudential number of interested parties or products, using samples that are statistically valid on the basis of the information available to it at the time of selection or the highest percentage of the volume of exports of the country in question that can reasonably be investigated.

**FOURTH** - The anti-dumping procedure shall not represent an obstacle to customs clearance by the National Customs Service.

**FIFTH** - The investigating authority shall handle, file and deal with the original non-confidential file the confidential original and the three identical copies of the non-confidential file, as follows:

1. The original confidential and non-confidential files shall be recorded, numbered and filed in the office of the investigating authority.
2. The first faithful non-confidential copy shall be held and used by the legal service of the investigating authority, which shall draw up the procedural plan for the administrative process.

3. The second faithful non-confidential copy shall be held and used by the technical service of the investigating authority.
4. The third faithful non-confidential copy and first and unique confidential copy reproduced by the investigating authority shall be transmitted to the competent sectoral Ministry for examination and determination of the material injury caused or threat of material injury to the respective domestic industry, in accordance with the technical criteria and permanent rules in the WTO Agreements. In such cases, in the acknowledgement of receipt, the sectoral Ministry which receives the first and unique confidential copy shall assume responsibility for absolute reserve of such information and a commitment to its safekeeping.

**SIXTH** - Every Government institution or State body, government-owned enterprise or semi-public enterprise shall collaborate with the investigating authority in the investigation procedure, shall submit reports, analyses, duly completed forms prepared by the investigating authority or those required within the period it indicates and supplemented or clarified – if need be – also within the period indicated by the investigating authority, in accordance with Article 99 of the Regulation to Implement Book IV of the Organic Code of Production, Trade and Investment, and subject to the permanent administrative liability in the law, and application of the provision in the second paragraph of Article 101 of the aforesaid Regulations. Likewise, in the same situation, every government institution or State body, government-owned or semi-public company shall collaborate with the competent sectoral Ministry in determining injury or threat of injury.

**SEVENTH** - The investigating authority shall draw up the form to be transmitted to domestic producers or importers and foreign exporters of the product investigated. The purpose of this form is to substantiate the application by precise, technical, statistical and quantitative data that will allow an exact determination of the existence of dumping, injury, and the causal link between the dumping and the injury.

**EIGHTH** - In exceptional circumstances and when it is in the public interest, the investigating authority shall decide to initiate an investigation without having received an application from the domestic industry or on its behalf, for which purpose it shall only conduct the investigation if it has sufficient evidence of dumping, material injury and the causal link to justify the initiation of an investigation, applying the provisions in this resolution insofar as they are relevant.

#### **DISABLING CLAUSE**

**FIRST** - In fulfilment of the provisions in Article 69 of the Regulation to Implement Book IV of the Organic Code of Production, Trade and Investment, which provides that COMEX shall define the procedural aspects for anti-dumping investigations, the provisions on dumping contained in the Consolidated Text of the MICIP Legislation, issued by Executive Decree No. 3497, published in Official Journal No. 744 of 14 January 2003, are hereby repealed, with the exception of those investigation procedures already being conducted, which shall continue in accordance with the procedural rules contained in the Consolidated Text of the MICIP Legislation.

This Resolution was adopted by the Foreign Trade Committee (COMEX) at its meeting held on 8 February 2012 and shall enter into force upon publication in the Official Journal.

Dr Rubén Morán Castro, Chairman (E).

Mr Jaime Albuja, Acting Secretary.

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