

ECUADOR

TRADE SUMMARY

U.S. goods exports in 2014 were \$8.4 billion, up 9.3 percent from the previous year. Ecuador is currently the 34th largest export market for U.S. goods. Corresponding U.S. imports from Ecuador were \$10.9 billion, down 5.5 percent. The U.S. goods trade deficit with Ecuador was \$2.5 billion in 2014, a decrease of \$1.3 billion from 2013.

The stock of U.S. foreign direct investment (FDI) in Ecuador was \$427 million in 2013 (latest data available), down from \$449 million in 2012. U.S. FDI in Ecuador is led by the manufacturing and mining sectors.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Resolution 116 - Product Certificate

Ecuador's Foreign Trade Committee (COMEX) issued Resolution 116 on December 4, 2013. This resolution restricts U.S. imports of a variety of products by requiring that commercial entities obtain certificates of recognition to demonstrate that their products conform to the criteria of Ecuador's technical regulations. Stakeholders raised concerns that Resolution 116 and the various technical regulations may be intended to address Ecuador's trade balance rather than address legitimate health or safety concerns. Certain Ecuadorian government officials have been reported as stating that these measures are part of Ecuador's policy of import substitution. Resolution 116 was not notified to the WTO before it went into force. As a result of Resolution 116, exports to Ecuador of certain products declined sharply in 2014.

On June 3, 2014, the Minister of Industry and Productivity (MIPRO) signed MIPRO Agreement 14241 creating an exception to Ecuador's technical regulations under Resolution 116 for products of EU origin. Agreement 14241 states that products of EU origin can be imported with only a sworn statement by the importer that the product meets Ecuadorian technical regulations and thus waives the requirement for a certificate of recognition. At the time this agreement was issued, Ecuador was negotiating with the EU to join the Multiparty Trade Agreement between the EU, Colombia, and Peru.

On November 7, 2014, the General Secretariat of the Andean Community issued ruling 003-2014 against Ecuador saying it was in partial breach of the Cartagena Agreement because MIPRO Agreement 14241 provided more favorable treatment to products of EU origin than to those of Andean Community countries. The ruling requests that Ecuador immediately extend the preferential treatment to products imported from Bolivia, Colombia, and Peru.

During 2014, the Ministry of Foreign Trade and COMEX issued numerous resolutions adding or removing the requirement that commercial entities obtain certificates of recognition for imported products. The resolutions can be found at the COMEX web site at <http://comercioexterior.gob.ec/comex/> and include:

- Resolution 001, issued on January 24, requires certificates of recognition for imports of fans and washing and drying machines.

- Resolution 002, issued on January 29, requires certificates of recognition for imports of dishwashers and other electrical appliances and parts.
- Resolution 003, issued on February 7, requires certificates of recognition for imports of 10 sub-tariff items, including jewelry and articles manufactured with pearls and precious metals.
- Resolution 004, issued on March 7, requires certificates of recognition for imports of 20 sub-tariff items, including cookies, bags, briefcases, backpacks, Christmas decorations, and others.
- Resolution 005, issued on March 21, requires certificates of recognition for imports of crockery, kitchen utensils, and some plastic articles.
- Resolution 006, issued on April 15, excludes 103 sub-tariff items from the requirement for certificates of recognition because, per the resolution, the goods are not intended for sale directly to the public. The resolution includes fresh, frozen, and processed food, tea, herbs, soap and cleaning materials, pipes and pipeline accessories, wires, valves, radios, car parts, apparel, and others.
- COMEX Resolution 003, issued on January 14, requires certificates of recognition for 16 sub-tariff items, including TV and computer monitors, TV CKDs, screws, bolts, iron and steel wire, and others.
- COMEX Resolution 010, issued on March 21, excludes 10 sub-tariff items from the certificates of recognition requirement because the goods are not intended for sale directly to the public. The list includes condiments, seasoning, food flavoring, bacon, olives, paint, varnish, and glaze.
- Resolution 013, issued December 9, requires certificates of recognition for personal hygiene products, including toilet paper, tooth brushes, and tooth paste, as well as tubular and milk containers.

The United States has raised concerns regarding Resolution 116 and other trade restrictions with senior Ecuadorian officials. The United States intends to continue to raise these concerns in 2015, both bilaterally and in the WTO TBT Committee.

Processed Foods – Nutritional Labeling Requirements

As of November 29, 2014, all processed food products were required to comply with Executive Decree No. 4522, which was published in November 2013 by the National Agency of Regulation, Control, and Sanitary Surveillance (ARCSA), an agency in Ecuador's Ministry of Health. The decree requires that processed and packaged food products include a label as set out in technical regulation RTE-INEN-022. The Executive Decree establishes several new labeling provisions. Labels must include a set of colored bars, commonly referred to as traffic light symbols that reflect low, medium, or high content of salt, sugar, and fat. For food packages smaller than 14.4 cm, the icon is not required, but an advisory message stating, "For your health, reduce the consumption of this product" is required. An advisory statement is also required for foods that contain less than 50 percent "natural" content. Ecuador defines a "natural food" as "a food as presented in nature that has not been transformed." Despite concerns raised by many trading partners both bilaterally and under the framework of the WTO TBT Committee, the Executive Decree entered into force in August 2014.

Upon implementation of the Executive Decree, Ecuador also began enforcing previously existing, but unenforced Ecuadorian Service for Standardization (INEN) requirements for a certificate to demonstrate compliance with each labeling elements. The certificates of conformity (COC) may only be issued by the Ecuadorian Accreditation Agency (OAE) or an OAE accredited inspection body or designee in relation to existing mutual recognition agreements with Ecuador. There are no OAE accredited laboratories in the United States. All prepackaged foods with the new traffic light labeling must also be reregistered under Ecuador's cumbersome Sanitary Registration process. Ecuador and the United States continue to explore alternatives to the COC, including use of State or Federal Certificates of Free Sale, a Supplier's Declaration of Conformity, or a determination of equivalence with INEN's requirements.

Mandatory Labeling of Foods Derived From Biotechnology

As of August 29, 2014, products containing at least 0.9 percent transgenics are required to display a label with the statement "contains transgenics" as per technical regulation RTE-INEN-022.

The United States has engaged bilaterally with Ecuador on this issue, including on the sidelines of the WTO TBT Committee meeting in October 2013. The United States requested clarification of the manner by which "testing for access to compliance" and "demonstration of compliance" will be carried out with regards to mandatory transgenics labeling. The United States will continue to engage Ecuador in addressing biotech-related concerns.

Sanitary and Phytosanitary Barriers

All agricultural imports require an SPS certificate issued by Ecuador's animal and plant health service (AGROCALIDAD). Importers complain the certification process is lengthy and burdensome. They also complain that the certificate process lacks scientific basis, is at odds with World Organization for Animal Health and Codex Alimentarius Commission standards, and is used to block imports that compete with domestic production of meat products, dairy products, and produce.

COMEX Resolution 019, issued September 10, 2014, mandates that AGROCALIDAD require an SPS certificate for processed agricultural products, including low-risk (cooked) products. Ecuadorian customs officials began enforcing Resolution 019 on October 9, 2014. Importers of U.S. products, especially U.S. fast food franchisees, reported import processing delays caused by confusion among government agencies over how to enforce the resolution and by officials intentionally delaying the entry of imported products as part of Ecuador's policy of import substitution.

IMPORT POLICIES

Ecuador has imposed a broad range of tariff and non-tariff restrictions on trade in goods, services and investment, as well as weakening protection of intellectual property rights. This trend began several years ago, but accelerated in 2014. Both individually and collectively, these measures have created uncertainty in Ecuador's market, which reduces investment, penalizes Ecuador workers and businesses, and denies the people of Ecuador a choice of competitively priced, high quality goods and services.

The United States has objected to Ecuador's discriminatory and unjustified restrictions on trade in a variety of fora – bilaterally, through the WTO and its various committees, and in coordination with other countries affected by Ecuador's increasingly protectionist measures. The United States in 2015 will continue to press Ecuador to reverse its protectionist policies and fully comply with its international commitments.

Ecuador's Organic Code for Production, Trade, and Investment (Production Code), which came into effect in 2010, covers an array of issues, including import and export policies, customs procedures, taxes, and

investment and labor rules. Among other things, the Production Code calls for strategic import substitution and for a transformation of Ecuador's "productive matrix" to increase the production of higher value-added products. According to Ecuador's National Plan for Good Living 2013-2017, produced by the National Secretariat of Planning and Development (SENPLADES), products subject to import substitution measures include fertilizers, agrochemicals, agricultural commodities and food products, pesticides and fungicides, soaps, detergents, cosmetics, ceramic tiles, floors, textiles, clothing, footwear, leather, radios, telephones, TVs, electronics, pharmaceuticals, and electrical appliances. Ecuador applies a combination of tariff and nontariff measures, such as non-automatic import licensing, to most of the sectors listed above.

As part of the policy of import substitution, Ecuadorian officials reportedly seek commitments from companies to increase local production and decrease imports. Ecuador's Coordinating Minister for Production, Employment, and Competitiveness announced in October 2014 that 905 companies had signed such agreements with the government. Importers complained that the government coerced them into the "agreements" by blocking their imports until they signed.

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). The 2011 WTO Trade Policy Review (TPR) of Ecuador reported that Ecuador's tariff structure had become more complex "with the increase in the number of *ad-valorem* rates and the adoption of compound duties." The TPR indicated that Ecuador's applied simple average most-favored-nation (MFN) tariff rate was 9.3 percent in 2011. Its average applied MFN tariff rate was 7.6 percent for industrial products and 19.6 percent for agricultural products. As Ecuador has implemented trade restrictions since the TPR, the actual average applied MFN tariff rates may be higher.

On March 11, 2015, Ecuador implemented a tariff surcharge ranging from 5 to 45 percent on 2800 tariff lines, which the government says represents about 32 percent of the value of Ecuador's imports. As of mid-March, the measure had not been notified to the WTO.

Specific tariff changes by industry in recent years include:

Construction Materials

COMEX Resolution 002, issued on January 14, 2014, raised tariff rates of 144 sub-tariff items including metal and construction items such as doors, windows, cables, and brushes. The new tariff rates vary between 10 percent and 25 percent, although COMEX resolution 027, issued on August 25, 2014, reversed some of the increases.

Consumer goods

COMEX Resolution 023, issued on July 17, 2014, created a \$42 tariff on packages shipped via international courier. Consumers may only receive packages that weigh less than four kilograms and are valued at less than \$400 and may only receive five packages per year with a total value not to exceed \$1,200. COMEX Resolution 033, issued September 19, 2014, modified Resolution 023 to provide a waiver from the \$42 tariff for packages sent by Ecuadorian residents abroad up to a limit of 12 packages or \$2,400 dollars.

Resolution 012, issued on April 1, 2014, eliminated the prior tariff exemption that applied to bicycles valued at \$400 or less. It also increased the tariffs on certain bicycle parts to 25 percent.

COMEX Resolution 013, issued on April 30, 2014, increased tariffs to 30 percent for five tariff lines including electric stoves, induction stoves, complete knock-downs (CKDs), and others in order to strengthen local production. However, CKDs for induction stoves received duty-free treatment indefinitely under COMEX Resolution 039. In addition, the Organic Production Incentives and Tax Fraud Prevention Law, signed by President Correa on December 23, 2014, exempted importers from paying the five percent capital exit tax on imports of induction stoves.

Automotive

Resolution 65, issued on June 15 2012, established a sliding tariff scale ranging between 4 percent and 40 percent on automobiles, which decreases as more locally produced content is incorporated in the vehicle. Resolution 65 also created a monitoring mechanism to verify increases in the incorporation of local content. However, Ecuador has not yet published a methodology for measuring local content and as such has not altered tariff rates in response to increased use of local content. Resolution 65 also established quotas for automotive imports, and Resolution 049, issued December 29, 2014, renewed and reduced those quotas (see section on non-tariff measures).

COMEX Resolution 95, passed on December 7, 2012, established *ad valorem* tariffs between 30 percent and 40 percent for three-wheeled vehicles.

Agricultural products

COMEX Resolution 040, issued November 26, 2014, suspended application of the Andean Price Band System (APBS) for soybean meal and set the tariff at zero percent until December 31, 2016.

Ecuador agreed to phase out its participation in the APBS when it became a WTO Member. To date, no steps have been taken to phase out use of the APBS. Since July 2007, the application of APBS is voluntary for members of the APBS. The extent to which the APBS affects 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 often zero percent. However, price band total duties as high as 86 percent and 45 percent have been applied to chicken parts and pork, respectively, restricting those imports.

Non-tariff Measures

Importers must register with Ecuador's National Customs Service to obtain a registration number for all products.

Agriculture

Several regulations requiring import licenses from Ecuador's Ministry of Agriculture, Livestock, Aquaculture, and Fishing (MAGAP) affect imports of food and agricultural products. These import licenses generally require several approvals within MAGAP, including those of the Under Secretary for Livestock Development, the Under Secretary for Commerce, the corresponding consultative committee, and AGROCALIDAD. This non-science based prior authorization system is vulnerable to lobbying by domestic producers who may wish to block or constrain imports.

MAGAP operates through consultative committees for a number of agricultural products. These committees are composed of private sector representatives and government officials. Originally conceived as an advisory body for recommending production and agricultural development policies, these committees now often seek to block imports and to encourage domestic production.

On June 14, 2013, MAGAP issued Resolution 299-A that imposes a mandatory and cumbersome process to allocate import licenses for cheese, butter, milk, potatoes (including french fries), beef, pork, chicken, turkey, beans, sorghum, and corn. Resolution 299-A states that import licenses will not be granted automatically but rather issued depending on the level of domestic production relative to demand. Resolution 299-A also requires importers to present annually to MAGAP their import requirements for the coming year and that they submit documentation for technical analysis. The results of the analysis are then provided to domestic producers for feedback. Resolution 299-A also prohibits imports during times of high domestic production, but excludes Andean Community members from the resolution.

Automotive

Resolution 049, issued December 29, 2014, reduced the value ceilings and unit quotas on imported motor vehicles and complete knock-downs (CKDs) that were established by COMEX Resolutions 65 and 66 in 2012. The value ceilings were reduced about 52 percent for motor vehicles and 24 percent for CKDs. The unit quotas were reduced about 45 percent for motor vehicles and 25 percent for CKDs.

Resolution 66, issued on June 11, 2012, limits vehicle imports to 68 percent of the total value imported in 2010. Resolution 77, approved on July 30, 2012, set out 50 vehicle importers allowed to import under the quota system. Together with Resolution 96 of 2012, these measures established an import quota in total units and value per dealer (as opposed to by vehicle type).

Resolution 91, issued by COMEX on October 24, 2012, established an annual import quota in units and in dollars for vehicles with cylinder capacity equal to or less than 1,000 cubic centimeters (tariff line item 8703210090), excluding purchases made by the government. Resolution 91 established a quota of 189 units and a total value of \$434,501 (FOB) for such products, with 75 percent allocated to a single importer.

Consumer Goods

In 2008, Ecuador increased its special consumption tax (ICE) on a number of products, largely luxury items. The ICE was increased mostly for products that tend to be imported rather than those produced domestically, such as perfumes, video games, firearms, airplanes, helicopters, boats, and cable TV service. In 2011, a new tax package increased the ICE *ad valorem* rate on spirits from 40 percent to 75 percent, and added a specific tax, phased in over three years, of \$6.20 for every liter equivalent of alcohol. After Ecuador increased the specific per liter tax in 2012 based on consumer price index for alcohol and beer, on December 24, 2014, Resolution 1109 again increased the specific per liter tax to \$7.10 for every liter equivalent of alcohol.

Satellite decoders/dishes

Resolution 93, issued on November 19, 2012, banned the import of decoders and satellite dishes when transported by mail, couriers, personal air luggage, ports, or land borders.

Mobile phones

Quantitative restrictions of phone imports remain in place, based on Resolutions 67, 69, 100 and 104. Resolution 67, adopted on June 15, 2012, limited annual imports for mobile phones to \$142.6 million, which represented 68 percent of the total value of cell phone imports in 2011. Unit and dollar value limits were established for each of Ecuador's 33 cell phone importers. Cell phones are also subject to a 15 percent *ad valorem* tariff.

COMEX Resolutions 69 and 70, issued on July 17, 2012, tightened the import restrictions established in Resolution 67. Resolution 69 reduced by 28 percent the total value of permissible imports by CONECEL, Ecuador's largest private mobile phone operator. Meanwhile, the state-owned telecommunications company, CNT, received a 145 percent increase in its import value entitlement, which grew from \$4.9 million to \$12 million. Unit quotas for CONECEL and CNT remained unchanged, suggesting that Ecuador has structured the restrictions to permit CNT to import more expensive phone models and improve its market share. Resolution 104, approved on August 9, 2013, established quotas on smart phones valued at \$220 or less for the three operators (CONECEL, CNT, and OTECEL). Although the three operators have unequal shares in the wireless market, CONECEL has about 68 percent, OTECEL has about 29 percent, and CNT has about 3 percent, the government allocated equal shares of 15,152 units and/or a total value of \$3,333,333 to each of them. On November 12, 2014, Resolution 034 assigned CNT an additional 266,044 units or \$13.2 million dollars for importation of devices for 4G service only.

GOVERNMENT PROCUREMENT

As a general rule, all public institutions are subject to Ecuador's Public Procurement Law. However, the law establishes several exceptions, including for procurements made according to special rules established by presidential decrees, for exploration and exploitation of hydrocarbons, for emergency situations, and for national security contracts. Article 34 of the Public Procurement Law allows public enterprises to follow special procurement rules, provided the National Public Procurement Service (SERCOP) issues an open-ended authorization for purchases considered within "the nature of the enterprise." This gives public enterprises broad flexibility to make procurements with reduced oversight.

Ecuador requires that preferential treatment be given to locally produced goods, especially those produced by the constitutionally created "social and solidarity economy," as well as micro and small enterprises, although foreign suppliers can compete for the procurements.

Bidders are required to register and submit bids for government procurement through an online system (<http://www.compraspublicas.gob.ec>). Foreign bidders must register and have a local legal representative in order to participate in government procurements. Bidding on government procurement can be cumbersome and non-transparent. The lack of transparency creates opportunities for manipulation by procuring entities.

On August 29, 2013, Decree 92 created the Public Enterprise for Imports (PEI). The entity, chaired by the Minister of Foreign Trade, is responsible for importing all goods procured by the executive branch and for acquiring products subject to trade restrictions.

On September 26, 2014, Resolution 2 of the PEI was enacted to approve the PEI's procurement procedures under the "nature of the enterprise" provision, stating that the PEI can make purchases through direct purchases, bidding, or framework agreements. Local companies complained that PEI is attempting to bypass their distribution networks and procure directly from their corporate offices.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Ecuador remained on the Special 301 Watch List in 2014 due to policies that adversely affect market access for U.S. intellectual property-intensive industries. On February 10, 2014, Ecuador enacted a new Penal Code, in effect since August 9, which de-criminalized intellectual property rights infringement. The United States continues to express its concern over this repeal of criminal IP enforcement provision, which will further exacerbate Ecuador's high levels of piracy and counterfeiting. The Correa Administration has yet

to pass a proposal reinstating the full complement of repealed remedies. In addition to copyright and trademark enforcement challenges, U.S. companies face exorbitant fees for patent registration and maintenance. Market access is further limited for the pharmaceutical and agricultural chemical industries by the lack of protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for their products.

Presidential Decree 522, signed by President Correa on December 17, 2014, requires that off-patent medicines be labeled primarily with their International Nonproprietary Names and that the label include the words “generic medicine,” effective one-year from issuance of the decree. It is unclear how the decree will be implemented but it may limit the use of trademarked brands in Ecuador.

The United States will continue to engage Ecuador on these issues in 2015, including through the Special 301 process.

SERVICES BARRIERS

Credit Bureaus

On September 12, 2014, Ecuador enacted the Monetary and Financial Code that regulates the financial, insurance, and capital markets. Article 357 of the law established the National Data Registry as the only depository of credit information (no date for when Article 357 takes effect has been set). At least one private bureau remained operational as of March 2015.

Mobile Spectrum

Ecuador’s 4G spectrum is currently licensed exclusively to the state-owned National Telecommunications Corporation (CNT), a public enterprise with 3.4 percent market coverage of the mobile market. The Government of Ecuador has committed to auctioning spectrum to private companies in 2015.

INVESTMENT BARRIERS

Ecuador’s investment climate remains marked by uncertainty, by virtue of the government’s evolving economic policies. Regulations and laws enacted between 2007 and 2014 limit private sector participation in sectors deemed “strategic,” most notably in the extractive industries. In addition, inconsistent application and interpretation of investment laws negatively impact the transparency and stability of Ecuador’s investment regime. This legal complexity increases the risks and costs of doing business in Ecuador.

Ecuador withdrew from the Convention on the Settlement of Investment Disputes (ICSID Convention), 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 Ecuador’s BIT with the United States, arguing that the BITs contained provisions that were unconstitutional. On November 24, 2010, Ecuador’s Constitutional Court ruled that provisions within Ecuador’s BIT with the United States were unconstitutional.

The Constitutional Court delivered similar rulings on the other BITs under review. Based on the Constitutional Court’s rulings, Ecuador’s National Assembly approved the termination of five BITs. The National Assembly has not approved the termination of four other, BITs, including the U.S. BIT. The Sovereignty, Integration, and Foreign Relations Committee approved the termination of the U.S. BIT, but the decision has not come to a full floor vote in the plenary. To date, the Ecuadorian government has only officially terminated its BIT with Finland.

Certain sectors of Ecuador's economy are reserved for the state, including nonrenewable natural resources and oil and gas transport and refining, 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 in broadcast stations.

In 2010, the Ecuadorian government enacted a hydrocarbons law that requires all contracts in the extractive industries to be in the form of service, or "for fee" contracts, rather than production sharing agreements. Several foreign companies declined to renegotiate their contracts and instead opted to negotiate compensation agreements for operations that they subsequently turned over to the Ecuadorian government.