ECUADOR

TRADE SUMMARY

The U.S. goods trade deficit with Ecuador was $1.3 billion in 2009, down $4.3 billion from 2008. U.S. goods exports in 2009 were $3.9 billion, up 13.8 percent from the previous year. Corresponding U.S. imports from Ecuador were $5.3 billion, down 41.7 percent. Ecuador is currently the 41st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ecuador was $1.3 billion in 2008 (latest data available), up from $977 million in 2007. U.S. FDI in Ecuador is led by the mining, manufacturing, and wholesale trade sectors.

IMPORT POLICIES

Ecuador's most recent constitution, promulgated in October 2008, established broad new guidelines for trade, giving priority to local production. Policies based on these provisions are still evolving.

Tariffs

When Ecuador joined the World Trade Organization (WTO) in January 1996, it bound most of its tariff rates at 30 percent or less, except for agricultural products covered by the Andean Price Band System (APBS). Ecuador applies a four-tiered structure with levels of 5 percent for most raw materials and capital goods; 10 percent or 15 percent for intermediate goods; and 20 percent for most consumer goods. According to the Ecuadorian government, in 2007 and 2008 it reduced tariffs on 3,267 tariff lines and increased them on 1,612 tariff lines. Product categories that benefitted from the tariff reductions included industrial capital goods, raw materials and transportation equipment. Most tariff increases were on durable and non-durable consumer goods and included 940 products (*e.g.*, foodstuffs, household and consumer appliances, paper products and construction materials) for which Ecuador raised the tariff to its WTO bound rate *i.e.*, the rate that generally cannot be exceeded under WTO rules. According to Ecuadorian government statistics, approximately 50 percent of Ecuador's tariff lines are MFN duty-free.

In January 2009, invoking the WTO's balance of payments 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. In response to concerns raised during meetings of the WTO Committee on Balance of Payment Restrictions, Ecuador agreed to replace most of the quantitative restrictions with price-based measures and to progressively modify the level and scope of the measures as its balance of payments situation improved. Ecuador also committed to remove all trade measures imposed for balance of payments purposes no later than January 22, 2010. In line with these commitments, the Ecuadorian government replaced most but not all of its quantitative restrictions with price-based measures in June 2009. Resolution 487 of Ecuador's Foreign Trade and Investment Council (COMEXI) replaced quantitative restrictions on 251 out of a total of 271 tariff lines. Of the 251 products that will no longer be under quota, 234 must pay a 12 percent tariff charge in addition to the pre-"safeguard" tariff level. The remaining 17 items under quota include: 10 automotive products (parts of car assembly kits) which must pay a 3 percent tariff surcharge; apples, grapes, and pears, which must pay a 10 cents/kilo specific tariff; and four tariff lines for tires which must pay an 80 cents/kilo specific tariff. However, Ecuador did not remove all trade measures imposed for balance of payments purposes on January 22, 2010. On February 11, 2010, Ecuador issued a resolution to phase-out the measures by July 23, 2010. The WTO Committee on Balance of Payments Restrictions will need to review this action, and consult with Ecuador. The U.S. Government continues to urge the Ecuadorian government to eliminate all balance of payment safeguard measures as soon as possible.

Separate from balance of payments safeguard measures, COMEXI published Resolution 550 on February 23, 2010 to change Ecuador's tariff schedule to reflect a mixed tariff of 10 percent *ad valorem* plus $6 per pair specific tariff to be applied to 28 tariff lines (at the 8-digit level) corresponding to footwear, effective June 1, 2010. This new mixed tariff would replace Ecuador's current *ad valorem* tariff of 30 percent. The Ecuadorian government has also announced plans to establish a mixed tariff on imported garments and linens of $5.50 per kilo plus 10 percent *ad valorem* tariff, replacing the current *ad valorem* tariff.

Ecuador applies the APBS with respect to more than 150 agricultural products imported from outside the Andean Community (AC). The AC 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.

Tariff-Rate Quotas

When Ecuador became a WTO Member in 1996, Ecuador established tariff-rate quotas (TRQs) for a number of agricultural imports. Products subject to TRQs include wheat, corn, sorghum, barley, barley malt, soybean meal, powdered milk, frozen turkeys, and frozen chicken parts.

Nontariff Measures

Importers must register with the Ecuadorian Central Bank through approved banking institutions to obtain import licenses for all products. Although Ecuador phased out the prior authorization requirement for most imports, it still requires prior authorization from the Ministry of Agriculture (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 is to ensure that sanitary standards and tax rules are followed, but in some instances these justifications do not appear to be applicable. Subsequent to a visit by MAG officials to the U.S. Department of Agriculture in Washington in September 2009, the MAG requested assistance in developing a more transparent and quantifiable system of prior import authorization. USDA provided such information and awaits a formal proposal from the MAG to continue cooperating in this area.

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, mainly composed 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 is required to provide prior authorization for processed, canned, and packaged products in the form of a sanitary registration. 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 32 percent on imported and domestic spirits. However, the taxable base upon which Ecuador assesses the ICE differs for domestic and imported spirits. For imported spirits, the ICE is applied to the customs value, which is then marked up 25 percent (*e.g.*, taxable base = [c.i.f. value + tariff + VAT] x 1.25), *i.e.*, the ICE is assessed on an inflated value for imported spirits. In contrast, for domestic spirits, the ICE is assessed on the factory price, and the 25 percent mark-up, although legally required, is not generally applied (*e.g.*, taxable base = [factory value + VAT]). In both cases, the excise tax is based on arbitrary values and not on actual transaction values.

Effective January 2008, a new tax law increased the ICE tax on a number of products, largely luxury items. The ICE tax increased for products that are largely imported rather than produced domestically, such as perfumes, luxury vehicles, all-terrain vehicles, airplanes, helicopters, and boats.

Since 2007, the Ecuadorian Customs Agency 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.

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 subjects the procurement process to possible manipulation by contracting authorities.

Since August 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. The government has not yet determined how it will implement the local preference requirement. 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. The law also created a National Institute of Public Contracting to oversee transparency and timeliness of the contracting process. Bidders are required to register and submit bids for government contracts through an online system (www.compras.publicas.gov.ec), which the Ecuadorian government expects will improve transparency.

A large number of Ecuadorian government-controlled companies (*e.g.,* fixed-line telephony providers, electric power generators and distributors, hospitals, and clinics) are not subject to Ecuador's rules on government procurement.

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 2009 Special 301 report. Key concerns cited in the Report included: 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 executes 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. Ecuador's Intellectual Property Institute (IEPI), assisted by a U.S. Agency for International Development program, has reduced its backlog of applications to register trademarks, decreasing the average time to register a trademark from two years to three months. Trademark and patent archives have been digitized, and IEPI is working to fully automate the application process.

In 2009 President Correa signed two presidential decrees regarding compulsory licenses, one for patented pharmaceutical products, and the other for agricultural chemical products. No compulsory licenses had been issued by the Ecuadorian government as of December 2009. The U.S. Government will continue to monitor developments in this area.

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

The transparency and stability of Ecuador's investment regime are negatively impacted by inconsistent application and interpretation of its investment laws. This legal complexity increases the risks and costs of doing business in Ecuador. A number of U.S. companies operating in Ecuador, notably in regulated sectors such as petroleum and electricity, have recently filed for international arbitration to resolve investment disputes with the government. In addition to dispute settlement under the United States-Ecuador Bilateral Investment Treaty (BIT), U.S. companies have also resorted to local courts, alternative dispute resolution mechanisms such as chambers of commerce, and international commercial dispute settlement mechanisms as provided for in their contracts.

In July 2009, Ecuador notified the World Bank's International Centre for Settlement of Investment Disputes that it was withdrawing from the convention establishing the international arbitration center. In September 2009, the Ecuadorian government requested approval from the country's National Assembly to terminate 13 bilateral investment treaties, including its BIT with the United States. The Ecuadorian government claims that these treaties' provisions on international arbitration for disputes between the State and private investors, as well as their provisions on national treatment of foreign investment, are in conflict with the country’s 2008 constitution. The constitution also contains provisions that would allow the government to “direct” foreign investment according to objectives identified in the country’s National Development Plan.

Certain sectors of Ecuador's economy are reserved to the State. For example, all foreign investment in petroleum exploration and development must be carried out under contract with the state. A number of disputes have arisen related to these contracts and the laws regulating petroleum exploration and development generally.

Several oil companies have been involved in disputes with the government of Ecuador relating to the refund of value added taxes. In 2004, one of the disputing U.S. companies won a $75 million arbitration award against the government of Ecuador, which the Ecuadorian government paid in March 2008. In 2006, Ecuador’s solicitor general initiated an investigation of the same company for allegedly transferring assets to another foreign company without obtaining the required government authorization. The Ecuadorian government nullified the company’s contract and seized the company’s considerable assets in Ecuador. The U.S. company initiated arbitration proceedings related to this matter under the U.S.-Ecuador BIT; notwithstanding objections to jurisdiction, the Ecuadorian government has participated in the proceedings. In September 2008, an arbitral panel ruled that it had jurisdiction over the case.

In 2006, Ecuador amended its hydrocarbons law, unilaterally increasing the share of extraordinary petroleum revenues owed to the government under existing oil production sharing contracts to 50 percent. In October 2007, Ecuador issued an executive decree increasing this share to 99 percent in a “windfall tax.” Foreign oil companies in Ecuador argued that operations would not be feasible under this scenario. In December 2006, April 2008, and June 2008, three U.S. companies initiated international arbitration proceedings challenging these changes (while continuing to pursue negotiated solutions), as have other foreign oil companies. One of the U.S. companies reached an agreement with the Ecuadorian government to buy out its contract in July 2008 and has since left the country. The government subsequently reduced the windfall tax to 70 percent. In July 2009, the government took over the operations of one foreign oil company as part of a continuing dispute over the windfall tax.

The Ecuadorian government is currently pursuing a policy that will require all contracts in extractive industries to be in the form of service, or “for fee,” contracts, rather than production sharing agreements. U.S. and other foreign oil and gas companies are currently evaluating proposed legislation and a new model for the service contracts; negotiations to transition existing contracts to the new model have not begun yet.

Other barriers include equity caps (foreign investment is limited to 49 percent in domestic fishing operations, with some exceptions, and 25 percent in broadcast stations) and a chronic pattern of underpayment in the electricity sector, principally due to delays in the Ecuadorian government’s central process for clearing electricity sector accounts.