

**NOTIFICATION UNDER ARTICLE 12.4 OF THE AGREEMENT ON  
SAFEGUARDS BEFORE TAKING A PROVISIONAL SAFEGUARD  
MEASURE REFERRED TO IN ARTICLE 6**

Replies to the Follow-Up Questions Posed by the EUROPEAN COMMUNITIES<sup>1</sup>  
Regarding the Notification from ECUADOR<sup>2</sup>

*(Glazed Ceramic Flags and Paving, Hearth or Wall Tiles (Smooth Ceramics))*

The following communication, dated 26 January 2004, is circulated at the request of the Delegation of the European Commission.

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On 3 July 2003, the Foreign Trade and Investment Council of Ecuador (COMEXI) decided to initiate a safeguard investigation on glazed ceramic flags and paving, hearth or wall tiles. On 1 September 2003, a provisional measure was imposed for a 180-day period, consisting of an extra duty of 15 per cent *ad valorem*. This measure was notified to the WTO Committee on Safeguards on 24 September 2003 (G/SG/N/7/ECU/2). The measure was adopted on the basis of Ecuadorian safeguard legislation, Decree No. 3497/2003.

1. It appears that Ecuador has not yet notified to the WTO Committee on Safeguards Decree No. 3497/2003 (published in Official Journal No. 744 of 14 January 2003). Can Ecuador explain the reasons why it has not made this notification promptly, as mandated by Article 12.6 of the Safeguards Agreement (SA), and when it intends to make the relevant notification? Would Ecuador agree that a WTO Member should not apply measures based on safeguard legislation it has not yet notified to, and which has not yet been reviewed by, the WTO Committee on Safeguards?

Reply

The rules laid down in the WTO Agreement on Safeguards were incorporated into Ecuadorian legislation by means of Foreign Trade and Investment Council (COMEXI) Resolution No. 052, which sets out the "Rules and Procedures for Preventing and Counteracting Unfair Trade Practices and for the Application of Safeguards". These rules are also set out in Executive Decree No. 3497, published in the Ecuadorian Official Register on 14 January 2003, and the sole purpose of which is to codify all areas of Ministry of Foreign Trade, Industrialization, Fisheries and Competitiveness (MICIP) legislation. Executive Decree No. 3497 therefore includes the full text of COMEXI Resolution No. 052, which was duly notified to the World Trade Organization and circulated as WTO document G/ADP/N/1/ECU/2.

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<sup>1</sup> G/SG/Q2/ECU/9.

<sup>2</sup> G/SG/N/7/ECU/2.

**2. Ecuador notified the provisional measures to the WTO Committee on Safeguards 23 days after their imposition. Does Ecuador consider that it has complied with Article 12.4 of the SA, which requires that provisional measures be notified before they are taken?**

Reply

Pursuant to the procedure established by domestic legislation, Ecuador's Foreign Trade and Investment Council (COMEXI) is responsible for taking corrective measures after studying the report of the MICIP (Ministry of Foreign Trade, Industrialization, Fisheries and Competitiveness) Investigating Authority. A notification is therefore issued once COMEXI decides to take a safeguard measure (if applicable) and subsequent to the corresponding publication in the Ecuadorian Official Register. In this particular case, the provisional safeguard measure was notified to the WTO through the Ecuadorian Permanent Mission as soon as these formalities were completed.

**3. Has Ecuador made any preliminary findings on unforeseen developments, as mandated by GATT Article XIX, in the context of its decision on provisional measures? Can Ecuador explain where these findings can be found in its notifications and/or decisions on provisional measures?**

Reply

The report submitted to the COMEXI and the Resolution adopted by this body describe the unforeseen developments on the basis of which the Investigating Authority recommended the adoption of the provisional measure. These documents contain probative evidence of an unforeseen increase in imports and this, together with the information concerning serious injury, constitutes the underlying critical circumstances which justified the adoption of the safeguard measure.

**4. Ecuador's notification of provisional measures under Article 12.4 contains some evidence on evolution of domestic sales (stable over the last three and half years), domestic production (declining, according to Ecuador, yet with no supporting evidence), capacity utilization (declining from 56 per cent to 52 per cent over the period), gross profit and operating profit (declining, but still positive at the end of the period), employment (stable over the period) and inventories (increasing by approximately 100 per cent).**

**(a) Can Ecuador explain how inventories could double when production was allegedly declining and sales remained stable?**

Reply

The *in situ* findings of the Investigating Authority with regard to the negative performance of the factors under analysis confirmed that inventories had indeed increased. They also confirmed the stagnation of the "porcellanato" production project, which would have resulted in an even greater increase in inventories.

**(b) Can Ecuador explain how the above data can constitute a preliminary determination that there is "clear evidence" of an "overall impairment in the position of a domestic industry" (Articles 6 and 4(1)(a) of the SA)?**

Reply

These findings provided the Investigating Authority with clear preliminary evidence of the negative performance of the variables under analysis.

- (c) **Can Ecuador explain how the above data can constitute a preliminary determination that there is "clear evidence" that the alleged problems of the domestic industry are caused by imports and not by any other factors (Articles 6 and 4(2)(b) of the SA)?**

Reply

The report prepared by the Investigating Authority includes information which proves how imports of the products under investigation have been displacing domestic production from the local market. It uses audited company information as well as Investigating Authority findings from its company visits to show the repercussions of this increase in imports on the level of sales, production, productivity, capacity utilization, economic performance and employment of the companies representing domestic production.

- (d) **Can Ecuador explain how the above data can constitute "critical circumstances where delay would cause damage which it would be difficult to repair" (Article 6 of the SA)? Has Ecuador evaluated the damage that would be caused by delayed action? Can details be provided?**

Reply

The information in the Investigating Authority report provides evidence of the existence of critical circumstances arising from the sharp increase in imports of the products at issue. To this must be added the previously mentioned stagnation of the "porcellanato" production project, which already entailed injury that would be difficult to repair given the financial cost represented by its implementation.

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