

EXPORT PROMOTION OF SELECTED PRODUCTS TO THE EU AND EFTA

Assessment of Trade-Restrictive Measures,
Market Access and Export Strategy

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To : Ministerio de Producción, Comercio Exterior, Inversiones y
Pesca, Government of Ecuador

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Abbreviations

ASEAN	Association of Southeast Asian Nations
Art.	Article
DSU	Dispute Settlement Understanding
EFTA	European Free Trade Agreement
EU	European Union
EXP	Export-related measures
FAO	Food and Agriculture Organization
FEPP	El Fondo Ecuatoriano Populorum Progressio
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade 1994
GDP	Gross Domestic Product
GSP	Generalized System of Preferences
GTA	Global Trade Alert
HS	Harmonized Commodity Description and Coding System
IMF	International Monetary Fund
INSP	Pre-Shipment Inspection
ITC	International Trade Centre
MRL	Maximum Residue Level
OECD	Organisation for Economic Co-operation and Development
SCM	Agreement on Subsidies and Countervailing Measures
SME	Small and Medium Enterprises
SPS	Sanitary and Phytosanitary Measure
SSE	Social and Solidarity Economy
TBT	Technical Barriers to Trade
TPRM	Trade Policy Review Mechanism
UNCTAD	United Nations Conference on Trade and Development
UNESCO	United Nations Educational, Scientific, Cultural Organization
USD	United States Dollar
WHO	World Health Organization
WTO	World Trade Organization

Executive Summary

The Project identifies trade-restrictive measures, provides negotiating strategies related to them and introduces a specific export strategy for the associations, specified by the Beneficiary.

The first chapter, set out in the present document, constitutes the introduction to the project. It analyses the socioeconomic conditions of Ecuador that generated the beneficiary's interest in the project. Afterward, it introduces some fundamental issues related to the export promotion of Small and Medium-sized Enterprises. Moving on, the chapter introduces the products at issue, quinoa, cocoa and handicraft, and the relevant associations that produce them. Lastly, it provides some basic information on the target market, as set by the Beneficiary.

The second chapter deals with the identification of trade-restrictive measures by using online databases. After identifying them, the second chapter introduces a handbook on examining the measures that were identified. The goal is to provide a database to the Beneficiary of trade-restrictive measures and the Beneficiary will be able to conduct a legal analysis based on the handbook included in chapter 2.

The third chapter deals with market access and negotiation strategies related to the conclusions of chapter 3. In specific, chapter 3 introduces the different negotiating *fora* and the processes that Ecuador must comply with in order to gain better market access for its products.

The fourth chapter, divided into 4 separate documents, provides specific export strategies, tailored to the associations and the products at hand. The goal was to identify the issues faced by the associations and provide concrete guidelines regarding exportation to the target markets.

The results draw attention to the finding that the products were mostly affected by technical regulations, which are sanitary and phytosanitary measures, as well as technical regulations, which compliance is mandatory.

Regarding quinoa, the measures relate mainly to pesticide residue limit and in some cases, to the acceptable levels of humidity, or packaging regulations. As for cocoa, cadmium or to maximum pesticide residue levels, to

labelling requirements. The handicrafts are potentially affected by a few measures.

The present report examines the available market access strategies that Ecuador has in order to deal with the trade-restrictive measures that were identified to affect Ecuadorian products. Following our analysis in the trade-restrictive measures report, we will focus on measures affecting quinoa grain and cocoa beans paste and examine possible negotiating strategies.

The report provides information on the available *fora* for negotiations in the World Trade Organization and in the Free Trade Agreements signed by Ecuador. In specific, the Free Trade Agreements examined are the EFTA-Ecuador Free Trade Agreement and the EU-Andean Community Free Trade Agreement.

For quinoa seeds, the report examines the introduction of the new standard on quinoa seeds by Codex Alimentarius. It seeks to lay down the procedures that Ecuador can follow to negotiate the harmonization of national regulations to the Codex standard. In addition, the report introduces the relevant procedures for achieving equivalence status of Ecuadorian sanitary and technical procedures with regards to EU and EFTA.

Lastly, the Report examines the basic considerations regarding the regulations of the cadmium level found in cocoa paste and cocoa beans.

1 Rationale of the report

1.1 Purpose of the project

The purpose of this project is to assist the beneficiaries in the export promotion of three specific Ecuadorian products in light of the government's objective of supporting small producers and further opening up the country's market. This will be done through the following steps: i) the identification of trade-restrictive measures imposed on the products, using the Global Trade Alert (GTA), the ePing Alert and the United Nations Conference on Trade and Development (UNCTAD) TRAINS database; ii) analysis of specific issues; iii) suggestion of a possible way forward.

1.2 Methodology

Summary:

- Data on trade-restrictive measures was gathered using three databases: GTA, ePing Alert and UNCTAD TRAINS;
- This search was done by searching the 6-digit HS codes of each product;
- Information gathering was also complemented by questionnaires sent to the trade associations.

In order to identify trade-restrictive measures, data was gathered from the three sources below. This information was then analysed on the basis of the methodology described below. The export strategy was developed considering the replies to questionnaires sent to the trade associations.

1.2.1 Databases for identification of trade-restrictive measures

Summary:

- GTA: classifies measures by type of intervention and then colour codes them based on whether they involve discrimination
 - Red – almost certainly discriminate against foreign interests
 - Amber – likely involve discrimination
 - Green – liberalize trade on a non-discriminatory basis;

- GTA does not report on SPS and TBT measures, two additional databases – ePing and UNCTAD TRAINS – were utilised.

The GTA,¹ the ePing Alert² and the UNCTAD TRAINS³ databases were used for the identification of TRMs. The GTA offers comprehensive coverage of all types of trade-restrictive and liberalizing measures, excluding Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT); ePing compiles notifications of SPS and TBT measures, while UNCTAD TRAINS focuses on non-tariff measures.

The GTA database classifies the measures by type of intervention and then by colour (red, amber and green). Red interventions almost certainly discriminate against foreign commercial interests. Amber interventions likely involve discrimination against foreign commercial interests. Finally, Green interventions liberalize trade on a non-discriminatory basis or improve the transparency of policies.⁴

The present Report focused on TRMs classified either as red or amber, which affect selected Ecuadorian exports. Thus, the database measures were filtered by Harmonized System (HS) code at the 6-digit level,⁵ by the affected country (Ecuador) and by the commercial flow (exports).

As the GTA database does not contain measures that are motivated to raise public welfare in general, such as policies relating to health, security, and environment, it does not report on SPS and TBT measures.⁶

In this sense, the ePing Alert, which is an SPS and TBT notification alert system, complemented the search for TRMs. The platform offers access to SPS and TBT notifications made by World Trade Organization (WTO) Members, which may be filtered by products and markets of interest.⁷

¹ Global Trade Alert. Available at <https://www.globaltradealert.org/>

² ePing Alert. Available at <https://www.epingalert.org/en>

³ UNCTAD TRAINS. Available at <https://www.trains.unctag.org>

⁴ Simon and Fritz, 2019.

⁵ The HS codes used were 1803.10 (cocoa paste), 1801.00 (cocoa beans), 6504.00 (toquilla hat), 5810.91 (embroidered cards), 1008.50 (organic quinoa) and 1102.90 (quinoa flour).

⁶ Simon and Fritz, 2019.

⁷ ePing, 2018.

The notifications were filtered by HS code at the 6-digit level⁸ and downloaded in Excel worksheets, which were then filtered by trade partners affected to identify relevant measures. As there was a divergence in the number of measures reported when notifications were filtered based on the HS code, searches using the name of the products were also conducted and the results added to the worksheets.

As the ePing platform is based on notifications from the transparency obligations in the SPS and TBT Agreements, it includes only measures notified by WTO Members and whose content is not based on an international standard, guideline or recommendation, and when the measure may significantly impact trade.

Finally, the UNCTAD TRAINS database was used to complement the search for measures affecting the trade of the selected products. It includes all non-tariff measures from the WTO's Integrated Trade Intelligence Portal, I-TIP. This step was necessary in order to capture measures that cannot be identified through the GTA and ePing.

In the UNCTAD TRAINS portal, the measures were obtained by applying the following criteria: any measures, imposed by any countries, affecting Ecuador, which are in force, and relate to the HS code at the 6-digit level of the selected products.⁹

1.2.2 Questionnaires to the trade associations

In order to obtain more information about the trade associations for the development of a target export strategy, questionnaires were sent to all six associations.

The questions were developed from questionnaires used in international competition and anti-dumping investigations and adapted to the associations in English and Spanish versions. The full questionnaires are provided for in **Annexes 1A and 1B**, respectively.

⁸ The HS codes used were 1803.10 (cocoa paste), 1801.00 (cocoa beans), 6504.00 (toquilla hat), 5810.91 (embroidered cards), 1008.50 (organic quinoa) and 1102.90 (quinoa flour).

⁹ The HS codes used were 1803.10 (cocoa paste), 1801.00 (cocoa beans), 6504.00 (toquilla hat), 5810.91 (embroidered cards), 1008.50 (organic quinoa) and 1102.90 (quinoa flour).

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1.3 Outcome of the project

The substantive outcomes of the project include:

1. An overview of TRMs with a focus on SPS and TBT measures;
2. A starting point for examining the legality of SPS and TBT measures;
3. Identification of the main TRMs that affect three specific Ecuadorian products: quinoa, cocoa and Ecuadorian handicrafts (toquilla straw hat and embroidered cards), and their main implementers;
4. Provision of information on possible negotiation strategies at the FTA and WTO-level for these products; and
5. Provision of information on possible export and marketing strategies in regard to the products looking at both existing and new markets, with a focus on the European Union and the EFTA countries, as requested by the beneficiaries.

2 Introduction

The present analysis will be divided into the following sections:

- Identification of trade-restrictive measures and legal assessment (**Section 3 and 4**);
- Examination of negotiating strategies at WTO and FTA level (**Section 5**); and
- Proposal of an export promotion and marketing strategy (**Section 6**).

As a prelude to the analysis, Section 2 contains the following: a short background analysis on Ecuador's socioeconomic profile and policy (**Section 2.1**); an introduction of the beneficiaries (**Section 2.2**); an introduction to the products at hand and the respective trade associations (**Section 2.3**); a brief analysis on the main issues that small and medium-sized enterprises (SMEs) face when competing in the export markets (**Section 2.4**).

Overall, three important factors for export promotion align: (i) the products have great export potential, (ii) Ecuador's policy objectives support exports from SMEs, and (iii) the EU and EFTA markets have shown interest in Ecuador. However, an efficient export promotion strategy not only takes into account the trade potential, but also the challenges posed by trade-restrictive measures that potential exporters may face in the international market.

In this context, the present **Chapter 2**, aims to serve as a handbook on trade-restrictive measures by focusing on what are the measures, how to identify them, and which are the measures already in place.

3 Overview of Ecuador: economy and relevant policies

Summary:

- Exports and imports amount to 42% of Ecuador's GDP;
- The main exporting markets of Ecuador are the US, the EU, Vietnam, Chile and Peru. Over time, the dominance of the US in the Ecuadorian import-export market has decreased;
- Ecuador's economy is mainly based on agriculture, fishing, mining, and oil. It is the world's largest exporter of bananas and an important exporter of shrimp, cut flowers and cocoa products;
- Various export promotion schemes, namely the *economía solidaria*, have been implemented by Ecuador in order to limit its dependence on volatile oil prices;
- The Social and Solidarity Economy (SSE), enshrined in the Ecuadorian Constitution, is a model that recognises the need to promote micro, small and medium enterprises (MSMEs) with a view of promoting economic growth.

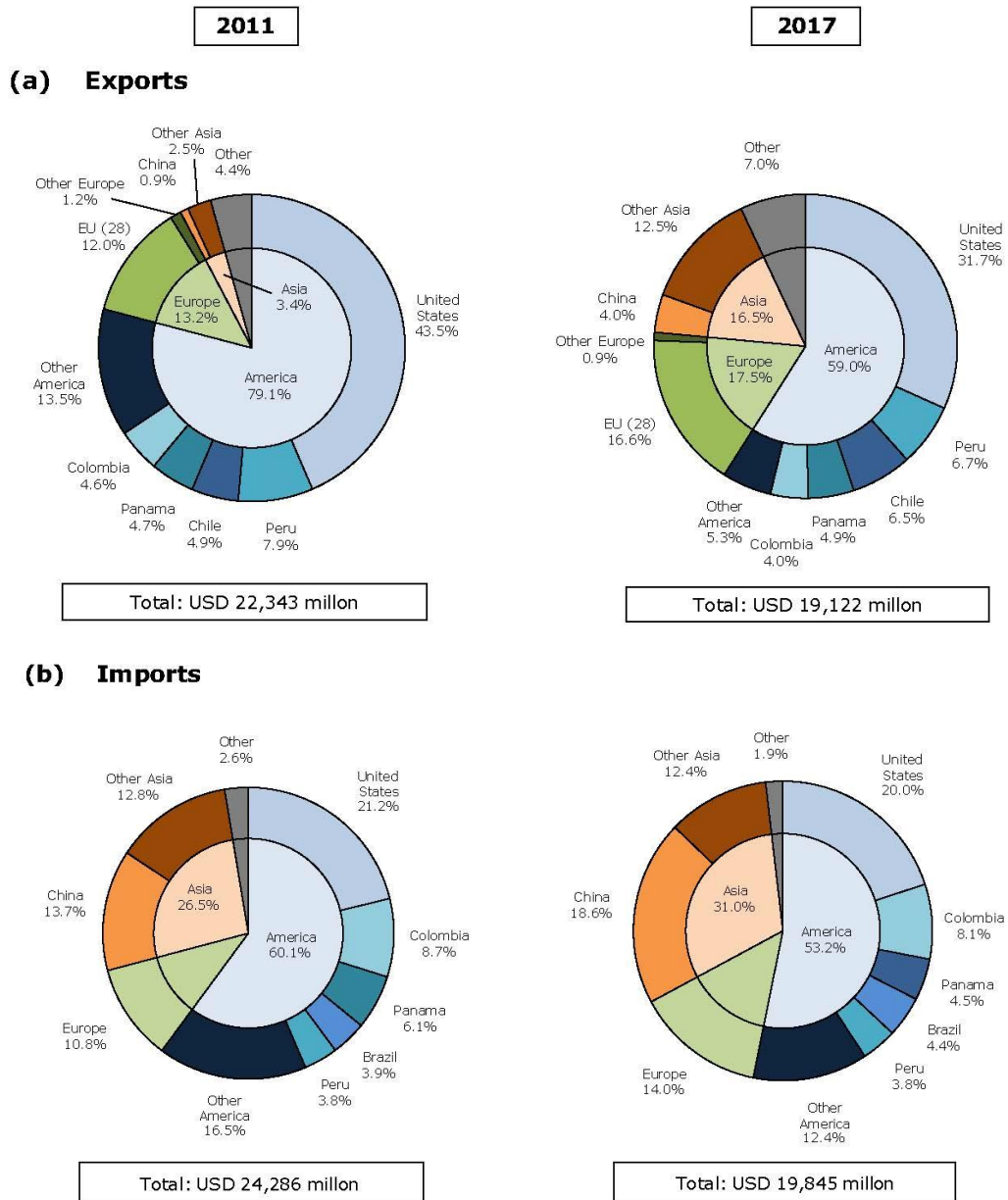
Ecuador uses the United States Dollars (USD) since 2000 as its official currency with a view of securing its macroeconomic stability while limiting its capacity for macroeconomic adjustment to fiscal policy.¹⁰

Exports and imports amount to 42% of the country's Gross Domestic Product (GDP). On the one hand, the main exporting markets of Ecuador are the United States (US) (31.7%), European Union (EU) (16,6%), Vietnam (7.6 %), Chile (6.5%) and Peru (6.7%). On the other hand, Ecuador's imports originate from the US (53.2%), China (18.6 %), EU (13.1%) and Colombia (8.1%).

¹⁰ Trade Policy Review of Ecuador, WTO, 2019.

The dominant role of the US in the Ecuadorian import-export market seems to diminish over time.¹¹ In contrast, the EU and China seem to have increased its bilateral trade with Ecuador.¹²

As of the 1st of January 2017, Ecuador has joined the EU-Andean Community Comprehensive Agreement and has signed the EFTA-Ecuador Free Trade Agreement on the 25th of June 2018.



Source: WTO Trade Policy Review Mechanism (2019).

¹¹ According to the Trade Policy Review, in 2011 the US market accounted for 43.5% of Ecuador's export, while in 2017 31.7%

¹² For example, the Ecuadorian exports in the EU accounted for 12% in 2011.

The Ecuadorian economy has been mainly based on agriculture, fishing, and mining and Ecuador is one of the biggest exporters of oil. The price of oil has played a significant role in the country's trade equilibrium. Oil accounts for about 40% of Ecuador's export income and 25% of the governmental revenue.

The need to limit Ecuador's dependence on oil prices by promoting other industries has been a major component in the governmental agenda which is reflected in the decline of the oil sector's percentage in Ecuador's GDP from 13.2% in 2011 to 4.8% in 2017, according to the WTO.¹³

In this regard, the share of services, such as education and health, has risen, while Ecuador has turned to be the world's leading exporter of bananas and an important producer of cocoa products, cut flowers, and shrimp.¹⁴

Ecuador has implemented various export promotion schemes, such as the granting of Tax Credit Certificates, which supported exporters that faced difficulties in certain international markets.

In August 2018, the "Organic Law on the Promotion of Production, Attraction of Investment, Generation of Employment, and Fiscal Stability and Balance"¹⁵ was approved (as amended) which introduces a long-term plan for economic stability and further implements investment and fiscal incentives for exporters, such as increased tax deductions for SMEs expenses.

As a response to the concern over the dependence on oil prices as well as the multiple global oil crises, Ecuador has focused its development agenda on the *Economía Solidaria*.¹⁶ Introduced in the 1970s with initiatives such as the *El Fondo Ecuatoriano Populorum Progressio*,¹⁷ the Social and Solidarity Economy (SSE) is formalised by the Ecuadorian Constitution of 2008.

In essence, the SSE is a model of political and economic development, which is based on principles of solidarity, cooperation, participation, and reciprocity.¹⁸ This model recognizes the need to promote micro and small-medium enterprises, unions of producers, associations, cooperatives, and

¹³Trade Policy Review of Ecuador, WTO, 2019.

¹⁴ Ecuador's Economy, Currency. Available at: <https://www.ecuador.com/business/economy/>

¹⁵ Organic Law on the Promotion of Production, Attraction of Investment, Generation of Employment, and Fiscal Stability and Balance.

¹⁶ UNRISD, 2013; Coraggio, 2011; Ley Organica de Economía Popular y Solidaria of 2018.

¹⁷ Dávalos, 2012; Da Ros, 2007; Scarlato, 2013.

¹⁸ Razeto, 2000; Coraggio, 2011.

family-owned-and-run businesses, with a view of promoting fair trade, inclusive economic growth for the different regions and marginalized communities, women empowerment and sustainable economic growth.¹⁹

In addition, ever since 2012, Ecuador has introduced the Fair-Trade Agenda, which proposes methodological guidelines and strategies for creating new social practices and relationships of production, distribution, marketing, and consumption, based on equity, justice, and co-responsibility. SMEs play a prominent role in providing sustainability to the Agenda, since, among other objectives, it aims to improve the living standards of small producers and workers.

¹⁹ Hillenkamp et al. 2013; Coraggio, 2011; The Social and Solidarity Economy in Ecuador: opportunities and challenges.

4 Small and Medium Enterprises (SMEs) and exports

Summary:

- The SSE highlights the role of SMEs in Ecuador's economy;
- SMEs are the core of the economy;
- The SSE plan aims to use SMEs to diversify economically and also promote employment whilst reducing poverty;
- There are four main limitations to the export competitiveness of SMEs:
 - access to finance,
 - internal competitiveness,
 - business environment,
 - market access.

The SSE highlights the role of SMEs in the Ecuadorian economy since they constitute an instrument for achieving transformation in productivity and a tool for social promotion. They constitute the core of the economy at the service of the society (*Economía al Servicio de la Sociedad*) axis in the National Development Plan 2017-2021, entitled "*Toda una vida*".

The plan seeks to: "(a) pursue a higher economic diversification and a faster technological upgrade for future prosperity while at the same time (b) promoting employment and reducing poverty and marginalisation under current conditions". In this regard, SMEs have received governmental support in various forms such as tax incentives.

In order to address Ecuador's SMEs export dimension, it is pertinent to make reference to the broader literature regarding SMEs export competitiveness. The promotion of SMEs export performance has been subject to international research and scrutiny. In most surveys (World Bank, Association of Southeast Asian Nations (ASEAN), WTO, International Trade Center (ITC), Organisation for Economic Co-operation and Development (OECD), EU and US), four main issues/categories have been identified as major limitations to the export competitiveness of SMEs.²⁰

The four main limitations to the export competitiveness of SMEs:

²⁰ White, 2019.

Access to Finance	Internal Competitiveness		
<ul style="list-style-type: none"> • Limited access to affordable finance (credit, guarantees, export insurances and direct financial support) is considered the top-ranked hindrance in the export potential of SMEs²¹. • This limited access, attributable to lack of collateral, formal financial record or credit history leads SMEs to rely on internal sources of finance²². Resultingly, they operate on a competitive disadvantage. • Limited finance not only tackles productivity but also hinders the establishment of prestige and credibility that international customers seek.²³ 	<ul style="list-style-type: none"> • SMEs are vulnerable to the practices of larger firms in the domestic markets that target them by offering lower prices to consumers²⁴ and limiting SMEs' access to skilled labor, licences to technologies and general human capital²⁵. • Limited access to human capital becomes more crucial when considering the usually inferior human resources management and training that SMEs have in comparison to larger enterprises²⁶. 		
<th data-bbox="240 1182 794 1227">Business Environment</th> <td data-bbox="801 1012 1353 1057"> <th data-bbox="801 1012 1353 1057">Market Access</th> </td>	Business Environment	<th data-bbox="801 1012 1353 1057">Market Access</th>	Market Access
<ul style="list-style-type: none"> • SMEs face barriers that are raised by the relative business and macroeconomic environments in which they operate (e.g. tax rates, corruption, economic stability)²⁸. • This decreases the appeal that SMEs have to international businesses. 	<ul style="list-style-type: none"> • SMEs require knowledge and information on international markets and specifically their customers. • However, they do not usually have the expertise or manpower to examine different findings on international customers and the information on various barriers (e.g. standards and regulations in international markets)²⁷. • Contrastingly, larger firms are able to either outsource such analysis or 		

²¹ OECD, 2008

²² WTO, 2016; Vandenberg, Yoshino, Goto, Patarapong, & Miyamoto, 2015; OECD, 2017.

²³ Yuhua & Bayhaqi, 2013.

²⁴ Harvie, Narjoko, & Oum, 2010a.

²⁵ Wignaraja, 2013.

²⁶ Harvie et al., 2010b.

²⁷ WTO, 2016.

²⁸ Wignaraja 2013; Harvie et al. 2010a.

<ul style="list-style-type: none"> • Lengthy administrative procedures, red tape and inadequate infrastructure create a burden to SMEs that cannot cope with additional costs²⁹. • A WTO survey found that in some instances “domestic logistics costs can add up to more than 42 per cent of total sales for SMEs, as compared to 15-18 per cent for larger firms.”³⁰ 	<p>conduct it themselves, creating an apparent competitive advantage in international markets.</p>
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This obstacle is the purpose of the present Report – different TRMs that exist in terms of products will be examined to introduce a negotiation and export strategy to facilitate the market access of the trade associations. In light of the findings, the answers provided by the producers in the questionnaires were examined³¹ to determine the fundamental issues that the associations face.

²⁹ OECD, 2017; Wignaraja, 2013; Thanh et al., 2010.

³⁰ WTO, 2016.

³¹ See Annexes 2A-2D

5 The Beneficiaries and products

Within this framework, as part of the SSE Agenda, the Beneficiaries (the Vice-Ministry of Export Promotion and its Under-secretariat for Export Promotion) seek to promote export competitiveness of trade associations and cooperatives in the field of cocoa, quinoa and handicrafts.

The Vice-Ministry of Export Promotion is part of the Ministerio de Producción, Comercio Exterior, Inversiones y Pesca,³² whose mission is to “promote the strategic insertion of Ecuador in World Trade through product development, the improvement of integral competitiveness, the development of value chains and investments”.³³

Some of the Vice-Ministry’s specific strategic objectives are the increase of Ecuador’s share in international trade, foster productivity, quality and associativity.

The present analysis will focus on three main products: quinoa (grain and flour), cocoa (beans and paste), and handicrafts (toquilla hat and embroidered cards). These were specified by the terms of reference of the present project as well as our communication with the beneficiaries.

The products come from six trade associations selected by the beneficiaries. All the associations have received support from the Ministry to be ready to export through a program that uses a traffic light system. Each association benefits from a different type of capacity building aid to go from red (not ready to export) to amber, amber AA, and green (ready to export). The present trade associations are classified under the amber and green categories.

The basic characteristics of the products, their tariff classification, their main trade-related aspects and the respective trade associations that produce them are as follows. Moreover, the questionnaires completed by the trade associations are provided for in **Annex 1C** (quinoa), **Annex 1D** (cocoa), **Annex 1E** (toquilla hat) and **Annex 1F** (embroidered cards).

³² Ministry of Production, Foreign Trade, Investment and Fisheries of Ecuador.

³³ Mission, Ministry of Production, Foreign Trade, Investment and Fisheries of Ecuador. Available at: <http://www.produccion.gob.ec/mision-vision/>

5.1 Quinoa grain and quinoa flour

Summary:

- Quinoa, a flowery plant with edible seeds, has been cultivated by Indigenous Andean populations since prehistoric times;
- It has become a major exportable product in the last two decades, its exports increasing fourfold from 2007-2013 (from 12,263 to 53,813 tonnes). The upward trend continues as exports doubled in 2018 (111,861 tonnes);
- The HS code does not have a separate heading for quinoa, evidence of the unexpected export potential. The HS code at the 6-digit level (10008.50) was included recently in 2012.
- The reason for the increased export is its status as a healthy superfood.

5.1.1 Quinoa characteristics and tariff classification

Quinoa is a flowery plant with edible seeds that is classified as a pseudo-cereal due to its nutritional similarities. It has been called a ‘mother grain’ by the Incas and has been cultivated by Indigenous Andean populations ever since prehistoric times.³⁴ It is a product deeply integrated into the indigenous communities both as a source of nutrition and as part of their religious and cultural practices.

In the last two decades, quinoa has become a major exportable product.³⁵ Its exports have increased fourfold in the period 2007 to 2013, when the relative export volumes have increased from 12,263 tonnes to 53,813 tonnes. This upward trend continues to this day as exports doubled in 2018 (111,861 tonnes).³⁶

This export potential was rather unexpected a few years back. For example, the HS does not have a separate heading for quinoa unlike other cereals such as rice. Rather, it was simply included quinoa in the 4-digit level HS 1008 “*Buckwheat, millet, canary seed and other cereals (excluding wheat and meslin, rye, barley, oats, maize, rice and grain sorghum)*”.

³⁴ Diaz, 2015.

³⁵ FAO, 2015.

³⁶ FAO-LAIA, 2013.

It should be noted that the separate HS 10008.50³⁷ at the 6-digit level was included in the HS very recently, in 2012. As for quinoa flour, it is classified under HS 6-digit level code 1102.90.³⁸

The reason behind this increased export interest is its classification as a healthy superfood with high adaptability and resilience to adverse climatic and soil conditions that led Food and Agriculture Organization (FAO) to declare 2013 as the 'International Year of Quinoa' because of the product's properties.³⁹ In addition, the rise of health-conscious consumers in the European and North-American markets have also contributed to this sharp increase in global demand.⁴⁰

5.1.2 Quinoa in international trade

The rise of global demand has introduced new economic opportunities and greater local availability for local and indigenous communities in the Andes since the export price has surged, which led to an equally impressive increase in production.⁴¹ The main producers are Bolivia, Peru, and Ecuador, which doubled or even tripled their production during the aforementioned period.⁴²

Currently, the US and Canada have started cultivating quinoa, called "Sea-level Quinoa", while the EU has initiated experimental cultivation.⁴³ Yet, the quality and quantity of the non-Andean cultivation cannot compete with Andean cultivation, mainly due to climatic reasons.

Quinoa is usually exported as grain (almost 85% of global trade) and it is followed by intermediate products like flakes, pops, quinoa flour and processed products like bars and granola. Organic and fair-trade certifications play a very important role in the consumers' tastes and preferences and lead to an

³⁷ Quinoa (*Chenopodium quinoa*).

³⁸ Cereal flours other than of wheat or meslin, other.

³⁹ FAO, 2015.

⁴⁰ Globally Cool, 2016.

⁴¹ For specific data see FAO, 2015

⁴² FAO-LAIA, 2013.

⁴³ <https://www.usaemergencysupply.com/information-center/all-about/all-about-whole-grains/all-about-quinoa>; <https://www.innovations-report.com/html/reports/life-sciences/growing-quinoa-in-europe.html>

increased value of 10-20% for the producer in comparison with conventional quinoa grain.⁴⁴

Quinoa importers prefer directly purchasing the raw grain instead of intermediary or processed products. Hence, despite consumer demand, exports of intermediate and processed products are not expected to rise equally to the exports of grains.⁴⁵

Lastly, in 2019 the World Health Organization (WHO) adopted the Standard of Quinoa, as part of the Codex Alimentarius which sets international food standards.⁴⁶

Ecuadorian exports of quinoa in EU have received duty-free status and will also receive duty-free treatment once the EFTA-Ecuador FTA enters into force, while in the US and Canada the applied rate is 1.10% and 0% respectively.⁴⁷

⁴⁴ Globally Cool, 2016.

⁴⁵ FAO, 2015.

⁴⁶ http://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252FStandards%252FCXS%2B333-2019%252FCXS_333e.pdf

⁴⁷ <https://www.efta.int/sites/default/files/documents/legal-texts/free-trade-relations/ecuador/efta-ecuador-annex-III-schedule-of-tariff-commitments-on-goods-iceland.pdf>; <https://www.efta.int/sites/default/files/documents/legal-texts/free-trade-relations/ecuador/efta-ecuador-annex-IV-schedule-of-tariff-commitments-in-good-norway.pdf>; <https://www.efta.int/sites/default/files/documents/legal-texts/free-trade-relations/ecuador/efta-ecuador-annex-V-schedule-of-tariff-commitments-on-goods-switzerland.pdf>; <https://madb.europa.eu/madb/euTariffs.htm?productCode=100850&country=EC>; <https://www.macmap.org/en/query/customs-duties?reporter=842&year=2019&partner=218&product=100850&level=6>; <https://www.macmap.org/en/query/customs-duties?reporter=842&year=2019&partner=218&product=100850&level=6>

5.1.3 Quinoa trade associations

Sumak Life

Sumak Life constitutes a partnership between the Popular Radiophonic Schools Foundation of Ecuador and the Sumak Tarpuy Integral and Solidarity Corporation. It represents more than 500 small indigenous producers from the Province of Chimborazo with environmentally friendly agricultural practices. Its products have received national and international organic certifications (KIWA-BCS in US and EU) and the Maki Fair Trade. The trade association works with the KIWA-BCS international certifier for the EU and the US (USDA).



COPROBICH

COPROBICH is a collective corporation of small farmers (families from 53 communities) from the province of Chimborazo producing organic quinoa and other cereals (pearled wheat and barley rice) and seeking to provide food security and increase the export capacity of quinoa through marketing and fair-trade. The corporation currently exports to France, Belgium, Canada, and Germany, among else, while having a Certification of Good Manufacturing Practices, GMP, organic and fair trade.



5.2 Cocoa beans and cocoa paste

Summary:

- Cocoa beans (HS code: 1801.00) have been cultivated for many years, exclusively in the tropics mainly on small family and subsistence-level farms;
- They are best known as the raw material for chocolate;
- Cocoa paste (HS code: 1803.10 and 1803.20) is a derivative of the cocoa bean made from crushing cocoa beans into a liquid;
- Cocoa paste is used mainly by manufacturers to produce chocolate and not sold on the consumer market;
- The largest producer and exporter of cocoa is Côte d'Ivoire, accounting for 40% of the export market share.

5.2.1 Cocoa characteristics and tariff classification

Cocoa beans (HS code: 1801.00 – Cocoa beans, whole or broken, raw or roasted), or simply cocoa, have been cultivated for many years. The crop is “best known today as a raw material for chocolate, which uses approximately 90% of the world’s cocoa production”⁴⁸. Cocoa is almost exclusively grown in the tropics, mainly on small family and subsistence-level farms.

Cocoa paste (HS code: 1803.10 and 1803.20 - *Cocoa paste, not defatted; cocoa paste, wholly or partly defatted*) is a derivative of the cocoa bean. It is the natural product of ground cocoa nibs which are drawn from the fruit of the cocoa tree. The raw cocoa paste is made by crushing raw cocoa beans into a liquid. Once this liquid has cooled down, it solidifies at room temperature to thicken into a paste. This product is generally not sold separately on the consumer market, but mainly used by manufacturers to produce chocolate.⁴⁹

5.2.2 Cocoa in international trade

According to the ITC, around 3 million tonnes of cocoa is produced on average each year. The largest producer and exporter of cocoa is Côte d'Ivoire,

⁴⁸ Cocoa: A Guide to Trade Practices, ITC, 2001.

⁴⁹ Exporting semi-finished cocoa products to Europe, Centre for the Promotion of Imports. Available at: <https://www.cbi.eu/market-information/cacao/semi-finished-cocoa-products/>

which accounts for 40% of the export market share⁵⁰ with an export value of 3.79 billion USD. The next largest exporters are Ghana (19%), Nigeria (7.1%) and Ecuador (6.6%).⁵¹

The international market price of cocoa is notoriously volatile. Crops are susceptible to the ravages of disease and extreme weather conditions. The size of the harvest can vary greatly from one year to the next.

The physical shipment of cocoa beans over long distances from numerous smallholdings to the main processing and distribution centres is a complex business – and not without risk. Bulk shipment and storage of cocoa have to be undertaken with extreme care and consideration for the formidable array of international rules and regulations that surrounds it.

Some cocoa-producing countries have managed to process significant quantities of cocoa beans locally into semi-finished and finished products, but it is more practical and economical for this activity to be performed in other countries, nearer to the main consumer markets.

Therefore, this means that the main exporters of cocoa export the product to countries such as the Netherlands, the largest importer of cocoa importing 2.29 billion USD worth of the product, the US, Germany, and Belgium. Since finished products based on cocoa have a higher value than the raw material, this means that exporters of the primary product lose out on the greater generation of value that is enjoyed by more advanced markets.

Under the EFTA-Ecuador FTA, cocoa beans currently have from 10-20% tariff rate depending on the specificity (i.e. whether it is for sowing or certified organic) and they will not become duty-free. The cocoa paste is currently subject to a 20% tariff rate and will receive duty-free treatment from Switzerland 15 years after the entry into force of the FTA. Under the EU-Andean Community FTA, both cocoa beans and paste enjoy duty-free treatment.

⁵⁰ Cocoa Beans, Observatory of Economic Complexity. Available at: <https://oec.world/en/profile/hs92/1801/>

⁵¹ Cocoa Beans, Observatory of Economic Complexity. Available at: <https://oec.world/en/profile/hs92/1801/>

5.2.3 Cocoa trade associations

Asociación Tsatsayaku

Asociación Tsatsayaku is the association of cocoa producers of Carlos Julio Arosemena Tola “Tsatsayaku” and represents over 180 cocoa (mainly) producers from 13 communities, mostly composed of Kichwas families. The Association is registered in the Superintendence of Popular and Solidarity Economy and has the support of various Institutions and Government Authorities, seeking to strengthen the cocoa value chain.



Corporación de Esmeraldas

Corporación de Esmeraldas COCPE is part of the Coordinadora Ecuatoriana de Comercio Justo CECJ. It is a cooperative representing 168 producers (8,000 families) from the northern coastal province Esmeraldas in Ecuador that produce and sell cocoa in seeds. The cooperative is certified as Organic and Fair-Trade and is an active member of the Latin American Coordination and Caribbean Network of Small Fair-Trade Producers.



5.3 Handicraft

There are two handicraft products in the present Report: the toquilla straw hat and embroidered cards.

5.3.1 Toquilla Straw Hat

Summary:

- The *sombrero de paja toquilla* (HS code: 6504.00) is a traditional straw hat from Ecuador's coastal region;
- In 2012, UNESCO declared the toquilla straw hat an ancient form of cultural expression part of the Intangible Cultural Heritage of Humanity;
- The toquilla hat has traditionally been exported to Panama, becoming popular when US President Theodore Roosevelt was photographed wearing one when visiting the Panama Channel thus becoming known as "Panama hats";
- As a result, Panamanian producers entered the toquilla hat market and exported as much as Ecuador in 2018. Chinese producers also export straw hats, but they do not compete directly with the toquilla hat due to their lesser quality.

5.3.1.1 Toquilla hat characteristics and tariff classification

The *sombrero de paja toquilla* is a traditional straw hat that originated in Ecuador's coastal region and has a significant historic and cultural relevance. It is handmade from weaving the straw of the *Carludovica Palmata* palm tree into the desired shape.⁵²

The skills and knowledge necessary for making the hat are transmitted from one generation of rural families to another. Hence, in 2012, the United Nations Educational, Scientific and Cultural Organization (UNESCO) declared the toquilla straw hat an ancient form of cultural expression part of the Intangible Cultural Heritage of Humanity.⁵³ The UNESCO list includes many forms of

⁵² Estudio de Mercado. Sombrero de Paja Toquilla en Alemania, Pro Ecuador, 2018; Catálogo de la Oferta Exportable 2016, Pro Ecuador, 2016.

⁵³ UNESCO. Available at <https://ich.unesco.org/en/RL/traditional-weaving-of-the-ecuadorian-toquilla-straw-hat-00729>.

traditions and expressions as a way to both showcase diversity and ensure better protection by raising awareness of such knowledges.

The production process starts with the preparation or purchase of the main input, the *paja toquilla*, sold in certain markets in Ecuador. The straw is then braided into mainly two types of hat, the Montecristi and the Cuenca, which originated in Manabí and Azuay provinces, respectively.⁵⁴ The finished product is dyed and prepared to be exported and sold in high-end specialized stores.

The hat is classified under HS 6504.00⁵⁵ and is characterized by its braiding, which may be standard, fine or extra-fine, as well as having a band made of either fabric or leather and a brim that may be short or long.

5.3.1.2 Toquilla hat in international trade

The toquilla hat has traditionally been exported to Panama and became popular when US President Theodore Roosevelt was photographed wearing one when visiting the Panama Channel. Even though the hats came from Ecuador, they became known as “Panama hats”.⁵⁶

Benefiting from the opportunity, Panamanian producers entered the international toquilla hat market and in 2018 exported as much as Ecuador (USD 16 million). The same year, the main markets for the Ecuadorian toquilla hat were the US (18%), Italy (14.5%), Germany (9.8%), Spain (8.6%), and Mexico (8%).⁵⁷

China also exports straw hats made out of paper fibres but does not directly compete with the toquilla hat as it is of lesser quality and different price range.

⁵⁴ Models of the two types of hat may vary. The most famous models are classic Fedora, classic Fedora semi fine, Golfer, Borsalino.

⁵⁵ Hats and other headgear plaited or made by assembling strips of any material, whether or not lined or trimmed.

⁵⁶ <https://www.turismo.gob.ec/el-sombrero-de-paja-toquilla-patrimonio-cultural-inmaterial-de-la-humanidad/>

⁵⁷ <https://revistagestion.ec/index.php/economia-y-finanzas-analisis/caen-las-exportaciones-de-sombreros-ecuatorianos>

The hats currently enjoy duty-free treatment under the EU-Andean Community FTA. However, under the EFTA-Ecuador FTA the product is subject to a 30% tariff rate, which will be gradually reduced within 5 years of the entry into force of the Agreement.

5.3.1.3 Toquilla hat trade association

Maki Fair Trade

Maki Fair Trade is a fair-trade gallery/social holding company selling the most representative traditional handicrafts of Ecuador such as the toquilla straw hats. It seeks to facilitate fair trade producers by building on the producer/consumer relationship based on the material and intangible wealth of resources, techniques, and artisanal knowledge of the peoples of southern Ecuador.



The hats are produced by the *Asociación de Producción Artesanal de Sombreros de Paja Toquilla El Milagro*, ASOARTE, located in Portoviejo. The association produces the Picoazá Toquilla Quality Hat.

5.3.2 Embroidered cards

Summary:

- The embroidered cards (HS code: 5810.91) result from handicraft work of a community of rural women from the Cuenca region in Ecuador;
- They are characterized by the hand embroidery with unique motifs;
- There is potentially a great market for the cards, especially those marketed for celebrations and festive seasons;
- The unique background of the cards is valued especially in the European and EFTA markets.

5.3.2.1 Embroidered cards characteristics and tariff classification

The embroidered cards, *tarjetas bordadas a mano*, produced in Ecuador are a result of the handicraft work of a community of rural women from the region of Cuenca. The artisans and translate the local culture, traditions, fauna and flora into embroidery using local products and biodegradable natural fibres, imprinting their human touch.⁵⁸

The cards are classified under HS 5810.91⁵⁹ and are characterized by the hand embroidery with unique motifs, which is transformed into colourful cards. It is produced in the community from the early stages of design and development. Once the design is approved, the women work from their homes and the final product is prepared for sale.

5.3.2.2 Embroidery in international trade

There is potentially a great market for the embroidered cards, especially for those marketed for celebrations and festive seasons. The product tells a unique story from the Cuenca community and such local connection is valued in European and EFTA markets, as demonstrated by exports to Austria recorded in 2016.⁶⁰

⁵⁸ Catálogo de la Oferta Exportable 2016, Pro Ecuador, 2016.

⁵⁹ Embroidery in the piece, in strips or in motifs of cotton.

⁶⁰ <https://www.revistalideres.ec/lideres/etnias-ecuador-bordados-exportacion-cuenca.html>

Under EU-Andean Community FTA, the cards benefit from duty-free treatment, but under the EFTA-Ecuador FTA are still subject to 20% tariff rates, which will be gradually lowered in the 10 years following the entry into force of the agreement.

5.3.2.3 Embroidered cards trade cooperative



Cooperativa Centro de Bordados de Cuenca

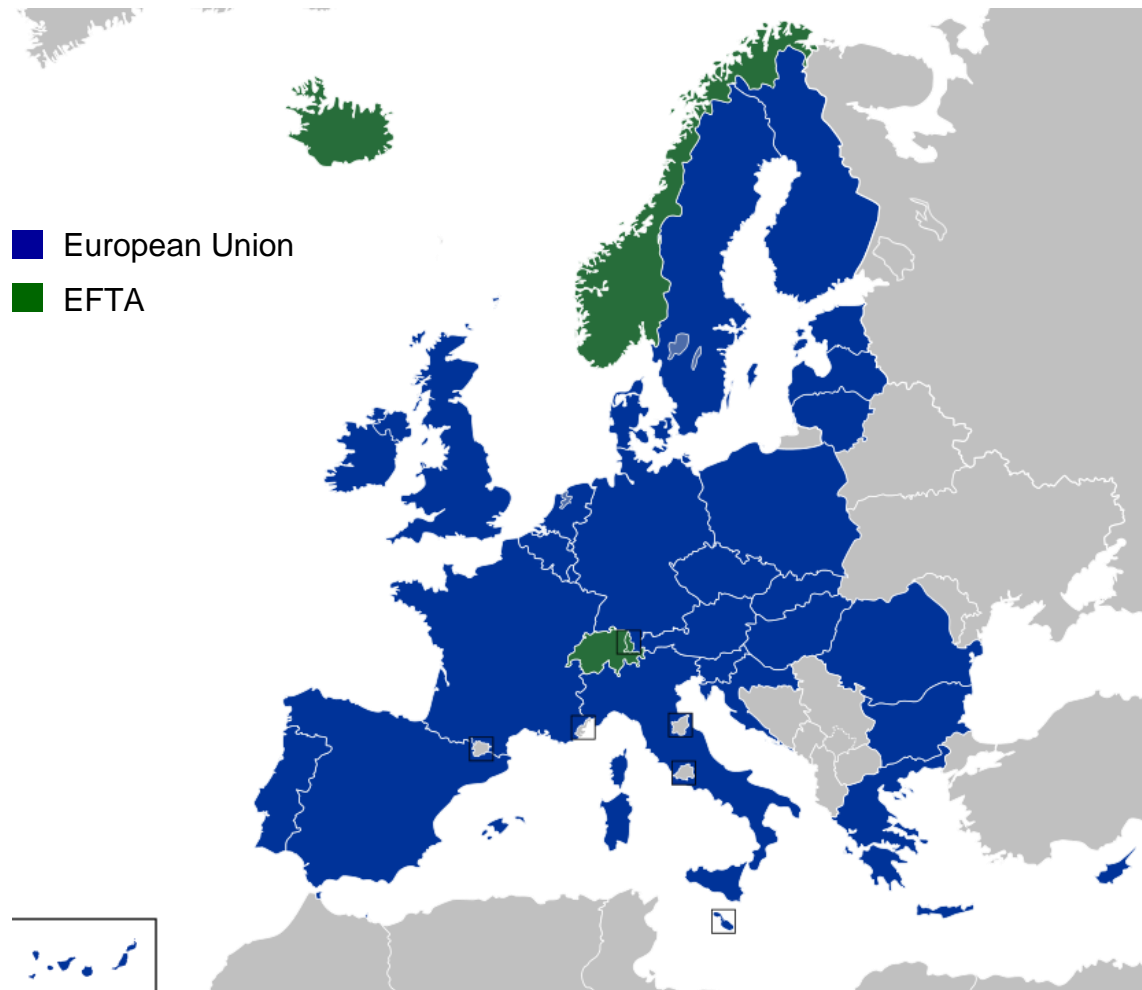
Cooperativa Centro de Bordados de Cuenca is a craft cooperative representing 60 women from the Southern Region of Ecuador. The cooperative has been exporting handmade products consisted of natural fibres since 1989. The goal is to provide organizational and technical knowledge to women, raise their income and circumvent the control of 'middle-men'.

The high quality of the products has been recognized by UNESCO in the 2014 Award of Excellence for Handicrafts in the Andean Region. The award aims to establish quality standards and to introduce the products to the international market handicraft products inspired by the peoples' tradition, but in an innovative way.⁶¹

⁶¹ http://www.unesco.org/new/es/media-services/single-view/news/cuenca_fue_la_sede_del_reconocimiento_de_excelencia_unesco_p/

6 Target Markets

The target markets as outlined by the beneficiaries are the European Union and the EFTA countries. The map and lists below present the target countries.



European Union

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia

- Estonia
- Lithuania
- Spain
- Finland
- Luxembourg
- Sweden
- United Kingdom*

* Note that currently, the United Kingdom is undergoing the process of withdrawal from the European Union.

EFTA

- Iceland
- Liechtenstein
- Norway
- Switzerland

7 Trade-restrictive measures

Summary:

Trade-restrictive measures fall under two categories:

- *Tariff measures*: export and import tariffs due at the border,
- *Non-tariff measures*: export and import measures, ranging from technical regulations, trade remedies, subsidies, rules of origin, among others.

The most commonly employed trade-restrictive measures are tariffs, as they give a price advantage to similar domestic products, which are not subject to customs duties.⁶² Tariffs also give a price advantage to similar imported products depending on their origin in case there is a preferential system in place for selected developing countries,⁶³ or in case the trade partners have signed preferential trade agreements.⁶⁴

Until 2013, Ecuador benefited from the Generalized System of Preferences (GSP) in the European Union, thus, some products imported from Ecuador were subject to fewer tariffs. However, the country was excluded from the program as it was classified as upper-middle-income by the World Bank in the years of 2011, 2012 and 2013.⁶⁵

Trade-restrictive measures also include a broad range of non-tariff measures that have a restrictive effect on international trade (either in quantities, or in prices, or both), regardless of compliance with trade agreements. The most relevant measures were classified by UNCTAD⁶⁶ and are presented in **Table 1**.

⁶² More information on tariffs is available [here](#).

⁶³ More information on special and differential treatment is available [here](#).

⁶⁴ More information on regional trade agreements is available here: [here](#).

⁶⁵ Full EU Regulation 1421/2013 available [here](#).

⁶⁶ International Classification of Non-Tariff Measures, UNCTAD (2019). Available [here](#).

Table 1 – Non-tariff Trade-Restrictive Measures Classification

Imports	Technical measures	A	Sanitary and phytosanitary measures
		B	Technical barriers to trade
		C	Pre-shipment inspection and other formalities
		D	Contingent trade-protective measures
		E	Non-automatic import licensing, quotas, prohibitions, quantity-control measures, and other restrictions not including sanitary and phytosanitary measures or measures relating to technical barriers to trade
	Non-technical measures	F	Price-control measures, including additional taxes and charges
		G	Finance measures
		H	Measures affecting competition
		I	Trade-related investment measures
		J	Distribution restrictions
		K	Restrictions on post-sales services
		L	Subsidies and other forms of support
		M	Government procurement restrictions
		N	Intellectual property
		O	Rules of origin
Exports	P	Export-related measures	

Source: UNCTAD (2019).

7.1 Database findings

Summary:

- 90% of the measures applicable to quinoa grains, quinoa flour, cocoa beans, and cocoa paste are sanitary and phytosanitary measures (SPS), as well as technical barriers to trade (TBT).
- Only a few technical measures were identified for the handicrafts, which are likely not applicable to the toquilla hat and embroidered cards. Tariff measures were also identified, but the two products already benefit from duty-free treatment under the EU-Andean Community FTA and will benefit under the EFTA FTA in the coming years.

The trade-restrictive measures were identified using three databases: the Global Trade Alert,⁶⁷ the ePing Alert,⁶⁸ and the UNCTAD TRAINS.⁶⁹ A detailed methodology is provided for in **Section 1.2.1**, and, due to the high number of measures, the complete findings are presented in the **Appendix**. It is important to note that not all measures found are relevant or applicable to the products.

An overview of the measures applied by the EU and EFTA countries is presented below categorized by product: quinoa grain and flour (**Section 7.1.1**), cocoa beans and paste (**Section 7.1.2**), and handicrafts (**Section 7.1.3**).

7.1.1 Quinoa grain and quinoa flour

In brief, as presented in **Figure 1**, international trade of quinoa grain (organic or not) and flour is more regulated in the EFTA market. Except for one measure, all were imposed by Switzerland (94). The EU also has implemented a considerable amount of measures (55).

⁶⁷ Global Trade Alert database available [here](#).

⁶⁸ ePing database available [here](#).

⁶⁹ TRAINS database available [here](#).

Technical measures represent 90% of the total findings and, more specifically, sanitary and phytosanitary regulations amount to 59% of the measures and technical barriers to trade account for the remaining 31%.

The following **Figures 2 – 5** present the type of measures found for each of the products in the two targeted markets. The measures found relate mainly to pesticide residue limit and in some cases, to the acceptable levels of humidity, or packaging regulations and other technical regulations.

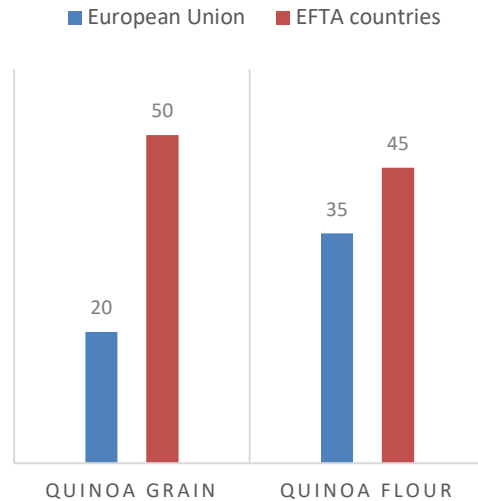


Figure 1. Total trade restrictive measures, by quinoa product and market (EU or EFTA countries).

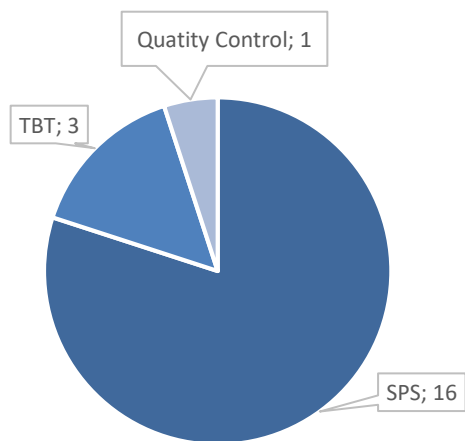


Figure 2. Measures from the European Union by type applicable for quinoa grains.

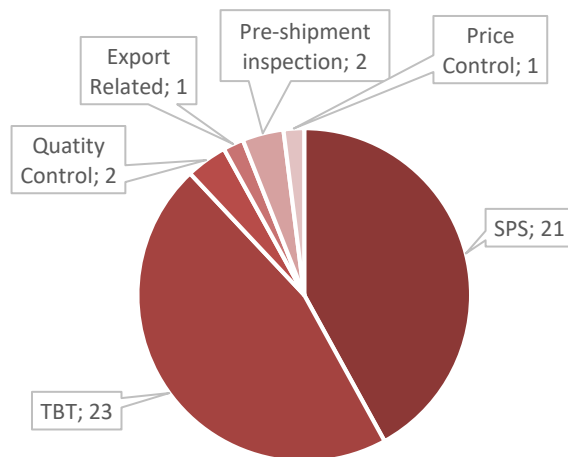


Figure 3. Measures from EFTA countries by type applicable for quinoa grains.

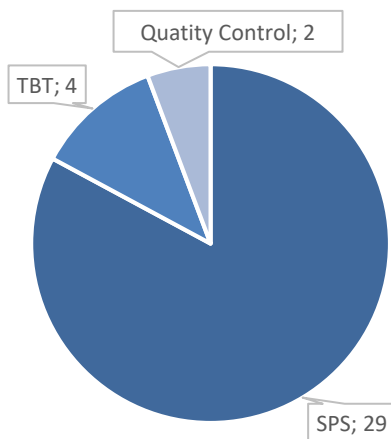


Figure 4. Measures from the European Union by type applicable for quinoa flour.

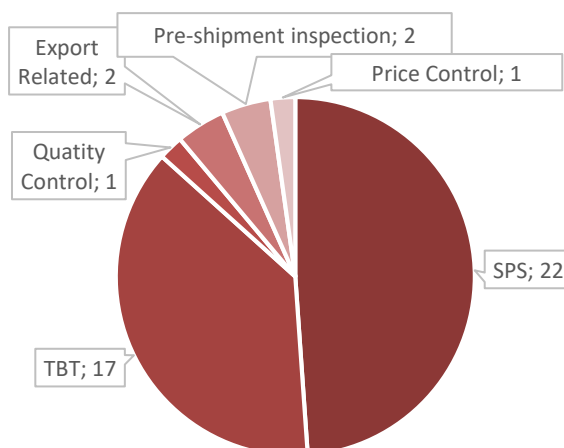


Figure 5. Measures from the EFTA countries by type applicable for quinoa flour.

7.1.2 Cocoa beans and cocoa paste

The trade of cocoa beans and cocoa paste is heavily regulated (**Figure 6**), especially in the EFTA market by Switzerland (81 measures), as opposed to the EU, which imposes considerably fewer measures (32).

Almost all the measures found (90%) are technical, notably, 56% are sanitary measures and 35% are sanitary measures and 35% are technical barriers to trade applicable to the two products: beans and paste.

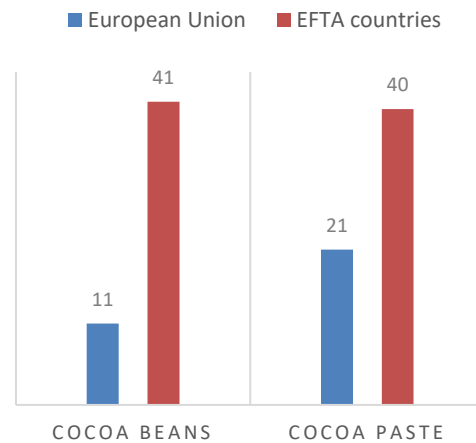


Figure 6. Total trade restrictive measures, by cocoa product and market (EU or EFTA countries).

As detailed in **Figures 7 – 10**, there are a number of technical measures, ranging from on cadmium or to maximum pesticide residue levels, to labelling requirements.

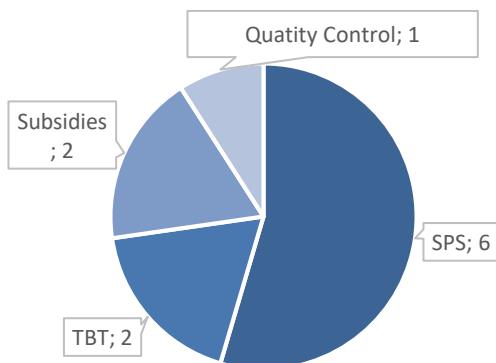


Figure 7. Measures from the European Union by type applicable for cocoa beans.

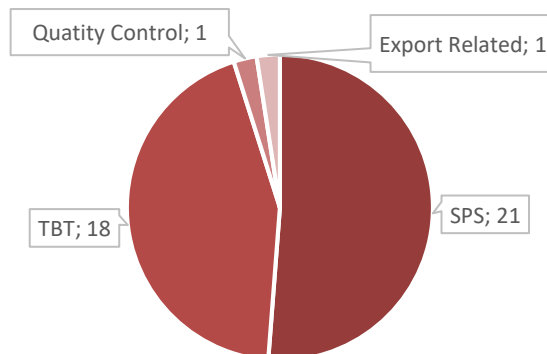


Figure 8. Measures from the EFTA countries by type applicable for cocoa beans.

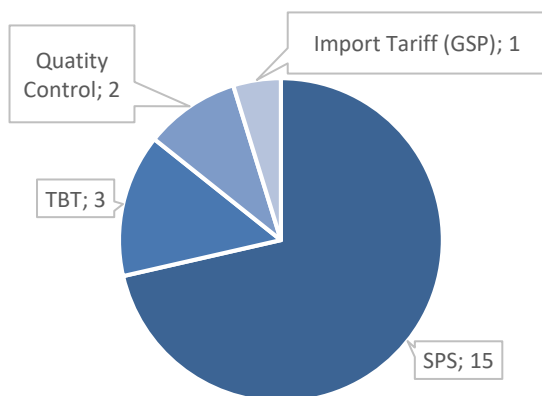


Figure 9. Measures from the European Union by type applicable for cocoa paste.

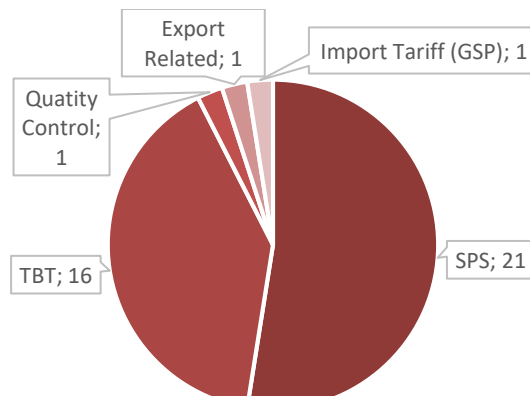


Figure 10. Measures from the EFTA countries by type applicable for cocoa paste.

7.1.3 Handicrafts

In comparison to the trade of quinoa and cocoa, fewer measures potentially affect the trade of the two handicraft products (**Figure 11**). The findings point to 16 measures in relation to the toquilla hat, 6 of which are TBT and 4 are SPS measures. As for the embroidered cards, 3 out of the 4 measures are sanitary.

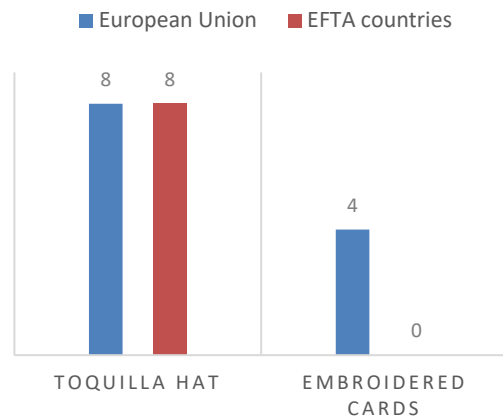


Figure 11. Total trade restrictive measures, by handicraft product and market (EU or EFTA countries).

However, the technical measures found for handicrafts are not specific for those products; rather they cover a broad range of HS classifications. Thus, the measures are potentially not applicable to Ecuadorian exports.

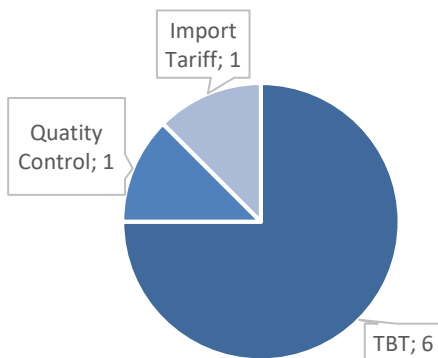


Figure 12. Measures from the European Union by type applicable for toquilla hat.

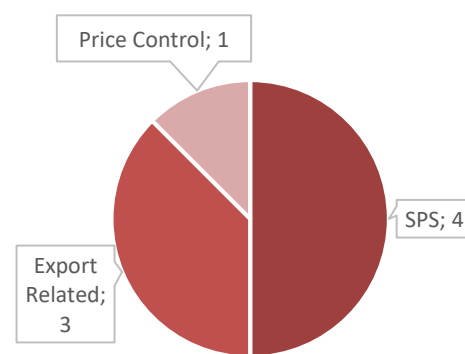


Figure 13. Measures from the EFTA countries by type applicable for toquilla hat.

The two tariff measures captured in the databases are from the EU. The first is a change in import tariffs applicable to the toquilla hat imposed in November 2018. The second measure captured in the database as affecting embroidered cards is the exclusion of Ecuador from the Generalized System of Preferences.

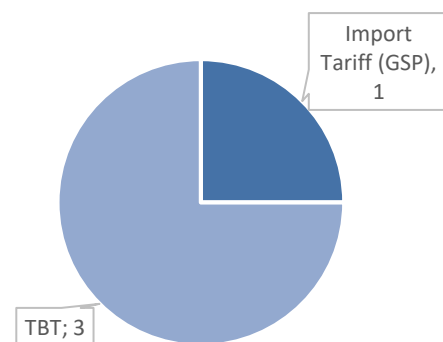


Figure 14. Measures from the European Union by type applicable for embroidered cards.

However, neither measures affect exports of the Ecuadorian toquilla hat and embroidered cards, as both products benefit from duty-free treatment under the EU-Andean Community FTA.

8 Assessment of trade-restrictive measures

Summary:

- Sanitary and technical barriers to trade are the most relevant to the products. The measures must comply with the agreements from the World Trade Organization, so this section provides a basic toolbox for analysing the measures' under the applicable rules.

Sanitary and Phytosanitary measures:

- Objective: protect human, plant and animal life and health;
- Example measures from the database: EU Regulation 488/2014 and Mexican Regulation of 07/2012; and
- Codex Alimentarius will be published soon for chocolate products.

Technical Barriers to Trade measures:

- Objective: protect domestic producers, consumers, environment, etc;
- Example measures from the database: Swiss Ordinance on Organic Farming, and EU Regulation 1235/2008; and
- Codex Alimentarius adopted in 2019 for quinoa.

Overall, as observed in **Section 7**, the products were mostly affected by technical regulations, such as sanitary and phytosanitary measures, and technical barriers to trade. Therefore, the present section will focus solely on these two types of measures. As a considerable number of measures were found in the databases, here a basic toolbox for examining a trade-restrictive measure is provided. As a guide to navigating other non-tariff trade-restrictive measures in the UNCTAD taxonomy, a brief summary, as well as a reference to the applicable WTO agreement is presented in **Annex 8A**.

8.1 Sanitary and phytosanitary measures

8.1.1 Overview

- **What are sanitary and phytosanitary measures?**

Sanitary and phytosanitary are measures taken to protect food safety and animal and plant health and life.

- **What is the applicable WTO agreement?**

The Sanitary and Phytosanitary Measures Agreement (SPS Agreement), available at https://www.wto.org/spanish/docs_s/legal_s/15sps_01_s.htm.

- **What type of measures is subject to the SPS Agreement?**

The SPS Agreement deals with sanitary and phytosanitary measures related to products and process and production methods, which purpose is to protect:

- ❖ Human or animal life or health from food-borne risks (risks arising from additives, contaminants, toxins or disease-causing organisms in their food, feed or beverages);
- ❖ Human life or health from animal - or plant - carried diseases;
- ❖ Animal and plant life or health from pests, diseases or disease-causing organisms; and
- ❖ A country's territory from damage from the entry, establishment or spread of pests (including weeds).

- **What are the basic obligations?**

The SPS Agreement seeks to assure that the measures do not unjustifiably discriminate between domestic and imported products, or among foreign products when similar conditions prevail.

The basic obligations introduced to deal with:

- ❖ Non-discrimination;
- ❖ Scientific evidence for risk assessment;
- ❖ Harmonization;
- ❖ Equivalence; and
- ❖ Transparency.

- **What is the importance of international standards?**

SPS measures should be based on international standards, guidelines or recommendations, in particular, the Codex Alimentarius Commission and the International Office of Epizootics.

- **What are the sanitary and phytosanitary obligations on the EU-Andean Community FTA and EFTA-Ecuador FTA?**

The EU-Andean Community FTA includes some additional obligations in Chapter 5 (Arts. 85-104). The articles mainly refer to equivalence, emergency and alternative measures, special and differential treatment, capacity building, transparency and party-consultation, and negotiations.

The EFTA-Ecuador FTA includes additional transparency and consultation obligations for SPS measures, with respect to the general WTO obligations, in Art. 2.12.

A more detail elaboration of the basic principles of the SPS Agreement is presented in **Annex 8B**.

8.1.2 Examples from the database

8.1.2.1 Mexican regulation on quinoa published on 07/2012⁷⁰

Even if Mexico is not a targeted market, it accounts for 1/3 of Ecuador's total export value in 2018 so it is an important trade partner. The measure is analysed in the present section as an example of a measure that distinguishes between countries where different but comparable conditions prevail.

The examination of the measure imposed by Mexico will focus on the operation of the non-discrimination principle in the SPS Agreement using the following set of questions.

- i. Are the conditions between countries different but comparable?
- ii. Is there an arbitrary and unjustifiable worse treatment of imported products in comparison with domestic products (national treatment) or among imported products (most-favored-nation)?
- iii. Is the level of protection chosen based on a risk assessment?
- iv. Is the worse treatment a disguised a restriction on trade?

⁷⁰ A summary of the text can be found here: https://members.wto.org/crnattachments/2017/SPS/MEX/17_3894_00_s.pdf

Following the test, it is observed that the measure targets specifically Ecuadorian quinoa products, while similar measures were adopted by Mexico for imports from Bolivia and Colombia. In specific, the measure imposes among else a Phytosanitary Certificate issued by Ecuador and further inspections, sampling and testing by the Mexican authorities upon importation. The adoption of such targeted SPS measures and the apparent exclusion of one specific supplying country, that is Peru, raises direct concerns under Art. 2.3 SPS Agreement.

Specifically, the conditions prevailing in all quinoa supplying countries can be considered similar. Besides, WTO caselaw has identified that a differential treatment that is based upon origin creates the presumption of likeness of the products. In the present case, this presumption can be transposed into the similarity of prevailing conditions since Mexico explicitly differentiates based on the origin of suppliers (Ecuador, Bolivia, Colombia and Peru).

The differential treatment evidently imposes worse competitive conditions since the introduction of SPS measures substantially alters the obligations of producers. This is evidenced by Mexico's import data. According to ITC, Peru accounts for over 95% of Mexico's imports of quinoa grain, while the rest of imports are catered by Ecuadorian exporters.

Finally, this worse differential treatment is considered unjustifiable if it was not based upon any specific or scientific justification. In the present case, it must be examined whether the exemption of Peru from the operation of SPS procedures that apply to the rest of the suppliers, derives from a scientific study that excludes Peruvian products from the threat of a pest or a disease. Otherwise, this discriminatory exemption should be considered unjustifiable. Hence, the pest-risk analysis conducted by Mexico on Ecuadorian products does not exclude by itself the possibility of a violation of the SPS Agreement.

8.1.2.2 EU Regulation 488/2014 on maximum levels of cadmium⁷¹

“Chocolate and cocoa powder sold to the final consumer can contain high levels of cadmium and are an important source of human exposure. (...) Since cadmium levels in cocoa products are related to their cocoa content, it is appropriate to establish different maximum levels of cadmium for products containing different percentages of cocoa.” (Preamble of Regulation 488/2014)

In previous SPS Committee Meetings, Colombia, Côte d'Ivoire, Ecuador, Madagascar, and Peru raised concerns about the EU Regulation, especially concerning the maximum cadmium levels applicable to cocoa powder and chocolate.

It is important to note that EU importers are incorrectly applying the regulation, as only chocolate and cocoa powder directly sold to the consumer are subject to the measure. Thus, the way the measure is applied effectively creates an unnecessary barrier to trade, which is more burdensome than required by the regulation.

In any event, the European measure targets regions from cocoa-producing countries, which cadmium levels in soil can be naturally high, such as Latin America. This practice could potentially reduce Ecuadorian world exports and move local cocoa and chocolate producers to cultivate the beans only, as those are not subject to the cadmium limits and, in any case, could be mixed by the importer with other cadmium-free beans to reduce the levels in the final product.

8.1.3 Codex Alimentarius for cocoa cadmium levels

The SPS Agreement recommends the WTO Member States to base their sanitary and phytosanitary measures on international standards. Hence, the maximum cadmium level requirements imposed on cocoa products should be examined in light of the forthcoming joint FAO-WHO Codex Alimentarius standards for cadmium levels in chocolate and other cocoa products, which is in development, by the Codex Committee on Contaminants in Food.

The draft was proposed by a working group led by Ecuador and co-chaired by Brazil and Ghana and it suggested maximum cadmium levels in chocolate

⁷¹ Full text available [here](#).

and cocoa powder only.⁷² Thus, the products under analysis, that is cocoa beans and paste, are not subject to the levels set by the measure.

The proposal was met with a lot of criticism from some countries, arguing that (i) the levels suggested were not sufficiently health-protective, especially for children; (ii) data from African producer countries supported a lower level, thus, a higher level would jeopardise their efforts to maintain high standards, and (iii) there was no shortage of low cadmium chocolate to justify a higher threshold.⁷³

Still, the levels were adopted, with reservations of the EU, Norway and Ecuador for the levels for < 30% chocolate,⁷⁴ and the discussions on dry mixtures of cocoa and sugars sold for final consumption, as well as cocoa powder were discontinued, thus, there are no levels agreed.⁷⁵ The following **Table 2** compares the levels adopted with the levels applied by the EU Regulation.

Table 2 – Comparison of maximum cadmium levels Codex and EU

Codex Alimentarius	% of cocoa	EU Regulation
0.9 mg/kg	100	0.8 mg/kg
	90	
	80	
	70	
0.80 mg/kg	60	
	50	
Under consideration of the Working Group	40	0.3 mg/kg
	30	
0.3 mg/kg	20	0.1 mg/kg
	10	
	0	

Source: REP19/CF, EU Regulation 488/2014.

⁷² Full text of the proposed draft is available [here](#).

⁷³ See paragraph 55 of the REP19/CAC, available [here](#).

⁷⁴ See paragraph 56 of the REP19/CF, available [here](#).

⁷⁵ See paragraph 67 of the REP18/CF, available [here](#).

The levels already approved by the Codex Alimentarius Commission could still change until the adoption of the final text. However, considering the levels already agreed on, the EU Regulation would not comply with the international standard, thus, the European Union potentially would have to bring its measures into conformity with the Codex.

8.2 Technical barriers to trade

8.2.1 Overview

- **What are the technical barriers to trade?**

Technical barriers to trade are domestic regulatory processes that protect domestic producers and consumers.

- **What is the applicable WTO agreement?**

The Agreement on Technical Barriers to Trade (TBT Agreement), available at https://www.wto.org/spanish/docs/s/legal/s/17-tbt_s.htm.

- **What type of measures is subject to the TBT Agreement?**

The TBT Agreement applies to the following measures:

- ❖ Mandatory product regulations (technical regulation);
- ❖ Voluntary product standards; and
- ❖ Conformity assessment procedures (procedures designed to test a product's conformity with mandatory regulations or voluntary standards).

Such measures should be taken under the following legitimate regulatory goals and purposes:

- ❖ Protection of human, animal, and plant life and health;
- ❖ Human safety;
- ❖ Protection of national security;
- ❖ Protection of the environment; and
- ❖ Prevention of deceptive marketing practices.

- **What are the basic obligations?**

The TBT Agreement seeks to assure that the measures do not become unnecessary obstacles to international trade and are not employed to obstruct trade.

The basic obligations deal with:

- ❖ Non-discrimination;
- ❖ Prevention of unnecessary obstacles to international trade;
- ❖ Harmonization;
- ❖ Equivalence; and
- ❖ Transparency.

- **What is the importance of international standards?**

TBT measures should be based on international standards, guidelines or recommendations.

- **What are the sanitary and phytosanitary obligations on the EU-Andean Community FTA and EFTA-Ecuador FTA?**

The EU-Andean Community FTA includes additional obligations in Chapter 4 (Arts. 74-84). The articles mainly refer to marking and labelling procedures, capacity building, transparency and party-consultation and negotiations.

The EFTA-Ecuador FTA includes additional transparency and consultation obligations for TBT measures, with respect to the general WTO obligations, in Art. 2.11.

A more detail elaboration of the basic principles of the TBT Agreement is presented in **Annex 8C**.

8.2.2 Examples for the database

8.2.2.1 Swiss Ordinance on Organic Farming and the Labelling of Organically Produced Products and Foodstuffs⁷⁶

The measure is a technical regulation that imposes labelling obligations, which compliance is mandatory: if the procedure is not followed, the product cannot be labelled organic. The measure will be examined with a focus on the operation of the non-discrimination principle in TBT Agreement using the following set of questions.

- i. Are the products at issue comparable (like)?
- ii. Is there an arbitrary and unjustifiable worse treatment of imported products in comparison with domestic products (national treatment) or among imported products (most-favored-nation)?
- iii. Is the worse treatment a result of protectionism instead of the result of a legitimate regulatory purpose or distinction?

⁷⁶ Full text available [here](#).

The first step is to analyse if products are like, that is, have similar physical characteristics, end-uses, and consumer preferences. In case the discrimination is among imported products, the examination is the similarity between imported product one vs. imported product two. But if the discrimination is between a domestic and an imported product, the similarities between those are the ones that should be observed.

Regarding the second question in the test, a comprehensive analysis of the measure is needed, but on its face, it is possible to observe that the term organic in the regulation is defined in a way to exclude products cultivated with synthetic agrochemicals, which is tied to a domestic Swiss cultivation procedure. Therefore, this could potentially give rise to a competitive advantage to the domestic producers, which cannot be rationalized by a legitimate regulatory purpose.

8.2.2.2 EU Regulation 1235/2008 on organics from third countries⁷⁷

A very exemplary measure that falls under the rules of the TBT Agreement is the measure relating to organic products imposed by the EU.

“Organic products from third countries may only be placed on the EU market when they are labelled as products with indications referring to organic production, if they have been produced in accordance with production rules and subject to inspection arrangements that are in compliance with, or equivalent to Community legislation”.

The measure is a technical regulation that imposes labelling obligations, which compliance is mandatory: if the procedure is not followed, the product cannot be labelled organic.

In order to analyse this measure, the same questions from **Section 8.2.1** are applicable. In the present case, a preliminary analysis has not found the treatment to be arbitrary or unjustifiable, nor that it is a result of protectionism.

8.2.3 Codex Alimentarius for quinoa⁷⁸

⁷⁷ Full text available [here](#).

⁷⁸ Full text available [here](#).

The TBT Agreement imposes the obligation to the Member States to base their technical regulations upon international standards. Hence, the multiple labelling and packaging requirements imposed on quinoa products should be examined in light of the WHO standard for quinoa adopted in 2019. The following set of questions the first step to examine if the measure is compliant with the Codex. If the measure is not compliant, the second questions sheds a light on whether the reasoning provided is reasonable.

- i. Are the national technical regulations 'based' upon the international standard?
- ii. In any case, is the Codex Alimentarius standard ineffective or inappropriate to fulfil the legitimate goal set by national authorities?

A specific analysis of the measure under the Codex is provided in **Section 9.5.1** already explaining how Ecuador could approach the issue so the EU and EFTA countries comply with the Codex standards and other alternatives.

9 Market Access Strategy

Summary:

- Market Access Strategies will focus on strategies related to Technical Barriers to Trade and Sanitary and Phytosanitary Measures that affect quinoa and cocoa products
- Negotiations for market access can either take place multilaterally, within the WTO or bilaterally, within the various FTAs
- The major points of concerns that are related to negotiating Technical Barriers to Trade and Sanitary/Phytosanitary measures are:
 1. Adoption of international standards in the domestic level such as the WHO standard on Quinoa
 2. Harmonization of national measures
 3. Equivalence Recognition Agreements

The purpose of the present Section is to introduce the fundamental aspects of trade negotiations. In specific, the report deals with negotiations related to Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS). This specification results from our trade-restrictive measures database, which predominantly identified TBT and SPS measures affecting the products at hand.

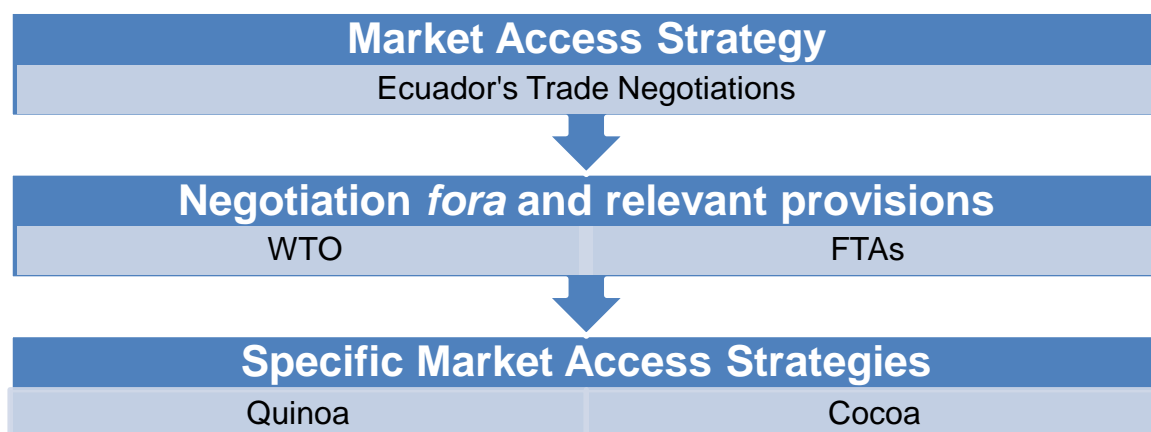
9.1 Introduction

In the present section, we are going to examine in detail Ecuador's negotiating history in International trade and examine the currently available *fora* either for dispute settlement or negotiations. Emphasis shall be placed upon the later. The examination will be centred around the WTO as a negotiation forum and the available *fora* on an FTA level.

We utilise academic analysis on negotiating strategies for SPS and TBT measures, mainly analysis of harmonization and equivalence. In addition, we examine the available international standards that may be utilised as leeway for harmonization and equivalence. Hence, we introduce standards adopted by the World Health Organization or other similar bodies such as the International Standardization Organization. The relevant negotiations for the adopted of the

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said standards are also part of our analysis. Furthermore, we introduce the main provisions related to negotiations that are available both at the WTO and FTA level. Lastly, our analysis takes into account the mandate of the project and the directions of the beneficiaries; therefore, our FTA analysis shall be limited to Ecuador's relations with EU and EFTA states.



Considering the results obtained in **Section 7**, this Section explores negotiating strategies available to Ecuador to deal with the identified TRMs. These proposed strategies are not applicable or suitable to each and every measure stored in the TRMs database; they are specifically tailored to the concerns raised by the Beneficiaries and the trends found in the TRMs analysis. Specifically, the focus of the present Section is on the SPS measures related to cadmium levels in cocoa cultivation, and on the adoption of the new WHO standard for quinoa.

The measure at hand are not easily negotiable compared to tariff measures, for example. Rather, they require a much more delicate treatment since they are usually directly related to the protection of human health. We clarify that the present analysis deals with governmentally related measures such as technical regulations, not private actions such as private standards. The latter will be part of the export promotion analysis as producers need to discuss any issue that arises with the relevant national Chamber of Commerce, rather than the government.

This section contains an Overview of Ecuador Trade Negotiations (**Section 9.1**); an overview of its current WTO and FTA policy, with a focus on the trade deals with the EU and EFTA (**Section 9.2**); the specific negotiating *fora* and strategies relating to the identified issues, cadmium levels in cocoa cultivation and the WHO standard for quinoa (**Section 9.3**).

9.2 Overview of Ecuador's presence in international trade negotiations

Ecuador has been a Member of the WTO since 1996. Ecuador has always been active in the International Trade Negotiations, as proven by its recent ratification of the Agreement on Trade Facilitation and observer status in the Committee on Government Procurement. In addition, Ecuador is a member of the following WTO group in the agriculture negotiations:

- the Group of Small and Vulnerable Economies;
- the Group of Art. XII Members;
- the Tropical Products Group;
- the G-20 (Agriculture);
- the G-33 ("Friends of Special Products"); and
- the "Friends of Fish" Group.

In addition, Ecuador seeks to promote its trade integration within the Andean region, South America and Latin America. Specifically, Ecuador is a Member of the Andean Community which sets up an integration system between Peru, Bolivia and Ecuador.

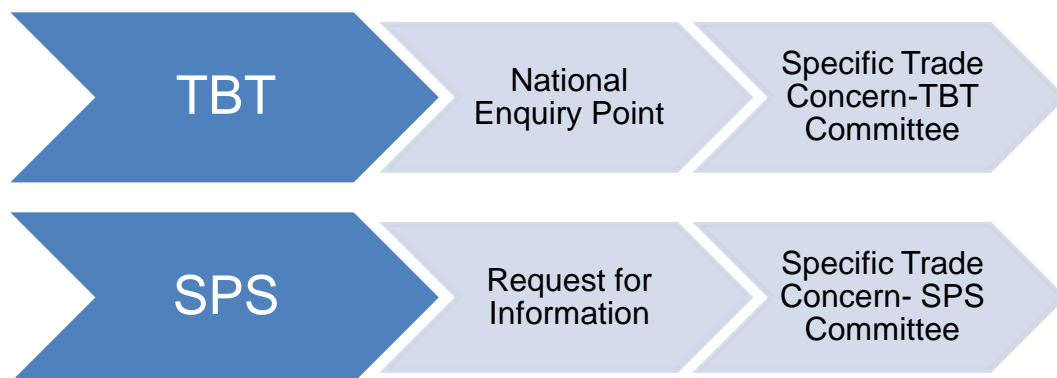
The Community establishes a free trade zone for all goods, facilitates the harmonization of national legislation and has developed common trade rules applicable to the parties. The Member States can negotiate trade deals with third parties, either individually or jointly or on a community basis.

Within this framework, the Community has signed the Andean-Community-MERCOSUR Comprehensive Agreement, while Bolivia and Peru had concluded the EU-Andean Community FTA, which Ecuador joined the latter in 2017.

In addition, Ecuador has been a signatory party to the Montevideo Agreement setting up the Latin American Integration Association, ALADI. Within the latter, Ecuador negotiated various preferential agreements such as the Partial Scope Agreement No. 29 concluded with Mexico and the Partial Scope Agreement, AAP, No. 42 with Guatemala.

Lastly, Ecuador has been a member of the Bolivarian Alliance for the Americas, ALBA, the Organization of American States, OAS, Community of Latin American and Caribbean States, CELAC, the Union of South American States, UNASUR, and an observer to the Pacific Alliance.

9.3 The World Trade Organization



9.3.1 Agreement on Technical Barriers to Trade

The TBT Agreement allows for members to raise specific trade concerns in relation to technical regulation or conformity assessment procedures adopted or in the process of adoption by other WTO members.

First, the concerned party may submit comments on the notification of the measure to the Enquiry Point of the country applying the regulation or conformity assessment to request an explanation. In case the concern is not satisfactorily addressed, the party may enter into bilateral discussions and consultations with the member applying the measure.

The previous two steps are not mandatory and concerned parties may directly voice the dislike in the TBT Committee under the agenda item Specific Trade Concerns.

The last available option if the concerns are not addressed is to take recourse to formal consultation procedures and, if necessary, a dispute settlement procedure before the Dispute Settlement Body.

9.3.2 Agreement on Sanitary and Phytosanitary measures

The SPS Agreement provides an opportunity for the member to exchange information and enter into consultations in cases of concern over measures taken by other members.

Firstly, the concerned party may request information about the measure from the notifying authority. It is possible to also submit comments on the notification. If such actions are not enough, the concerned party may also enter into bilateral discussions and consultations with the member applying the measure.

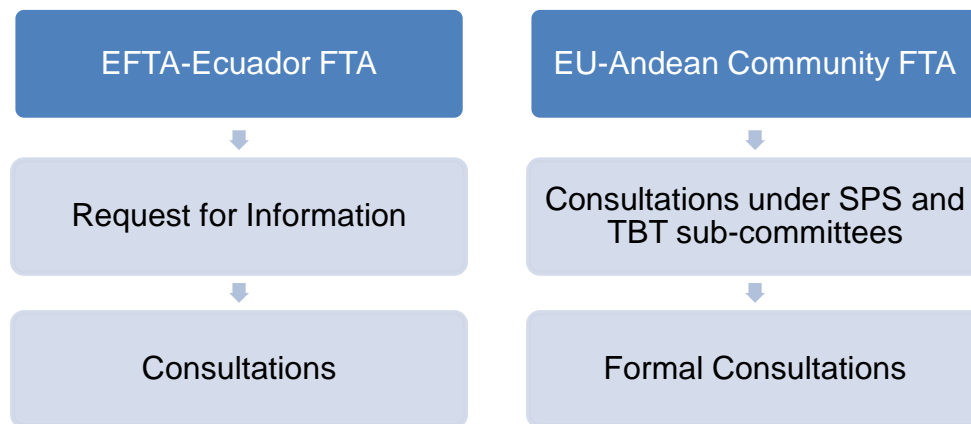
The two steps are not necessary, and members have available the following option: the party may raise concerns with SPS measures, including transparency issues, adopted or in the process of being adopted by other members. The appropriate forum to do so is the item Specific Trade Concerns in the SPS Committee agenda.

In case the concerns raised under the SPS Committee do not produce the desired result, the party may request the initiation of formal consultations and a dispute settlement procedure.

More details on the procedure can be found in Annex 2.

9.4 Ecuador's free-trade agreements

In the present part, we examine the available *fora* provided for in the EFTA- Ecuador Free Trade Agreement (2.2.2.1.) and in the EU-Andean Community FTA (2.2.2.2.).



9.4.1 EFTA-Ecuador free-trade agreements

The EFTA states signed an FTA with Ecuador on the 25th of June 2018. The ratification procedures are currently ongoing. As a broad-based FTA, it covers trade in goods, trade in services, establishment (investment), intellectual property rights, government procurement, competition, trade and sustainable development and cooperation. In the area of trade in goods, the EFTA States abolish all customs duties on imports of industrial products, including fish and other marine products, originating in Ecuador.

Art. 2.11 of the FTA stipulates that with respect to technical regulations, the WTO TBT Agreement applies and is incorporated into the FTA. Art. 2.11 §4 sets out the procedure to be taken if a Party believes another Party has taken a measure that is likely to create or has created an obstacle to trade. In addition, the Agreement provides for a request for information provision related to technical regulations and SPS measures.⁷⁹

Firstly, consultations are to be held in order to find a “mutually acceptable solution”. The consultations should take place within 30 days from the receipt of the request and can be conducted by any technical method agreed by the consulting Parties.

Art. 2.12 of the FTA holds that the WTO SPS Agreement applies and is incorporated into the FTA. Art. 2.12 §9 sets out the procedure to be taken if a party to the FTA believes another Party has taken a measure that is likely to

⁷⁹ Article 76 EFTA-Ecuador FTA

create or has created an obstacle to trade. Identical to the provision in Art. 2.11, consultations are to be held.

Art. 11 holds the dispute settlement procedure for the Agreement. The complaining party is free to decide whether the dispute is to be brought to WTO or under the Agreement if it is on a matter arising under both (Art. 11.1 §2). The Agreement provides the following dispute resolution methods: good offices, conciliation, mediation, consultations and arbitration.

9.4.2 EU-Andean Community free-trade agreements

Ecuador joined the EU-Andean Community FTA on the 1st of January 2017 and Ch. 5, Art. 85(b) holds that the objective of the chapter is to further implement the WTO SPS Agreement. Art. 104 sets out the procedure to be taken if a party to the FTA believes another party has breached any obligation related to an SPS measure. The party may request technical consultations in the SPS Sub-committee.

Chapter 4, Art. 73 holds that the WTO TBT Agreement applies and is incorporated into the FTA.

Title XII, Ch. 1 provides the dispute settlement procedure for the Parties to the Agreement. According to Art. 319 §2, disputes related to the same measure arising from the Agreement and by virtue of the WTO Agreement, the complaining party is at its discretion to choose whether the dispute is to be settled under this Agreement or the WTO DSU. The Agreement provides the following dispute resolution methods: consultations and arbitration.

9.5 Specific market access strategies

Summary:

- The market access strategies relate to quinoa and cocoa products
- The market access strategies for quinoa focus on the adoption and implementation of the WHO standard on quinoa. In addition, further market access via harmonization and equivalence are examined.
- The strategies for cocoa products revolve around the regulation of cadmium levels by the EU and the tools available to Ecuador to negotiate a favourable outcome for its domestic cocoa producers..

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As an introduction to the analysis, a table found in international academia is provided, called “*An indicative list of tools for addressing regulatory issues*”.⁸⁰

Tabell 2.1 An indicative list of tools for addressing regulatory issues

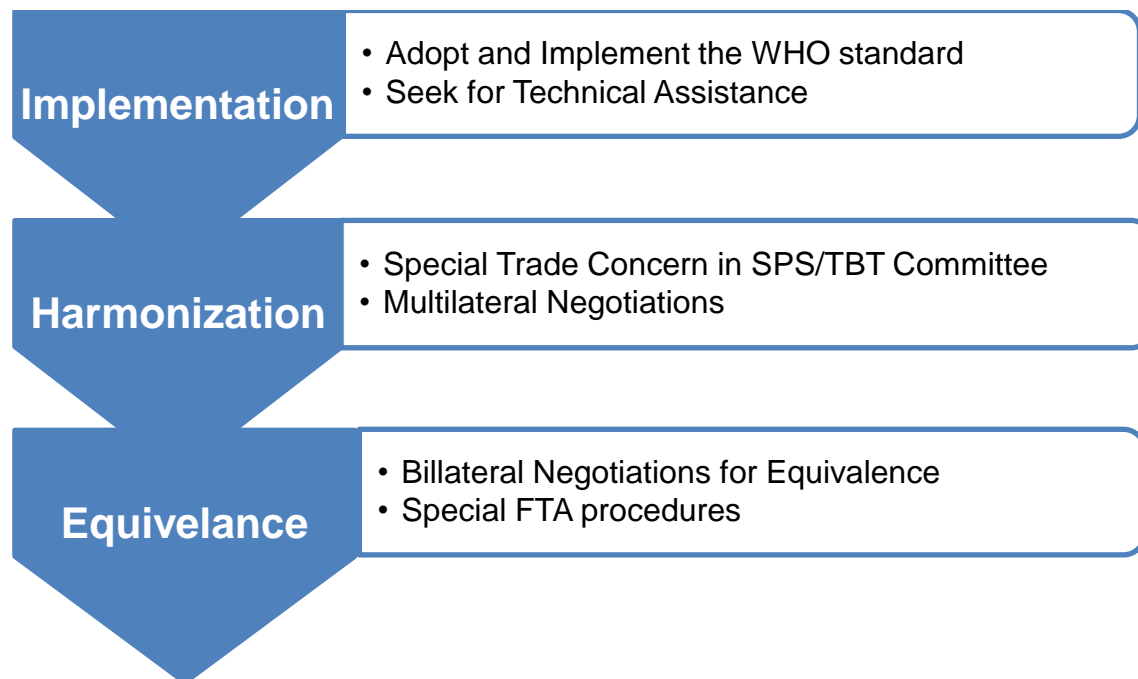
No.	Issues	Some tools for addressing them
1.	Compatibility of approach	Regulatory co-operation
2.	Coherence of regulation	Harmonization of regulation International regulation Recognition of equivalence
3.	Coherence of standards	Harmonization of standards International standardization Recognition of equivalence
4.	Transparency and impartiality of regulations and standards	Harmonization International regulation and standardization Recognition of equivalence
5.	Appropriate level of regulation	Regulatory co-operation
6.	Transparency and impartiality in obtaining certification	Mutual recognition agreements Technical assistance
7.	Recognition of certificates	Mutual recognition agreements
8.	Compatibility of market surveillance	Regulatory co-operation Technical assistance
9.	Development of infrastructure	Technical assistance

Source: Veggeland, F. and Elvestad C. (2004) Equivalence and Mutual Recognition in Trade Arrangements Relevance for the WTO and the Codex Alimentarius Commission.

It provides for the exemplary tools that can be utilized when dealing with regulatory issues. It can be seen that international standardization, harmonization of standards, recognition of equivalence, regulatory cooperation and technical assistance are recognized as valuable tools. These tools are examined in the following negotiating strategies.

⁸⁰ Veggeland (2004).

9.5.1 Quinoa grain



In 2019, the WHO has adopted the new standard for quinoa (CXS 333-2019). It applies “*to quinoa (Chenopodium quinoa Willd.) processed as defined, suitable for human consumption, packaged or in bulk*”. The standard introduces the basic features related to the regulation of quinoa trade. In particular, the standard provides:

- a description of the product;
- the essential composition;
- the quality factors (moisture, defect, extraneous matter etc.);
- food additives;
- contaminants;
- hygiene;
- packaging;
- labelling; and
- methods of analysis and sampling.⁸¹

The importance of a WHO standard is twofold: harmonization and equivalence recognition.

⁸¹ Full text provided in Annex 4A

As has been indicated above, the TBT and SPS Agreements encourage Members to use international standards for their national technical regulations and SPS measures. The new WHO standard provides the basis upon which national regulations shall operate concerning quinoa, as defined in the scope.

Member States are only allowed to deviate from the standard either when adopting a higher level of protection or when the standard is unworkable for their regulatory concern. Hence, Ecuador, as an important exporter of quinoa, should utilize this opportunity and negotiate the adoption of this standard by the WTO Member States.

9.5.1.1 Adoption and implementation of the Codex Alimentarius

Ecuador first must adopt and implement the WHO standard on quinoa. The successful implementation of the standard at the domestic level will be valuable in future negotiations.

This will require, among else, substantial technical assistance which Ecuador will be able to seek at the WTO level, under Article 9 of the SPS Committee and Article 11 of the TBT Agreement.

Among else, Ecuador should request from the individual Member States to provide appropriate technical assistance to facilitate the implementation of SPS measures and technical regulations. This assistance may include science-based and technical information on the relevant and appropriate measures that ought to be taken in order to enhance the market access opportunities.

In this regard, the SPS Committee has agreed before to propose a WTO-funded regional training event that relates to the adoption and adherence to international standards.⁸² Ecuador should take advantage of the impetus of the new WHO standard to gain access to training events for its national producers.

In addition, the Standards and Trade Development Facility (STDF) provides funding opportunities for accepted projects.⁸³ The project can address the possible difficulties of producers to abide by the WHO standards. In addition, the project can include initiatives for capacity building either in the

⁸² For example, G/SPS/GEN/997/Rev.6/Add.1

⁸³ The procedure for the acceptance of a project proposal is provided for : https://www.standardsfacility.org/sites/default/files/EIF_HandbookProjectDesign_Feb-12.pdf

production process, such as machinery or during transit. The latter is important since the beneficiaries have mentioned that transportation conditions have rendered Ecuadorian quinoa products defective for EU SPS standards. For example, if the transportation conditions lead to contamination of the products, then STDF would be able to accept a project related to the issue.

The current deadline for funding proposals is 10 January 2020.

9.5.1.2 Harmonization

Ecuador should raise the issue at the WTO level, mainly in the SPS and TBT Committee, respectively, to make the other Member States adopt and implement the relevant standard in order to provide coherence in the regulation of quinoa trade.⁸⁴ Given the fact that the SPS Committee has the mandate to “*invite the relevant international organizations to examine specific matters with respect to a particular standard*”,⁸⁵ Ecuador should propose to invite the WHO to the committee to discuss the implementation procedure of the new standard. The latter is important since the Member States that do not apply an international standard, should provide the Committee an indication of the reason why and, in particular, whether they consider the standard not stringent enough.⁸⁶

Specifically, Ecuador should raise the adoption of the WHO standard in the SPS and TBT Committees as Specific Trade Concerns (STC). During the procedures of the Committees, Ecuador should gain the support of other quinoa producing states, such as Bolivia, who made the proposal for the WHO standard.

In this context, Ecuador could highlight the findings in terms of the TRMs database in order to call the attention of WTO Members on the multiplicity of measures applicable to quinoa trade. Proofs of the chaotic regulation as it is evinced by the database, will be valuable in the negotiations. Among the measures identified, the negotiator should introduce to the WTO Members the diversification of the measure on issues covered by the WHO standard. In

⁸⁴ Next meeting on March 2020

⁸⁵ Art. 12.6

⁸⁶ Art. 12.4

specific, the measures identified in our database impose packaging requirements, maximum residue limits, levels of humidity and definitions of defectiveness of a product.

These differences from the WHO standard illustrate the need for the adoption of a single standard since this plurality constitutes a significant burden on international trade. Therefore, the adoption of the new standard by the WHO can become the leeway for international harmonization of SPS and TBT procedures.

9.5.1.3 Equivalence

Ecuador should pursue its specific export-oriented negotiations at the EU and EFTA level. We have seen that the EU-Andean Community and the EFTA-Ecuador FTAs introduce specific provisions for regulatory cooperation among the Parties. The goal of Ecuador is first to identify the desired level of protection and second to reach the level of regulatory equivalence.

The reason why the level of protection is mentioned is due to the responses by COPROBICH to the questionnaire.⁸⁷ Specifically, the products of the association not only conform with the WHO standard but they are also able to conform with an even higher level of protection.

Hence, Ecuador can appeal to the consumer-conscious European governments to introduce regulations that are more protective than the WHO standard. This, however, requires a careful examination of the totality of Ecuador's production as well as the main competitors' production, i.e. Peru and Bolivia, who are also Members to the EU-Andean Community FTA. It is noted though that this strategy is very much dependant on the circumstances. In contrast, the main strategy that Ecuador should follow is regulatory equivalence recognition.

As we have seen, recognition of equivalence means that States recognize the regulations, processes and inspections of fellow States; thus, excluding their product from further examination at the border.

⁸⁷ See Annex 4B

The OECD provides the following table regarding Equivalence procedures:⁸⁸

Box 1. On terminology and definitions

Mutual Recognition (MR) is a wide-ranging concept: one can mutually recognise limited or general aspects of a regulatory regime. A very ambitious form is MR of rules or standards. 'Rules' can mean various manifestations of legal obligations. 'Standards' are by definition voluntary; however, in some regimes, adhering to a specific standard may be regarded as fulfilling the relevant regulatory objective of health or safety (etc.). MR will be possible only if the relevant regulatory objectives are regarded as 'equivalent'.

Mutual Recognition Agreements (MRAs) are far more limited and modest. Their purpose is solely to avoid duplicative testing in international trade. Neither the regulatory objectives, nor the technical requirements, nor the conformity assessment procedures are the same or 'equivalent'. What is mutually recognised is (i) the technical competence of specific conformity assessment bodies in the export country to perform conformity assessment at the expected level of the import country, and (ii) the knowledge of these bodies about the technical requirements and conformity assessment procedures in the import country. MRAs thus recognise the competence of designated conformity assessment bodies in export country A to test and issue certificates on the basis of the technical requirements and procedures of import country B, and vice versa, thereby allowing such imports to enter the destination country without further barriers or delays.

MRAs are one of many ways to address technical barriers to trade (TBTs) which arise from divergences in national technical regulations. There are alternatives to MRAs which partly or imperfectly substitute functions of MRAs. The most important example is the **Supplier Declaration of Conformity (SDoC)**. According to Fliess, Gonzales and Schonfield (2008), "by definition, under SDOC the supplier himself (this can be the manufacturer, distributor, importer, assembler, etc) provides written assurance of conformity to all applicable technical regulations of a market. Allowing the supplier himself to declare compliance of a product removes the regulatory need for obtaining certification from a recognised third party, usually located in the export market."

Box 1. On terminology and definitions (cont.)

Countries can also conclude '**equivalence agreements**'. In such agreements, the importing country recognises the 'equivalence' of the objectives and conformity assessment of the exporting country in product x to that of its own, although they need not be exactly the same. The discretion is therefore on the importing country (under certain procedures). Indeed, equivalence may well be granted on a case by case basis, just like a 'positive list' approach in trade negotiations. Therefore, mutual recognition is more ambitious : mutual (and not unilateral) recognition is the rule, and procedures to claim exceptions are typically difficult, rendering MR akin to a liberalisation of market access based on a (strict) negative list approach.

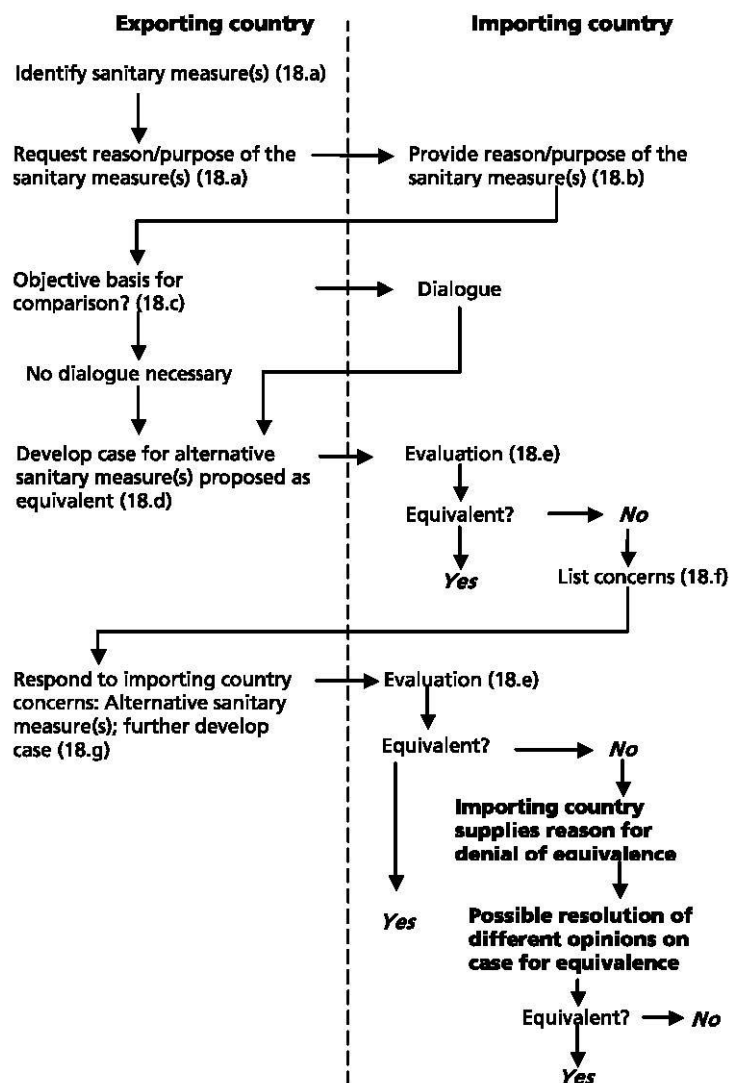
Source: OECD 2016 [Correia de Brito, A., C. Kauffmann and J. Pelkmans "The contribution of mutual recognition to international regulatory co-operation" *OECD Regulatory Policy Working Papers*, No. 2, OECD]

In the present case, the report will focus on equivalence agreements and equivalence recognition since the FTAs at hand provide for procedures regarding equivalence, not mutual recognition.

The procedure can be summed up with the following table introduced by WHO⁸⁹:

⁸⁸ OECD 2016

⁸⁹ Guidelines on the Judgement of Equivalence of Sanitary Measures Associated with Food Inspection and Certification Systems (CAC/GL 53-20)



Source: Guidelines on the Judgement of Equivalence of Sanitary Measures Associated with Food Inspection and Certification Systems

The EU-Andean Community FTA provides a series of procedures for the adoption of equivalence status.⁹⁰ Yet, the text of the Agreement does not introduce any equivalence procedure or right for SPS measure. Rather, it introduces the negotiating framework that may be used for gaining equivalence status.

⁹⁰ Art. 95 EU-Andean Community FTA

Equivalence

The SPS Sub-committee may develop provisions on equivalence and will make recommendations to the Trade Committee accordingly. This Sub-committee shall also establish the procedure for the recognition of equivalence”.

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Similarly, the Agreement does not provide any equivalence provision for TBT measures other than general provisions.⁹¹ Hence, Ecuador needs to carefully plan its proposal to the relevant TBT or SPS Sub-Committee of the Agreement.

First, Ecuador should successfully adopt and implement the WHO standard (or a measure with a higher standard of protection). Then, Ecuador should make sure that it can produce significant reassurances that the conforming procedures and assessments are effectively the same as EU's. According to EU law,⁹² the recognition of equivalence under normal circumstances requires an examination by EU authorities of:

- the inspection procedures;
- the adopted standards;
- certification processes;
- rules on the inspection system;
- a description of how it is organised; and
- any available reports on the effectiveness of the implementation of production and inspection rule.

Thus, Ecuador should be able to produce such evidence in order to successfully initiate equivalence recognition procedures.

The request of Ecuador for equivalence should be limited and tailor-made to quinoa exportation. The authorities should also think about requesting equivalence only for specific procedures such as certification (FairTrade or Organic). For example, EU has a favourable regulation (1235/2008) that grants favourable recognition status for certain states regarding the adoption of the Organic label. Ecuador could seek to upgrade its status from the application of Regulation 889/2008 to the application of Regulation 1235/2008 which provides for equivalent guarantees and products/processes considered to be

⁹¹ Art.76 EU-Andean Community FTA
Technical Regulations

2. Upon request of another Party interested in developing a similar technical regulation, and in order to minimise the duplication of costs, a Party shall, to the extent possible, provide the requesting Party with any information, technical study or risk assessment or other available relevant document, with the exception of confidential information, on which that Party has relied for the development of such technical regulation”.

⁹² For example, for organic product Council Regulation (EEC) No. 2092/91; Commission Regulation (EEC) No. 94/92

compliant.⁹³ In specific, Countries included in the more favourable regulations are considered to have equivalent certification process [Trade Control and Expert System (TRACES)] for certifying organic products via the electronic certificate of inspection (e-COI). Hence, their products can be certified by the national authorities. In contrast, products originating from countries that have not received this equivalence recognition, have to be certified by the EU Control Bodies; thus, having a competitive disadvantage.

The more specific the request, the greater the chances of success. It should be noted though that Ecuador should be prepared to give something in return since the equivalence may be unilateral (EU commits to recognise the procedures of Ecuador as equivalent, not vice versa), yet EU will definitely seek to acquire a further market access right.

In this regard, concessions must be made, and Ecuador should be prepared to propose a deal that can indirectly favour its importers. COPROBICH clarified that the lack of sophisticated machinery for the process of quinoa constitutes an obstacle to its export performance. Hence, a proposal for further market access for the EU's agricultural machinery may not only be appealing to the EU but also beneficial for Ecuadorian producers.

The aforementioned strategy can apply equally to EFTA negotiations. The Agreement here provides similar provisions with the EU-Andean Community FTA regarding future equivalence procedures negotiations.⁹⁴

9.5.2 Cocoa beans and cocoa paste

The main issue that is of concern to Ecuador in regard to cocoa beans and paste is the EU Regulation on cadmium. Ecuador has already jointly raised a concern at the SPS Committee Meeting regarding the measure with Colombia, Côte d'Ivoire, Madagascar and Peru. For the purposes of negotiation, the best

⁹³ Text in Spanish: [889/2008](#) and [1235/2008](#)

⁹⁴ Art. 76 EU-Andean Community FTA
Technical Regulations

2. Upon request of another Party interested in developing a similar technical regulation, and in order to minimise the duplication of costs, a Party shall, to the extent possible, provide the requesting Party with any information, technical study or risk assessment or other available relevant document, with the exception of confidential information, on which that Party has relied for the development of such technical regulation”.

course of conduct would be to continue to raise concerns at SPS Committee Meetings as well as awaiting the forthcoming joint FAO-WHO Codex Alimentarius standards on cadmium levels in chocolate and other cocoa products.

10 Conclusion

The present Report seeks to provide a comprehensive overview of the trade-restrictive measures that affect the Ecuadorian cocoa, quinoa and handicraft products. In specific, it sets out the fundamental parameters for the classification of a measure as trade-restrictive in accordance with the International Databases utilised, and establishes a tailor-made database of trade-restrictive measures applicable, that are provided in the Annexes and the Appendices of the Present Report. In addition, the Report introduces the basic legal concepts when examining the consistency of a Technical Barrier to Trade or Sanitary/Phytosanitary measure with WTO law.

Furthermore, a detailed analysis is provided on negotiating further market access for cocoa and quinoa products that are affected by Technical Barriers to Trade and Sanitary/Phytosanitary measures. Specifically, the Report introduces the concepts of international harmonization and equivalence recognition with a view of providing easier and guaranteed access for Ecuadorian Products into the EU and EFTA markets. The latter have been characterized by the Beneficiary as target markets.

Lastly, in separate documents specific export promotion strategies have been crafted in order to boost the export performance of quinoa, cocoa and handicraft products from Ecuador to EU and EFTA markets. These documents can be directly utilised by the producers with a view of maximizing their export potential.

In sum, this Report seeks to provide the overview of three distinct aspects: identification of trade-restrictive measures, negotiations of market access and export promotion strategies. It mainly operates as a capacity building Report upon which the national authorities and the individual exporters can develop their strategies.