

# ECUADOR

## TRADE SUMMARY

U.S. goods exports in 2013 were \$7.3 billion, up 9.5 percent from the previous year. Corresponding U.S. imports from Ecuador were \$11.5 billion, up 21.1 percent. The U.S. goods trade deficit with Ecuador was \$4.2 billion in 2013, up \$1.4 billion from 2012. Ecuador is currently the 35th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ecuador was \$851 million in 2012 (latest data available), up from \$793 million in 2011. U.S. FDI in Ecuador is led by the mining and manufacturing sectors.

## IMPORT POLICIES

On June 12, 2013, Executive Decree 25 created the Ministry of Foreign Trade. Previously, foreign trade policy was administered by the Ministry of Foreign Affairs as a vice-ministry. The Foreign Trade Minister, appointed on June 14, 2013, holds a broad mandate that includes the formulation and implementation of trade and investment policies.

The Organic Code for Production, Trade, and Investment (Production Code), which came into effect on December 29, 2010, covers an array of issues, including import and export policies, customs procedures, taxes, and investment and labor rules. Among other things, the Production Code provides incentives intended to spur local and foreign investment and to promote export expansion and diversification. The Production Code created a Committee on Foreign Trade (COMEX) to replace the former Trade and Investment Council (COMEXI) as Ecuador's interagency body in charge of trade policy formulation and regulation. COMEX now falls under the authority of the Ministry of Foreign Trade. The Production Code also lowered the corporate tax rate by 1 percentage point per year, until it reached 22 percent in 2013, as well as provided 3 types of tax incentives to promote investment in domestic production activities.

Ecuador pursues a strategic policy of selective import substitution. A key concept in the 2013-2017 national plan developed by the Planning Agency is to change Ecuador's production model ("Matriz Productiva") from reliance on commodity exports to production of higher value added products. According to the plan, the products subject to selective import substitution measures include fertilizers, agrochemicals, agricultural commodities and food products, pesticides and fungicides, soaps, detergents, cosmetics, ceramic tiles, floors, textiles, clothing, footwear, leather, radios, telephones, televisions, electronics, pharmaceuticals, and electrical appliances. Also, the plan states the aim of fostering metalworking industries as well as software and hardware industries. The stated goal is to reduce the share of imported food products from 7.4 percent in 2010 to 5 percent in 2017.

Ecuador applies a combination of tariff and nontariff measures, such as non-automatic import licensing, to most of the sectors listed above to implement its selective import substitution strategy.

## Tariffs

Ecuador's import policies are increasingly restrictive and create an uncertain environment for traders in many sectors. Ecuador is a member of the Andean Community (AC) customs union, which also includes Bolivia, Colombia, and Peru. When Ecuador joined the WTO in January 1996, it bound most of its tariff rates at 30 percent *ad valorem* or less, except for agricultural products covered by the Andean Price Band

System (APBS). Ecuador's second Trade Policy Review (TPR) by the WTO was concluded in November 2011. According to the WTO Secretariat's TPR report, Ecuador's tariff structure has become more complex. Previously, Ecuador had generally applied a simple four-tiered tariff 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. Ecuador also imposes a number of fees and charges on imports.

According to the information available to the WTO, Ecuador's applied simple average most favored nation (MFN) tariff rate was 10.1 percent in 2012. While its average applied MFN tariff rate for industrial products declined from 10.6 percent in 2005 to 8.8 percent in 2012, for agricultural products it increased from 16.7 percent to 18.5 percent. However, as Ecuador did not supply to the WTO the *ad valorem* equivalents for its mixed tariffs and has implemented new trade restrictions since the WTO conducted its analysis, the actual average applied MFN tariff rates might be higher. As part of Ecuador's TPR, the WTO Secretariat identified 19 tariffs at the 10-digit level that exceeded Ecuador's bound tariff rates by 5 to 15 percentage points in 2011.

In June and July of 2012, Ecuador adopted a number of trade-restrictive measures, which included an increase in tariffs on a number of products, as well as import quotas scheduled to expire at the end of 2014. On December 4, 2013, Ecuador issued Resolution 116, which requires the conformity to dozens of new technical regulations that prohibit the importation and sale of products that do not conform to these new requirements. Nearly 300 product categories are affected by these new measures, including food, cosmetics, spices, food container materials, building materials, dietary supplements, and automobiles. For more details on Resolution 116, please refer to the Ecuador section of USTR's annual TBT Report.

Specific trade-restrictive resolutions by industry include:

#### *Consumer goods*

Resolution 63, enacted on June 15, 2012, increased tariffs on products covered by 102 tariff lines, including alcoholic beverages, washing machines, televisions, video and photographic equipment, art utensils, paper and cardboard, hair styling equipment, and work safety equipment. In Resolution 63, Ecuador also increased tariffs on tobacco and tobacco seeds, malt, and other cereals. Mixed tariffs (1 percent *ad valorem* plus a specific tariff of \$0.25 per grade of alcohol/liter) were established for 20 alcoholic products, including malt beer, sparkling wine, "pisco" (grape brandy), vodka, and tequila. According to U.S. distilled spirit industry sources, due to the new formulation and the prevailing price of the majority of imported spirits, Ecuador's assessed tariff rates on spirits in many instances now exceed Ecuador's WTO bound rates. Televisions, which fall within a single tariff line, were also assigned mixed tariffs, increasing in proportion to the size of the television. Resolution 70 introduced a specific tariff of \$39.97 for all televisions up to 20 inches, while retaining the existing 5 percent *ad valorem* duty; it also increased to \$73.11 the specific tariff for televisions between 20 inches and 32 inches. Ecuador raised tariffs on an additional 81 tariff lines, with all but 4 lines increased to the bound tariff rate under its WTO commitments.

#### *Automotive*

Resolution 65, also enacted on June 15, 2012, established value ceilings and unit quotas for imports of automobile complete knock-downs. In addition, Resolution 65 established a sliding tariff scale ranging between 4 percent and 40 percent, which decreases as more locally produced content is incorporated in the vehicle. Resolution 65 also created a monitoring mechanism to verify increases in the incorporation of local content. However, Ecuador has not yet published a methodology for measuring local content levels. This resolution is scheduled to expire at the end of December 2014, but could be renewed.

Resolution 66, issued on June 11, 2012, established a \$538 million limit for the importation of motor vehicles classified under 16 tariff lines, including passenger cars and cargo trucks. The \$538 million quota served to limit imports of vehicles under the 16 tariff lines affected to 68 percent by value of the total imported in 2010. The 38 importers among which the quota was divided had to comply with established unit and dollar value limitations. Tariffs on vehicles, which are as high as 40 percent, also remained in effect.

Resolution 66 has been modified on multiple occasions. Resolution 77, approved on July 30, 2012, slightly eased the unit and value restrictions on vehicle imports imposed by Resolution 66 by allowing importers to use existing import licenses to continue to import vehicles through December 28, 2012, even if it resulted in imports exceeding the importers' quotas. In addition, Resolution 77 increased the number of beneficiaries of the quota system from 38 to 50.

Resolution 92, enacted on October 24, 2012, reiterated the need to charge all January through December 2012 vehicle imports to the quota established under Resolution 66 and also established a prohibition on carrying forward unused import entitlements to 2013. Resolution 94, approved on November 19, 2012, modified Resolution 66 by giving Ecuador's customs authority flexibility in shifting vehicles' quotas among different sub-tariff items (or car models for each importer).

Resolution 96 approved by COMEX on December 7, 2012, eliminated all sub-tariff items that restricted vehicle imports by automobile dealer. As a result, an import quota in total units and value per dealer (as opposed to by vehicle type) was established.

Resolution 101, enacted January 7, 2013, established the 2013 parameters for automobile and truck imports. It confirmed the original quota and values established under Resolution 66 for 38 importers and ratified the quotas and values for the 12 importers included under Resolution 77. The aggregate value of entitlement for the 50 importers is \$552.5 million.

On October 24, 2012, COMEX issued Resolution 91, which established an annual import quota in units and in dollars for vehicles with cylinder capacity under or equal to 1,000 cubic centimeters (tariff line item 8703.21.00.90), excluding purchases made by the government. Resolution 91 established a quota of 189 units and a total value of \$434,501 (FOB) for such products, with 75 percent allocated to a single importer.

COMEX Resolution 95, passed on December 7, 2012, highlighted the widespread use of three-wheeled vehicles for commercial purposes and established *ad valorem* tariffs between 30 percent and 40 percent. Resolution 95 also combined four sub-tariff items into a new line item for three-wheeled vehicles.

#### *Government-procured goods*

On August 30, 2012, COMEX issued Resolution 82 to reduce tariffs on imported capital goods used for government contracts. Resolution 82 aims to promote investments and support investors that have signed contracts with the government. To qualify for the benefits, goods must be validated individually by COMEX for end-use purposes and meet origin and technical requirements. If there are any similar locally produced goods, the benefits do not apply.

#### *Restrictions on satellite decoders/dishes*

Resolution 93, issued on November 19, 2012, banned the import of decoders and satellite dishes when transported by mail, couriers, personal air luggage, ports or land borders.

## *Agricultural products*

Ecuador applies variable import duties set pursuant to the Andean Price Band System (APBS) with respect to more than 150 agricultural products when they are imported from outside the Andean Community (AC). These products include wheat, rice, sugar, barley, white and yellow corn, soybeans, African palm oil, soy oil, chicken meat, pork meat, and powdered milk, as well as certain products derived from them. The APBS protects domestic producers of covered products by providing for tariff increases when world prices fall and tariff decreases when world prices rise.

When Ecuador became a WTO member, it agreed to phase out its participation in the APBS. To date, no steps have been taken to phase out use of the APBS. Since July 2007, the application of APBS is voluntary to member countries. The extent to which the APBS restricts trade varies by product. For some U.S. exports, such as wheat, barley, malt barley, and their byproducts, the price band total duty (*ad valorem* tariff plus variable levy) is often zero. However, price band total duties as high as 86 percent and 45 percent have been applied to chicken parts and pork, respectively, restricting those imports.

### **Tariff-Rate Quotas**

When Ecuador became a WTO Member it established tariff-rate quotas (TRQs) for a number of agricultural imports. Products subject to TRQs include wheat, corn, sorghum, barley, barley malt, soybean meal, powdered milk, and frozen turkeys. The Ecuadorian government has not implemented a process for TRQ administration, but this has not stopped the flow of trade in these goods.

### **Nontariff Measures**

Importers must register with Ecuador's National Customs Service (formerly the Ecuadorian Customs Corporation) to obtain a registration number for all products. In August 2011, Ecuador instituted a non-automatic import licensing program covering 42 tariff subheadings. The products affected are tires, vehicles, mobile telephones, televisions and monitors, refrigerators and freezers, and semi-finished iron and steel products. According to the Ecuadorian government, the licensing regime was put into place to monitor compliance with so-called voluntary import agreements within these sectors.

Ecuador's Ministry of Agriculture (MAGAP) has been actively pursuing import substitution policies for sensitive agricultural products such as cheese, butter, milk fats, potatoes (including french fries), beef, pork, chicken, turkey, offals, beans, sorghum, and corn. On March 1, 2013, Ecuador established a non-automatic import licensing regime administered by the Ministry of Agriculture for 55 such products. Andean Community products are exempt from the import licensing regime. In June 2013, Ecuador instituted a mandatory and cumbersome process to allocate import licenses for certain agricultural products subject to import licensing.

Another administrative hurdle for importers of agricultural products is the Ministry of Agriculture, Livestock and Fisheries (MAGAP) use of "Consultative Committees" for some import authorizations for agricultural products. These Committees, composed primarily of local producers, often advise MAGAP against granting import authorizations. Additionally, import authorizations usually are subject to crop absorption programs, pursuant to which MAGAP requires that all local production be purchased at high prices before authorizing imports.

In January 2008, Ecuador increased its special consumption tax (ICE) on a number of products, largely luxury items. The ICE was increased mostly for imported products rather than those produced domestically, such as perfumes, vehicles (tiered increases by vehicle price starting at \$20,000), video games, firearms, airplanes, helicopters, boats, and cable television service. In December 2011, a new tax

package increased the ICE *ad valorem* rate on spirits from 40 percent to 75 percent, and added a specific tax, phased in over 3 years, of \$6.20 for every liter equivalent of alcohol. On December 18, 2012, Resolution 832, issued by Ecuador's tax authority, increased the specific per liter tax to \$6.93 based on consumer price index for alcohol and beer. Resolution 832 entered into effect on January 1, 2013. The resolution is supposed to make assessment of the ICE for domestically produced and imported spirits more equitable by establishing factory and pre-import duty prices as the new taxable bases, respectively. A special consumption tax on cigarettes set on November 24, 2011 at \$0.08 per cigarette was increased to \$0.0862 through Resolution 864, issued on December 19, 2013. The tax is adjusted biannually, depending on the consumer price index.

### *Mobile phones*

Resolution 67, adopted on June 15, 2012, limited annual imports under a single tariff line for cell phones to \$142.6 million, which represented 68 percent of the total value of Ecuador's cell phone imports in 2011. Unit and dollar value limits were established for each of Ecuador's 33 cell phone importers. Imports of cell phones entering Ecuador before June 11, 2012, were counted toward the annual limits, as were shipments already in transit. Cell phones are also subject to a 15 percent *ad valorem* tariff.

On July 17, 2012, COMEX issued Resolutions 69 and 70, which tightened the import restrictions established in Resolution 67 with respect to mobile phones. Resolution 69 reduced by 28 percent the total value of permissible imports by CONECEL, Ecuador's largest private mobile phone operator. Meanwhile, the state-owned telecommunications company, CNT, received a 145 percent increase in its import value entitlement, which grew from \$4.9 million to \$12 million. Unit quotas for CONECEL and CNT remained unchanged, suggesting that Ecuador has structured the restrictions to permit CNT to import more expensive phone models and improve its market share, which is only 1.6 percent. Resolution 104, approved on August 9, 2013, establishes quotas that apply specifically to smart phones worth \$220 or less for the 3 operators CONECEL, OTECEL, and publicly-owned CNT. Although the 3 operators currently have unequal shares in the wireless market, the government of Ecuador allocated equal shares of 15,152 units and/or a total value of \$3,333,333 equally among the three. The resolution also does not specify whether the quantity or value criteria will prevail.

## **GOVERNMENT PROCUREMENT**

On October 14, 2013, the National Assembly passed reforms to the Public Procurement Law. The National Procurement Service (SERCOP) was created and the National Institute of Procurement (INCOP) was legally closed. Article 2 of the law gives SERCOP regulatory powers which INCOP lacked.

As a general rule, all public institutions are subject to Ecuador's public contracting law. However, that law establishes several exceptions, including for procurements made according to special regimes established pursuant to norms set by the Ecuadorian President (Article 2), international agreements for the purchase of goods and services (Article 43), exploration and exploitation of hydrocarbons, emergency situations (Article 57), and national security contracts.

Since 2008, Ecuador's public contracting law has required that priority be given to locally produced and supplied products and services, although foreign suppliers can compete for the procurements. The 2013 reform law reiterates preferential treatment for locally produced goods, especially those produced by the constitutionally created "social and solidarity economy," as well as micro and small enterprises. Article 25 of the public contracting law promotes procurement of local goods and services. The possibility of winning a procurement contract is higher depending on the local content of the product offered (assessed by the value of local inputs in a given product) to compete for public procurements.

On August 29, 2013, Decree 92 created the “Public Enterprise for Imports.” The new entity, chaired by the Minister of Foreign Trade, is responsible for importing all government procured goods and for acquiring products subject to trade restrictions. This new entity is not yet operational. Private sector representatives have voiced concerns regarding possible unfair competition since the public sector is exempt from the 5 percent capital exit tax on foreign transfers.

Bidders are required to register and submit bids for government procurement through an online system (<http://www.compraspublicas.gob.ec>). Foreign bidders must register and have a local legal representative in order to participate in government procurement in Ecuador. Bidding on government procurement can be cumbersome and non-transparent. The lack of transparency creates opportunities for manipulation by procuring entities.

Ecuador is not a signatory to the WTO Agreement on Government Procurement.

## **INTELLECTUAL PROPERTY RIGHTS PROTECTION**

Ecuador remained on the Special 301 Watch List in 2013. The United States is very concerned about increases in the fees charged to apply for and maintaining patent rights and plant variety protection in Ecuador; these exorbitantly high fees create a disincentive for innovative companies to enter the market and will adversely affect the operation of the patent system. Widespread piracy and counterfeiting continue to adversely affect market access for U.S. rights holders. The United States urges Ecuador to continue to improve its IPR enforcement efforts and to establish the specialized IPR courts required under Ecuador’s 1998 IPR law. Ecuador should also further clarify its system for protecting against unauthorized disclosure or unfair commercial use of undisclosed test or other data submitted to the government to obtain marketing approval for pharmaceutical and agricultural chemical products. The United States also encourages Ecuador to provide an effective system to expeditiously address patent issues presented by applications to market pharmaceutical products. The United States looks forward to continuing to work with Ecuador to address these and other issues.

## **SERVICES BARRIERS**

### **Credit Reference Services**

In November 2012, Ecuador enacted a credit bureau law that severely restricts the operations of private credit bureaus, giving a state-owned entity exclusive right to credit-related data. The law was to become effective on December 4, 2013, but Ecuador postponed implementation for 90 days. Private credit bureaus, while not prohibited outright from operating, will be obliged to transfer their databases to the government and can no longer receive data directly from the financial sector. As of December 2013, only one private credit bureau remained in operation.

### **Mobile Spectrum**

Ecuador’s 4G spectrum is currently licensed exclusively to CNT, the public enterprise with 3.4 percent market coverage of the mobile market.

## **INVESTMENT BARRIERS**

Ecuador’s investment climate remains marked by uncertainty, as the government’s economic policies continue to evolve. While Ecuador is still relatively open to foreign investment in most sectors, new laws and regulations limit private sector participation in sectors deemed “strategic,” most notably in the

extractive industries. In addition, inconsistent application and interpretation of its investment laws negatively impacts the transparency and stability of Ecuador's investment regime. This legal complexity increases the risks and costs of doing business in Ecuador.

In 2013, the Permanent Court of Arbitration (PCA), an intergovernmental organization based in The Hague, The Netherlands, which provides a variety of dispute resolution services, issued two awards favorable to U.S. oil companies in highly visible cases against the Republic of Ecuador. Furthermore, the Ecuadorian judiciary sanctioned lower courts for issuing a favorable tax ruling to a foreign-owned oil pipeline operator.

Ecuador's framework for investment protection is still unsettled. Ecuador's denunciation of the Convention on the Settlement of Investment Disputes (ICSID Convention) became effective January 7, 2010. In September 2009, the Ecuadorian government requested approval from the country's National Assembly to terminate 13 bilateral investment treaties (BITs), including its BIT with the United States, arguing that they contained provisions that were unconstitutional. On November 24, 2010, Ecuador's Constitutional Court ruled that provisions within Ecuador's BIT with the United States were unconstitutional. In its ruling, Ecuador's Constitutional Court held that Article 422 of Ecuador's Constitution prohibited the state from concluding treaties or international instruments in which Ecuador would cede sovereign jurisdiction to international arbitration tribunals in commercial disputes between the state and private investors and concluded that the BIT with the United States constituted such an instrument.

The Constitutional Court has delivered similar rulings on the other BITs under review. Based on the Constitutional Court's rulings, Ecuador's National Assembly has so far approved the termination of five BITs, but has not approved the termination of four others, including the U.S. BIT. The Sovereignty, Integration and Foreign Relations Committee approved the termination of the U.S. BIT but the decision has not come to a full floor vote in the plenary. On November 19, 2013, the Minister of Foreign Trade issued an announcement that Ecuador would not terminate the remaining four BITs in 2013, but rather that Ecuador will seek to renegotiate those BITs that conflict with its constitution.

To date, the Ecuadorian government has only officially terminated its BIT with Finland. Furthermore, the Ecuadorian government has indicated it may be open to negotiating international arbitration clauses within individual contracts, as provided for under the Production Code and the Planning and Public Finance Code.

In May 2013, Presidential Decree 1506 created the "Integral Citizen's Audit Commission of Bilateral Investment Treaties and International Arbitration on Investment Issues" to study Ecuador's bilateral investment treaties and the international arbitration system to determine their legality and legitimacy, and to identify inconsistencies or irregularities that could have an impact on Ecuador in economic, social, and environmental terms. The Commission's work is currently in progress. The structure of the Commission, which is chaired by the National Planning Office, closely resembles the "Integral Debt Audit" implemented in 2008 and 2009 that provided the arguments for Ecuador's sovereign debt default of \$3.2 billion in May 2009.

Certain sectors of Ecuador's economy are reserved for the state, while equity caps apply in other sectors, such as a 49 percent cap on foreign investment in domestic fishing operations and a 25 percent limit with respect to broadcast stations. Petroleum exploration and development is reserved for the state, but foreign investment can be conducted through "exceptional" contracts with the state. In the past, a number of disputes relating to these contracts have arisen, as well to the laws regulating petroleum exploration and development generally. In 2010, the Ecuadorian government enacted a hydrocarbons law that requires all contracts in the extractive industries to be in the form of service, or "for fee" contracts, rather than

production sharing agreements. On November 23, 2010, the Ecuadorian government completed negotiations with most resident foreign oil companies to transition from production sharing to service contracts. Several companies declined to renegotiate their contracts but instead opted to negotiate compensation agreements for operations that they subsequently turned over to the Ecuadorian government. The last U.S. oil and gas production company operating in Ecuador departed in 2011 after negotiating a sale of its operations to the government. As noted above, some U.S. companies that have operated in Ecuador, notably in the petroleum sector, have initiated international investment arbitration claims relating to these disputes.