

## ECUADOR

### TRADE SUMMARY

In 2001, the U.S. trade deficit with Ecuador was \$622 million, a decrease of \$579 million from the U.S. trade deficit of \$1.2 billion in 2000. U.S. goods exports to Ecuador were approximately \$1.4 billion, an increase of \$383 million (36.9 percent) from the level of U.S. exports to Ecuador in 2000. Ecuador was the United States' 48<sup>th</sup> largest export market in 2001. U.S. imports from Ecuador were about \$2.0 billion in 2001, a decrease of \$196 million (8.8 percent) from the level of imports in 2000.

The stock of U.S. foreign direct investment (FDI) in Ecuador in 2000 was \$838 million, a decrease of 19.0 percent from the level of U.S. FDI in 2000. 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 5 percent for most raw materials and capital goods, 10 or 15 percent for intermediate goods, and 20 percent for most consumer goods. Although Ecuador harmonized its tariff schedule with the CET, it 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 2001, Ecuador phased out temporary surcharges on imports imposed in 1999 to raise additional revenues.

At the Andean President's Council held January 31, 2002, the five member countries of the Andean Community agreed to establish an Andean free trade zone, a CET and a customs harmonization policy by January 2004. The CET agreement establishes a unified tariff schedule that will come into effect at the end of 2003. The CET reportedly will be zero duty on capital goods, five percent on industrial goods and raw materials, ten percent on manufactured goods with some exceptions, and twenty percent on "ultra-sensitive goods."

#### Non-Tariff 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. In spite of Ecuador's WTO accession commitment not to impose arbitrary constraints or 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 makes policy recommendations on import levels and prices. Some committees have a reputation for acting in a way that discriminates in favor of domestic producers, such as the rice, corn and dairy products committees. Authorization to import requires 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. Ecuador claims its import procedures are 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

Ecuador also continues to maintain a preshipment inspection (PSI) regime. Preshipment 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 to shipping times.

Ecuador also maintains a price band system. At present, 138 agricultural products, including wheat, white and yellow corn, rice, soya and palm oil, barley, sugar, chicken parts, dairy products and pork meat, are subject to a variable import tariff. Under this system, the *ad valorem* CET rates are adjusted according to the relationship between 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 percent and 95 percent. As part of its WTO accession, Ecuador committed to phase out its price band system starting in January 1995, with a total phase-out by December 2001. No steps have been taken to comply with the WTO commitment. Instead, in January 1995, Ecuador adopted the Andean price band system, which applies common tariff rates among Andean Community members. Ecuador maintains that its participation in the Andean price band system is WTO-consistent. There have also 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 rates.

Ecuador has agreed to apply tariff-rate quotas (TRQs) with lower tariff rates on at least a specified quantity of imports for certain import-

sensitive commodities. Except for corn, sorghum, and soybeans, Ecuador has yet to implement the TRQ system. Tariff rates of 19 percent to 45 percent are used for 17 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 inconsistent with its WTO obligations. For instance, 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. Legislation was drafted to ease the ban on the import of used vehicles, but has not yet been passed by the Ecuadorian Congress.

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). Ecuador also applies a 25 percent markup 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 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. However, there is no legal ban on genetically modified imports.

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

National standards are set by the Ecuadorian Norms Institute (INEN) of the Ministry of

## ECUADOR

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. Ecuador must comply with the WTO Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures, yet its 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. Recent changes in law are significantly improving Ecuador's sanitary permit regime. New implementing regulations are in place to allow the acceptance of foreign countries' free sale certificates, to require sanitary permits to be issued within 30 days of the receipt of the request, and to reduce the number of documents required to obtain a permit. However, U.S. firms report that in practice it is difficult to obtain sanitary registrations using their U.S. documentation.

The Izquierda Perez National Hygiene Institute (INHIP), with offices in Quito, Guayaquil and Cuenca, is responsible for registering imported products. INHIP Guayaquil has refused to accept the new implementing rules and continues to apply the old regime for sanitary permits. For this reason, the Ministry of Health recommends that sanitary permit applications be filed at INHIP Quito. Sanitary registrations are required for imported as well as domestic processed food, cosmetics, pesticides, pharmaceuticals and syringes, as well as 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

Ecuador has created a semi-independent agency, the Corporation for the Promotion of Exports and Investments (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 (IPR) PROTECTION

In 1998, Ecuador instituted a comprehensive law that significantly improved the legal basis for protecting intellectual property, including patents, trademarks and copyrights.

The intellectual property law provides greater protection for intellectual property. However, enforcement of copyrights remains a problem. In 2001, USTR recognized Ecuador's progress made by removing it from the "Watch List" under the Special 301 provision of the 1974 Trade Act, as amended.

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

## ECUADOR

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. In 2001, Ecuador ratified the WIPO Patent Cooperation Treaty.

In October 1993, Ecuador and the United States signed a 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 "pipeline" patent protection, which remains a concern for the United States.

### Enforcement

Despite some improvements, there continues to be local trade in pirated audio and video recordings, computer software and counterfeit activity regarding brand name apparel. At times, judges in IPR cases apply performance bond and evidentiary requirements before issuing a preliminary injunction that exceed legal requirements and in effect limit the ability of rights holders to enforce their rights. The national police and the customs service are responsible for carrying out IPR enforcement orders, but do not always enforce court orders. Some local pharmaceutical companies produce or import pirated drugs and have sought to block improvements in patent protection.

### Patents and Trademarks

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

The requirement for pipeline protection stems from the 1993 bilateral IPRA. In mid-1998, Ecuador issued 12 "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 12 "pipeline" patents, despite the basis for issuance in the IPRA. The 12 "pipeline" patent applications which were already approved were not automatically nullified. However, pirate companies have legal action pending against some of those applications.

The Andean Community's September 2000 adoption of Decision 486 as the IPR regime for the region helped bring Ecuador closer to compliance with the WTO TRIPS Agreement. However, U.S. pharmaceutical companies are concerned that Decision 486 is not sufficiently explicit regarding the protection of data that is included in marketing approval applications, thereby opening the way to the possible erosion of such protection. They also express concern regarding an Andean Tribunal decision against Peru during 2001 that a company that had patented a compound for one use cannot subsequently patent a second use of that compound. This decision would put the Andean Community at odds with international norms and possibly with the WTO TRIPS Agreement. Venezuela and Ecuador have similar cases before the Tribunal.

### SERVICES BARRIERS

## ECUADOR

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.

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 a range of other domestic and international telecommunications 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 included 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 in 1998, and was then lowered to 24 percent in 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 decided that it would not eliminate the local content requirement as it had 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. All foreign investment in petroleum exploration and development in Ecuador must be carried out under contract with the state oil company. 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. 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 receive prompt, adequate and effective compensation varies widely. It can be difficult to enforce property and concession rights, particularly in the agriculture and mining sectors. Foreign oil and telecommunications companies, among others, have often had difficulties resolving contract issues with state or local partners. Several U.S. companies have also raised concerns about the lack of transparency, predictability and stability in Ecuador's legal and regulatory regime, which increases the risks and adds to the cost of doing business in Ecuador.

**ECUADOR**

|