

# ECUADOR

## TRADE SUMMARY

The U.S. goods trade deficit with Ecuador was \$3.6 billion in 2011, up \$1.5 billion from 2010. U.S. goods exports in 2011 were \$6.1 billion, up 12.0 percent from the previous year. Corresponding U.S. imports from Ecuador were \$9.6 billion, up 29.1 percent. Ecuador is currently the 42nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ecuador was \$1.3 billion in 2010 (latest data available), up from \$1.2 billion in 2008. U.S. FDI in Ecuador is led by the manufacturing and mining sectors.

## IMPORT POLICIES

The Organic Code for Production, Trade, and Investment (Production Code), which came into effect on December 29, 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 provides incentives intended to spur local and foreign investment and to promote export expansion and diversification.

The Production Code created a Committee on Foreign Trade (COMEX) to replace the former Trade and Investment Council (COMEXI) as Ecuador's interagency body in charge of trade policy formulation and regulation. The Production Code identifies trade policy tools available to the government to address certain objectives, including: guaranteeing "fundamental rights" contained within Ecuador's 2008 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 antidumping, countervailing duty, and safeguard measures.

Since January 26, 2011, Ecuador has pursued a strategic import substitution policy drawing on mechanisms included in the Production Code. The products subject to selective import substitution measures include: fertilizers, agrichemicals, pesticides and fungicides, soaps, detergents and cosmetics, other chemicals, ceramic tiles and floors, textiles, clothing, footwear, leather, radios, television, telephones, electronics, and electrical appliances. To date, Ecuador has applied a combination of tariff and nontariff measures, such as non-automatic import licensing, to most of the sectors listed above. The Production Code also includes a provision for cutting the corporate tax rate by 1 percentage point per year until it reaches 22 percent in 2013, as well as 3 types of tax incentives to promote investment in domestic production activities.

## Tariffs

Ecuador is a member of the Andean Community (AC), which also includes Bolivia, Colombia, and Peru. 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). Ecuador's

second Trade Policy Review (TPR) by the WTO was concluded in November 2011. According to the WTO Secretariat's TPR report, Ecuador's tariff structure has become more complex over the last couple of years. Until recently, Ecuador had generally applied a simple 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.

Balance of payments safeguards, imposed by Ecuador on over 600 products in January 2009, were phased out by July 2010. However, in June 2010, Ecuador instituted mixed tariffs on over 300 tariff line items including footwear, textile and apparel products, providing continued protection to these domestic industries, which had benefitted substantially from the previous balance of payments safeguard measures. A mixed tariff of 10 percent *ad valorem* plus a \$6 per pair specific tariff was applied to 28 tariff lines (at the 8-digit level) corresponding to footwear, and a mixed tariff of \$5.50 per kilo plus 10 percent *ad valorem* tariff was applied to imported garments and linens. Mixed tariffs have also been applied to televisions.

According to the information available to the WTO, Ecuador's applied average most favored nation (MFN) tariff rate was 9.3 percent in 2011. While its average applied MFN tariff rate for industrial products declined from 10.6 percent in 2005 to 7.6 percent in 2011, for agricultural products it increased from 16.7 percent to 19.6 percent. However, as Ecuador had not supplied to the WTO the *ad valorem* equivalents for its mixed tariffs, the actual average applied MFN tariff rates may be higher than those noted above and may exceed Ecuador's bound tariff rates. The WTO Secretariat identified 19 tariffs at the ten-digit level that exceeded Ecuador's bound tariff rates by 5 to 15 percentage points.

On September 1, 2011, COMEX imposed new tariffs ranging from 5 percent to 18 percent on CKDs (automobile knock-down kits). Previously, CKDs were not subject to a tariff. The tariff is eligible for a discount at a ratio of one percent for every two percentage points of local content incorporated into the finished vehicle. The Ministry of Industry and Productivity (MIPRO) is responsible for auditing vehicle assemblers to determine local content percentage.

Ecuador applies the APBS with respect to more than 150 agricultural products imported from outside the AC. 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 decreasing 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.

On October 11, 2010, Ecuador imposed a safeguard measure on imports of automotive 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.

## **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, barley malt, soybean meal, powdered milk, frozen turkeys, and frozen chicken parts. The Ecuadorian government's process for TRQ administration lacks transparency, and for some products, such as frozen chicken parts, a TRQ has not yet been established. The U.S. Department of Agriculture (USDA) is currently working with the Ministry of Agriculture, Livestock, Aquaculture, and Fisheries (MAGAP) to address this issue using information management systems.

## **Nontariff Measures**

Importers must register with Ecuador's National Customs Service (formerly the Ecuadorian Customs Corporation) to obtain an import code for all products. In August 2011, Ecuador instituted a non-automatic import licensing program covering 42 tariff subheadings. The products affected are tires, vehicles, mobile telephones, televisions/monitors, refrigerators/freezers, and semi-finished iron and steel products. According to the Ecuadorian government, the licensing regime was put into place to monitor compliance with so-called voluntary import agreements within these sectors. According to Ecuador's Central Bank, this measure affected imports from the United States worth \$332 million in 2010, nearly 16 percent of the total of these products imported into Ecuador. The WTO noted in its TPR report that Ecuador had not yet provided a notification to the WTO of its import licensing regime.

Ecuador also still requires prior authorization from the MAGAP 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 MAGAP argues that the authorization ensures that sanitary standards and tax rules are followed, but in some instances where entry has been denied these justifications do not appear to apply. Subsequent to a visit by MAGAP officials to the U.S. Department of Agriculture in Washington, D.C. in September 2009, the MAGAP 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 MAGAP initiative to use information management systems for the issuance of import permits.

Another administrative hurdle for agricultural importers is the MAGAP'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 MAGAP against granting import authorizations for products such as corn, soybean meal, dairy products, and meats. The MAGAP 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.

In January 2008, Ecuador's special consumption tax (ICE) on a number of products, largely luxury items, was increased. The ICE was 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. In December 2011, a new tax package increased the ICE *ad valorem* rate on spirits from 40 percent to 75 percent, and added a specific tax of \$6.20 for every liter-equivalent of alcohol, phased in over 3 years. However, the legislation is supposed to make assessment of the ICE for domestically produced and imported spirits more equitable by establishing factory and pre-import duty prices as the new taxable bases, respectively. The IVA on cigarettes is slated to increase by \$0.08 per cigarette over a 3 year period. The package also included an increase, effective immediately, of Ecuador's capital exit tax from two percent to five percent. Importers claim this indirect tax on imports will substantially increase the cost of purchasing abroad. Imports of raw materials, basic inputs, and capital goods are eligible for offsetting tax credits, but the process has been criticized as convoluted.

Since 2007, Ecuador's 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 August 2010, a policy was implemented 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 procurement can be cumbersome and relatively nontransparent. The lack of transparency creates opportunities for manipulation by procuring entities.

Since 2008, Ecuador's public contracting law requires that priority be given to locally produced and supplied products and services, although foreign suppliers can compete for the procurements. Based on Article 25 of the public contracting law, INCOP (Public Contracting Institute) established that at least 40 percent of the value of a product must be locally produced to qualify for this preference. Bidders are required to register and submit bids for government procurement through an online system (<http://www.compraspublicas.gov.ec>).

As a general rule, all public institutions are subject to the public contracting law. However, the same law establishes exceptions, including special regimes established 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 PROTECTION**

Ecuador was listed on the Watch List in the 2011 Special 301 report. The report cited progress made by Ecuador in extending intellectual property rights (IPR) services throughout the country and in facilitating access to patent information. However, the report also cited key remaining concerns, 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 addition, Ecuador has yet to put in place specialized IPR courts, which were required under its 1998 IPR law.

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. To date, no other compulsory licenses have been granted by IEPI for either patented pharmaceutical or agricultural chemical products. The United States will continue to monitor these developments.

## **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 remains uncertain as the government's economic policies continue to evolve. 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 unsettled. Ecuador's withdrawal from the World Bank's International Centre for Settlement of Investment Disputes (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 they 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 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 investors and concluded that the BIT with the United States constituted such an instrument. The Constitutional Court has delivered similar rulings on the other BITs under review. Based on the Constitutional Court's rulings, Ecuador's National Assembly has so far approved termination of five of the BITs, but did not approve termination of four others. It has not yet acted on Ecuador's BIT with the United States. To date, the Ecuadorian government has only officially terminated its BIT with Finland. The Ecuadorian government has indicated it may be open to negotiating international arbitration clauses within individual contracts, as provided for under the Production Code.

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 "exceptional" 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. In 2010, the Ecuadorian government enacted 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 most resident foreign oil companies to transition from production sharing to service contracts. Several companies declined to renegotiate their contracts and negotiated compensation for operations turned over to the Ecuadorian government. The last U.S. oil and gas production company operating in Ecuador departed in 2011 after negotiating a sale of its operations to the Ecuadorian government. Some U.S. companies that have operated in Ecuador, notably in the petroleum sector, have filed for international arbitration resulting from investment disputes.