

# ECUADOR

## TRADE SUMMARY

The U.S. goods trade deficit with Ecuador was \$3.2 billion in 2007, a decrease of \$1.2 billion from \$4.4 billion in 2006. U.S. goods exports in 2007 were \$2.9 billion, up 7.7 percent from the previous year. Corresponding U.S. imports from Ecuador were \$6.1 billion, down 13.5 percent. Ecuador is currently the 47th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ecuador was \$461 million in 2006 (latest data available), down from \$730 million in 2005. U.S. FDI in Ecuador is concentrated largely in the mining and wholesale trade sectors.

## IMPORT POLICIES

### 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 in the Andean Price Band System (APBS). Ecuador's average applied MFN tariff rate is 11.7 percent. 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. Two hundred and seven agricultural related inputs including planting seeds, agricultural chemicals, and veterinary products are duty free.

As a member of the Andean Community (CAN), Ecuador grants and receives exemptions from tariffs, *i.e.*, reduced *ad valorem* tariffs and no application of the Andean Price Band System (APBS), for products from the other CAN countries (Bolivia, Colombia, and Peru). Currently, these countries have an Andean Free Trade Zone. They had agreed to apply Common External Tariffs (CET), as stated in CAN Decision 370, but pursuant to CAN Decision 663 of January 2007, implementation of the CET was postponed until January 31, 2008.

Ecuador maintains the APBS on 153 agricultural products (13 marker and 140 linked products) imported from outside the CAN. The 13 marker products are wheat, rice, sugar, barley, white and yellow corn, soybean, soybean meal, African palm oil, soy oil, chicken meat, pork meat, and powdered milk. Under the APBS, the basic (*ad-valorem*) tariff is adjusted using a variable levy. The amount of the variable levy results from the relation between bi-weekly reference prices and floor and ceiling prices established by the CAN for each marker product. The price band works to maintain protection for the domestic industry by keeping tariffs high when world prices fall, and drops tariffs when world prices rise.

When Ecuador became a WTO Member it agreed to phase out its price band system, starting in January 1996, with a total phase out by December 2001. No steps have been taken to phase out the price band system.

In August 2007, Ecuador lowered tariffs to 0 percent, 5 percent, and 10 percent for approximately 2,000 imported raw materials, inputs, and capital goods. In October 2007, Ecuador increased tariffs on approximately 600 industrial and agricultural products, largely those that compete with local production. Products with tariff increases included liquor, cellular phones, white goods, textile and leather manufactures, livestock, powdered milk, and ceramics.

## **Tariff-Rate Quotas (TRQ)**

During the Uruguay Round, Ecuador agreed to establish TRQs for a number of agricultural imports. In May of 2000, Ecuador created a TRQ Committee to administer and manage TRQs, which have remained constant. However, quota allocations are not always requested by importers because the tariffs under the APBS are sometimes lower than the in-quota TRQ tariffs. At the same time, the TRQ Committee sometimes does not approve TRQ requests for certain products in order to protect local production. This outcome is common with products such as poultry and powdered milk.

Products subject to TRQs include wheat, corn, sorghum, barley, barley malt, soybean meal, powdered milk, frozen turkeys, and frozen chicken parts.

## **Nontariff Measures**

Ecuador maintains several requirements that could be considered nontariff barriers that are not justified under the WTO Agreement. Importers must register with the Central Bank through approved banking institutions to obtain import licenses for all products. Although Ecuador recently phased out the prior authorization requirement for most imports, it still requires prior authorization from the Ministry of Agriculture (MAG) for imports of 80 agricultural items originating in countries other than CAN members, as stated in COMEXI Resolution 383 of June 11, 2007. The list of products includes a number of commodities already within the Andean price band system, such as poultry, beef, dairy, horticultural products, corn, rice, palm oil, and soybean meal. For several of these imports, the Minister or a designee must provide prior import authorization. The MAG argues that the authorization is to ensure sanitary standards and tax rules are followed, but in some instances these justifications do not appear applicable.

Another administrative hurdle for agricultural importers is the MAG's use of Consultative Committees for import authorizations. These are usually 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, and meats. The MAG often requires that all local production be purchased at high prices before authorizing imports. If these barriers were removed, U.S. industry estimates that total U.S. corn and soybean meal exports could increase by \$35 million per year.

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 general, the bureaucratic procedures that importers must follow in order to obtain authorizations continue to be lengthy and cumbersome.

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 ex-customs value, which is then marked up 25 percent (*i.e.*, taxable base = [c.i.f. value + tariff + VAT] marked up by 25 percent); the ICE is assessed on this inflated value. In contrast, for domestic spirits, the ICE is assessed on the ex-factory price, and the 25 percent markup, although legally required, is not generally applied (*i.e.*, taxable base = ex-factory value + VAT). In both cases, the excise tax is based on arbitrary values and not on actual transaction values. Further increasing the cost of importing, Ecuador recently raised the tariff rates on spirits such as vodka from 20 percent to 30 percent, Ecuador's highest bound tariff rate for such products.

In October 2007, Ecuador passed a new Customs Law replacing its existing pre-shipment inspection (PSI) regime for imports with free on board values of more than \$4,000 with a risk analysis system run by the

Ecuadorian Customs Agency. Under this system, low risk importers should benefit from fewer physical inspections and expedited release of their cargo. The new law also includes changes to customs processes and requirements in an effort to reduce costs and minimize delays for importers.

Ecuador maintains bans on the import of used motor vehicles and spare parts, tires, and clothing.

In April 2006, Ecuador's Congress approved a controversial Food and Nutrition Security law. This bill invoked the precautionary principle and in practice prohibited the use, handling, trade, or import of any food products that may have contained organisms derived from biotechnology, since Ecuador did not possess appropriate institutions to provide proof of their safety. The prohibition stopped imports of several commodities in high demand by the animal feed and cooking oil industry (soybean meal and oil) for several weeks. However, apparently due to pressure from local industry, Ecuador's Attorney General declared this law unenforceable due to technical errors in the text.

Health Code legislation passed by Congress in December 2006 reintroduces the provisions of the Food and Nutrition Security law. However, imports have continued normally and it appears the Ministry of Agriculture is awaiting the development of implementing legislation before enforcing the law.

## **STANDARDS, TESTING, LABELING, AND CERTIFICATION**

Ecuador's Animal and Plant Health Inspection Service (SESA) is responsible for administering Ecuador's sanitary and phytosanitary (SPS) controls. According to Ecuadorian importers, bureaucratic procedures required to obtain clearance still appear to discriminate against foreign products. Denials of SPS certification often appear to lack a scientific basis and, in certain cases, appear to have been used in a discriminatory fashion to block the importation of U.S. products that compete with Ecuadorian production. This occurs most often with poultry, turkey and pork meats, beef, dairy products, and fresh fruit. For instance, in May 2007, the World Organization for Animal Health (OIE) classified the United States as a controlled risk country for Bovine Spongiform Encephalopathy (BSE), thereby clarifying that U.S. beef and beef products are safe to trade, provided that the appropriate specified risk materials (SRMs) are removed. However, Ecuador continues to ban U.S. beef and beef products through BSE-related measures. The ability to import some products, such as rice, corn, soybeans, and soybean meal, depends entirely on the discretion of the MAG, which will often look to the Consultative Committees for advice. The impact of removing these barriers would mean an increase of U.S. exports of up to \$20 million per year according to industry estimates. Although Ecuador has a number of SPS measures in place for imports of agricultural products, it has yet to complete its notification obligations under the SPS Agreement. To date, Ecuador has only notified 18 SPS regulations to the WTO.

SESA follows the CAN's Andean Sanitary Standards. Some standards applicable for third countries are different from those applied to CAN members. For example, there can be differences in the requirements for imports from CAN members and third countries. SESA also requires certifications for each product stating that the product is safe for human consumption or, in the case of live animals, that the animal is healthy and that the country of origin or the area of production is free from certain exotic plant or animal diseases. Industry sources assert that this process has been used unreasonably by SESA to prevent entry of animal products – especially poultry – that compete with local producers.

U.S. firms report that the Izquieta Perez National Hygiene Institute (INHIP – the Ministry of Health's executive arm responsible for granting sanitary registration certificates) accepts U.S. Certificates of Free Sale, not in lieu of sanitary registrations, but only as part of the many documents required for sanitary registration. In addition, onerous and inefficient procedures have delayed issuance beyond 30 days, and in some cases have reportedly limited the entry of some products imported from the United States.

Pharmaceutical, food, and beverage industry sources estimate that lost U.S. exports due to problems with sanitary registrations amount to \$25 million annually.

Ecuador does not adequately define or provide an appropriate sanitary registration process for food and dietary supplements. Currently, there is no regulation governing the sanitary registration process for such products. When registering foods supplements, U.S. companies are unable to ensure these products are assigned a proper classification by the Ministry of Health. In addition, U.S. companies have expressed concerns regarding regulations issued by Ecuador's public health ministry requiring foreign food manufacturers to disclose confidential information, such as formulas of imported food and pharmaceutical products. This requirement appears to go beyond the requirements of the Codex Alimentarius Commission on International Standards and Labeling.

## **GOVERNMENT PROCUREMENT**

Government procurement is regulated by a 2001 public contracting law. Foreign bidders must be registered in Ecuador and have a local legal representative in order to participate in government procurement. The law does not discriminate against U.S. or other foreign suppliers. However, bidding on government contracts can be cumbersome and relatively nontransparent. The lack of transparency is also a factor in the cancellations of bid solicitations that unnecessarily adds to the costs of participating in government procurement and subjects the procurement process to possible manipulation by contracting authorities. A large number of government controlled companies (such as 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**

The basic legal tenets of Ecuador's IPR regime are provided for under a comprehensive 1998 IPR law and Andean Pact Decisions 345, 351, and 486. The 1998 IP law provides greater protection for intellectual property than existed before it came into effect; however, Ecuador's IPR regime is weak in a number of areas and the law is not being adequately enforced.

Ecuador's 1998 IPR law provided an improved legal basis for protecting patents, trademarks, and trade secrets. However, concerns remain regarding several provisions, including a working requirement for patents, and inadequate protection of undisclosed pharmaceutical test and other data submitted for marketing approval. U.S. companies are also concerned that the Ecuadorian government does not provide patent protection to new uses of previously known or patented products.

Government of Ecuador health authorities continue to approve the commercialization of new drugs that are the bioequivalent of patented drugs, thereby denying the originator companies effective patent protection for innovative drugs. A modification to Ecuador's health code in late 2006 permits sanitary registrations without regard to whether or not a medication is patented. However, a court decision in 2006 that characterized efforts by a patent holder to remove illegal copies from the market as an illegal competitive practice was overturned on appeal in 2007.

Proprietary pharmaceutical test data submitted for marketing approval is also not being afforded adequate protection. In effect, the government of Ecuador is allowing the test data of registered drugs from originator companies to be relied upon by others seeking approval for their own version of the same product.

## **Enforcement**

Active local trade in pirated audio and video recordings, computer software, and counterfeit brand name apparel continues. The government of Ecuador, through the National Copyright Office's Strategic Plan against Piracy, has committed to take action to reduce the levels of copyright piracy, including implementation and enforcement of its 1998 Copyright Law. However, weak copyright enforcement remains a significant problem, especially concerning sound recordings, computer software, and motion pictures. Although the Ecuadorian Intellectual Property Institute has voiced its concern, the government of Ecuador has not taken action to clarify that Article 78 of the 1999 Law on Higher Education does not permit software copyright infringement by educational institutions.

The International Intellectual Property Alliance (IIPA) estimates that pirated products accounted for 98 percent of the domestic record and music industry in Ecuador in 2006, with estimated damage due to music piracy of \$33 million. Ecuador has made limited progress in establishing the specialized IPR courts required by its 1998 IPR law. The national police and the customs service are responsible for carrying out IPR enforcement, but do not always enforce court orders. Some local pharmaceutical companies produce or import counterfeit drugs and have sought to block compliance with Ecuador's IP law.

## **SERVICES BARRIERS**

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**

In disputes, U.S. companies have resorted to local courts or alternate dispute resolution mechanisms such as Chambers of Commerce; others have pursued international commercial dispute resolution mechanisms as provided for in their contracts or under the United States-Ecuador Bilateral Investment Treaty (BIT). The BIT, which entered into force in May 1997, includes obligations relating to national and Most Favored Nation treatment; prompt, adequate, and effective compensation for expropriation; the freedom to make investment related transfers; and access to binding international arbitration of investment disputes.

The transparency and stability of the country's investment regime are significantly weakened by the existence of numerous investment related laws that overlap or that appear to have mutually inconsistent provisions. This legal complexity increases the risks and costs of doing business in Ecuador.

In early 2005, Ecuador's Congress modified the Arbitration and Mediation Law to prohibit international arbitration of investment disputes if the national interest could be affected. Depending on how it is interpreted and applied, this modification of Ecuador's law may conflict with Ecuador's consent to binding arbitration under the BIT. At a minimum, the law could create confusion among investors regarding their arbitration rights and may also reinforce negative impressions among investors of

Ecuador's commitment to international arbitration. Ecuador's notification to the World Bank's International Centre for Settlement of Investment Disputes (ICSID) that Ecuador will not consent to ICSID arbitration for oil and mining issues has introduced additional uncertainty to the investment climate in the petroleum sector.

Certain sectors of Ecuador's economy are reserved to the state. All foreign investment in petroleum exploration and development must be carried out under contract with the state oil company. U.S. and other foreign oil companies produce oil in Ecuador under such contracts. Foreign investment in domestic fishing operations, with exceptions, is limited to 49 percent of equity. Foreign companies cannot own more than 25 percent equity in broadcast stations, and foreigners are prohibited from owning land on the borders or the coast.

Several oil companies are involved in a dispute 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 international arbitration award against the government of Ecuador. The government has requested a judicial review of the arbitration award. After notice of the award, Ecuador's solicitor general (Procurador General) initiated an investigation of the company for allegedly transferring assets to another foreign company without obtaining the required government authorization. The government of Ecuador has since nullified the company's contract and seized the company's considerable assets in Ecuador. The U.S. company has initiated arbitration proceedings under the BIT; the government of Ecuador is participating in the proceedings.

In 2006, Ecuador amended its hydrocarbons law, unilaterally increasing the share of revenues owed to the government to 50 percent under existing oil production sharing contracts. As a result, at least one U.S. company faces bankruptcy and is attempting to negotiate a change to its concession contract that would permit it to continue operating and investing in Ecuador (it has also initiated international arbitration proceedings as allowed by its contract). In October 2007, Ecuador issued an executive decree increasing the share of extraordinary petroleum revenues owed to the government to 99 percent. Companies are currently assessing the decree's impact on their revenue streams and whether operations would still be feasible, and are holding talks with the government on the possibility of renegotiating their contracts.

U.S. investors in the electricity sector face problems of chronic underpayment, due in part to government regulated prices and the inability to cut off consumers that do not pay their bills; government subsidies only partially offset these losses and are not available to all firms. A 2006 electricity reform law attempts to address some of the problems plaguing the sector, but the problem of underpayment has not been resolved. U.S. firms in this sector are also pursuing international arbitration and are simultaneously attempting to negotiate settlements with the government of Ecuador.

Effective compensation for expropriation is provided for in Ecuadorian law, but can be difficult to obtain in practice. The extent to which foreign and domestic investors receive prompt, adequate, and effective compensation for expropriations varies widely. It can be difficult to enforce property and concession rights, particularly in the real property, agriculture, oil, and mining sectors. Foreign oil, energy, and telecommunications companies, among others, have often had difficulties resolving contract issues with state or local partners.