

**GENERAL AGREEMENT  
ON TARIFFS AND TRADE**

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Questions and Replies to the Memorandum on  
Foreign Trade Régime (L/7202)

Annex

As foreshadowed in document L/7301, additional questions submitted by contracting parties in connection with the foreign trade régime of Ecuador and the replies thereto provided by the authorities of Ecuador are reproduced hereunder.

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CHAPTER I:	<u>INTRODUCTION</u>
CHAPTER II:	<u>RECENT ECONOMIC CHANGES</u>
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1. Current transactions
2. Trade balance
3. Exports
4. Imports
5. Balance of services
6. Capital transactions
7. International monetary reserves

Concerning the impact on Ecuador's economy of its foreign debt:

1. Ecuador's debt service-to-export ratio in 1992 was 41.6 per cent. How has this situation developed in 1993? Does it appear that the projected figure for 1993 will improve?

The Government of Ecuador is trying to achieve a comprehensive agreement for the payment of its external debt, as a means of establishing suitable conditions for economic growth and social development. The debt service-to-export ratio could improve if this agreement is successfully negotiated.

## CHAPTER V: GOVERNMENT ECONOMIC POLICIES

### 1. Fiscal policy

2. **Page 14:** Concerning recent "price adjustments for basic products", please list items for which Ecuador continues to maintain price controls and describe how the programme is administered. How are price controls applied to imports? What plans does Ecuador have for its price control programme?

Ecuador does not currently apply a price-control policy for either domestic or import prices. Economic policy recognizes the rôle of the market as the fundamental instrument for determining prices. However, in order to protect the general standard of living of the population, the Government sets prices for medicaments, some oil products and gas for household use.

### 3. Exchange system

3. **Page 16:** It is stated that "The official exchange rate is used for ... transactions denominated in Units of Account carried out by the Central Bank of Ecuador." Please describe the kinds of transactions referred to in this passage.

This refers to operations involving Special Drawing Rights between the Central Bank of Ecuador and the International Monetary Fund. The official exchange rate is 390 sucres to one United States dollar.

### 4. **Page 16:** How is the "intervention exchange rate" determined?

The Ecuadorian monetary authorities adopted Resolution No. 858/93 of 1 September 1993, reproduced in Annex A, which simplified the exchange system by eliminating the fluctuation band for the United States dollar previously in force in the intervention market of the Central Bank of Ecuador for public sector transactions. The exchange rate for public sector foreign exchange transactions in the Central Bank of Ecuador is now set weekly at a rate equivalent to the average of the free-market exchange rate of the previous week.

5. **Page 17:** It is stated that "The Central Bank of Ecuador may buy foreign exchange for ... 100 per cent of the f.o.b. value of exports ...". Does this mean that exporters are not required to sell their foreign exchange receipts but may do so if they choose?

The system described in document L/7202 has been amended, as may be seen from Annex A. Exporters are not obliged to sell foreign exchange amounting to 100 per cent of the value of exports to the Central Bank of Ecuador, but rather to private banks and authorized private finance companies.

6. **Page 18:** What is the significance of import transactions based on "import declarations endorsed by the Central Bank of Ecuador" versus any other import transaction? Why are kraft paper and starch imports exempted from this provision?

It should be noted that the information given in the second sub-paragraph on page 18 of document L/7202 describes an exception to the sale of foreign exchange by the Central Bank of Ecuador and does not refer to an "authorization" of importation. In any event, it should be pointed out once

again that the foreign exchange system has been modified with the entry into force of Monetary Board Resolution 858-93 (Annex A). The Central Bank of Ecuador no longer sells foreign exchange to the private sector for the payment of imports: the private sector must obtain foreign exchange on the free market.

The Import Declaration is a non-restrictive formality which must be fulfilled for all imports.

**7. Page 19:** In parts 1 and 2 of the General provisions, reference is made to the conditions for acquisition of foreign exchange "under the industrial warehousing régime" and for "merchandise covered by import declarations endorsed by the Central Bank of Ecuador".

- Please describe these régimes with emphasis on why their difference is significant in the acquisition of foreign exchange.

The system described in document L/7202 has been modified. Please refer to Annex A.

**8. Page 20:** Why is the right of application for foreign exchange limited to "the National Federations of Chambers or authorized banking institutions and finance companies?"

Please see the previous reply.

**9. Page 20:** Concerning the free exchange rate:

- What portion of Ecuador's foreign trade in 1991 and 1992 was serviced at the free-exchange rate compared with (1) the official rate, and (2) foreign exchange secured from the Central Bank or the Committee at the intervention exchange rate?

This information is not available at the moment.

**10. What is the free-exchange rate at this time, and why is it allowed to differ from the official and intervention rates?**

The free market exchange rate fluctuates around 1,950 sucres per US dollar. The official exchange rate is used for accounting purposes in the balance sheet of the Central Bank of Ecuador.

**4. Labour and employment policy**

**11. Page 21:** We understand there are a number of points in the current Labour Code that serve as disincentives to investors, such as a requirement for Government approval for dismissal of employees for cause.

- Please give us a general overview of the responsibilities of an employer, including training requirements, dismissals, and worker guarantees.

The Political Constitution of the Republic and the Labour Code guarantee, the following basic workers' rights among others: freedom of association, right to form trade unions and freedom for them to carry on their activities, right to strike and stop work, right to contractual employment and right of collective bargaining. The law guarantees that no-one may be obliged to carry out free or forced labour, and prohibits work of minors under fourteen years of age. Various legal provisions also establish specific obligations with regard to working conditions, treatment of workers, work safety

measures and work accident compensation. Ecuador has signed a number of multilateral labour instruments.

**12. Your Government has indicated an intent to reform the Labour Code. Has any such legislation been introduced?**

The Law Amending the Labour Code was adopted in November 1991 in order to update labour legislation and establish a suitable legal framework for worker-management relations that would allow balanced economic and social development.

The National Government intends gradually to bring labour legislation into line with the country's new realities, which will have positive repercussions for those involved in production processes.

**13. Are there legal limitations on the right to hire foreign employees, such as visa requirements?**

Foreign employees must obtain a visa in order to work in the country.

## **CHAPTER VII:**

## **TRADE POLICY**

**2. Trade policy instruments**

**14. Ecuador appears to be establishing a price-band system for imports of some agricultural products.**

- **If so, would Ecuador please indicate which products will be included in the programme?**

By Decree No. 409-A of 5 January 1993, published in Official Journal No. 103 of 8 January 1993, the Government of Ecuador established the application of specific levies in addition to the ad valorem duties established in Article 2 of the Import Tariff Law. These will be applied solely when the cost of imports is lower than the minimum reference price for imports of agricultural products. When the import price is above a specified ceiling, the Decree provides for the notification of the import tariff by reduction of the ad valorem duty to zero. The specific levies are charged at the time of settlement of the imports, on the basis of the c.i.f. reference price in force for the settlement fortnight. The reference price is a fortnightly average of the daily prices recorded in the world market.

The price-band system applied by Ecuador is neither discriminatory nor political, but rather aimed at correcting the prices of products listed in Annex 1, and is considered to be in keeping with the spirit of the contents of the Uruguay Round Draft Final Act.

**15. How would such a programme be operated in conformity with the CET of the Andean Pact?**

How this programme will operate in relation to the CET is being studied by the Andean Group.

**16. Please list all import prohibitions, quotas, licensing restrictions or other quantitative restrictions on imports, by tariff line, that are authorized under Ecuadorian law and/or currently applied. Which imports require prior authorization, by tariff line if possible?**

A list of the products subject to import prohibitions in conformity with Articles XVIII and XXI of the General Agreement appears in Annex 2.

Tariff lines covered by the prior authorization system are listed in Annex 3.

**17. Does Ecuador ban the importation of used cars? If so, does Ecuador believe that such a ban is consistent with GATT provisions. If so, under what Articles of the General Agreement would such a measure be justified? If not, will Ecuador eliminate this ban in the context of its GATT accession?**

Ecuador considers that the prohibition on the import of used motor-vehicles is in conformity with paragraphs 9, 10 and 11 of Article XVIII:B of the General Agreement. The terms of the prohibition are specified in Annex B.

**18. Please describe Ecuador's standards and certification régime as it is applied to imports. Does Ecuador intend to adhere to the Standards Code at the time of accession? How can importers and foreign exporters make their views known in the national standards setting process?**

The Standards Catalogue of the Ecuadorian Standardization Institute (INEN) is attached as Annex H.

Customs check compliance with the standards and specific origin requirements. The declaration of origin must be certified by a government body specially authorized by the exporting country for that purpose or by a trade association approved by the government body, under the latter's supervision and responsibility.

Ecuador is currently evaluating the implications of joining the various Tokyo Round Codes.

**2. Trade policy instruments**

**2.1 Customs tariff**

**1(b) Current situation**

**19. Page 28: In paragraph 2, the tariff ceiling is listed as 27 per cent (except motor-vehicles). However, on page 33, the table lists no products with a tariff over 20 per cent (except motor-vehicles).**

- **Is Ecuador's maximum applied tariff level in fact 20 per cent or 27 per cent?**
- **Will Ecuador's maximum tariff be 20 per cent in January 1994 after implementation of the Andean Pact CET?**

The information given in the second paragraph on page 28 is merely a clear and succinct account of the unilateral liberalization effort made by Ecuador since May 1992 in the tariff field. The document indicates that at that time the tariff ceiling had been reduced from 290 per cent to a level of 27 per cent. Subsequently, the tariff ceiling was further modified, in the direction of greater openness of the economy, and reached the level indicated on page 33, pursuant to the decisions adopted by the Andean Group in connection with the Common External Tariff.

Nevertheless, it should be borne in mind that the table on page 33 represents averages of the tariffs currently applied, which are not comparable with the ceilings established, by economic group, in the Common External Tariff.

**20. Page 28:** Paragraph 4 indicates that the draft National Customs Service Law now before the Ecuadorian Congress would replace the 1 per cent customs fee and 2 per cent special tax currently applicable to imports, by "financing sources different from the present non-tariff sources".

- Please indicate the form that such different financing sources take?

Ecuador is studying the relevance of applying alternative sources of financing, but in no case will this represent discrimination of any kind against imports.

**21. We understand that the draft National Customs Service Law would also replace the customs policy with a new enforcement organization.**

- Please briefly describe the structure and responsibilities of the new organization and how it would differ from the current programme. Would this new customs authority be responsible for import valuation in addition to inspection and documentation?
- Does the new law have other provisions relevant to trade administration and GATT provisions? For example, does it include provisions to alter any current trade measures?
- When do you anticipate enactment by Congress of the draft National Customs Service Law?

As this is a draft law that has not yet been examined by the National Congress, it would not be appropriate to specify new modalities, structures or other provisions it may eventually contain.

**22. Has Ecuador supplied tariff and trade data for a recent representative period by tariff item by supplier country?**

This information is available in the GATT Secretariat for consultation by the contracting parties.

## **2. Trade policy instruments**

### **2.2 Valuation rules**

**23. Page 29:** Section 2.2 indicates that Ecuador has adopted the rules and provisions of the GATT Customs Valuation Code to calculate the taxable base of ad valorem taxes on import. Does Ecuador intend to join the Customs Valuation Code at the time of its GATT accession?

Ecuador is currently evaluating the implications of joining the various Tokyo Round Codes.

## **3. Treatment of imports**

**24. Please confirm that the national value added tax (VAT) of 10 per cent is applied to imports, and indicate the valuation basis for its application. Are there VAT rates other than 10 per cent? What domestic and imported products are exempted from the application of the VAT?**

VAT is applied to imports comprehensively and at a standard rate. Imports by the public sector do not pay VAT. The taxable base in the case of imports is the result of adding to the c.i.f. value the taxes, tariffs, fees, duties, surcharges and other costs appearing in the import declaration and other relevant documents.

The list of products exempted from VAT is given in Article 54 of the Law on the Internal Taxation System, the full text of which is available in the GATT Secretariat for consultation by contracting parties.

3. Treatment of imports

1. Tariff Treatment of Goods Imported for Consumption

25. **Concerning conditional imports, which are given "specific restrictions" on their use and ownership within Ecuador (page 29):**

- **What are examples of these restrictions?**
- **In determining conditional imports, please describe any provisions or restrictions based on the exporting country or exporting trade régimes (e.g. LAIA, EC)**

It should be pointed out that the original text in Spanish (page 32) does not refer to conditional or unconditional importation, as this régime does not exist in Ecuador. Document L/7202 describes the exceptional situation, as regards "nationalization" (a different word from importation), of imported goods which have not paid customs duties and therefore remain subject to the fulfilment of specific conditions as regards their use and ownership.

The "nationalization" of imported goods implies payment of customs duties. "Nationalization" without such payment, by reason of an exemption provided for by law, is subject to the fulfilment of certain conditions regarding the use and ownership of the good.

26. **Concerning exemptions from customs duties (pages 29-30):**

- **Do the tariff exemptions provided for State-owned enterprises include imports for the production process or other operation of firms that engage in commercial activities in competition with private firms?**

The exemption covers imports of private-law entities that have concluded contracts with public sector agencies and bodies for the construction of works or provision of services for charitable or educational purposes.

27. **What portion of Ecuador's recent imports entered duty-free under the exemptions listed in this section?**

No statistics are available on this subject.

2. Special customs régime (pages 31-32):

(a) Temporary admission:

28. **What documentation is required? Is the importer required to secure a bond while the good is in country?**

For the Ministry of Finance to authorize temporary admission, it is necessary to provide details of all the goods on the cargo manifest, submit a Customs Declaration and lodge a sufficient guarantee for the value of the duties and taxes that would be required for the importation with release for consumption ("nationalization") of the goods.

**29. It states that "machinery and equipment" may be imported into the country without specified taxes and duties until "the conclusion of validly signed contracts". Are these contracts open to both private and State parties?**

The expression used in document L/7202 refers to the extension of the temporary admission period: if necessary, the machinery and equipment may remain 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.

**30. Please describe any restrictions and stipulations on the creation of "validly signed contracts" (e.g. are there any conditions on specific foreign business or State parties engaged in such contracts?)**

There is no relationship between the content of the question and the temporary admission régime. Without exception, a contract is validly signed if it complies with the law.

**(b) Industrial warehousing**

**31. You mention that inputs or raw materials for production of re-exported goods may be stored at special warehouses overseen by factories. Are these factories private or State-owned?**

These factories are private warehouses authorized by the Ministry of Finance.

**(c) Temporary exportation**

**32. Page 31: Concerning provisions for temporary exportation, goods may be dispatched abroad for a period of six months and returned without payment of duties.**

- **Does the temporary exportation clause apply only to goods manufactured in Ecuador?**

The temporary export clause applies to "nationalized" goods (imports released for consumption) or goods manufactured in Ecuador.

**(f) Duty drawback system**

**33. Please describe the system more fully. Does Ecuador implement its drawback system in a way that ensures remission will not exceed the amount of import charges actually levied on only those goods that are physically used to make the exported product?**

The system consists of the full or partial refund of internal taxes paid on raw materials and other foreign imports used in the production, processing or packaging of goods destined for export.

**34. Under the current Customs Law, implementing regulations for a draw-back programme were never implemented.**

**35. Does Ecuador intend to implement regulations or does the proposed Customs Law offer new guidelines?**

At the time of writing of document L/7202, the drawback system had not been implemented. Executive Decree No. 762, published in Official Journal No. 193 of 19 May 1993, was subsequently issued to put the system into practice. The régime is open exclusively to natural or legal persons engaged



in the export of products involving imported foreign components. Beneficiaries must comply with the requirements laid down in the law and its regulations.

As the draft National Customs Service Law has not been examined by Congress, it would be out of place to specify possible new modalities, structures or other provisions it may establish.

(g) Replacement goods

**36. It is noted in pages 32-33 that duty-free imports are permitted if they replace similar goods in the local market for development projects or works of national priority.**

- **Please give examples of "national priority" projects.**

Projects are classified as having priority by the National Development Council (CONADE). They include the construction of social housing, hydro-electric power stations, highways, irrigation systems and canals, drinking water infrastructure, hospital equipment and schools.

**37. Please define the meaning of the terms "exonerative" and "suspensive" régimes referred to in the Kyoto Convention. What do exonerative and suspensive customs procedures entail under the Ecuadorian law?**

An exonerative régime is one that establishes customs tax exemptions within the limits and conditions laid down in the Customs Law. Customs tax exemptions are established solely by law, for which purpose the prior favourable opinion of the Ministry of Finance is required.

A suspensive régime is one that allows the entry or exit of goods into or from the customs territory with suspension of the payment of import or export duties and taxes. The suspensive régimes are called Special Régimes in the Customs Law and are listed on pages 31 and 32 of document L/7202.

The customs procedures for the exonerative régime are spelled out in Chapter V of the General Regulation of the Customs Law, Articles 188-236. In the case of the special or suspensive régimes, the procedures are specified in Title III, Articles 315-435, of the General Regulation of the Customs Law; in the "Regulation for the Control and Inspection of Natural or Legal Persons importing goods with the suspension of payment of taxes ..."; and the "manual of procedures for the application of the provisions of the Customs Law and the Regulation thereto, with respect to the administration of the system of customs guarantees". These legal texts are available in the GATT Secretariat for consultation by contracting parties.

4. Import tax systems

1. Import taxes (pages 34-35):

(a) Tariffs

**38. We note that the 1 and 2 per cent levies referred to in this section, when combined with Ecuador's current applied tariff duty levels of 2, 7, 12 and 17 per cent would match the Andean Pact CET levels of 5, 10, 15 and 20 per cent. Does Ecuador intend to incorporate the taxes in its tariff schedule?**

**39. Will these charges be replaced by other border charges of some kind?**

Ecuador is studying this possibility.

(b) Control fee

40. Several fees are listed, i.e. a fee of 0.5 per cent for imports under special procedures and a fee of 1 per cent for goods entering under special customs régimes.

- Since the fees are "ad valorem", how can they accurately reflect the cost of providing the services? Are they administered in a way that discriminates against imported products?

It should be pointed out that the control fee of 0.5 per cent concerns "goods entering the country under special customs régimes" (see document L/7202) and not under "special procedures" as the English translation mistakenly indicates.

Bearing in mind the common difficulty encountered by the customs of any country in the world to reflect accurately the cost of the service, the customs law empowers the Ministry of Finance to set the values for each service and arrange for its collection. In any case, these fees are payments for services provided and do not constitute direct or indirect protection for domestic products or a charge of a fiscal nature applied to imports.

The application of the control fee does not discriminate as between products or their origin.

(d) Transit fee

41. Please indicate the relationship between the cost of services rendered and the transit fee described on page 35.

Every service provided by the customs carries a fee. Fees are charged for the provision of general services, and as such cover only the costs of the services concerned. Transit fees are applied in accordance with the provisions of Article V of the General Agreement.

2. Import formalities (pages 35-36):

42. Concerning the Customs Declaration, please list or illustrate the sort of "authorizations and certifications by official entities" that might be required. Approximately what portion of total imports require such special authorizations, etc?

Please see Annex 3.

43. Which, if any, of these procedures and documentation requirements would be affected by the proposed Customs Service Law?

The draft National Customs Service Law has not yet been discussed by the Congress. After approval by Congress it will be transmitted to the Executive, which has the power to promulgate it or veto it partially or totally. Consequently, the procedures and documentation requirements that may be affected by possible changes cannot be anticipated.

In any event, Ecuador can provide assurances that the import procedures will be in conformity with the General Agreement.

44. Is the "sanitary register" referred to on page 45 of L/7202 one of the "special authorizations" required in the Customs Declaration?

The documents that must accompany a Customs Declaration are the following: original or negotiable copy of the bill of lading, air consignment note or consignment note; commercial invoice; and certificate of origin, if required.

However, 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 may 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 is required to obtain it.

The purpose of the Sanitary Register, as stated in document L/7202, is to guarantee that the consumption or use of a product is not harmful to public health and that the product may therefore be freely marketed on Ecuadorian territory.

5. Treatment of exports (page 37):

45. Does Ecuador maintain any export bans?

Please refer to the information provided on page 37 of document L/7202.

6. Export promotion and development strategies: tax aspects

46. Page 38: Please describe the sorts of investments whose current tax benefits are preserved by transitional provision No. 4 of Law No. 56. Are any of these investments associated with exports? Is it certain that the exemptions will cease in 1993?

Preferential treatment is preserved in the case of: new investment by enterprises to increase exports of non-traditional products; investment in afforestation or reafforestation activities approved by the Ministry of Agriculture and Livestock (this deduction not to exceed 30 per cent of the taxable base for the immediately previous financial year); and allocations, donations and grants made by legal and natural persons to legally constituted non-profit-making institutions engaged exclusively in charitable works, cultural, educational, research, health and sport activities (deduction of up to a maximum of 10 per cent of the taxable base for the immediately previous financial year).

The foregoing is an important part of Ecuador's economic development programme and is in keeping with Article 14 of the GATT Subsidies Code.

As from 1994 all exemptions, deductions and other preferential treatment with regard to income taxes under promotional laws will be eliminated except for those mentioned in the first paragraph of this reply.

47. Page 38: It states that "Taxable income will also be reduced by an amount equal to commissions for exports covered by the respective contract... and that when exports of non-traditional products are carried out, the figure may be as much as 15 per cent."

- Please define the term "non-traditional" exports in the context of these exemptions. Can Ecuador supply a list of such export products?

Ecuador considers that its traditional export products, excluding oil and oil products, are bananas, cocoa beans and coffee beans. Non-traditional exports consist of all other goods produced for marketing abroad.



**48. Please elaborate on the nature of this tax exemption.**

**49. How are the remaining exemptions from direct taxation consistent with the provisions of Article VI and the Subsidies Code, i.e., that export exemptions from direct taxation are inconsistent with the GATT.**

Under its development strategy, Ecuador recognizes the importance of providing the private sector with a suitable framework of freedom and incentives to increase investment and private-sector participation in economic growth. Accordingly, and given the pressing need to diversify production, it grants the above exemption.

Consequently, as a developing country Ecuador repeats once again that such exemptions are fully in keeping with the provisions of the General Agreement and the GATT Subsidies Code.

**50. Page 38. Please list by tariff line the products subject to the Special Consumption Tax (ICE) - cigarettes, beer, carbonated beverages, mineral and purified water, alcohol and alcohol products - whose levels range from 5 to 260 per cent.**

The products subject to the Special Consumption Tax (ICE), by tariff line, are the following:

<u>Product</u>	<u>ICE Level</u>
Foreign brands of cigarettes made from light tobacco, with or without filter, manufactured under licence or imported	260 per cent
National brands of filter cigarettes made from light tobacco, special packaging	240 per cent
National brands of filter cigarettes made from light tobacco, ordinary packaging	220 per cent
National brands of cigarettes made from light tobacco, without filter, ordinary packaging	200 per cent
Cigarettes made from dark tobacco, national with filter or imported	70 per cent
Cigarettes made from dark tobacco, national without filter	30 per cent
National cigarettes made from black tobacco from the frontier region	10 per cent
Beer	85 per cent
Carbonated beverages	20 per cent
Mineral water and purified water	5 per cent
Alcohol and alcoholic products other than beer	100 per cent

**51. How are these levels determined?**

In accordance with Article 53 of the Ecuadorian Constitution, taxes may be established, modified or eliminated only by legislative act of the competent body. Accordingly, it is for the National Congress to enact laws governing any tax matter.

**52. Are imports from LAIA or the Andean Pact subject to the tax?**

The Special Consumption Tax (ICE) is levied on the above-mentioned products whether of domestic origin or imported (Article 71 of the Internal Taxation Régime Law).

**53. Please specify the valuation basis for application of this tax and the point of sale at which domestic and imported products are taxed.**

The relevant charge is determined by applying the above-mentioned 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 is levied on transfer by the manufacturer, whether for consideration or free of charge. In the case of consumption of imported products, the tax is levied upon customs clearance of the product.

**CHAPTER VIII: OTHER TRADE POLICY INSTRUMENTS**

**1. Prevention of unfair business practices**

**54. Page 40:** It states that under Chapter VIII of the Cartagena Agreement, the Board of the Agreement must provide prior authorization before any Agreement signatory can adopt "corrective measures" to "prevent or eliminate practices that could distort trade competition within the Andean sub-region".

- (a) Does this refer to anti-dumping/countervailing duties or to some other kind of corrective measure?

This does refer to countervailing or anti-dumping duties.

- (b) If the former, does the prior authorization of the Board apply only to trade among the Cartagena Agreement signatories or to trade involving other countries as well?

Decision 283, Article 2, of the Commission of the Cartagena Agreement establishes the cases where the Andean countries may request the Board for the authorization or power to prevent or correct distortions in trade competition in the sub-regional market arising out of dumping or subsidies; however, commitments under the integration process aimed at strengthening the customs union may lead to the imposition of anti-dumping duties on third countries in the sub-regional market pursuant to paragraphs (c) and (d) of the same Article.

**55. Page 41:** It states that the Minister of Finance has the authority to impose anti-dumping or CVD duties following a report from the Special Commission of the Tariff Committee. Insofar as the membership of the Special Commission is drawn from government agencies as well as the industry which filed the unfair trade complaint, how is impartiality assured in this process? What is the nature of the report and underlying analysis which the Special Commission would make?

The provisions of Ecuadorian law ensure the impartiality of the Special Commission in the procedure for the establishment of anti-dumping or countervailing measures, as representatives of public institutions or enterprises and producers', importers' or exporters' associations may also participate in the Special Commission for the purpose of providing information. In addition, the responsible authority will give priority to the convening of meetings among the interested parties in order to enable them to present their views and try to achieve a direct settlement among them.

The interested parties will also be informed of the initiation of the investigation and will be requested to provide the necessary information for the investigation of the producer, exporter or government, as the case may be, of the product concerned by the practice. During the investigation it is possible to have access only to general information and non-confidential documents as well as to summaries or analysis of the evidence. The competent bodies, authorities and officials must not disclose the evidence or information they have received in the course of the investigation when such information is of a confidential nature.

The presence of the representative of the industry that produces the good concerned by the unfair business practice cannot in any case give rise to a conflict of interest, as he only intervenes in the investigative stage.

In accordance with the relevant Regulation (Decree 2722-A, published in Official Journal No. 780 of 30 September 1991), the Special Commission issues a an opinion on the unfair business practices.

**56. Page 40: Andean Pact Decisions 283, 284, and 285 may have some consequences for Ecuador's accession. Would Ecuador please provide these documents?**

If this documentation is not available in the GATT Secretariat, Ecuador sees no difficulty in providing additional copies (see Annex C).

**57. Page 41: The final paragraphs of this section describe Ecuador's anti-dumping code, which is based on Andean Pact Decision 283.**

- **Do Ecuador's implementing regulations provide a specific time frame for an investigation (e.g., nine months)?**

The investigation has to be carried out within a period of four months from the date of acceptance of the complaint. This period may be extended by two months by the Special Commission, but in that case the Special Commission may recommend the application of provisional or preventive measures on the basis of the information available.

When the injury or threat of injury is serious enough to require provisional preventive or corrective action, a prior investigation will be carried out on the basis of available information within twenty days of acceptance of the request, and within five working days the Special Commission will issue its decision on the adoption of corrective measures (Decree 2722-A Article 19).

**58. When considering injury to Ecuadorian industry, are exporting countries valued on a cumulative basis or individually?**

The determination of the existence of serious injury or threat of serious injury and the causal relationship with dumping or subsidization is based, among other things, on the examination of:

- (a) the volume of imports subject to the practices concerned, in particular to determine whether they have increased significantly either in absolute terms or in relation to Ecuador's production and consumption and imports;
- (b) the prices of the dumped or subsidized imports, in particular to determine whether they are considerably lower than the prices of like products as a result of the unfair business practices;
- (c) The ensuing effects on local industry, as deduced from trends in production, domestic sales, market share, profits, productivity, return on investments, utilization of capacity,

actual and potential negative effects on cash flow, inventories, employment, wages, growth and investments.

**59. Will Ecuador adhere to the Anti-Dumping Code?**

Ecuador is assessing the implications of joining the various Tokyo Round Codes.

**4. Consumer Protection Law**

**60. Concerning the Consumer Protection Law:**

- Please describe in more detail the provisions of this law as they are applied to imports.
- How does the law affect the importation of raw materials from foreign countries?
- Are foreign exporters of raw materials for goods produced by Ecuadorian manufacturers responsible for infringements of the Consumer Protection Law? If so, please detail.

The purpose of the Law is to defend and protect consumer rights. Its obligations extend to all private and public sector natural and legal persons engaged in activities relating to the production, import, export, distribution or marketing of goods and provision of services. The law details the obligations of suppliers in connection with the disclosure of the characteristics and properties of goods, the effects of their consumption and safety of use of goods and services offered to consumers, the presence of contaminants, guarantees to cover defects in manufacture and operation, and as regards compliance with the technical standards, regulations, resolutions and codes of practice officially adopted by the Ecuadorian Standardization Institute (INEN). The Institute must prepare a list of imported products considered essential but dangerous for industrial or agricultural use and for consumption, such as insecticides, pesticides and other chemical products, for which an import authorization is required.

This Law does not cover the sphere alluded to in the third question of this section.

**5. Price setting in the pharmaceutical sector**

**61. Page 44:** The text indicates that Decree Law No. 152 creates a National Council for the Setting of Prices of Medicaments for Human Use, which sets prices for the medicaments to be sold on the domestic market.

- We understand that the Consumer Defence Law of Ecuador is the basis for setting prices and that procedural guidelines should be published at this point. Is that document available?

The document requested appears in Annex D.

**6. Government procurement**

**62. Page 44:** Please indicate the requirements foreign companies must meet in order to bid on government contracts, including local representation requirements, taxes or fees, if any, not applied to domestic bidders.



With regard to precontractual procedures, the Law on Government Procurement provides that if the bidder is a legal person constituted in Ecuador it must provide a certificate of legal personality and of compliance with the obligations laid down by the Office of the Supervisor of Companies or the appropriate supervisory body; if the bidder is a foreign enterprise, it must submit a certificate issued by the Consul of Ecuador, based on the declaration of the competent authority of the country where the enterprise has its principal domicile, concerning its legal personality and capacity to enter into contracts in Ecuador. Furthermore, all legal persons must submit evidence of the appointment of a legal representative or attribution of power of attorney in Ecuador, duly legalized and registered and valid on the date of submission of the bid.

There is no discrimination in the charging of taxes or fees or presentation of guarantees as between national or foreign bidders.

**63. Does the Ecuadorian Procurement Code consider reciprocity?**

The government procurement law does not consider reciprocity. The law does not discriminate between imported products and does not give special treatment to domestic suppliers.

**7. State enterprises**

**64. Page 45: When does the Law on the Modernization of the State become effective? How will the new law affect current procurement agreements between Ecuadorian State-owned enterprises and foreign firms?**

The legislature is expected to adopt the Law on the Modernization of the State by the end of this year. In any event, until the draft legislation actually becomes law, it would be out of place to refer to its possible effects on current procurement agreements.

**65. Are there currently in existence in Ecuador any State-operated or State-sanctioned monopolies on the production or trade of goods, e.g., on fertilizers, cement, petroleum products, tobacco products, alcoholic beverages, dairy products, meat, forest products or agricultural commodities?**

There are no State or private monopolies for any of the above-mentioned products, with the exception of natural gas and some petroleum products.

**66. To what extent do Ecuador's State-owned enterprises engage in the manufacture, trade, and distribution of commodities? Do any of these enterprises enjoy a State-sanctioned monopoly of production and distribution, or any other benefit not granted to private firms?**

The participation of Ecuador's State-owned enterprises in the manufacture, trade and distribution of commodities is not representative, and there are no monopolies in the sense suggested by the question, except in the case of natural gas and some petroleum products.

**67. What portion of Ecuador's imports and non-petroleum exports are accounted for by State-owned enterprises?**

These enterprises accounted for about 2 per cent of total imports in 1992. State-owned enterprises do not participate in non-petroleum exports.

**68. Is Ecuador willing to observe Article XVII in the operations of these firms, including notification and description of their State-trading activities?**

Yes.

**CHAPTER IX: PARTICIPATION IN INTEGRATION AGREEMENTS AND  
OTHER PREFERENTIAL ARRANGEMENTS**

**1. Latin American Integration Association**

**69. Page 46: What portion of Ecuador's imports are currently subject to preferential tariff rates under its various free-trade agreements and other preferences? Are any sectors of its trade schedule exempt from such preferences?**

Please refer to the information in Annex E, which provides details of all the agreements negotiated by Ecuador with LAIA member countries on trade preferences.

**70. Sub-paragraph (i) describes a Market Opening List between Ecuador and LAIA members. Is that list available, including duty reductions by product?**

The list has been provided by the LAIA Secretariat and is available in the GATT Secretariat (Annex F).

**2. The Cartagena Agreement**

**2.2 The Common External Tariff (CET)**

**71. Page 51: The fourth paragraph on the page indicates Ecuador will obtain a list of exceptions for some 1,000 products under the CET arrangement.**

- **Has the list of exceptions been finalized and is it available?**

The list appears as Annex G and corresponds to the list adopted by Decision 335 of the Commission of the Cartagena Agreement.

**72. We understand that certain industries, namely agriculture and automotive, will have different tariff arrangements and for the latter, local content requirements. Please elaborate on these and any other sector specific differentiations from the CET.**

**73. Under the CET arrangement, will individual countries maintain the right to determine duty waivers?**

In general, since the entry into force of Decision 232 of the Commission of the Cartagena Agreement, the Andean countries do not have the right to establish duty-free exemptions that infringe sub-regional tariff commitments, except in the cases provided for by the above-mentioned Decision or by Decision 322 relating to the negotiations with the LAIA countries.

**74. How will the CET be applied to the trade preferences established through LAIA agreements?**

The preferences negotiated under the LAIA partial-scope agreements were agreed taking account of the member countries' tariff: the margin of preference is maintained.

**75. What portion of Ecuador's trade volume and value with the members of the Andean Group is covered by the preferences of this agreement?**

All Ecuador's trade with the Andean Group countries is carried out within the free-trade area. With regard to the percentage of import trade accounted for by the 1,000 products included in the list of exceptions, the figure was somewhere between 45 and 50 per cent of the value of total imports in 1992.

## **CHAPTER X: FOREIGN INVESTMENT AND TECHNOLOGY**

### **1. Legal framework**

As noted on page 53:

**76. Does Ecuador exclude or require prior approval in certain investment situations? We understand that restrictions remain in the fishing and media areas and that investments along the border are subject to government approval.**

Without prior approval, direct foreign investment may be made in all sectors of the economy under the same conditions as investment by Ecuadorian natural or legal persons.

The sole areas where foreign investment remains prohibited are defence activities, communication media and internal air transport, while minority shareholding is permitted in the fishing sector.

Under Article 18 of the Political 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.

**77. Please give us a broader overview of Ecuador's most recent investment law, Decree 415 and note the changes over previous regulations:**

The Ecuadorian legislation introduced in January 1993 lifted the barriers to foreign investment. The current rules allow unrestricted repatriation of profits, remove the restriction on foreign shareholdings in excess of a limit of 49 per cent in any enterprise, and eliminate the requirement of prior approval of investment by the competent Ministry for most sectors. Investments are registered solely with the Central Bank of Ecuador, and technology contracts with the Ministry of Industry, Trade, Integration and Fishery (MICIP).

Foreign investment is currently allowed in the financial sector. With the approval of the Securities Market Law, the tax system applied to foreign investors is now the same as that for national investors.

### **10. Income remitted abroad**

As noted on page 55:

**78. It is our understanding that remittances are subject to an 11 per cent tax, which added to the local income tax of 25 per cent, creates a 36 per cent tax for foreign investors. However, it is also our understanding that the recently enacted Securities Law eliminates the 11 per cent tax. Can you confirm this?**

Article 71 of the new Securities Market Law, published in the Supplement to Official Journal No. 199 of 28 May 1993, repealed Article 39 of the Law on the Internal Taxation System relating to the taxes on income remitted abroad. Consequently, the tax system applied to any Ecuadorian or foreign investor has been made the same.

**79. We understand that the mining and petroleum sectors are subject to additional taxes, including a 40 per cent withholding tax and progressive production taxes. Are these taxes still in effect?**

From the standpoint of income tax, national or foreign natural or legal persons in the mining sector receive the same treatment as others operating in the country.

Mining activity is subject to a 3 per cent Patent Tax, calculated on the value of gross output of all mineral ore won, and to a similar percentage for mining royalties.

In view of its importance for national development and the special characteristics of the petroleum sector, this industry receives specific tax treatment under the Law on the Internal Taxation System, consisting of:

- (a) payment of income tax at a flat rate of 44.4 per cent; in the case of profits ploughed back within the country, this rate is reduced to 25 per cent on the amounts reinvested; and
- (b) an additional progressive tax on production, using as a reference average daily output on a monthly basis per area covered by the contract:
  - up to 30,000 barrels a day of oil per day or the gas equivalent: no tax;
  - over 30,000 barrels, payment of a basic tax of 3 per cent plus 1 per cent for each 10,000 additional barrels, up to a maximum of 30 per cent.

**2. Remittance of profits and other guarantees**

**80. It is stated on page 53 that foreign enterprises, "have the access to mechanisms for promoting exports."**

- **Please describe in further detail the mechanisms foreign enterprises have in promoting exports within Ecuador?**

Since foreign enterprises have access to the export promotion and development mechanisms under the same conditions as Ecuadorian or joint enterprises, please refer to document L/7202 pages 36-39, (English version) sections 5 and 6, "Treatment of Exports" and "Export promotion and development strategies: tax aspects".

**81. Please describe any restrictions on export promotion for foreign enterprises (e.g., countries within Andean trade régime v.s. countries that are not).**

Please refer to the previous reply.

**LIST OF ANNEXES**

**Annex No.**

- |    |   |
|----|---|
| 1. | List of "price band" products   |
| 2. | List of prohibited imports  |
| 3. | Tariff items subject to prior authorization                                 |
| 4. | Import and export trade flows   |
| A. | Monetary Board Regulation 358-93 on exchange policy                         |
| B. | Monetary Board Regulation 863-93 on the importation of motor vehicles       |
| C. | Decisions No. 283, 284 and 285 of the Commission of the Cartagena Agreement |
| D. | Law 152 creating the Pharmaceutical Price-Setting Committee (pending)       |
| E. | Preferential trade agreements negotiated in the LAIA (pending)              |
| F  | LAIA Market Opening List (pending)  |
| G  | List of CET exceptions  |