



2016 International Economic Law Update in Latin America

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Introduction

To provide a snapshot of 2016 international economic law activity in Latin America, we selected the top ten countries in this field. The criteria used for this selection were size of the economy (GDP), merchandise trade volume, participation as parties in WTO dispute settlement, volume of patent applications and number of countries with which they have regional trade agreements. The following list shows the top ten countries by alphabetical order that had the highest frequency in each of these criteria.¹

Argentina
Brazil
Chile
Colombia
Costa Rica
Ecuador
Guatemala
Mexico
Panama
Peru

For this regional update, we used the following research methodologies: For trade barriers, we used the IQOM database for news about new legislation in Latin America, official legislation webpages and the available trade policy reviews from the WTO Secretariat. For intellectual property rights enforcement, we looked at the 2016 Special 301 USTR Report and for international investment we looked for all ICSID cases “pending” and “concluded” in 2016 involving the selected countries.

Regional Trends

In 2016 the World Health Organization (WHO) published the Report on Fiscal Policies for Diet and the Prevention of Noncommunicable Diseases in which it calls for all governments to implement sugar taxes to reduce the consumption of sugary drinks in order to diminish diabetes and other cardiovascular diseases. It concluded that there is reasonable and increasing evidence that appropriately designed taxes on sugar-sweetened beverages would result in proportional reductions in consumption, especially if aimed at raising the retail price by 20% or more.²

During the last year, some of the Latin American countries selected issued measures to protect the health of their inhabitants. Regulations vary between countries

¹ For more details on the country selection process see [2016 Snapshot of International Economic Law Activity, Latin America .xlsx](#)

² <http://apps.who.int/iris/bitstream/10665/250131/1/9789241511247-eng.pdf?ua=1>

and include technical regulations imposing label requirements on certain products as well as ad valorem and specific taxes on unhealthy products.

Another trend is that the USTR remains unsatisfied with intellectual property rights protection in the region. On the 2016 Special 301 Report, it classifies countries with concerns on IPR in two lists, Priority Watch List and Watch List. The following chart shows how the selected countries were classified under these criteria.

2016 Special 301 Report Country Classification

Priority Watch List	Watch List
<ul style="list-style-type: none"> • Argentina • Chile 	<ul style="list-style-type: none"> • Brazil • Colombia • Costa Rica • Ecuador • Guatemala • Mexico • Panama • Peru

New Treaties and Regional Cooperation Initiatives

The following list shows the trade agreements that entered into force on 2016.

Name of the Treaty	Member States	Type of Treaty	Date of Entry into Force
“Acuerdo Marco Alianza del Pacífico”	Colombia, Chile, México and Peru	Free Trade Agreement	May 1 st 2016
Preferential Trade Agreement Between the Common Market of the South and the Southern African Customs Union	Brazil, Argentina, Paraguay, Uruguay. (MERCOSUR) Botswana, Lesotho, Namibia, South Africa and Swaziland (SACU)	Preferential Trade Agreement	April 1 st 2016
Colombia and Costa Rica Free Trade Agreement	Colombia and Costa Rica	Free Trade Agreement	August 1 st 2016
Free Trade Agreement between the Republic of Colombia and the	Colombia and South Korea	Free Trade Agreement	July 15 th 2016

Republic of Korea			
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Dispute Settlement at the WTO during 2016

The following chart lists all the disputes filed during 2016 that involved the selected countries as a respondent or as a complainant.

Dispute Number	Name	Parties involved	Last Update	Status	Agreements Cited
DS502	Colombia-Measures Concerning Imported Spirits	Complainant: European Union Respondent: Colombia	September 26th 2016	Panel established, but not yet composed	GATT 1994: Art. III:1 , III:2 , III:4 , X:3(a) , XXIV:12
DS506	Indonesia-Measures Concerning the Importation of Bovine Meat	Complainant: Brazil Respondent: Indonesia	April 4th 2016	In consultations	GATT 1994: Art. I:1 , II:1 , III , III:4 , VIII:1 , X:3 , XI:1
DS507	Thailand-Subsidies concerning Sugar	Complainant: Brazil Respondent: Thailand	April 4th 2016	In consultations	Agriculture: Art. 3.2 , 3.3 , 6.3 , 8 , 9.1 , 10.1 Subsidies and Countervailing Measures: Art. 3.1(a) , 3.2 , 5(c) , 6.3
DS514	United States-Countervailing Measures on Cold and Hot Rolled Steel Flat Products from Brazil	Complainant: Brazil Respondent: United States	November 11th 2016	In consultations	GATT 1994: Art. VI Subsidies and Countervailing Measures: Art. 1 , 2 , 10 , 11 , 11.2

International Economic Law Developments by Country

Argentina

National Legislation

Trade Barriers

Labelling of Low Voltage Electrical Equipment

On October 22, 2015, Argentina issued Resolution 508/2015, which changes the procedures for obtaining safety certificates for low voltage electrical equipment. Article 15 of the Decree states that all products that require the use of an external power supply must display a label with all the electrical characteristics of the power supplies that are compatible with them.³ Argentina notified this measure to the WTO Committee on Technical Barriers to Trade (TBT Committee) on November 2, 2015, and it came into force on April 22, 2016.⁴

Label Supervision System on Consumer Goods

Argentina issued Resolution 420/2015 in October 2015, which established a label supervision system on several products including imported food, personal care, perfume and cosmetics. The measure also required that these products must fulfill new label requirements. Article 8 prohibits advertising for discounts on product labels if the importer can't guarantee the alleged prices to the consumer. On January 28, 2016, the recently elected government of President Mauricio Macri issued Resolution 6/2016, which revokes this measure in its entirety.⁵

Testing Requirements for Lead in Printed Materials

Resolution 453/2010 required that all inks, lacquers and varnishes used in producing printed materials, such as books, magazines, newspapers and package labels must be tested for lead content. The measure only allowed two Argentinian laboratories to do the product testing. In January 2016, the new administration issued Resolution 1/2016, to exclude books, magazines, brochures and leaflets from the restrictions established in Resolution 453/2010, thereby facilitating the access of imported printed materials to the Argentinian market.⁶

Taxes

Sliding Scale Tax on Luxury Vehicles

³ <http://servicios.infoleg.gob.ar/infolegInternet/anexos/250000254999/253700/norma.htm>

⁴ http://www.puntofocal.gov.ar/notific_otros_miembros/Arg/307.pdf

⁵ <https://www.boletinoficial.gob.ar/#!DetalleNormaBusquedaAvanzada/11494641/null>

⁶ http://www.cira.org.ar/index.php?option=com_content&view=article&id=6493:resolucion-1-2016&catid=112&Itemid=500

In 2015, Argentina issued a new sliding scale tax on imported luxury vehicles. The decree required that cars priced above 195,500 pesos (USD 12,190.) must pay a 30 percent tax, while vehicles priced above 241,500 pesos (USD 15,103.) were subject to a 50 percent tax. In January 2016, the Macri government issued Decree 11/2016, which reduced the luxury tax for imports and applied such taxes to locally produced vehicles. The new Decree eliminated taxes on cars priced below 350,000 pesos. (USD 21,889) ⁷

Intellectual Property

Argentina holds the third position in patent applications in the region with a 6.61% share of the total patent applications. Argentina remained on the Priority Watch List in the 2016 Special 301 USTR Report, as it continues to present several long-standing deficiencies in intellectual property rights protection and enforcement. According to the USTR, a major challenge in Argentina is the lack of effective IPR enforcement by the national government. Argentine police do not take ex officio actions, prosecutions can stall, cases may languish in excessive formalities, and, even when criminal investigation reaches final judgement, infringers do not receive deterrent sentences. ⁸

International Investment

Of all FDI inflows in Latin America Argentina received 7.08% of all investment inflows, representing the fifth most common destination for foreign investment in the region. Argentina is an active State member of the ICSID Convention, the following list shows the ICSID cases that concluded and remained pending in 2016 with Argentina as a respondent.

Case Number	Name	Claimants Nationalities	Economic Sector	Instruments invoked	Last update	Status
ICSID Case No. ARB/03/23	EDF International S.A., SAUR International S.A. and León Participaciones Argentinas S.A. v. Argentine Republic	EDF International S.A. (French), León Participaciones Argentinas S.A. (French), SAUR International S.A. (Luxembourg)	Electric power and other energy	BIT France - Argentina 1991, BIT Argentina - Belgium-Luxembourg 1990	February 5 th 2016	Decision on annulment issued by the ad hoc Committee

⁷ <https://www.boletinoficial.gob.ar/#!DetalleNormaBusquedaAvanzada/11499968/null>

⁸ <https://ustr.gov/sites/default/files/USTR-2016-Special-301-Report.pdf>

ICSID Case No. ARB/04/1	Total S.A. v. Argentine Republic	Total S.A. (French)	Oil, gas and mining	BIT France - Argentina 1991	February 1 st 2016	Decision on annulment issued by the <i>ad hoc</i> Committee
ICSID Case No. ARB/04/4	SAUR International v. Argentine Republic	SAUR International (French)	Water, sanitation and flood protection	BIT France - Argentina 1991	December 19 th 2016	Decision on annulment issued by the <i>ad hoc</i> Committee
ICSID Case No. ARB/07/5	Abaclat and others v. Argentine Republic	Abaclat and others (nationality not available)	Debt instruments	BIT Argentina - Italy 1990	December 29 th 2016	Settlement agreed by the parties and settlement recorded at their request in the form of an award
ICSID Case No. ARB/07/26	Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. Argentine Republic	Consortio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa (Spanish), Urbaser S.A. (Spanish)	Water, sanitation and flood protection	BIT Spain - Argentina 1991	December 8 th 2016	Award rendered by the Tribunal
ICSID Case No. ARB/07/31	HOCHTIEF Aktiengesellschaft v. Argentine Republic	HOCHTIEF Aktiengesellschaft (German)	Highway system construction contract	BIT Germany - Argentina 1991	December 21 st 2016	Award rendered by the Tribunal
ICSID Case No. ARB/04/16	Mobil Exploration and Development Inc. Suc. Argentina and Mobil Argentina S.A. v. Argentine Republic	Mobil Argentina S.A. (Argentine), Mobil Exploration and Development Inc. Suc. Argentina (U.S.)	Oil, Gas & Mining	BIT United States of America - Argentina 1991	August 18th 2016 (Annulment Proceeding)	Pending (Mobil Exploration and Development files a counter-memorial on annulment on May 3, 2017)
ICSID Case No. ARB/03/17	Suez, Sociedad General de Aguas de Barcelona S.A. and Interagua Servicios Integrales de Agua S.A. v. Argentine Republic	Interagua Servicios Integrales de Agua S.A. (Spanish), Sociedad General de Aguas de Barcelona S.A. (Spanish), Suez (French)	Water, Sanitation & Flood Protection	BIT France - Argentina 1991, BIT Spain - Argentina 1991	September 21st 2016 (Annulment Proceeding)	Pending (the Argentine Republic files a memorial on annulment on May 8, 2017)

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Brazil

National Legislation

Trade Barriers

Toy Conformity Assessment Procedures

Brazil notified the WTO Committee on Technical Barriers to Trade about the criteria for procedures, assessing the conformity of toys in the country. Under current regulations, toy manufacturers must register manufacturing facilities and each toy as a part of a family of products. In addition, product labels would have to bear a separate registration number for each product family. The application of this registration system will rise consumer prices as the certification system will impose new costs to manufacturers and importers.⁹

Subsidies

On July 9th, 2014, the President of Brazil issued Provisional Measure no. 651 reintroducing the Reintegra program as part of a major industrial policy known as *Plano Brasil Maior*. Reintegra exempted from certain taxes exports of goods covering 8,639 tariff lines, and allowed Brazilian exporters to receive up to three percent of their gross receipts from exports in tax refunds. The Council of the Foreign Trade Chamber decided in 2016 to maintain the forecast for raising the Reintegra rebate rates to two percent in 2017 and three percent in 2018.¹⁰

Intellectual Property

Brazil holds the first place in patent applications in the region with a share of 48.43% total patent applications, followed by Mexico and Argentina with a share of 28.96% and 6.61% respectively. Brazil remained on the Watch List in the 2016 Special 301 USTR Report. In 2014 and 2015, Brazil carried out important enforcement actions and brought cases against operators of online piracy sites. According to the USTR, significant concerns remain with respect to the high levels of counterfeiting and piracy in the country.

⁹ https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=128651&CurrentCatalogueIdIndex=0&FullTextSearch=

¹⁰ <http://www.brazilgovnews.gov.br/news/2016/09/brazilian-government-will-raise-tax-rebate-for-exporters>

Increased emphasis on enforcement at the border, as well as stronger deterrent penalties are needed to make sustained progress on these IPR concerns.¹¹

International Investment

In 2016 Brazil received 39.25% of all FDI inflows in Latin America, followed by Mexico and Chile with a share of 18.39% and 12.25% respectively.¹² Brazil has not signed the ICSID Convention and therefore there are no ICSID cases. As of 2016 Brazil has signed twenty Bilateral Investment Treaties (BIT) but none of them has entered into force.¹³ The following chart shows all of the BITs signed by Brazil.

No.	Short title	Parties	Status	Date of signature
1	Angola - Brazil BIT (2015)	Angola; Brazil;	Signed	01/04/2015
2	BLEU (Belgium-Luxembourg Economic Union) - Brazil BIT (1999)	BLEU (Belgium-Luxembourg Economic Union); Brazil;	Signed	06/01/1999
3	Brazil - Chile BIT (1994)	Brazil; Chile;	Signed	22/03/1994
4	Brazil - Chile BIT (2015)	Brazil; Chile;	Signed	24/11/2015
5	Brazil - Colombia BIT (2015)	Brazil; Colombia;	Signed	09/10/2015
6	Brazil - Cuba BIT (1997)	Brazil; Cuba;	Signed	26/06/1997
7	Brazil - Denmark BIT (1995)	Brazil; Denmark;	Signed	04/05/1995
8	Brazil - Finland BIT (1995)	Brazil; Finland;	Signed	28/03/1995
9	Brazil - France BIT (1995)	Brazil; France;	Signed	21/03/1995
10	Brazil - Germany BIT	Brazil; Germany;	Signed	21/09/1995

¹¹ <https://ustr.gov/sites/default/files/USTR-2016-Special-301-Report.pdf>

¹² See the Investment and Intellectual property sheet on the [2016 Snapshot of International Economic Law Activity, Latin America .xlsx](#)

¹³ Retrieved from UNCTAD <http://investmentpolicyhub.unctad.org/IIA/CountryOtherIias/27#iialInnerMenu>

	(1995)			
11	Brazil - Italy BIT (1995)	Brazil; Italy;	Signed	03/04/1995
12	Brazil - Korea, Republic of BIT (1995)	Brazil; Korea, Republic of;	Signed	01/09/1995
13	Brazil - Malawi BIT (2015)	Brazil; Malawi;	Signed	25/06/2015
14	Brazil - Mexico BIT (2015)	Brazil; Mexico;	Signed	26/05/2015
15	Brazil - Mozambique BIT (2015)	Brazil; Mozambique;	Signed	30/03/2015
16	Brazil - Netherlands BIT (1998)	Brazil; Netherlands;	Signed	25/11/1998
17	Brazil - Portugal BIT (1994)	Brazil; Portugal;	Signed	09/02/1994
18	Brazil - Switzerland BIT (1994)	Brazil; Switzerland;	Signed	11/11/1994
19	Brazil - United Kingdom BIT (1994)	Brazil; United Kingdom;	Signed	19/07/1994
20	Brazil - Venezuela, Bolivarian Republic of BIT (1995)	Brazil; Venezuela, Bolivarian Republic of;	Signed	04/07/1995

Chile

National Legislation

Trade Barriers

Food Product Labeling

Chile's Ministry of Health published on June 26th, 2015 Decree 13 which regulates the labeling of the nutritional composition of certain food products. This measure requires labels on certain prepackaged food products if they exceeded specified thresholds of sodium, sugar, calories and saturated fats. The products that exceed the thresholds must bear a stop sign with the words "High in" salt, sugar, energy or saturated fat.¹⁴

Mexico, Canada and the United States have expressed their concern about this measure. This regulation entered into force on June 26th, 2016.

¹⁴ <http://www.leychile.cl/Navegar?idNorma=1078836>

Import Controls

Chile imposes some import prohibitions to protect the environment and human, animal and plant health. Chile bans the import of used vehicles and motorcycles, as well as used and retreated tires. These restrictions apply without taking into consideration the goods' country of origin. Most of the prohibitions remain for road safety reasons and to protect the health and the environment. The import of used tires is prohibited to prevent the spread of mosquitoes in Chile, which transmit dengue. Chile also prohibits the import of endangered species and the import of toxic and hazardous waste pursuant to the Basel Convention.¹⁵

Intellectual Property

Chile holds the fourth place in patent applications in the region with a share of 5.25%. Chile remained on the Priority Watch List in the 2016 Special 301 USTR Report. Although in 2015 the government increased IP enforcement actions and reduced the rate of unlicensed software use. According to the USTR, Chile still needs to ensure that the effective administrative and judicial procedures, as well as deterrent remedies, are made available to right holders, such as, satellite and cable providers. The government should implement an effective system for addressing patent issues expeditiously in connection with applications to market pharmaceutical products and to provide adequate protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.¹⁶

International Investment

Chile holds the third place in overseas investment as it received 12.25% of all FDI inflows in Latin America. Chile is an active State member of the ICSID Convention, the following chart shows the only ICSID case that remained pending in 2016 with Chile as a respondent. No ICSID cases were filed or concluded in 2016 with Chile as a respondent.

Case Number	Name	Claimants Nationalities	Economic Sector	Instruments invoked	Last update	Status
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¹⁵ https://www.wto.org/english/tratop_e/tpr_e/s315_e.pdf

¹⁶ <https://ustr.gov/sites/default/files/USTR-2016-Special-301-Report.pdf>

ICSID Case No. ARB/98/2	Victor Pey Casado and President Allende Foundation v. Republic of Chile	Victor Pey Casado and President Allende Foundation (Spanish,Chilean)	Information and communication	BIT Chile - Spain 1991	November 8 th 2016 (Rectification Proceeding)	Pending (the proposal for disqualification of arbitrators Franklin Berman and V.V. Veeder is declined by the Chairman of the Administrative Council. The proceeding is resumed pursuant to ICSID Arbitration Rule 9(6) on April 13, 2017)
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Colombia

National Legislation

Trade Barriers

Medium and High Risk Product Certification Requirements

The Colombian Ministry of Commerce, Industry and Tourism issued on August 2015 Decree N.1595. This measure requires that “medium and high risk products” obtain local safety conformity certifications unless a country agrees to recognize Colombia’s safety certifications. To date, Colombia has not formulated the criteria that would determine these risk categories. Additionally, the scope of this measure has not been clarified and other regulations addressing, electrical installations, passenger vehicles and fuel blends have been issued.¹⁷

Energy Drinks

¹⁷ http://www.mincit.gov.co/loader.php?lServicio=Documentos&lFuncion=verPdf&id=76574&name=decreto_1595_de_2015.pdf&prefijo=file

On 2009 the National Food and Drug Surveillance institute issued Resolution 4150 that specified the requirements to be met by energy drinks for human consumption. The resolution also prohibited the sale and commercialization of energy drinks to population under 14 years of age. Subsequent versions of this resolution required a series of warning labels that must cover 10 percent of the container of energy drinks.¹⁸

Intellectual Property

Colombia holds the fifth place in patent application in the region with a share of 3.59% total patent applications. Colombia remained on the Watch List in the 2016 Special 301 USTR Report despite the government’s efforts in amending the copyright law. According to the USTR, new investigations and prosecutions need to be conducted as online piracy in mobile devices continues to grow. In addition, the authorities have not been able to reduce the number of pirated and counterfeited goods that cross the border and are sold at local markets in Bogota.¹⁹

International Investment

Of all FDI inflows in Latin America Colombia received 7.35%, representing the fourth destination for overseas investment in the region. During 2016 three ICSID cases remained “pending” with Colombia as a respondent and there were no concluded ICSID cases.

Case Number	Name	Claimants Nationalities	Economic Sector	Last update	Status
ICSID Case No. ARB/16/41	Eco Oro Minerals Corp. v. Republic of Colombia	Eco Oro Minerals Corp. (Canadian)	Oil, gas and mining	December 29 th 2016	Pending (Tribunal not yet constituted)
ICSID Case No. ARB(AF)/16/5	América Móvil S.A.B. de C.V. v. Republic of Colombia	América Móvil S.A.B. de C.V. (nationality not available)	Information and communication	October 3 rd 2016	Pending (following appointment by the Respondent, Rodrigo Oreamuno (Costa Rican) accepts his appointment as arbitrator.
ICSID Case No. ARB/16/6	Glencore International A.G. and C.I. Prodeco S.A. v. Republic of Colombia	C.I. Prodeco S.A. (Colombian), Glencore International A.G. (Swiss)	Oil, gas and mining	August 4 th 2017	Pending (the Respondent files a request to address the objections to jurisdiction as a preliminary question.)

¹⁸ <https://www.invima.gov.co/images/Resolucion%204150%20de%202009%20Bebidas%20energizantes.pdf>

¹⁹ <https://ustr.gov/sites/default/files/USTR-2016-Special-301-Report.pdf>

Costa Rica

National Legislation

Trade Barriers

Cosmetic and Toiletries Registrations

The Ministry of Health requires a License of Operation or a Good Manufacturing Practices Certificate as a requisite for registration of cosmetics and toiletries entering Costa Rica. In 2016, the Executive Order 39735 outlined the new amendments to this measure that entered into force since 2014.²⁰ As a result of this regulation, the manufacturers have to invest a lot of time finding the right entity that can add the information required by the Costa Rican government. In addition, those unable to obtain the certificate are not allowed to enter the Costa Rican market.²¹

Intellectual Property

Costa Rica remained on the Watch List in the 2016 Special 301 USTR Report despite the government's effort in increasing criminal investigations related to Intellectual Property Rights violations. The USTR advised Costa Rica to impose deterrent penalties where appropriate and to end government use of unlicensed software. Pharmaceutical and agricultural chemical patent holders report various concerns, including extensive delays in regulatory approvals. In order to improve border enforcement, Costa Rica should create a formal customs recordal system for trademarks to allow customs officers to make full use of their ex officio authority to detain and examine goods.²²

International Investment

According to the US State Department, Costa Rica's regulatory environment can pose significant barriers to investment. One common problem is inconsistent action between institutions within the central government or between institutions in the central government and municipal governments. The resulting inefficiency in regulatory decision-making is especially noticeable in infrastructure projects, which can languish for years between the award of a tender and the start of project construction. Construction now underway on a new container terminal at Costa Rica's main Atlantic port, a public-private

²⁰ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=81785&nValor3=104467&strTipM=TC

²¹ <https://www.export.gov/apex/article2?id=Costa-Rica-trade-barriers>

²² <https://ustr.gov/sites/default/files/USTR-2016-Special-301-Report.pdf>

partnership project that is critical to facilitating trade, was delayed by more than 13 months, reportedly costing the investing private company more than \$300 million.²³

There were no concluded or filed ICSID cases during 2016 involving Costa Rica as a respondent. The following list shows the four ICSID cases that remained pending with Costa Rica as a respondent during 2016.

Case Number	Name	Claimants Nationalities	Economic Sector	Last update	Status
ICSID Case No. ARB/14/5	Infinito Gold Ltd. v. Republic of Costa Rica	Infinito Gold Ltd (Canadian)	Oil, gas and mining	January 20 th 2017	Pending (the Tribunal holds a hearing on jurisdiction in New York City)
ICSID Case No. UNCT/15/3	David Aven et al. v. Republic of Costa Rica	Aven, David Richard (U.S.), Aven, Samuel Donald (U.S.), Buscemi, Giacomo Anthony (U.S.), Janney, David Alan (U.S.), Park, Carolyn Jean (U.S.), Park, Eric Allan (U.S.), Raguso, Roger (U.S.), Shiolen, Jeffrey Scott (U.S.)	Real Estate, tourism	February 7 th 2017	Pending (the Tribunal holds a hearing on the merits in Washington, D.C)
ICSID Case No. UNCT/13/2	Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz v. Republic of Costa Rica	Spence International Investments et al. (U.S.)	Oil, gas and mining	February 28 th 2017	Pending (the Tribunal issues a Procedural Order concerning the Claimants' request of January 25, 2017)
ICSID Case No. ARB/13/2	Cervin Investissements S.A. and Rhone Investissements S.A. v. Republic of Costa Rica	Cervin Investissements S.A. (Swiss), Rhone Investissements S.A. (Swiss)	Oil, gas and mining	February 3 rd 2017	Pending (the Tribunal declares the proceeding closed in accordance with ICSID Arbitration Rule 38)

²³ <https://www.state.gov/documents/organization/227145.pdf>

Ecuador

National Legislation

Trade Barriers

Nutritional Labeling on Processed Foods

Executive Decree No. 4522 issued by Ecuador's Ministry of Health requires that all processed and packaged food products include a label with a set of colored bars, which reflect low, medium, or high content of salt, sugar and fat. The measure also requires that products that have less than half of "natural" content display an advisory statement. The decree defines "natural" as a food present in nature that has not been transformed.²⁴ Four countries have raised concerns about this measure at the TBT committee.²⁵

Labeling on Transgenic Products

Decree no. 14413 from the Ecuadorian Ministry of Industries and Productivity requires that products containing genetically engineered ingredients must display on their packages the legend: "CONTAINS TRANSGENICS" if the genetically altered ingredients surpass 0.9% of the product. This measure considers that a "transgenic" is every living organism that has been genetically modified through the addition of exogenous genes to achieve new properties. In addition, the decree requires that ingredients fulfilling these characteristics be followed by the word: "TRANSGENIC" on the product ingredient list.²⁶

Tariffs

Since 2015, Ecuador has been imposing surcharges on 30% of imports due to the highly unfavorable economic climate caused by the decrease in oil prices and the appreciation of the US dollar. The government considered that these measures were necessary to protect the country's balance of payments as they would reduce 11% of non-petroleum imports from Peru and Colombia, countries that also suffered depreciations in their currencies.²⁷

Over the last year Ecuador's economic climate has shown signs of recovery. In 2016 Ecuador issued COMEX Resolution No. 00-2016. This measure implemented the process

²⁴ <http://www.controlsanitario.gob.ec/wp-content/uploads/downloads/2014/08/REGLAMENTO-SANITARIO-DE-ETIQUETADO-DE-ALIMENTOS-PROCESADOS-PARA-EL-CONSUMO-HUMANO-junio-2014.pdf>

²⁵ https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=235072,227682,226942,130491,124089,123036,116035,115114,55943,103099&CurrentCatalogueIdIndex=3&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True

²⁶ <http://www.normalizacion.gob.ec/wp-content/uploads/downloads/2014/08/RTE-022-1R.pdf>

²⁷ <https://www.export.gov/article?id=Ecuador-Import-Tariffs>

and timetable that Ecuador’s government will follow to remove one third of the surcharges by April 2017 and to terminate the surcharges by June 2017.²⁸

Intellectual Property

Ecuador was removed from the Priority Watch List in the 2016 Special 301 USTR Report since in 2015 the government made amendments to the penal code which reinstated some criminal procedures and penalties for commercial scale counterfeiting and piracy. According to the USTR, there has been a weak enforcement of IPR against the spread of piracy and counterfeiting and companies face high fees for patent registration and maintenance.²⁹ The pharmaceutical and agricultural chemical industries are limited due to the lack of protection against unfair commercial use. Presidential Decree 522, which entered into force on January 2016, requires that when a pharmaceutical product invention patent expires, it must be registered and commercialized as a generic. In addition, the measure prohibits generics to be exclusively commercialized with a specific brand.³⁰

International Investment

Ecuador withdrew from the ICSID convention on January 2010, the government also requested the Congress’ approval to terminate 13 bilateral investment treaties, arguing unconstitutionality. No ICSID cases with Ecuador as a respondent concluded on 2016, but two cases remained pending.

Case Number	Name	Claimants Nationalities	Economic Sector	Instruments invoked	Last update	Status
ICSID Case No. ARB/08/6	Perenco Ecuador Limited v. Republic of Ecuador	Perenco Ecuador Limited (Bahamian)	Oil, Gas and Mining	BIT France - Ecuador 1994	November 5 th 2016	Pending (the Tribunal and the parties and expert visit the place connected with the dispute pursuant to ICSID Arbitration Rule 37(1))

²⁸ https://www.wto.org/english/news_e/news17_e/bop_24apr17_e.htm

²⁹ <https://ustr.gov/sites/default/files/USTR-2016-Special-301-Report.pdf>

³⁰ http://www.controlsanitario.gob.ec/wp-content/uploads/downloads/2015/01/decreto_522_medicamentos_gen%C3%A9ricos.pdf

ICSID Case No. ARB/08/5	Burlington Resources, Inc. v. Republic of Ecuador	Burlington Resources Andean Limited (British), Burlington Resources Ecuador Limited (British), Burlington Resources Oriente Limited (British), Burlington Resources, Inc. (U.S.)	Oil, Gas and Mining	BIT Ecuador - United States of America	February 14 th 2017	Pending (<i>Ad hoc</i> Committee not yet constituted)
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On December 2015 Ecuador’s National Assembly issued the Organic Law on Incentives for Public-Private Partnerships and Foreign Investment. This measure aims to attract foreign investment in specific sectors, such as, construction, rehabilitation of public works, hydroelectric and alternative energy sectors. In article XIX the law allows investment disputes to be taken to national or international arbitration within the Latin-American region.³¹

Guatemala

National Legislation

Trade Barriers

Between 2009 and April 2016, Guatemala made 35 notifications to the WTO Committee on Technical Barriers to Trade, most of which concerned draft regulations prepared by the Ministries of the Economy, Agriculture and Public Health.³²

Import License for Plastic, Rubber, and Electrical Equipment

Decree-Law No. 68-86, Law on the Protection and Improvement of the Environment, requires that electrical equipment, rubber and plastic imports must obtain a new license to ensure that the products do not pose a threat to the environment. The decree was issued on July 12, 2016 and grants a two-year period to comply. The import licenses will be issued by a governmental agency that will determine the level of threat to the environment of the imported goods.³³

³¹ <http://www.asambleanacional.gob.ec/sites/default/files/private/asambleanacional/files/asambleanacionalnameuid-29/Leyes%202013-2017/154-ley-aso-publi-privadas/RO-ley-aso-pub-pri-RO-652-sup-18-12-2015.pdf>

³² https://www.wto.org/english/tratop_e/tpr_e/s348_e.pdf

³³ http://cta-consultoria.com/wp-content/uploads/2013/11/AG-137-2016_Reglamento-de-Evaluacion-Control-y-Seguimiento-Ambiental.pdf

Subsidies

Prior to March 2016, Guatemala had three export subsidy programs: special customs regimes (maquila); free zones; and the industrial and trade free zone (ZOLIC). The three regimes allowed exemption from payment of tariffs and other import duties (including VAT) for imports of machinery, equipment, parts, components and accessories needed for the production process.³⁴

Intellectual Property

During the review period for the 2016 WTO Trade Policy Review, Guatemala made efforts to strengthen Intellectual Property Rights protection. Since 2013, the Congress amended the Industrial Property Law to ensure special forms of protection for geographical indications and appellations of origin. In addition, Decree of the Congress of the Republic No. 7-2016 of 28 January 2016 acceded to and ratified the Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities.³⁵

Guatemala remained on the Watch List in the 2016 Special 301 USTR Report due to the limited enforcement to protect Intellectual Property Rights. According to the USTR, pirated and counterfeit goods continue to be widely available and the country has reportedly become a source of counterfeit pharmaceutical products. Other areas of concern include the government use of unlicensed software and the lack of coordination among law enforcement agencies. Guatemala did not notify any new IPR legislation during its last review period for the Trade Policy Review.³⁶

International Investment

Guatemala is an active ICSID member. It is also party to the Convention on the Recognition and Enforcement of Foreign Judgments (New York Convention). During 2016 no ICSID cases concluded or were filed with Guatemala as a respondent. The following chart shows the only ICSID case that remained pending with Guatemala as a respondent during 2016.

Case Number	Name	Claimants Nationalities	Economic Sector	Instruments invoked	Last update	Status
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³⁴ https://www.wto.org/english/tratop_e/tpr_e/s348_e.pdf

³⁵ https://www.wto.org/english/tratop_e/tpr_e/s348_e.pdf

³⁶ <https://ustr.gov/sites/default/files/USTR-2016-Special-301-Report.pdf>

<u>ICSID Case No.</u> <u>ARB/10/23</u>	TECO Guatemala Holdings, LLC v. Republic of Guatemala	TECO Guatemala Holdings, LLC (U.S.)	Electric Power and other Energy	CAFTA-DR (Dominican Republic-Central America Free Trade Agreement)	April 5 th 2016	Decision on annulment issued by the <i>ad hoc</i> Committee
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Mexico

National Legislation

Trade Barriers

Technical regulations in Mexico are issued as Mexican Official Standards (NOMs). The issues regulated by NOMs during 2016 concerned biotechnology medicines, design construction, safety, operation and maintenance of systems for storing liquefied petroleum gas and pollution emission levels for motor vehicles.³⁷

Mercury Limits and Labelling of Batteries

NOM-212-SCFI-2016 issued by the Mexican Ministry of Economy requires that all batteries sold in the country must undergo testing for mercury content. The decree bans batteries containing more than 0.0005% of mercury or other “dangerous substances”. It also requires new label specifications to be displayed on the batteries’ body.³⁸

Taxes

Taxes on Products Harmful to Health

The Mexican senate approved in 2016 a reform to the Law of the Special Tax on Production and Services. This measure raised the existing 5% tax to an 8% tax on high-calorie products which include sweets and candies, chocolate and other cacao derived products, desserts and puddings, high sodium snacks, among others. The government expects to reduce obesity and cardiovascular diseases with this measure. Since 2013 Mexico imposed a sugar tax on soda and other sugary drinks to prevent health issues on its population.³⁹

³⁷ https://www.wto.org/english/tratop_e/tpr_e/s352_e.pdf

³⁸ <http://www.economia-noms.gob.mx/normas/noms/2010/p212scfi2016.pdf>

³⁹ http://www.diputados.gob.mx/LeyesBiblio/pdf/78_271216.pdf

Intellectual Property

Mexico is party to 22 treaties of the World Intellectual Property Organization (WIPO) and in 2015 ratified the Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Person with Print Disabilities, which came into force on 30 September 2016.⁴⁰ During 2016 Mexico occupied the second place in patent registration in the region with a share of 28.96%.

Mexico remained on the Watch List in the 2016 Special 301 USTR Report despite positive developments in 2015, like the creation of the Digital IP Crime Unit by the Specialized IP Unit of the Attorney General’s Office to investigate and prosecute internet crimes. Concerns remain with respect to pirated and counterfeit goods in local markets.⁴¹

In 2015 PROFECO and the Mexican Institute for Industrial Property (IMPI) signed an agreement to prevent the registration of trademarks and products that mislead consumers using ambiguous expressions as “the best”. This measure entered into force in 2016.⁴²

International Investment

Mexico received 18.39% of all FDI inflows in Latin America, representing the second destination for foreign investment in the region. The main FDI-recipient sectors are the manufacturing industries, which absorbed an average of 54.4% of all FDI flows, followed by mining (8.5%) and commerce (7.7%).

No ICSID cases with Mexico as a respondent concluded in 2016. Nevertheless, during last year three ICSID cases remained pending.

Case Number	Name	Claimants Nationalities	Economic Sector	Instruments invoked	Last update	Status
ICSID Case No. ARB(AF)/16/3	B-Mex, LLC and others v. United Mexican States	B-Mex, LLC (U.S.), David Figueiredo (U.S.), Deana Anthone (U.S.), Douglas Black et al.	Gaming Industry	NAFTA (North American Free Trade Agreement)	August 11 th 2016	Pending (Tribunal recently constituted)

⁴⁰ http://www.wipo.int/treaties/en/ShowResults.jsp?country_id=123C.

⁴¹ <https://ustr.gov/sites/default/files/USTR-2016-Special-301-Report.pdf>

⁴² <http://www.profeco.gob.mx/prensa/prensa15/marzo15/bol0011.asp>

ICSID Case No. ARB(AF)/15/2	Lion Mexico Consolidated L.P. v. United Mexican States	Lion Mexico Consolidated L.P. (Canadian)	Construction	NAFTA (North American Free Trade Agreement)	July 27 th 2016	Pending (the Tribunal issues a decision on the Respondent's preliminary objection)
ICSID Case No. ARB(AF)/12/4	Telefónica S.A. v. United Mexican States	Telefónica S.A. (Spanish)	Telecommunication services	BIT Spain - Mexico 2006	September 19 th 2016	Pending (the proceeding is suspended until March 16, 2017, pursuant to the parties' agreement)

Since 2013 Mexico initiated a series of structural reforms that required amendments in the Constitution. The most relevant sectors for FDI that underwent significant changes were telecommunications, financial services and energy.⁴³

In the energy sector the reform seeks to encourage foreign investment and to restructure the country's fiscal policy, as in the past decades Mexico depended on the revenue of the state-owned oil enterprise (PEMEX). Basic petrochemicals and electricity generation and sale are no longer reserved exclusively to the State. Foreign investors may now participate in marketing of gasoline and distribution of liquefied petroleum gas, except for the drilling of oil and gas wells and the construction of pipelines to transport oil and its derivatives.⁴⁴

Previously to the reform a 49% ceiling on FDI in the telecommunications and broadcasting sector was in force. The access to this sector for foreigners can now be as much as 100% in fixed telephony and satellite communications. The legal framework that underwent the reform on this sector is the Federal Telecommunications and Broadcasting Law and the Mexican Public Broadcasting System Law.⁴⁵

Panama

National Legislation

Reform to National Food Safety Authority

⁴³ [http://reformas.gob.mx/wpcontent/uploads/2014/04/Explicacion ampliada de la Reorma Energetica1.pdf](http://reformas.gob.mx/wpcontent/uploads/2014/04/Explicacion_ampliada_de_la_Reorma_Energetica1.pdf)

⁴⁴ https://www.wto.org/english/tratop_e/tpr_e/s352_e.pdf

⁴⁵ http://www.dof.gob.mx/nota_detalle.php?codigo=5352323&fecha=14/07/2014

The Panamanian Congress approved in 2015 Bill 188 which reformed several articles regulating AUPSA, the Panamanian Food Safety Authority. The new bill posed some restrictions to agricultural and food imports since it raised the standards of sanitary and phytosanitary measures. Concerns were raised that this measure would constitute a violation to international trade treaties and the President partially vetoed the bill.⁴⁶

In April 2017, the measure was passed again by the Congress due to the pressure of local producers that will benefit from this measure.

Certificate of Chemical Analysis

Resolution N° 209 issued by Panama's National Customs Authority requires that "dangerous, sterile and radioactive" imports must obtain a Certificate of Chemical Analysis performed by a national laboratory. This measure entered into force on May 2016.⁴⁷

Ban on Imported Agricultural Products

On July 16, 2015, Panama's Ministry of Agricultural Development issued Resolution N° OAL- 135-DM-2015 to ban the entry or movement of imported potatoes and onions for human consumption into areas, sites and locations of domestic production of potatoes and onions in Panama. In the preamble of this measure, the Ministry argued that the prohibition's aim was to stop the spread of plagues entering the country to protect the local crops.⁴⁸

Intellectual Property

In accordance to a Trade Promotion Agreement signed in 2012 with the United States, the Panamanian government made some efforts in procuring the protection of Intellectual Property Rights. Panama's legal framework includes protection for trademarks, patents and digital copyrighted products. Nevertheless, in the 2016 Special 301 USTR Report, concerns have been raised about governmental use of unlicensed software. The Panamanian government was urged to legitimize its own activities in order to set an example of respecting IPR for private enterprises.⁴⁹

International Investment

⁴⁶ http://www.asamblea.gob.pa/proyley/2015_P_188.pdf

⁴⁷ https://www.ana.gob.pa/images/PDF/resoluciones/RESOLUCION_GENERALES/2016/resolucion_07142016_0220pm.pdf

⁴⁸ https://www.gacetaoficial.gob.pa/pdfTemp/27828_A/GacetaNo_27828a_20150721.pdf

⁴⁹ <https://ustr.gov/sites/default/files/USTR-2016-Special-301-Report.pdf>

Panama received 3.06% of all FDI inflows in Latin America, representing the seventh destination for foreign investment in the region. The following list shows all the concluded and pending ICSID cases with Panama as a respondent during 2016.

Case Number	Name	Claimants Nationalities	Economic Sector	Instruments invoked	Last update	Status
ICSID Case No. ARB/13/28	Transglobal Green Energy, LLC and Transglobal Green Panama	Transglobal Green Energy de Panama, S.A. (Panamanian), Transglobal Green Energy, LLC (U.S.)	Electric Power and Other Energy	BIT United States of America - Panama 1982	June 2 nd 2016	Award rendered by the Tribunal
ICSID Case No. ARB/16/42	Omega Engineering LLC and Mr. Oscar Rivera v. Republic of Panama	Mr. Oscar Rivera (U.S.), Omega Engineering LLC (U.S.)	Construction	BIT United States of America - Panama 1982	December 30th 2016	Pending (Tribunal recently constituted)
ICSID Case No. ARB/16/34	Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama	Bridgestone Americas, Inc. (U.S.), Bridgestone Licensing Services, Inc. (U.S.)	Tire and rubber products enterprise	TPA United States of America - Panama 2007	October 28th 2016	Pending (Tribunal recently constituted)
ICSID Case No. ARB/16/13	Dominion Minerals Corp. v. Republic of Panama	Dominion Minerals Corp. (U.S.)	Mining concession	BIT United States of America - Panama 1982	August 26th 2016	Pending (following appointment by the Respondent, Alexis Mourre (French) accepts his appointment as arbitrator)

Peru

National Legislation

Trade Barriers

Labeling of Unhealthy Products

In 2013, the Peruvian Congress issued the “Act to Promote Healthy Eating among Children and Teenagers”. This measure requires that products that surpass the established thresholds of saturated fat, sugar and sodium must display a warning statement on its label. These types of products must contain the legend: “High in (fat/sugar/sodium), avoid excessive consumption”. It also requires that products containing any type of trans fats must display the legend: “Contains trans fats, avoid its consumption”. The measure also establishes certain restrictions to the advertising of the products mentioned before, especially if the ads are targeted to children and teenagers.⁵⁰

Labelling of Genetically Altered Products

Article 37 of the Peruvian Consumer Defense Code requires that all products containing genetically engineered components must display on its labels the legend: “Contains Genetically Altered Ingredients”.⁵¹

Intellectual Property

Despite the Peruvian government efforts in promoting Intellectual Property Rights and raise public awareness, the country remained on the Watch List in the 2016 Special 301 USTR Report due to the persistence of pirated and counterfeited goods. According to the USTR, online piracy is a growing problem, especially with respect to music, software, and video content. Peru is a major source of unauthorized “camcorded” movies and administrators of notorious Spanish-language websites are based in the country. The Peruvian government needs to devote additional resources for IPR enforcement, improve coordination among enforcement agencies, enhance its border controls, train its law enforcement officials, prosecutors and judges in Intellectual Property Rights protection.⁵²

International Investment

During the last year Peru was the sixth most common destination for foreign investment in Latin-America, it received the 4.17% from all foreign investment in the region. The following chart shows the ICSID cases concluded and pending on 2016 with Peru as a respondent.

Case Number	Name	Claimants Nationalities	Economic Sector	Instruments invoked	Last update	Status
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⁵⁰ <http://www.leyes.congreso.gob.pe/Documentos/Leyes/30021.pdf>

⁵¹ <https://www.indecopi.gob.pe/documents/20195/177451/CodigoDProteccionyDefensaDelConsumidor%5B1%5D.pdf/934ea9ef-fcc9-48b8-9679-3e8e2493354e>

⁵² <https://ustr.gov/sites/default/files/USTR-2016-Special-301-Report.pdf> z

ICSID Case No. UNCT/13/1	The Renco Group, Inc. v. Republic of Peru	The Renco Group, Inc. (U.S.)	Oil, Gas and Mining	FTA Peru – United States of America 2006	November 9 th 2016	Final award rendered by the Tribunal
ICSID Case No. ARB/11/21	DP World Callao S.R.L., P&O Dover (Holding) Limited, and The Peninsular and Oriental Steam Navigation Company v. Republic of Peru	DP World Callao S.R.L. (Peruvian), P&O Dover (Holding) Limited (British), The Peninsular and Oriental Steam Navigation Company (British)	Transportation	BIT Peru - United Kingdom of Great Britain and Northern Ireland	October 5th 2016	Pending (the Tribunal issues Procedural Order No. 8 concerning procedural matters)