

**WORLD TRADE  
ORGANIZATION**

G/SG/N/1/ECU/4  
10 October 2005

(05-4571)

---

**Committee on Safeguards**

Original: Spanish

**NOTIFICATIONS OF LAWS, REGULATIONS AND ADMINISTRATIVE  
PROCEDURES RELATING TO SAFEGUARD MEASURES**

ECUADOR

The attached communication, dated 30 September 2005, is being circulated at the request of the delegation of Ecuador.

---

In accordance with Article 12.6 of the Agreement on Safeguards, Ecuador notifies the Committee under your chairmanship of Resolution No. 320 of the Foreign Trade and Investment Council (COMEXI), published in Official Register No. 105 of 16 September 2005, which lays down an internal administrative procedure for the establishment of a safeguard mechanism to prevent products originating in and arriving from the People's Republic of China from causing or threatening to cause market disruption for the domestic industry producing like or directly competitive products.

The relevant part of the Resolution published in Official Register No. 105 is attached.

**No. 320**

THE FOREIGN TRADE AND INVESTMENT COUNCIL

WHEREAS:

The Government of Ecuador ratified the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, the Ministerial Decisions, Declarations and Understandings and the Marrakesh Agreement Establishing the World Trade Organization (WTO);

By decision dated 10 November 2001, the Ministerial Conference of the World Trade Organization (WTO) approved the accession of the People's Republic of China to the Marrakesh Agreement Establishing the World Trade Organization (WTO), on the terms and conditions set out in China's Protocol of Accession to the WTO;

The Report of the Working Party on the Accession of China was attached to the aforementioned Protocol and forms an integral part thereof;

The Protocol of Accession establishes a transitional safeguard mechanism in the event that specific products of Chinese origin are imported into the territory of any Member of the World Trade Organization (WTO) in such increased quantities and under such conditions as to cause or threaten to cause market disruption in the importing country;

The Protocol of Accession further provides that if an action by the People's Republic of China or any other Member of the World Trade Organization (WTO) under paragraphs 2, 3 or 7 of Section 16 of the Protocol causes or threatens to cause significant diversion of trade into its market, measures may be taken to address such trade diversion;

The Report of the Working Party on the Accession of China, which forms part of China's Protocol of Accession to the World Trade Organization (WTO) also provides that any WTO Member may, in certain circumstances, apply quantitative restrictions on imports of Chinese origin;

The Foreign Trade and Investment Council, meeting on 31 August 2005, decided to issue regulations and implementing rules to ensure the effective application of the aforementioned mechanisms; and,

By virtue of the powers conferred upon it by Article 11 of the Foreign Trade and Investment Law (LEXI),

DECIDES:

Article 1. – To establish a safeguard mechanism in order to prevent products originating in and arriving from the People's Republic of China from causing or threatening to cause market disruption for the domestic industry producing like or directly competitive products.

Article 2. – The Foreign Trade and Investment Council (COMEXI) may apply safeguard measures, subject to a report by the investigating authority of the MICIP, when it considers that products originating in and arriving from the People's Republic of China are being imported in such increased quantities and under such conditions as to cause or threaten to cause market disruption for the domestic industry producing like or directly competitive products.

Article 3. – There shall be deemed to be market disruption when imports, originating in and arriving from the People's Republic of China, of a product similar to or directly competing with the product manufactured by the domestic industry are increasing, in absolute or relative terms, at a rate so rapid as to cause serious injury or a threat of serious injury to the domestic industry. Market disruption shall be determined on the basis of objective factors, such as the volume of imports, the impact of the imports on prices of like or directly competitive items and the impact of such imports on the domestic industry producing like or directly competitive products.

Article 4. – For the purposes of the decision whether to implement safeguard measures within the meaning of this resolution, the procedure laid down herein shall apply once the consultations provided for in paragraphs 1, 2 and 3 of Section 16 of China's Protocol of Accession to the World Trade Organization (WTO) have been completed.

Article 5. – For the purposes of this resolution:

- (a) "Investigating authority" shall be interpreted as referring to the Trade Directorate of the Ministry of Foreign Trade, Industrialization, Fisheries and Competitiveness;
- (b) "days" shall be interpreted as referring to calendar days, except where expressly indicated as working days;
- (c) "interested parties" shall be interpreted as referring to the exporters, foreign producers or importers of a product under investigation, or the trade or business associations a majority of members of which are producers, exporters or importers of the product; the government of the exporting Member; and the producers of the like product in the national territory or the trade or business associations a majority of members of which are engaged in production of the like product in the national territory. The above list shall not preclude the investigating authority from allowing domestic or foreign parties other than the aforementioned to be joined as interested parties; and,
- (d) "domestic industry" shall be interpreted as referring to producers as a whole of like or directly competitive products in the national territory or those of them whose collective output of like or directly competitive products constitutes a major proportion of the total domestic production of such products.

Article 6. – Applications for the implementation of measures provided for herein shall be submitted to the Under-Secretariat of Foreign Trade and Integration of the MICIP by the domestic industry which considers itself to be affected by the increase, in absolute or relative terms, in imports of products originating in the People's Republic of China. Applications shall be accompanied by the evidence necessary to determine whether the imports are causing or threatening to cause market disruption for the domestic industry producing like or directly competitive products.

Article 7. – Applications shall satisfy all the requirements set out for that purpose in the Annex to this resolution.

Article 8. – Within five working days of receiving an application, the investigating authority shall inform the applicant in writing whether the application satisfies the requirements established in the Annex to this resolution. Where the investigating authority finds that pertinent information is missing, it shall request the applicant to submit further details within a period not exceeding 45 working days, which may not be counted towards that set for the investigating authority to decide the conformity of the application. The request for additional information may be made once only. Failure to submit the missing information by the above time-limit shall be deemed to constitute abandonment of the application, which shall then be shelved.

Within 15 working days of notifying conformity, the investigating authority shall assess, in the light of considerations of public interest and overall economic policy, the appropriateness of initiating an investigation. Where there is to be an investigation, the Under-Secretary for Foreign Trade and Integration shall issue the resolution so stating within eight working days, for immediate publication in the Official Register. The investigating authority shall notify the Committee on Safeguards of the World Trade Organization (WTO) immediately after the resolution has been published in the Official Register. Where the investigating authority deems it inappropriate to initiate an investigation, the decision shall be notified in writing to the interested parties and the application shall be shelved.

Article 9. – The duration of the investigation for the application of a safeguard measure may not exceed ten (10) months following the initiation of the investigation. In exceptional circumstances, COMEXI may, upon good cause shown, decide to extend the investigation by two (2) additional months.

Article 10. – In the course of the investigation, the investigating authority shall provide exporters, importers, chambers of production and other interested parties with adequate opportunity, by way of notification, to submit their views and evidence concerning the requested measure and as to whether it will serve the public interest.

Article 11. – Any information which is by nature confidential or which is provided on a confidential basis shall be treated as such, subject to the investigating authority's approval.

Article 12. – If the investigating authority considers that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, such information may be disregarded unless it can convincingly be demonstrated from appropriate sources that the information is correct.

Article 13. – Interested parties providing confidential information shall furnish non-confidential summaries thereof. The summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, the parties may indicate that the information is not susceptible of summary, in which case a statement of the reasons why summarization is not possible shall be provided.

Article 14. – The investigating authority shall base the final technical report on the information provided by the interested parties. The report shall be signed by the Under-Secretary for Foreign Trade and Integration and submitted to the Foreign Trade and Investment Council (COMEXI) for examination and decision.

The report shall consider:

- (a) The volume of imports;
- (b) the effect of the imports on prices of like or directly competitive products in the domestic market; and,
- (c) the effect of the imports on the domestic industry producing like or directly competitive products.

The above list is not exhaustive and may include other such indicators as the investigating authority may deem useful in preparing the report.

The final technical report forms an integral part of the investigation and shall therefore be submitted in accordance with the terms of Article 9 herein.

Article 15. – On the basis of the aforementioned report and in the light of considerations of public interest and overall economic policy, COMEXI shall make a decision on the measure to apply. Definitive measures shall be notified to the Committee on Safeguards of the World Trade Organization (WTO) within fifteen (15) days of publication of the resolution in the Official Register.

Article 16. – A safeguard measure may take the form of:

- (a) A quantitative restriction;
- (b) increased import duties; or,
- (c) any other such measure as the investigating authority may suggest, with a view to withdrawing concessions or limiting imports.

Article 17. – The duration of a definitive safeguard measure shall be restricted to the period necessary to prevent or remedy market disruption for domestic producers of like or directly competitive products suffering injury or threat of injury. The measure shall apply for two (2) years at most.

Article 18. – Without prejudice to Articles 3 and 4 herein, the investigating authority may, in critical circumstances in which any delay would cause damage that it would be difficult to repair, propose that COMEXI adopt, within 10 working days of the initiation of the investigation, a provisional safeguard measure on the basis of a preliminary determination that imports have caused or threaten to cause market disruption. Once adopted, such a measure shall immediately be notified to the Committee on Safeguards of the World Trade Organization (WTO) and a request for bilateral consultations shall be made. The duration of the provisional measure shall not exceed two hundred (200) days, during which the pertinent requirements of paragraphs 1, 2 and 5 of Section 16 of the Protocol of Accession of the People's Republic of China to the World Trade Organization (WTO) shall be observed.

Article 19. – For the adoption of a provisional safeguard measure, the investigating authority shall draw up a preliminary technical report containing all relevant factors of an objective and quantifiable nature which may serve to evaluate the relevance of applying the measure and its possible impact on the domestic market.

The preliminary report shall be based on clear evidence that increased imports have caused market disruption and shall be submitted with a recommendation to COMEXI for approval. The provisional measure shall be adopted, through a COMEXI resolution, within fifteen (15) working days of the date on which the investigating authority submitted its recommendation.

Article 20. – The resolution providing for the adoption of a provisional safeguard measure shall contain the following:

- (a) A determination as to the increase in imports, in absolute and relative terms;
- (b) a description of the product to which the measure applies;
- (c) a list of the producers who constitute the domestic industry;

- (d) a preliminary determination as to the existence of clear evidence that increased imports are the cause of market disruption, including an account of the economic factors analysed for the purpose of the determination;
- (e) the level of the provisional safeguard measure, i.e. the amount of the tariff increase; and,
- (f) the duration of the provisional measure.

Article 21. – The duration of a safeguard measure may be extended provided that its continued application is found to be necessary in order to prevent or remedy market disruption.

Article 22. – Extensions shall be decided in conformity with the procedure governing investigations, as laid down herein.

The investigating authority shall request information on a regular basis from the company or sector protected by the safeguard measure concerning the evolution of production, sales and other factors that led to the adoption of the measure, in order to determine whether the measure should be revoked or not.

Article 23. – There shall be significant diversion of trade where the investigating authority considers that a measure adopted by the People's Republic of China or any other Member of the World Trade Organization (WTO) and applied to a specific product originating in the People's Republic of China in order to prevent or remedy disruption in the market of the WTO Member concerned, causes or threatens to cause diversion of trade in this product into the Ecuadorian market.

Article 24. – The application of objective criteria in order to determine whether measures to prevent or remedy market disruption cause or threaten to cause significant diversion of trade shall include consideration of, *inter alia*, the following factors:

- (a) The actual or imminent increase in the share of the domestic market taken by imports from the People's Republic of China;
- (b) the nature or extent of the measure adopted or proposed by the People's Republic of China or other Members of the World Trade Organization (WTO);
- (c) the actual or imminent increase in the volume of imports from the People's Republic of China that is due to the measures adopted or proposed;
- (d) conditions of supply and demand in the local market for the products at issue; and,
- (e) the volume of exports from the People's Republic of China to the Member(s) of the World Trade Organization (WTO) applying a provisional or definitive safeguard measure.

Article 25.- If the measure adopted pursuant to paragraphs 2, 3 or 7 of Section 16 of the Protocol of Accession of the People's Republic of China to the World Trade Organization (WTO) causes or threatens to cause significant diversion of trade into the Ecuadorian market, the Government of Ecuador may request consultations with the People's Republic of China and/or the WTO Member concerned. The consultations shall be held within thirty (30) days of the request being notified to the WTO Committee on Safeguards.

Article 26. – If the consultations fail to lead to any agreement with the People's Republic of China and/or the WTO Member(s) concerned within sixty (60) days of the notification, the investigating authority may recommend that COMEXI decide the withdrawal of concessions accorded for or otherwise limit imports from the People's Republic of China of the product at issue, to the extent necessary to prevent or remedy trade diversion. Any such measures as may be adopted by COMEXI shall be notified immediately to the WTO Committee on Safeguards.

Article 27. – Anti-trade diversion measures shall be reviewed when a Member of the World Trade Organization (WTO) having provided for the imposition of measures against trade diversion under the terms of this resolution notifies the Committee on Safeguards of the World Trade Organization (WTO) of any modification of the measure in question.

Article 28. – The Protocol of Accession of the People's Republic of China to the World Trade Organization (WTO) provides for the expiry of the transitional safeguard mechanism for specific products twelve (12) years after its entry into force. Consequently, any measure adopted under this resolution shall lapse at the latest on 11 December 2013.

Article 29. – COMEXI may delegate to the Executive Commission the task of implementing the rules it deems necessary for the application of the provisions laid down herein.

Article 30. – The present resolution shall enter into effect on the day following its publication in the Official Register.

The present resolution was adopted by the Directorate of the Foreign Trade and Investment Council (COMEXI) in plenary session on Wednesday, 31 August 2005.

- (f) Manuel Chiriboga Vega, Under-Secretary for Foreign Trade and Integration and Secretary of COMEXI.

#### ANNEX

Requirements for applications to initiate investigations for the imposition of safeguard measures are as follows:

1. A description of the like or directly competitive product, including:
  - (a) The tariff heading;
  - (b) the similarity of the imported product to the product produced by the domestic industry; and,
  - (c) a brief description of the manufacturing process (by production chain).
2. The names and addresses of the firms or entities represented in the application, along with documentary evidence of legal representation of the firms or the trade association appearing on behalf of the domestic industry.
3. The percentage of domestic production of the like or directly competitive product accounted for by those firms and proof of the representativeness of the domestic industry.

4. Import data for the previous three calendar years or another period adequately justified as representative for the industry, which show the increase in the imports under investigation in absolute terms or relative to domestic production. Statistical information shall be obtained from the Central Bank of Ecuador, the Ecuadorian Customs Corporation and, for comparative purposes, from other statistics sources at the international level.
5. Data on the volume and value of domestic production of the like or directly competitive product for the previous three calendar years or another period adequately justified as representative for the industry. Such information shall as far as possible be submitted on a monthly basis.
6. Quantitative data indicating the degree of market disruption for the period referred to in the previous paragraph, including the following (as applicable):
  - (a) A significant idling of installed production capacity in the domestic industry, including data on the closure of plants or underutilization of production capacity;
  - (b) the inability of a significant number of domestic firms to carry out production activities at a reasonable level of profit;
  - (c) the level of unemployment actually or potentially generated;
  - (d) changes in price, production, productivity and sales levels;
  - (e) the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditure for research and development;
  - (f) the extent to which imports are being diverted to the Ecuadorian market owing to restrictions in third-country markets or seasonal surpluses at source or points of origin; and,
  - (g) causal link: an explanation and a description, based on the relevant data, of the presumed causes of the market disruption and the extent to which these are attributable to the imports under investigation, and an explanation demonstrating that the market disruption cannot be attributed to causes other than the imports.
7. If critical circumstances resulting in the application of a provisional measure are alleged, data on the following factors:
  - (a) The factual grounds which serve to demonstrate that the increased imports of the product under investigation are causing the market disruption, and that any delay in taking measures would cause damage which it would be difficult to repair; and,
  - (b) a declaration specifying the level of the provisional measure requested and the underlying justification for that remedy.



In my capacity as owner/legal head of the firm the data concerning which are set out herein, I declare on oath that all of the information detailed above, consisting of ... pages, is truthful. I undertake to report forthwith any changes to any or all of the data supplied herein.

---