Ecuador

RISK & COMPLIANCE REPORT

DATE: January 2017

Executive Summary - Ecuador	
Sanctions:	None
FAFT list of AML Deficient Countries	No longe on FATF list
Higher Risk Areas:	Non - Compliance with FATF 40 + 9 Recommendations Not on EU White list equivalent jurisdictions Corruption Index (Transparency International & W.G.I.) World Governance Indicators (Average Score) Failed States Index (Political Issues)(Average Score) International Narcotics Control Majors List
Medium Risk Areas:	US Dept of State Money Laundering Assessment

Major Investment Areas:

Agriculture - products:

bananas, coffee, cocoa, rice, potatoes, manioc (tapioca), plantains, sugarcane; cattle, sheep, pigs, beef, pork, dairy products; fish, shrimp; balsa wood

Industries:

petroleum, food processing, textiles, wood products, chemicals

Exports - commodities:

petroleum, bananas, cut flowers, shrimp, cacao, coffee, wood, fish

Exports - partners:

US 37%, Chile 8.1%, Peru 7.1%, Colombia 4.6%, Japan 4.5%, Russia 4.4% (2012)

Imports - commodities:

industrial materials, fuels and lubricants, nondurable consumer goods

Imports - partners:

US 28%, China 11.2%, Colombia 9.3%, Peru 4.9% (2012)

Investment Restrictions:

cuador is relatively open to foreign investment in most sectors, including general manufacturing, retail and services. However, its overall investment climate remains uncertain as its economic, commercial and investment policies continue to change.

Foreigners have the same access to large-scale mining concessions as domestic investors, but are prohibited from investing in small-scale mining operations.

Foreign companies are prohibited from owning more than 25 percent equity in broadcast stations and foreigners are not permitted to obtain broadcast concessions.

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Section 1 - Background

What is now Ecuador formed part of the northern Inca Empire until the Spanish conquest in 1533. Quito became a seat of Spanish colonial government in 1563 and part of the Viceroyalty of New Granada in 1717. The territories of the Viceroyalty - New Granada (Colombia), Venezuela, and Quito - gained their independence between 1819 and 1822 and formed a federation known as Gran Colombia. When Quito withdrew in 1830, the traditional name was changed in favor of the "Republic of the Equator." Between 1904 and 1942, Ecuador lost territories in a series of conflicts with its neighbors. A border war with Peru that flared in 1995 was resolved in 1999. Although Ecuador marked 30 years of civilian governance in 2004, the period was marred by political instability. Protests in Quito contributed to the mid-term ouster of three of Ecuador's last four democratically elected presidents. In late 2008, voters approved a new constitution, Ecuador's 20th since gaining independence. General elections were held in February 2013, and voters re-elected President Rafael CORREA.

Section 2 - Anti – Money Laundering / Terrorist Financing

FATF status

Ecuador is on the FATF List of Countries that have been identified as having strategic AML deficiencies

Latest FATF Statement - 23 October 2015

The FATF welcomes Ecuador's significant progress in improving its AML/CFT regime and notes that Ecuador has established the legal and regulatory framework to meet its commitments in its action plan regarding the strategic deficiencies that the FATF had identified in June 2010. Ecuador is therefore no longer subject to the FATF's monitoring process under its on-going global AML/CFT compliance process. Ecuador will work with GAFILAT as it continues to address the full range of AML/CFT issues identified in its mutual evaluation report.

Compliance with FATF Recommendations

The last Mutual Evaluation Report relating to the implementation of anti-money laundering and counter-terrorist financing standards in Ecuador was undertaken by the Financial Action Task Force (FATF) in 2011. According to that Evaluation, Ecuador was deemed Compliant for 1 and Largely Compliant for 13 of the FATF 40 + 9 Recommendations. It was Partially Compliant or Non-Compliant for 5 of the 6 Core Recommendations.

US Department of State Money Laundering assessment (INCSR)

Ecuador was deemed a Jurisdiction of Concern by the US Department of State 2016 International Narcotics Control Strategy Report (INCSR).

Key Findings from the report are as follows: -

Perceived Risks:

Ecuador is a major drug transit country. With a dollarized economy and geographic location between two major drug producing countries, Ecuador is highly vulnerable to money laundering. Corruption is a significant problem in Ecuador and facilitates money laundering. There is evidence that money laundering occurs through trade and commercial activity, as well as through cash couriers. Large amounts of undeclared currency entering and leaving

Ecuador indicate that transit of illicit cash is a significant activity. There is no way to accurately determine the magnitude of money laundering activity in the country.

Structuring (smurfing) is also a problem in Ecuador, especially along the northern border with Colombia where low-level criminals cross the border into Ecuador to make deposits into financial institutions under the $10,000 threshold, thereby avoiding currency transaction reporting (CTR) requirements. Some observers note that money laundering is an important component in Ecuador's financial sector and authorities lack sufficient will to stamp out this activity.

On June 26, 2015, the FATF removed Ecuador from its Public Statement. The FATF determined Ecuador had taken appropriate steps to establish the legal and regulatory frameworks necessary to address the actions required under its action plan.

DO FINANCIAL INSTITUTIONS ENGAGE IN CURRENCY TRANSACTIONS RELATED TO INTERNATIONAL NARCOTICS TRAFFICKING THAT INCLUDE SIGNIFICANT AMOUNTS OF US CURRENCY; CURRENCY DERIVED FROM ILLEGAL SALES IN THE U.S.; OR ILLEGAL DRUG SALES THAT OTHERWISE SIGNIFICANTLY AFFECT THE U.S.: YES

CRIMINALIZATION OF MONEY LAUNDERING:
"All serious crimes" approach or "list" approach to predicate crimes: All serious crimes
Are legal persons covered: criminally: YES civilly: YES

KNOW-YOUR-CUSTOMER (KYC) RULES:
Enhanced due diligence procedures for PEPs: Foreign: YES Domestic: YES KYC covered entities: Savings banks, offshore banks, foreign and domestic private banks, credit information offices, currency exchanges, credit unions, foreign branches of financial institutions, mutual companies, public financial institutions, offices representing foreign banks, financial corporations and groups, credit card companies, insurance providers (including private insurance), cooperatives, trust and fund managers, money transfer companies, couriers, and brokerages

REPORTING REQUIREMENTS:
Number of STRs received and time frame: Not available
Number of CTRs received and time frame: Not available
STR covered entities: Banks, finance companies, credit unions, and mutual savings and loan societies; insurance and reinsurance companies; international bank branches subject to Ecuadorian financial sector supervision; stock exchanges and brokerage firms; fund administrators and trusts; cooperatives, foundations, and NGOs; sellers of vehicles, watercraft, and aircraft; money transfer and courier services, including operators, agents, and agencies; tourism agencies and operators; individuals and corporations dedicated to real estate investment, sales, and construction; casinos (now banned), gambling houses, bingo parlors, slot machines, and race tracks; pawnshops; dealers of jewels, metals, and precious stones; art and antique dealers; notaries; property and mercantile registrars

MONEY LAUNDERING CRIMINAL PROSECUTIONS/CONVICTIONS:
Prosecutions: Not available
Convictions: 4: January - August 2015

RECORDS EXCHANGE MECHANISM:
With U.S.: MLAT: NO Other mechanism: YES
With other governments/jurisdictions: YES

Ecuador is a member of the Financial Action Task Force of Latin America (GAFILAT), a FATF-style regional body.

ENFORCEMENT AND IMPLEMENTATION ISSUES AND COMMENTS:

In 2015, Ecuador demonstrated it had made significant progress in addressing strategic AML/CFT deficiencies and ensuring its AML/CFT legislation and implementing regulations adhere to international standards. Ecuador does not publicly publish statistics on money laundering prosecutions and convictions nor on the volume of suspicious transaction reports (STRs) or currency transaction reports (CTRs) received by the financial intelligence unit.

Article 367 of the 2014 Integral Organic Penal Code (COIP) criminalizes terrorist financing – previous legislation did not list terrorist financing as a specific crime. Articles 69, 549, and 551 of the COIP establish procedures to identify and freeze terrorist assets and confiscate funds related to money laundering.

Despite improvements in Ecuador's AML/CFT regime, obstacles to successful prosecutions in money laundering cases remain. While Article 317 of the COIP states that money laundering is an autonomous crime, it places the burden of proof on prosecutors to investigate the illicit origins of the money. In many cases, this unclear wording has led to confusion over the law's proper interpretation.

The failure of the COIP to specifically criminalize bulk cash smuggling means there is no significant deterrent for this serious issue. The Law of Prevention, Detection, and Eradication of stipulates that failure to declare cash/currency at a port of entry is punishable only by a 30 percent administrative fine – the law does not address the smuggling of other financial instruments. Authorities can pursue money laundering charges against bulk cash smugglers, but convictions are difficult to obtain in these cases as bulk cash smuggling is considered a "flagrant" crime and authorities are only given 30 days to investigate (in other money laundering cases they are given 90 days to investigate once an arrest is made). In some cases, the authorities are required to advise a suspect that he or she is under investigation, which often results in key evidence disappearing.

Ecuadorian authorities have noted that trade mechanisms are used for laundering activities. In October 2015, Ecuadorian authorities reported a growing trend in high-profile money laundering cases related to trade with Venezuela. Media reported in April that the Prosecutor's Office was investigating a potential $228 million trade-based money laundering case involving transactions between several Ecuadorian banks and Venezuelan firms. For example, according to prosecutors, one company in Ecuador exported calcium carbonate, which has many industrial uses, at a price of $1,000 a kilogram, when the actual cost of the shipment was 17 cents a kilogram. Another company exported handicraft equipment at a stated value of $250,000, whereas the actual cost was between $600 and $1,200.

Approximately 40 percent of Ecuador's population is non-banked. To help serve their needs, Ecuador is promoting a cellphone-based digital currency that allows users to store and

transfer value and pay assorted bills, taxes, and credit card bills from their phones. The government introduced the digital currency in 2014, but interest from Ecuadorian citizens so far has been muted. The service is limited to Ecuadoran citizens and tied to their national ID numbers.

However, questions remain as to whether the new service has enough protections to prevent criminals from using it to launder money. Worries prompted the government to announce transactions are limited to $2,000 per month and $300 per day for individual users (companies have higher limits). AML analytics should be engineered into the new system to help prevent "mobile smurfing" or the structuring of credits and transactions.

In order to more effectively secure money laundering convictions, Ecuador should reform its law to criminalize bulk cash smuggling, give prosecutors additional time to investigate cases, and allow for investigation without notifying a suspect that he or she is under investigation. Rooting out money laundering and related government and private sector corruption will require further commitment by the government. Ecuador should require its financial intelligence unit to provide STR/CTR statistics publicly. The number of annual money laundering prosecutions and convictions should also be made available so as to better gauge the effectiveness of Ecuador's AML/CFT regime. The government should make a dedicated effort to continue training judges, prosecutors, and investigators on the country's applicable AML/CFT legislation and regulations.

Current Weaknesses in Government Legislation (2013 INCRS Comparative Tables):

According to the US State Department, Ecuador fully conforms with regard to the government legislation required to combat money laundering.

EU White list of Equivalent Jurisdictions

Ecuador is not currently on the EU White list of Equivalent Jurisdictions

World Governance indicators

To view historic Governance Indicators Ctrl + Click here and then select country

Failed States Index

To view Failed States Index Ctrl + Click here

Offshore Financial Centre

Ecuador is not considered to be an Offshore Financial Centre

US State Dept Narcotics Report 2016 (introduction):

Situated between two of the world's largest cocaine producing countries, Ecuador is a major transit country for illegal narcotics. Cocaine and heroin from Colombia and Peru are trafficked through porous land borders and via maritime routes for distribution to the United States and Europe. While not a major drug producing country, Ecuador is a major transit country for chemical precursors to process illegal narcotics and is also vulnerable to transnational organized crime due to weak public institutions, permeable borders, and corruption. Ecuador's police, military, and judiciary lack sufficient resources to confront the transnational criminal challenges they face. Elements of the Ecuadorian government remain committed to reducing the supply of drugs, although the country's top leadership places more importance on demand reduction and addressing the public health aspect of the issue. Domestic drug consumption is rising and public treatment facilities are insufficient to treat Ecuador's population suffering from substance use disorders, a problem that will likely be compounded by Ecuador's 2014 decriminalization of personal possession and consumption of most narcotics, hallucinogens, and stimulants.

Corruption

As a matter of policy, the Ecuadorian government does not encourage or facilitate the illicit production or distribution of narcotic or other controlled substances, or the laundering of proceeds from illegal drug transactions. Ecuador's new penal code increased penalties for government officials who impede the prosecution of drug traffickers and strengthens the definition of conspiracy.

Narcotics-related corruption remains a problem within the public security forces. In January 2015, two police officers were killed and others injured in a shootout while trying to prevent off-duty officers from transporting a shipment of marijuana in Esmeraldas. In March, 63 officers were dismissed after failing to pass a polygraph related to the event.

Several government entities are responsible for receiving and investigating corruption complaints, but resource constraints and political pressure generally lead to a lack of prosecution.

US State Dept Trafficking in Persons Report 2014 (introduction):

Ecuador is classified a Tier 2 country - A country whose governments does not fully comply with the Trafficking Victims Protection Act's minimum standards, but are making significant efforts to bring themselves into compliance with those standards

Ecuador is a source, transit, and destination country for men, women, and children subjected to sex trafficking and forced labor. The majority of Ecuadorian victims identified are women and children exploited in sex trafficking within the country, as well as in domestic servitude, forced begging, and forced labor, primarily in agriculture. In some parts of the country, local gangs are involved in sex trafficking. Indigenous and Afro-Ecuadorians are particularly vulnerable to human trafficking. Traffickers recruit children from impoverished indigenous

families under false promises of employment; these children are forced to work as domestic servants, in sweatshops, as street and commercial vendors, or in begging in Ecuador or neighboring countries. Media reports identified cases of Ecuadorian children subjected to forced labor in criminal activity, such as drug trafficking and robbery. In 2013, one report documented an illegal armed group attempting to recruit an Ecuadorian child along the northern border with Colombia. Ecuadorian women and children have been identified in forced labor and sex trafficking in other South American countries, including Colombia, Brazil, Peru, Venezuela, and Chile, as well as other countries. Ecuador is a destination for Colombian, Peruvian, and Paraguayan women and girls exploited in sex trafficking and domestic servitude. Government officials characterize over 75 percent of identified trafficking victims as having been recruited with false promises of employment. Colombian refugees and migrants are subjected to forced labor on palm oil plantations.

The Government of Ecuador does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Authorities increased the number of trafficking prosecutions and convictions and reported identifying a large number of trafficking victims compared with the previous reporting period. While authorities continued to provide funding to NGOs to provide victim assistance, specialized services were inadequate in most of the country, and one of only two dedicated shelters for child sex trafficking victims closed during the year. Complicity of government officials in trafficking remained a serious concern.

Latest US State Dept Terrorism Report

Overview: Ecuador's greatest counterterrorism and security challenge remained the presence of Colombian terrorist groups in the extremely difficult terrain along its porous 450-mile border with Colombia. Ecuador continued to respond to this threat but it faced resource constraints and limited capabilities. The Correa administration, while still maintaining that the Colombian conflict was mainly Colombia's responsibility, repeated its opposition to encroachments by armed groups across its borders and increased its military presence in the north to discourage incursions by these groups. Ecuador's security forces continued limited operations against Revolutionary Armed Forces of Colombia (FARC) trafficking, training, and logistical resupply camps along the northern border.

Legislation and Law Enforcement: Active alien smuggling rings in Ecuador continued to raise concerns about the transit of individuals with terrorism connections, particularly as it continued to allow visa-free entry to all but nine countries. Ecuadorian law enforcement dismantled one such ring involving 66 foreign nationals on March 10.

On December 14, Ecuador announced that it would increase the Plan Ecuador budget, an agency organized under the Ministry of Security to stabilize the border, from about $4 million to $13 million. The Ecuadorian military conducted more than 200 operations to help secure the northern border area against illegally armed groups between January and October, seizing small arms and munitions, drugs, and disrupting illicit trafficking. In November, an Ecuadorian soldier died in a confrontation with alleged petroleum smugglers with FARC ties. The Ecuadorian government captured FARC 48th front deputy commander Andres Guaje Chala (alias Danilo) in June and handed him over to the Colombian government.

Many acts associated with social protest, such as blocking roads, protesting without a permit, or encouraging protest, can fall under the rubric of “terrorism” and “sabotage,” vaguely-defined crimes against public welfare or the interests of the state under Ecuadorian law. In some cases, human rights advocates and opposition leaders argued that the government brought charges of terrorism against persons for participating in legitimate forms of social protest. Ecuador's judicial institutions remained weak, susceptible to corruption, and heavily backlogged with pending cases. While the military and police made numerous arrests, the judicial system had a poor record of achieving convictions in all types of criminal cases. Ecuador continued to participate in the Department of State's Antiterrorism Assistance program.

Countering Terrorist Finance: Ecuador is a member of the Financial Action Task Force of South America Against Money Laundering, a Financial Action Task Force-style regional body. Ecuador's anti-money laundering law, in effect since 2010, criminalized the financing of acts listed as “crimes of sabotage and terrorism” in the penal code. The breadth and effectiveness of the new law are still unclear. While Ecuador has regulations to confiscate property used in terrorism or the financing of terrorism, Ecuador lacked adequate procedures for the freezing of assets and has a lengthy criminal process for confiscating terrorists' assets.

Regional and International Cooperation: Ecuador and Colombia exchanged ambassadors following their 2010 restoration of diplomatic relations. Security cooperation has resumed and improved. Colombian and Ecuadorian defense ministries signed an agreement June 14 to exchange border security training and intelligence that included provisions to combat illegal mining, weapons smuggling, money laundering, and construction of drug smuggling submarines. Ecuador is a member of the Organization of American States (OAS) and participated in meetings of the OAS' Inter-American Committee Against Terrorism.

International Sanctions

None applicable

Bribery & Corruption

Index	Rating (100-Good / 0-Bad)
Transparency International Corruption Index	31
World Governance Indicator – Control of Corruption	29

Corruption and Government Transparency - Report by US State Department

Corruption is a serious problem in Ecuador. Transparency International consistently ranks Ecuador poorly among countries it surveys in the region. Ecuador ranked 102 out of 176 countries surveyed for Transparency International's 2013 Corruption Perceptions Index and received a score of 35 out of 100 (100-very clean, 0-highly corrupt). In comparison with other countries in the Western Hemisphere, Ecuador ranks better than Nicaragua, Guyana, Honduras, Paraguay, Haiti, and Venezuela, but worse than its closest neighbors, Peru and Colombia.

Ecuador has laws and regulations to combat official corruption, but they are inadequately enforced. Illicit payments for official favors and theft of public funds reportedly take place frequently. Dispute settlement procedures are complicated by the lack of transparency and inefficiency in the judicial system. In addition, there are frequent allegations by the private sector that local authorities demand bribes to issue necessary permits.

Offering or accepting a bribe is illegal and punishable by imprisonment for up to five years. The Controller General is responsible for the oversight of public funds and there are frequent investigations and occasional prosecutions for irregularities. These investigations can be politically motivated. Autonomous agencies are subject to little effective oversight. Government officials and candidates for office often make an issue of corruption, but there is little follow-through once in office. Politically-motivated corruption scandals are a feature of Ecuadorian political life, but even high-profile cases often become stalled after they are remanded to lengthy and often inconclusive judicial proceedings.

Ecuador is not a signatory to the OECD Convention on Combating Bribery, nor has Ecuador complied with the main requirements of the OAS Inter-American Convention Against Corruption. The 2008 Constitution created the Transparency and Social Control branch of government, tasked with preventing and combating corruption, among other things. In December 2008, President Correa issued a decree that created the National Secretariat for Transparency to investigate and denounce acts of corruption in the public sector. Both entities can conduct investigations into alleged acts of corruption but responsibility for prosecution remains with the Office of the Prosecutor General (the “Fiscalia”).

Through the Function of Transparency and Social Control, alleged acts of corruption can be reported by dialing 159 within Ecuador. The Council for Citizen Participation and Social Control also maintains a web portal for reporting alleged acts of corruption: http://www.cpccs.gob.ec.

Section 3 - Economy

Ecuador is substantially dependent on its petroleum resources, which have accounted for more than half of the country's export earnings and approximately two-fifths of public sector revenues in recent years. In 1999/2000, Ecuador's economy suffered from a banking crisis, with GDP contracting by 5.3% and poverty increasing significantly. In March 2000, the Congress approved a series of structural reforms that also provided for the adoption of the US dollar as legal tender. Dollarization stabilized the economy, and positive growth returned in the years that followed, helped by high oil prices, remittances, and increased non-traditional exports. From 2002-06 the economy grew an average of 4.3% per year, the highest five-year average in 25 years. After moderate growth in 2007, the economy reached a growth rate of 6.4% in 2008, buoyed by high global petroleum prices and increased public sector investment. President Rafael CORREA Delgado, who took office in January 2007, defaulted in December 2008 on Ecuador's sovereign debt, which, with a total face value of approximately US$3.2 billion, represented about 30% of Ecuador's public external debt. In May 2009, Ecuador bought back 91% of its "defaulted" bonds via an international reverse auction. Economic policies under the CORREA administration - for example, an announcement in late 2009 of its intention to terminate 13 bilateral investment treaties, including one with the United States - have generated economic uncertainty and discouraged private investment. China has become Ecuador's largest foreign lender since Quito defaulted in 2008, allowing the government to maintain a high rate of social spending; Ecuador contracted with the Chinese government for more than $9.9 billion in forward oil sales, project financing, and budget support loans as of December 2013. Foreign investment levels in Ecuador continue to be the lowest in the region as a result of an unstable regulatory environment, weak rule of law, and the crowding-out effect of public investments. In 2013, oil output marginally reversed a declining trend and production is expected to increase slightly in 2014, although prices will likely remain lower than in previous years. Faced with a 2013 trade deficit of $1.1 billion, Ecuador erected technical barriers to trade in December 2013, causing tensions with its largest trading partners. Ecuador also decriminalized intellectual property rights violations in February 2014.

Agriculture - products:

bananas, coffee, cocoa, rice, potatoes, manioc (tapioca), plantains, sugarcane; cattle, sheep, pigs, beef, pork, dairy products; fish, shrimp; balsa wood

Industries:

petroleum, food processing, textiles, wood products, chemicals

Exports - commodities:

petroleum, bananas, cut flowers, shrimp, cacao, coffee, wood, fish

Exports - partners:

US 37%, Chile 8.1%, Peru 7.1%, Colombia 4.6%, Japan 4.5%, Russia 4.4% (2012)

Imports - commodities:

industrial materials, fuels and lubricants, nondurable consumer goods

Imports - partners:

US 28%, China 11.2%, Colombia 9.3%, Peru 4.9% (2012)

Banking

Ecuador's financial system has operated under the supervision of the Superintendency of Banks and Insurance Companies (Superintendencia de Bancos y Seguros) since1927.

The financial system is comprised of many highly sophisticated institutions with state-of-the-art technology, including: three large banks (Pichincha, Guayaquil, and Pacífico), three medium-sized banks (Produbanco, Bolivariano, Banco Internacional), 18 small banks, and one international bank (Citibank) currently operating in Ecuador. (Note: size is measured according to the bank's assets).

The Deposit Insurance Corporation (COSEDE) provides deposit insurance andguarantees the safety of deposits in Ecuadorian banks, currently up to $27,000 per depositor per bank.

Stock Exchange

The 1993 Capital Markets Law set up a modern regulatory structure, opened stock market trading to banks and other firms, and encouraged the development of mutual funds. However, Ecuadorian capital markets remain underdeveloped. Most large industrial groups are privately held and are financed largely through debt or retained earnings. The bulk of activity on the country's two small stock exchanges, la Bolsa de Valores de Quito and la Bolsa de Valores de Guayaquil, currently involves trading in short-term commercial paper, bank obligations, and government debt. Regional rivalries complicate efforts to develop a truly efficient capital market in Ecuador's small market.

Section 4 - Investment Climate

Executive Summary

Ecuador is relatively open to foreign investment in most sectors; however, foreign direct investment rates are very low in comparison with other countries in Latin America and the overall investment climate is uncertain. Economic, commercial, and investment policies are often contradictory and subject to frequent changes. The legal complexity resulting from inconsistent application and interpretation of existing laws complicates enforcement of contracts and increases the risks and costs of doing business in Ecuador. Systemic weakness in the judicial system and its susceptibility to political or economic pressures are issues for U.S. companies investing in or trading with Ecuador. The Ecuadorian judicial system is hampered by processing delays, unpredictable judgments in civil and commercial cases, inconsistent rulings, and limited access to the courts.

The existing U.S.-Ecuadorian Bilateral Investment Treaty (BIT) provides for national treatment; unrestricted remittances and transfers; prompt, adequate, and effective compensation for expropriation; and binding international arbitration of disputes. However, the long-term status of Ecuador's existing investment treaties remains uncertain. Foreign investors may remit 100 percent of net profits and capital, subject to a five-percent capital exit tax.

A number of U.S. companies operating in Ecuador, notably in regulated sectors such as petroleum and electricity, have filed for international arbitration resulting from investment disputes. Private investment in Ecuador's petroleum sector has declined in recent years, in part because of unfavorable economic terms, legal uncertainties, government tax policies, environmental liability concerns, and lack of a consistent energy policy. Investors in more lightly-regulated sectors have had fewer disputes.

Corruption is a serious problem in Ecuador. Transparency International consistently ranks Ecuador poorly among countries it surveys in the region. Ecuador does not have a history of frequent violence as a result of demonstrations or political instability. Crime is a serious and growing concern, however, especially in the larger cities.

Since 2003, the United States Trade Representative has listed Ecuador as a Watch List country in its annual Special 301 Report on intellectual property. In the 2014 Report, USTR expressed concern about new legislation scheduled to take effect in August 2014 that would decriminalize intellectual property violations.

For these reasons, caution should be exercised when considering investment in Ecuador.

1. Openness to, and Restrictions upon, Foreign Investment

Attitude Toward FDI

Ecuador is open to foreign investment in most sectors, including general manufacturing, retail and services. However, its overall investment climate remains challenging and uncertain as Ecuador's economic, commercial, and investment policies are often contradictory and continue to change. While some laws and regulations have been enacted to spur increased domestic and foreign investment, other legal changes have reduced private sector participation in so-called strategic sectors, most notably extractive industries. The regulatory framework has specifically targeted the banking and media

sectors, negatively affecting these industries. Frequent changes in Ecuador's tax code makes business planning difficult. Ecuador's business environment and the long-term status of a number of bilateral investment treaties, including with the United States, remain uncertain.

In general, the legal complexity resulting from the inconsistent application and interpretation of existing laws complicates enforcement of contracts and increases the risks and costs of doing business in Ecuador. A referendum passed in May 2011 approved substantial reform of the judiciary by the executive branch. Government officials and private Ecuadorian businesses have used regulatory schemes and questionable legal maneuvers to affect foreign company operations in the country. Companies have sometimes been confronted with requirements of additional payments not negotiated in original agreements and others have had their assets seized. Receiving full and timely payments due can be another recurring problem. Business disputes with U.S. companies can become politicized, especially in sensitive areas like the energy and oil sectors. Several high level investment disputes involving U.S. companies, mostly linked to the energy sector, are currently under international arbitration. The central government and a number of provincial governments are exploring ways to provide investment attraction services to support current investment, facilitate the entry of new investment, and alleviate bureaucratic and other hurdles.

Limits on Foreign Control

Foreign investment with up to 100 percent foreign equity is currently allowed without prior authorization or screening in most sectors of the Ecuadorian economy open to domestic private investment. There is no legal discrimination against foreign investors at the time the investments are made. Foreign investors may participate in government-financed research programs. Foreign investors must register their investments with the Central Bank for statistical purposes. Ecuadorian law requires private companies to distribute 15 percent of pre-tax profits to their employees each year.

Ecuador does not have a law in place specifically governing franchises. For license and franchise transactions, no limits exist on the amount of royalties that may be remitted, but the tax on capital outflows was increased from two percent to five percent on November 24, 2011. All license and franchise agreements must be registered with the Ecuadorian Intellectual Property Institute (IEPI).

Articles 313 through 315 of the 2008 Constitution establish that the state is responsible for management of "strategic sectors" through state-owned or controlled companies. Strategic sectors identified include: energy in all its forms, telecommunications, non-renewable natural resources (includes petroleum, natural gas, and mining), transportation, hydrocarbon refining, media, water, biodiversity, and "genetic patrimony." Within the last few years, new state companies have been formed in mining, pharmaceuticals, and strategic planning, as well as to import security equipment and manufacture uniforms. In August 2013, a new public enterprise was created to import goods required by the executive branch.

TABLE 1:

Measure	Year	Rank or value	Website Address

TI Corruption Perceptions Index	2013	(102 of 177)	http://cpi.transparency.org/cpi2013/results/
Heritage Foundation's Economic Freedom Index	2013	(159 of 177)	http://www.heritage.org/index/ranking
World Bank's Doing Business Report "Ease of Doing Business"	2013	(139 of 189)	http//doingbusiness.org/rankings
Global Innovation Index	2013	(83 of 142)	http://www.globalinnovationindex.org/content.aspx?page=gii-full-report-2013#pdfopener
World Bank GNI per capita	2012	$5,170	http://data.worldbank.org/indicator/NY.GNP.PCAP.CD

Selected Strategic Sectors:

Petroleum

Private investment in Ecuador's petroleum sector has declined in recent years, in part because of unfavorable contractual terms, legal uncertainties, government tax policies, environmental liability concerns, and lack of a consistent energy policy. High profile legal cases brought by and against foreign oil companies, often stemming from tax disputes, have dampened foreign investor interest in the sector.

All subsurface resources belong to the state. Ecuador permits investment by foreign oil companies, but has changed the terms for private sector participation in the sector over the last few years. Prior to the change, foreign oil companies were engaged in exploration and development activities under production-sharing contracts with the state oil company Petroecuador, which gave private investors the right to share in profits with the government. In 2010, the government changed these contracts to a fee-for-service model. In 2012, the government signed a few hybrid service contacts, whereby oil services companies have a more traditional oil production company role of financing investments and taking on risks.

One year after launching the "11th round" of tenders for oil exploration of 13 fields in the southeast amazon region, the process appeared to stall in November 2013. Given reduced interest in the tender, the government announced it will undertake exploration with its own resources, assigning some fields for possible exploration with state-owned enterprises from Chile and Belarus.

Only the state is authorized to participate in domestic fuel distribution, refining, and transport activities. Fuel prices are controlled and subsidized by the central government. Ecuador has insufficient refining capacity to meet domestic demand for refined products and must import

many oil derivatives. Ecuador is largely dependent on imports of diesel, gasoline, and cooking gas, importing $5.5 billion in 2013, out of which $3.7 billion were subsidized.

Reforms to Ecuador's Hydrocarbons Law that came into effect on July 27, 2010, provided the legal framework and deadlines for the Ecuadorian government to negotiate new contracts with foreign oil companies operating in the country. Negotiations with the major foreign oil operators were concluded on November 23, 2010, resulting in new service contracts for seven concessions with five operators. Negotiations were not successful with three other companies, which negotiated the turnover of their operations to the state and left the country. Marginal oil-field operators concluded new service contract negotiations with the government in 2011. Some general features of the new service contract are that the state receives an initial payment of 25 percent of gross revenues as a "sovereign margin;" companies receive a negotiated per barrel tariff for oil produced.

In January 2013, Petroecuador's production branch was absorbed by Petroamazonas, the operator of the former Occidental Petroleum oil field.

The expected shutdown of the Esmeraldas refinery for a major overhaul, initially scheduled for 2012, has been repeatedly postponed. Meanwhile, there have been partial shutdowns with some units operating intermittently. Financing remains pending for the flagship Pacific Refinery project (initially valued at $12 billion for 300,000 barrels-per-day capacity), created as a joint venture between Petroecuador and Venezuelan PDVSA. However, a Brazilian company has already begun to clear the land at the site in Manta. In September 2013, the government of Ecuador announced a joint venture with China to build the refinery. Under the existing plan, Ecuador will reportedly remain the major shareholder, holding 51 percent of the shares, with China holding 30 percent and Venezuela 19 percent.

A U.S. oil company was affected by a ruling issued in January 2012 by the Appellate Court in Sucumbíos province upholding a $19 billion judgment in a long-standing environmental lawsuit. The plaintiffs have unsuccessfully pursued the company's assets in third countries. In November 2013, Ecuador's Supreme Court (called the National Court of Justice) reduced damages against the company to $9.5 billion. Related cases remain pending in Ecuadorian and international legal fora.

In October 2012, a U.S. oil company was issued a $1.8 billion plus interest award against Ecuador under international arbitration, having argued that Ecuador had breached its bilateral investment treaty with the U.S. following contract termination and seizure of the company's assets in 2006. The case is in the final stages of appeal in international legal fora.

Mining

The mining sector is relatively open to foreign investment. Investment in mining continues to be modest by Andean standards in spite of the government's desire to extract revenue from the sector. Foreigners have the same access to large-scale mining concessions as domestic investors, but are prohibited from investing in small-scale mining operations. Ecuador's mining potential is concentrated in gold, copper, and silver. Foreign investors must receive permission from the president and the approval of the Ministry of Defense to obtain mining rights in zones adjacent to international boundaries. In April 2008, Ecuador's Constitutional Assembly revoked the majority of existing mining concessions, suspending large-scale mining activity for over a year. The mining law, originally approved in 2009 and reformed in July 2013, includes provisions to combat informal mining with army support.

The July 2013 amendments made windfall revenues taxable only after the initial investment has been recovered. Concession holders must sign an extraction contract in addition to the exploration contract. Royalties to be paid to the government hover between five and eight percent on sales, independent of profits. In addition, all mining concessionaires must pay a 12-percent tax on profits, 70-percent windfall tax on extraordinary profits (above a certain threshold), 12-percent value added tax, and 25-percent income tax. The amendments also reduced the number of permits required to operate a concession from ten to two, significantly simplifying the pre-certification process.

Although high commodity prices prior to 2013 led to increased interest in mining investment in Ecuador, problems with the regulatory framework and possible discrepancies with local communities over mining rights create uncertainties in the sector. In June 2012, an international mining company sold its stake in a gold concession at a heavy discount after having invested hundreds of millions of dollars over several years. In June 2013, another international mining company announced it planned to withdraw from a large gold and silver concession. Politically-controversial draft legislation on water usage that would likely have regulatory consequences for many industries, including mining, is still pending in the National Assembly.

In January 2010, the Ecuadorian government established a new National Mining Company (ENAMI) to engage in joint ventures with state and private companies and increase government investment in the sector. According to the mining law, ENAMI has the right of first refusal to establish mining operations in areas considered "of interest" by the government and where no previous concession exists.

Electricity

In 2007, the Ecuadorian government created a new Ministry of Electricity and Renewable Energy to focus more attention on the sector. Ecuador passed two constitutional amendments in May and July of 2008 to restructure the electricity sector. They established a single electricity tariff for distributors, and consolidated the 19 state distributors. Implementation included the creation of the National Electricity Company (CNEL) in late 2008 and the National Electric Company (CELEC EP) in early 2009. CNEL's mandate is to manage the electricity distribution companies. CELEC EP, a state-owned enterprise, was created to centralize management of most of the generation companies and the transmission company. After passage of two electric-sector laws in May and August 2008, fixed capital investments in generation, transmission and distribution are solely funded by the annual state budget. Simultaneously, the regulator, CONELEC, was asked to review its pricing plans omitting marginal costs in generation and investment costs in transmission and distribution.

Ecuador's 2008 Constitution declared the electricity sector as a public service and strategic sector. Some small electricity generation companies were allowed to continue under private ownership but large investments must be publicly-owned. Only one U.S. firm still operates an electricity power generation plant in Ecuador. Another U.S. company sold its gas-fired electricity power plant to the Ecuadorian government in May 2011 after the government declared the company to be in breach of contract regarding its associated gas operations.

The Ecuadorian government is undertaking a large-scale program to expand the country's generation capacity by over 60 percent, building 10 large wind and hydroelectric projects. To date, however, all construction and equipment contracts have been awarded to Chinese

and Russian state-owned companies in a non-competitive bidding process linked to Chinese and Russian-provided financing.

The 1500 MW Coca Codo Sinclair hydroelectric project under construction by Chinese Syno-hydro was 60 percent complete as of April 2014. The official target completion date is February 2016. Intended to supply 33 percent of the country's electricity needs it will be the largest hydroelectric plant in Ecuador.

A contract for a planned 500 KV high voltage transmission system to link Quito and Guayaquil to the 1500 MW Coca Codo Sinclair hydroelectric was awarded to a Chinese contractor in July 2013, but work has not begun yet. The contract requires that the system come on-line within 3.5 years from startup.

In August 2013, the president announced that the government is targeting the year 2016 to phase out gas subsidies for liquid propane gas (LPG), which currently cost the government about $600 million annually. Electricity production from new hydroelectric projects is intended to replace the loss of subsidized gas. In parallel, Ecuador is promoting the sale of locally-produced electric cooking stoves as an alternative to gas stoves. Because of the artificially-low cost of LPG and Ecuador's long history of electric blackouts, the vast majority of Ecuadorians still use LPG for cooking, heating water, and other household uses. Total refined petroleum products subsidies cost the government about $3.7 billion annually.

Telecommunications

Claro, owned by a Mexican investor, is the dominant cellular provider, with 63.8% of market share, followed by Spanish company Telefónica, with 32.8%, and the national Corporación Nacional de Telecomunicaciones (CNT), with 3.4%. Private companies also participate in the satellite, cable, and internet markets.

CNT, a public enterprise formed in January 2010 is the monopoly provider of landline telephone services, and the exclusive licensee of the 4G spectrum in mobile services. In April 2014, government authorities announced that the 4G concession process would be opened for the other two market operators. CNT's cumbersome legal requirements and late payments to the private sector continue to hinder foreign investment.

A new Ministry of Telecommunications was created in August 2009, modifying the role of the sector's key players. The Ministry promotes increased use of broadband internet services and deeper internet penetration among the population (currently penetration is about 69 percent). In general, internet service provision is expensive and the Ministry plans to reduce current costs.

Ecuador's government failed to respect the outcome of two court decisions in 2011 and 2012 that found in favor of a U.S. provider of telecom services.

On February 7, 2014, the Superintendency for Market Power fined the largest private cell phone operator in Ecuador $138.4 million, alleging its land lease contracts included illegal and anti-competitive exclusive-use clauses. However, on March 11, 2014, the fine was suspended after a judge's ruling found no merits to the case.

Media

The government is an important player in the media market since it controls a large share of radio, TV, and other press holdings. Article 312 of the Constitution prohibits financial

institutions, their shareholders, board members, and legal representatives from media ownership. In addition, the Organic Law for Regulation and Control of Market Power, enacted in October 2011, prohibits anyone possessing more than a six percent interest in a media company from investing in any other business sector. By July 2012, all media companies had divested their non-media assets in compliance with the law.

The Organic Communications Law, passed in June 2013, prohibits partial or total ownership of media businesses by foreign companies or citizens that do not reside permanently in Ecuador. This provision applies to all media owners (radio, subscription video, audio, television, and printed press) with products that reach at least 30 percent of the population. The law provided a deadline of two years upon its enactment for divestiture by foreign companies. However, January 2014 implementing regulations softened this prohibition to allow citizens or companies from countries that have signed bilateral commercial or economic agreements with Ecuador, duly ratified, to own media companies. Since the United States has no such agreement with Ecuador, this softening would not benefit U.S. citizens or companies.

The Communications Superintendency and Council for Regulation and Development of Information and Communication are now fully operational. Various sanctions against leading newspapers, radio broadcasters, and a cartoonist were imposed in 2014 for violations of the Organic Communications Law. The Organic Communications Law also introduced a requirement that advertising disseminated in Ecuador must have 80% domestic content, causing many foreign companies to invest in producing publicity in Ecuador.

Fishing

Foreign investment in domestic fishing operations is subject to approval by the National Fisheries Development Council, based on a favorable report from the National Fisheries Institute. Extractive fishing by foreign companies is permitted provided that the catch is processed in Ecuador. The local sea cucumber population has been nearly eliminated, but shrimp, tuna, and other fish products are harvested by national and foreign flag vessels and are major exports for Ecuador.

2. Conversion and Transfer Policies

In 2000, following a severe financial crisis, Ecuador adopted the U.S. dollar as its official currency. After Ecuador adopted the dollar, inflation rates declined from a high of nearly 100 percent in 2000 to single digits since 2003. According to the Ecuadorian Central Bank, the annualized inflation rate as of March 2014 was 3.1 percent.

Foreign Exchange and Remittance Policies

Foreign investors may remit 100 percent of net profits and capital, subject to a five-percent capital exit tax. Investors may also repatriate the proceeds from liquidation of their investments. There are no current limitations on outflows of funds for debt service, capital gains, returns on intellectual property, or imported inputs. There is also no significant delay for remitting investment returns such as dividends, return on capital, interest, and principal on private foreign debt, lease payments, royalties, and management fees through normal legal channels.

Ecuadorians may also export capital, and there are substantial Ecuadorian financial holdings in the United States and other offshore banking centers. However, on November 24, 2011, the

Ecuadorian government increased the tax on all capital outflows from two percent to five percent. In December 2013, 2000 goods were declared exempt from payment of capital exit tax when imported, provided those goods are used in government-designated productive sectors, mostly in the food industry. In 2012, the Ecuadorian government introduced exemptions to the tax for payments of raw material imports that would be used to manufacture exports.

In 2012, Ecuador designated the U.S. states of Delaware, Florida, Nevada, and Wyoming as "tax havens" with respect to non-U.S. Limited Liability Companies (LLCs) registered in those states that do not pay U.S. federal taxes. The list also designated Puerto Rico, the U.S. Virgin Islands, American Samoa, and Guam; LLCs based in these locations that meet the criteria are excluded from competing for Ecuadorian government procurement contracts. Both companies and individuals residing in these locations must pay income tax on dividends (10 percent is retained automatically) and are not eligible for any exception to the five-percent capital exit tax.

3. Expropriation and Compensation

Expropriation is allowed under Ecuadorian law with appropriate compensation. In cases of expropriation, the affected party has the right to petition a judge to establish a fair price for expropriated holdings. The Agrarian Development Law restricts the grounds for expropriation of agricultural land and makes land cases subject to regular courts. It can be difficult to enforce property and concession rights, particularly in the agriculture, mining, energy, and commercial and residential real estate sectors. In some cases, Ecuador's judicial system has failed to provide adequate protection from unlawful expropriations or provide investors and lenders with prompt, adequate, and effective compensation for expropriated property.

The 2008 Constitution establishes that the state manages land use and access to lands, while recognizing and guaranteeing the right to private property, "which should fulfill social and environmental functions." The Constitution provides for the redistribution of land if the land is not in productive use for more than two years. The definition of "productive use" is complicated, particularly for pastures and unexploited land. Access to land for the landless is a major theme of the government's agricultural policy, but, to date, there have not been any public seizures of private assets under the current administration. The Organic Code for Commercial Production and Investment ("Production Code"), approved in 2010, includes expropriation as a possibility to improve the distribution of production factors and enhance opportunities for the rural population. New land-reform legislation, originally expected in 2011, has been delayed given the highly-charged political nature of the issue. But the National Assembly has prioritized moving this legislation forward in 2014.

Some local and foreign mining companies have had their concessions occupied by informal miners, who have subsequently sought a share of the concessions or have carried out mining activities without repercussions.

Property, whether land or mobile assets, jointly owned by several persons or companies, can be seized by Ecuadorian courts through judgments or seizure orders. Resolution and compensation typically require many years and significant legal costs. In addition, the Organic Law for the Defense of Labor Rights, approved in September 2012, allows property to be seized by state entities (tax administrator, state-owned banks, and municipal governments) when debts have not been serviced. The law eliminated the protections provided by Limited Liability Companies (LLCs) by extending corporate debts to their

shareholders, their heirs, or third parties that have a relationship with the debtor. In 2012, the tax authority used the law's mandate to seize the assets of an export-oriented conglomerate. Some of these assets were auctioned off in December 2013 while others, including a banana plantation, were sold to the workers through government-granted loans.

Under Ecuador's existing bilateral investment treaty (BIT) with the United States, expropriation can only be carried out for a public purpose, in a nondiscriminatory manner, and upon payment of prompt, adequate, and effective compensation.

The Government of Ecuador faces a number of pending expropriation disputes related to the oil sector in international arbitration proceedings.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

Systemic weakness in the judicial system and its susceptibility to political and economic pressures constitute important problems faced by U.S. companies investing in or trading with Ecuador. The Ecuadorian judicial system is hampered by processing delays, unpredictable judgments in civil and commercial cases, inconsistent rulings, and limited access to the courts. Criminal complaints and arrest warrants against foreign company officials have been used to pressure companies involved in commercial disputes. There have been cases in which foreign company officials have been prevented by the courts from leaving Ecuador due to pending claims against the company. Ecuadorians involved in business disputes allegedly can sometimes arrange for their opponents, including foreigners, to be jailed pending resolution of the dispute.

Concerns have been raised in the media, and by the private sector, that Ecuadorian courts may be susceptible to outside pressure and are perceived as corrupt, ineffective, and protective of those in power. Legislative oversight was restricted following passage of the Law for Legislative Affairs in 2009. The resource-starved judiciary continues to operate slowly and inefficiently. After a public referendum in May 2011, the judiciary operated under an emergency decree until 2013 that gave the executive branch power to restructure the judiciary. Approximately $500 million have been spent in the restructuring process. As part of the restructuring, officials representing the legislature, the executive, and the participation council appointed hundreds of new judges in all courts in 2012, following a selection process. Neither legislative oversight nor internal judicial branch mechanisms have shown a consistent capacity to investigate effectively and discipline allegedly corrupt judges. In January 2010, Ecuador withdrew from the World Bank's International Center for Settlement of Investment Disputes between States and Nationals of Other States ("ICSID Convention").

According to the 2014 Rule of Law Index of The World Justice Project, Ecuador ranks low (lowest is worst), 77 among 99 countries. In December 2012, an international oversight committee submitted a report with conclusions and recommendations on the reform implementation. Currently, there are over 55,000 laws and regulations in force. Many of these are conflicting, which contributes to unpredictable and sometimes contradictory judicial decisions. Enforcement of contract rights, equal treatment under the law, IPR protection, and unpredictable regulatory regimes are major concerns for foreign investors.

Investment Disputes

The existing U.S.-Ecuador Bilateral Investment Treaty (BIT) provides for binding international arbitration of disputes between the government and investor in a venue of the investor's choosing, including the ICSID Convention. Given Ecuador's 2009 withdrawal from the ICSID Convention, alternative arbitration venues available to U.S. investors include: ICSID's Additional Facility; *ad hoc* arbitration under UNCITRAL rules; and arbitration administered by any other arbitral institution to which the parties agree. Should the Ecuadorian government terminate the U.S.-Ecuador BIT, the BIT's provisions would be fully in effect for one year from the date of termination notice, and for an additional 10 years for investments existing on the one-year anniversary of the termination notice (see the section on "Bilateral Investment Agreements" for more details).

Ecuador's Production Code and Planning and Public Finance Code contain provisions which allow the state to negotiate the inclusion of an international arbitration clause within contracts with private investors or country creditors.

A number of U.S. companies operating in Ecuador, notably in regulated sectors such as petroleum and electricity, have filed for international arbitration resulting from investment disputes. Investors in more lightly-regulated sectors have had fewer disputes.

Between January and April 2014 the government signed close to 290 "investment contracts" with companies that pledged to produce locally goods that were formerly imported. In exchange, the government relaxed import regulations for those companies to import certain products that are restricted under quality and standards regulations enacted in December 2013. These contracts have not been publicly released.

5. Performance Requirements and Incentives

There are no formal performance requirements associated with foreign investment in Ecuador. The country's Production Code establishes tax incentives to attract both domestic and foreign investment in certain priority sectors: fresh and processed food, forestry, agro-forestry, metalworking, petrochemical products, pharmaceuticals, tourism, renewable energies, logistical services, biotechnology, applied software, and those determined by Ecuador's president to be "strategic import substitution" sectors. Some incentives, which may take the form of tax exemptions, income tax deductions, as well as a five-year tax holiday, are mostly applicable for investments made outside of Quito and Guayaquil and for new investments. To qualify for the tax incentives, an investment proposal must be approved by a Technical Secretary of the Sectoral Council for Production. To date, few companies have applied for these incentives. Implementing regulations for the Production Code were published in April 2011.

In November 2012, the National Assembly approved the Organic Law for the Redistribution of Income for Social Expenditures. The legislation eliminates tax incentives that benefitted the financial system when reinvesting profits. The Production Code also contains measures to promote establishment and growth of small and medium enterprises (SMEs). The measures are designed to improve access for SMEs to public bank financing and the stock market, and to develop credit guarantee institutions and a special guarantee system for SME financing. Ecuador passed ten tax laws between January 2006 and December 2012 that significantly modified economic incentives and caused substantial uncertainty.

Under the Andean Community Common Automotive Policy, Ecuador and Colombia impose local content requirements on automobiles assembled in country in order to qualify for

reduced duties on imports. The WTO Agreement on Trade-Related Investment Measures (TRIMS) prohibits such requirements. Although under the TRIMS Agreement Ecuador was obliged to eliminate local content requirements by 2000, the local content requirement is still in place. In 2012, the requirement was set at 24.3 percent, but current requirements are unclear, as new guidelines are pending.

Ecuador was the sole remaining beneficiary of the Andean Trade Promotion and Drug Eradication Act (ATPDEA) when it lapsed indefinitely on July 31, 2013. The primary goal of this program was to promote export diversification and provide sustainable economic alternatives to drug-related activities in the Andean region through duty-free access to the U.S. market on a broad range of products. Under an Ecuadorian government resolution, beginning August 2013, former beneficiaries of ATPDEA can receive tax credits that offset U.S. import tariffs, Ecuador is also a beneficiary of the Generalized System of Preferences trade program, which lapsed on July 31, 2013.

In May 2011, Ecuador launched the Institute for Export and Investment Promotion (PRO ECUADOR), which to date has focused more strongly on export promotion. A number of Ecuador's provinces are also working to attract investment, often as public-private collaborations between provincial governments and private commercial associations and universities. In addition to conducting international road shows to attract foreign direct investment (FDI), the provincial investment promotion agencies seek to assist both current and prospective investors to open new facilities, increase existing investments, and overcome bureaucratic hurdles. Visa and residence requirements are relatively relaxed and do not inhibit foreign investment.

6. Right to Private Ownership and Establishment

Foreign and domestic private entities can own business enterprises and engage in almost all forms of business activity. Private entities can compete freely with the public sector. In August 2008, Ecuador's Constituent Assembly passed a new public contracting law, which grants priority to locally-produced products and services in public purchases, although foreign suppliers can compete for the contracts. The National Service for Public Contracting (SERCOP) regulates the process for evaluating proposals. Local origin content is not the only factor evaluated in awarding a contract; other factors such as price and quality are also assessed. The law eliminates a requirement to obtain approval from the Attorney General and the Controller prior to awarding a government contract, and charges SERCOP with ensuring transparency and timeliness of the contracting process. Emergency decrees for public procurement are used frequently and allow public entities to by-pass the procurement processes established in the law.

In the utility sector, Ecuador has fostered the creation of mixed companies that fall under a special tax and procurement regime. In 2012, the government regulator registered 120 mixed economy companies, including joint ventures with foreign state-owned enterprises, such as the Rio Napo Consortium that operates the Sacha oil field with Venezuelan capital.

7. Protection of Property Rights

Real Property

There have been numerous instances where the judicial system has not adequately protected property owners' rights. U.S. investors in real estate should exercise caution when considering a land purchase in Ecuador.

Intellectual Property Rights

Ecuador's intellectual property regime is governed by the 1998 "Law on Intellectual Property." The law provided criminal and administrative relief to right holders. Legislation enacted in February 2014 and scheduled to take effect in August 2014 would nullify sections from the Intellectual Property Law providing for criminal sanctions for intellectual property violations; administrative fines would still be available. New intellectual property legislation is currently being promulgated. Ecuador has ratified the Berne Convention for the protection of literary and artistic works, the Geneva Phonogram Convention, and the Patent Cooperation Treaty. Ecuador is also bound by Andean Community Decisions 345, 351, and 486. Decision 486 improves intellectual property protection by expanding the definition of patentability and strengthening data exclusivity provisions. Ecuador is not a party to the Madrid Protocol on trademarks.

The Ecuadorian Intellectual Property Institute (IEPI) was established in January 1999 to handle patent, trademark, and copyright registrations. Ecuador has been on the Special 301 Watch List of the Office of the United States Trade Representative since 2003. Enforcement against intellectual property infringement remains a serious problem in Ecuador. The national police and the Customs authority are responsible for carrying out IPR enforcement orders, but enforcement of court orders can be problematic. Piracy of mainstream music and movies is widespread; in contrast, piracy of local Ecuadorian music and movies has declined significantly, in part due to improvements in legitimate local production and distribution channels and government-sponsored public awareness campaigns. Piracy of computer software and counterfeit activity in brand name apparel remains widespread. Trademark registration of well-known brands and enforcement against infringement has improved.

Patents

Ecuador's IPR law extends patent protection for 20 years from the date of filing. In infringement cases, the burden of proof lies with the alleged infringer. Although Andean Community Decision 486, issued in late 2000, represents a significant improvement over Decision 344, it still does not provide adequate protection for "second use" patents. In 2010, Ecuador established compulsory license regimes for pharmaceutical and agrochemical products. As of April 2014, four compulsory licenses have been issued. Those compulsory licenses allow local firms to import or manufacture patented drugs. IEPI is currently reviewing additional compulsory license applications.

In October 2012, IEPI issued a resolution that raised the fees established in June 2011 and May 2010 for patents, plant varieties, industrial design, and three-dimensional logos. IEPI justified the new fees on the basis of a new system of surcharges for late payments, allowing discounts to universities, small and medium enterprises, public entities and farmers, and adopting new prices for validation of inventions or processes over a 20-year period. The resolution significantly increased the maintenance fees for patents and plant varieties. Over 20 years, the fees would amount to approximately $145,000 for patents and $170,000 for plant varieties. Prior to the resolution, patent maintenance fees were less than $6,000 in Ecuador. Discounts on plant variety fees ranging between 10 and 90 percent are available, depending on several factors including phytosanitary upgrades and the extent of participation of Ecuadorian research in developing plant varieties.

Ecuadorian government health authorities continue to approve the commercialization of new drugs that are the bioequivalent of patented drugs, thereby denying the originator companies effective patent protection for innovative drugs. A modification to Ecuador's health code in late 2006 permits the granting of sanitary registrations without regard to whether a medication is patented.

Presidential Decree 181, issued on December 21, 2009, established a National Pharmaceutical Company (ENFARMA) which has been selling imported generics from Cuba. Construction of a ENFARMA production plant in Ecuador is underway to produce generics.

Copyrights

Printed and recorded works are in theory protected under the IPR law for the life of the author plus 70 years. Computer programs and software are also protected. However, pirated CDs and DVDs are readily available on many streets and even in shopping malls. One of Ecuador's largest outdoor markets (La Bahia) in Guayaquil is listed on the United States Trade Representative's "Notorious Markets" watch list. Weak copyright enforcement remains a significant problem, especially concerning sound recordings, computer software, and motion pictures. The government has not taken action to clarify that Article 78 of the 1999 Law on Higher Education does not permit software copyright infringement by educational institutions. Ecuador mandates the use of open source software for all government agencies. Software company representatives are critical of the measure, saying it has the unintended consequence of encouraging the acquisition of pirated commercial software.

Trademark registration is permitted for renewable 10-year periods, but registration may be canceled if the trademark is not used in the Andean region for a period of three years. The IPR law provides protections for well-known trademarks. A trademark registration cannot be canceled without the consent of the trademark owner.

Other Protections

The IPR law covers protection for industrial designs and extends protection to industrial secrets and geographical indicators. Semiconductor chip layouts are protected. Plant varieties and other biotechnology products are also protected under the IPR law.

Registrations and Enforcement

The Ecuadorian National Police and Customs service are responsible for carrying out IPR enforcement, but do not always enforce court orders. IEPI can take enforcement actions through an administrative process that can result in sanctions and/or interception of counterfeit goods by Ecuadorian Customs.

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at http://www.wipo.int/directory/en/.

Embassy point of contact: ecuadorcommercial@state.gov.

Local lawyers list: http://ecuador.usembassy.gov/service/assistance.html

8. Transparency of the Regulatory System

The GOE enacted the Organic Law for Regulation and Control of Market Power, otherwise known as the "Anti-Monopoly Law" in October 2011. It issued implementing regulations for

the Anti-Monopoly Law in April 2012 and the provisions include mechanisms to prevent, control, and sanction market power abuses, restrictive market practices, economic concentration, and unfair competition. The regulatory body began operations in October 2012. Sanctions for companies found to be in violation of the law can range from a formal warning up to a fine of 12 percent of previous year's gross revenues.

The Superintendency of Banks and Insurance regulates financial and insurance institutions. The 2008 Constitution calls for the creation of separate regulatory agencies for the public, private, and informal sectors. The Constitution also mandates that each financial institution have an ombudsman office. The Law for the Creation of a Financial Safety Net, which was approved by the National Assembly in December 2008, improved coordination of the financial regulatory agencies. In October 2009, the National Assembly passed a law reforming the Central Bank Charter, eliminating its autonomy and redefining the composition of its Board to align the Central Bank Charter with Articles 302 and 303 of the 2008 Constitution. The new Charter gave the executive branch total control over Central Bank policies and operations. .

The National Secretariat of Telecommunications (SENATEL) establishes the regulatory framework for fixed-line and wireless communications services. The Superintendency of Telecommunications (SUPERTEL) maintains oversights of fixed-line and wireless communications services. The National Council of Radio Broadcasting and Television (CONARTEL), which previously regulated broadcasters, became part of SENATEL after the creation of the new Ministry of Telecommunications in August 2009. The Superintendency of Companies regulates all other firms and, via the National Securities Council, the Quito, Guayaquil, and Over-the-Counter stock exchanges.

Decree 301 enacted on April 17, 2014, created the Agency for the Regulation and Control of Water (ARCA); it will partially absorb the functions of the Water Secretariat created in May 2008, and will establish oversight and control mechanisms over the use of water resources.

Policies, regulations, and standards, particularly in regards to agricultural trade, often are not based on scientific principles and discriminate between local and imported products. Political appointees in the Ministries of Agriculture and Health control imports of agricultural goods, and customs procedures are cumbersome. Ecuadorian regulators currently provide little or no opportunity for public comment on newly proposed laws and regulations, particularly those related to food safety, sanitary and phytosanitary, and other trade-related matters. A new agency for sanitary regulation and control (ARCSA) was created by decree in August 2012 in parallel with the National Institute for Public Health Research (INSPI). Ecuador does not always comply fully with WTO notification requirements.

In addition, ministries, parastatals, and regional and municipal governments all impose their own requirements and regulations on commercial activity.

9. Efficient Capital Markets and Portfolio Investment

The 1993 Capital Markets Law set up a modern regulatory structure, opened stock market trading to banks and other firms, and encouraged the issuance of commercial paper. However, Ecuadorian capital markets remain underdeveloped. Most large industrial groups are privately held and are financed largely through debt, commercial paper, or retained earnings. Some firms maintain external credit lines or other forms of foreign financing; however, the five-percent capital exit tax applies to external payments and increases the

cost. Thus, many companies have switched to cheaper sources of financing, like issuance of commercial paper. The bulk of activity on the country's two small stock exchanges currently involves trading in fixed income securities, mainly government bonds and privately issued commercial paper. Most stock trades involve shares in a handful of banks and companies. Public institutions are not legally required to trade securities through the stock exchanges; therefore the terms of the transactions are unknown. The Social Security Institute and Social Security Bank (BIESS) are the main players in the government bond market.

A long-awaited securities market law intended to strengthen the corporate sector and the stock market was enacted in April 2014, by which the Quito and Guayaquil stock exchanges will continue to operate under a new legal standing. If they fail to increase efficiencies as stipulated under the law, a new public stock exchange will be created. The new law also prohibits private banks from issuing commercial paper with maturity of less than one year.

In 2012 and 2013, the financial system was the target of numerous new restrictions. By July 2012, most banks had sold off their brokerages, mutual funds, and insurance companies to comply with constitutional changes following a May 2010 referendum. The amendment to Article 312 of the Constitution required banks, its senior managers and shareholders with more than six percent equity in financial entities to divest entirely from any interest in all other non-financial companies by July 13, 2012. These provisions were incorporated in the Anti-Monopoly Law passed in September 2011.

With the goal of protecting consumers and preventing a real estate bubble, the National Assembly approved in June 2012 a law that allows homeowners to default on their first home and car loan without penalty if they forfeit the asset. The provisions do not apply to homes valued at more than $146,000 or vehicles worth more than $29,200. In addition, the law mandates the Superintendency of Banks to set specific annual targets for mortgage activity for each financial institution based on its portfolio. The legislation had led to reduced lending for cars and homes.

In April 2012, the Superintendency of Banks approved a regulation that prohibits financial institutions from charging clients for the issuance and renewal of credit cards, as well as the issuance of account statements.

The Central Bank issued Regulation 29 in July 2012, requiring all financial transfers (inflows and outflows) to be channeled through the Central Bank's accounts starting November 2012. Due to operational hurdles, the measure did not take effect until January 3, 2013. In principle, the regulation increases monetary authorities' oversight and prevents banks from netting their inflows and outflows to avoid paying the five-percent capital exit tax.

In November 2012, the National Assembly passed a law that would severely restrict the operations of private credit risk rating agencies (bureaus). The law has not yet been fully implemented. It grants exclusive rights to credit-related data to a state-run entity. If implemented as written, private credit bureaus, while not prohibited from operating, would be obliged to give up their databases to the government and could no longer receive data directly from the financial sector.

In November 2012, the National Assembly passed a law increasing taxes on banks to partially finance a government cash-transfer program, undermining financial profitability. In addition, the law lifts banking secrecy and enables tax authorities to access credit information directly, with no interference from the banking regulator.

The Central Bank regulates and caps interest rates. Starting in July 2012, it also required banks to maintain as liquid reserves at least two percent of their deposits in securities issued by the non-financial public sector, in addition to maintaining at least 60 percent of their liquid reserves in Ecuador.

Return on equity and profitability ratios of the financial system declined in 2013.

In November 2013, the Banking Committee issued Resolution 2694 setting ceilings on salaries and fringe benefits of financial sector employees, legal representatives, and executives. Resolution 2825, passed in April 2014, partially reversed the limitations imposed in November 2013.

On February 28, 2014, the Central Bank passed Resolution 55 which allows the issuance of electronic currency exclusively by the Central Bank. Per Resolution 55, the currency constitutes a means of payment for all economic agents; can be stored in various fixed and mobile devices; is convertible to cash at nominal value; and can be used as a mechanism for payment of public sector expenditures. The electronic currency will be registered as a liability of the Central Bank and several regulatory entities will have an oversight role on the operation of the currency. The Central Bank indicated the measure is meant to promote financial inclusion; yet, economists are concerned that the currency is backed by assets with low liquidity.

10. Competition from State-Owned Enterprises

The 2009 Organic Law of Public Enterprises regulates state-owned enterprises (SOEs). SOEs are most active in sectors designated as strategic under the 2008 Constitution, especially non-renewable natural resources, telecommunications, and transportation.

In general, regulations allow SOEs greater flexibility in the use of public resources. They follow a special procurement regime with greater flexibility and limited oversight. The Law of Public Enterprises requires SOEs to follow generally accepted accounting principles; however, SOEs are not required to specifically follow the same accounting practices as the central government, nor do they have to participate in the electronic financial management system used in most of the public sector for budget and accounting management. Ecuador does not have a sovereign wealth fund, and its asset management bureau is responsible for fixed assets only. SOEs are eligible for government guarantees, and face a lower tax burden than private companies.

The Production Code softened some of the restrictions on the private sector introduced in the Constitution and in the Organic Law of Public Enterprises by allowing private investment in strategic sectors. However, the Production Code is secondary to the relevant sector laws of the strategic sectors.

11. Corporate Social Responsibility

There is substantial awareness of corporate social responsibility (CSR) among the large businesses operating in Ecuador. Many multinational and large domestic companies maintain corporate social responsibility strategies, following generally accepted CSR principles. They are active in areas such as sustainability, clean environmental practices, and education. Consumer awareness of CSR is less pronounced than producer awareness. A U.S. company operating in Ecuador was a finalist for the Secretary of State's Award for Corporate Excellence in 2013.

12. Political Violence

Ecuador does not have a tradition of substantial guerrilla activity, nor of frequent violence as a result of demonstrations or political instability. Crime is a serious and growing concern, especially in the larger cities.

Student, labor union, and indigenous protests against government policies have been a regular feature of political life in Ecuador. While disruptive, especially to transportation, violence is usually limited and localized. Protesters often block city streets and rural highways, and public transportation tends to be disrupted during these incidents. Protestors also occasionally burn tires, throw Molotov cocktails, engage in destruction of property, and detonate small improvised explosive devices during demonstrations, but fatalities as a result of protests have been rare. Pamphlet bombs have been used to disseminate political literature. Six such bombs exploded in November and December 2011, without serious injury to person or property (although one had the potential to be lethal) and none aimed at businesses or business interests. Popular protests in 1997, 2000, and 2005 contributed to the removal of three elected presidents before the end of their terms.

Some communities have successfully used protests and strikes to obtain promises of increased government spending on social benefits and infrastructure. Some indigenous communities opposed to development have blocked access by petroleum and mining companies. In September 2009, one individual was killed near the city of Macas during protests by indigenous communities demonstrating against the government's proposed mining and water laws. The government has increasingly filed legal charges or opened investigations against protesters who blocked roads or impeded public services. The government charged demonstrators with "terrorism and sabotage," or similar charges that effectively criminalized protest, for obstructing roads and public services. It is against the law for non-Ecuadorians to engage in political activity that starts or promotes civil wars or international conflicts. In 2013 there were no large-scale political protests, likely a result of the Correa government's aggressive prosecution of protesters in recent years.

Presidential Decree 16, issued in June 2013, provides the government discretion to dissolve civil society organizations on multiple grounds, including compromising the interests of the state, engaging in political activity, threatening public peace, deviating from the organization's stated purpose, or not providing access to information requested by the government. The government has used Decree 16 to close one NGO (Fundacion Pachamama), accusing the organization of disturbing public order during a protest over a round of government negotiations with foreign firms to exploit new oil fields.

The political violence present in neighboring Colombia has a spillover effect in northern Ecuador. Security on the northern border with Colombia, where the majority of Ecuador's oil deposits are located, is particularly tenuous. The area is used as a transshipment point for precursor chemicals used in illegal drug production as well as arms and supplies for Colombian insurgent groups and narco-traffickers. Businesses in the area continue to report being extorted for protection money. Kidnappings have occurred and foreigners have been targeted. The U.S. Embassy in Quito advises against travel to the northern border of Ecuador – to include the provinces of Sucumbios, Orellana, Carchi, and parts of Esmeraldas. The Ecuadorian military and government agencies are increasing efforts to promote development and provide security in this area. Kidnappings are more often committed for economic rather than political motivations. Since 1998, at least 12 U.S. citizens have been kidnapped in Ecuador. In July 2012, an American citizen was kidnapped near the jungle city

of Lago Agrio and held for ransom. After several weeks, the victim was rescued after an intensive investigation involving Ecuadorian, Colombian, and U.S. law enforcement.

Violent crime has significantly increased over the last few years, with American citizens being victims of crimes, including homicides, armed assaults, robberies, sexual assaults, and home invasions.

13. Corruption

Corruption is a serious problem in Ecuador. Transparency International consistently ranks Ecuador poorly among countries it surveys in the region. Ecuador ranked 102 out of 176 countries surveyed for Transparency International's 2013 Corruption Perceptions Index and received a score of 35 out of 100 (100-very clean, 0-highly corrupt). In comparison with other countries in the Western Hemisphere, Ecuador ranks better than Nicaragua, Guyana, Honduras, Paraguay, Haiti, and Venezuela, but worse than its closest neighbors, Peru and Colombia.

Ecuador has laws and regulations to combat official corruption, but they are inadequately enforced. Illicit payments for official favors and theft of public funds reportedly take place frequently. Dispute settlement procedures are complicated by the lack of transparency and inefficiency in the judicial system. In addition, there are frequent allegations by the private sector that local authorities demand bribes to issue necessary permits.

Offering or accepting a bribe is illegal and punishable by imprisonment for up to five years. The Controller General is responsible for the oversight of public funds and there are frequent investigations and occasional prosecutions for irregularities. These investigations can be politically motivated. Autonomous agencies are subject to little effective oversight. Government officials and candidates for office often make an issue of corruption, but there is little follow-through once in office. Politically-motivated corruption scandals are a feature of Ecuadorian political life, but even high-profile cases often become stalled after they are remanded to lengthy and often inconclusive judicial proceedings.

Ecuador is not a signatory to the OECD Convention on Combating Bribery, nor has Ecuador complied with the main requirements of the OAS Inter-American Convention Against Corruption. The 2008 Constitution created the Transparency and Social Control branch of government, tasked with preventing and combating corruption, among other things. In December 2008, President Correa issued a decree that created the National Secretariat for Transparency to investigate and denounce acts of corruption in the public sector. Both entities can conduct investigations into alleged acts of corruption but responsibility for prosecution remains with the Office of the Prosecutor General (the “Fiscalia”).

Through the Function of Transparency and Social Control, alleged acts of corruption can be reported by dialing 159 within Ecuador. The Council for Citizen Participation and Social Control also maintains a web portal for reporting alleged acts of corruption: http://www.cpccs.gob.ec.

14. Bilateral Investment Agreements

The existing U.S.-Ecuadorian Bilateral Investment Treaty (BIT) provides for national treatment; unrestricted remittances and transfers; prompt, adequate, and effective compensation for expropriation; and binding international arbitration of disputes. However, in September 2009,

the Ecuadorian government requested the approval of Ecuador's National Assembly to terminate the U.S.-Ecuador Bilateral Investment Treaty, along with the BITs of 12 other nations, claiming the treaties' international arbitration provisions for resolution of investor-state disputes conflicted with the country's 2008 Constitution. Article 422 of the 2008 Constitution states that "Ecuador will not enter into international agreements or instruments under which the Ecuadorian state would have to cede sovereign jurisdiction to international arbitral tribunals in contractual or commercial matters between the state and individuals or corporations."

The National Assembly approved termination of five of the BITs, but did not approve termination of another four; it has not yet voted on the U.S. BIT. Only one BIT, with Finland, has been formally terminated. In 2013, President Correa launched an *ad hoc* committee to formally study and report on Ecuador's bilateral investment treaties, along with the international arbitration system itself. The committee's final report may be released in summer 2014; its impact on the status of Ecuador's BITs and pending international investment arbitration cases is not clear.

Should the Ecuadorian government terminate its BIT with the United States, the treaty would remain fully in effect for one year from the date of a formal notice to terminate, and would apply for an additional ten years for investments made prior to the one-year anniversary of the termination notice.

Given Ecuador's withdrawal from the ICSID Convention, alternative arbitration venues identified in the U.S. BIT include ICSID's Additional Facility; *ad hoc* arbitration under UNCITRAL rules; and arbitration administered by any other arbitral institution to which the parties agree.

15. OPIC and Other Investment Insurance Programs

Ecuador has had an Investment Guarantee Agreement with the Overseas Private Investment Corporation (OPIC) since 1986. Ecuador has signed and ratified the Multilateral Investment Guarantee Agreement (MIGA).

16. Labor

Ecuador's population is about 15 million. Semi-skilled workers are relatively abundant at low wages, although widespread emigration over the past few years has led to shortages of skilled workers in some parts of the country.

Minimum compensation levels for private sector employees are set annually by the National Compensation Council and Ministry of Labor Relations. The minimum basic salary for 2014 was $340 per month, but mandatory bonuses and other contributions pushed total compensation to over $400 per month. Ecuador's Production Code, enacted in December 2010, requires that workers be paid a "dignified wage," defined as an amount that would enable a family of four with 1.6 wage earners to be able to afford a basic basket of necessities. The cost of the basic necessities basket is determined periodically by Ecuador's Statistics Institute (INEC). In January 2014, the basic needs basket was valued at $628.27, and the official family wage level was $634.67, surpassing basic needs for the first time on record. By the end of 2013, Ecuador's unemployment rate was estimated at 4.2 percent, with underemployment of 52.5 percent.

Ecuador's periodic economic difficulties during recent decades have contributed to high levels of emigration. According to the latest U.S. census, almost 600,000 people of

Ecuadorian ancestry live in the United States. Approximately 610,000 people, or 18 percent of Ecuador's labor force, emigrated between 2002 and 2009, principally to Spain and to the United States.

The public education system is tuition-free and attendance is mandatory from ages six to fifteen. The current government has dramatically reduced the illegal practice of schools requiring parents to pay for education-related expenses and transportation costs. Many children drop out before age fifteen and in rural areas only about one-third complete sixth grade. The government is striving to create better programs for the rural and urban poor, especially in technical and occupational training. However, government funding for such training has not kept up with demand. In recent years, the government also has been successful in reducing illiteracy. The 2008 Constitution requires the central government to increase the budget allocation for primary and secondary education by at least 0.5 percent of gross domestic product (GDP) annually until reaching six percent of GDP. Since 2008, expenditures on education have grown in absolute terms, but short of the mandated growth rate. Public universities have an open admissions policy. In recent years, however, large increases in the student population, budget difficulties, and politicization of parts of the university system have put a strain on maintaining academic standards.

A weak public university system produces a surplus of semi-qualified graduates in some professions. Trained financial professionals and engineers can be difficult to attract and many graduates require additional training to reach international standards. There are relatively few R&D and high technology investments in Ecuador, limited mostly to agricultural research, with a small amount of government activity as well as that of some foreign firms. Little post-graduate education exists in Ecuador, and scientists and medical professionals are nearly all foreign-trained. At this point, none of the Ecuadorian universities offers doctorate programs beyond limited offerings in social sciences at two institutions. Masters-level degrees are widely offered, but relatively few are competitive with international quality levels. Upper-level Ecuadorian business managers have frequently been educated abroad, most often in the United States. With the new Higher Education Law, which went into effect on October 3, 2010, the Executive will regulate and oversee higher education and may demand that all institutions adhere to the National Development Plan in their program offerings. It also calls for the professionalization of the faculty by requiring a Ph.D. or equivalent degree for most full-time positions, although there are not enough Ecuadorians with doctorates to fulfill this requirement.

Cumbersome labor regulations apply equally to both foreign and domestic firms and tend to inhibit investment and foster evasion. In 2006, the Ministry of Labor Relations worked with an ILO representative to draft a revised Labor Code to better comply with ILO standards. The Labor Code provides for a 40-hour work week, 15 calendar days of annual paid vacation, restrictions and sanctions for those who employ child labor, general protection of worker health and safety, minimum wages and bonuses, maternity leave, and employer-provided benefits. By law, companies must distribute 15 percent of pre-tax profits to their employees. The National Assembly is currently debating a comprehensive Organic Labor Code with the goal of further increasing labor protections.

There is special legislation regulating labor in export processing zones. Most workers in export processing zones are hired on temporary contracts, and, while technically covered by the Labor Code, enforcement of the Code is weak.

The 2008 Constitution bans child labor, requires hiring workers with disabilities, and prohibits strikes in most of the public sector. Provisions that virtually eliminate hourly labor contracts and labor contracts through third parties are aimed at employers who avoid benefits for full-time employees, but the provisions also reduce flexibility in the labor market. Unpaid internships are not permitted in Ecuador.

Most workers in the private and parastatal sectors have the constitutional right to form trade unions and local law allows for unionization of any company with more than 30 employees. However, less than two percent of the work force, mostly skilled workers in medium- to large-sized enterprises or state industries, is officially organized. According to media reports, in 2013 eighty percent of the trade unions were in the public sector, although there are more workers employed by private companies. Union participation in the private sector is almost nonexistent. Private employers are required to engage in collective bargaining with recognized unions, but only five percent of cases resolved through collective bargaining originated in the private sector in 2013. The Labor Code provides for resolution of conflicts through a tripartite arbitration and conciliation board process. The Code also prohibits discrimination against union members and requires that employers provide space for union activities.

The International Labor Organization and prominent NGOs believe international labor standards are not respected in Ecuador. Workers fired for organizing a labor union are entitled to limited financial indemnification, but the law does not mandate reinstatement. The Public Service Law enacted in October 2010 prohibits the vast majority of public sector workers from joining unions, exercising collective bargaining rights, or paralyzing public services in general. The Constitution lists health; environmental sanitation; education; justice; fire brigade; social security; electrical energy; drinking water and sewerage; hydrocarbon production; processing, transport, and distribution of fuel; public transport; and post and telecommunications as strategic sectors. Some of the sectors defined as strategic exceeded the ILO standard for essential services. The few public workers who are not under the Public Service Law may join a union and bargain collectively since they are governed by the provisions under the Labor Code.

With assistance from the ILO, Ecuador has been taking ambitious steps to eliminate child labor, which is still common in the informal sector, particularly in family-owned businesses and small farms in rural areas. Over the past 10 years Ecuador has reduced child labor by nearly 50 percent; however, economic realities leave families more than ready to send their children to work, even if it means pulling them out of school and placing them in fields or mines where they are exposed to hazardous conditions for little or no pay. Labor advocates in Ecuador assert that only a significant increase in wages will keep families from sending their children to work in the fields.

17. Foreign-Trade Zones/Free Ports

Provisions within the 2010 Production Code superseded Ecuador's 1991 free trade zone law. The Production Code authorizes the creation of Special Economic Development Zones (ZEDEs). ZEDEs are subject to special trade, tax, and financial rules; imported goods entering these zones are exempted from tariffs. ZEDEs are not intended to operate solely for the manufacture of exports. In granting ZEDE status to a project, the government will consider the extent to which the project promotes technology transfer, innovation, industrial diversification, and development of multimodal services. Existing free trade zones were permitted to continue to operate according to their original authorization, but administrators

and users had to adjust to new administrative procedures defined for ZEDEs. A maquila (in-bond processing) law has been in effect since 1990. The majority of maquila operations in Ecuador are in the textile and fish-processing sectors.

18. Foreign Direct Investment (FDI) Statistics

TABLE 2: Key Macroeconomic data, U.S. FDI in Ecuador, 2012

Note: Ecuador's Central Bank only reports FDI flows, not stock

	Host Country Statistical Source		**USG or international statistical source**		
Economic Data	**Year**	**Amount**	**Year**	**Amount**	**Link to Source of Data**
Host Country Gross Domestic Product (GDP) (*Billion U.S. Dollars)*	2012	86	2012	84	http://www.worldbank.org/en/country/ecuador http://bce.fin.ec
Foreign Direct Investment					
U.S. FDI in partner country (*Millions U.S. Dollars, stock positions)*	N/A	N/A	2012	$851 million	http://www.bea.gov
Host country's FDI in the United States (*Millions U.S. Dollars, stock positions)*	N/A	N/A	2012	$40 million	http://www.bea.gov

18. Table 3: Net Flows of Foreign Direct Investment (In Millions of Dollars) [1]

Source: Ecuador Central Bank

	2009	**2010**	**2011**	**2012**	**2013**
Net Flow of FDI	305	161	640	583	703
FDI Net flow/GDP (percent)	0.50%	0.24%	0.82%	0.67%	0.75%
Mexico	621	278.5	70	83	91
Panama	117	139	33	26	53
Canada	65	105	252	59	27
China	56	45	80	86	88
Uruguay	-13	40	3	6	115
Bahamas	-2	39	11	-4	6
Netherlands	-4	11	7	11	48
Spain	50	-18	50	50	67
Venezuela	8	14	24	18	19
Peru	14	13	7	13	12
Colombia	-0.4	19	21	8	-3
Italy	0.9	10	25	27	59
Brazil	3	10	10	9	0
United States	-607	-535	12	94	41
By Sector:					
Oil/Mining	-6	178	379	225	240
Manufacturing	118	119	121	133	134

Wholesale and Retail Trade	83	93	78	83	105
Services	-24	66	43	39	113
Construction	-14	28	50	31	69
Community and social services	18	23	28	2	-3
Agriculture	52	9	-0.8	20	25
Electricity	3	-6	-11	47	28
Transport, Storage and Communications	64	-350	-47	4	-9

[1]**Notes:** All figures are listed in millions of dollars unless otherwise noted. Data is from the Central Bank of Ecuador. Numbers from prior years in this chart differ significantly from charts in previous versions of the Investment Climate Statement, because the Central Bank made major revisions to these figures in late 2012. The Central Bank only publishes FDI calculated as net flows.

In recent years, Ecuador has received among the lowest levels of FDI inflows in the Western Hemisphere as a percentage of GDP. In 2012 there was a net inflow of FDI into Ecuador of $582.4 million (0.67 percent of GDP), down from a high of $1.0 billion in 2008. The FDI/GDP ratio over the period 2006- 2012 has hovered between 0.2 and 1.7 percentage points, far below Latin American standards.

Traditionally, FDI has been focused primarily in the oil sector. Construction of the Trans-Andean Heavy Oil Pipeline (OCP) by a consortium of five foreign oil producers, completed in October 2003, resulted in inward investment of $3.5 billion, including direct project investment of $1.4 billion. Major foreign oil companies invested billions over the last decade for exploration and production of concessions. However, since 2006, a number of major oil and gas companies have departed Ecuador. OCP is underutilized and the consortium is facing a tax dispute with government of Ecuador. If mining companies are able to move from the exploratory phase into production over the next several years, foreign investment in that sector would increase significantly. Foreign investment in the communications, commerce, services and agricultural sectors has become more prominent as FDI in the oil sector has declined. Since 2007 Mexico constitutes a very important investor in Ecuador, mostly in the telecommunications sector. China's contribution to FDI is modest; however, it ranks as the most important lender to Ecuador.

Petroleum companies engaged in exploration and production are, as a group, still the largest foreign investors in Ecuador. The major investors include: Andes Petroleum and Petroriental (Chinese); YPF/Repsol (Spain/Argentina); AGIP (Italy); and Ivanhoe (Canada). U.S. oil service companies Baker Hughes, Halliburton, Weatherford and Harbert are also present. U.S. firm Duke Energy is active in the electricity sector. Exxon Mobil (U.S.) and Shell (Holland/UK) distribute fuels at service stations across the country.

U.S. firms active in the manufacturing sector include: General Motors, which holds an interest in two automotive assembly plants; Philip Morris (cigarettes); Mead Johnson (baby formula and nutritionally-balanced milk supplements for children and adults); Avon (cosmetics, fragrances, jewelry, household products and lingerie); The Coca-Cola Co. (beverages); Sherwin Williams (paint); Kellogg's (cereal); Colgate-Palmolive; The Clorox Co.; Johnsonwax; Kimberly Clark (personal care items and cleaning products);Johnson & Johnson (healthcare,personal care products and nutritional products); Eveready (batteries), and 3M (medical supplies, cleaning products, car cleaning products and office supplies).

Other U.S. companies operating in Ecuador include: Bristol-Myers Squibb; Merck Sharp & Dohme; Abbott; Janssen Pharmaceutical; Eli Lilly; and Pfizer. Baxter owns four renal units and has 10 joint ventures with private and public hospitals and clinics in the country. Also present: Procter & Gamble (personal care products, fragances and cleaning products); Kraft (processed food); E.G. Hills Flowers, Transmar Commodity Group (cocoa products); Muehlstein International Ltd. (plastic products); Pioneer (agriculture); Monsanto (agriculture); Payless Shoes (footwear); Barnett Corporation (Paper); and UPS and FedEx (courier services).

Seaboard Flour has a strong presence in the Ecuadorian milling market. Continental, along with several other U.S. firms, is a major investor in shrimp farming. U.S. firms Dole, Chiquita Banana (Chiquita announced in March 2014 global merger with Irish company Fyffes), and Del Monte are involved in the banana industry from production to marketing and shipping. Several U.S. franchises operate in Ecuador, including Yum! Brands (Pizza Hut/Kentucky Fried Chicken/); Baskin Robbins; Burger King; McDonalds; Tony Roma's; Johnny Rockets; TGI Fridays; Chili's; Papa John's; Domino's Pizza; Carl's Jr.; Subway; Quizno's; Martinizing; Heel Quick; Swisher; Gymboree; Fast Track Kids; Plan Ahead Events, and New Horizons. Citibank has commercial banking operations, while Helm Bank has a representation office in Ecuador. U.S. airlines Delta, United, and American, as well as IBM, Xerox, Microsoft (hardware and software), DirecTV, ACE, Pan-American Life, BMI, AIG, Aon (insurance), and McCann Erickson (advertising) are also active. U.S. citizens have also invested in the textile and agricultural sectors (flowers, fruit, and vegetables). U.S. hotel chains have a strong presence in the country such as: J.W. Marriott, Sheraton, Holiday Inn, Hilton, Radisson, and Best Western.

Among third-country investors, General Tire (Germany) manufactures tires; Holderbank/Holcim (Switzerland) produces cement; Akzo Nobel (The Netherlands) makes paints, fibers, and textiles; Borden (The Netherlands) manufactures chemicals; and Eternit (Switzerland) fabricates construction materials. British SAB Miller and Belgian-Brazilian Anheuser-Busch InBev own major breweries, and Nestle (Switzerland) manufactures consumer goods. Kinross-Aurelian (Canada) has a gold mine concession (but announced a plan to sell it in June 2013) and Ecuacorriente (China) has a copper mine concession.

Web Resources

Foreign Trade & Investment Council:
http://www.mcpec.gob.ec/index.php?option=com_content&view=article&id=848&Itemid=78

Central Bank of Ecuador - Foreign Investment Department: www.bce.fin.ec

Superintendency of Companies: www.supercias.gob.ec

PRO ECUADOR: www.proecuador.gob.ec

Section 5 - Government

Chiefs of State and Cabinet Members:

For the current list of Chief of State and Cabinet Members, please access the following - Central Intelligence Agency online directory of Chiefs of State and Cabinet Members of Foreign Governments

Legal system:

civil law based on the Chilean civil code with modifications

International organization participation:

CAN, CD, CELAC, FAO, G-11, G-77, IADB, IAEA, IBRD, ICAO, ICC (national committees), ICRM, IDA, IFAD, IFC, IFRCS, IHO, ILO, IMF, IMO, Interpol, IOC, IOM, IPU, ISO, ITSO, ITU, ITUC (NGOs), LAES, LAIA, Mercosur (associate), MIGA, MINUSTAH, NAM, OAS, OPANAL, OPCW, OPEC, PCA, UN, UNAMID, UNASUR, UNCTAD, UNESCO, UNHCR, UNIDO, Union Latina, UNMIL, UNMISS, UNOCI, UNWTO, UPU, WCO, WFTU (NGOs), WHO, WIPO, WMO, WTO

Section 6 - Tax

Exchange control

Limited control is exercised. Direct foreign loans generally must be registered.

Treaty and non-treaty withholding tax rates

Decisions 578 of the Cartagena Agreement have been adopted by Ecuador. This broadly means that relief from double taxation is provided for natural and juridical persons located in any of the Andean Pact countries. Ecuador has similar tax treaties with Belgium, Brazil, Peru, Colombia, Chile, Venezuela, Bolivia, Mexico, France, Germany, Italy, Spain, Romania, Switzerland, Canada and Korea.

Methodology and Sources

Section 1 - General Background Report and Map

(Source: CIA World Factbook)

Section 2 - Anti – Money Laundering / Terrorist Financing

	Lower Risk	Medium Risk	Higher Risk
FATF List of Countries identified with strategic AML deficiencies	Not Listed	AML Deficient but Committed	High Risk
Compliance with FATF 40 + 9 recommendations	>69% Compliant or Fully Compliant	35 – 69% Compliant or Fully Compliant	<35% Compliant or Fully Compliant
US Dept of State Money Laundering assessment (INCSR)	Monitored	Concern	Primary Concern
INCSR - Weakness in Government Legislation	<2	2-4	5-20
US Sec of State supporter of / Safe Haven for International Terrorism	No	Safe Haven for Terrorism	State Supporter of Terrorism
EU White list equivalent jurisdictions	Yes		No
International Sanctions UN Sanctions / US Sanctions / EU Sanctions	None	Arab League / Other	UN , EU or US
Corruption Index (Transparency International) Control of corruption (WGI) Global Advice Network	>69%	35 – 69%	<35%
World government Indicators (Average)	>69%	35 – 69%	<35%
Failed States Index (Average)	>69%	35 – 69%	<35%
Offshore Finance Centre	No		Yes

Section 3 - Economy

General Information on the current economic climate in the country and information on imports, exports, main industries and trading partners.

(Source: CIA World Factbook)

Section 4 - Foreign Investment

Information on the openness of foreign investment into the country and the foreign investment markets.

(Source: US State Department)

Section 5 - Government

Names of Government Ministers and general information on political matters.

(Source: CIA World Factbook / https://www.cia.gov/library/publications/world-leaders-1/index.html)

Section 6 - Tax

Information on Tax Information Exchange Agreements entered into, Double Tax Agreements and Exchange Controls.

(Sources: OECD Global Forum on Transparency and Exchange of Information for Tax Purposes PKF International)

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