

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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Communication from Ecuador

Addendum

The following communication was submitted by the Mission of Ecuador on 14 June 1994.

The Permanent Mission of Ecuador has the pleasure to transmit herewith the replies to the questions raised by various contracting parties, for circulation in the GATT working languages at the next meeting of the Working Party on the Accession of Ecuador.

ADDITIONAL INFORMATION FOR THE CONTRACTING PARTIES

General remarks concerning the foreign trade regime

Ecuador's trade policy over the past few years has favoured mutual trade without discrimination of any kind in an effort to reintegrate the country into an international economic system in order to modernize its production structure, reconvert its industry and profit from its comparative advantages.

Ecuador's progress has been achieved on its own initiative. At the meeting of the Working Group last April, Ecuador pointed out that in recent years it 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 has 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 has 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, it has gone a long way towards bringing its customs duty regime into line with GATT standards, an indication of its considerable internal effort towards opening up its economy and promoting commercial transactions with the contracting parties.

Ecuador has 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 have been taken towards the abolition of monopolies and privatization of activities in which the State participated, a fact which should favour a competitive environment for economic operators in Ecuador.

Similarly, foreign investment legislation has 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 have been carried out for some years now with a view to providing better facilities so as to make foreign investment in Ecuador more attractive and profitable. The latest reforms in this field provide a wide range of investment possibilities for foreign investors, who are guaranteed the same conditions as national investors, while a number of restrictions and conditions which used to limit the inflow of foreign capital have been eliminated.

Ecuador and the International Monetary Fund have concluded their negotiations for the signature of a Letter of Intent setting forth an economic programme for 1994-1995, supplementing the intensive efforts over the past few years aimed at restructuring the economy with a view to strengthening overall macroeconomic equilibrium.

In short, the country has continued with this new stage in the liberalization of its foreign trade relations, as demonstrated, *inter alia*, by its firm intention of acceding 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.

In response to the additional concerns expressed by various contracting parties, Ecuador would like to provide the following information:

1. Changes introduced since May 1993

(a) Exchange regime

Modifications have been made to the regime as described in the Memorandum on Foreign Trade Regime (document L/7202) and documents L/7301 and L/7301/Add.1.

In pursuit of the objectives of stabilizing and stimulating of the economy, the country's monetary authorities simplified the exchange system and eliminated both the US dollar fluctuation band that existed in the intervention market of the Central Bank of Ecuador for public sector transactions and the official exchange rate of 390 sucres per dollar which the Central Bank used for accounting purposes and for transactions with the International Monetary Fund.

Thus, a free exchange system has been adopted in which the private sector acquires the foreign exchange it needs for its activities at the market rate. Foreign exchange transactions for foreign trade purposes are no longer carried out through the Central Bank of Ecuador. There are no limits on the purchase or sale of foreign exchange. The system is thus different from that described in L/7202.

To summarize, the current foreign exchange system works as follows:

- (i) In accordance with Decree 1353 of 23 December 1993, published in Official Journal No. 349 of 31 December 1993, the official exchange rate is the same rate as that used by the Central Bank of Ecuador in its transactions for the sale of foreign exchange;
- (ii) the foreign exchange selling rate of the Central Bank of Ecuador is set weekly at a rate equivalent to the average of the free market interbank exchange rate of the previous week as recorded at the Bank's Exchange Desk. The buying rate is 250 sucres less than the selling rate;
- (iii) the exchange rate parity is determined by supply and demand in the officially authorized private entities. There are no restrictions on the acquisition of foreign exchange or on its remittance abroad;
- (iv) the various transactions relating to the purchase and sale of foreign exchange involving the Central Bank of Ecuador are:
 - Purchase of foreign exchange from foreign currency earnings by the public sector and activities relating to hydrocarbon exploration, transport and marketing by enterprises that have signed contracts with the State Petroleum Company (PETROECUADOR), under the terms specified in the regulations laid down by the Monetary Board of Ecuador (Regulation No. 858-93, of which copies have been sent to the GATT Secretariat).
 - The Central Bank of Ecuador sells foreign exchange to cover payments abroad by the public sector for any reason, as well as payments relating to activities of hydrocarbon exploration, extraction, marketing and transport by companies that have concluded contracts with the State Petroleum Company (PETROECUADOR).
 - Public sector contracts whose obligations must be met in foreign exchange must be registered in 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 provided they have foreign exchange earnings and obligations abroad that are inherent

to their operations. A system of control over such operations is in place.

- 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. The Bank may issue foreign-currency-denominated exchange stabilization bonds and fix the amounts, maturities and other terms of issue for the trading of these bonds on the market.
- The Central Bank of Ecuador decides on the most appropriate means for participating in the free exchange market in accordance with the objectives of monetary and financial programming, 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. The maximum period for such transactions is 180 days.
- The Central Bank of Ecuador registers direct foreign investment and reinvestment in the capital stock of enterprises.
- The Central Bank of Ecuador also registers external foreign-currency loans incurred by the private sector.

(b) Law on the Modernization of the State, Privatization and Provision of Public Services by Private Enterprise

The Law entered into force upon publication in Official Journal No. 349 of 31 December 1993.

It lays 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 transfer of 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 enterprise:

- (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 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 does not contain any amendment to the legislation governing transactions between State enterprises and foreign enterprises.

(c) Securities Market Law

The Law entered into force on 28 May 1993 through publication in Official Journal No. 199. It was enacted in order to organize the securities market efficiently and transparently, so that securities trading would be competitive and orderly.

The National Securities Council (CNV), the body responsible for the securities market within the Office of the Supervisor of Companies, establishes general policy for the securities market and regulates its operation.

The Law contains regulations on securities exchanges, securities houses and other intermediaries, investment funds of natural or legal persons, the issue of bonds by public limited companies and limited liability companies, securities market registration and so forth.

As mentioned in the reply to Question No. 78 in document L/7301/Add.1, Article 71 of the Law brought tax treatment of foreign investors into line with that of domestic investors.

(d) Law on the National Customs Service

The Law is aimed at simplifying procedures and improving the efficiency of the State in its function of providing services to citizens. It regulates the legal relationship between the State and persons involved in the international movement of goods within the customs territory. It entered into force on 9 March 1994.

The new Law regroups and organizes all provisions relating to the customs service which were previously contained in various legal instruments.

Changes with respect to the previous system

- It simplifies and greatly reduces the formalities and procedures, which also means time-saving and discourages customs corruption.
- It allows for 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.
- It establishes the principle of trust in the tax payer, through self-assessment and advance payment of customs charges.

- It classifies violations of the customs regulations into the categories of offences, infringements and faults.
- It introduces a "random customs valuation system" that is exercised as a means of control on the basis of an automatized programme; previously, as a general rule, customs valuation was physical.
- It provides for a single type and kind of customs guarantee, whereas under the previous law there were general, specific and special customs guarantees of varying amounts and with different systems for establishing those amounts.
- It downsizes 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.
- It provides for the repeal of laws and legal provisions relating to customs matters which have lost practical relevance or hindered the State from acting efficiently.

Structure and responsibilities of the new organization

The administrative structure of the customs service is headed by the Minister of Finance and Public Credit, representing the President of the Republic. The structure also includes a consultative and advisory body, the Customs Technical Committee, and the National Customs Service Directorate. The functions of the advisory Technical Committee are to give an opinion on draft executive decrees relating to customs tariffs and valuation rules. The National Customs Service Directorate consists of the District Administrations and the Customs Surveillance Service which is responsible for investigating and preventing customs offences. Under the previous legislation, control was exercised by the Customs Military Police.

(e) Law on Financial Institutions

The Law applies modern criteria to the organization and operation of banks, financial companies, factoring companies, leasing companies and other financial intermediaries.

(f) Law on Hydrocarbons

The Law opens the sector to foreign investment, abolishes monopolies and rationalizes the sector's tax system.

2. Minimum prices for textiles imports

Firstly, Ecuador considers the system of determination of the value of goods on the basis of officially established minimum values to be consistent with GATT, since it has been accepted for developing countries (paragraph 3 of Part I of the Protocol to the Agreement on Implementation of Article VII of GATT 1947 and paragraph 2 of Annex III to the Agreement on Implementation of Article VII of GATT 1994).

Ecuador has been obliged to establish a system of minimum customs values for a range of fabrics given the increasing tendency to undervalue declared prices of textiles in general and in order to overcome the ensuing difficulty for the application of customs valuation rules.

Undervaluation not only encourages tax evasion and efforts to cheat the State, it also favours unfair competition against similar products which comply with the legislation in force.

Consequently, the system of minimum customs values has two objectives: to defend tax interests and counter the unfair competition facing domestic products.

As regards the trade covered by this system, the list of products subject to minimum prices is set forth in Ministerial Agreement No. 073 of 31 January 1994, which appears as Annex J of document Spec(94)1/Add.2.

Finally, Ecuador is taking the necessary steps to introduce preshipment inspection under the terms of the relevant Agreement (Annex 1A of the Final Act), with due respect for the principles pertaining to non-discrimination, site of inspection, standards and transparency provided for in that Agreement.

3. Prohibition of importation of used vehicles

Ecuador's trade policy allows importation of vehicles classified under tariff heading 8703 and in the following subheadings provided they are new and manufactured in the year in which they are imported or the immediately previous year:

8702.10.00.10	
8702.10.00.20	
8702.90.10	
8702.90.90.10	
8702.90.90.20	
8704.10.00	
8704.21.00.20	
8704.21.00.90	
8704.22.00	(except with chassis and cab combined)
8704.23.00	(except with chassis and cab combined)
8704.31.00.20	
8704.31.00.90	
8704.32.00	(except with chassis and cab combined)
8704.90.00	
8706.00.10	
8706.00.90.91	

Ecuador also allows importation of new or used vehicles of a model not more than five years old, provided they are classified under the following headings:

8701.20.00	
8702.10.00.30	
8702.90.90.30	
8704.22.00	(only with chassis and cab combined)
8704.23.00	(only with chassis and cab combined)
8704.32.00	(only with chassis and cab combined)
8706.00.90.19	
8706.00.90.99	

Under Article XVIII of the General Agreement, protective measures affecting imports may be taken, firstly, to implement programmes and policies of economic development so as to increase

investment, generate employment to occupy the growing economically active population and thus increase the general standard of living of the people, and secondly, to reduce a high degree of dependence on production of primary commodities.

Ecuador believes that the importation of used motor vehicles under conditions other than those detailed above does not foster real development either of the existing assembly activity in the country - which aims to satisfy part of domestic demand in a context of competition with the supply of foreign manufacturers in other countries - or of the related domestic industries that have developed as a result of the direct and indirect effects of the original industry.

Ecuador therefore considers that its regulations are not incompatible with the GATT provisions, but rather are consistent with Article XVIII of the General Agreement.

Ecuador's motor-vehicle assembly industry began to develop in 1972 and has proved to have a great multiplier effect on the country's economy, by drawing into the national production process a large number of new enterprises or diversifying the production of many other existing industries that supply parts, components or end products for the terminal or assembly industries. This production has in turn boosted activities in such areas as metalworking, rubber, plastics, textiles, painting, glass, grease and oils, lubricants, springs, filters, batteries etc.

In addition, in a country with a high unemployment rate, employment offered by the assembly and allied industries has proved quantitatively significant, as the entire assembly process is labour-intensive. This is also true of the small and medium-scale enterprises providing goods and services for the industry.

Ecuador's motor-vehicle assembly industry doubled its output in the period 1988-1992 compared with the combined output of the 15 previous years. During this five-year period, production rose from 12,137 units in 1988 to 15,242 units in 1989. In 1990 16,830 units were manufactured, and in 1991, 20,342 units. At the end of 1992, output totalled 25,752 units, representing an average annual growth rate of 21 per cent.

With the liberalization of motor-vehicle import policy, imports of vehicles in 1992 were triple the level of 1991. While in 1991 7,569 vehicles were imported, in 1992 22,825 units were purchased abroad. For 1993, imports of vehicles followed a similar growth trend to that of earlier years: 24,158 units were purchased.

The figures for vehicle imports in 1992 and 1993 represented a little over 47 per cent of all units on the domestic market, at a time when the domestic industry was experiencing serious problems in selling the units programmed for that period. This leads to the conclusion that, in a small market like Ecuador's, the free import of used vehicles would complicate the circumstances in which the as yet infant national vehicle assembly industry has to compete, threatening it with extinction.

In 1992, vehicles of the following makes were produced in Ecuador: Chevrolet (Hatch, San Remo, Monza, Swift, Vitara, Trooper Cargo and Suzuki Forza I and Forza II); Toyota Stout; Datsun 1200; Mitsubishi L200 4 x 2 and L200 4 x 4; Mazda (323, B-2,000, B-2,600); Fiat (Uno, Premio, Fiorino and Weekend); and Botar (buses).

Finally, we repeat that all these regulations were submitted to the GATT Secretariat at the appropriate time.

4. Preferential trade agreements

With respect to preferential trade agreements in which Ecuador takes part, please refer to reply No. 10 in document Spec(94)1/Add.2.

The suggestion that "80 per cent of Ecuadorian imports are carried out under preferential agreements, leaving a maximum of 20 per cent covered by the most-favoured-nation clause" is a misinterpretation. Of Ecuador's overall imports for 1992 and 1993, 7.1 per cent and 7.14 per cent respectively were covered by preferential trade agreements.

5. Compilation of foreign trade restrictions

Ecuador offers and promotes a wide range of facilities for the investment of foreign capital in virtually all sectors of its economy. Decision No. 291 of the Cartagena Agreement, which entered into force in 1991, together with Rule No. 415, liberalized the former restrictions and regulations on foreign investment. While Ecuadorian regulations with respect to foreign investment and contracts for the transfer of technology, trade marks, patents, licences and royalties do not prohibit foreign investment, the State has reserved the following sectors for national investment:

- (a) The mass media: public television channels, i.e. those which do not require private subscription; mass communication newspapers, magazines and periodicals; mass communication radio broadcasting;
- (b) traditional fishing, i.e. the capture of maritime species using traditional means or industrial means which do not involve modern techniques; and
- (c) defence and the manufacture of ammunition.

With a view to its accession to the WTO, Ecuador is ready to enter into the commitments arising from the Agreement on Trade-Related Investment Measures (TRIMS) in Annex 1A of the Final Act.

6. Import prohibitions, quotas, import licensing restrictions, prior authorization and any other restrictions, including quantitative or non-tariff restrictions

In Annex 2 of document L/7301/Add.1, Ecuador submitted a list of prohibited imports, and subsequently justified each tariff line in turn in the light of the provisions of Articles of XVIII, XX and XXI of the General Agreement.

The 28 tariff subheadings listed in Annex 2 of document L/7301/Add.1 are justified under Articles XVIII, XX and XXI of the General Agreement, as follows:

Article XVIII

In accordance with the provisions of Article XVIII, economies which are "in the early stages of development" and are seeking to industrialize so as to reduce their dependence on the production of primary products may adopt protective or other measures affecting imports.

Ecuador's economy depends for 60 per cent on exports of primary products, and wishes to reduce this proportion through industrial development programmes. Accordingly, for some years Ecuador

has considered it necessary to protect some of its infant industries; this is the specific reason for the measures affecting imports of the products falling within the following tariff headings:

2008.30.0000;	4012.10.1000;	4012.10.9000;
4012.20.0000;	5208.33.0000;	7211.11.0000;
8707.10.0000;	8707.90.1000;	8707.90.9000.
8716.10.0000;		

Article XX

In accordance with Article XX, Ecuador may adopt measures to protect public morals, human or animal life or health, to protect plants, etc. Such is the case of the measure affecting the product classified under the following tariff heading:

29.14.110000, a product frequently used for the illegal preparation of narcotics or psychotropic substances.

Measures relating to the following subheadings and concern the defence and protection of endangered animal species and the environment are also consistent with this Article:

29.03.591000;	29.03.592000;	29.10.901000;
29.10.902000;	29.20.101000;	29.20.102000;
41.03.200000;	41.07.210000;	41.07.290000.
96.01.100000;	96.01.900000;	

Used tyres

In addition to the justification under Article XVIII for subheading 40.12.200000, "used tyres", Ecuador considers that in this case Article XX is also applicable.

Article XXI

Finally, Article XXI allows the adoption of all necessary measures for the protection of essential security interests relating to fissionable materials or the materials from which they are derived; the traffic in arms, ammunition and implements of war, and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying the Armed Forces.

Accordingly, the measures relating to the products corresponding to these tariff items are consistent with this Article of the General Agreement:

87.10.000000;	89.06.001000;	93.05.901000;
93.06.901000;	93.07.000000.	

Prior authorizations

It must be repeated that prior authorizations are aimed only at ensuring the security and health of the country's citizens. A list by tariff item was distributed to all of the contracting parties during the meeting of the Working Group last April, indicating in addition the body responsible for the administration of each item.

In the event that any prior authorizations were incompatible with GATT regulations, they would be eliminated.

As regards the agricultural restrictions listed in the reply of Question No. 5 of document Spec(94)1/Add.2, Ecuador repeats its statement to the Working Group according to which they would be revised and brought into line with GATT rules within a reasonable period of time.

7. Requirements of the Andean Pact on rules of origin

Decision 293 of the Cartagena Agreement establishes rules for the determination of the origin of goods, for the purposes of the Andean Liberalization Programme. The following goods are considered to originate from the territory of any member country of the Andean Group; goods which are manufactured entirely in the Andean countries; goods which appear in the annexed list for the sole reason that they were produced in the Andean countries; goods which comply with specific requirements of origin established by the Board of the Cartagena Agreement; goods which do not fit any specific requirements of origin, subject to the condition that the production process gives them a new identity or that they are the products of an assembly process; goods which do not fit any specific requirements of origin which are the product of an assembly process in which materials originating in the territory of the member countries are used and the c.i.f. value of the materials imported from third countries does not exceed 50 per cent of the f.o.b. value of the product for Colombia, Peru and Venezuela, and 60 per cent for Bolivia and Ecuador.

Further details can be found in the copy of the relevant Decision annexed hereto.

8. Accession of Ecuador to GATT 1947 and the World Trade Organization (WTO)

It was of particular importance to Ecuador that the Working Group should meet to examine its accession to GATT last April, only a few days after the end of the Marrakesh Conference which, in general terms, ratified the agreements of the Uruguay Round of Multilateral Trade Negotiations; indeed, Ecuador's trade policy is fully in keeping with the new multilateral spirit which has given birth to the WTO.

In submitting its Memorandum on the Foreign Trade Regime (document L/7202), Ecuador provided information on investment, services and intellectual property (Chapters X and XI of document L/7202). It did so in spite of the fact that GATT 1947 does not cover these sectors, that the mandate of the Working Group on the Accession of Ecuador to GATT does not provide for the examination of those subjects and that, at the time of submission of the document (February 1993), the conclusion of the Uruguay Round was not yet in sight, much less the decisions which were to be adopted at Marrakesh on the procedures to be followed by the countries which had not concluded the process of accession to GATT.

This is a clear demonstration of transparency and of the country's determination to deal with these subjects thoroughly and to respect its obligations as member of the WTO. Ecuador is currently preparing additional information on the treatment accorded by its national legislation to intellectual property and investment viewed in relation to the relevant Agreements of the Final Act (TRIPS and TRIMS).

Ecuador has taken due note of the Marrakesh Ministerial Declaration which provides for the granting of differential and more favourable treatment to the developing countries.

At the same time, Ecuador aims to become an original member of the WTO, and to this end it plans to implement a number of measures in connection with its commitments within the multilateral framework of disciplines governing trade in goods and services, investment and the protection of intellectual property rights.

Thus, in the next few days Ecuador will be submitting its initial offer of specific commitments in the field of services.

As regards the Tokyo Round Agreements, incorporated and amended in the Final Act, Ecuador will adapt its legislation as required by those instruments, within the deadlines set for the developing countries, and it counts on the technical cooperation offered by the GATT Secretariat to that end. For this reason, and because the accession of Ecuador to GATT 1947 will probably take place very shortly before the entry into force of the WTO, Ecuador will not sign the Tokyo Round Codes, but will go through all of the procedures for the ratification of the legal instruments making up GATT 1994 - including, *inter alia*, the mentioned Codes - in order to avoid duplication of efforts in the National Congress.

9. National tariff levels

National tariff levels are the same as those of the Common External Tariff of the Andean Group, adopted in March 1993, i.e. 5 per cent, 10 per cent, 15 per cent and 20 per cent. In addition, certain tariff items corresponding to vehicles are subject to an ad valorem duty of 40 per cent.

The table of average tariff rates applied will be prepared and submitted in due course.

10. Application of the Special Consumption Tax (ICE) to tobacco products

In applying the ICE, Ecuador undertakes to respect the principle of national treatment set forth in Article III of the General Agreement.

11. Sanitary registration

It is forbidden to import, market, store and transport food products or additives, medicines in general, drugs or medical apparatus, cosmetics, sanitary products or perfumes and pesticides for domestic, industrial and agricultural uses within the territory of the country without the necessary sanitary registration. Sanitary registration is required for imported or locally produced goods in order to protect public health, and the registration of a given product is the responsibility of the importer or manufacturer. For imported products, registration is requested upon presentation of the customs declaration.

The Ministry of Health is about to issue a decree permitting importers to market any product without sanitary registration, where the product in question has been authorized by certain international agencies.

12. Information on anti-dumping regulations and laws

In addition to the information provided in documents L/7301, Questions 42, 43, 44 and 45, and L/7301/Add. 1, Questions 54, 55, 56, 57, 58 and 59, Ecuador responded extensively to the questions on this matter in document Spec(94)1, page 1.

13. Agreement on Implementation of Article VI

Ecuador will adopt the measures required to implement the Agreement on Implementation of Article VI of the General Agreement. The common legislation of the Andean Group in this respect is compatible with the GATT rules.

14. Specific subsidies and general subsidies

At the moment, Ecuadorian legislation does not distinguish between specific subsidies and general subsidies. However, given that the specific nature of subsidies is defined for the first time the Agreement on Subsidies and Countervailing Measures in GATT 1994, which has not yet entered into force, Ecuador could revise its legislation to bring it into line with the commitments arising from its entry into the WTO using the definition contained in that Agreement.

15. Notification of State enterprises under Article XVII

When Ecuador becomes a GATT contracting party, and bearing in mind the future characteristics of the Ecuadorian Telecommunications Company (EMETEL) under the new Law on the Modernization of the State, Privatization and Provision of Public Services by Private Enterprise of 31 December 1993, that enterprise will be notified.

In any event, we repeat that in its procurement involving imports EMETEL complies with the principle of non-discrimination and bases its transactions on purely commercial considerations. EMETEL operates on an exclusive basis within the telecommunications services sector because this is an area of economic activity reserved for the State under the Constitution. It is possible that the State may delegate the exercise of this activity to private enterprise under the terms of the Law of the Modernization of the State.

The following State trading enterprises and enterprises in which the State has a majority holding, which have not yet been privatized, do not play a predominant role in the economic sectors in which they operate, and they do not have any monopoly rights whatsoever; consequently, their buying or selling of goods does not influence the level or trend of imports or exports.

See list in Annex (to be reproduced separately).

16. Notification of local content requirements and other TRIMS and the period for dismantling such TRIMS within the WTO

With a view to ensuring compliance with the commitment in respect of transparency and notification contained in Article X of GATT 1994, Ecuador is currently preparing a document providing fuller information on the treatment of the subject of investment in its national legislation and the relationship of such treatment to the TRIMS Agreement.

Ecuador has taken due note of the provision of special and differential treatment for developing countries with respect to the dismantling of the TRIMs which are incompatible with GATT 1994.

17. Foreign investment in the communication media

Foreign investment in the mass media is not permitted. This applies to public television channels i.e. those that do not require private subscription, mass communication newspapers, magazines and periodicals, and mass communication radio broadcasting.

Ecuador: Imports by National Tariff Section and Average Ad Valorem Duty RatesYear: 1993

Value: In US\$ '000

National tariff sections		Average ad valorem duty rate %	Imports	
			US\$ f.o.b.	US\$ c.i.f.
I.	Live animals; animal products	14.3	8,789.1	10,515.6
II.	Vegetable products	9.8	66,292.8	78,525.8
III.	Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes	12.1	9,464.3	10,803.3
IV.	Prepared foodstuffs; beverages, spirits and vinegar; tobacco and manufactured tobacco substitutes	15.3	35,277.8	41,905.2
V.	Mineral products	3.3	67,821.1	100,219.8
VI.	Products of the chemical or allied industries	5.1	303,924.8	340,807.1
VII.	Plastics and articles thereof; rubber and articles thereof	9.7	109,620.6	127,999.6
VIII.	Raw hides and skins, leather, furskins and articles thereof; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk-worm gut)	12.6	1,219.5	1,435.8
IX.	Wood and articles of wood; wood charcoal; cork and articles of cork; manufactures of straw, of esparto and of other plaiting materials; basketware and wickerwork	9.2	642.3	813.9
X.	Pulp of wood or of other fibrous cellulosic material; waste and scrap of paper or paperboard; paper and paperboard and articles thereof	10.6	102,700.2	122,810.2
XI.	Textiles and textile articles	12.6	76,580.3	90,013.6
XII.	Footwear, headgear, umbrellas, sun umbrellas, walking-sticks, seat-sticks, whips, riding-crops and parts thereof; prepared feathers and articles made therewith; artificial flowers; articles of human hair	15.7	6,973.5	8,679.1
XIII.	Articles of stone, plaster, cement, asbestos, mica or similar materials; ceramic products; glass and glassware	10.7	26,574.0	34,455.0
XIV.	Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal and articles thereof; imitation jewellery; coin	9.2	117,481.9	135,385.9
XV.	Base metals and articles of base metal	6.5	127,285.6	143,645.0
XVI.	Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	5.5	655,427.8	736,193.7
XVII.	Vehicles, aircraft, vessels and associated transport equipment	9.3	424,299.3	482,942.5
XVIII.	Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; clocks and watches; musical instruments; parts and accessories thereof	8.4	55,824.5	60,709.8
XIX.	Arms and ammunition; parts and accessories thereof	15.4	1,254.7	1,308.4
XX.	Miscellaneous manufactured articles	15.4	25,676.5	33,033.2
XXI.	Works of art, collectors' pieces and antiques	17	--	--
Sum total			2,223,130.4	2,562,202.4

18. Intellectual property

(a) Protection of computer programmes (software)

On 17 December 1993, Ecuador and the Andean Group member countries adopted Decision 351 establishing a common regime on copyright and neighbouring rights. This regime provides adequate and effective protection of authors of literary works. It should be pointed out that Chapter VIII of Decision 351 deals with the subject of the protection of computer programmes and data bases, and stipulates in Article 23 that "computer programmes shall enjoy the same protection as literary works", and that such protection shall cover both operational and application programmes, whether in source or object code.

The regime currently in force stipulates that the owner of a copy of a computer programme lawfully in circulation may copy or adapt the programme if such measure is necessary for its use or for storage purposes, that is, aimed exclusively at substituting the lawfully acquired copy.

The copying of a computer programme, *inter alia* for personal use, requires the authorization of the right holder, except with respect to the backup copy. Use of the copy by several persons through the installation of networks, work stations and other similar means is not considered lawful without the consent of the holder.

With regard to databases, Decision 351, Article 28, stipulates that they shall be protected if by selection or arrangement of the materials they constitute an intellectual creation.

While the protection granted does not cover compiled data and information, this does not affect such rights as may exist in the works and materials making up such compilations.

(b) Intellectual property protection regime for pharmaceuticals

The new common regime for industrial property adopted by the Commission of the Cartagena Agreement by Decision 344 came into force in January 1994. This new regime, which is applied in Ecuador, is 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). Decision 344 further broadens the scope of patentability to cover medicaments and biotechnology with a term of protection of 20 years. Essential medicines identified by the WTO are exempt from these rights.

With respect to trade marks and industrial secrets, pharmaceutical products are covered in the same way as other products. The description of the coverage of Decision 344 in this respect can be found in document L/7488, prepared by Ecuador, under the heading "Information Relating to the Agreement on Trade-Related Intellectual Property Rights".

19. Services

Regulatory arrangements and restrictions on the participation of foreigners in various sectors.

(a) Financial services

On 3 May 1994, the National Congress adopted the General Law on Financial Institutions, modernizing the national legal framework in which private financial institutions operate in Ecuador.

The Law defines as private financial institutions banks, financial companies, mutual home savings and loan associations and saving and loan cooperatives acting as financial intermediaries for the public.

The Office of the Superintendent of Banks monitors the application of the law governing the activities of national or foreign private financial institutions.

National treatment is clearly established by Article 22 of the Law, 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 is 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.

Chapter III of the Law (Articles 23 to 27) 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.

(b) Insurance

The Ecuadorian Government is currently considering new provisions and legislation in the insurance sector. Ecuador is awaiting the results of the negotiations taking place pursuant to the Decision on Financial Services and the Understanding on Commitments in Financial Services contained in the Final Act.

(c) 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, stipulates 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. This document is compulsory and must be submitted to the employers prior to recruitment to carry out a given job.

The Ministry of Labour is responsible for supervising compliance with legal provisions in employment contracts signed by foreigners.

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 is also necessary to register with the Office of the Superintendent of Banks and to obtain the corresponding authorization.

(d) Transport

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 Ecuadorian flag or to ships chartered or operated by Ecuadorian shipping companies.

The *Consejo Nacional de Marina Mercante Puerto* (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, Ecuadorian 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.

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.

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 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.

It should also be pointed out that Articles 11 and 12 of Decision 297 stipulate that the member countries shall create the necessary conditions for non-scheduled passenger and cargo flights between countries of the subregion and third countries.

Telecommunications

Telecommunications are a service of public necessity and utility and are a matter of public security, and hence exclusively the responsibility of the State. Consequently, the State must direct, regulate and control all communications 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).

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 enterprise.

The Special Law on Telecommunications of 1992 established the State Telecommunications Company, EMETEL, with its own legal personality, equity and resources, and administrative, economical, financial and operational autonomy. Company management is 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.

With respect to the establishment and operation of telecommunication services, EMETEL complies with the standards and recommendations of the International Telecommunications Union (ITU) and its regulatory bodies.

STATE ENTERPRISES OR STATE PARTICIPATION IN ENTERPRISES
INVOLVED IN DOMESTIC AND INTERNATIONAL TRADE

<u>ENTERPRISES INVOLVED IN DOMESTIC TRADE</u>	<u>PRODUCTS MARKETED</u>
TRANSPORT AND STORAGE	
Empresa Nacional de Ferrocarriles del Estado	Transport of passengers, cargo and mail
Transportes Aéreos Militares Ecuatorianos	Transport of passengers, cargo and mail
COMMUNICATIONS	
Instituto Ecuatoriano de Telecomunicaciones	Regulation and operation of the telecommunications system and development of its infrastructure
FORESTRY	
Empresa de Desarrollo Forestal CEM	Forestation and reforestation for the production of forestry products
FISHERIES	
Empresa Pesquera Nacional	Fishing, processing and marketing of fish
HYDROCARBONS	
Empresa Estatal de Petr�leos del Ecuador	Exploration and extraction of hydrocarbons
MINING	
Compa��a Minera de Econom�a Mixta	Gold mining
Servicios Mineros de Econom�a Mixta	Installation of mineral processing and smelting plants
AGRO-INDUSTRY	
Azucarera Tropical Americana	Extraction and processing of cane sugar
Planta Hortifruct�cola Ambato	Production, processing and marketing of fruits and vegetables
INDUSTRY	
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 Guap�n S.A.	Production of grey cement

<u>ENTERPRISES INVOLVED IN DOMESTIC TRADE</u>	<u>PRODUCTS MARKETED</u>
Ecuatoriana de Siderúrgica S.A. DOMESTIC MARKETING Empresa Nacional de Almacenamiento y Comercialización de Productos Agrícolas Empresa de Suministros del Estado	Iron and steel Storage and marketing of agricultural goods Marketing of office supplies, materials and equipment
<u>ENTERPRISES INVOLVED IN INTERNATIONAL TRADE</u>	<u>PRODUCTS MARKETED</u>
TRANSPORT AND STORAGE Empresa Ecuatoriana de Aviación FISHERIES Empresa Pesquera Nacional HYDROCARBONS Empresa Estatal de Petróleos del Ecuador INDUSTRY Alcoholes del Ecuador Fertilizantes Ecuatorianos CEM Astilleros Navales Ecuatorianos DOMESTIC MARKETING Empresa Nacional de Almacenamiento y Comercialización de Productos Agrícolas	Transport of passengers, cargo and mail Fishing, processing and marketing of fish Exploration and extraction of hydrocarbons Production of 96% alcohol Import of raw materials, transformation and marketing of fertilizers Ship building Storage and marketing of agricultural goods