

**DRAFT REPORT OF THE WORKING PARTY**  
**OF THE ACCESSION OF ECUADOR**

1. Ecuador's request for accession to the General Agreement was circulated to contracting parties in September 1992. At its meeting on 29 September - 1 October 1992, the GATT Council of Representatives established a Working Party to examine the application of the Government of Ecuador to accede to the General Agreement under Article XXXIII, and to submit to the Council recommendations which may include a draft Protocol of Accession. Membership of the Working Party was open to all contracting parties indicating the wish to serve on it. In pursuance of the Ministerial Decision of 14 April 1994 on Acceptance of and Accession to the Agreement Establishing the World Trade Organization (WTO) and to the decision of 31 May 1994 of the Preparatory Committee for the WTO, the Working Party examined the application of Ecuador for membership in the WTO and agreed to pursue the market access negotiations for goods, including an agricultural country schedule, and for services. In pursuance of the decision adopted by the WTO General Council on 31 January 1995, the existing GATT 1947 Accession Working Party was transformed into a WTO Accession Working Party. The terms of reference and the membership of the Working Party are reproduced in document WT/L/55/Rev.1.

2. The Working Party met on 20 July 1993, 17-18 January, 21-22 April, 20 September, 28 and 30 November, 1 December 1994 and [1-2 May] 1995, under the chairmanship of H.E. Mr. C. Manhusen (Sweden).

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\*This document is a revision of Spec(94)44/Rev.2.

3. The Working Party had before it, to serve as a basis for its discussions, a Memorandum on the Foreign Trade Regime of Ecuador (L/7202) and the questions submitted by contracting parties on the foreign trade regime of Ecuador, together with the replies thereto, and other information provided by the Ecuadorean authorities (L/7268 and Addenda; L/7301 and Addenda; Spec(94)1, Addenda, Supplement and Corrigendum; L/7488 and Addenda; L/7523 and Addendum 1; L/ 7566 and WT/L/54).

The Government of Ecuador made available to the Working Party the following documentation:

- Supreme Decree 2527-A of 5.11.65 on export duties
- Decree 1268 of 6.11.72 on export duties
- Supreme Decree 13 of 9.1.73 on the Export Tariff
- Supreme Decree 185 and Law 14 on the Children's Fund
- Supreme Decree 610 on copyright
- Supreme Decree 823 on the Export Tariff
- Ministerial Decision 8022 on the Sanitary Register, Min. of Public Health
- Decision 10824 on copyright
- Supreme Decree 735 on copyright (amendment)
- Decree 487 on the Export Tariff
- Law No. 78 of 22.9.81 on the Export Tariff
- Law No. 79 of 24.9.81 on the Export Tariff
- Law 20 on the INNFA (National Institute for Children and the Family)
- Decree 2544-A on temporary admission maquila (in-bond processing)
- Decree 2778 of 1.4.87 on the Export Tariff
- Law 92 on the Fondo de Desarrollo de la Infancia (Children's Development Fund)
- Law 14 of 24.1.89 setting up the FONNIN
- Law 56 on the Internal Taxation System
- Law 72, Customs Tariff Law
- Law 79 on private-sector exemptions
- Law 90 of 24.6.90 on the Maquila (in-bond) Régime
- Law on Government Procurement
- Law 107, Consumer Protection Law, Law on Free Zones, Regulation on the Maquila (in-bond) Régime
- Decision 447 on valuation rules
- Regulation on Free Zones
- Executive Decree 2722-A on anti-dumping controls
- Law 152 on the National Price-Setting Council (pharmaceuticals)
- Decree 3367, Tariff Adjustment
- Decision 524, tariff concessions to the Andean Group
- Decision 596, tariff concessions to the Andean Group
- Executive Decree 415, Regulation on the Single Régime for Andean Multinational Enterprises
- Foreign-Exchange Market
- Organic Customs Law and Regulations
- Law on the Internal Taxation System and Regulations
- Law on Industrial Development and Regulation thereto
- Law on Small-Scale Industry and Regulation thereto
- Law on Industrial Zones
- Law on the Maquila (in-bond) Régime and Regulation thereto
- Law on Free Zones and Regulation thereto

- Law on the Promotion of the Automotive Industry
- Law on the Promotion of the Merchant Navy
- Reforms to the Import Tariff
- Executive Decree No. 396 amending the Import Tariff
- Import statistics for Ecuador for 1991 and 1992, as well as the first quarter of 1993
- Official Journal No. 349 of 31 December 1993 which contains the "Law on Modernization of the State, Privatization and the Provision of the Public Services by Private Enterprise"
- Supreme Decree 188 published in Official Journal No. 158 of 8 February 1971 which contains the Health Code and Sanitary Register
- Ministerial decision 438 published in Official Journal No. 279 of 20 September 1993 which contains the "Order Prohibiting the Importation, Marketing, Storage or Transport of Products in General without their being Registered in the Sanitary Register"
- Ministerial Decision 8022 published in Official Journal No. 984 of 22 July 1988 which contains the "Food Regulations"
- Ministerial Decision 10723 published in Official Journal No. 676 of 3 May 1991 concerning the "Pharmacological Standards for Registration in the Sanitary Register"
- Cartagena Agreement - Decision 293: Rules of Origin
- Cartagena Agreement - Decision 344: Industrial Property
- Cartagena Agreement - Decision 351: Intellectual Property
- List of "price band" products
- List of prohibited imports
- Tariff items subject to prior authorization (September 1994)
- Import and export trade flows
- Monetary Board Regulation 904-94 on exchange policy
- Monetary Board Regulation 863-93 on the importation of motor vehicles
- Decisions No. 283, 284 and 285 of the Commission of the Cartagena Agreement
- Law 152 creating the Committee for Price-Setting in the Pharmaceuticals Sector and Inter-Ministerial Agreements of 4 January 1993 fixing maximum prices for medicaments
- Preferential Trade Agreements negotiated in the LAIA. Trade preferences received and granted by Ecuador in the LAIA
- LAIA Market-Opening List
- List of CET exceptions
- Catalogue of Ecuador's Technical Standards published by the Ecuadorean Standardization Institute
- Schedule of specific commitments on services
- Ministerial Decision 752 repealing the Decisions on minimum customs values
- Executive Decree 1572 eliminating import restrictions

4. In his introductory statements, the representative of Ecuador said, *inter alia*, that Ecuador's trade policy over the past few years had favoured mutual trade without discrimination of any kind in an effort to reintegrate the country into the international economic system in order to modernize its production structure, reconvert its industry and profit from its comparative advantages. Ecuador's progress had been achieved on its own initiative. In recent years Ecuador had drastically reduced its import tariffs, eliminated non-tariff measures and restrictions, abolished non-tariff levies, reformed its customs legislation, making it more transparent and bringing it into line with international regulations, and facilitated the procedures governing foreign trade. Ecuador had adopted new policy measures which make its foreign trade regime even more flexible. Within the framework of legislation which avoids all obstacles to the flow of goods, it had completely liberalized its exchange regime in order to provide

importers with free access to the foreign exchange required for their purchases abroad. At the same time, Ecuador had gone a long way towards bringing its customs duty regime into line with GATT standards. As an indication of its considerable internal effort towards opening up its economy and promoting commercial transactions with the contracting parties, Ecuador had brought into force a new Customs Law embodying the standards established by GATT and providing for the modernization of customs services. Pursuant to the legislation on the Modernization of the State, a number of important steps had been taken towards the abolition of monopolies and the privatization of activities in which the State participated, a fact which should favour a competitive environment for economic operators in Ecuador. Similarly, the foreign investment legislation had been liberalized to provide better guarantees for foreign capital. Under a policy of economic modernization and openness to foreign capital, substantial legal and economic reforms had been carried out with a view to providing better facilities and to make foreign investment in Ecuador more attractive and profitable. The latest reforms in this field provided a wide range of investment possibilities for foreign investors, who were guaranteed the same conditions as national investors, while a number of restrictions and conditions which used to limit the inflow of foreign capital had been eliminated. In short, Ecuador was carrying out efforts aimed at restructuring the economy with a view to strengthening overall macroeconomic equilibrium. Ecuador would continue the liberalization of its foreign trade relations, as demonstrated, *inter alia*, by its intention of acceding promptly to the General Agreement. Ecuador would be grateful for recognition by the contracting parties of its efforts towards greater transparency in its economic policy and, by extension, in its external transactions. The representative of Ecuador stated that the Law on the Modernization of the State, Privatization and Provision of Public Services by Private Enterprise which had entered into force on 31 December 1993 laid 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 for transferring 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 enterprises: (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 the 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 did not contain any amendment to the legislation governing transactions between State enterprises and foreign enterprises. Finally, the representative of Ecuador reaffirmed his Government's desire to expedite the accession negotiations to the GATT 1947 with a view to becoming a member

of the World Trade Organization (WTO) as foreseen in the Ministerial Decision of 14 April 1994 on Acceptance of and Accession to the Agreement Establishing the WTO and in the Decision of 31 May 1994 of the Preparatory Committee for the WTO. Following the entry into force of the WTO Agreement on 1 January 1995, the Government of Ecuador reaffirmed its decision to become a Member of the WTO Agreement, pursuant to Article XII thereof.

### **General Comments**

5. In their opening remarks many members of the Working Party welcomed Ecuador's initial application for accession to the General Agreement, which had been submitted shortly prior to the conclusion of the Uruguay Round of Multilateral Trade Negotiations, and supported Ecuador's request to be associated with the negotiations. Noting Ecuador had undertaken a substantial process of economic and trade liberalisation aimed at improving the standard of living of the population, increasing employment opportunities and achieving diversification of the productive sectors, these members also expressed support for an early conclusion of the proceedings of the Working Party. Some members recalled their strong regional ties with Ecuador and welcomed Ecuador's long lasting and earnest decision to be fully integrated into the multilateral trading system. Recalling the recent comprehensive economic reforms introduced by Ecuador, some members stressed that this would facilitate the assumption of GATT obligations. Some members of the Working Party notified the intention to enter into bilateral market access negotiations with Ecuador. Upon the conclusion of the Uruguay Round negotiations, members welcomed Ecuador's application for accession to the WTO. With reference to the possible membership of Ecuador in the World Trade Organization, some members stressed the need for comprehensive information concerning the WTO related issues and for the early commencement of negotiations concerning market access on goods including agriculture as well as services, TRIPS, TRIMs etc. The relevant information submitted by Ecuador in this respect is reproduced described hereunder in the corresponding sections of this report.

### **Foreign Trade Regime**

6. The Working Party reviewed the foreign trade regime of Ecuador and the possible terms of a draft Protocol of Accession to the WTO. The views expressed by members of the Working Party are summarized below in paragraphs 7 to 78.

### **Economic Policies**

7. In response to questions concerning Ecuador's foreign debt situation, rates of inflation and the Macroeconomic Stabilization Plan and other government economic policies, the representative of Ecuador said that his Government was trying to achieve a comprehensive agreement for the payment of its external

debt, as a means of establishing suitable conditions for economical growth and social development. The debt service to exports ratio would improve if this agreement was concluded successfully. The application of protectionist measures and export subsidies, whatever their nature, was not Government policy. The Government of Ecuador had launched a process of modernization of the economy which tends to redefine the rôle of the State in the management of the economy and society, specifying its areas of influence in line with current conditions. Government strategy favoured competition as a key factor of progress, the free interaction of supply and demand, the existence of transparent and competitive markets and the optimum allocation of resources with a view to achieving a balanced economy. For the moment no benefits were granted under any specific development laws, and there were no export or credit subsidies or tax incentives. The only prices controlled by the State were internal prices of certain oil and gas products for domestic consumption, pharmaceuticals and electricity. Certain agricultural products were subject to the price band system. There was no discrimination between domestic and imported products with the exception of some imported products subject to the special consumption tax. Fiscal policy and the balancing of public accounts were based on the rationalization of Government expenditures and not on the regulation of consumption or increases in internal taxes. The rôle of the public sector had been streamlined and a policy had been adopted to eliminate subsidies and obtain forced savings within the State structure in order to achieve the desired results. The measures adopted had made it possible to reduce the public deficit in 1993 to 2.5 per cent of the GDP, as against 7 per cent for 1992.

### **Foreign Exchange System**

8. Some members of the Working Party requested information on the functioning of the foreign exchange system, whether multiple rates applied, the plans for a unified rate, problems faced by importers to acquire foreign exchange, etc. The representative of Ecuador stated that the exchange system had been reformed in 1994. There was now a free exchange system for private sector transactions with a unified rate determined by the market. There were no restrictions on foreign exchange market operations and participation and none on investment transactions. As a result of recent reforms, the foreign exchange system had been simplified by eliminating the US dollar fluctuation band that had existed in the intervention market of the Central Bank for public sector transactions and the official exchange rate which the Central Bank had used for accounting purposes and for transactions with the IMF. Thus a free exchange system had been adopted in which the private sector could acquire the foreign exchange needed for its activities at the market rate. Foreign exchange transactions for foreign trade purposes were no longer carried out through the Central Bank of Ecuador. There were no restrictions on the purchase or sale of foreign exchange. He added that the current foreign exchange system worked as follows. In accordance with Decree 1353 of 23 December 1993, published in the

Official Journal No. 349 of 31 December 1993, the official exchange rate was the rate used by the Central Bank of Ecuador in its transactions for the sale of foreign exchange. There were no restrictions on the acquisition of foreign exchange or on its remittance abroad. All foreign exchange transactions undertaken by the public sector must be placed at 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 or other foreign banks provided they have foreign exchange earnings and obligations abroad that are inherent to their operations. 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, 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 and with other derivative instruments. The Central Bank of Ecuador registers direct foreign investment and reinvestment in the capital stock of enterprises, and also registers external foreign-currency loans incurred by the private sector.

9. In this respect, a member acknowledged progress in liberalizing the foreign exchange regime of Ecuador because the acquisition, sale, retention, remittance and use of foreign exchange appeared to be substantially without restriction on private or commercial persons. However, in his opinion, a multiple foreign exchange system still existed. In particular, the foreign exchange system for certain public sector transactions remained partially controlled. In response the representative of Ecuador said that the free market exchange rate was determined by the supply and demand of foreign exchange by economic agents. The foreign exchange selling rate of the Central Bank to the public sector was set weekly at a rate equivalent to the average selling rate of the free market inter bank exchange rate of the previous week as recorded at the Central Bank's Exchange Desk. All public sector exchange transactions were [are] carried out in the Central Bank. The Central Bank buys foreign exchange from public sector enterprises at a 2 per cent discount from the free market rate, with the exception of PETROECUADOR, where discount currently is set at 150 sucres per dollar. This fixed spread of 150 sucres will drop to 2 per cent in June 1995. ~~The spread between the buying and the selling rate was 2 per cent. The Central Bank will buy foreign exchange only from PETROECUADOR oil exports at a fixed spread until June 1995,~~ as provided for in the Letter of Intent agreed with the IMF.

[10. The representative of Ecuador stated that the ~~This~~ modality of the foreign exchange regime described in paragraph 9 does not have negative effects for private sector traders and provides no implicit subsidies. The Working Party took note of this assurance [commitment]].

[11. ~~40.~~ The representative of Ecuador indicated that, in conjunction with commitments made to the International Monetary Fund, Ecuador would continue to reduce the spread between the rates of foreign exchange for the public sector. This spread in no way affects the activities of private trade operators. The Working Party took note of this commitment.]

## **Trade Policy**

### **Tariff Regime**

12. ~~41.~~ Members of the Working Party raised a number of questions concerning the import tariffs including the structure of the tariff system, recent liberalization measures, the exemptions system, the duty draw back system, preferential tariff regimes, the possible level of ceiling bindings. etc. In response the representative of Ecuador stated that at present tariff levels were quite low. In 1992, the highest tariff rates had been reduced from 290 per cent to 40 and tariff levels were cut from 30 to 10. Currently national tariff levels were the same as those of the Common External Tariff of the Andean Group, approved in March 1993 by Decision 335 of the Cartagena Agreement which ~~was~~ ~~would be~~ implemented ~~as of 1 January~~ in February 1995, i.e. 5 per cent, 10 per cent, 15 per cent and 20 per cent. However, certain tariff items corresponding to vehicles were subject to an *ad valorem* duty of 40 per cent. Ecuador maintained a suitable level of protection for its infant motor vehicle industry, in particular, because of the multiplier effects on production and employment. There were also exceptions in relation to some agricultural products covered by the price band system. Moreover, in ~~November 1994~~ February 1995 for less than 300 items Ecuador ~~had sought~~ received permission to apply a temporary exemption of 5 percentage points below the CET rates. Ecuador's request was currently under review by the Andean Group. At present average *ad valorem* duty rates by national tariff section fluctuated between 17 per cent for arts and antiques and 3.3 per cent for mineral products. The simple average tariff was 9.3 per cent and the weighted average was 6.8 per cent. Having regard to modifications in the Common External Tariff of the Cartagena Agreement, tariff rates could change in the future within the limits of the agreed bindings. At the present approximately 7-8 per cent of imports were subject to preferential tariff regimes under the Cartagena Agreement.

13. ~~42.~~ Some members noted that the duty exemptions granted to certain categories of public and private sector institutions, had the potential to distort trade and introduced uncertainty about the applicable duties. In response the representative of Ecuador said that the exemptions were not granted on the



basis of a preestablished list of products but rather on the basis of the specific individual purposes of each institution as defined in the Customs Law and Regulations. Goods enjoying tariff exemption could only be marketed after a period of time and the payment of the duties from which they were exempted. The law had eliminated all total or partial exemptions from duties on private sector imports and there was no discrimination against any supplier. The entities and persons exempt from the payment of customs duties, within the limits and conditions laid down in the law, comprised the following: 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 governments enjoying administrative and economic autonomy, as public or private law entities for the provision of public services; private-law entities that had signed contracts with public sector agencies or bodies for public works for the provision of welfare, public assistance or educational services; legally-authorized universities, politechnical 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 appropriate legal instruments; 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 was responsible for the prior authorization of duty-free imports of goods by the above mentioned public or private entities eligible for such exemption, and might restrict such authorization to urgent needs of such entities. No importations of this type might be carried out without prior qualification and authorization. Between 1989 and 1993, duty free imports by the public sector had represented between 1 per cent and 3.7 per cent of Ecuador's total imports.

14. ~~13-~~ Noting that duty-free imports were permitted for development projects or works of national priority, a member of the Working Party asked what was the meaning of the term "national priority". The representative of Ecuador said that this term referred to projects classified as having priority by the National Development Council (CONADE). They included the construction of social housing, hydro-electric power stations, highways, irrigation systems and canals, drinking water infrastructure, hospital equipment and schools. The customs tariff exemptions for State owned enterprises covered imports by private entities that had concluded contracts with public sector agencies and bodies for the construction of works on the provision of services for charitable or educational purposes.

15. ~~14-~~ The representative of Ecuador assured the Working Party that imports by the public sector under duty free exemptions did not compete with ordinary private sector trade and that there was no discrimination among supplying countries through the application of duty exemptions. The Working Party took note of these assurances commitments.

**Market Access Negotiations**

16. ~~15-~~ In response to questions concerning market access negotiations and the level of tariff bindings, the representative of Ecuador confirmed that Ecuador was willing to enter into comprehensive market access commitments for the purpose of acceding to GATT and becoming a member of the World Trade Organization, at levels consistent with Ecuador's financial development and trade needs and taking into account its developing country status. Ecuador agreed to a "step approach" to bindings equal to the Common External Tariff of the Andean Group plus 10 percentage points, i.e. bound rates of 15, 20, 25 and 30 per cent. The negotiated exemptions to the across-the-board ceiling binding level are as specified in the schedule of Ecuador that will be annexed to the Protocol of Accession of Ecuador. The Working Party took note of the statement of Ecuador that the market access commitments ~~[undertaken in the framework of its accession to the General Agreement]~~ as well as the agricultural country schedule and the services commitments would constitute Ecuador's contribution to the market access and services negotiations required for membership in the World Trade Organization.

**Import Taxes and Charges**

17. ~~16-~~ Some members of the Working Party asked questions concerning the nature, application, coverage and justification of various taxes and charges such as surcharges, control fees, transfer fee, transit fee, storage fee, consumption taxes, value added tax etc. These members noted that the control fee of 1 per cent and 0.5 per cent for goods entering the country under special customs regime and the transit fees which were levied on ad valorem basis were not consistent with the provisions of Article VIII of the GATT as interpreted by the GATT Panel Report on United States Customs User Fee. Some members also stated that the 1 per cent and 2 per cent levies in favour of INNFA represented taxation of imports for fiscal purposes in contravention of GATT Articles VIII and III as there were no similar levies on products of domestic origin. It was noted that if these levies were incorporated into the applied tariff duty levels of Ecuador, the rates set in the Common External Tariff of the Andean Group would be attained. In response the representative of Ecuador said that the control fee of 0.5 per cent for goods entering the country under special customs regime was meant to cover the cost of customs services rendered and did not constitute a direct or indirect protection for domestic products or a fiscal charge on imports. The application of the control fee did not discriminate as between products or their origin. He added that, with the suspension of duties on goods in transit, the transit fee was another customs services fee charged for the provision of general services on goods declared in customs transit. This fee covered only the cost of the services rendered. The level of the fee was based on the minimum living wage. For goods declared in customs transit, the fee was 20 per cent of the minimum living wage for each transit waybill and for vehicles proceeding from abroad in customs transit, 10 per cent

of the minimum living wage. This fee was applied in accordance with the provisions of Article V of the General Agreement. The minimum wage was used as basis for calculating administrative costs. Some members of the Working Party said that the use of the minimum living wage as the basis for computing this fee was inconsistent with GATT. In their view, the fee should be based on the approximate cost of the services rendered. Concerning the storage fees, the representative of Ecuador said that these fees were charged by the Customs for warehousing and their incidence depended on the length of time spent by the goods in warehouses. The representative of Ecuador noted that the 30 per cent tariff surcharge and the additional 5 per cent tax on the importation of luxury goods had been eliminated. Furthermore, the 1 and 2 per cent taxes of c.i.f. value for the Children's Development Fund and the National Fund for Nutrition and Protection of Ecuadorean Children which had been based on social security considerations had been repealed by the new Customs Law. In this respect, he assured the Working Party that Ecuador would comply fully with the provisions of Article VIII of the General Agreement. The Working Party took note of these assurances.

18. ~~47.~~ The representative of Ecuador indicated that his Government has adopted measures to revise the procedure of application of the customs control fee, which is only applied to imports under the regime of temporary admission and not to imports for consumption. He added that Ecuador, at the moment, applied only an *ad valorem* fee of 0.5 per cent on such imports and has established ceilings for this import fee of 15 constant units of value currently equal to approximately US\$60. The 1 per cent fee referred to in paragraph 17 has been eliminated. These ceilings are set in order to make sure that the fee charged is commensurate with the cost of services rendered. The Working Party took note of these ~~assurances~~ commitments.

### **Special Consumption Tax**

19. ~~48.~~ Some members of the Working Party requested information on the nature of the special consumption tax, its product coverage, the tax rates and their method of application. In this context special reference was made to the higher incidence of the special consumption tax on imports of certain tobacco products relative to domestic goods, and to the need to equalize the tax to bring it into conformity with Article III of the GATT. In response the representative of Ecuador said that the special consumption tax was an excise tax levied on cigarettes, alcohol and alcoholic beverages, beer, carbonated beverages and mineral and purified water. The level of taxation ranged from 5 per cent on mineral and purified water to 260 per cent on foreign brands of cigarettes made from light tobacco manufactured locally under licence or imported. The tax was levied on the above products whether of domestic or imported origin. The relevant charge was determined by applying the respective *ad-valorem* rates to the ex-works price or ex-customs price as appropriate. In the case of consumption of domestically produced goods,

the tax was levied on transfer by the manufacturer, whether for consideration or free of charge. In the case of consumption of imported products, the tax was levied upon customs clearance of the product. He noted that in accordance with Article 53 of the Constitution, the National Congress was competent to enact laws governing any tax matter.

20.19- The representative of Ecuador acknowledged that the Special Consumption Tax is applied to a number of imported products at rates in excess of those applied to similar domestically produced goods, and that this practice is not in conformity with Article III. Ecuador would equalize the application of the tax no later than July 1996. The Working Party took note of this commitment.

### **Value Added Tax (VAT)**

21.20- In response to a question concerning the nature and coverage of the VAT, the representative of Ecuador pointed out that this tax was applied to imports and domestically produced goods comprehensively at a standard 10 per cent rate. However, imports by the public sector were not subject to the payment of the VAT. The taxable base in the case of imports was the c.i.f. value plus the tariffs, taxes fees, duties and other costs appearing in the import declaration and other relevant documents. The domestic sale of domestically produced and imported agricultural products are exempt from the VAT as well as the importation of imported and domestically produced agricultural products in primary form, inputs, human medicaments, machinery and agricultural equipment were exempted from the VAT. Exported products were also exempt from the VAT. There was no special treatment in respect of exemption from the VAT on the basis of m.f.n. status or the origin of the raw material imported.

22.24- The representative of Ecuador stated that the incidence of the VAT falls equally on domestically produced goods and imported items in all cases and that his Government would apply the VAT in accordance with the provisions of the General Agreement, in particular Articles III and VIII. The Working Party took note of this assurance commitment.

### **Customs Regime**

#### **Customs Procedures and Practices**

23.22- Some members of the Working Party asked questions on Ecuador's customs procedures and practices including the requirements for temporary admission, exonerative and suspensive customs procedures, documentation for customs declaration, the structure and functions of the new National Customs Service, and Ecuador's intentions concerning acceptance of the MTN Customs Valuation Code, etc. The representative of Ecuador said the law on the National Customs Service had entered into force on 9 March 1994. The law aimed at simplifying procedures and improving the efficiency of

the State in its function of providing customs services and regulate the legal relationship between the State and persons involved in the international movement of goods within the customs territory. The law had regrouped and organized all provisions relating to the Customs Service which were previously contained in various legal instruments. The law had introduced the following changes with respect to the previous system: (i) simplified and reduced the formalities and procedures; (ii) allowed 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; (iii) established the principle of trust in the tax payer, through self-assessment and advance payment of customs charges; (iv) clarified violations of the customs regulations into the categories of offenses, infringements and faults; (v) introduced a "random customs valuation system" that was exercised as a means of control on the basis of an automatized programme; previously, as a general rule, customs valuation had required a physical presence; (vi) provided for a single type and kind of customs guarantees, whereas under the previous law there were general, specific and special customs guarantees of varying amounts and with different systems for establishing those amounts; (vii) downsized 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; (viii) provided for the repeal of laws and legal provisions relating to customs matters which had lost practical relevance or hindered the State from acting efficiently. The administrative structure of the customs service was headed by the Minister of Finance and Public Credit, representing the President of the Republic. The structure also included a consultative and advisory body, the Customs Technical Committee, and the National Customs Service Directorate. The functions of the advisory Technical Committee were to give an opinion on draft executive decrees relating to customs tariffs and valuation rules. The National Customs Service Directorate consisted of the District Administrations and the Customs Surveillance Service and was responsible for investigating and preventing customs offenses.

24.23. With regard to the documentation needed for customs declaration purposes, the representative of Ecuador stated that they comprised the original or a negotiable copy of the bill of lading, air consignment note or consignment note; the commercial invoice; and the certificate of origin if required. Moreover, sanitary registration was needed for the importation, marketing, storage or transportation within the national territory of the following products: processed food products or additives, medicaments in general, drugs or medical devices, cosmetics, hygienic products or perfumes and pesticides for household, industrial or agricultural use. A favourable report from the National Hygiene Institute of the Ministry of Public Health was required to obtain such registration. In reply to questions as to the

justification of such a measure, the representative of Ecuador stressed that the purpose of the Sanitary Register was to safeguard public health and did not constitute unnecessary obstacles to trade.

### **Temporary Admission**

25.24- A member of the Working Party requested information on the requirements for temporary admission of goods into the country. The representative of Ecuador said that it was incumbent upon the Ministry of Finance to authorize the temporary admission of imports. For this purpose the importer had to provide details of all the goods on the cargo manifest, submit a customs declaration and lodge a guarantee for the value of the duties and taxes that would be required for the importation with release for consumption ("nationalization") of the goods. Under the temporary admission regime, imported machinery and equipment could remain if necessary in the country, exempt from payment of taxes until the termination of validly signed contracts between public or private enterprises and the State, Provincial and Municipal governments or other public sector institutions. Article 82 of the Organic Customs Law and Article 350 of the Regulation thereto listed the goods that may be introduced under the temporary admission regime. The temporary admission may be extended, by decision of the Ministry of Finance, depending on the implementation needs of the projects covered by the regime. Nationalized goods or goods manufactured in Ecuador could be dispatched abroad for a period of six months and returned without payment of duties, under the provisions for temporary exportation.

### **Duty Draw-Back**

26.25- In response to further questions, the representative of Ecuador said that the duty draw-back mechanism had been introduced in May 1993. Under the duty draw-back system, duties and ~~internal~~ **indirect** taxes paid on raw materials and other imports used in the production, processing or packaging of goods **that are fully incorporated in the exported product** were fully or partially refunded. The mechanism benefitted only natural or legal persons who exported products comprising imported components. There were no statistics concerning the operation of this mechanism but it fully observed the m.f.n. principle.

### **Customs Valuation**

27.26- Some members of the Working Party noted that on 1 November 1993, the Government of Ecuador had issued Ministerial Agreement N 786 establishing minimum official prices for virtually all imports of textile products and clothing (HS categories 5007-6310) through the end of the year. The Agreement provided that each textile product and article of clothing was subject to an official minimum price per kilo. It also appeared that Ecuador might apply similar measures to imports in other sectors, such as steel, tires, beer and appliances.

28.27- In response to the request for information on the system of minimum prices for textiles and its justification under the General Agreement, the representative of Ecuador said that the current list of minimum prices for textiles had been listed in Ministerial Decision No. 073 of 31 January 1994. The system of minimum customs values for textiles had had two objectives, namely to defend taxation interests and to counter unfair competition facing domestic products. Ecuador had been obliged to establish a system of minimum customs valuation prices for a wide range of fabrics in view of the increasing tendency to undervalue the declared prices of textiles and in order to overcome the ensuing difficulty in the application of the customs valuation rules. There had been a major problem of tax evasion and disruption of the domestic market for textiles. The system of minimum values had been a temporary measure aimed principally at stabilizing the market. Nevertheless, Ministerial Decision 752 of 14 October 1994 had repealed this system.

29.28- In reply to a question concerning of Ecuador's position regarding the MTN Customs Valuation Code, the representative of Ecuador said that Ecuador's domestic legislation specified that for the purposes of customs valuation, the provisions of the Agreement on Implementation of Article VII of the GATT applied. When becoming a member of the WTO, Ecuador would notify its decision to make use of the reservation which accorded to developing countries the right to a delayed implementation of the computed value method. Ecuador had temporarily applied on a limited basis minimum or reference prices to certain products including but not limited to textiles, steel, tires, beer and appliances. On 14 October 1994, Ministerial Decision 752 had repealed the Ministerial Decision on Minimum Customs Values for industrial products as well as for agricultural products not subject to the price band mechanism. On 17 October 1994 Ecuador had introduced a system of preshipment inspection which would be implemented in accordance with the relevant WTO Agreement.

30.29- The representative of Ecuador said that after accession his Government would not apply or reintroduce minimum customs values and would abide by the provisions of the Agreements on Preshipment Inspection and Customs Valuation. The Working Party took note of these assurances commitments.

### **Non-Tariff Measures**

31.30- Some members of the Working Party said that, notwithstanding considerable progress towards the liberalization of trade, Ecuador still appeared to have a highly complex and rather pervasive system of controls, bans restrictions, authorizations or registration which not only impeded the free flow of trade, but could also lead to significant trade distortions. In this respect particular reference was made to import restrictions concerning used textiles and clothing, tires and automobiles, to price controls

for pharmaceuticals and to the restrictions affecting a significant number of agricultural products and raw materials. In their view, unless Ecuador could justify the existing restrictions in terms of the GATT 1994 and the WTO Agreement ~~whose entry into force was imminent~~, all the restrictions would have to be eliminated by the date of the accession of Ecuador to the ~~GATT~~ WTO.

~~32.34-~~ The representative of Ecuador indicated that his Government would eliminate by the date of accession all non-tariff import and export restrictions not addressed in paragraphs 33, 34, 35, 46 47 and 47 48 which cannot be justified specifically under [GATT]/WTO provisions, in particular the Agreements on Agriculture and Import Licensing Procedures, and Article XI of the GATT 1994. Such measures would not be applied or re-introduced after accession to the [GATT]/WTO unless specifically provided for in the WTO Agreement. The Working Party took note of this commitment.

### **Import Prohibitions**

~~33.32-~~ The representative of Ecuador said that in the view of his authorities the remaining restrictions on imports and exports were consistent with the provisions of the General Agreement. Law No. 72, published in the Official Journal n.441 of 21 May 1990, amending the Tariff Law, had inter alia eliminated prior import deposits, quotas and prior licensing as of 1 January 1991. The system of prohibitions in force was for the protection of human and animal life, the maintenance of ecological balance (preservation of species) and for reasons of national security. A list of 28 tariff subheadings subject to import prohibitions had been annexed to document L/7301/Add.1 as Annex 2. Monetary Board Resolution 893-94 of 2 August 1994 had reduced import prohibition to the following 13 items: 29035920; 29109010; 29109020; 29201010; 29201020; 40121010; 40121090; 40122000; 41032000; 41072100; 41072900; 96011000; 96019000. These items corresponded to certain chemical products, unrecapped used tires, reptile skins and ivory products. Ecuador considered that these import bans were justified under Articles XX and XXI of the General Agreement. The import restrictions on ~~recapped tires and~~ used automobiles items number 87012000, 8702100010, 8702100020, 8702100030, 8702109010, 8702900000, 87029010, 8702909010, 8702909020, 8702909030, 8703100000, 8703210090, 8703220090, 8703230090, 8703240090, 8703310090, 8703320090, 8703330000, 870390000, 87041000, 8704210020, 8704210090, 8704220000, 8704230000, 8704310020, 8704310090, 87043200, 8704900000, 87060010, 8706009019, 8706009091, 8706009099 and 8707009099 and used clothing item number ~~5208330000 and HS chapters 61 and 62~~ 6309 would be lifted no later than 1 July 1996. ~~Additional time would be needed in the case of used tires.~~

~~34.33-~~ Some members of the Working Party disagreed with Ecuador's analysis and assertion that all the products subject to import prohibitions were justified under GATT Articles XX and XXI. In their



view, Ecuador should establish valid criteria for importing used clothing, tires and automobiles consistent with the need to protect the health and consumer safety of its citizens, and resort only to tariff based protection bound in its market access schedules at appropriate levels. As provided for in Article III of the General Agreement, such criteria should apply equally to domestic and imported products offered for sale and should be administered in conformity with the WTO Agreement on Import Licensing Procedures.

35.33. The representative of Ecuador indicated that his Government would eliminate by the date of accession all non-tariff import and export restrictions (including all quantitative restrictions currently in place in the agricultural sector) that cannot be justified specifically under [GATT]/WTO provisions (e.g., bans, quotas, permits and licenses), in particular the Agreements on Agriculture and Import Licensing Procedures, and Article XI of the GATT 1994. In this regard, Ecuador would eliminate by July 1996 its import bans on used articles, replacing them as necessary with the application of objective criteria uniformly applied to domestic and imported goods for the protection of plant, animal and human health and safety administered in conformity with the provisions of the Agreement on Import Licensing Procedures, e.g., bans on used clothing, automobiles and tires. Such measures would not be applied or re-introduced after accession to the [GATT]/WTO unless specifically provided for in the [GATT or] WTO. The Working Party took note of this commitment.

~~34. The representative of Ecuador indicated that his Government would eliminate its import bans on used articles, replacing them as necessary with the application of objective criteria uniformly applied to domestic and import goods for the protection of plant, animal and human health and safety, and administer these in conformity with the WTO Agreement on Import Licensing Procedures. The import restrictions on used automobiles and clothing would be eliminated by 1 July 1996. Additional time would be needed in the case of used tires. The Working Party took note of these commitments.~~

### **Prior Authorization**

36.35. The representative of Ecuador said that the list of products subject to "prior authorization" annexed as Annex 3 to document L/7301/Add.1 had been liberalized by the Executive Decree 1572 of 18 March 1994. The prior authorization system consisted in obtaining the approval of certain official bodies in order to protect health, public morals, the environment and essential security interests. In such cases the importer or interested party submitted an application containing the required information for consideration by the competent body. Examples of such cases would be applications for the importation of explosives, which required authorization by the National Defence Ministry, or applications for the importation of psychotropic substances and narcotic drugs which required authorization by the National

Council for the Control of Narcotic Drugs and Psychotropic Substances (CONSEP). He added that the current import licensing regime was as follows: the State of Ecuador guarantees the right of any natural or legal person residing in Ecuador to carry out foreign trade operations. Before obtaining an import licence, it is necessary to complete a declaration on the appropriate form and submit it to the Central Bank of Ecuador, together with a note or letter requesting a licence. The import licence regime had been duly publicized and was well known to agents involved in foreign trade. Its objective was not to restrict the quantity or value of imports. Licences applied to imports from any origin and they were automatically approved before the dispatch of imported goods. Any importer who met the requirements necessary to obtain an import licence for goods subject to prior authorization by the competent public bodies may import such goods. The Central Bank of Ecuador requires the submission of the authorization given by the competent authority. If the competent public bodies consider that the use of such products does not present an undue risk for health, security and the environment, they would issue the authorization. The import of goods which were dangerous to human or animal health, arms and ammunition, and products which had an adverse environmental impact, required a prior authorization. There was no intention whatsoever to restrict the quantity or value of such goods. Because the free import regime was free, the import licence was used primarily for statistical purposes. The Central Bank of Ecuador issued the import licence not more than three working days after it had been applied for. Goods which arrived in a port without an import licence may be cleared by customs subject to payment of a fine equivalent to 10 per cent of the c.i.f. value of the goods. Customs clearance of goods in warehouses or on the site of trade fairs did not require an import declaration endorsed by the Central Bank of Ecuador. Import licences must obligatorily be obtained before the goods are shipped and not afterwards. The Central Bank was the only body which issued import licences and there were no restrictions regarding the period of the year during which an import licence may be applied for. Importers may only register with the Central Bank and to do so they had to fill out forms showing their domicile, their citizenship and tax registration details, together with the signatures of the persons responsible for endorsing the import documents. In order to clear the goods, the importer must submit to the customs, in addition to the documentation from the Central Bank, a final verification form, called the "Customs Declaration", which is used to calculate and subsequently pay the tariff duties. The import licence form costs US\$0.20 and no deposit or prior payments were required in order to obtain an import licence. Import licences were usually valid for 180 days following the date of issue. This period could be extended for up to two years. The regulations did not provide for the transfer or assignment of licences among importers. Importers could obtain the foreign currency necessary for their activities on the free exchange market; the exchange regime was free and there were no restrictions on access to foreign exchange. Detailed information provided by Ecuador in response to the "Questionnaire on Import Licensing Procedures" appears in document L/7523/Add.1.

37.36- With regard to the importation of telecommunications equipment, the representative of Ecuador said that such importation required prior authorization from the Telecommunications Supervision Department (Superintendencia de Telecomunicaciones) and not from the Central Bank of Ecuador. The role of the Central Bank of Ecuador was confined to the registration of imports for statistical purposes. Private enterprises could obtain the necessary licence to import telecommunications equipment for their own use. A license issued by the Telecommunications Superintendence was needed to import *inter alia* telephonic terminal equipment, data and telex, modems, integrated service digital network terminals, and approved mobile cellular telephone system terminals, which are connected to a terminal point in a public or private system, and intended to access one or more telecommunications service. The system was not intended to limit the quantity or value of imports, merely to guarantee the correct interworking of terminals operating with telecommunications networks. The system applies to the import of products regardless of their country of origin. All natural or legal persons may apply for authorization for the afore-mentioned equipment. The certificate of type-approval suffices for subsequent imports of similar equipment.

38. 37- The representative of Ecuador reiterated that prior authorization was not used to restrict the quantity or value of imports. He said that any prior authorizations or license requirements incompatible with the provisions of the General Agreement 1994 or the Multilateral Trade Agreements, in particular the WTO Agreement on Import Licensing Procedures, would be eliminated at the time of accession. From the date of accession additional measures would only be applied as provided for in the Articles of the General Agreement 1994, in particular Articles III and XX, and the WTO Agreements, in particular the Agreement on Import Licensing Procedures. The representative of Ecuador further confirmed that his Government would, if requested, consult with the contracting parties concerning the effect of these measures on their trade. The Working Party took note of this commitment.

### **Agricultural Sector**

39.38- Some members of the Working Party said that in their view Ecuador's legislation provided for the application of quantitative and other non-tariff measures on imports for a number of reasons which did not appear to have a GATT justification, e.g. import quotas for fruit, sugar and other agricultural raw materials, and seasonal import permits. In their view, Ecuador should announce the elimination by the date of accession of those restrictions that could not be justified specifically under GATT/WTO provisions. Moreover, Ecuador had to address its remaining non-tariff restrictions on agricultural products in the light of its impending obligations under the WTO Agreement on Agriculture. Finally, Ecuador was asked to provide a comprehensive list of the non-tariff measures remaining in force, the nature of the restrictions, their legal basis, and their justification under GATT/WTO provisions.

40.39- In response the representative of Ecuador said that the agricultural restrictions and the ministries or other agencies whose approval was required for importation were listed in Annex 3 of document L/7301/Add.1. He added that Ecuador had abolished most non-tariff restrictions, including licences, quotas and prohibited imports of agricultural products in the same Executive Decree which had implemented the tariff adjustment mechanism known as "price band". Some members of the Working Party stressed that prior authorization procedures for the importation of agricultural products which were inconsistent with the provisions of the GATT 1947 and the WTO Agreement should be eliminated. Other members of the Working Party cautioned against demands to Ecuador, at the time of accession to GATT 1947, which went beyond GATT 1947 obligations.

41.40- The representative of Ecuador said that all agricultural restrictions would be brought into conformity with the rules of the General Agreement 1994 and the WTO Agreement on Agriculture. Seasonal restrictions on fruit imports and the Interministerial Agreement 061 of 31 January 1991 concerning quotas for wheat imports had been eliminated in November 1994. At the time of accession to the WTO, Ecuador would repeal Interministerial Agreement 067 of 20 February 1978 which was the remaining provision in force which allowed official bodies to set quotas or other restrictions for the import of agricultural products. The agricultural schedule of Ecuador was submitted to the Working Party. The Working Party took note of these commitments.

### **Price Band System**

42.41- Questions were asked concerning the price-band system under which variable levies were imposed on imports of certain agricultural products. These questions referred to the nature of the system, the mechanism for the establishment and adjustment of the price bands, the products to which it was applied, the justification of the system under the GATT and the existence of plans for phasing it out. Some members noted that the use of minimum import prices and variable charges appeared to be in conflict with Ecuador's obligations under Articles II, VI and VII of the General Agreement 1994, the WTO Customs Valuation Agreement and the WTO Agreement on Agriculture. In their view, Ecuador should either phase out this mechanism or bring it into conformity with the aforesaid obligations.

43.42- In response the representative of Ecuador said that the price-band system was an Andean tariff adjustment mechanism that acted as a means of stabilizing the impact of international prices in the Ecuadorean market. Its purpose was to counteract the distortions and variations in international prices caused by the guaranteed prices, buying-in of surpluses, storage subsidies, import quotas, stabilization mechanisms, and export bonuses and subsidies which, among others, were part of the agricultural policies of some exporting countries. It enabled clear and transparent signals to be given to the agricultural

producing sector so that it could programme its production activities. This mechanism applied to imports of 130 eight-digit tariff items from countries not belonging to the Andean Group specified in the attachment.

44.43- The representative of Ecuador added that in the application of the price band mechanism, a distinction was drawn between two kinds of products: "Marker" product: a product of which the international price was 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. The functioning of the price-band system was as follows: (a) if the international price of an agricultural product on importation was below the established floor price, it was subject to an additional charge over and above the ad valorem duty, termed a specific levy; (b) if the world price was somewhere between the floor and ceiling prices of the established band, then the import paid only the ad valorem duty; and (c) if the world price was above the ceiling price of the established band, then the import was subject to a reduction in the ad valorem duty. To calculate the floor and ceiling prices series of the last 60 f.o.b. prices of the relevant market was used. The series of the f.o.b. products was inflated by the United States consumer price index. The average of the inflated series was calculated. A standard deviation was deducted from this average. This new value was called the f.o.b. floor price. The f.o.b. ceiling price was obtained by adding the standard deviation to the average rather than deducting it. Finally, c.i.f. prices were obtained by adding freight and insurance values to the floor and ceiling prices. The relevant market was the reference market used for taking the international prices to determine the floor and ceiling prices. Various criteria were 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. The criteria for including a product in the price band were that (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 price band system. The additional levy or duty reduction was 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 was 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 was applicable only when the 15-day reference price was lower than the c.i.f. floor price. The duty reduction was applied only when the reference price was above the c.i.f. ceiling.

45.44- In reply to further questions on the reference prices used to determine the levels of additional levy or duty reduction, the representative of Ecuador said that the prices which Ecuador used to determine tariffs were those on the major commodity exchanges for agricultural products, for example, Chicago, Rotterdam, Thailand, Germany, Argentina and others recognized at the global level whose data was widely available through specialized electronic media. The procedure for collecting prices was clear and transparent and the prices were published fortnightly in the main written communication media. The reference markets utilized for the various products were as follows: rice: Commodity Exchange of Thailand; maize, soya, soya oil, wheat: Chicago Commodity Exchange; palm oil: Rotterdam Exchange; meat: Credit Commodity Corporation; poultry meat: Urner Barry Publication; barley: prices in Portland; sugar: Contract 5 on the London Exchange.

46.45- Some members referred to the harmonization of Ecuador's price band system with that of the Andean Group member countries. The representative of Ecuador said that the Andean price band system had been approved after three years of intensive negotiations by the Ministers of Agriculture and Livestock of the member countries of the Andean Group ~~and was expected to entered~~ into force in ~~1994~~ February 1995. Ecuador had fewer products subject to these mechanisms than those proposed in the harmonized price band system. In conclusion, he said that the tariff adjustment mechanism, also known as the price band, was a transitory, clear and transparent mechanism to stabilize domestic production, allowing non-discretionary and real signals to be transmitted to economic operators so that they could make appropriate plans for their agriculture campaign. It was based on effective observation of the market and was updated as a result of observing the agricultural markets relevant for Ecuador's imports. The price band constituted a dynamic tariff response which had eliminated State intervention in fixing prices, and also had done away with the expectations of rent-seekers who benefitted from market distortions.

47.46- Noting that the price band system was against the letter and spirit of the Final Act of the Uruguay Round, some members of the Working Party asked whether Ecuador had plans to phase out the system since it had been asserted it would be temporary in nature. In their view, Ecuador should make a commitment in the Protocol of Accession for either the early elimination of the price band system or to alter the system to meet the GATT/WTO obligations. A member asked whether Ecuador would undertake to tariffy the price band system at the time of accession as stipulated under the Uruguay Round Agriculture Agreement. Another member expressed the expectation that the system would not lead to tariff levels higher than negotiated bindings. The representative of Ecuador stressed that this tariff adjustment mechanism was a temporary measure both as regards the original concept applied by Ecuador and its practical application within the framework of the Andean Group. The objective

of the system was to strengthen domestic agricultural production so as to minimize the risk caused by the uncertainty of international agricultural markets currently suffering from the direct and indirect subsidies discussed at length in the Uruguay Round and which had not allowed the global agricultural market to be transparent.

48.47- The representative of Ecuador said that his Government undertook to operate this tariff adjustment mechanism in conformity with the provisions of Article II of the General Agreement 1994 and without impairing the rates duty bound in Ecuador's schedule of concessions. He added that in order to comply with the provisions of the WTO Agreement on Agriculture, Ecuador would gradually eliminate the price band system within a seven year period in accordance with the time table attached to this report. During this period Ecuador would not enlarge the coverage of the system nor reintroduce products back into the system. The Working Party took note of these commitments.

#### **Sanitary and Phytosanitary Measures (SPS)**

49.48- Some members of the Working Party noted that the sale of medicines, cosmetics and food products in Ecuador required the enrolment on the Sanitary Register, a process that could take months for each product marketed. These requirements were unduly onerous for imports and should be streamlined so as to eliminate the possibility that they constituted an unnecessary impediment to trade. In addition, sanitary and phytosanitary controls were often applied to imported agricultural commodities without adequate notification, consultation or a clear scientific basis for their application. This had been a particular problem with poultry where certification requirement, for health, sanitation or quarantine reasons had acted as *de facto* bans on importation.

50.49- In response the representative of Ecuador stated that the importation of agricultural and food products was subject to a "Phytosanitary Import Licence" granted by the Ministry of Agriculture. The Law on Plant Health and its Regulations, issued on 14 January 1974, the Community Phytosanitary Standards for the Andean Subregion and the International Plant Protection Convention constituted the legal framework for the establishment of the criteria for the granting of this licence. Note was taken, when issuing the Phytosanitary Import Licence, of the plant diseases that could reappear in the imported product subject to quarantine or that were exotic to Ecuador and should therefore not be present in the product in question. The Community Regulations contained a list of products which were prone to certain diseases depending on their country of origin. On the question of "Sanitary Register", he stated that by Ministerial Decision No. 8022, published in Official Journal No. 391 of 1 August 1977, the Ministry of Public Health had created the Sanitary Register, in order to guarantee the quality of products that were imported, manufactured or marketed in Ecuador. Accordingly, for a product to

be freely marketed in Ecuador, natural or legal persons must register with the Ministry of Public Health as importers or manufacturers of such products, and submit their products for analysis to demonstrate that their consumption or use will not be harmful to public health. Thus, processed food products or additives, medicaments in general, drugs or medical devices, cosmetics, hygienic products or perfumes and pesticides for household, industrial or agricultural use could not be imported, marketed, stored or transported within the national territory without the appropriate sanitary registration. A favourable report from the National Hygiene Institute of the Ministry of Public Health was required to obtain it. It was stressed that the purpose of the Sanitary Register was to guarantee human, animal and plant health and had no protective effect. At present there were no restrictions on the entry of poultry of United States origin into Ecuador but if there was a new risk of contagion from diseases, the relevant health measures would have to be adopted regarding poultry or any other product which endangered animal, plant or human health. The sanitary and phytosanitary measures adopted by Ecuador were in conformity with international standards, guidelines and recommendations by the Codex Alimentarius Commission, the Office of International Epizootics and the relevant international and regional organizations operating within the framework of the International Plant Protection Convention and especially the Food and Agriculture Organization of the United Nations (FAO). They did not in any way represent a hindrance to free trade.

~~51.50-~~ In reply to the enquiry as to the extent to which sanitary controls aimed at ensuring the quality of imported products were in conformity with the Uruguay Round Agreement on Sanitary and Phytosanitary Measures (SPS), the representative of Ecuador gave the assurance that its sanitary and phytosanitary measures are in conformity with the provisions of the [GATT/JWTO and the SPS Agreement. The Working Party took note of these assurances.

#### **Price Setting in the Pharmaceutical Sector**

~~52. 51-~~ Some members of the Working Party noted that price setting for pharmaceuticals for human use might imply subsidization by the State and asked for information concerning the authority responsible for the price setting, the mechanism involved, its coverage and justification, whether it applied equally to domestic and imported products and relevant statistical data. In response the representative of Ecuador said that, over the last few years, Ecuador had made an enormous effort to liberalize domestic prices in its economy under a programme to boost efficiency and production. The price-setting policy Ecuador had established in the 1970s had been virtually dismantled. The exceptions to this trend were fuels and gas for household use, where prices were set by the Ministries of Finance and Energy and Mining; and medicaments. The price of medicaments had important social and political implications because in Ecuador the public health system did not yet provide adequate coverage for the lower income groups



of the population; and because measures that could affect the more deprived sectors of the population were a potential source of social unrest and instability. The National Council for the Setting of Prices of Medicaments for Human Use was responsible for setting the prices for medicaments. The price setting for imported and domestically produced pharmaceuticals operated as follows. In order to establish the prices of imported products, the following procedures were carried out on a product-by-product basis: to the f.o.b. price were added international transport and import, entry and internal transport costs, which determined to the cost up to the warehouse. Operating, administrative, selling, promotion and financial costs were 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 was taken into account, and to establish the maximum selling price to the public, a profit margin of 25 per cent was added to the maximum pharmacy selling price. In order to establish the prices of locally manufactured products, the following procedure was carried out on a product-by-product basis: the f.o.b. price of the main imported active principles was considered, and to the f.o.b. value of the imported raw materials and excipients were added international transport, importation or entry costs and transport costs to the manufacturer's warehouse. A percentage was also added for loss or waste in the production process for each product. In establishing the production cost, account was 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 were added to the production costs, which gave the commercial cost. In order to establish the pharmacy selling price, a profit margin of up to 20 per cent of the commercial cost was 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 was added for each product. All pharmaceutical products for human use contained in chapter 30 of the National Customs Tariff and of the Harmonized System were subject to these controls. The share in the Ecuadorean market of imported pharmaceutical products had been as follows: in 1989 49 per cent, in 1990 45.9 per cent, in 1991 46.3 per cent, in 1992 35.5 per cent. In 1992 the consumption of imported pharmaceuticals had been worth approximately US\$85 million.

53. ~~Finally, the~~ The representative of Ecuador assured the Working Party that his Government did not intend to extend the price setting policy to other sectors of the economy. The Working Party took note of this assurance commitment.

### **Standards**

54. ~~52.~~ Some members of the Working Party asked whether Ecuador's standards and technical regulations were based on relevant international standards, whether they were published in such a way as to enable interested parties to become acquainted with them and whether they were applied equally to imported and domestic products. Other questions concerned the bodies responsible for their formulation and

implementation, how importers and foreign exporters could make their views known in the standards setting process and Ecuador's intentions regarding the Agreement on Technical Barriers to Trade. In response, the representative of Ecuador stressed that internationally agreed rules served as a basis for Ecuador's standards and technical regulations which were defined according to the characteristics of the products when used, its design and features. Ecuador's standards did not constitute a barrier to trade and did not affect the transparency of trade. The procedures involved were publicly known and were generally applied. The Ecuadorean Institute of Standardization (INEN), a government body attached to the Ministry of Industry, Trade, Integration and Fisheries was responsible for preparing standards. He submitted the INEN Technical Standards Catalogue and noted that the only legislation in this respect was Executive Decree 939 of 2 July 1993, published in the Official Journal No 233 of 15 July 1993 entitled General Regulations on Pesticides and Related Products for Agricultural Use. This Regulation had simplified the formalities for the registration of pesticides and streamlined the marketing process for such products. Moreover, the Consumer Protection Law regulated marking, labelling and packaging.

55. ~~In conclusion, he~~ The representative of Ecuador said that ~~the his~~ Government of Ecuador guaranteed that there was no legal or technical impediment to the adoption of the Uruguay Round Agreement on Technical Barriers to Trade. The Working Party took note of this assurance [commitment].

### **Unfair Trade Practices**

56. ~~53-~~ Some members of the Working Party asked further information on the anti-dumping regime and practices of Ecuador. Questions were asked on the material injury tests, the methodology employed for determining serious injury, particularly in the context of the requirements set out in Article VI of the GATT and the Anti-Dumping Code, whether hearings were open to all interested parties, whether the final report was made available to the public and whether Ecuador's participation in the Cartagena Agreement could lead to the imposition by Ecuador of anti-dumping duties on products the importation of which was affecting the competitive position of other Andean Group members, Ecuador's intentions concerning acceptance of the Anti-Dumping Code upon accession to the GATT 1947, the timing of the application of provisional measures, the implementation of the WTO Anti-Dumping Agreement, etc. In response the representative of Ecuador, said that his Government had incorporated into its domestic legislation all of the decisions adopted by the Commission of the Cartagena Agreement aimed at practices that could distort trade competition, in particular Decision N 283. Pursuant to this Decision the member countries could apply anti-dumping duties to products originating in third countries in order to correct distortions in trade competition in the sub-regional market. The regulations for the prevention and correction of the practices of dumping and subsidization introduced by

Decree No. 2722-A, published in the Official Journal No. 780 of 30 September 1991, had incorporated the provisions of the Anti-Dumping Code and the Code on Subsidies and Countervailing Duties of the Tokyo Round of Multilateral Trade Negotiations ~~in GATT~~, defined the scope of application and determined the time-limits, procedures and competent bodies for dealing with these questions. In Ecuador, the Ministry of Finance and Public Credit was empowered to adopt measures to prevent and eliminate the practices of dumping or subsidies after the Special Commission of the Tariff Committee had given its opinion. In accordance with the national regulations to prevent or eliminate the practices of dumping or subsidies, the producer concerned must submit for his industry or on its behalf an application in writing requesting the initiation of the corresponding investigation and the application of preventive or corrective measures. The application must contain sufficient evidence of the existence of dumping or subsidies and show that these practices cause injury to industry. Five days after receipt of the request, the Ministry of Industry, Trade, Integration and Fisheries contacts the parties concerned directly and requests them to provide the necessary information in order to commence the investigation into the producer or exporter of the product concerned. During the investigation, general information and non-confidential documents, as well as the summaries or analyses of evidence, may be consulted. The competent bodies, authorities and officials may not disclose the evidence and information received in connection with the investigation when these are of a confidential nature. In accordance with domestic legislation, the competent authority first of all convenes meetings between the parties involved so that they may present their points of view and a direct solution may be found. The time-limit for carrying out the investigation was four months from the date of receipt of the application, but this may be extended by a further two months at the discretion of the Special Commission. In such a case, the Special Commission may recommend the application of provisional or preventive measures until the Minister for Finance adopts the final measures decided upon. When the prejudice or the likelihood of causing prejudice is sufficiently serious to warrant the adoption of provisional or preventive corrective measures, a prior investigation is carried out on the basis of the information available within a period not exceeding twenty days from the date of receipt of the application and, in addition, the Special Commission is convened within the following five working days so that it can express its views on the adoption of corrective measures. The final decisions on whether or not such practices have led to dumping or subsidy and injury to domestic industry, together with decisions on the reduction or suspension of their application, are published in the Official Journal. In the case of dumping, domestic legislation provided for the application of duties on the imports concerned equivalent to the margin of dumping determined or a lower amount when this is sufficient to counter the threat of prejudice or the prejudice caused. In the case of subsidies, countervailing duties were imposed on the imports concerned for an amount equivalent to the subsidy or a lower amount when this was sufficient to counter the threat of prejudice or the prejudice caused. Corrective measures to prevent or eliminate distortions due to dumping and

subsidies were not applied simultaneously to the same product. Anti-dumping or countervailing duties could remain in force for a period of up to two years. The determination of serious prejudice or the threat of serious prejudice was based on the following considerations: (a) the volume of imports subject to the practice, so as to determine if they had increased to a significant extent both in absolute terms and in relation to Ecuador's production, consumption and imports; (b) the price of imports subject to dumping or the granting of subsidies, to determine in particular if they were considerably lower than the prices of similar products as a result of unfair trade practices; (c) the effects on domestic industry determined on the basis of trends in production, domestic sales, market share, profits, productivity, return on investments, utilization of installed capacity, actual or potential negative effects on cash flow, inventories, employment, wages, growth and investment capacity. Ecuadorean legislation provided for administrative appeal procedures. All interested parties may utilize such procedures. To this date, Ecuador had not applied any countervailing or anti-dumping duties.

57. ~~54.~~ The representative of Ecuador confirmed that ~~upon the acceptance of the WTO Agreement, his Government would implement the WTO Agreement on the Implementation of Article VI as of the time of accession~~ from the date of accession to the WTO, Ecuador will apply the provisions of the WTO Agreement on Implementation of Article VI in cases involving allegations of dumping by imports. The Working Party took note of this ~~assurance~~ commitment.

### **Export Incentives**

58. ~~55.~~ Members of the Working Party asked Ecuador to provide information on measures aimed at facilitating and promoting exports especially in the area of taxation and subsidies. The representative of Ecuador described the measures to facilitate and promote exports. The Law for the Facilitation of Exports by water enacted by Decree No. 147 of 23 March 1992 aimed at eliminating bureaucratic red tape and delays in the shipment of merchandises to world markets. The duty draw-back system introduced through Executive Decree No. 762 on 19 May 1993 benefitted natural or legal persons whose activity was oriented towards the exportation of products comprising imported foreign components. Its application required the compliance with the conditions set forth in the Law and its regulations. Similarly all goods destined for export markets were exempted from the value added tax (VAT) without discrimination as to the destination. He added that since 1990 Ecuadorean policy had been to eliminate production and export subsidies. ~~Article 14 of The Tokyo Round~~ Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade [and the WTO Agreement on Subsidies and Countervailing Measures] ~~had~~ recognized the importance of policies to assist production, including export promotion policies, for the economic development programmes of developing countries.

59. 56. The representative of Ecuador said that at present, the legislation which specifically promoted industrial and agricultural production did not confer benefits or advantages; there were no export or credit subsidies and no tax incentives or encouragement. There were no production subsidies in the form of artificial public service tariffs. Concerning the WTO Agreement, he said that at the moment, Ecuadorean legislation did not distinguish between specific subsidies and general subsidies. However, given that the specific nature of subsidies had been defined for the first time in the Uruguay Round Agreement on Subsidies and Countervailing Measures, Ecuador would revise its legislation to bring it into ~~the~~ conformity with the commitments arising from membership in the WTO by 1 July 1996, using the definition given in that Agreement. The Working Party took note of this assurance.

### **Free Trade Zones**

60. 57. Some members of the Working Party noted that Ecuadorean law provided for free zones that process goods for export under special regimes for *inter alia* taxes, tariffs and capital and requested that Ecuador describe the special regimes associated with the establishment of "in-bond" regime for export processing and with investment in the free zones. They also asked whether Ecuador had plans to establish free trade zones, the rationale behind it, whether national labour laws would be applied in such zones, etc. The representative of Ecuador said that no such zones has yet been set up, despite the existence of legislation for their creation; however, the Government planned to create some as part of its development strategy in order to promote foreign investment, the transfer of technology and the creation of employment. They were also intended to promote exports and boost the country's foreign exchange earnings. With regard to the application of national labour laws to such zones, he said that labour contracts in such zone would be often temporary in nature and could not be subject to general legislation.

61. 58. The representative of Ecuador said that ~~Ecuador's national legislation establishes the payment of normal taxes and tariffs on the imported component of sales from the zones into the rest of Ecuador.~~ his Government would be prepared to make a commitment that the imported component of sales from the zones into the rest of Ecuador would be assessed normal taxes, tariffs and other border measures. The Working Party took note of this ~~assurance~~ commitment.

### **Government Procurement**

62. 59. Some members of the Working Party asked for information on Ecuador's government procurement practices; the rules and procedures applied, the degree of transparency of the system and the treatment of foreign and domestic suppliers. The representative of Ecuador said that government procurement was done through public bidding with no discrimination between domestic and foreign suppliers. There

was also no discrimination regarding the ~~of~~ taxes or fees or on the presentation of guarantees as between national or foreign bidders. The procedures provided for in the Government Procurement Law of 2 August 1990 published in the Official Journal of the same date were as follows. For the performance of works, purchase of goods and provision of services 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 invitation to tender, if the amount does not exceed 10,000 but is over 4,000 times the general minimum wage; open price tendering, if the amount is over 1,500 but not more than 4,000 times the general minimum wage; 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 were 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. Special pre-contractual procedures applied to procurement relating to the purchase of real estate, 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). The Law provided for a Procurement Committee in each Ministry, dependent body or entity of the public sector. The Committee decides on the award of the contract. The Government Procurement Law did 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 were not given special treatment.

### **State Owned Enterprises**

63. ~~60.~~ The Working Party reviewed the nature of operations and GATT justification of the activities of a number State owned enterprises. Some members of the Working Party requested a listing of the State owned enterprises, their share in the economy in general and in trade in particular, sectors of activity, monopolies exercised by them, compliance in their operations with the provisions of Article XVII, as well as future plans and priorities concerning privatization. Some members of the Working Party noted that the examination of this issue should not lead to requests for commitments beyond the obligations provided for in Article XVII for all contracting parties. In response the representative of Ecuador said that his Government had decided to modify the role of the State sector in economic development. The involvement of the State in the past 30 years had led to the State having holdings in some 165 enterprises in sectors such as transport and storage, energy, communications,

agriculture, industry, mining, tourism, internal trade, financing and services. Owing to the decreasing efficiency of this model and the demand of current economic, financial and technological realities, the Government had adopted a policy of modernization the basic directions of which were the rationalization and simplification of the public sector administrative and economic structures through the efficient distribution of functions and responsibilities among its entities or organizations, the decentralization of public sector activities, the elimination of State monopolies and the privatization of public services. The National Council for the Modernization of the State (CONAM), attached to the Presidency of the Republic, had been entrusted with administrative rationalization and simplification. He stressed that commercial enterprises which were wholly or partially owned by the State covered by Article XVII of the General Agreement fully observed the principle of non-discrimination both for their procurement and for their sales involving imports or exports. Furthermore there were no monopolies in Ecuador except in the case of natural gas and some petroleum products. With regard to the sectors of the economy exclusively reserved for the State, he pointed out that according to the Law on the Modernization of the State, Privatization and Provision of Public Services by Private Enterprise which had entered into force on 31 December 1993, the following activities that were reserved for the State under Article 46 of the Constitution could be delegated by concession to private enterprises: (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 had provided the abolition of monopolies and the privatization of State activities. With regard to the share of the State in the economy, he said that in 1992 the share of the State sector in the GDP was 7.2 per cent a decrease from the average for the previous decade of 8.9 per cent. In 1992 the share of State owned enterprises in total imports had amounted to 2 per cent. Ecuador provided the following list of State enterprises or State participation in enterprises involved in domestic and international trade: Empresa Nacional de Ferrocarriles del Estado (Transport of passengers, cargo and mail); Transportes Aéreos Militares Ecuatorianos (Transport of passengers, cargo and mail); Instituto Ecuatoriano de Telecomunicaciones (Regulation and operation of the telecommunications system and development of its infrastructure); Empresa de Desarrollo Forestal CEM (Forestation and reforestation for the production of forestry products); Empresa Pesquera Nacional (Fishing, processing and marketing of fish); Empresa Estatal de Petróleos del Ecuador (Exploration and extraction of hydrocarbons); Compañía Minera de Economía Mixta (Gold mining); Servicios Mineros de Economía Mixta (Installation of mineral processing and smelting plants); Azucarera Tropical Americana (Extraction and processing of cane sugar); Planta Hortifructícola Ambato (Production, processing and marketing of fruits and vegetables); Alcoholes del Ecuador (Production of 96% alcohol); Empresa de Abonos del Estado (Production of organic, mineral and chemical-organic fertilizers); Fertilizantes Ecuatorianos CEM (Import of raw materials, transformation and marketing of fertilizers); CEM Cementos Selva

Alegre (Production of cement); Cementos Cotopaxi C.A. (Production of cement); Empresa de Cementos Chimborazo C.A. (Production of Portland cement); Industria Guapán S.A. (Production of grey cement); Ecuatoriana de Siderúrgica S.A. (Iron and steel); Empresa Nacional de Almacenamiento y Comercialización de Productos Agrícolas (Storage and marketing of agricultural goods); Empresa de Suministros del Estado (Marketing of office supplies, materials and equipment); Empresa Ecuatoriana de Aviación (Transport of passengers, cargo and mail); Empresa Pesquera Nacional (Fishing, processing and marketing of fish); Empresa Estatal de Petróleos del Ecuador (Exploration and extraction of hydrocarbons); Alcoholes del Ecuador (Production of 96% alcohol); Fertilizantes Ecuatorianos CEM (Import of raw materials, transformation and marketing of fertilizers); Astilleros Navales Ecuatorianos (Ship building); Empresa Nacional de Almacenamiento y Comercialización de Productos Agrícolas (Storage and marketing of agricultural goods).

### **EMETEL**

64.62 Members of the Working Party referred to the Ecuadorean Telecommunications Company (EMETEL) and asked questions about its legal basis and framework, the reasons for its creation, its procurement and contract practices and procedures, the rational for the import licensing requirements; the standards for the equipment employed in the telecommunications sector and their conformity with international standards, etc. Some of these members considered that the procedures and practices of EMETEL were not GATT consistent. In their view EMETEL should be notified under the provisions of Article XVII of the General Agreement. With regard to the standards for equipments in the telecommunications sector, assurances were requested that they would conform with international standards. It was also noted in this respect that, Ecuador should be prepared to adhere to the Agreement on Technical Barriers to Trade. In response the representative of Ecuador stated that telecommunications were a service of public necessity and utility and were also 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 was required from the Telecommunications Department, and the enterprise must have the necessary concession to install the equipment. Ecuador had established a legal framework that was in keeping with the importance, complexity, scale, technological level and specificity of telecommunications services. The Special Law on Telecommunications had established the State Telecommunications Company (EMETEL), with its own legal personality, equity and resources, and administrative, economical, financial and operational autonomy. Company management was 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 was responsible for setting and approving the administrative, financial and technical standards, rules and procedures, while the Executive Director was responsible for planning and development of the company's telecommunications systems. The technical standards applied by EMETEL for the procurement of goods and services were based on the standards laid down by the CCITT and the CCIR. Ecuador assured the contracting parties that its standards were consistent with international standards within the framework of the International Telecommunications Union. According to the Law, the contracts concluded by EMETEL were not subject to the government procurement laws and regulations. EMETEL carried on its activities in accordance with business management criteria. The procurement practices of EMETEL were guided exclusively by commercial considerations, without discrimination of any kind. For enterprises of other contracting parties this ensured transparency and free competition conditions with regards to tenders.

~~63. The representative of Ecuador said that, as a contracting party, Ecuador would notify EMETEL as a State trading enterprise within the meaning of Article XVII of the General Agreement. The Working Party took note of this commitment.~~

65.64 The representative of Ecuador gave the assurance that his Government would observe the provisions of Article XVII of the General Agreement 1994 including notification and the description of State trading activities for all the enterprises listed in the preceding paragraphs as of [GATT/]WTO accession. The Working Party took note this assurance commitment.

### **Integration Agreements**

66.64 Some members of the Working Party noted Ecuador's participation in a number of regional integration and preferential trade agreements. In particular, questions referred to the GATT consistency of the Latin American Integration Association (LAIA) and the Cartagena Agreement, their justification under Article XXIV of the GATT, the operation of various mechanisms in force in the context of the integration processes, and the fulfilment of the notification requirements under the GATT. With regard to the Cartagena Agreement some members enquired about the status of implementation of the Common External Tariff (CET), progress made in the trade liberalization within the Andean Group, and aspects such as the scope and nature of the rules on "unfair trade competition" among the members, the common regime for the treatment of foreign capital and trade marks, patents, licences and royalties; rules of origin and local content requirements, etc. Some other members of the Working Party said that in their opinion the examination of the regional integration agreements of which Ecuador was a member had been undertaken in the appropriate GATT bodies and therefore would be beyond the mandate of

the Working Party. The representative of Ecuador responded that contracting parties members of the Latin American Integration Association (LAIA) and the Cartagena Agreement complied with the relevant obligations under the provisions of the General Agreement and the legal instruments negotiated under its auspices, including the Enabling Clause Decision. Information concerning developments under these Agreements was submitted to the contracting parties regularly. Reports had been submitted by the member states of LAIA and the Andean Group in 1992 (L/6985 and Add.1 and L/7088 and L/7089, respectively).

67.65 With regard to the Latin American Integration Association (LAIA) set up by the 1980 Treaty of Montevideo to replace the Latin American Free-Trade Association (LAFTA) of 1960, the representative of Ecuador said that the long-term goal of LAIA was the gradual and progressive creation of a Latin American common market. The instruments provided for achieving this goal were regional scope agreements, in which all member countries participated, and partial-scope agreements which concerned solely their signatories. These instruments provided for the negotiation of mutual tariff concessions. They also sought to promote economic complementarity and develop economic cooperation. The regional tariff preference was granted according to the level of development of each member country giving or receiving the preference. Under the market opening agreements signed by members of the LAIA in favour of the relatively less-developed countries, one of which was Ecuador, his country had received preferences from the other eight member countries, as set out in Regional Market-Opening Agreement No. 2. All member countries of the Association, had reduced national tariffs with respect to the rest of the world and thus had improved trade conditions for imports from non-preferential trading partners, often to the detriment of margins of preference negotiated among members of the Association and the potential of regional trade. In 1993 the total value of imports by LAIA member countries from outside the Association had totalled US\$61,548 million, an increase of 11 per cent compared with 1992.

68.66 With regard to the Cartagena Agreement, the representative of Ecuador recalled that this subregional economic integration agreement was originally signed by Bolivia, Chile, Ecuador and Peru. Later on Chile had withdrawn and Venezuela had joined in. The basic objectives of the Agreement were to promote and achieve balanced development among the member countries, to accelerate growth and generate employment, to reduce external vulnerability and improve the countries' international economic standing and to strengthen subregional solidarity. It was an advanced integration process in Latin America and constituted an open and competitive rather than a defensive model of integration. It sought greater participation in the world economy and one of its goals was to become a customs union. For this purpose in March 1993, the Commission of the Cartagena Agreement had adopted

Decision 335 establishing the Common External Tariff (CET), which Ecuador would implement as of 1 February 1995. Within the Andean Group region goods moved freely without tariffs or restrictions of any kind. In response to questions regarding the exemptions from the CET allowed to Ecuador, he said that Article 3 of Decision 335 of the Commission of the Cartagena Agreement had allowed Ecuador as a relatively less developed country to maintain a temporary rate of 5 per cent below the CET levels for a list of products, subject to review by 31 December 1996 at the latest. This matter was currently under negotiation. Moreover, since the entry into force of Decision 232 of the Commission of the Cartagena Agreement, the Andean Group member countries did not have the right to establish duty-free exemptions that infringed sub-regional tariff commitments, except in the cases provided for by the Decision 335 or by Decision 322 relating to the negotiations with the LAIA member countries. The preferences negotiated under the LAIA partial-scope agreements were negotiated taking account the member countries' tariff and the maintenance of margins of preference. He added that Ecuador applied the rules of origin established by the Cartagena Agreement which were based on the general principles of change of tariff heading, processing and greater incorporation, and indicative lists, set out in Decision 293 of the Commission of the Cartagena Agreement issued on 4 April 1993. Decision 293 of the Cartagena Agreement established rules for the determination of the origin of goods, for the purposes of the Andean Liberalization Programme.

69.67. Some members of the Working Party noted that Ecuador's participation in a number of regional integration and preferential trade agreements appeared to influence Ecuador's negotiations of the conditions for accession to the General Agreement and the WTO. They expressed concern that regional agreements were being cited as a factor limiting Ecuador's flexibility in the market access negotiations. Other members of the Working Party recalled that both the General Agreement and the WTO Agreement had recognized the desirability of trade liberalization in the framework of regional agreements. They added that the existence of regional agreements and in particular their preferential tariff rates could not be considered as constraining the sovereign approach of members to market access negotiations.

[70. The representative of Ecuador gave the assurance that his Government would work with other Members of such Agreements to ensure that the WTO provisions for notification, consultation, and other requirements concerning preferential trading systems, free trade areas, and customs unions are met, when amendments are introduced, e.g., Article XXIV of the GATT 1994 and paragraph 3 of the Enabling Clause. The Working Party took note of this assurance [commitment].]

**[World Trade Organization (WTO)]**

71.68. The representative of Ecuador recalled that in the Memorandum on the Foreign Trade Regime (document L/7202) and in subsequent documentation (L/7488 and Addenda, ~~and~~ L/7523 and Addenda, ~~and~~ L/7566 ~~and~~ WT/L/54), his Government had provided information on trade related investment measures, services and trade related aspects of intellectual property rights. Ecuador ~~had~~ aimed to become an original member of the World Trade Organization. Therefore, Ecuador had negotiated ~~[and would implement]~~ commitments within the framework of the Uruguay Round Multilateral Trade Agreements concerning market access, including agriculture as well as services, trade related investment measures and trade related aspects of intellectual property rights. He stressed that Ecuador would adapt its domestic legislation to the requirements of the WTO Agreement and would ratify the legal instruments annexed to the WTO Agreement. ~~[Nevertheless,]~~ As a developing country, Ecuador intended to invoke the special provisions concerning developing countries contained in the Multilateral Trade Agreements. The Working Party took note of these commitments [this statement].

**General Agreement on Trade in Services (GATS)**

72.69. Several members of the Working Party expressed interest in entering into negotiations with Ecuador with regard to services and requested information concerning the regulations applicable to the various services sectors.

73.70. The representative of Ecuador noted that the Law on Financial Institutions had set liberal criteria for the organization and operation of banks, financial companies, factoring companies, leasing companies and other financial intermediaries. The Securities Market Law of 28 May 1993 regulated securities exchanges, securities houses and other intermediaries, investment funds, the issue of bonds, securities market registration, etc. National treatment was established by Article 22 of the Law on Financial Institutions which stipulates that "a foreign financial institution operating in Ecuador as an institution of the private financial system shall enjoy the same rights and be subject to the same obligations, laws, rules and regulations as are applied to national financial institutions". National treatment were also provided for in Article 44, which stipulates that foreign investment in the institutions subject to the control and supervision of the Office of the Superintendent of Banks shall not require prior authorization from any State body, and that foreign investors shall enjoy the same rights and be subject to the same obligations as national investors. The Law also regulates capital investment abroad by institutions of the national financial system, without discrimination between national and foreign institutions, and permits free capital investment outside the country. With regard to insurance, the Ecuadorean Government was currently considering new provisions and legislation in the insurance sector. With regard to professional services, the regulations controlling foreign labour activities, published in the

Official Journal No. 509 of 19 January 1978 as Ministerial Decision 1806 of the Ministry of Labour, stipulate in Article 4 that any foreigner wishing to work in Ecuador must hold the appropriate visa, fill in the forms provided for each case by the Ministry of Labour and submit the necessary certificates in support of his application. This provision also applies to the organized immigration of professionals, technicians and other persons assisted by international bodies recognized by Ecuador. The above-mentioned regulations provide for a *Carnet Ocupacional* (work permit), the only official document authorizing foreigners to work in the country. Professionals or technicians must, where appropriate, submit a certificate from an educational institution or an association authorizing them to carry out their professional activity. In the specific case of auditing services for financial institutions, it was also necessary to register with the Office of the Superintendent of Banks and to obtain the corresponding authorization. With regard to maritime transport, Article 13 of the Law on the Simplification of Exports and Water Transport, published in the Official Journal No. 901 of 25 March 1992, stipulates that water transport to and from Ecuador shall be based on the principle of effective reciprocity and shall be subject to the provisions of the conventions on water transport to which Ecuador is party. Effective reciprocity is understood to mean access by foreign ships transporting imported or exported cargo generated by Ecuador under the same conditions as those granted by the foreign country in question to ships sailing under the Ecuadorean flag or to ships chartered or operated by Ecuadorean shipping companies. The *Consejo Nacional de la Marina Mercante y Puertos* (National Merchant Navy and Port Council) may impose temporary restrictions on foreign companies or vessels sailing under the flag of a third country when such country imposes similar restrictions on ships belonging to, or chartered or operated by, Ecuadorean shipping companies. In no case will free competition in export shipping be affected. The above-mentioned Law contains a cargo reservation with respect to hydrocarbons. With regard to land transport, Decision 257 of the Board of the Cartagena Agreement on the International Transport of Goods by Road stipulates that under no circumstances shall restrictions be imposed on the facilities for free transit and transport of persons, vehicles or goods applicable among the Andean countries or with respect to third countries. This form of transport can only be operated by an authorized carrier. With regard to air transport, with the adoption on 16 May 1991 of the Open Skies Agreement (Decision 297 of the Commission of the Cartagena Agreement), the countries of the Andean Group had established a single air space permitting the free air traffic of passengers, cargo and mail in aircraft from and to each of the international airports located in the Andean subregion. This decision stipulates that the member countries of the Andean Group shall grant free exercise of the rights relating to the third, fourth and fifth freedoms of the air on regular passenger, cargo and mail flights made within the subregion. With regard to telecommunications, 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), without prejudice to the constitutional reservation in favour of the State with respect to the economic

exploitation of natural resources and of the services mentioned in Article 46, paragraph 1 of the Constitution, the State may delegate the provision of telecommunication services to private enterprises.

74.71 The representative of Ecuador said that in conformity with paragraph 5 of the Final Act of the Uruguay Round, his Government had submitted a schedule of specific commitments in the field of services circulated in document L/7566. Some members noted that, as agreed by the Preparatory Committee for the World Trade Organization, following the conclusion of the negotiations, ~~the schedule would be subject to~~ pursuant to the technical verification process, ~~Thereafter, the Preparatory Committee would have to approve the schedules of specific commitments to the GATS.~~ the schedule had been approved by the Preparatory Committee for the WTO. The offer on financial services had been presented in accordance with the Second Annex on Financial Services and the Decision on Financial Services. After becoming a WTO Member, Ecuador would participate in the negotiations on maritime transport services, basic telecommunications, financial services and movement of natural persons.

#### **Trade Related Investment Measures (TRIMs)**

75.72 Some members of the Working Party asked information about the legal framework for investment in Ecuador, whether there was preferential taxation treatment for export related investments, the nature of tax benefits, the existence of local content regulations, export performance requirements, national treatment, restrictions on remittance of profits, barriers to foreign investment, etc. In response the representative of Ecuador said that without prior approval, direct foreign investment could be made in all sectors of the economy under the same conditions as investment by Ecuadorean natural or legal persons. The sole areas where foreign investment remained prohibited were defence activities, communication media and internal air transport, while minority shareholding was permitted in the fishing sector. Under Article 18 of the Constitution, foreign natural or legal persons may not directly or indirectly acquire or retain ownership or other real rights relating to immovable property, nor rent such property, obtain the use of water, establish industries or farms or conclude contracts relating to non-renewable natural resources and in general to products of the sub-soil and all minerals or substances distinct in nature from the soil, in the frontier areas and the reserved areas established by the competent bodies, unless in any of the above cases authorization has been obtained in accordance with the law. The Ecuadorean legislation introduced in January 1993 Decree 415 had lifted the barriers to foreign investment. The current rules allowed the unrestricted repatriation of profits, had removed the restriction on foreign shareholdings in excess of a limit of 49 per cent in any enterprise, and had eliminated the requirement of prior approval of investment by the competent Ministry for most sectors. Investments were registered solely with the Central Bank of Ecuador, and technology contracts with the Ministry of Industry, Trade, Integration and Fishery (MICIP). There were no restrictions on investments related

to local content requirements nor concerning export performance requirements. He added that foreign investment was allowed in the financial sector. With the approval of the Securities Market Law, the tax system applied to foreign investors was now the same as that applied to national investors. With regard to any possible restrictions on share holding by foreigners, he stated that as a general rule, current Ecuadorean legislation did not establish restrictions on foreign shareholding in industry. Investments in the fisheries sector were an exception to this rule. In accordance with Article 19 of the Law on Fishing and Fishery Development, this activity was 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 had to obtain authorization from the National Council for Fishery Development. With regard to limitations on the remittance of profits by foreign investor, he stressed that Ecuadorean legislation did not provide for any limitation or restriction on foreign investors remittance of their profits abroad. Concerning the tax treatment for exports, he said that tax benefits for specific industries had been eliminated and export companies were liable to tax; however, like in most countries, exports were exempted from internal taxes. Moreover, foreign enterprises did have access to the export promotion and development mechanisms under the same conditions on Ecuadorean or joint enterprises. He noted that Decision 291 of the Commission of the Cartagena Agreement had adopted a common regime for the treatment of foreign capital.

76.73. In conclusion the representative of Ecuador said that his Government would comply with the commitment in respect of transparency and notification contained in Article X of the GATT 1994 and in Article 6 of the Agreement on Trade Related Investment Measures (TRIMS). Moreover, Ecuador had reviewed the Agreement on Trade-Related Investment Measures and was willing to comply with the commitments it lays down as soon as it becomes a WTO member. With respect to national treatment and quantitative restrictions, Ecuador would undertake not to maintain measures inconsistent with the provisions of Articles III and XI of GATT 1994. With regard to exceptions to the Agreement on Trade-Related Investment Measures, Ecuador would ensure that such exceptions are covered by the provisions of GATT 1994. At present Ecuador did not apply any of the measures foreseen in the TRIMS Agreement. However, an Andean agreement for the automotive sector which was not in force included certain domestic content requirements. When it becomes a member of the WTO, Ecuador would notify within the prescribed time-limits all the TRIMS it applies that are not in conformity with the provisions of the TRIMS Agreement. The Working Party took note of these commitments.

#### **Trade Related Aspects of Intellectual Property Rights (TRIPS)**

77.74 Some members of the Working Party asked questions on the status of intellectual property protection in Ecuador including to what extent pharmaceutical products, microorganisms and plant

species were protected, whether Ecuadorean legislation gave adequate protection to software, whether piracy in this area was effectively prevented and prosecuted. Ecuador was asked to address the issue of how its laws and regulations concerning the protection of intellectual property were consistent with the provision of the WTO TRIPS Agreement and to describe legislation pending which would fully address this issue. In response the representative of Ecuador said that Ecuadorean law on intellectual property rights consisted primarily of the following texts. The Copyright Law, enacted by Supreme Decree No. 610 and published in the Official Journal, No. 0149 of 13 August 1976, and the regulations thereto, issued through Decision (Acuerdo) No. 10824 and promulgated in Official Journal No. 4945 of 13 December 1977. Supreme Decree No. 2821 published in Official Journal No. 0735 of 20 December 1978 had amended this Law, including in it protection against piracy in the reproduction, distribution or sale of illegal copies of phonograms. On 17 December 1993, Ecuador and the Andean Group member countries had adopted Decision 351 establishing a common regime on copyright and neighbouring rights. This regime provides adequate and effective protection of authors of literary, artistic and scientific works as well as of performers, producers of phonograms and broadcasting organizations (radio and television), and also obliges Andean Group member countries to grant protection no less favourable than that granted to their nationals. With regard to the rights that are recognized and protected, the Andean Group Decision recognizes authorship of the work, integrity and other rights of a moral nature that may be exercised by the author, his heirs or the State in their absence. It also recognizes the ownership rights consisting in the exclusive right of the author to authorize or prohibit the reproduction, marketing, translation, arrangement or transformation of his works. The duration of the rights recognized in Decision 351 shall be no less than the life of the author and 50 years after his death. When ownership of the rights is vested in a legal person, the period shall be no less than 50 years from the date of making of the work in the form of disclosure or publication of the work. The protection granted by this common regime covers literary, artistic and scientific works that may be reproduced or divulged by any means known or that becomes known. Such works include works expressed in writing (books, pamphlets, etc); lectures, addresses, speeches; dramatic, dramatico-musical and choreographic works and entertainments in dumb show; fine arts works, drawings, paintings, sculptures, engravings, etc; illustrations, maps, sketches; computer programmes (software); anthologies or compilations of various works and data bases which by reason of the selection or arrangement of their contents constitute personal creations. Decision 351 also grants protection of neighbouring rights, which are the rights of persons who take part not in the creation of the works but rather in their dissemination. The protection covers performers, producers of phonograms and broadcasting organizations. The new common regime for industrial property adopted by the Commission of the Cartagena Agreement by Decision 344 had come into force in January 1994. This new regime, which was applied by Ecuador, was compatible with the provisions of international conventions on this subject,



and in particular with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Thus, it contains rules not only governing the grant of trade marks and patents but also protecting for the first time industrial secrets and appellations of origin. Other intellectual property rights covered by the TRIPS Agreement would also be protected. With regard to the term of patent protection, the new decision brings the Andean regime into line with the provisions of the Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property Rights, extending the term to 20 years counted from the filing date. The legislation in force in the common regime for industrial property established by Decision 344 provides protection for industrial designs and utility models. A patent on a utility model is granted for 10 years to any new form, configuration or arrangement of elements of any device, instrument or mechanism or other object or any part thereof enabling it to function better or differently. Utility model patents do not cover processes or matters that cannot be protected by an inventor's patent. Sculptures, architectural works, paintings, engravings, lithographic works or any other object of a purely aesthetic nature are not considered utility models. Decision 344 provides in Article 81 that "signs that are perceptible, sufficiently distinctive and capable of graphical representation may be registered as trademarks." Decision 344 states that registration of a trademark shall be for a term of 10 years from the date of registration and may be renewed automatically for successive periods of 10 years without having to prove use of the trademark. In line with the Agreement on Trade-Related Aspects of Intellectual Property Rights, the industrial property regime in force in Ecuador through the adoption of Decision 344 includes a chapter on industrial secrets, protecting a person in control of an industrial secret against disclosure, acquisition or use of the secret without his consent.

~~78.~~ ~~75.~~ In conclusion, the representative of Ecuador assured the Working Party that his Government considered that it would have no difficulties, as far as trade-related aspects of intellectual property rights are concerned, in entering into the commitments in this field required for membership in the World Trade Organization by July 1996. The legislation in force in Ecuador, which incorporates the Andean Group common regime, covers the commitments the country would enter into. Moreover, in some cases, the national legislation confers broader protection than that required under the TRIPS Agreement. The Working Party took note of these assurances.

### **Conclusions**

~~79.~~ ~~76.~~ The Working Party took note of the explanations and statements of Ecuador concerning its foreign trade régime, as reflected in this report. The Working Party took note of the assurances given by Ecuador in relation to certain specific matters which are reproduced in paragraphs 9, 10, 44, 15, 46, 17, 18, 21, 29, 50, 51, 52, 54, 55, 56, 57, 58, 59, 61, 70 and ~~75~~ 78 of this report. The Working Party took note of the commitments given by Ecuador in relation to certain specific matters which

are reproduced in paragraphs [10], [15], [18], 49, 20, 22, 30, 34, 32, 34, 35, 37, 38, 40, 41, 47, 48, 53, [55], [57], 60, 61, 63, 65, 68, [70], [71], 73 and 76 of this report and noted that these commitments had been incorporated in paragraph 2(a) of the Protocol of Accession.

80.77. Having carried out the examination of the foreign trade régime of Ecuador and in the light of the explanations, assurances and commitments given by the representative of Ecuador, the Working Party reached the conclusion that, subject to the satisfactory conclusion of the relevant market access tariff negotiations for market access for goods including an agricultural country schedule, Ecuador be invited to accede to the ~~General Agreement~~ Agreement Establishing the WTO under the provisions of Article ~~XXXXIII XII~~. For this purpose the Working Party has prepared the draft Decision and Protocol of Accession reproduced in the Appendix to this report. It is proposed that these texts be approved by the General Council when it adopts the report. The Working Party noted that the Schedule of Specific Commitments in Services which had been approved by the Preparatory Committee for the WTO was reproduced in document L/7566. This Schedule would be annexed to the Protocol of Accession of Ecuador. When the tariff market access negotiations between Ecuador and contracting parties Members in connection with accession have been concluded, the resulting Schedule of Ecuador and any concessions granted by contracting parties Members as a result of negotiations with Ecuador would be annexed to the Protocol. The Decision would then be submitted to a vote by contracting parties Members in accordance with Article ~~XXXXIII XII~~. When the Decision is adopted, the Protocol of Accession would be open for acceptance and Ecuador would become a contracting party Member thirty days after it accepts the said Protocol. The Working Party agreed, therefore, that it had completed its work concerning the negotiations for the accession of Ecuador to the ~~GATT 1947~~ Agreement Establishing the WTO.

**APPENDIX**

**ACCESSION OF ECUADOR**

**Draft Decision**

**The General Council,**

**Having regard** to the results of the negotiations directed towards the establishment of the terms of accession of the Republic of Ecuador to the Agreement Establishing the World Trade Organization and having prepared a Protocol for the Accession of Ecuador,

**Decides**, in accordance with Article XII of the Agreement Establishing the World Trade Organization, that the Republic of Ecuador may accede to the Agreement Establishing the World Trade Organization on the terms set out in the said Protocol.

**PROTOCOL OF ACCESSION OF ECUADOR  
TO THE AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION**

**DRAFT**

The World Trade Organization (hereinafter referred to as the "WTO"), pursuant to the approval of the General Council of the WTO accorded under Article XII of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as "WTO Agreement"), and the Republic of Ecuador (hereinafter referred to as "Ecuador"),

Taking note of the Report of the Working Party on the Accession of Ecuador to the WTO in document WT/L/ ...,

Having regard to the results of the negotiations on the accession of Ecuador to the WTO,

Agree as follows:

**Part I - General**

1. Upon entry into force of this Protocol, Ecuador accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.
2. The WTO Agreement to which Ecuador accedes shall be the WTO Agreement as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of entry into force of this Protocol. This Protocol shall be an integral part of the WTO Agreement.
3. Ecuador shall observe the commitments set out in paragraphs ... of the Report of the Working Party on the Accession of Ecuador to the WTO (document WT/L/...).
4. [(a) Ecuador shall implement those obligations in the Multilateral Trade Agreements annexed to the WTO Agreement that are to be implemented over a period of time starting with the entry into force of that Agreement as if it had accepted that Agreement on the date of its entry into force.

(b) In each case in which a Multilateral Agreement on Trade in Goods set out in Annex 1A of the WTO Agreement refers to the implementation of obligations by a Member as of the date on which the Agreement enters into force for it, the applicable date shall be ... .

(c) In each case in which the General Agreement on Trade in Services (hereinafter referred to as the "GATS") set out in Annex 1B of the WTO Agreement refers to the implementation of obligations by a Member as of the date on which the Agreement enters into force for it, the applicable date shall be ... .

(d) In each case in which the Agreement on Trade-Related Aspects of Intellectual Property Rights set out in Annex 1C of the WTO Agreement (hereinafter referred as "Agreement on TRIPS") refers to the date of entry into force of the Agreement, in particular for the purpose of the transitional arrangements provided for in Article 65 of the Agreement on TRIPS, the applicable date shall be ....

5. [Ecuador shall submit to the WTO the notifications, responses to questionnaires and any other information to be submitted under

- the provisions concerning transparency set out in the Multilateral Trade Agreements annexed to the WTO Agreement,
- the Decision on Notification Procedures adopted by the WTO General Council on 31 January 1995 and
- the commitments referred to in paragraph 3 above

within ... months of the date of entry into force of this Protocol.]

## **Part II - Schedules**

6. The Schedules annexed to this Protocol shall become the Schedule of Concessions and Commitments annexed to the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the "GATT 1994") and the Schedule of Specific Commitments annexed to the GATS relating to Ecuador. The staging of the concessions and commitments listed in the Schedules shall be implemented as specified in the relevant parts of the respective Schedules.

7. For the purpose of the reference in paragraph 1 of Article II of the GATT 1994 to the date of that Agreement, the applicable date in respect of each product which is the subject of a concession provided for in the Schedule of Concessions and Commitments annexed to this Protocol shall be the date of entry into force of this Protocol. For the purpose of the reference in paragraph 6(a) of Article II

of the GATT 1994 to the date of that Agreement, the applicable date in respect of the Schedules of Concessions and Commitments annexed to this Protocol shall be the date of entry into force of this Protocol.

8. [For the purposes of the GATS[, including in particular Article XVI, XVII, XX and XXI thereof,] the applicable date in respect of the Schedule of Specific Commitments annexed to this Protocol which shall also be annexed to the GATS, shall be the date of the entry into force of this Protocol.]

### **Part III - Final Provisions**

9. This Protocol shall be open for acceptance, by signature or otherwise, by Ecuador until ... . [It shall also be open for acceptance by signature or otherwise by WTO Members until ... .]

10. This Protocol shall enter into force on the thirtieth day following the day of its acceptance [by Ecuador].

11. This Protocol shall be deposited with the Director-General of the WTO. The Director-General of the WTO shall promptly furnish a certified copy of this Protocol and a notification of [each] acceptance thereto pursuant to paragraph to each Member of the WTO and to Ecuador.

12. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this ... day of ... one thousand nine hundred and ninety-five, in a single copy in the English, French and Spanish languages each text being authentic, except as otherwise provided for in respect of the Schedules annexed hereto.

ANNEX

SCHEDULE CXXX - ECUADOR

Part I - Goods

Part II - Services

[TO BE COMPLETED]

**ATTACHMENT**      TIMETABLE FOR THE DISMANTLING OF THE TARIFF ADJUSTMENT  
MECHANISM OVER SEVEN YEARS

OVERVIEW

YEAR	NUMBER OF TARIFF HEADINGS REMOVED*	% DISMANTLED
FIRST YEAR	0	0%
SECOND YEAR	0	0%
THIRD YEAR	0	0%
FOURTH YEAR	29	22%
FIFTH YEAR	44	34%
SIXTH YEAR	29	22%
SEVENTH YEAR	28	22%
TOTAL DISMANTLED	130	100%

\*Tariff headings are removed with the initial tariff level for 1995, and are reduced by 10 per cent only in the seventh year (2001).

TIMETABLE FOR THE DISMANTLING OF THE TARIFF ADJUSTMENT  
MECHANISM OVER SEVEN YEARS

RICE BAND PRODUCTS

NANDINA	DESCRIPTION	INITIAL TARIFF (1995)	YEAR REMOVED FROM MECHANISM	TARIFF IN YEAR REMOVED	SEVENTH YEAR
					FINAL TARIFF (2001)
1006.10.90	Paddy rice, except for sowing	75.0%	2001	68.0%	67.5%
1006.20.00	Husked (brown) rice	75.0%	2001	68.0%	67.5%
1006.30.00	Semi-milled or wholly milled rice, whether or not polished or glazed	75.0%	2001	68.0%	67.5%
1006.40.00	Broken rice	75.0%	2001	68.0%	67.5%



BARLEY BAND PRODUCTS

NANDINA	DESCRIPTION	INITIAL TARIFF (1995)	YEAR REMOVED FROM MECHANISM	TARIFF IN YEAR REMOVED	SEVENTH YEAR
					FINAL TARIFF (2001)
1003.00.90	Barley, except for sowing	40.0%	1999	40.0%	36.0%
1107.10.00	Malt, not roasted	40.0%	1998	40.0%	36.0%
1107.20.00	Malt, roasted	40.0%	1998	40.0%	36.0%

WHITE MAIZE (CORN) BAND PRODUCTS

NANDINA	DESCRIPTION	INITIAL TARIFF (1995)	YEAR REMOVED FORM MECHANISM	TARIFF IN YEAR REMOVED	SEVENTH YEAR
					FINAL TARIFF (2001)
1005.90.12*	Hard white maize (corn)	50.0%	2001	45.0%	45.0%
1102.20.00	Maize (corn) flour	50.0%	2000	50.0%	45.0%

\* Opening of Nandina 1005.90.10 in process of approval

WHEAT BAND PRODUCTS

NANDINA	DESCRIPTION	INITIAL TARIFF (1995)	YEAR REMOVED FROM MECHANISM	TARIFF IN YEAR REMOVED	SEVENTH YEAR
					FINAL TARIFF (2001)
1001.10.90	Durum wheat, except for sowing	40.0%	2001	36.0%	36.0%
1001.90.20	Other wheat, except for sowing	40.0%	2000	40.0%	36.0%
1001.90.30	Meslin	40.0%	1999	40.0%	36.0%
1101.00.00	Wheat or meslin flour	40.0%	2001	36.0%	36.0%
1103.11.00	Cereal groats and meal of wheat	40.0%	2000	40.0%	36.0%
1108.11.00	Wheat starch	40.0%	1998	40.0%	36.0%

## POULTRY CUTS BAND PRODUCTS

NANDINA	DESCRIPTION	INITIAL TARIFF (1995)	YEAR REMOVED FROM MECHANISM	TARIFF IN YEAR REMOVED	SEVENTH YEAR
					FINAL TARIFF (2001)
0207.39.00	Poultry cuts and offal, fresh or chilled, except fatty livers of geese or ducks	95.0%	1999	95.0%	85.5%
0207.41.00	Cuts and offal of fowls of the species gallus domesticus, other than livers, frozen	95.0%	2001	85.5%	85.5%
0207.42.00	Cuts and edible offal other than livers, of turkeys, frozen	95.0%	2000	95.0%	85.5%
0207.43.00	Cuts and edible offal other than livers, of ducks, geese or guineafowls, frozen	95.0%	1999	95.0%	85.5%

## YELLOW MAIZE (CORN) BAND PRODUCTS

NANDINA	DESCRIPTION	INITIAL TARIFF (1995)	YEAR REMOVED FROM MECHANISM	TARIFF IN YEAR REMOVED	SEVENTH YEAR
					FINAL TARIFF (2001)
0203.11.00	Meat of swine, fresh or chilled, carcasses and half carcasses	50.0%	1998	50.0%	45.0%
0203.12.00	Hams, shoulders and cuts thereof, with bone in, fresh or chilled	50.0%	1998	50.0%	45.0%
0203.19.00	Other meat of swine, fresh or chilled	50.0%	1998	50.0%	45.0%
0203.21.00	Meat of swine, carcasses and half carcasses, frozen	50.0%	1999	50.0%	45.0%
0203.22.00	Hams, shoulders and cuts thereof, with bone in, frozen	50.0%	1998	50.0%	45.0%
0203.29.00	Other meat of swine, frozen	50.0%	1998	50.0%	45.0%
0207.10.00	Poultry not cut in pieces, fresh or chilled	50.0%	2000	50.0%	45.0%
0207.21.00	Fowls of the species gallus domesticus, not cut in pieces, frozen	50.0%	2001	45.0%	45.0%
0207.22.00	Turkeys not cut in pieces, frozen	50.0%	2001	45.0%	45.0%
0207.23.00	Ducks, geese and guineafowls not cut in pieces, frozen	50.0%	1999	50.0%	45.0%
0210.12.00	Bellies of swine (streaky) and cuts thereof, salted, in brine, dried or smoked	50.0%	1998	50.0%	45.0%
0210.19.00	Other meat of swine, salted, in brine, dried or smoked	50.0%	1998	50.0%	45.0%
1005.90.11*	Hard yellow maize (corn)	50.0%	2001	45.0%	45.0%
1007.00.90	Grain sorghum, except for sowing	50.0%	2001	45.0%	45.0%
1108.12.00	Maize (corn) starch	50.0%	2000	50.0%	45.0%
1108.19.00	Other starches (e.g. rice starch, arrowroot starch)	50.0%	1999	50.0%	45.0%

YELLOW MAIZE (CORN) BAND PRODUCTS (Cont'd)

NANDINA	DESCRIPTION	INITIAL TARIFF (1995)	YEAR REMOVED FROM MECHANISM	TARIFF IN YEAR REMOVED	SEVENTH YEAR
					FINAL TARIFF (2001)
1702.30.20	Glucose syrup, not containing fructose or containing in the dry state less than 20% by weight of fructose	50.0%	1999	50.0%	45.0%
1702.30.90	Other glucose not containing fructose or contain in the dry state less than 20 per cent by weight of fructose	50.0%	1999	50.0%	45.0%
1702.40.10	Glucose containing in the dry state at least 20% but less than 50% by weight of fructose	50.0%	1999	50.0%	45.0%
1702.40.20	Glucose syrup containing in the dry state at least 20% but less than 50% by weight of fructose	50.0%	1999	50.0%	45.0%
2302.10.00	Bran and sharps of maize (corn)	50.0%	2001	45.0%	45.0%
2302.30.00	Bran and sharps of wheat	50.0%	2000	50.0%	45.0%
2302.40.00	Bran and sharps of other cereals	50.0%	2000	50.0%	45.0%
2308.90.00	Other vegetable materials and vegetable waste, of a kind used in animal feeding	50.0%	1999	50.0%	45.0%
2309.10.00	Dog or cat food, put up for retail sale	50.0%	2000	50.0%	45.0%
2309.90.10	Sweetened forage	50.0%	2000	50.0%	45.0%
2309.90.90**	Other preparations of a kind used in animal feeding	50.0%	1998	50.0%	45.0%
3505.10.00	Dextrine and other modified starches	50.0%	1998	50.0%	45.0%
3505.20.00	Glues based on starches etc.	50.0%	2000	50.0%	45.0%

\* Opening of Nandina 1006.90.10 in process of approval

\*\* Other than milk for veal, for which it is proposed to create NANDINA 2309.90.30, which is not part of the System.

MILK BAND PRODUCTS

NANDINA	DESCRIPTION	INITIAL TARIFF (1995)	YEAR HEADING REMOVED FROM MECHANISM	TARIFF IN REMOVAL YEAR	FINAL TARIFF (2001)
0401.10.00	Milk and cream, not concentrated nor containing added sugar or other sweetening matter, of a fat content, by weight, not exceeding 1%	60.0%	2000	60.0%	54.0%
0401.20.00	Milk and cream, not concentrated nor containing added sugar or other sweetening matter, of a fat content, by weight, exceeding 1% but not exceeding 6%.	60.0%	2000	60.0%	54.0%
0401.30.00	Milk and cream, not concentrated nor containing added sugar or other sweetening matter, of a fat content, by weight, exceeding 6%.	60.0%	2000	60.0%	54.0%

## MILK BAND PRODUCTS (Cont'd)

NANDINA	DESCRIPTION	INITIAL TARIFF (1995)	YEAR HEADING REMOVED FROM MECHANISM	TARIFF IN REMOVAL YEAR	FINAL TARIFF (2001)
0402.10.00	Milk and cream, containing added sugar or other sweetening matter, in powder, granules or other solid forms, of a fat content, by weight, not exceeding 1.5%	60.0%	2001	54.0%	54.0%
0402.21.00	Milk and cream, not containing added sugar or other sweetening matter, in powder, granules or other solid forms, of a fat content by weight exceeding 1.5%	60.0%	2001	54.0%	54.0%
0402.29.00	Milk and cream, in powder, granules or other solid form, of a fat content, by weight, exceeding 1.5%, concentrated, containing added sugar or other sweetening matter	60.0%	2001	54.0%	54.0%
0402.91.10	Evaporated milk, not containing added sugar or other sweetening matter	60.0%	2000	60.0%	54.0%
0402.91.90	Other milk and cream, not containing added sugar or other sweetening matter	60.0%	2000	60.0%	54.0%
0402.99.90	Other milk and cream, containing added sugar or other sweetening matter	60.0%	2000	60.0%	54.0%
0404.10.00	Whey, whether or not concentrated or containing added sugar or other sweetening matter	60.0%	2000	60.0%	54.0%
0404.90.90*	Other	60.0%	2000	60.0%	54.0%
0405.00.10	Butter and other fats and oils derived from milk, fresh, salted or melted	60.0%	1999	60.0%	54.0%
0405.00.20	Butter and other fats and oils derived from milk, dehydrated	60.0%	1999	60.0%	54.0%
0405.00.90	Butter and other fats and oils derived from milk, other than fresh, salted, melted or dehydrated	60.0%	1999	60.0%	54.0%
0406.30.00	Processed cheese, not grated or powdered	30.0%	1998	30.0%	30.0%
0406.90.10	Soft cheeses, excluding Colonia type cheese	30.0%	1998	30.0%	30.0%
0406.90.20	Semi-hard cheeses	30.0%	1998	30.0%	30.0%
0406.90.30	Hard cheeses, Gruyere type	30.0%	1999	30.0%	30.0%
0406.90.90	Other cheeses (e.g. of fermented fresh cream)	30.0%	1998	30.0%	30.0%

\*Opening of NANDINA 0404.90.00, in process of approval, in order to exclude demineralized whey (0404.90.10) which is not part of the System.

SUGAR BAND PRODUCTS

NANDINA	DESCRIPTION	INITIAL TARIFF (1995)	YEAR HEADING REMOVED FROM MECHANISM	TARIFF IN REMOVAL YEAR	FINAL TARIFF (2001)
1701.11.90	Cane sugar, raw, not containing added flavouring or colouring matter, other than brown sugar	50.0%	2001	45.0%	45.0%
1701.12.00	Other beet sugar, raw	50.0%	1999	50.0%	45.0%
1701.91.00	Refined cane or beet sugar, and chemically pure sucrose, in solid form, containing added flavouring or colouring matter	50.0%	2000	50.0%	45.0%
1701.99.00	Refined cane or beet sugar, and chemically pure sucrose, in solid form, not containing added flavouring	50.0%	2001	45.0%	45.0%
1702.10.10	Lactose	30.0%	1998	30.0%	30.0%
1702.60.10	Other fructose containing in the dry state more than 50% by weight of fructose	50.0%	1999	50.0%	45.0%
1702.60.20	Fructose syrup containing in the dry state more than 50% by weight of fructose	50.0%	1999	50.0%	45.0%
1702.90.20	Caramel	50.0%	1999	50.0%	45.0%
1702.90.30	Flavoured or coloured sugars	50.0%	1999	50.0%	45.0%
1702.90.40	Other syrups	50.0%	1999	50.0%	45.0%
1702.90.90	Maltose and other solid sugars including invert sugar	50.0%	1999	50.0%	45.05
1703.10.00	Cane molasses	50.0%	2000	50.0%	45.0%
1703.90.00	Molasses resulting from the extraction or refining of sugar, other than cane molasses	50.0%	2000	50.0%	45.0%

SOYA BEAN BAND PRODUCTS

NANDINA	DESCRIPTION	INITIAL TARIFF (1995)	YEAR HEADING REMOVED FROM MECHANISM	TARIFF IN REMOVAL YEAR	FINAL TARIFF (2001)
1201.00.90	Soya beans, whether or not broken, except for sowing	40.0%	2001	36.0%	36.0%
1202.10.90	Ground nuts, not roasted or otherwise cooked, in shell, except for sowing	40.0%	1999	40.0%	36.0%
1202.20.00	Groundnuts, shelled, whether or not broken	40.0%	1999	40.0%	36.05
1205.00.90	Rape or colza seeds, whether or not broken, except for sowing	40.0%	2001	36.0%	36.0%
1206.00.90	Sunflower seeds, whether or not broken, except for sowing	40.0%	2001	36.0%	36.0%
1207.40.90	Sesame seeds, whether or not broken, except for sowing	40.0%	1999	40.0%	36.0%
1207.90.90	Other oil seeds and oleaginous fruits, whether or not broken, except for sowing	40.0%	2000	40.0%	36.0%

## SOYA BEAN BAND PRODUCTS (Cont'd)

NANDINA	DESCRIPTION	INITIAL TARIFF (1995)	YEAR HEADING REMOVED FROM MECHANISM	TARIFF IN REMOVAL YEAR	FINAL TARIFF (2001)
1208.10.00	Soya bean flour	40.0%	2001	36.0%	36.0%
1208.90.00	Other flours and meals of oilseeds or oleaginous fruits, other than those of mustard	40.0%	1999	40.0%	36.0%
2301.20.10	Flours and meals of fish unfit for human consumption	40.0%	1999	40.0%	36.0%
2304.00.00	Oil cake and other solid residues resulting from the extraction of soya bean oil	43.0%	2001	38.7%	38.7%
2306.10.00	Oil cake and other solid residues resulting from the extraction of cotton seed oil	43.0%	1999	43.0%	38.7%
2306.30.00	Oil cake and other solid residues resulting from the extraction of sunflower seed oil	43.0%	1999	43.0%	38.7%
2306.90.00	Other oil cake	43.0%	1999	43.0%	38.7%

## SOYA BEAN OIL BAND PRODUCTS

NANDINA	DESCRIPTION	INITIAL TARIFF (1995)	YEAR HEADING REMOVED FROM MECHANISM	TARIFF IN REMOVAL YEAR	FINAL TARIFF (2001)
1507.10.00	Soya bean oil, crude, whether or not degummed	35.0%	2001	32.0%	31.5%
1507.90.00	Other soya bean oil, whether or not refined	35.0%	2000	35.0%	31.5%
1508.10.00	Crude groundnut oil	35.0%	1998	35.0%	31.5%
1508.90.00	Other groundnut oil, whether or not refined	35.0%	1998	35.0%	31.5%
1512.11.00	Crude sunflower or safflower seed oil	35.0%	2000	35.0%	31.5%
1512.19.00	Other sunflower or safflower seed oil, whether or not refined	35.0%	1999	35.0%	31.5%
1512.21.00	Crude cotton seed oil, whether or not gossypol has been removed	35.0%	1998	35.0%	31.5%
1512.29.00	Other cotton seed oil, whether or not refined	35.0%	1998	35.0%	31.5%
1514.10.00	Crude rape, colza or mustard oil	35.0%	1999	35.0%	31.5%
1514.90.00	Other rape, colza or mustard oil, refined	35.0%	1999	35.0%	31.5%
1515.21.00	Crude maize (corn) oil	35.0%	2001	32.0%	31.5%
1515.29.00	Other refined maize (corn) oil	35.0%	2001	32.0%	31.5%
1515.50.00	Sesame oil and its fractions	35.0%	1998	35.0%	31.5%
1515.90.00	Other fixed vegetable fats and oils and their fractions, whether or not refined, but not chemically modified	35.0%	1998	35.0%	31.5%

PALM OIL BAND PRODUCTS

NANDINA	DESCRIPTION	INITIAL TARIFF (1995)	YEAR HEADING REMOVED FROM MECHANISM	TARIFF IN REMOVAL YEAR	FINAL TARIFF (2001)
1501.00.10	Lard and other pig fat, not refined	35.0%	1998	35.0%	31.5%
1501.00.20	Lard and other pig fat, refined	35.0%	1998	35.0%	31.5%
1501.00.90	Other lard, pig fat and poultry fat	35.0%	1998	35.0%	31.5%
1502.00.11	Fats of bovine animals, sheep or goats, crude	35.0%	1999	35.0%	31.5%
1502.00.90	Fats of bovine animals, sheep or goats, other than crude	35.0%	1999	35.0%	31.5%
1503.00.00	Lard stearin, lard oil, oleostearin, oleo-oil and tallow oil, not emulsified or mixed or otherwise prepared	35.0%	1998	35.0%	31.5%
1506.00.00	Other animal fats and oils	35.0%	1999	35.0%	31.5%
1511.10.00	Crude palm oil	35.0%	2001	32.0%	31.5%
1511.90.00	Other palm oil, whether or not refined	35.0%	2001	32.0%	31.5%
1513.11.00	Crude coconut (copra) oil	35.0%	1998	35.0%	31.5%
1513.19.00	Other coconut (copra) oil, whether or not refined	35.0%	1998	35.0%	31.5%
1513.21.10	Crude palm kernel oil	35.0%	2000	35.0%	31.5%
1513.29.10	Other refined palm kernel oil	35.0%	2000	35.0%	31.5%
1515.30.00	Castor oil and its fractions	35.0%	1999	35.0%	31.5%
1516.20.00	Vegetable fats and oils and their fractions	35.0%	1999	35.0%	31.5%
1517.10.00	Margarine, excluding liquid margarine	35.0%	2000	35.0%	31.5%
1517.90.00	Other margarine	35.0%	2000	35.0%	31.5%
1518.00.00	Animal or vegetable fats and oils and their fractions, boiled, oxidized, dehydrated, sulphurized, blown, polymerized by heat in vacuum or inert gas or otherwise chemically modified	35.0%	1999	35.0%	31.5%
1519.11.00	Stearic acid	35.0%	1999	35.0%	31.5%
1519.12.00	Oleic acid	35.0%	1999	35.0%	31.5%
1519.13.00	Tall oil fatty acids	35.0%	1999	35.0%	31.5%
1519.19.00	Other monocarboxylic fatty acids	35.0%	1999	35.0%	31.5%