ECUADOR

In 1996, the U.S. trade deficit with Ecuador was $659 million, an increase of $267 million from the U.S. trade deficit of $392 million in 1995. U.S. merchandise exports to Ecuador were approximately $1.3 billion, a decrease of $281 million (18.3 percent) from the level of U.S. exports to Ecuador in 1995. Ecuador was the United States' fifty-first largest export market in 1996. U.S. imports from Ecuador were about $1.9 billion in 1996, a decrease of $14 million (0.8 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Ecuador in 1995 was $830 million, an increase of 12.8 percent from the level of U.S. FDI in 1994. 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 17 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.

Since January 1995, Ecuador has been a part of a harmonized automotive policy with Colombia and Venezuela. The policy establishes CET rates of 35 percent for passenger vehicles, 15 percent for mass transit and cargo vehicles, and 3 percent for assembly kits, and includes regional content requirements.

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

As noted, Ecuador joined the WTO in January 1996, but has failed to meet the deadlines for fulfilling many of its obligations to eliminate remaining non-tariff barriers.

Ecuador

Prior authorization for certain goods is required before the Central Bank can issue an import license. Import of psychotropic medicines and certain precursor chemicals used in narcotics processing, including acetone, ether, sulfuric acid, hydrochloric acid, toluene, and benzaldehyde, require prior authorization from the National Drug Council (CONSEP). Imports of weapons, munitions, explosives, armored vehicles, helicopters, airplanes, ships, and other defense-related products require prior authorization from the Ministry of Defense.

The Superintendency of Telecommunications must authorize the import of telecommunications equipment for standards purposes. There have been recent incidents in which such authorization has been delayed or denied, allegedly due to the refusal of U.S. companies to make illicit payments to telephone company officials.

In spite of Ecuador's WTO accession commitment not to impose arbitrary and quantitative restrictions on agricultural imports, the Ministry of Agriculture often denies sanitary/phytosanitary (SPS) permits. These clearances are often denied not for SPS reasons, but on the grounds that local producers need protection. The products most affected by this policy include frozen chicken parts and turkeys, and to a lesser extent, apples and wheat. In the case of poultry, the Minister of Agriculture announced an import "ban" on poultry in October 1996, although the policy does not appear to have any basis in local law. In 1996, Ecuador imported less than half of the minimum market access tariff-rate quota for frozen chicken parts. An estimated $2 million in U.S. exports are lost annually due to the de facto ban on poultry imports.

Some 138 agricultural products, including rice, barley, white and yellow corn, wheat, sugar, soya, soya and palm oil, chicken parts, and dairy products, 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. These variable duties can drive up effective tariff rates significantly. Upon accession to the WTO, Ecuador bound its tariffs plus price bands on these products at between 20 to 95 percent. All price bands are to be phased out by 2001, with lower tariffs bound at 20 to 85.5 percent. In its WTO protocol, Ecuador agreed to provide minimum market access at tariff rates of 19 to 45 percent for 17 agricultural products, including wheat, chicken parts, and powdered milk. The price band system costs an estimated $15 million in lost U.S. sales annually.

Ecuador also continues to impose certain formal and informal quantitative restrictions that appear to be incompatible with its WTO obligations. Ecuador failed to meet the July 1, 1996, deadline for lifting bans on the import of used motor vehicles, tires, and clothing.

Since August 1996, Ecuador effectively has reverted to a system of having customs officials physically inspect most incoming merchandise to determine duties, resulting in long processing delays and frequent demands for illegal payments. During August-November 1996, non-military f.o.b. import value dropped 17.6 percent below the same period in 1995, which was 7.8 percent below the level projected based on trends earlier in the year. U.S. exports were down by $52 million from projected levels for the period.

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 customs clearance time saved. 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.

Most products are subject to a 10 percent value-added tax (VAT) based on c.i.f. value. This tax applies to domestically-produced goods as well as imports. Imports exempted from VAT include agricultural inputs, books, medicines, and petroleum development equipment.

In addition, a special consumption or excise tax at a nominal rate of 103 percent (effectively 46 percent of the retail price) is levied on both imported and domestic cigarettes. Excise taxes also are levied on all liquor (63 percent), beer (43 percent), soft drinks (15 percent), and bottled waters (8 percent). In December 1996, a 10 percent excise tax was applied to both imported and domestic motor vehicles and aircraft. Since excise taxes on imports are calculated on values that include customs duties, the effective rate is higher for imports than domestic products. The Ecuadorian Government failed to fulfill its WTO accession commitment to equalize the application of the excise tax by July 31, 1996. In violation of its WTO national treatment obligations, Ecuador's 1996 tax amendments levied a 10 percent excise tax on imported, but not domestic, crystal and porcelain products, perfumes, cosmetics, furniture, artwork, jewelry, and precious stones.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The standards maintained in Ecuador are set by the Ecuadorian Norms Institute (INEN) of the Ministry of Commerce, generally following international standards. Ecuador committed itself in its WTO accession protocol to conforming with the WTO Agreement on Technical Barriers to Trade.

In January 1997, the Central Bank began requiring that certain products obtain a certificate of recognition from INEN based on a certificate of conformity with Ecuadorian standards to be issued by an INEN-approved laboratory in the country of origin and notarized by an Ecuadorian consulate. Such certification is required for each shipment and is only valid for 60 days. The new regulations apply to a variety of food products, including vegetable oils, processed meats, canned fish, milk products, and juices, as well as construction materials, motor vehicles, paper products, and shoes. According to Ecuadorian importers, the bureaucratic procedures required to obtain INEN clearance for imports will effectively discriminate against foreign products, while increasing the opportunities for corruption.

The "Izquieta Perez" National Hygiene Institute (INHIP) conducts 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, pharmaceuticals, and syringes, as well as some other consumer goods. Corruption and inefficiency in the sanitary registration process has had the effect of blocking the entry of some imports from the United States. In one case, a U.S. pharmaceutical company donated a testing lab to INHIP in order to speed up the approval process. 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.

The Ministry of Agriculture is responsible for administering Ecuador's sanitary and phytosanitary (SPS) import controls. Although Ecuador made a commitment in its WTO accession to comply with the

Agreement on the Application of Sanitary and Phytosanitary Measures, 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 Ecuadorian production.

GOVERNMENT PROCUREMENT

Government procurement is regulated by the 1990 Public Contracting Law. 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 often 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 does not have any explicit export subsidy programs. There is 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. The government has terminated programs to compensate certain exporters for fuel costs. The government is considering the creation of an export credit agency.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Ecuadorian law does not appear to provide basic protection for intellectual property rights (IPR), and it can be difficult to gain effective protection through the legal system. As a result of its laws and practices, Ecuador was placed on the "Watch List" under the Special 301 provision of the 1988 Trade Act in 1996. The United States is pursuing its concerns with Ecuador over its IPR regime, its failure to implement the U.S.-Ecuador Intellectual Property Rights Agreement, its failure to implement the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), and its failure to repeal the 1976 Agents and Distributors Protection Law (Dealers' Act).

Ecuador offers limited protection for IPR under Andean Pact Decisions 344, 345, and 351. 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).

As part of its WTO accession, Ecuador agreed to apply the TRIPs Agreement by July 31, 1996. After the TRIPs Agreement text and Ecuador's Accession protocol were published in the Official Registry in June 1996, and in spite of its assertion that this fully implemented TRIPs in Ecuador, Ecuador asserted that it would take up to four years to apply the provisions of the TRIPs Agreement. Since the change in government in February 1997, the position of the new Ecuadorian administration remains unclear.

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, and obligates Ecuador to establish criminal and border enforcement systems. The Government of Ecuador promised to implement the IPRA by

September 30, 1994, but has yet to secure either ratification of the IPRA or introduce legislation to harmonize the local IPR regime with the 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 status of pipeline protection remains uncertain.

The Dealers' Act prevents U.S. and other foreign suppliers from terminating existing exclusive distributorship contracts without paying compensation, even if there is a valid termination clause in the contract. The law contravenes WTO national treatment guarantees and has been applied in ways that appear to contravene Ecuador's obligations under the TRIPs Agreement. The Government of Ecuador has made no effort to repeal this law since joining the WTO.

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.

Under the Dealers' Act, trademarks of a foreign company can be seized if that company loses a lawsuit in Ecuador. It is unclear whether a recent court decision will result in the cancellation of lawsuits against U.S. trademark owners regarding termination of license arrangements with Ecuadorian companies.

Copyrights

Andean Pact Decision 351 supplements Ecuador's 1976 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 still 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.

Enforcement of intellectual property rights remains a 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, as well as computer software. Local registration of unauthorized copies of well-known trademarks is a problem since the government lacks 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.

SERVICES BARRIERS

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 those services not monopolized by the state and can participate equally in the partial privatization of the state telephone company scheduled for 1997. In the recently concluded WTO negotiations on basic telecommunications services, Ecuador made commitments only for domestic cellular services. It did not make any commitments on regulatory principles.

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. Foreign investors are accorded the same rights of entry 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, and foreign exchange is readily available. There are no performance requirements. A bilateral investment treaty with the United States that guarantees access to binding international arbitration has been ratified by both parties, but has not yet been implemented.

Certain sectors of the economy are reserved to the state, although the scope for private sector participation, both foreign and domestic, has increased in recent years. 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 more private investment in the telecommunications and electricity sectors and the partial privatization of existing 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 from owning land on the frontier or coast.

Appropriate compensation for expropriation is provided for in Ecuadorian law, but is infrequent. The extent to which investors and lenders, whether foreign or domestic, 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 the agriculture and mining sectors, and squatters can be a problem. Oil companies have had difficulties resolving contract issues with the state oil company. Although Ecuador joined the International Center for the Settlement of Investment Disputes (ICSID), Ecuador maintains that congressional ratification is necessary to make that membership effective.

OTHER BARRIERS

There have been questions raised about the WTO-consistency of the Government of Ecuador's implementation of safeguards and antidumping measures.

There have been cases in which U.S. company officials have been prevented by the courts from leaving Ecuador due to pending claims against the company. Ecuadoreans involved in business disputes can sometimes arrange for their opponents, including foreigners, to be jailed pending resolution of the dispute.

Ecuador has laws and regulations to combat official corruption, but they are unevenly enforced. Illicit payments for official favors and theft of public funds sometimes take place. During the Bucaram administration (August 1996-February 1997), U.S. firms experienced problems with customs corruption. Bribery can compromise the procurement process of the central government, as well as the autonomous agencies and the parastatals. Dispute settlement procedures are made difficult by the lack of transparency in the court system and the openness of some judges to bribery. Local authorities occasionally expect gratuities for issuing necessary permits. Tax evasion is an endemic problem in Ecuador. Corruption does not generally present a problem when making transfers or engaging in normal private sector business.