

ECUADOR

TRADE SUMMARY

The U.S. goods trade deficit with Ecuador was \$2.9 billion in 2012, down \$639 million from 2011. U.S. goods exports in 2012 were \$6.6 billion, up 8.3 percent from the previous year. Corresponding U.S. imports from Ecuador were \$9.5 billion, down 1.4 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 \$1.2 billion in 2011 (latest data available), the same as 2010. U.S. FDI in Ecuador is led by the mining and manufacturing 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 policy of import substitution 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. Ecuador applies a combination of tariff and nontariff measures, such as non-automatic import licensing, to most of the sectors listed above. The country introduced numerous new trade restrictions in 2012 (described below). 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 three types of tax incentives to promote investment in domestic production activities.

Tariffs

Ecuador's import policies are increasingly restrictive and create an uncertain environment for traders in many sectors. Ecuador is a member of the Andean Community (AC) customs union, 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. Previously, Ecuador had generally applied a simple four-tiered tariff 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. Ecuador also imposes a number of fees and charges on imports.

According to the information available to the WTO, Ecuador's applied average most favored nation (MFN) tariff rate was 10.1 percent in 2011. While its average applied MFN tariff rate for industrial products declined from 10.6 percent in 2005 to 8.8 percent in 2011, for agricultural products it increased from 16.7 percent to 18.3 percent. However, as Ecuador did not supply to the WTO the *ad valorem* equivalents for its mixed tariffs and has implemented new trade restrictions since then, the actual average applied MFN tariff rates might be higher than those noted above and, in some cases, might exceed Ecuador's bound tariff rates. The WTO Secretariat identified 19 tariffs at the 10-digit level that exceeded Ecuador's bound tariff rates by 5 to 15 percentage points in 2011.

In June and July of 2012, Ecuador enacted a number of trade-restrictive measures, which included an increase in tariffs on a number of products, as well as import quotas that will expire at the end of 2014. A deteriorating non-oil trade deficit of \$2.9 billion during the first four months of 2012 appears to have prompted these measures. Some government officials publicly stated that they hoped these measures would reduce imports by \$300 million.

Resolution 63, enacted on June 15, 2012, increased tariffs on products covered by 102 tariff lines, including alcoholic beverages, washing machines, televisions, video and photographic equipment, art utensils, paper and cardboard, hair styling equipment, and work safety equipment. In Resolution 63, Ecuador also increased tariffs on tobacco and tobacco seeds, malt, and other cereals. Mixed tariffs (1 percent *ad valorem* plus a specific tariff of \$0.25 per grade of alcohol/liter) were established for 20 alcoholic products, including malt beer, sparkling wine, "pisco" (grape brandy), vodka, and tequila. According to U.S. distilled spirit industry sources, due to the new formulation and the prevailing price of the majority of imported spirits, Ecuador's assessed tariff rates now exceed in many instances Ecuador's WTO bound rates. Televisions, which fall within a single tariff line, were also assigned mixed tariffs, increasing in proportion to the size of the television. Ecuador raised tariffs on an additional 81 tariff lines, with all but four lines increased to the country's bound tariff rate under its WTO accession agreement.

Resolution 65, also enacted on June 15, 2012, established value ceilings and unit quotas for imports of automobile complete knock-downs (CKDs). In addition, Resolution 65 established a sliding tariff scale ranging between 4 percent and 40 percent, 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 levels. This resolution will remain in effect through December 2014.

Resolution 66, issued on June 11, 2012, established a \$538 million limit for the importation of motor vehicles classified under 16 tariff lines, including passenger cars and cargo trucks. The \$538 million quota would limit imports of vehicles under the 16 tariff lines affected, to 68 percent by value of the total imported in 2010. The 38 importers among which the quota has been divided must comply with established unit and dollar value limitations. Tariffs on vehicles, which are as high as 40 percent, also remain in effect. On July 30, 2012, COMEX approved Resolution 77, which slightly eased the unit and value restrictions on vehicle imports imposed by Resolution 66. Resolution 77 allowed importers to use existing import licenses to continue to import vehicles through December 28, 2012, even if it resulted in imports exceeding the importers' quotas. This eased concerns somewhat because some importers were

already approaching their annual import quotas when the quotas were announced, which would have required vehicles ordered before Resolution 66 was announced to be re-exported.

Resolution 67, adopted on June 15, 2012, limited imports under a single tariff line for cell phones to \$142.6 million, which represents 68 percent of Ecuador's total value of these cell phones imports in 2011. Unit and dollar value limits were established for each of the 33 importers. Imports of cell phones entering Ecuador before June 11, 2012 were counted toward the annual limits, as well as shipments already in transit. In addition, cell phones will still be subject to a 15 percent *ad valorem* tariff.

On July 17, 2012, COMEX issued Resolutions 69 and 70, which tightened import restrictions established in Resolutions 63 and 67. Resolution 69 reduced by 28 percent the total value of permissible imports by CONECEL, Ecuador's largest private mobile phone operator. Meanwhile, the public 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, which is only 1.6 percent.

Resolution 70 introduced a specific tariff of \$39.97 for all televisions up to 20 inches, while retaining the existing 5 percent *ad valorem* duty; it also increased to \$73.11 the specific tariff for televisions between 20 and 32 inches.

On August 30, 2012, COMEX issued Resolution 82 to reduce tariffs on imported capital goods used for government contracts. Resolution 82 aims to promote investments and support investors that have signed contracts with the government. To qualify for the benefits, goods must be validated individually by COMEX for end-use purposes and meet origin and technical requirements. If there are any similar locally produced goods, the benefits do not apply. According to local newspapers, private sector representatives criticized the resolution for only favoring public-private initiatives.

Agricultural Products

Ecuador applies variable import duties set pursuant to the APBS with respect to more than 150 agricultural products when they are 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 producers of covered products by providing for tariff increases when world prices fall and tariff decreases when world prices rise.

When Ecuador became a WTO member, it agreed to phase out its participation in the APBS. 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 often zero. However, price band total duties as high as 85.5 percent and 45 percent have been applied to chicken parts and pork, respectively, restricting those imports.

Safeguards

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 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, and frozen turkeys. 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.

Nontariff Measures

Importers must register with Ecuador's National Customs Service (formerly the Ecuadorian Customs Corporation) to obtain a registration number 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.

Ecuador requires prior authorization from the Ministry of Agriculture, Livestock, Aquaculture, and Fisheries (MAGAP) for imports of 37 agricultural products originating in countries outside the AC (COMEXI Resolution 585 of 2010). Many of these products are also protected under the APBS (*e.g.*, poultry, dairy, rice, palm oil). MAGAP officials argue that the authorization ensures that sanitary standards and tax rules are followed, but entry has been denied in situations where these concerns do not appear to apply.

Another administrative hurdle for importers of agricultural products is the MAGAP's use of "Consultative Committees" for import authorizations. 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. Additionally, import authorizations usually are subject to crop absorption programs, pursuant to which MAGAP requires that all local production be purchased at high prices before authorizing imports.

In January 2008, Ecuador increased its special consumption tax (ICE) on a number of products, largely luxury items. 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, phased in over three years, of \$6.20 for every liter-equivalent of alcohol. 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. A special consumption tax on cigarettes was set on November 24, 2011 at \$0.08 per cigarette and is adjusted biannually, depending on the consumer price index.

The December 2011 tax package also included an increase, effective immediately, of Ecuador's capital exit tax from 2 percent to 5 percent. Importers claim this indirect tax on imports substantially increases 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.gob.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 Ecuadorian 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 2012 Special 301 report. The report acknowledged statements from Ecuador's intellectual property rights (IPR) officials regarding the need to create a culture of respect for IPR. However, the report also cited key remaining concerns, including: weak IPR enforcement; 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. 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.

On October 23, 2012, Ecuador enacted Resolution 006-2012-CD-IEPI, which substantially raised the fees associated with registration of patents and new plant varieties. Under this resolution patent and plant variety maintenance fees are assessed yearly, on an upward sliding scale. As enacted, the fees associated with a patent for an invention or procedure are more than \$140,000 over 20 years, while the fees associated with protection of a plant variety are more than \$175,000 over 20 years.

Ecuador has issued two compulsory licenses for patented drugs used in the treatment of HIV/AIDS. The first was issued on April 14, 2010, for a patented drug manufactured by a U.S. company. The second was issued on November 12, 2012, for a patented drug manufactured by a British company.

SERVICES BARRIERS

Credit Reference Services

On October 2, 2012, Ecuador's National Assembly passed a credit bureau bill severely restricting the operations of private credit bureaus. The bill creates a new state-owned entity with exclusive rights to credit-related data. Private credit bureaus, while not prohibited outright from operating, are obliged under the bill to give up their databases to the government and can no longer receive data directly from the financial sector.

INVESTMENT BARRIERS

Ecuador's investment climate remains marked by uncertainty, 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 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 that 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 and the Planning and Public Finance 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 hydrocarbons law 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 government. Some

U.S. companies that have operated in Ecuador, notably in the petroleum sector, have filed for international arbitration resulting from investment disputes.