UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

UNCTAD

1999 20 YEARS ANNIVERSARY 2019

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INVESTMENT POLICY REVIEW

REPORT ON THE IMPLEMENTATION OF THE INVESTMENT POLICY REVIEW

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NOTES

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The following symbols have been used in the tables:

- **Use of an en dash (–) between dates** representing years, for example, 2004–2005 signifies the full period involved, including the beginning and end years.
- **Reference to dollars ($)** are to United States of America dollars, unless otherwise indicated.
- **Annual rates of growth or change**, unless otherwise stated, refer to annual compound rates.
- **Details and percentages** in tables do not necessarily add to totals because of rounding.

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ABBREVIATIONS

AEI	Alliance for Entrepreneurship and Innovation
APEC	Asia-Pacific Economic Cooperation
BIT	bilateral investment treaty
CAN	Community of Andean Nations
CEPAI	Strategic Committee for Investment Promotion and Attraction
COPCI	Organic Code of Production, Trade and Investment
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
DIAE	Division on Investment and Enterprise
DTT	double taxation treaty
EFTA	European Free Trade Association
EU	European Union
FDI	foreign direct investment
GDP	gross domestic product
GEM	Global Entrepreneurship Monitor
GFCF	gross fixed capital formation
ICSID	International Centre for Settlement of Investment Disputes
IIA	international investment agreement
IMF	International Monetary Fund
IP	intellectual property
IPFSD	investment policy framework for sustainable development
IPR	investment policy review

IRS	Internal Revenue Service
ISD	Foreign Currency Exit Tax
MPCEIP	Ministry of Production, Foreign Trade, Investment and Fisheries
NIP	national investment policy
NSI	National System for Science, Technology, Innovation and Ancestral Knowledge
PND	National Development Plan
PPP	Public-Private Partnership
SAS	simplified stock companies
SENADI	National Service for the Protection of Intellectual Rights
SENESCYT	Secretariat of Higher Education, Science, Technology and Innovation
SME	small and medium-sized enterprise
SNDPP	Decentralized National System of Participative Planning
TVET	technical and vocational education and training
UNCTAD	United Nations Conference on Trade and Development
WEF	World Economic Forum
WTO	World Trade Organization
ZEDE	special economic development zone

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INTRODUCTION

The Government of Ecuador has undertaken many initiatives in recent years to diversify its economy and foster the country's sustainable development prospects. These reforms, among others, aimed at securing macro-economic stability, improving the investment environment and promoting local enterprise development by providing support to different economic sectors.

The Investment Policy Review (IPR), published by UNCTAD in 2001, analyzed the main bottlenecks to competitiveness, which impeded the attraction of foreign direct investment (FDI) and the diversification of the economy in Ecuador. It also aimed at increasing the long-term benefits derived from FDI. In addition to improving the regulatory framework for FDI and establishing investment promotion programmes, the IPR recommended to foster infrastructure development and support the local private sector, including through the strengthening of innovation and skills.

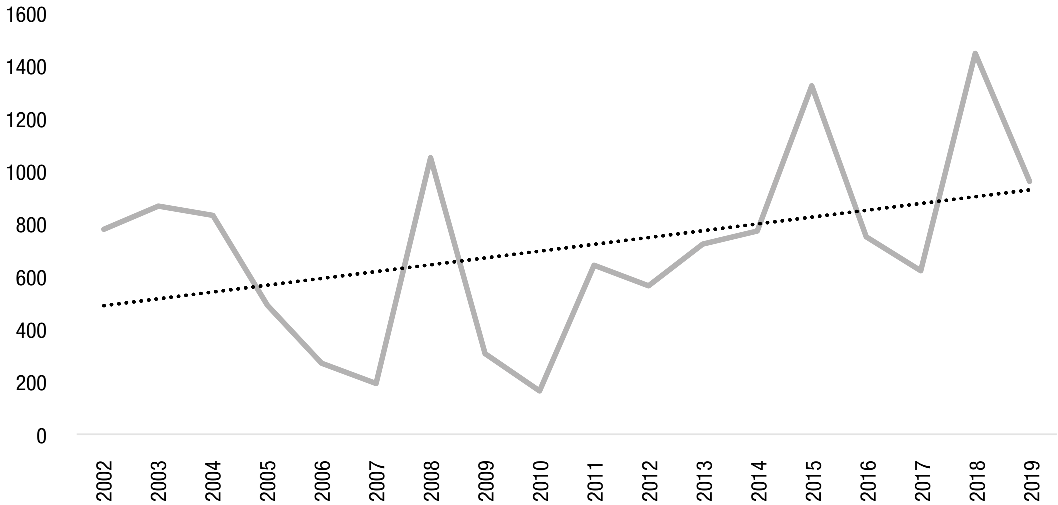
Since the completion of the Review, UNCTAD provided assistance to the country through policy advice and training workshops on issues related to investment promotion, governance, image building and investor aftercare. In 2020, the Government of Ecuador requested additional technical assistance on investment policies, including an assessment on how the implementation of the IPR recommendations had contributed to improve the investment environment and what actions should to be taken to further strengthen it. This report summarizes the progress made and provides recommendations for additional investment policy reforms to support the country's objectives and foster sustainable development.[1]

1. KEY FDI TRENDS SINCE THE IPR

During the period 1990–1999, FDI was heavily concentrated in the oil industry (80 per cent of inflows). While this industry continued to attract the lion's share of FDI, the economic, political and social crisis experienced at the end of the 1990s significantly impacted non-oil FDI, which contracted to less than 5 per cent of total FDI in 1999. Within manufacturing, food processing and chemical industries (mainly foreign producers of oil lubricants and other oil products) attracted the largest share of FDI. In the services sector, FDI remained insignificant with some inflows entering between 1996 and 1999, mainly in the trade, transportation and communication services (85 per cent) and to a lesser extent in the banking and other financial services.

Since the early 2000s, FDI inflows to Ecuador almost doubled, moving from $567 million in 2002 to $946 million in 2019 (figure 1). Important fluctuations affecting oil prices and a period of political and policy instability were reflected, however, in the high volatility of these flows. Tax policy decisions affecting the oil industry ultimately led to the withdrawal of several companies from the country and to four investor-State dispute cases.[2] The country progressively limited access to international arbitration in investor-State disputes and withdrew from 25 of its bilateral investment treaties (BITs), leaving only the treaties with the Netherlands (1999) and Spain (1996) in force.[3] The Constitution adopted in 2008 confirmed a predominant role of the State in several sectors,[4] and uncertainties concerning the accuracy in the measurement of the public debt also contributed to shaking investor confidence (IMF, 2019).

Figure 1. FDI inflows to Ecuador (2002–2019) (million dollars)

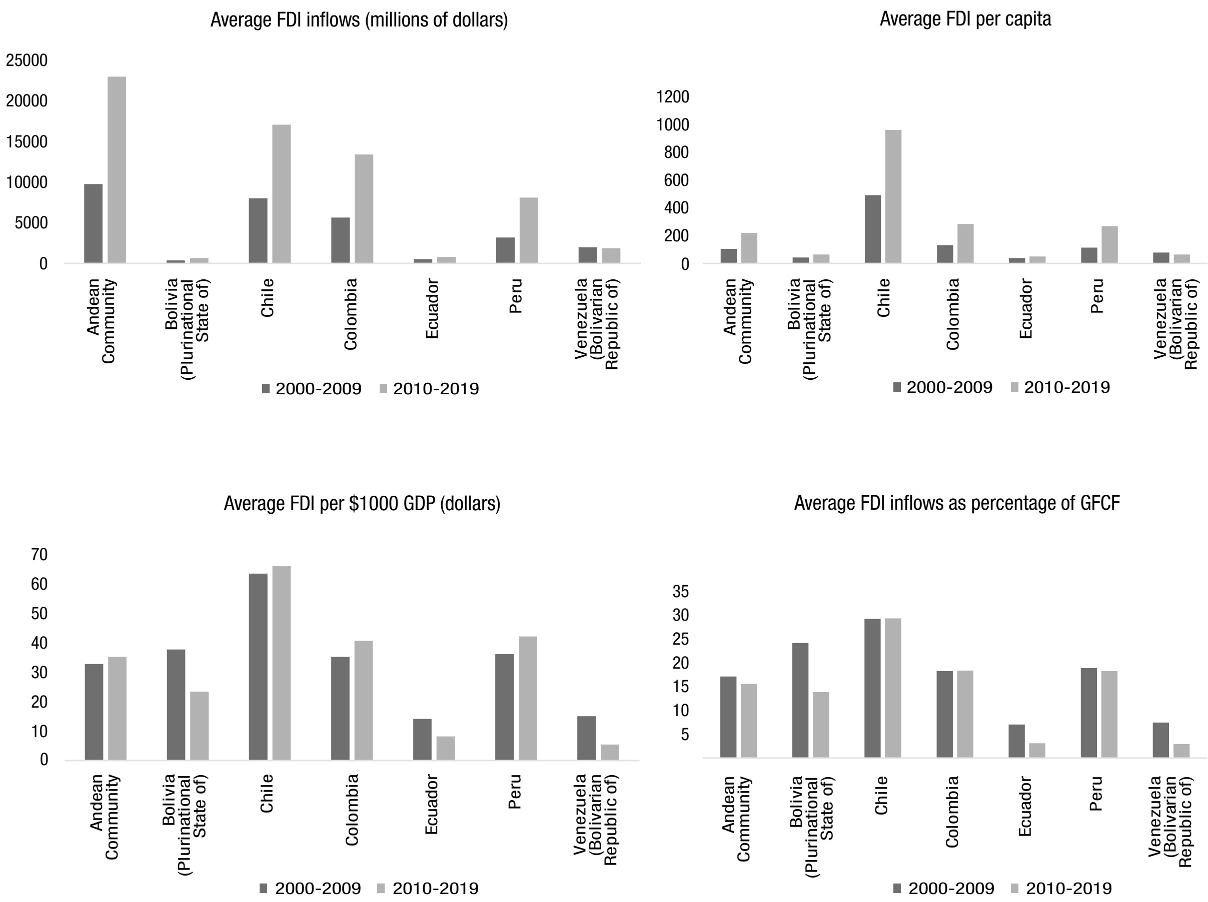


Source: UNCTAD (2020a).

Beyond the global economic and financial crisis, the Ecuadorian economy was heavily affected by a series of other shocks. These include the drop in oil prices in 2014–2015, the appreciation of the dollar[5] (at a time when the currencies of neighbouring countries were depreciating) and the dramatic effects of the most powerful earthquake experienced in over 50 years (which hit on 16 April 2016). Following several quarters of economic contraction, in 2015 and 2016 the economy returned to growth (IMF, 2019). However, at the end of 2019, it had not yet recovered to the levels observed prior to these shocks. Preliminary data indicate that the COVID-19 pandemic has also taken a heavy toll on the economy (a decline of 12.4 per cent in gross domestic product (GDP) was observed in the second quarter of 2020 compared with 2.3 per cent in the first quarter).[6]

Against this background, the country has generally underperformed most comparators in the region in terms of FDI attraction (figure 2 and table 1). Between the periods 2000–2009 and 2010–2019, the rise in FDI inflows in Ecuador surpasses only that of the Bolivarian Republic of Venezuela. At the same time, the share of Ecuadorian FDI in the total inflows received by the Andean Community fell from 5.5 per cent to 3 per cent. In 2019, Ecuador's FDI stock was also lower than in comparator countries, with the exception of the Plurinational State of Bolivia. Finally, although FDI per capita has increased slightly, FDI relative to GDP and as percentage of gross fixed capital formation (GFCF) have declined more than in comparator countries (except for Venezuela) between the two periods.

Figure 2. FDI inflows to Ecuador and comparator countries



Source: UNCTAD (2020a), FDI/TNC Database.

Table 1. FDI stock in Ecuador and comparator countries in 2019

Country	Total (millions of dollars)	Per capita (dollars)	Percentage of gross domestic product
Ecuador	19 707	1 134	18
Bolivia (Plurinational State of)	11 769	1 022	28
Chile	267 820	14 131	95
Colombia	205 890	4 090	65
Peru	115 330	3 547	50
Venezuela (Bolivarian Republic of)	24 616	863	6
Andean Community	352 695	3 156	51

Source: UNCTAD (2020a), FDI/TNC Database.

FDI has nevertheless contributed, to a certain extent, to increasing the dynamism of traditional sectors (i.e. those related to the oil industry, like manufacturing and transportation, storage and communications) and stimulating the development of new ones, such as agriculture, business services, construction, mining and quarrying, and trade. These new sectors have attracted increasing levels of FDI from more diverse sources, including from regional investors, with key home countries now including Brazil, Canada, China, Mexico, the Netherlands, Panama and Spain. While almost all investors are active in the oil industry, they have also launched operations in other industries. Some examples include Mexican FDI in trade and food processing,[7] Spanish FDI in fish and crustacean's transformation, telecommunications, trade and infrastructure,[8] and FDI from the Netherlands in agro-industry, mining and quarrying, transport and storage, and trade.[9] However, the linkages between FDI and the local economy, which represent one the main expected benefits from FDI, remain very limited, in particular for the oil industry.

2. SUMMARY OF FINDINGS

Over the past decade, the Government of Ecuador has initiated a series of reforms to support the transformation of the economy. The objective is to overcome dependency on few commodities to foster an economy that generates value added and knowledge by further developing activities in strategic industries (e.g. refinery, petrochemical, steel, shipbuilding), promoting new and emerging sectors (e.g. forestry and mariculture) and boosting exports. While fostering the diversification of the economy, the Government's plans also aim at protecting and promoting biodiversity. In this regard, the National Strategy for the Change in the Production Model (*Estrategia Nacional para el Cambio de la Matriz Productiva*), adopted in 2013, proposed a series of policy interventions aligned with the IPR recommendations in the areas of innovation, business linkages, infrastructure as well as investment promotion and facilitation.[10]

The main reforms undertaken by the Government, summarized below and described in more detail in the IPR's live implementation matrix (see annex),[11] contributed to:

- **Strengthen institutions, enhance transparency and fight corruption.** The Constitution adopted in 2008 explicitly committed the State to combatting corruption. It also created the Council of Citizen Participation and Social Control as part of the efforts of the Government to foster stability and transparency.[12] Other legislative and institutional changes were implemented. A transitional Council was established in 2018 and given attributions to strengthen national institutions, fight corruption and build public-private dialogue by better integrating private sector stakeholders in the elaboration of key policies and initiatives, such as the National Development Plan (PND, 2017–2021). These measures were reflected in the improved rating of Ecuador in international rankings on transparency and governance and had a positive impact on investors' confidence.

- **Foster competition.** Ecuador moved to address one of the key regulatory and institutional gaps identified in the IPR: the absence of a competition regime. Key tools were put in place, including a competition law and the establishment of the Superintendence of Control of Market Power. Reforms are ongoing in this area with the objective of further increasing clarity and speed up decision times.

- **Develop infrastructure.** Another one of the main constraints to private sector development and FDI attraction identified by the IPR, infrastructure development is an area where Ecuador has made important progress since 2000, driven mostly by public investment. In recent years, despite some restrictive provisions contained in the Constitution, the Government explored potential avenues for more private sector participation, including through the adoption of a Public-Private Partnership Law. Its implementation is supported by a dedicated committee and offers new perspectives for FDI attraction.

- **Expand market access.** Ecuador has strengthened its participation in the Community of Andean Nations (CAN), which represents 20 per cent of the country's non-traditional exports, with higher value-added exports and 12 per cent of export-related jobs. In 2017, Ecuador joined the European Union (EU)/Colombia-Peru Trade Agreement. Since then, the country became a major trading partner of the EU (IMF, 2019). A Comprehensive Economic Partnership Agreement with the European Free Trade Association (EFTA – Iceland, Liechtenstein, Norway and Switzerland) was also signed in June 2018.

The global competitiveness of a country, including its investment's attractiveness, is determined by several factors, such as the quality of its infrastructure, the strength of its legal and regulatory framework, the skills and productivity of its labour force, as well as the level of development of the domestic private sector and its capacity to innovate. To make further progress to lift constraints that were negatively affecting competitiveness in Ecuador additional actions have been initiated but they have yet to be fully implemented or to bear fruits. In the meantime, issues continue to hamper the country's competitiveness and constrain domestic entrepreneurship development and the attraction of foreign investment beyond oil. These include:

- **Policy instability.** In recent history, policy reversals remained frequent in Ecuador. Motivated by internal political cycles or the urgency to address exogeneous shocks, some policy decisions, in spite of being well intended, have contributed to shaking investors' confidence. This, together with the termination of BITs, has impacted the country's competitiveness and its ability to attract investment. Furthermore, despite efforts to clarify the mandates of the institutions in charge of investment, enhanced institutional coherence and coordination in the implementation of the policy objectives in the areas of investment and entrepreneurship development is needed. For example, different initiatives to introduce one-stop shops are in the making and it is unclear how these would interact.

- **Lack of prioritization.** The Government took many measures to address the negative impact of economic shocks (endogenous and exogenous), which hit the country in the last two decades (see section above). The policy responses taken aim to provide support to a wide range of sectors and industries without clear prioritization criteria. The National Strategy of Change in the Production Model identified 14 priority industries and five strategic industries for government intervention.[13] In addition, 18 priority sectors were listed in the Internal Tax Revenue Law. While reforms were undertaken to improve tax revenue collection and simplify the tax regime, the country continued to rely on a wide range of fiscal and non-fiscal incentives. Worldwide experience has shown that such schemes are difficult for governments to administer, for business to comply with, and lead to a dispersion of scarce resources thus reducing the effectiveness of policy support interventions.

- **Absence of clear investment targets.** In addition to its impact on policies, the lack of prioritization, in a context of scarce resources, also affects the ability of authorities to effectively promote investment. The investment promotion campaigns are not driven by specific targets concerning the type of foreign investors and investment needed to support the transformation of the country's production model. All priority sectors identified in the strategies and plans are therefore promoted indifferently and investment promotion remains too general. This makes it difficult to derive positive results from these campaigns.

- **Cumbersome business and investment procedures.** A new Commercial Code was adopted in 2019 and simplification measures were introduced for property registration and access to commercial justice. The Government has also adopted legislation to advance digitalization and streamline administrative procedures. Online business establishment is already possible, and a single window for investors should become operational before the end of 2021. Initially physical, this single window is expected to go online at a later stage. Despite these advances, the procedures to start a business and the operations to run it remain burdensome. In the areas of enforcement of property rights, of both tangible and intangible assets, and contract enforcement, the country ranks behind several other Latin American and Caribbean economies.

- **The Special Economic Development Zones (ZEDEs) are not optimally used.** One of the main recommendations of the IPR was to develop the free trade zones by considering the introduction of private management and attributing a specialized focus to each of the zones. The legislation and policies supporting the ZEDEs integrate these aspects. While this report cannot provide a full assessment of their performance, the Government indicated that there are challenges with the procedures to access the four zones that are operational. Also, some of the initial investments in these zones did not yield the expected outcomes. Furthermore, while a plan is in the making, a full investment promotion campaign for the ZEDEs has yet to be launched. In parallel to the zones, Ecuador also has established eight productive development poles. An incentives regime is in place for these poles and access authorizations are determined by the decentralized autonomous governments.

- **Business linkages and spillovers to the local economy remain limited.** Efforts made to attract FDI must be accompanied by a strengthening of the local private sector to derive the full benefits of operations by foreign investors. So far, based on evidence gathered for this report, these linkages are very limited, including in the oil industry, the main beneficiary of FDI inflows. Furthermore, no systematic business linkages support programmes are in place.

- **Innovation and skills need to be improved further to accompany the achievement of a knowledge economy.** Promoting a national system of innovation and fostering linkages between innovation, education, employment and production are emphasized in several policies and legislations, including the Constitution of 2008. This is also the case with the recent adoption of the Law on Entrepreneurship and Innovation. The impact of these efforts is yet to fully materialize, and entrepreneurship remains mostly concentrated in traditional sectors, often motivated by necessity rather than the will to innovate (AEI, 2014). At times, the impact is also limited by a lack of implementation guidance (e.g. regarding the implementation of the Organic Code of the Social Economy of Knowledge, Creativity and Innovation). In addition, despite the adoption of initiatives to foster entrepreneurship in recent years, the complexity of the regulatory framework highlighted above acts as a break to the entrepreneurial ecosystem. Furthermore, entrepreneurship skills remain outside the public curricula and access to finance problematic (GEM, 2020). Skills development in other areas, such as technical and vocational education and training (TVET), also requires adjustments.

CONCLUSIONS AND RECOMMENDATIONS

Ecuador has made important efforts to achieve its objective of diversifying its economy through a change of the production matrix. It has, in the course of this process, implemented several of the recommendations of the IPR that aimed at increasing investment, both domestic and foreign, and its long-term benefits. While reforms are still underway in several areas, including the digitalization of administrative processes, important bottlenecks in key areas of the investment framework persist. They need to be addressed in order to increase the competitiveness of the country.

In the aftermath of the COVID-19 pandemic, competition to attract more FDI will increase. It is therefore important for the Government of Ecuador to implement planned reforms and take new initiatives to enhance the overall competitiveness and provide investors, domestic and foreign alike, with conditions conducive to growing their business, and to strive for enhanced development impact. Against this background and on the basis of UNCTAD's Investment Policy Framework for Sustainable Development (IPFSD) (UNCTAD, 2015), this report recommends the following areas of actions for investment policymaking:

1. Improving the investment policy regime and the overall strategy to promote investment, both from domestic and foreign investors

The policy actions taken by the Government of Ecuador in response to the various shocks to the economy have led to supporting numerous industries and sectors without a clear prioritization. This resulted in scattered investment policies and promotion efforts that have not fully succeeded in achieving the diversification of the production matrix.

With a view to enhance the development impact of investment, it will be key going forward, to adopt a more concise and targeted approach to selecting priority sectors, relying on the competitive advantages of Ecuador, as well as on the development objectives identified in the PND. This prioritization will enable the Government to better define the policy actions for industries' support and to streamline the fiscal and non-fiscal incentives. This exercise should be supported by regular and comprehensive cost-benefit analysis of incentive schemes.

The Government of Ecuador will also need to clarify, through this prioritization process, the role expected from foreign investors in changing the production matrix. At the same time and while recognizing the country's right to regulate, it will be important to better integrate into policies and strategies the potential contribution FDI could play to achieve the development objectives, in particular in terms of innovation. This will help in elaborating a more targeted approach to FDI promotion. The ongoing preparation of a national investment policy is an opportunity to conduct this prioritization exercise.

Furthermore, in light of the emergence of more sustainable development oriented international investment agreements (IIAs), and of the country's re-engagement, in June 2021, with the International Centre for Settlement of Investment Disputes (ICSID), the Government could also rethink its approach to investment treaties so as to foster an attractive business environment while preserving the right of the State to regulate. This should also include rekindling investment relations with the partner countries that were formerly engaged with Ecuador through a BIT. Also, Ecuador could assess the potential benefits of joining regional economic partnerships, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

2. Enhancing digitalization of government services and simplifying business procedures

A key lesson of the COVID-19 pandemic is the important role eGovernment tools can play in day-to-day economic activities and the urgency for countries to accelerate their adoption. However, to be effective, the adoption of eGovernment tools needs to proceed hand-in-hand with a simplification of business procedures. A legislation adopted in 2019 in Ecuador aims at streamlining business establishment procedures. Its impact has yet to be captured by international indicators, but the authorities have highlighted that this is clearly one of their priorities and the findings of this report support the need to proceed at full throttle towards the implementation of the digitalization agenda. In this regard, it is encouraging that one of the first measures of the Government, elected in 2021, was to issue an executive decree to declare trade facilitation and investment promotion a public policy priority (Executive Decree no. 68 of 9 June 2021). The decree specifies that the goal of the Government is to boost competitiveness, adopt good regulatory practices, and promote simplification, efficiency and transparency of administrative processes.

3. Strengthening entrepreneurship skills and fostering business linkages

Several initiatives have been launched by the Government of Ecuador to support the diversification of the production matrix. Many of these have targeted skills, innovation, as well as entrepreneurship.

Experience has shown that the emergence of a thriving and strong domestic private sector enhances the positive impact of FDI. This impact is usually amplified through strengthened business linkages between the foreign affiliates and local small and medium-sized enterprises (SMEs). In this regard, emphasizing entrepreneurship development, in particular in priority sectors, and links between the domestic and foreign private sectors, are key to enhance FDI spillovers.

UNCTAD stands ready to provide further assistance for the implementation of these reforms through its various technical assistance programmes. In particular, it could provide assistance to the Government of Ecuador to:

- **Develop the national investment policy (NIP)** in line with the objectives of the PND. In this regard, Executive Decree no. 68 of 2021, among others, calls for the definition of a new policy to promote and attract national and international investment. The NIP will aim at: 1) identifying a limited number of priority sectors; 2) specifying the investment and entrepreneurial policy measures required to assist in the development of these sectors; 3) defining the role FDI can play to support the achievement of the expected objectives on the Ecuadorian economy. Some initial discussions have already taken place, and could continue, between UNCTAD and the Government on the structure and content of the NIP. Additional assistance could notably include policy advice to streamline the investment-related legal framework, improve the coordination among the entities involved in investment promotion, and to organize training on IPFSD.

- **Build capacity for investment targeting and other promotion functions** for the staff of the investment promotion authorities. UNCTAD could assist in developing the skills and techniques to carry out new functions, by providing capacity-building on investor targeting techniques and strategies, aftercare and policy advocacy.

- **Provide training on sustainable development-oriented approaches to IIAs** for Ecuadorian negotiators. UNCTAD's tools, including the UNCTAD's IPFSD (UNCTAD, 2015), its Reform Package for the International Investment Regime (UNCTAD, 2018) and the newly released IIA Reform Accelerator (UNCTAD, 2020b) could provide useful guidance in designing and modernizing investments treaties in line with national development objectives and sustainable development principles.

- **Pursue the digitalization and simplification of selected business procedures** with a view to enhance the investment climate for the domestic and foreign private sector and improve its competitiveness. UNCTAD has contributed to the simplification of procedures and launch of eGovernment tools in more than 57 economies through its Business Facilitation Programme and the installation of eRegulations and eRegistration tools.[14]

- **Strengthen entrepreneurship** with a view to enhance the domestic private sector by building entrepreneurial skills. The assistance could include a review of the national strategy to foster entrepreneurship development, following UNCTAD's Entrepreneurship Policy Framework and Implementation Guidance (UNCTAD, 2012).

- **Facilitate and set up a business linkages programme** to extend the benefits of FDI. UNCTAD could provide assistance to develop such a programme. The goal would be to link foreign firms and local suppliers to promote local entrepreneurship and economic diversification through enhanced productivity and efficiency for all participants.

ANNEX. IMPLEMENTATION MATRIX

What	Why	How	Status	Findings
1. Improve key aspects of the investment framework	The legal framework for foreign direct investment (FDI) compared favourably to many countries in the region and offered solid treatment and protection guarantees. However, frequent legislative changes, discretionary powers in the public administration and the proliferation of secondary legislation often led to legal uncertainty, at a time when Ecuador was already affected by economic and political instability.	**Improve the investment-specific framework:** 1.1. Promote policy stability, improve transparency in public administration, reduce administrative discretion and limit the proliferation of secondary legislation	◐	1.1. Ecuador has adopted several measures to improve transparency and efficiency in the public administration. The following are among the key ones: – A law affirming the right of access to public information, the Organic Law on Transparency and Access to Public Information, was adopted in May 2004. Also, two official websites (available at: gob.ec/regulaciones and registroficial.gob.ec) give access to regulations, laws, decrees and other legal texts of the State and of the Decentralized Autonomous Governments. – After a decade of political instability, a new Constitution introduced, in 2008, the concept of Transparency and social control. Added to the executive, legislative and judicial powers, it has been further defined by the Organic Law of the Transparency and Social Control Power of 2014, and allocates, to some institutions, functions that include the promotion of transparency and the fight against corruption. – The Organic Code of Production, Trade and Investment (COPCI, 2010) established the Consultative Council for Productive Development and External Trade. Its intersectoral representatives from the public and private sectors have a policy advocacy role.

● = implemented; ◐ = substantially implemented; ◔ = partially implemented; ○ = not implemented.

What	Why	How	Status	Findings
				– The National Development Plan (PND) 2017–2021, developed based on extensive public consultations, also put strong emphasis on transparency, the quality of public administration services and public-private dialogue. The PND is one of the instruments of the Decentralized National System of Participative Planning (SNDPP). Clearer targets associated with the transparency objectives of the PND could prove very useful as well as more specific guidelines on how the private sector, including foreign investors, can be involved in the consultation mechanisms. A survey of Ecuadorian firms reported that policy instability remains the top constraint of the business environment (World Bank, 2017). The Investment Climate Statement of the United States Department of State also reports that frequent changes of economic, commercial and investment policies increase the risk and cost of doing business, that national and municipal level regulations can conflict with each other, and that contradictions affect the implementation of laws and regulations (USDOS, 2020). This highlights the need for a better coordination in the formulation and implementation of processes to attract private investment.

● = implemented; ◐ = substantially implemented; ◔ = partially implemented; ○ = not implemented.

What	Why	How	Status	Findings
				Despite issues that remain to be tackled, it is recognized that progress has been made in implementing reforms in the areas of transparency and fight against corruption (IMF, 2019). The Law on the Optimization and Efficiency of Administrative Procedures, adopted in 2018, emphasizes the right of citizens to information, and also obligations to inform for public authorities. In addition, in June 2019, the National Plan for Public Integrity Prevention and Fight against Corruption (*Plan Nacional de Prevención de la Integridad Pública y Lucha contra la Corrupción*) was approved. The initiatives impacted positively Ecuador's international ranking (increased from 118th over 176 economies in 2012 (the first year where the score and ranking can be compared) to 93rd over 180 in 2019 (Transparency International Corruption Perception Index, available at: https://www.transparency.org/en/cpi/2020/index/nzl).

● = implemented; ◐ = substantially implemented; ◔ = partially implemented; ○ = not implemented.

What	Why	How	Status	Findings
	Several areas of the general framework affecting business required upgrading, including the Penal Code, the Labour Code, the Commercial Code and the regulation of property rights.	**Improve the investment-specific framework:** 1.2. Strengthen the enforcement of property rights 1.3. Upgrade the legal system affecting enterprise operations, including the judicial system	◐	1.2. Issues related to property rights continued affecting the investment climate in the first decade of the 2000s and led to some investor-State disputes. The 2008 Constitution recognizes the right to private property, subject to social and environmental responsibilities. Together with the COPCI, it prohibits confiscation and states that expropriation is subject to reasons of public utility, social and national interest, and provided fair appraisal, compensation and payment pursuant to the law. Ecuador made registering property easier by reducing the time required to transfer property and by increasing the transparency of the land administration system (World Bank, 2020). 1.3. Access to justice is highlighted in the 2008 Constitution and in the PND 2017–2021, which emphasizes efficiency and autonomy of the judiciary. The General Organic Code of Procedures (2015) regulates proceedings, except administrative, constitutional, criminal and electoral matters. It includes provisions to simplify proceedings (including the admission of electronic documents), limits hearings to one for the voluntary and enforcement procedures, and imposes maximum duration periods on proceedings (i.e. 106 days for the ordinary procedure). The Government indicated that proceedings were able to continue during the COVID–19 pandemic due to the introduction of virtual hearings. Despite these reforms, Ecuador continues to face challenges to enforce contracts (it ranks 96 over 180 economies and it takes 523 days to obtain adjudication, at a cost of 27.2 per cent of the claim value (World Bank, 2020)). At the regional level, the country ranks 15th among 29 countries.

● = implemented; ◐ = substantially implemented; ◔ = partially implemented; ○ = not implemented.

What	Why	How	Status	Findings
	At the time of the IPR, the entry and establishment process was fairly smooth and well supported by local private services. Over time, it lost ground vis-à-vis regional comparators, and establishment procedures have made little use of eGovernment tools.	**Improve the investment-specific framework:** 1.4. Improve business establishment regulations and procedures with a view to simplifying them, including by adopting eGovernment tools	◔	1.4. Registration at the Ecuadorian Institute for Social Security (*Instituto Ecuatoriano de Seguridad Social*) is available online since 2010. The Business Establishment Portal (*Portal de Constitucion Electronica*) was launched in September 2014. Its features allow the online establishment of companies (as listed by the Company Law) and of simplified stock companies (*sociedades por acciones simplificadas* SAS, formalized by the Organic Law on Entrepreneurship and Innovation adopted in 2020). SAS benefit from a simplified and fee-free procedure with a view to boost the middle economy and formalization. Entities contributing to it include users, notaries, the trade registrar, the Internal Revenue Service (IRS), and the Superintendency of Companies, Securities and Insurance. Since its launch, 22 693 companies were established online (compared to 37 944 physically). The transition to online procedures was not accompanied by a simplification of procedures. Ecuador ranked 177 over 190 economies, 29 over 32 countries in the Latin American and Caribbean region, with 11 procedures over 48.5 days at a cost of 33 per cent of income per capita (World Bank, 2020).

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What	Why	How	Status	Findings
				The Law on the Optimization and Efficiency of Administrative Procedures, adopted in 2018, introduced several best practice principles, including speed, consolidation and ex-post control of procedures conducted by the public administration, emphasizes the use of digital tools and the importance of legal security. It also simplified certain documents required for administrative procedures, including business establishment. The impact of these reforms remains to be assessed. In 2019, Ecuador enacted a new Commercial Code, which enhances freedom of contract, recognizes mass trade and the use of digital means, protects consumer rights and gives greater value to commercial activity. Finally, Ecuador has also developed a National System for Attracting and Facilitating Investments Project (with the assistance of the Inter-American Development Bank). One of the components of the system aims at simplifying and reducing the time, cost and number of procedures for investors' establishment. It relies on setting up, in a first stage, physical single windows in Quito and Guayaguil, before establishing digital single windows once the procedures will have been simplified. The project is implemented by the Ministry of Production, Foreign Trade, Investment and Fisheries (MPCEIP), through the Vice Ministry for Exports Promotion and Investment, with the assistance of the Ministry of Telecommunications, and sectoral and transversal institutions. The physical single window should be effective by the end of 2021/ beginning of 2022.

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What	Why	How	Status	Findings
	The Law on the Promotion and Guarantee of Investments (1997) provided for the conclusion of investment contracts between the State and investors (both local and foreign) to stabilize the legal regime. None had been concluded at the time of the IPR as investors did not consider them a useful instrument.	**Improve the investment-specific framework:** 1.5. Improve the investment contracts but limit their application to priority industries, such as mining and tourism	◔	1.5. The COPCI and the Organic Law for Productive Development, Investment Attraction, Employment Generation, and Fiscal Stability and Balance of 2018 regulate investment contracts. They can be granted for all medium and large-scale mining investments, and also in other sectors. Incentives under an investment contract can be granted for up to 15 years and renewed once (maximum length of 30 years). In addition to incentives, a tax stability agreement can be included covering notably the corporate income tax (and the taxable base), for the same duration as the incentives. Criteria to obtain a tax stability agreement in sectors other than medium and large-scale mining include a minimum investment amount of $100 million and a technical study conducted by the responsible sectoral ministry. Other potential benefits include access to arbitration, if agreed on by the State, and the exemption of the Foreign Currency Exit Tax (*Impuesto a la Salida de Divisas*, ISD).

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What	Why	How	Status	Findings
	The corporate tax regime was uncompetitive by comparison to other countries of the region and was subject to frequent changes, making it difficult to administer and cumbersome for investors to comply with. Ecuador also offered several investment incentives schemes. While some were industry-specific, others were enterprise-specific, and implemented through individual tax stability agreements. Beyond being costly to the administration, this complex structure did not prove attractive to investors.	**Stabilize the tax regime and simplify the incentives' structure:** 1.6. Increase the efforts to stabilize the tax regime 1.7. Continue to improve the tax administration's efficiency and revenue collection 1.8. Review, simplify and coordinate the incentives' scheme structure 1.9 Consider designating one institution to oversee incentives' implementation	◔	1.6 – 1.9 Ecuador has taken several steps to improve tax revenue collection and simplify the tax regime since the completion of the IPR. The Law on Tax Simplification and Progressivity was enacted in 2019, with the aim of simplifying the tax system, promoting entrepreneurship and exports, and raising tax revenue. Among others, the Law includes measures to introduce a simplified tax regime for microenterprises, review the withholding tax rules for dividends paid by resident companies and the deductibility of interest expenditure, impose a temporary additional tax on companies with high taxable income, eliminate the requirement for companies to make advance payments of income tax (prepaid income tax) and impose value added tax on digital services. In the context of an extended arrangement with the International Monetary Fund (IMF), Ecuador also committed to tax administration improvements, including strengthening tax and customs operations and conducting a diagnosis of tax and customs operations (e.g. to raise compliance levels and to assess the potential risks and benefits of integrating the tax and customs administrations) (IMF, 2019).

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What	Why	How	Status	Findings
				Several aspects of the tax regime, however, have not changed significantly, including the continued reliance on a wide range of investment incentives and on individual investment contracts, which add complexity to the regime's administration. Incentives continued proliferating in response to pressures from different sectors of the economy. Most are covered by the COPCI, and are aimed at promoting productive investments and the development of certain regions. In particular, corporate income tax exemption is available for new productive investments executed within "basic industries" (six sectors can benefit from this until August 2021), and "prioritized sectors" (18 sectors) qualified as such by the Government, as well as investments developed within border cities or outside the cities of Quito and Guayaquil. Additional incentives are provided by the Special Economic Development Zones (ZEDEs) regime and the Public-Private Partnership (PPP) Law (see below). The Organic Law for Productive Development, Investment Attraction, Employment Generation, and Fiscal Stability and Balance also offers incentives to attract new investment in the country.

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What	Why	How	Status	Findings
				Beyond the incentives available for all new investment, by sector or by type of activity, investment contracts can be concluded between the Government and individual investors, which offer additional benefits and guarantees for medium and large-scale mining investment, or for investment above $100 million. These can include a fiscal stability clause (covering the corporate income rate and the incentives) for up to 15 years, renewable once (maximum validity of 30 years), exoneration of the ISD on certain payments (imports of capital goods and raw materials, and dividends distributed by domestic and foreign companies domiciled in Ecuador), and access to national and international arbitration, albeit the latter is limited to regional fora. On the institutional side, Decree 252 of 2018 established the Strategic Committee for Investment Promotion and Attraction (CEPAI), with inter-institutional coordination function to promote, attract, facilitate, specify and maintain foreign investment in Ecuador. CEPAI is also in charge of approving investment projects and supporting the implementation of investments. Its functions also include determining the compliance criteria for investors that submit a request for investment contracts and to authorize their signing, extension and revocation. CEPAI, through MPCEIP, also conducts ex post compliance verifications of investment contracts, including in terms of job creation and technology transfer requirements.

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What	Why	How	Status	Findings
	Despite the existence of an incentive regime for free trade zones, they did not attract significant FDI, due notably to poor supporting infrastructure and security concerns.	**Overhaul the free trade zones regime:** 1.10. Consider introducing private management and operation of the zones 1.11 Provide logistic and other business support services by establishing tailor-made logistic centres 1.12 Host specialized investment promotion units (see below) 1.13 Actively market the zones around a specialized focus 1.14 Constitute an integrated network among the zones, by providing dedicated transport and communication links	◔	The IRS is in charge of ex post verification as regards the incentives granted to investment outside the scope of investment contracts. Ecuador, however, does not conduct regular and comprehensive cost-benefit analysis of its incentive schemes. 1.10 – 1.14 As per the COPCI (2010), the ZEDEs are special customs territories that host activities oriented towards exports and import substitution, selected on the basis of their location, the quality of infrastructure and services, as well as their potential to generate employment and value added. Companies located in the Zones benefit from tax and duty exemptions. In 2013, Ecuador adopted the General Policies for the establishment of ZEDEs. The Policies define the zones as mechanisms to attract new investment through tax incentives, the simplification of customs procedures and the provision of facilities to support productive value chains. In line with the IPR recommendations, the ZEDEs can be managed and operated by private investors, both local and foreign, and are assigned a specialized focus differentiating between industrial, logistics and technology-oriented zones (see: inteligenciaproductiva.gob.ec/zonas-especiales-de-desarrollo-economico). Since 2010, four ZEDEs have been established, one for logistics, industry and technology (see below), two for logistics and industry (one of which has no zone administrator) and one for industry.

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What	Why	How	Status	Findings
				In the practice, the MPCEIP is preparing promotion plans for the ZEDEs. However, it has reported issues with the procedures to access them, as well as with initial investments that did not generate the expected outcomes. Four free trade zones are still operating on the basis of the repealed Free Trade Zones Law: two are dedicated to airport services, one is focused on tuna exports and one has touristic recreational activities. In addition to the ZEDEs, in December 2018, the Government adopted a “Guide to the Declaration of Productive Development Poles”. According to the Guide, the Poles are “territorial zones with a vocation and potential for productive development capable of attracting national or foreign investment in services, facilities and infrastructure and providing an adequate business climate to promote local economic development” (article 1). The poles target the development of activities which can generate employment, promote competitiveness, value chain integration and access to new markets. They are classified by sector, including productive, agro-productive, touristic, innovation-oriented and multi-sectoral. Eight Productive Development Poles are currently in place, promoted by the Competitiveness Directorate at the MPCEIP. The COPCI provides that incentives, fiscal and non-fiscal, of the Poles are determined by the Decentralized Autonomous Governments.

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What	Why	How	Status	Findings
	In key sectors, anti-competitive practices made the entry of new investors difficult. The Constitution and the Company Law contained general principles on competition. However, these were not operationalized.	**Complete and operationalize the competition regime:** 1.15. Enact a competition law and policy 1.16 Establish a competition authority	●	1.15 – 1.16 The Organic Law for the Regulation and Control of Market Power came into force in October 2011. It was followed soon after by the implementing regulations. The law aims to protects consumers, entrepreneurs (especially small and medium-sized ones) from the abuses derived from high economic concentration and monopolistic practices. Among others, the law regulates and sanctions: (i) abuse of a dominant position, (ii) agreements and practices that restrict competition, (iii) unfair competition practices, and (iv) public subsidies. The Law also includes provisions that limit equity investments in undertakings operating in financial and media sectors. The Law also establishes a competition authority, the Superintendence of Control of Market Power, in charge of ensuring the transparency and efficiency of markets by preventing, correcting or sanctioning the abuse of market power, the restrictive agreements and practices, and the unfair conducts. The authority has an active role in the investigation, prohibition and sanctioning of anticompetitive practices and cartels. It also grants authorizations for certain economic concentration transactions, such as mergers or acquisitions. Since the introduction of the new regime, Ecuador has been taking additional steps to increase the efficiency and effectiveness of the competition regime. In 2020, for instance, it passed reforms aimed at reducing the competition authority's decision times, as well as clarifying forbidden practices and behaviours (see: http://competitionlawblog.kluwercompetitionlaw.com/2020/11/25/new-reforms-to-ecuadors-merger-control-regime-and-restrictions-by-object/).

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What	Why	How	Status	Findings
2. Promote innovation and develop human resources	Ecuador had made efforts to improve science, technology and intellectual property (STIP) by adopting several policies, and establishing relevant institutions. These efforts and initiatives were, however, insufficiently coordinated. Linkages among universities, research centres and the private sector remained weak and innovations rare. Improvements in the protection of intellectual property (IP) were necessary. The education system produced a relatively large pool of professionals. However, most of the labour force was unskilled, and it did not meet the requirements of the labour market, thus reducing the expansion prospects of many industries. To reach the objectives of diversifying the economy and exporting higher valued-added goods and servicies, the Government needed to strengthen its efforts.	**Strengthen science, technology and innovation policy, and link skills and labour:** 2.1. Establish the planned national system of innovation 2.2. Consider technology and education policies to better link public research and development institutions, technology centres, enterprises, universities and funding institutions, and promote skills that match the needs of the labour market 2.3 Provide financial incentives for technology development 2.4. Strengthen the implementation of IP regulations	◔	2.1. The establishment of a National System of Innovation has been highlighted in several policy and legal documents adopted in recent years: – At the policy level, the National Strategy for the Change of the Productive Model, adopted in 2013, emphasized strengthening the productive system based on innovation efficiency. The PND also describes the development of systems of innovation, including smart cities, productive clusters and ZEDEs, as one of the requirements for structural transformation of the economy and changing the production model. – At the legal level, the 2008 Constitution provides for the establishment of a National System for Science, Technology, Innovation and Ancestral Knowledge (NSI). In addition to programmes, policies, resources and actions, it highlights that the NSI should comprise State institutions, universities and polytechnic schools, public and private research institutions, private enterprises, non-governmental organizations and natural and legal persons. When referring to investment, including FDI, the Constitution indicates that it shall be made on the basis of criteria of diversification of production, technological innovation, and striking a balance between regions and sectors.

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What	Why	How	Status	Findings
				– The Organic Code of the Social Economy of Knowledge, Creativity and Innovation (the Code of Knowledge), adopted in 2016, indicates in its first article that its object is to regulate the NSI and its articulation with the National Systems for Education and Culture. The Code of Knowledge sets up a complex institutional structure with the Secretariat of Higher Education, Science, Technology and Innovation (SENESCYT) as the lead entity and the Executive Function coordinating between the different Systems. The SENESCYT is supported by a Consultative National Committee of the Social Economy of Knowledge, Creativity, Innovation and Ancestral Knowledge comprising the State, academia, the socio-productive sector, the artistic-cultural sector, villages, ethnicities (nacionalidades) and civil society. Similarly to the PND, the Code of Knowledge also describes spaces for the development of the NSI, including the ZEDEs, territories oriented towards research and knowledge, scientific-technological parks, tecno-industrial parks, transfer of technology centres and other spaces necessary to fully implement and reach the objectives of the System.

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What	Why	How	Status	Findings
				– The Organic Law of Entrepreneurship and Innovation, adopted early 2020, imposes obligations on the State to adopt adapted public policies to encourage the emergence of an entrepreneurship ecosystem, simplify business establishment (see above) and allocate the appropriate resources for its implementation. It also establishes several institutions, including the National Council for Entrepreneurship and Innovation (which comprises the SENESCYT), with a Technical Secretariat, in charge of establishing a National Strategy for Entrepreneurship, Innovation and Competitiveness, aligned with the PND, and a Consultative Council of Entrepreneurship and Innovation. The Council is responsible for coordinating the creation and functioning of a Single Window for Entrepreneurship. At the time of its elaboration, the PND reflected that results were still partial and required policies to achieve more plausible effects of development of new industries and the incorporation of technology production processes. It remained therefore necessary to work on strengthening production chains to boost production with high technology intensity and built-in value added, to generate work through the strengthening of the social economy of knowledge and the creation of innovation ecosystems and entrepreneurship, and for the linkage of the productive strategy with the active employment policy.

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What	Why	How	Status	Findings
				The SENESCYT website does not contain information on the NSI; it is therefore difficult to provide an assessment of the impact of these policies. Nevertheless, information from the Alliance for Entrepreneurship and Innovation (AEI) indicates that several grey areas in the Code of Knowledge and contradictions between some of its provisions and other legislation impacted its implementation. For instance, it is not clear how mechanisms of collaboration with universities or research centres will be put in place. The focus on innovation remains also moderate in the Law and the pandemic affected the adoption of secondary legislation for its implementation. It is also unclear how the different institutions established by the two legislations would coordinate. Ultimately, data from the United Nations Educational, Scientific and Cultural Organization Institute of Statistics indicates that spending for research and development in Ecuador is at 0.4 per cent of the GDP with 399 researchers per million inhabitants. This is in line with or above the average for Latin America and the Caribbean countries for which data is available, except Argentina, Brazil and Costa Rica. Initiatives launched by the Government, such as the Technological City of Yachay established in 2014 as a national hub for academia and public private sectors research and development or the SENESCYT Innovation Hubs did not yield the expected results. According to information from AEI, no transfer of technology and technological ZEDE is in place. Ecuador ranks 116 over 141 economies on the growth of innovative companies and companies embracing disruptive ideas (WEF, 2019).

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What	Why	How	Status	Findings
				2.2. The 2008 Constitution states that the higher education system has a central role to play in academic and professional training. It also highlights that the State has the responsibility to incorporate information and communication technologies in education, and promote linkages between teaching, productive and social activities. The Code of Knowledge underlines the need to strengthen human talent and to link it to the activities of the social economy of knowledge, creativity and innovation. It gives the mandate to the SENESCYT, in coordination with the competent public entities, to formulate a policy oriented towards consolidating the human talent as a paramount factor for the social economy of knowledge. The Code of Knowledge stresses the importance of setting up technology transfer centres in educational institutions, and provides for the establishment of a National System of Professional Qualifications with a National Training Plan, a Catalogue of Professional Qualifications and the certification of professional qualifications for people trained in a formal or informal way. The National Agreement for Employment, Productive Investment, Innovation and Inclusion is one of the policy actions mentioned in the second axis of the PND, which reflects the important role public, private and community actors can play in its implementation. However, the text could not be identified, and it is unclear how the Agreement could be operationalized. To be more effective, these initiatives need to be better linked to the needs of the labour market. For example, the Code of Knowledge contains provisions on introducing students to practical trainings and on the content of the curricular. It does not however properly reflect the needs of the employers.

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What	Why	How	Status	Findings
				Several texts have been adopted to promote the employment of youth and vulnerable groups. The Ministerial Agreement MRL-2011-00284 established a pre-work internship regime for people between 18 and 29 years old. The Ministerial Agreement MDT-2016-0053 put in place the "My First Job" programme, which targets students enrolled in the higher education system to obtain internships in the public sector. The programme also contains a branch dedicated to academic excellence. In 2020, the Ministry of Labour adopted the Ministerial Agreement MDT-2020-223, which defines the labour regime for the youth (below 26 years old), including a specific regime for those who are studying. However, none of these texts is accompanied by incentives for employers to recruit young workers. A series of incentives are provided to strengthen human talent. These include financial measures (scholarships, educational credit and economic assistance) and credit lines in public and private banks. They also consist of administrative assistance, additional points in the scoring in public procurement processes and of a shortened procedure for foreigners who want to conduct research in Ecuador. In addition, the Law provides for the establishment of free incubators for entrepreneurs, facilitated access to some infrastructure, and the inclusion of entrepreneurship-related education at all levels.

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What	Why	How	Status	Findings
				Worldwide, Ecuador ranks 76 over 141 on the skills pillar (WEF, 2019). In terms of technical and vocational education and training (TVET), it is reported that the offer in the country remains limited. A survey shows that 73.7 per cent of firms which answered it offered formal training to their employees (World Bank, 2017). This is well above the Latin America and Caribbean and the world average of 51.2 per cent and 32.2 per cent respectively. Nevertheless, for 22.3 per cent of firms surveyed, they indicated that the workforce is not adequately trained which constitutes a major constraint. In another assessment, it was indicated that 60 per cent of the workforce remains in the informal sector and the Covid-19 pandemic resulted in the loss of 200 000 jobs in the formal sector (USDOS, 2020). 2.3. In addition to the incentives highlighted, the Code of Knowledge provides incentives for responsible research. These include financial and fiscal support, administrative assistance and funding programmes for research. It stipulates that the research belongs to the public authority that has granted the funds or has implemented the funding programme. The Law establishes a National Registry for Entrepreneurship for companies benefitting from incentives under the Code of Knowledge. Companies registered must have been created less than five years ago, have a turnover of less than one million dollars and a maximum of 49 employees, thus limiting it to small and medium-sized enterprises. Once registered companies can access different financing schemes, notably supported by the public institutions for entrepreneurship, innovation and technology.

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What	Why	How	Status	Findings
				On social innovation, the Code of Knowledge establishes financing mechanisms, as well as fiscal and administrative incentives, including simplified registration for new products and additional points in the scoring in public procurement processes. Other incentives related to innovation, notably included in the COPCI, are also available. These include a variety of incentives either generally applicable or based on transfer of technology and innovation (WTO, 2019). 2.4. In 2018, the National Service for the Protection of Intellectual Rights (SENADI), under the SENESCYT, succeeded the Ecuadorian Institute of Intellectual Property and became the authority in charge of enforcing IP rights, including the Code of Knowledge (Decree 356 of 3rd April 2018). To obtain IP rights, registration is mandatory at the SENADI. The procedure should be described in the Code of Knowledge's regulations. However, the World Trade Organization's 2019 Trade Policy Review indicates that in a transitional period, timeframes and procedures are determined by the Intellectual Property Law's provisions, its implementing regulations and the Community of Andean Nations (CAN) legislation establishing the Common Industrial Property Regime for the Andean Community. Infringement is punished with fines and no imprisonment is mentioned in the Code of Knowledge. The authority may order precautionary measures when it receives a complaint; it is not clear if it has an ex officio competence to do so. The SENADI does however have an ex officio competence to order the suspension of customs operation, contrary to the National Customs Service of Ecuador.

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What	Why	How	Status	Findings
				Ecuador has been since 2016 on the United States Trade Representative Watch List and is on the Notorious Markets List in relation with piracy of computer software and counterfeit activity in brand name apparel (USDOS, 2020). Ecuador ranked 108 over 141 economies on the intellectual property indicator (WEF, 2019).
3. Implement infrastructure development programmes, including through the mobilization of private investment	Successive economic and political crises as well as natural disasters resulted in the deterioration of infrastructure and public services. Their improvement was a precondition to reviving domestic and foreign investment.	**Improve infrastructure, including by mobilizing private investment** 3.1. Ensure that the entry of private investors leads to improved quality of services, fiscal benefits and a fairer distribution of long-term gains among all stakeholders 3.2. Use incentives to promote investment and requirements for investors to improve services 3.3. Adopt regulatory measures to ensure that public monopolies are not replaced by private ones (domestic of foreign) 3.4. Ensure the effective coordination of the agencies and authorities involved in privatization and PPPs	●	3.1 – 3.5 Infrastructure was one of the main constraints to investment identified by the IPR. Since then, Ecuador has made important progress in this area. In 2019, the country ranked 62 worldwide (over 141 economies) and four in the Latin America and Caribbean region (over 22 economies) in terms of infrastructure (WEF, 2019). The 2008 Constitution reserves for the State the right to administer, regulate, monitor and manage strategic sectors, including energy, telecommunications, non-renewable natural resources, oil and gas transport and refining, biodiversity and genetic heritage, the radio spectrum and others as established by the law. The State is also responsible for the provision of public services like drinking and irrigation water, sanitation, electricity, telecommunications, roads, seaport and airport facilities, and others as established by the law. Among the obligations of the States are principles of obligation, generality, uniformity, efficiency, responsibility, universality, accessibility, regularity, continuity and quality, as well as to ensure that the prices and fees of public services are equitable.

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What	Why	How	Status	Findings
		3.5. Safeguard the role of the Government by financing socially and/or economically important infrastructure projects perceived as unattractive or too risky for private investors		The 2008 Constitution and article 100 of the COPCI also allow for the delegation of the State's participation in strategic sectors and public services to mixed-economy companies in which it has a majority shareholding, or on an exceptional basis, to private enterprises.
		3.6. Ensure the effective functioning of PPPs and the concession system, when projects are granted to the private sector and ownership retained by the State		The Executive Decree 582 (Regulation of the Regime of Public-Private Collaboration, March 2015) opened up the possibility for private entities to propose projects in the area of public services. It was complemented by the Organic Law on Incentives for PPPs and Foreign Investment (December 2015). These laws define a framework for PPPs with principles of fiscal sustainability, shared risk allocation, value for money, respect of the interests and rights of users, protection of property rights as well as coverage and social inclusion. The PPP Law covers general interest sectors as determined by the Interinstitutional Committee of PPPs (the entity that oversees its implementation), including infrastructure, sea and airports. Between 2016 and 2020, the PPP framework was subject to several revisions aimed at clarifying specific aspects of the regime, detailing the mandate of the Committee, defining a Programme of PPP projects, and establishing the coordination modalities with the SNDPP.

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What	Why	How	Status	Findings
				The Executive Decree 1190 of November 2017 adds a Sustainability and Fiscal Risk Unit, addresses potential conflicts with other legislation not allowing PPPs, and refines the financial and technical modalities of PPPs. It also opens infrastructure services to private capital, allowing private entities to maintain and operate services, in addition to building and renovating them. The Decree does not contain accessibility requirements. In May 2020, pursuant to the COVID-19 pandemic, the President of Ecuador decided on the liquidation of eight State-owned enterprises, including the airline Tame (see: https://www.comunicacion.gob.ec/se-emiten-los-decretos-ejecutivos- para-la-liquidacion-de-ocho-empresas-publicas-y-la-supresion-de-dos- entidades/). A list of PPP projects, identified through standardized forms and procedures, are promoted by the Investment Sub-secretariat and the commercial offices. They are also included in the catalogue of investment, available online. These PPP projects have all undergone a pre-feasibility study.

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What	Why	How	Status	Findings
4. Formulate and implement an investment promotion programme	The Law on the Promotion and Guarantee of Investments established a "National System of Investment Promotion", with different institutions responsible for, respectively, the formulation of national strategies and policies on investment, trade, export promotion and investment promotion. The Ministry of Foreign Affairs was in charge of negotiating investment and tax treaties. However, some of the mandates of the different institutions overlapped, and better alignment with the new legislation as well as improved coordination were needed.	**Strengthen investment promotion** 4.1. Enhance coherence and operationalize the system of institutions dealing with FDI, including by clarifying and reviewing their responsibilities and removing overlaps 4.2. Organize a national consensus-building workshop with public and private stakeholders, including foreign investors on the strategic directions for investment policy and promotion 4.3. Determine which institution has the statutory authority in the area of FDI and task it with defining a strategic plan to increase the role of FDI in the country's development	◐	4.1– 4.5 To follow up on the IPR, UNCTAD provided technical assistance to Ecuador on several issues, including: – Building investment promotion capacity through the formulation and launching of an investment promotion programme and the development of the Ecuadorian Investment Gateway. – Elaborating a 10-year national plan on investment promotion and policy reforms, which was concluded and presented to national stakeholders. – Organizing workshops on topics such as investment promotion, policy advocacy, governance, consensus, image building and aftercare. In June 2011, the Government had launched a new investment and exports promotion agency, PRO ECUADOR. In 2018, the agency was integrated in the MPCEIP. The Ministry (i.e. the *Subsecretaría de Inversiones*) currently coordinates investment promotion activities and functions, including in the areas of policy, promotion and aftercare.

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What	Why	How	Status	Findings
		4.4. Establish an investment promotion unit and make it an operational arm to coordinate all investment promotion activities and functions. Focus its activities initially on policy advocacy and image building. In the long term, expand its mandate to the promotion of business linkages 4.5. Organize training programmes for the staff responsible for investment promotion in the country and abroad, including the Ministry of Foreign Affairs		Eighteen priority sectors are listed in article 9.1. of the Internal Tax Law (*Ley de Regimen Tributario Interno*) and 14 sectors and subsectors were prioritized in the 2013 National Strategy for the Change in the Production Model. In parallel, five staff are allocated to the investment promotion team at the Investment Sub-secretariat. Investment promotion efforts are therefore limited, and mostly remain general rather than targeted at specific investors. The country has 24 commercial offices, which have a wide geographic coverage, being spread across 20 countries. These offices promote a catalogue of projects that was designed to guide investors and financial institutions, both national and international, on the public and private investment opportunities in Ecuador. Four local offices, present in Cuenca, Loja, Manta and Quito, focus their promotion activities on productive and export activities. The authorities recognize that the high number of priority sectors is a significant challenge to efficient investment promotion efforts. In terms of aftercare, four staff are allocated to follow up on investment projects. They currently focus on implementing the single window (see above). In 2018, a “State policy to attract and promote investments, guarantee their complementarity with development objectives and strategies for generating employment, and promote foreign exchange earnings” was adopted (Executive Decree No. 252). The Decree created the CEPAI, as an intersectoral body of the Executive Function, in charge of inter-institutional coordination to promote, attract, facilitate and maintain foreign investmentsin Ecuador.

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What	Why	How	Status	Findings
				Beyond its role in approving investment incentives and contracts, CEPAI ismandated to: – Define policies for the promotion and attraction of investments; – Approve the Pluriannual Strategic Plan for the Promotion of Investments; – Coordinate with all public entities, comprehensive proposals to promote, attract, facilitate, specify and maintain investment in Ecuador; – Adopt the measures necessary to prevent possible disputes in investment matters, at the request of the interested party; – Convene the Consultative Council for Productive Development and Foreign Trade, in order to guarantee intersectoral participation in the development of public policies; and – Evaluate the policies of promotion, attraction and performance of investments in all their phases. As mentioned, the MPCEIP, which is also the Secretariat of CEPAI, is in charge of policies and programmes for the promotion and attraction of investment, as well as for structuring and suggesting the Strategic Pluriannual Plan of Investment Promotion for the approbation of the CEPAI. In addition to promote this Plan, the Ministry is also in charge of implementing comprehensive investment promotion, facilitation and retention strategies.

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What	Why	How	Status	Findings
				The commercial offices play an important policy advocacy role by relaying concerns of established and prospective investors to the CEPAI, which occasionally welcomes companies to discuss their concerns. Also, the National System for Attracting and Facilitating Investments Project aims at enhancing investment promotion. The first component will establish a single window to present information to potential investors, and also link them to potential local partners and suppliers. It also targets the elaboration of an implementation plan, mapping involved entities, analyzing priority sectors, regions and types of investment, and assessing the activities required. It involves capacity building and developing a customer relationship management system. Five sectors were identified as priorities in the context of this project. These are agriculture, fresh, frozen and processed food; logistics services to external trade; manufacturing, agro-processing and agro-associative; development and production of software and hardware technology services, digital infrastructure and security; tourism, cinematography, audiovisual and international events. These however seem large and would not allow investment targeting if the staff in charge of investment promotion remains the same (see above).

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What	Why	How	Status	Findings
				In May 2021, the MPCEIP elaborated a roadmap for investment promotion activities comprising strategic and specific objectives for 2021. The former includes increasing domestic and foreign investment, encouraging an attractive business climate, technology transfer and innovation, and increasing economic integration. The latter involves supporting monitoring and management activities to attract FDI, and positioning Ecuador as a regional investment destination. In terms of investment promotion, the work will focus on image-building, investment generation, investment facilitation and retention as well as policy advocacy. No formal business linkages programmes were reported by the investment promotion authorities, however punctual initiatives are implemented, for instance in Atuntaqui with the United Nations Industrial Development Organization. In addition, both ZEDEs and Productive Development Poles, contain a business linkage component. It is however difficult to assess the impact of these programmes. In December 2019, a commercial diplomacy workshop, which also dealt with investment promotion, was organized with the International Trade Centre for officials from the Ministry of Foreign Affairs and from the commercial offices. A workshop is also planned in 2021.

● = implemented; ◐ = substantially implemented; ◔ = partially implemented; ○ = not implemented.

What	Why	How	Status	Findings
5. Expand market access	Ecuador had been very active in seeking to liberalize and promote international trade. In addition, it had signed 23 bilateral investment treaties (BITs) and eight double taxation treaties (DTTs). However, it could participate more actively in international arrangements to establish international standards in trade and investment, to expand its market access, and improve the country's locational attractiveness, while preserving its right to regulate.	**Expand regional and international initiatives for trade and investment** 5.1. Support initiatives to strengthen regional agreements (CAN, Asia-Pacific Economic Cooperation (APEC)) 5.2. Consider concluding BITs and DTTs with important actual and potential home countries for FDI, maintaining a balance between investors' rights and obligation, as well the country's right to regulate 5.3. Organize training programmes for negotiators of international investment agreements	◔	5.1. Ecuador is not a member to the APEC. It has been a party to the Pacific Economic Cooperation Council, which has an observer status at the APEC since 20 October 1999. It imports, from the CAN markets, raw materials, production inputs and capital equipment for domestic production in various sectors, including agribusiness, food processing, chemical and pharmaceuticals, automotive, metalwork, plastic, clothing and textiles, and an export of higher value products. The two main export destinations are Colombia and Peru, with respectively 1 000 and 864 Ecuadorian products entering their markets. Overall, 20 per cent of non-traditional Ecuadorian exports with higher processing are destined to the CAN markets, and 12 per cent of export-related jobs are related to CAN exports. Ecuador has taken initiatives to strengthen its participation in the CAN, including Decision 838 on standards for the registration, control, marketing and use of veterinary products, Decision 848 to update the harmonization of customs regimes, Decision 854 to set community guidelines for the provision international roaming service to users in the postpaid mode, as well as the construction and implementation of the Andean Digital Agenda.

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What	Why	How	Status	Findings
				5.2. Article 422 of the 2008 Constitution prohibited the entry of the State of Ecuador in "treaties and international instruments where the Ecuadorian State yields its sovereign jurisdiction to international arbitration entities in disputes involving contracts or trade between the State and natural persons or legal entities". On this basis, the Constitutional Court determined that arbitration clauses in BITs were contrary to the Constitution. This interpretation was challenged in 2018 and the decision is pending. In parallel, the COPCI and Law of Productive Development, Attraction of Investment and Employment Generation refer to arbitration as part of the advantages in the context of an investment contract, albeit it is, according to the authorities, limited to a regional forum in the case of an international dispute. In terms of enforcement of arbitral awards, the General Organic Code of Procedures of 2015 introduced an exequatur procedure for the recognition and enforcement of international arbitration awards, which was repealed in 2018 by the Law of Productive Development, Attraction of Investment and Employment Generation of 2018 (see: arbitrationblog.kluwerarbitration.com/2020/05/17/enforcing-international-arbitral-awards-in-ecuador-after-recent-legal-reforms-is-this- the-end-of-the-exequatur-process/?doing_wp_cron=1593121939.0552499294281005859375). Finally, Ecuador signed, on 21 June 2021, to re-join the ICSID Convention.

● = implemented; ◐ = substantially implemented; ◔ = partially implemented; ○ = not implemented.

What	Why	How	Status	Findings
				Regarding DTTs, despite expressions of interest by different countries, the Internal Revenue Service requires the positive feedback from the Ministry of External Relations and Human Mobility, as well from the MPCEIP, to initiate negotiations. Among the criteria are the potential positive impact on the bilateral trade relations, in particular investment, and, ideally, with partner countries identified as potential sources of resources and/or markets that are not already consolidated, given the important tax impact of DTTs. As of 9 February 2021, Ecuador had concluded 20 DTTs, half of them after the IPR. These include the members of the Andean Community (Plurinational State of Bolivia, Colombia and Peru, 2005), Canada (2001), China (2014), Japan (2019), Republic of Korea (2013), Qatar (2018), Russian Federation (2018), Singapore (2015) and Uruguay (2012) (See: ibfd.org). Based on information gathered for this report, no training programmes for negotiators of international investment agreements were undertaken after the IPR. 5.3. Based on information gathered for this report, no training programmes for negotiators of international investment agreements were undertaken after the IPR.

● = implemented; ◐ = substantially implemented; ◔ = partially implemented; ○ = not implemented.

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ENDNOTES

[1] This report was prepared by Maha El Masri and Massimo Meloni under the direction of Chantal Dupasquier, Chief of the Investment Policy Review Section, Division on Investment and Enterprise (DIAE). Overall guidance was provided by Joerg Weber, Head of the Investment Policies Branch, and James Zhan, Director, DIAE. Comments were received from national stakeholders, including representatives of several Government entities. The data were made available by the Trends and Data Section, DIAE, and research support was provided by Irina Stanyukova.

[2] Other tax policy decisions include the increase of the Impuesto a la Salida de Divisas (ISD, Foreign Currency Exit Tax) increase from 0.5 to 5 per cent in 2012.

[3] A series of policy decisions affected the access to arbitration and investment protection. In 2005, Ecuador introduced an amendment to the Arbitration and Mediation Law limiting arbitration when "not affecting or impairing national or collective interests" (see: https://globalarbitrationreview.com/review/the-arbitration-review-of-the-americas/2021/article/ecuador). In 2007, the country notified the International Centre for Settlement of Investment Disputes (ICSID) that it would no longer submit to its jurisdiction for mining and petroleum issues (see: https://globalarbitrationreview.com/review/the-arbitration-review-of-the-americas/2021/article/ecuador), before withdrawing from the Centre in 2009. Limitations to arbitration were also adopted in the new Constitution in 2008. In parallel, Ecuador initiated the termination of the majority of its BITs (see: https://investmentpolicy.unctad.org/international-investment-agreements/countries/61/ecuador). On 21 June 2021, Ecuador signed to re-join the ICSID Convention.

[4] These include energy, telecommunications, non-renewable natural resources, oil and gas transport and refining, biodiversity and genetic heritage, the radio spectrum and others as established by the law.

[5] Ecuador became a dollarized economy in 2000.

[6] https://www.imf.org/en/News/Articles/2020/10/05/na100520-helping-ecuador-confront-the-pandemic.

[7] See: https://www.pressreader.com/ecuador/diario-expreso/20180309/281861529016889; https://www.elcomercio.com/actualidad/mexico-inversion-ecuador-fybeca-femsa.html; https://www.femsa.com/en/press-room/press-release/femsa-comercio-enters-the-drug-store-business-in-ecuador/.

[8] See: https://www.capitalmadrid.com/2019/1/9/51800/ecuador-gana-terreno-en-el-mapa-de-la-inversion-espanola.html#:~:text=En%20Ecuador%20est%C3%A1n%20establecidas%20unas,Inditex%2C%20Mango%20y%20Grupo%20Puentes.

[9] See: https://www.theheinekencompany.com/newsroom/heineken-enters-ecuadorian-beer-market-with-the-acquisition-of-biela-ecuador/; https://www.freshplaza.com/article/9104160/ecuador-and-the-netherlands-consolidate-their-commercial-relationship/.

[10] See: https://www.planificacion.gob.ec/wp-content/uploads/downloads/2013/01/matriz_productiva_WEBtodo.pdf.

[11] This new tool, put in place by UNCTAD in 2020, aims at assisting member States to better address the challenges of dynamic investment policymaking and improving prospects for achieving the Agenda 2030 for Sustainable Development. It provides IPR beneficiary countries with an interactive platform for reporting on the implementation of IPR recommendations and other investment policy reforms. The matrix can also be viewed online at: https://investmentpolicy.unctad.org/investment-policy-review/62/ecuador.

[12] This power was further defined by the Organic Law of the Transparency and Social Control Power of 2014.

[13] The 14 priority industries are fresh and processed food, biotechnology (biochemicals and biomedicine), clothing and footwear, renewable energy, pharmaceutical, metal-mechanic, petrochemistry, wood forest products, environmental services, technology (software, hardware and IT services), vehicles, motor vehicles, bodies and arts, construction, transport and logistics, and tourism. The five strategic industries are refinery, shipyard, petrochemistry, metallurgy (copper) and steel.

[14] See: https://businessfacilitation.org/ for more information.

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