

ECUADOR

TRADE SUMMARY

In 2000, the U.S. trade deficit with Ecuador was \$1.2 billion, an increase of \$279 million from the U.S. trade deficit of \$894 million in 1999. U.S. merchandise exports to Ecuador were approximately \$1.0 billion, an increase of \$117 million (12.7 percent) from the level of U.S. exports to Ecuador in 1999. Ecuador was the United States' 53rd largest export market in 2000. U.S. imports from Ecuador were about \$2.2 billion in 2000, an increase of \$396 million (21.8 percent) from the level of imports in 1999.

The stock of U.S. foreign direct investment (FDI) in Ecuador in 1999 was \$1.2 billion, an increase of 18.2 percent from the level of U.S. FDI in 1998. U.S. FDI in Ecuador is concentrated largely in the petroleum, manufacturing and finance sectors.

IMPORT POLICIES

Tariffs

When it joined the WTO in January 1996, Ecuador bound most of its tariff rates at 30 percent or less. Ecuador's average applied tariff rate is about 13 percent *ad valorem*. Since February 1995, Ecuador has applied a common external tariff (CET) with two of its Andean Pact partners, Colombia and Venezuela. The CET has a four-tiered structure with levels of five percent for most raw materials and capital goods, 10 or 15 percent for intermediate goods, and 20 percent for most consumer goods. Ecuador harmonized its tariff schedule with the CET but took numerous exceptions in order to maintain lower tariff rates on capital goods and industrial inputs. Agricultural inputs and equipment are imported duty-free. In February 1999, the Government of Ecuador imposed temporary surcharges on imports to raise additional revenues. Earlier this year, the Government of Ecuador also submitted tax reform legislation including a provision to raise the value-added tax from 12 to 15 percent.

Non-tariff Measures

Ecuador appears to have failed to meet deadlines for fulfilling some of its WTO obligations to eliminate remaining non-tariff barriers. Prior authorization for certain goods is required before the central bank can issue an import license. In spite of Ecuador's WTO accession commitment not to impose arbitrary and quantitative restrictions on agricultural imports, the Ministry of Agriculture often denies the issuance of import permits in order to protect local producers. The products most affected by this policy include rice, dairy products, frozen chicken parts, turkeys and, to a lesser extent, apples and fresh fruit. In addition, a consultative committee comprised of private producers and government representatives controls imports of products such as rice, corn, poultry, meat and dairy products. Import licenses require two signatures, one from the Ecuadorian Animal and Plant Health Inspection Service (SESA) and one from the Agriculture Ministry's Under Secretary of Policy and Investment. The Government of Ecuador claims its import procedures are not designed to delay imports and that the Under Secretary's signature is necessary to ensure that administrative import procedures are followed. However, the requirement for two approvals constitutes a non-tariff barrier that adversely affects U.S. exporters.

Ecuador was scheduled to implement the WTO Agreement on Customs Valuation at the start of 2001, but has not yet notified its legislation nor the Customs Valuation Checklist to the WTO Committee on Customs Valuation. The U.S. attaches great importance to full implementation of the WTO Agreement on Customs Valuation, and will continue to monitor closely the progress of Ecuador.

Ecuador also continues to maintain a pre-shipment inspection (PSI) regime. Pre-shipment inspection by an authorized inspection company (both before shipment and after specific export documentation has been completed at the intended destination) results in delays far exceeding the time saved in customs clearance. Customs authorities sometimes perform spot-checks, causing further delays. These practices generally add six to eight weeks

ECUADOR

to the date when merchandise reaches the retailer.

Ecuador also maintains its existing price band system. At present, 138 agricultural products, including wheat, white and yellow corn, rice, soybeans, soya and palm oil, barley, sugar, chicken parts, dairy products and pork meat, are subject to a variable import tariff or price band system. Under this system, the *ad valorem* CET rates are adjusted according to the relationship between “marker” commodity reference prices and established floor and ceiling prices. The marker commodity reference prices are issued every other week by the Andean Community secretariat. Upon accession to the WTO, Ecuador bound its tariffs plus price bands on these commodities between 20 and 95 percent. All price bands are to be phased out by 2001, but no steps appear to have been taken to comply with the WTO commitments.

Meanwhile, there have been reports that the customs authorities do not always abide by the maximum tariff rates on products such as turkey meat, demanding payments above WTO bound tariffs.

Through tariff-rate quotas (TRQs), Ecuador has agreed to provide minimum market access at nonrestrictive preferential tariff rates while providing a measure of protection for import-sensitive commodities. Except for barley, wheat, corn and soybeans, the Government of Ecuador has yet to implement the TRQ system. Tariff rates of 19 to 45 percent are used for seventeen agricultural products, including sorghum, wheat, corn, chicken parts, turkey, powdered milk and soybean meal.

Ecuador also continues to impose certain formal and informal quantitative restrictions that appear to violate its WTO obligations. Ecuador does not appear to have met its WTO commitment to lift bans on the import of used motor vehicles, tires and clothing by July 1, 1996. The Government drafted legislation to ease the ban on the import of used vehicles, but the legislation has not been passed by the Ecuadorian Congress.

The Government of Ecuador does not appear to have complied with its WTO accession commitment to equalize the application of excise taxes between imported and domestic products. Excise taxes are levied on all liquor (27 percent), beer (31 percent), soft drinks (10 percent), cigarettes (18 to 77 percent), motor vehicles (5 percent) and aircraft (10 percent). The Government of Ecuador also applies a 25 percent mark-up on imported distilled spirits, which is not added to the tax base on which the excise tax is applied to domestic spirits.

In December 1999, the Ministry of Agriculture, through Ecuador’s animal plant health inspection service (SESA), issued a new requirement that all importers must present a certificate stating that imported agricultural products (plants, animals, their products or byproducts) have not been produced using modern biotechnology.

STANDARDS, TESTING, LABELING AND CERTIFICATION

National standards are set by the Ecuadorian Norms Institute (INEN) of the Ministry of Commerce and generally follow international standards. The Ministry of Agriculture is responsible for administering Ecuador's sanitary and phytosanitary controls. According to Ecuadorian importers, bureaucratic procedures required to obtain clearance for imports have recently improved, but still appear to discriminate against foreign products. Although Ecuador made a commitment in its WTO accession to comply with the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), denials of SPS certification often appear to lack a scientific basis and to have been used in a discriminatory fashion to block the import of U.S. products that compete with Ecuadorian production.

Ecuador has not yet fulfilled its 1995 bilateral commitment to the United States to accept U.S. certificates of free sale as the basis for sanitary registrations, which are administered by the Ministry of Public Health. However, recent

ECUADOR

changes in law, if implemented, should significantly improve Ecuador's sanitary permit regime. The implementing regulations should permit the non-reciprocal acceptance of foreign countries' free sale and good manufacturing practice certificates, require sanitary permits to be issued within 30 days of receipt of the request, and reduce the number of documents required to obtain a sanitary permit.

Additionally, Ecuadorian laboratories will begin accepting product analysis by competent institutions in the country of origin. To date, however, the Ministry has not issued the necessary implementing regulations.

Currently, the Izquieta Perez National Hygiene Institute (INHIP) and accredited public and private laboratories conduct tests on consumer products that are required to obtain a sanitary registration from the Ministry of Health. Sanitary registrations are required for imported as well as domestic processed foods, cosmetics, pesticides, pharmaceuticals and syringes, and some other consumer goods. Non-transparent procedures and inefficiency in the sanitary registration process have delayed and even blocked the entry of some imports from the United States.

GOVERNMENT PROCUREMENT

Government procurement is regulated by the 1990 public contracting law. Foreign bidders must be legally represented in Ecuador. There is no legal requirement to discriminate against U.S. or other foreign suppliers. Bidding for government contracts can be cumbersome and insufficiently transparent, although recent tenders appear to show some improvement. Ecuador is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

The Government of Ecuador has created a semi-independent agency, Corpei, to promote Ecuadorian exports. Using a World Bank loan,

Corpei offers matching grants to exporters to help fund certain expenses, including international promotion events and export certifications. The maximum individual grant is \$50,000.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 1998, the Ecuadorian Congress passed, and the President signed, a comprehensive law significantly improving the legal basis for protecting intellectual property, including patents, trademarks and copyrights.

The intellectual property law provides significantly greater protection for intellectual property, and enforcement of copyrights has improved. Still, it can be difficult to obtain adequate and effective protection given the remaining shortcomings in the legal system. In 1999, USTR recognized the improvement made by the Government of Ecuador by moving Ecuador from the "Priority Watch List" to the "Watch List" under the Special 301 provision of the 1974 Trade Act, as amended. The United States continues to pursue its intellectual property concerns with Ecuador, including issuance of scores of pending (transitional) "pipeline" pharmaceutical patent applications and the continued judicial application of the discriminatory 1976 Agents and Distributors Protection Law (Dealers' Act).

Ecuador's current intellectual property regime is provided for under its Intellectual Property Rights (IPR) Law, Andean Pact Decisions 486, 345 and 351, and its public commitment to apply the WTO TRIPS Agreement from the date of its accession to the WTO. Ecuador is a member of the World Intellectual Property Organization (WIPO) and has ratified the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Furthermore, Ecuador has ratified the Berne Convention for the Protection of Literary and Artistic Works and the Geneva Phonogram Convention, but not the Paris Convention for the Protection of Industrial Property.

ECUADOR

In October 1993, Ecuador and the United States signed the bilateral Intellectual Property Rights Agreement (IPRA) that mandates full protection for copyrights, trademarks, patents, satellite signals, computer software, integrated circuit layout designs and trade secrets. However, the IPRA has not been ratified by the Ecuadorian Congress. The IPRA obligates Ecuador to establish criminal and border enforcement systems similar to those required under the TRIPS Agreement. While many of the areas covered by the IPRA have been addressed by the 1998 IPR law, the IPRA also calls for pharmaceutical “pipeline” patent protection.

Despite improvements, enforcement against intellectual property infringement remains a serious problem in Ecuador. The national police and the customs service are responsible for carrying out IPR enforcement orders, but there has sometimes been difficulty getting court orders enforced. There is a widespread local trade in pirated audio and video recordings, computer software and counterfeit activity regarding brand name apparel. Local registration of unauthorized copies of well-known trademarks has been reduced. Some local pharmaceutical companies produce or import pirated drugs and have sought to block improvements in patent protection.

Before its September 1997 prospective repeal, the Dealers’ Act prevented U.S. and other foreign suppliers from terminating distributorship contracts without mutual consent and judicial approval, even if there was a termination clause in the contract that allowed either party to unilaterally terminate the contract. The Act has continued to form the basis for judicial decisions involving contracts signed before the repeal and for cases in the judicial system before the repeal. As of the date of this report, several court cases against U.S. firms remain pending, with large potential claims that bear no relation to alleged damages.

Patents and Trademarks

Ecuador’s 1998 IPR law provided an improved legal basis for protecting patents, trademarks and trade secrets. However, concerns remained regarding the lack of “pipeline” protection, working requirements for patents, compulsory licensing and ambiguities surrounding protection for test data.

In mid-1998, the Government of Ecuador issued twelve “pipeline” patents, but declined to take action on more than 140 other “pipeline” applications. In 1999, the Andean Community imposed sanctions on Ecuador for issuing the twelve “pipeline” patents, despite their having been issued pursuant to the IPRA. The twelve “pipeline” applications which were already approved were not automatically nullified. However, pirate companies have a legal action pending against some of those applications.

In September 2000, the Andean Community trade ministers approved Decision 486, which entered into force on December 1, 2000, and replaced Decision 344 as the Andean Community’s Common Industrial Property Regime. Decision 486 is a notable improvement over Decision 344 in bringing the region’s IPR regime closer to conformance with WTO standards. Nonetheless, U.S. companies are concerned that Decision 486 is not sufficiently explicit regarding the confidentiality of data included with marketing approval applications, thereby opening the way to the possible erosion of protections for such information. Also, Decision 486 contains ambiguities regarding the patentability of “second use” innovations. The Decision has not yet been fully implemented in Ecuador.

Copyrights

The IPR law protects printed and recorded works for the life of the author plus 70 years. Corporations may protect works for 70 years from production date. The copyright law covers software and satellite signals. Semiconductor chip layouts are specifically protected.

ECUADOR

SERVICES BARRIERS

Ecuador has ratified the WTO Agreement on Financial Services. The 1993 Equity Markets Law and the 1994 General Financial Institutions Law significantly opened markets in financial services and provided for national treatment. Foreign professionals are subject to national licensing legislation, and accountants must be certified by the Superintendent of Banks. Foreign insurance companies may not present offers on government tenders.

In the area of basic telecommunications, Ecuador only took WTO commitments for domestic cellular services. It did not make market access or national treatment commitments for the range of other domestic and international telecom services, such as voice telephony and data. In addition, Ecuador did not adhere to the pro-competitive regulatory commitments of the WTO Reference Paper.

INVESTMENT BARRIERS

Ecuador's foreign investment policy is governed largely by the national implementing legislation for Andean Pact Decisions 291 and 292 of 1991 and 1993, respectively. Foreign investors are accorded the same rights of establishment as Ecuadorian private investors, may own up to 100 percent of enterprises in most sectors without prior government approval, and face the same tax regime. There are no controls or limits on transfers of profits or capital. The U.S.-Ecuador Bilateral Investment Treaty (BIT) entered into force in May 1997 and includes guarantees regarding national and most-favored-nation treatment, prompt, adequate and effective compensation for expropriation, financial transfers and access to international arbitration.

Under the Andean Community Common Automotive Policy, Ecuador, Venezuela and Colombia impose local content requirements in order to qualify for reduced duties on imports. The local content requirement for passenger

vehicles was 32 percent in 1997. It was raised to 33 percent for 1998, and was then lowered to 24 percent for 2000. Under the WTO Agreement on Trade Related Investment Measures (TRIMS Agreement), the three countries were obligated to eliminate local content requirements by the year 2000. However, in December 1999 the Andean Automotive Policy Council determined that it would not eliminate the local content requirement as it had initially indicated, but instead decided to increase it gradually to 34 percent by the year 2009. This automotive policy may be inconsistent with Ecuador's WTO obligations under the TRIMS Agreement.

Certain sectors of Ecuador's economy are reserved to the state, although the scope for private sector participation, both foreign and domestic, is increasing. All foreign investment in petroleum exploration and development in Ecuador must be carried out under a contract with the state oil company. However, the government plans to attract increased foreign investment in the telecommunications, electricity and oil sectors through privatization and new legislation. 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. Foreign investors must obtain armed forces approval to secure mining rights in zones adjacent to international boundaries. Foreigners are prohibited from owning land on the frontier or coast.

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

ECUADOR

|