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**Council for Trade in Goods
Committee on Safeguards**

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**REQUEST BY THE REPUBLIC OF ECUADOR UNDER ARTICLE 13.1(B)
OF THE AGREEMENT ON SAFEGUARDS****REQUEST BY THE REPUBLIC OF ECUADOR CONCERNING THE FAILURE
BY THE REPUBLIC OF UKRAINE TO COMPLY WITH THE PROCEDURAL
REQUIREMENTS ESTABLISHED IN ARTICLES 3 AND 12
OF THE AGREEMENT ON SAFEGUARDS**

ECUADOR

The following communication, dated and received on 19 May 2021, is being circulated at the request of the delegation of Ecuador.

In accordance with Article 13.1(b) of the Agreement on Safeguards, the Republic of Ecuador requests the Committee on Safeguards to analyse and rule on the failure by the Republic of Ukraine to comply with the procedural requirements established in Articles 3 and 12 of the Agreement on Safeguards, and to report its conclusions to the Council for Trade in Goods. This failure to comply by Ukraine specifically concerns: the lack and inaccuracy of information submitted in the investigation; the failure to publish non-confidential summaries of the information submitted by the applicants; and the failure to conduct prior consultations as part of the process to establish the definitive safeguard for the goods classified under tariff subheading 0603.11.00, which was imposed on 16 April 2021 and notified to the World Trade Organization on 27 April 2021, according to document G/SG/N/10/UKR/10/Suppl.1 - G/SG/N/11/UKR/8/Suppl.1 of 27 April 2021.

The basis for this request is as follows:

I. FACTS

1. On 12 June 2020, Ukraine notified the WTO Committee on Safeguards that, on 28 May 2020, it had initiated a safeguard investigation on fresh cut roses, classified under the tariff subheading 0603.11.00, which was carried out regardless of the country of origin and exportation.
2. During the investigation process, Ukraine did not provide the interested parties with a report setting forth the findings and reasoned conclusions on all the issues of fact and law for the adoption of the safeguard measure. It also failed to provide public summaries of confidential information submitted by the applicants and, lastly, it did not initiate consultations with Ecuador regarding the process on the imposition of the safeguard.
3. On 16 April 2021, the Ukrainian Interdepartmental Commission on International Trade adopted Decision No. SP-487/2021/4411-03, by means of which it applied a safeguard measure for the importation into Ukraine of fresh cut roses, regardless of the country of origin and exportation, for a three-year period, in the form of a special duty of 56%.

4. On 27 April 2021, Ukraine notified the WTO of the decision to apply a safeguard measure for imports of fresh cut roses. This notification is contained in document G/SG/N/10/UKR/10/Suppl.1 - G/SG/N/11/UKR/8/Suppl.1.

II. COMPLIANCE WITH PROCEDURAL REQUIREMENTS

5. Ecuador considers that the failure to publish a report supporting the final determination for the adoption of the measure, in addition to the failure to publish non-confidential summaries of the information submitted by the applicants, constitutes a violation of the procedure established in Article 3 of the Agreement on Safeguards. As indicated by the Appellate Body in *US - Lamb*, a report published in the context of Article 3.1 must provide reasoned conclusions on all pertinent issues of fact and law.
6. In *US - Wheat Gluten*, the Appellate Body referred to Article 3.1 as part of the context for the interpretation of the requirement included in Article 4.2(a) to assess "all relevant factors". The Appellate Body firstly emphasized: "The ordinary meaning of the word "investigation" suggests that the competent authorities should carry out a "systematic inquiry" or a "careful study" into the matter before them. The word, therefore, suggests a proper degree of activity on the part of the competent authorities because authorities charged with conducting an inquiry or a study [...] must actively seek out pertinent information".
7. Concerning the failure to provide non-confidential summaries, in *US - Wheat Gluten*, the Appellate Body determined that: "the refusal by a Member to provide information requested of it undermines seriously the ability of a panel to make an objective assessment of the facts and the matter, as required by Article 11 of the DSU. Such a refusal also undermines the ability of other Members of the WTO to seek the "prompt" and "satisfactory" resolution of disputes [...]".
8. Furthermore, concerning the failure to conduct consultations, in *Korea - Dairy*, the Panel determined that consultations must be held before the application of a safeguard measure, that is, when the safeguard measure is still merely a proposal. In the current investigation, Ukraine did not comply with the procedure established in the Agreement on Safeguards, as it did not carry out the corresponding consultations, and did not fulfil its obligations under GATT 1994. As indicated in the Appellate Body report in *US - Wheat Gluten*, the information referred to in Article 12.2 of the Agreement on Safeguards, that is, evidence of serious injury, should be provided before consultations are conducted and, in any case, prior to the imposition of the definitive safeguard, which was not the case.

III. REQUEST

As mandated in Article 13.1(b) of the Agreement on Safeguards, Ecuador requests the Committee on Safeguards to rule on whether compliance was ensured with the procedural requirements established in the aforementioned Agreement during the investigation that gave rise to the imposition of the definitive safeguard measure in question. It also requests the Committee to report its findings to the Council for Trade in Goods.
