

ECUADOR

In 1998, the U.S. trade deficit with Ecuador was \$69 million, a decrease of \$464 million from the U.S. trade deficit of \$533 million in 1997. U.S. merchandise exports to Ecuador were approximately \$1.7 billion, an increase of \$164 million (10.8 percent) from the level of U.S. exports to Ecuador in 1997. Ecuador was the United States' 48th largest export market in 1998. U.S. imports from Ecuador were about \$1.8 billion in 1998, a decrease of \$300 million (14.6 percent) from the level of imports in 1997.

The stock of U.S. foreign direct investment (FDI) in Ecuador in 1997 was \$1.2 billion, an increase of over 27 percent from the level of U.S. FDI in 1996. U.S. FDI in Ecuador is concentrated largely in the petroleum, manufacturing, and wholesale sectors.

IMPORT POLICIES

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 January 1999, the Government of Ecuador imposed additional surcharges on imports until April 1999 to raise additional revenues. Given Ecuador's continuing fiscal problems, the surcharges could be extended beyond the April deadline.

Nontariff Measures

Ecuador has 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. 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 the Ecuadorean Animal 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.

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

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"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, with lower tariffs bound at 20 to 85.5 percent. Presently, however, customs authorities often do not respect the price band system for some imports, such as turkey meat. There have been reports that the customs authorities do not always accept the maximum tariff rates and demand payments above WTO bound tariffs.

“As a part of its WTO accession commitments, Ecuador, through a schedule of tariff rate (TRQs), agreed to provide minimum access at nonrestrictive tariff rates for 17 agricultural products. Ecuador has yet to implement the TRQs for wheat, corn, barley, and soybeans. Recent reports indicate that Ecuador has not announced 1999 TRQs, resulting in imported products being assessed duties significantly higher than those which would otherwise be assessed under the TRQ system.”

Ecuador also continues to impose certain formal and informal quantitative restrictions that violate its WTO obligations. Ecuador has failed to meet its promise to the WTO to lift bans on the import of used motor vehicles, tires and clothing by July 1, 1996.

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 discriminate against U.S. exporters by making them less competitive than local suppliers.

The Government of Ecuador has not 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 (26 percent), beer (30 percent), soft drinks (10 percent), cigarettes (75 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 still appear to discriminate against foreign products. In 1998, Ecuador implemented a new law to eliminate some excessive requirements, such as notarization.

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

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and have been used in a discriminatory fashion to block the import of U.S. products that compete with Ecuadorean production.

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.

GOVERNMENT PROCUREMENT

Government procurement is regulated by the 1990 public contracting law, although the government is considering introducing 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. 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

In 1998, the Ecuadorean Congress passed, and the President signed, a comprehensive law significantly improving the legal basis for protecting intellectual property rights (IPR), including patents, trademarks and copyrights. As of February 1999, the government had signed, but not yet published, regulations to implement the law.

The new law provides significantly greater protection for intellectual property rights, and notwithstanding the lack of implementing regulations, enforcement of patents and copyrights has improved. Still, it can be difficult to gain protection through the legal system. In 1998, USTR reaffirmed Ecuador's place on the "Priority Watch List" under the Special 301 provision of the 1988 Trade Act. The United States continues to pursue its IPR concerns with Ecuador, including issuance of scores of pending (transitional) "pipeline" pharmaceutical patent applications and the continued judicial application of the discriminatory, WTO-inconsistent 1976 agents and distributors protection law (Dealers' Act).

The scope of Ecuador's current IPR protection is provided under its new intellectual property rights law, Andean pact decisions 344, 345 and 351, and its public commitment to apply the WTO TRIPs agreement. 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 is a member of the World Intellectual Property Organization (WIPO).

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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 agreement has not been ratified by the Ecuadorean Congress. The IPRA obligates Ecuador to establish criminal and border enforcement systems. Many of the areas covered by the IPRA have been addressed by the new IPR law, except for the pending pharmaceutical "pipeline" applications held by U.S. and other foreign companies.

In response to a November 1996 decision by the Andean Pact Tribunal, Ecuador repealed its implementing regulations for Andean Pact Decision 344 on industrial property, which included provisions for "pipeline" protection for previously unpatentable products. In December 1996, another decree re-established 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. In mid-1998, the Government of Ecuador issued 12 "pipeline" applications, but declined to take action on more than 140 other "pipeline" applications, citing, inter alia, Andean Community prohibitions and its intention to abolish the DNPI.

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 law violated national treatment guarantees of both the WTO and the U.S.-Ecuador Bilateral Investment Treaty, and was applied in ways that appeared to contravene Ecuador's obligations under the TRIPs Agreement. 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 very large potential claims that bear no relation to alleged damages.

Despite improvements, enforcement of intellectual property rights 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 clothing. 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.

Patents and Trademarks

The new IPR law provides an improved legal basis for protecting patents, trademarks and trade secrets. However, concerns remain with the lack of pipeline protection, provisions permitting parallel importation, working requirements for patents, and ambiguities surrounding protection for test data. Further improvement awaits publication of the law's implementing regulations and the creation of the Ecuadorean Intellectual Property Institute (IEPI). Until IEPI is created, patent and trademark registration applications can be filed with the National Directorate of Industrial Property in the Ministry of Trade.

Copyrights

The new 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.

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SERVICES BARRIERS

Ecuador has ratified the WTO Agreement on Financial Services and has a relatively 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.

Telecommunications services are reserved to the state, but foreign companies enjoy national treatment in providing services not monopolized by the state and will be invited to participate in the planned partial privatization of the two state telephone companies in 1999 or the year 2000. 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 that 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 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. 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 obtain 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 Ecuadorean law, but is often difficult to obtain. 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 a agriculture and mining sectors. Oil companies often 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. In its WTO accession protocol, Ecuador committed to eliminate the local content requirement of

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its auto regime before January 1, 2000, and not to increase its inconsistency with the TRIMs Agreement in the interim.