

ECUADOR

In 1997, the U.S. trade deficit with Ecuador was \$533 million, a decrease of \$126 million from the U.S. trade deficit of \$659 million in 1996. U.S. merchandise exports to Ecuador were approximately \$1.5 billion, an increase of \$266 million (21.1 percent) from the level of U.S. exports to Ecuador in 1996. Ecuador was the United States' forty-eighth largest export market in 1996. U.S. imports from Ecuador were about \$2.1 billion in 1997, an increase of \$139 million (7.3 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Ecuador in 1996 was \$855 million, an increase of 2.6 percent from the level of U.S. FDI in 1995. U.S. FDI in Ecuador is concentrated largely in the petroleum, manufacturing and wholesale sectors.

IMPORT POLICIES

Ecuador has substantially liberalized its trade regime since 1990, resulting in a reduction of tariffs and tariff dispersion, elimination of most non-tariff surcharges, and enactment of an in-bond processing industry law.

Tariffs

When it joined the World Trade Organization (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 5 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 1998 the Government of Ecuador announced that it would impose surcharges on imports, which may violate Ecuador's tariff bindings in the WTO.

Ecuador has concluded bilateral free trade agreements with Colombia, Bolivia, Venezuela and Chile. Ecuador is negotiating trade agreements with Mexico and the MERCOSUR countries.

Non-Tariff Measures

Ecuador has failed to meet deadlines for fulfilling many 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. For instance, the superintendency of telecommunications must authorize the import of telecommunications equipment for standards purposes.

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 to protect local producers. The products most affected by this policy include frozen chicken parts, turkeys and, to a lesser extent, apples and fresh fruit. Import licenses require two signatures, one from Ecuadorean animal plant health

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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 the administrative import procedures are followed. However, the requirement for two approvals constitutes a non-tariff barrier.

Some 138 agricultural products, including wheat, white and yellow corn, rice, soy beans, 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 JUNAC, the office of the Andean Community. 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, with lower tariffs bound at 20 to 85.5 percent.

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

The Government of Ecuador signed a side letter with the United States in June 1995 to accept the U.S. certificate of free sale, authorized by the U.S. Food and Drug Administration (FDA). To date, Ecuador has not implemented a system accepting the certificates.

Ecuador also continues to impose certain formal and informal quantitative restrictions that appear to be incompatible with its WTO obligations. Ecuador has failed to meet its WTO requirements to lift bans on the import of used motor vehicles, tires and clothing.

Pre-shipment inspection by an authorized inspection company 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-checking, causing even further delays. This generally adds six to eight weeks to the date when merchandise reaches the retailer. Such practices make U.S. exporters less competitive than local suppliers.

Excise taxes are levied on all liquor (26 percent), beer (30 percent), soft drinks (10 percent), motor vehicles (5 percent), and aircraft (10 percent). Since excise taxes on imports are calculated on CIF values, the effective rate is higher for imports than domestic products.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

National standards are set by the Ecuadorean norms institute (INEN) of the Ministry of Commerce, and generally follow international standards. Ecuador committed itself in its WTO accession protocol to conform with the WTO Agreement on Technical Barriers to Trade.

According to Ecuadorean importers, bureaucratic procedures required to obtain INEN clearance for imports have recently improved, but can still lead to discrimination against foreign products. A new draft law eliminating excessive requirements, such as notarization, was sent to the executive in May 1997 for approval.

However, no action has yet been taken.

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, as well as some other consumer goods. Corruption and inefficiency in the sanitary registration process has delayed and even blocked the entry of some imports from the United States. 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. To do so, the health code must be amended. The Ministry of Agriculture is responsible for administering Ecuador's zoosanitary and phytosanitary import controls. 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 scientific bases and have been used in a discriminatory fashion to block the import of U.S. products that compete with Ecuadorean production.

GOVERNMENT PROCUREMENT

Government procurement is regulated by the 1990 public contracting law, although Congress is considering new legislation. In some instances, the military is not required to use this law for its purchases. Foreign bidders must be legally represented in Ecuador. There is no formal discrimination against U.S. or other foreign suppliers. However, tenders are sometimes canceled. Bidding for government contracts can be cumbersome and insufficiently transparent. Ecuador is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Ecuador is considering the creation of an export credit agency. In the meantime, the National Finance Corporation (CFN) has begun to offer export financing. The government uses a drawback system to reimburse the cost of duties and taxes paid on raw material and other inputs incorporated in products that are subsequently exported.

LACK OF INTELLECTUAL PROPERTY PROTECTION

As of this report, the Ecuadorean Congress is considering comprehensive legislation that could significantly improve Ecuador's protection of intellectual property rights (IPR), including patents, trademarks, and copyrights.

Ecuadorean law does not provide adequate protection for intellectual property rights, and it can be difficult to gain protection through the legal system. In 1997, USTR placed Ecuador on the "Priority Watch List" under the Special 301 provision of the 1988 Trade Act. The United States is pursuing its IPR concerns with Ecuador, including its failure to implement the U.S.-Ecuador Intellectual Property Rights Agreement and its failure to resolve the uncertainty surrounding the repeal of the WTO-inconsistent 1976 Agents and Distributors Protection Law (Dealers' Act).

The scope of Ecuador's current protection for IPR in Ecuador is provided under Andean Pact Decisions 344, 345 and 351. Ecuador has also formally announced that it will apply the WTO TRIPS Agreement. Ecuador

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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 is a member of the World Intellectual Property Organization (WIPO).

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. The IPRA obligates Ecuador to establish criminal and border enforcement systems. The Government of Ecuador committed to seek full implementation of the IPRA by September 1994, but has yet to secure IPRA ratification or to implement legislation harmonizing domestic law with IPRA and TRIPS.

In response to a November 1996 Andean Pact Tribunal Decision, Ecuador repealed its implementing regulations for Andean Pact Decision 344 on industrial property, which included provisions for transitional ("pipeline") protection for previously unpatentable products. In December 1996, another decree reestablished the National Directorate of Industrial Property (DNPI) as the competent patent and trademark authority and authorized the DNPI only to administer Decision 344 as written. The Government of Ecuador states that it can resolve all the pending pipeline patents through administrative action. However, no such action has been taken to date.

Before its September 1997 prospective repeal, the Dealers' Act prevented U.S. and other foreign suppliers from terminating distributorship contracts without paying compensation, even if there was a termination clause in the contract. The law violated WTO national treatment guarantees and the U.S.-Ecuador Bilateral Investment Treaty, and was applied in ways that appeared to contravene Ecuador's obligations under the TRIPS Agreement. Despite the Act's partial repeal, it appears that the Act can still form the basis for future judicial decisions involving contracts signed before the repeal. As of the date of this report, several court cases against U.S. firms remain pending, with very large potential claims.

Enforcement of intellectual property rights remains a serious problem for Ecuador. The national police and the customs service are responsible for carrying out IPR enforcement orders, but it can be difficult to get court orders enforced or to secure effective police action. There is a widespread local trade in pirated audio and video recordings, computer software and clothing. Local registration of unauthorized copies of well-known trademarks is a problem since the government has not committed the resources to monitor and control such registrations. Some local pharmaceutical companies produce or import patented drugs without licenses and have sought to block improvements in patent protection.

Patents and Trademarks

With the repeal of implementing regulations for Andean Pact Decision 344, it is unclear what legal protection and remedies are available in Ecuador in the patent, trademark and trade secrets areas. Patent and trademark registration applications can still be filed with the national directorate of industrial property.

Copyrights

Andean Pact Decision 351 supplements Ecuador's former copyright law. Printed and recorded works are protected for the life of the author plus 50 years. Computer programs are protected, albeit as a type of work

distinct from literary works. The copyright law has been changed to cover software and satellite signals. Decision 351 assigns copyrights only to individuals, not corporations, and restricts the right of copyright holders to sell those rights.

Semiconductor chip layouts are not specifically protected, but it may be possible to register layouts under either the copyright law or the industrial designs provision of Decision 344. The Ministry of Education deals with copyright matters, while the National Telecommunications Council (CONATEL) has jurisdiction over satellite signals.

SERVICES BARRIERS

Ecuador's WTO financial services offer in the recently concluded negotiations reflects their already open regime in financial services. The 1993 Equity Markets Law and the 1994 General Financial Institutions Law established open markets in financial services and provide for national treatment. Foreign professionals are subject to national licensing legislation; accountants must be certified by the superintendency of banks. Foreign insurance companies may not present offers on government tenders.

Maritime transport services are generally open, subject to reciprocity with other countries, although the transport of hydrocarbons is reserved for a Navy-owned company. Andean Pact Decision 257 provides for freedom of land transportation within the region.

Telecommunications services are reserved to the state, but foreign companies enjoy national treatment in providing services not monopolized by the state and can participate in the planned partial privatization of the state telephone company. In the WTO negotiations on basic telecommunications services, Ecuador made commitments for domestic cellular services, but did not adopt commitments for other domestic and international services. It was one of the very few countries which chose to make market access commitments without reinforcing regulatory commitments.

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 entry as Ecuadorean 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, and foreign exchange is readily available. There are no performance requirements, with the exception of the auto regime. A Bilateral Investment Treaty with the United States that guarantees access to binding international arbitration has been ratified and entered into force in May 1997.

Certain sectors of the 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. New legislation allows increased private investment in the telecommunications and electricity sectors and privatization of state enterprises. 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 obtain mining rights in zones adjacent to international boundaries. Foreigners are prohibited

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from owning land on the frontier or coast.

Appropriate compensation for expropriation is provided for in Ecuadorean law, but is infrequent. The extent to which foreign and domestic investors and lenders receive prompt, adequate and effective compensation is largely related to the particular judicial process underway. It can be difficult to enforce property and concession rights, particularly in agriculture and mining sectors. Also, squatters can be a problem. Oil companies have had difficulties resolving contract issues with the state oil company. Although Ecuador deposited its instrument of accession to the International Center for the Settlement of Investment Disputes (ICSID), the government maintains that congressional ratification is necessary to make that membership effective.

Under the Andean Community Common Automotive Policy, Ecuador, Colombia and Venezuela impose regional content requirements in the automotive assembly industry in order to qualify for reduced duties on imports. The local content requirement for passenger cars was 32 percent in 1997 and has risen to 33 percent for 1998. In its WTO accession protocol, Ecuador committed to eliminate the local content requirement of its auto regime before January 1, 2000, and not to increase its inconsistency with the TRIMs agreement in the interim.