

ECUADOR

TRADE SUMMARY

The U.S. goods trade deficit with Ecuador was \$2.0 billion in 2010, up \$668 million from 2009. U.S. goods exports in 2010 were \$5.4 billion, up 38.3 percent from the previous year. Corresponding U.S. imports from Ecuador were \$7.5 billion, up 41.3 percent. Ecuador is currently the 39th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ecuador was \$1.3 billion in 2009 (latest data available), up from \$1.1 billion in 2008. U.S. FDI in Ecuador is led by the mining and manufacturing sectors.

IMPORT POLICIES

On December 29, 2010, the Organic Code for Production, Trade, and Investment (Production Code) came into effect. The new Production Code is intended to stimulate local production and employment within priority economic sectors and geographic areas, while emphasizing the development of small and medium-sized enterprises. The Production Code provides incentives intended to spur local and foreign investment and to promote export expansion and diversification. It covers an array of issues, including import and export policies, customs procedures, investment, labor, and taxes. The Production Code replaces 14 laws, including the Industrial Promotion, Small Business Development, Investment Promotion, Free Zones, Trade and Investments, and Customs laws, and modifies various articles in 10 other laws. Under the Production Code, the Ecuadorian Customs Corporation will become Ecuador's National Customs Service.

The Production Code identifies various trade policy tools available to the government to address various objectives, including: guaranteeing "fundamental rights" contained within Ecuador's Constitution; implementing treaties or international agreements; preserving the environment and biodiversity; responding to unjustifiable and unilateral restrictions applied by other countries to Ecuadorian exports; correcting balance of payments imbalances; preventing illicit trafficking of drugs; avoiding shortages of essential products and controlling the prices of such products; securing supplies of raw materials for domestic producers as part of a government industrial development plan; and protecting nonrenewable natural resources and the national cultural and historic heritage. In addition, the Production Code authorizes the use of trade remedies, including anti-dumping, countervailing duty, and safeguard measures, stating that this will be in accordance with domestic law and international instruments and will ensure market transparency and efficiency and promote competition.

The Production Code also provides that the Ecuadorian government will promote exports through trade liberalization initiatives and the use of tariff preference programs and other advantages provided for under trade agreements. In addition, exporters will receive a refund of value added tax (VAT) and other taxes on local consumption and imports of inputs and raw materials for the production of exports. They will receive financial assistance in export promotion and market development as well. In addition, the Ecuadorian government will create and administer an export credit insurance agency to cover nonpayment risks for the value of exported goods. The government is expected to issue regulations implementing the Production Code by the end of March 2011.

On January 26, 2011, the Ecuadorian government announced the outlines of a plan to reduce the country's trade deficit and implement a policy of strategic import substitution, drawing on mechanisms included in

the Production Code. Measures the government plans to employ include increased tariffs, importer registration requirements, stricter application of standards and sanitary and phytosanitary requirements, and voluntary import restrictions for various sectors.

Tariffs

When Ecuador joined the WTO in January 1996, it bound most of its tariff rates at 30 percent *ad valorem* or less, except for agricultural products covered by the Andean Price Band System (APBS). In general, Ecuador applies a four-tiered tariff structure with levels of five percent for most raw materials and capital goods; 10 percent or 15 percent for intermediate goods; and 20 percent for most consumer goods. In line with efforts to promote local production in 2008 and 2009, Ecuador increased applied tariffs on 960 items, with some duties reaching the WTO bound rate, while decreasing tariffs on roughly 2,000 products, primarily raw materials and capital goods. According to the WTO, Ecuador's simple applied average tariff is 11.2 percent. For agricultural products the simple average tariff is 18.4 percent, and for non-agricultural products it is 10.1 percent.

Ecuador applies the APBS with respect to more than 150 agricultural products imported from outside the Andean Community (AC), which includes Bolivia, Colombia, Ecuador, and Peru. These products include wheat, rice, sugar, barley, white and yellow corn, soybeans, soybean meal, African palm oil, soy oil, chicken meat, pork meat, and powdered milk, as well as certain products derived from them. The APBS protects domestic industry with a variable levy by increasing tariffs when world prices fall and lowering tariffs when world prices rise.

When Ecuador became a WTO Member, it agreed to phase out its participation in the APBS, starting in January 1996, with a total phase out by December 2001. To date, no steps have been taken to phase out use of the APBS. The extent to which the APBS restricts trade varies by product. For some U.S. exports, such as wheat, barley, malt barley, and their byproducts, the price band total duty (*ad valorem* tariff plus variable levy) is usually below Ecuador's WTO bound tariff and is often zero. However, price band total duties as high as 85.5 percent and 46 percent have been applied to chicken parts and pork, respectively, restricting those imports.

In January 2009, invoking the WTO's balance of payments safeguard provisions, Ecuador imposed quantitative restrictions and a tariff surcharge on a large number of imported products, resulting in tariffs in excess of Ecuador's bound tariff rates. At the request of WTO Members, Ecuador replaced most of the quantitative restrictions with price-based measures in June 2009. Despite its commitment to remove all trade measures imposed for balance of payments purposes no later than January 22, 2010, Ecuador did not fully eliminate the safeguard measures until July 23, 2010.

Effective June 1, 2010, Ecuador instituted mixed tariffs for footwear and textile and apparel products, providing continued protection to these domestic industries, which had benefitted substantially from the balance of payments safeguard measures. Ecuador's Trade and Investment Council, COMEXI, established a mixed tariff of 10 percent *ad valorem* plus a \$6 per pair specific tariff to be applied to 28 tariff lines (at the 8-digit level) corresponding to footwear, and a mixed tariff on imported garments and linens of \$5.50 per kilo plus 10 percent *ad valorem* tariff. It is unclear whether these mixed tariffs exceed Ecuador's WTO-bound tariff rates for these products. The U.S. Government has requested information from the Ecuadorian government concerning how these tariffs are calculated, and the issue is under review in the WTO Council for Trade in Goods.

In addition, Ecuador instituted mixed tariffs of five percent *ad valorem* and specific tariffs ranging from \$39.97 to \$158.14 each for televisions sets, effective July 30, 2010. On July 26, 2010, it replaced a 15

percent *ad valorem* tariff for tires with specific tariffs of \$0.90 and \$1.20 per net kilo for automobile and bus tires, respectively. In July 2010, Ecuador eliminated tariffs for rechargeable batteries to implement energy saving and environmentally focused policies. In October 2010, it established a differentiated *ad valorem* tariff from zero percent to 35 percent for hybrid vehicles, varying by engine size.

On October 11, 2010, Ecuador imposed a safeguard measure on imports of windshields based on a determination of serious injury to the national industry due to increased imports. The safeguard measure will be applied for three years and consists of the application of a \$12.72 specific tariff on top of the current applied 15 percent *ad valorem* tariff; imports from Peru and Chile are exempted from the measure.

Ecuador's second Trade Policy Review within the World Trade Organization will be conducted in November 2011.

Tariff-Rate Quotas

When Ecuador became a WTO Member in 1996, it established tariff-rate quotas (TRQs) for a number of agricultural imports. Products subject to TRQs include wheat, corn, sorghum, barley, malt, wheat and corn starch, glucose, powdered milk, rapeseed oil-cake, fresh and chilled whole turkeys, and frozen chicken parts. The Ecuadorian government's process for TRQ administration lacks transparency, and the U.S. Department of Agriculture (USDA) is currently working with the Ministry of Agriculture (MAG) to address this issue using information management systems.

Nontariff Measures

Importers must register with the Ecuadorian National Customs Service (formerly the Ecuadorian Customs Corporation) to obtain an import code for all products. Although Ecuador has phased out the prior authorization requirement for most imports, it still requires prior authorization from the MAG for imports of more than 80 agricultural items originating in countries other than AC Members (COMEXI Resolution 383 of June 11, 2007). Many of these products are also protected under the APBS (*e.g.*, poultry, beef, dairy, horticultural products, corn, rice, palm oil, and soybean meal). For several types of agricultural imports, the Minister or a designee must provide prior import authorization. The MAG argues that the authorization ensures that sanitary standards and tax rules are followed, but in some instances these justifications do not appear to apply. Subsequent to a visit by MAG officials to USDA in Washington in September 2009, the MAG requested assistance in developing a more transparent and quantifiable system of prior import authorization. Through its PL-480 program, USDA has provided funding to support a MAG initiative to use information management systems for the issuance of import permits.

Another administrative hurdle for agricultural importers is the MAG's use of "Consultative Committees" for import authorizations. Import authorizations usually are subject to crop absorption programs, which were to be eliminated as part of Ecuador's WTO accession in 1996. These Committees, composed primarily of local producers, often advise the MAG against granting import authorizations for products such as corn, soybean meal, dairy products, and meats. The MAG often requires that all local production be purchased at high prices before authorizing imports.

The Ministry of Health must provide prior authorization in the form of a sanitary registration for imported and domestically produced pharmaceuticals, natural products, pesticides, and processed, canned, and packaged foods. Importers have concerns regarding the confidentiality of information they must provide on product formulas and compositions. In addition, importers report that U.S. "Certificates of Free Sale" are not accepted in lieu of sanitary registration but only as one of the many documents required for registration.

Ecuador assesses a special consumption tax (ICE) of 40 percent on imported and domestically produced spirits. However, the taxable base upon which Ecuador assesses the ICE differs for domestic and imported spirits. For domestically produced spirits, the ICE is applied to a base price that excludes all taxes, whereas the base price used to compute the ICE for imported spirits includes the import tax, or duty. In neither case is the excise tax applied to actual transaction values but rather to a base price that either is calculated according to a formula or represents an approximated reference price.

In January 2008, the ICE on a number of products, largely luxury items, was increased. The ICE increased mostly for imported products rather than those produced domestically, such as perfumes, vehicles (tiered increases by vehicle price starting at \$20,000), video games, firearms, airplanes, helicopters, boats, and cable television service.

Since 2007, the Ecuadorian Customs Corporation (now the National Customs Service) has used a risk analysis system rather than Ecuador's existing pre-shipment inspection regime for imports with f.o.b. values of more than \$4,000. Under this system, low risk importers benefit from fewer physical inspections and expedited release of their cargo. In 2007, Ecuador also changed certain customs processes and requirements in an effort to reduce costs and minimize delays for importers. However, in August 2010, the Ecuadorian Customs Corporation instituted a new policy requiring that for every shipment, importers must provide net weight figures per product lot number, rather than prorating the weight of the container by product as was previously allowed.

GOVERNMENT PROCUREMENT

Foreign bidders must register and have a local legal representative in order to participate in government procurement in Ecuador. Bidding on government contracts can be cumbersome and relatively non-transparent. The lack of transparency creates opportunities for manipulation by contracting authorities.

Since 2008, Ecuador's public contracting law has required that priority be given to locally produced and supplied products and services, although foreign suppliers can compete for the contracts. Based on Article 25 of the public contracting law, INCOP (Public Contracting Institute) has established that at least 40 percent of the value of a product must be locally produced to qualify for this preference. The law also created a National Institute of Public Contracting to oversee the transparency and timeliness of the contracting process. In addition, the law eliminated the requirement for contract awardees to obtain approval from the Attorney General and the Controller prior to being awarded a government contract. Bidders are required to register and submit bids for government contracts through an online system (<http://www.compraspublicas.gov.ec>), which the Ecuadorian government expects will improve transparency.

As a general rule, all public institutions are subject to the public contracting law. However, the same law establishes exceptions, including special regimes pursuant to norms set by the President (Article 2); international agreements for the purchase of goods and services (Article 43); exploration and exploitation of hydrocarbons; emergency situations (Article 57); and national security contracts.

Ecuador is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Ecuador was listed on the Watch List in the 2010 Special 301 Report. Ecuador continued to make progress, as cited in the report, by reducing its backlog of applications to register trademarks and for patent

adjudication. However, key concerns remain, including: weak enforcement of intellectual property rights; lack of effective protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products; and lack of an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. Although Ecuador has established special IPR units that conduct investigations and execute seizures of pirated and counterfeit products, overall IPR enforcement in Ecuador remains seriously inadequate, resulting in high piracy levels in the software, publishing, recording, and film industries.

In 2009, President Correa signed two presidential decrees establishing a compulsory license policy for patented pharmaceutical products and agricultural chemical products. On April 14, 2010, Ecuador's Intellectual Property Institute (IEPI) granted a compulsory license for a patented drug used in the treatment of HIV/AIDS that is manufactured by a U.S. company. The Ecuadorian company awarded the license has used it to win a government tender to supply imported copies of the patented drug. Two other compulsory license petitions for the same drug were submitted to IEPI; the first petition was never completed, and IEPI is reviewing the other petition, which was filed by the state pharmaceutical company Enfarma. To date, no other compulsory license petitions have been filed with IEPI for either patented pharmaceutical or agricultural chemical products.

SERVICES BARRIERS

Telecommunications

In the area of basic telecommunications, Ecuador has only undertaken WTO commitments for domestic cellular services. Accordingly, it does not have market access or national treatment obligations for other domestic and international telecommunications services, such as fixed-line voice telephony and data transmission services. In addition, Ecuador has not committed to adhere to the pro-competitive regulatory commitments of the WTO Reference Paper.

INVESTMENT BARRIERS

Ecuador's investment climate has become increasingly uncertain as the government's economic policies continue to evolve with implementation of the country's 2008 Constitution. While Ecuador is still relatively open to foreign investment in most sectors, new laws and regulations limit to some extent private sector participation in sectors deemed "strategic," most notably in extractive industries. In addition, inconsistent application and interpretation of its investment laws negatively impacts the transparency and stability of Ecuador's investment regime. This legal complexity increases the risks and costs of doing business in Ecuador.

Ecuador's framework for investment protection is still in flux. In July 2009, Ecuador notified the World Bank's International Centre for Settlement of Investment Disputes (ICSID) that it was withdrawing from the convention establishing the international arbitration center. Ecuador's withdrawal from ICSID became effective January 7, 2010.

In September 2009, the Ecuadorian government requested approval from the country's National Assembly to terminate 13 bilateral investment treaties (BITs), including its BIT with the United States, arguing that they were unconstitutional. On November 24, 2010, Ecuador's Constitutional Court ruled that provisions within Ecuador's BIT with the United States were unconstitutional due to a conflict with Article 422 of the 2008 Constitution. In its ruling, the Court stated that Article 422 of Ecuador's Constitution prohibited the State from concluding treaties or international instruments in which Ecuador would cede sovereign jurisdiction to international arbitration tribunals in commercial disputes between the State and private

FOREIGN TRADE BARRIERS

investors and concluded that the BIT with the United States constituted such an instrument. The Constitutional Court has delivered similar rulings on 12 of the 13 BITs under review. Based on the Constitutional Court's rulings, Ecuador's National Assembly has so far approved termination of three of the BITs, not including the BIT with the United States. The Ecuadorian government has not yet officially terminated any of the investment treaties.

Certain sectors of Ecuador's economy are reserved for the State, while equity caps apply in other sectors, such as a 49 percent cap on foreign investment in domestic fishing operations and a 25 percent limit with respect to broadcast stations. Petroleum exploration and development is reserved for the State, but foreign investment can be conducted through contracts with the State. In the past, a number of disputes have arisen related to these contracts and to the laws regulating petroleum exploration and development generally. The Ecuadorian government is currently pursuing a policy that requires all contracts in extractive industries to be in the form of service, or "for fee," contracts, rather than production sharing agreements. On November 23, 2010, the Ecuadorian government completed negotiations with major foreign oil companies to transition from production sharing to service contracts. Negotiations were not successfully concluded with several of the companies; the Ecuadorian government has indicated that it will take over ownership of these operations and pay compensation to the affected companies.