

**ECUADOR – DEFINITIVE SAFEGUARD MEASURE ON IMPORTS
OF MEDIUM DENSITY FIBREBOARD**

Request for Consultations by Chile

The following communication, dated 24 November 2003, from the Delegation of Chile to the Delegation of Ecuador and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

I have been instructed by my Government to contact you in order to request consultations with Ecuador pursuant to Article XXIII of the GATT 1994, Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes and Article 14 of the Agreement on Safeguards, in relation to the safeguard measures applied by the Government of Ecuador on imports of medium density fireboard (MDF) classified under NANDINA subheading 4411 of the National Tariff.

On 20 February, Ecuador notified the WTO Committee on Safeguards of the adoption of a provisional safeguard measure on imports of MDF (G/SG/N/10/ECU/2) consisting in the application of an additional duty of 15 per cent *ad valorem* on MDF imports for a duration of 180 days beginning on 9 January 2003. Subsequently, on 25 July 2003, Ecuador notified the Committee on Safeguards of its finding of threat of serious injury or serious injury and its decision to apply a definitive safeguard measure (G/SG/N/8/ECU/1 – G/SG/N/10/ECU/2/Suppl.1). The definitive measure is a quantitative restriction, consisting of an import quota equivalent to 5,401 MT per year starting on 16 July 2003, for a duration of two years. This notification also states that the safeguard measure is to be made subject to progressive liberalization according to a timetable, and that at the end of the second year of application, the import quota is to be completely eliminated.

The Government of Chile considers that the definitive safeguard measure at issue was imposed and applied by Ecuador in a manner inconsistent with a number of obligations, both substantive and procedural, set forth in Article XIX:1(a) of the GATT 1994 and in the Agreement on Safeguards, thereby seriously and severely undermining the competitiveness of the Chilean products in question on the Ecuadorian market and causing nullification or impairment of benefits accruing under the covered agreements.

This is true, in particular although not exclusively, in the following respects:

- (a) The measure does not meet the "unforeseen developments" condition in Article XIX:1(a) of the GATT 1994. Moreover, the report of the competent authorities does not demonstrate, as a matter of fact, the existence of unforeseen developments, nor does it provide a reasoned and adequate explanation in support of

its determination in this respect, as required under Article 3.1 of the Agreement on Safeguards.

- (b) Nor is it clear that the product has been imported in increased quantities, absolute or relative, under the terms of Article XIX:1(a) of the GATT 1994 and Article 2.1 of the Agreement on Safeguards, or under such conditions as to allegedly signify a "threat" of serious injury.
- (c) At the same time, the Ecuadorian investigating authority failed to analyse separately each one of the eight subheadings under NANDINA 4411 affected by the measure for the purpose of determining whether they were like products or directly competitive with the domestic industry that requested the imposition of the measure. This, in its turn, implies a failure to demonstrate objectively the alleged increased imports, absolute or relative, the alleged threat of serious injury to the domestic industry, and the causal link between the alleged increase in imports and the alleged threat. This is contrary to Article XIX:1(a) of the GATT 1994 and to Articles 2.1, 3.1 and 4 of the Agreement on Safeguards.
- (d) Regarding the determination of the existence of the alleged threat of serious injury, the report of the competent authorities contains no reasoned and adequate explanations of the objective and quantifiable factors listed as a minimum in Article 4.2 of the Agreement on Safeguards, nor does it analyse other relevant factors of the same kind that could clearly have a substantial influence on the situation alleged by the domestic industry.
- (e) As a direct result of this inconsistency, the report of the competent authorities fails to provide objective evidence or to demonstrate the existence of a causal link between the alleged increased imports and the alleged threat of serious injury. Nor does it comply with the principle of "non-attribution", since it does not analyse the possible effect of, and relationship between, relevant objective and quantifiable factors other than the alleged increased imports and the alleged threat of serious injury. This is a violation of Articles 4 and 3.1 of the Agreement on Safeguards.
- (f) Similarly, if Ecuador failed to meet its obligations under Article 4 of the Agreement on Safeguards, or more specifically, if it failed either to carry out or record the proper analyses of the causal link between the alleged increased imports and the alleged threat of serious injury, it follows that Ecuador violated Article 5 of the Agreement on Safeguards by failing to ensure that it was in a position to determine the level necessary to prevent the alleged threat of serious injury and facilitate adjustment of the domestic industry.
- (g) Ecuador's notifications do not provide any details on how to administer and allocate the import quotas among supplier countries. This allocation system may be inconsistent with Article 5.2 of the Agreement on Safeguards.
- (h) Furthermore, the report of the competent authorities neither explains nor provides any evidence of whether imports from countries excluded from the application of the measure were excluded, in their turn, from the analysis of the alleged increase in imports and the alleged threat of injury. This implies that Ecuador acted inconsistently with its obligations under Articles 2.1, 3.1 and 4 of the Agreement on Safeguards.

- (i) Nor did Ecuador ever specify the critical circumstances justifying the imposition of provisional measures as stipulated in Article 6 of the Agreement on Safeguards.
- (j) Finally, by providing late notification of the provisional safeguard measure, Ecuador obstructed and delayed the holding of consultations under Article 12 of the Agreement on Safeguards.

For the reasons set forth above, the Government of Chile considers the definitive safeguard measure imposed by Ecuador on imports of MDF to be inconsistent with various WTO provisions, *inter alia* Articles 2, 3, 4, 5, 6, 7 and 12 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994.

The Government of Chile looks forward to a reply to this request for consultations in order to establish a mutually convenient date and place for holding them.
