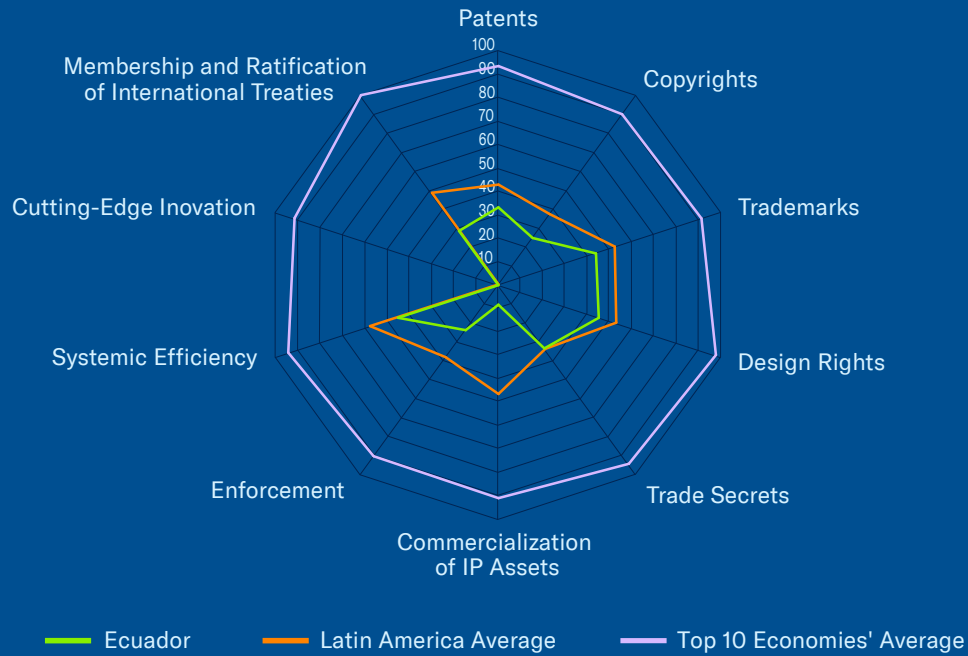


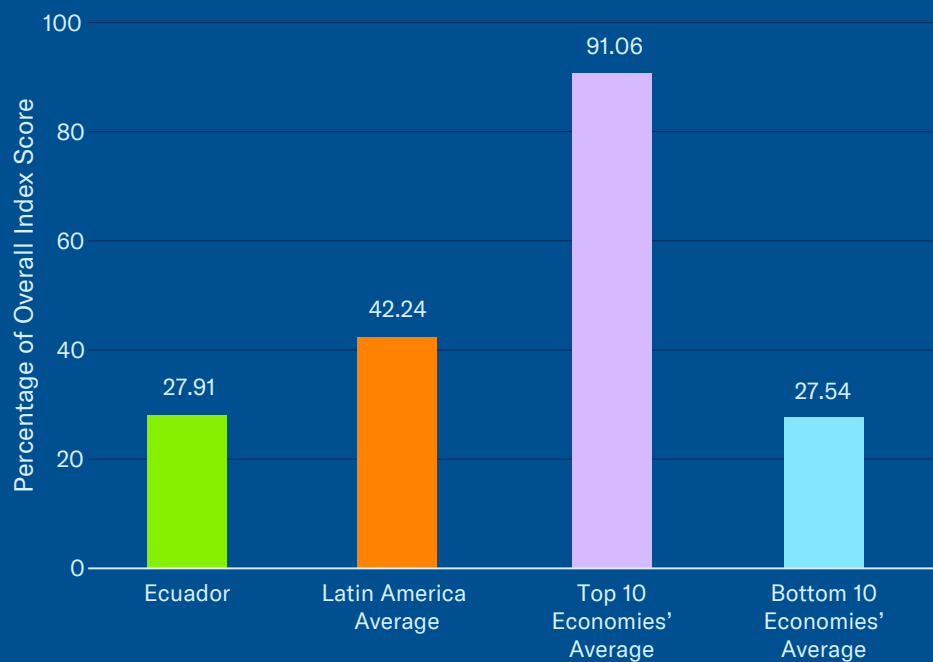
# Ecuador

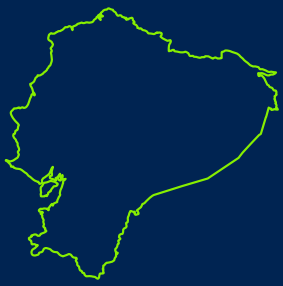
Rank  
51/55

## Category Scores



## Overall Score in Comparison





## Key Areas of Strength

- Strengthened support for SMEs through WIPO-WEF “Inventor Assistance Program”
- National IP authority SENADI ordered local ISPs to disable access to several websites hosting infringing and unlicensed content
- Five-year term of RDP defined in law *Código Ingenios*
- Limited re-criminalization of IP rights through 2016 criminal law amendments
- Member of PPH

## Key Areas of Weakness

- No special IP incentives for orphan medicinal product development
- Implementing regulations potentially undermine *Código Ingenios* RDP term of protection
- Plant variety protection term is shorter than internationally accepted term
- Substantial barriers are in place for licensing activities, including direct government intervention and review of technology transfer and licensing agreements
- Key life sciences IP rights are missing, including patent term restoration and mechanisms for early patent dispute resolution
- *Código Ingenios* imposes additional limits on patentability and amount of nonpatentable subject matter
- Persistently high levels of piracy; estimated 68% software piracy rate
- Ecuador has a low score for its participation in and ratification of international treaties

Indicator	Score	Indicator	Score
<b>Category 1: Patents Rights and Limitations</b>		<b>Category 7: Enforcement</b>	
1. Term of protection	1.00	29. Direct government intervention in setting licensing terms	0.00
2. Patentability requirements	0.50	30. IP as an economic asset	0.25
3. Patentability of CILs	0.00	31. Tax incentives for the creation of IP assets	0.00
4. Plant variety protection	0.74	<b>Category 8: Systemic Efficiency</b>	
5. Pharmaceutical-related enforcement	0.00	32. Physical counterfeiting rates	0.34
6. Legislative criteria and use of compulsory licensing	0.00	33. Software piracy rates	0.32
7. Pharmaceutical patent term restoration	0.00	34. Civil and precedural remedies	0.25
8. Membership of a Patent Prosecution Highway	0.50	35. Pre-established damages	0.25
9. Patent opposition	0.25	36. Criminal standards	0.25
<b>Category 2: Copyrights and Limitations</b>		37. Effective border measures	0.00
10. Term of protection	0.74	38. Transparency and public reporting by customs	0.25
11. Exclusive rights	0.25	<b>Category 9: Cutting-Edge Innovation</b>	
12. Expeditious legal remedies disabling access to infringing content online	0.25	39. Coordination of IP rights enforcement	0.25
13. Cooperative action against online piracy	0.00	40. Consultation with stakeholders during IP policy formation	0.25
14. Limitations and exceptions	0.25	41. Educational campaigns and awareness raising	0.75
15. TPM and DRM	0.25	42. Targeted incentives for the creation and use of IP assets for SMEs	0.75
16. Government use of licensed software	0.00	43. IP-intensive industries, national economic impact analysis	0.25
<b>Category 3: Trademarks Rights and Limitations</b>		<b>Category 10: Membership and Ratification of International Treaties</b>	
17. Term of protection	1.00	44. IP incentives for orphan medicinal product development	0.00
18. Protection of well-known marks	0.25	45. IP incentives for orphan medicinal product development, term of protection	0.00
19. Exclusive rights, trademarks	0.25	46. Restrictions on the effective use of existing IP incentives for orphan medicinal product development	0.00
20. Frameworks against online sale of counterfeit goods	0.25	<b>Category 6: Commercialization of IP Assets</b>	
<b>Category 4: Design Rights and Limitations</b>		26. Barriers to market access	0.00
21. Industrial design term of protection	0.40	27. Barriers to technology transfer	0.25
22. Exclusive rights, industrial design rights	0.50	28. Registration and disclosure requirements of licensing deals	0.00
<b>Category 5: Trade Secrets and the Protection of Confidential Information</b>		<b>Percentage of Overall Score: 27.91%</b>	
23. Protection of trade secrets (civil remedies)	0.25	<b>Total Score: 14.79</b>	
24. Protection of trade secrets (criminal sanctions)	0.25		
25. Regulatory data protection term	0.50		

# Spotlight on the National IP Environment

## Past Editions versus Current Score

Ecuador's overall score remains unchanged at 14.79 out of 53 indicators.

## Enforcement; and Membership and Ratification of International Treaties

*37. Effective border measures; and 50. At least one post-TRIPS FTA with substantive IP provisions and chapters in line with international best practices:*

As noted in last year's edition, before 2016 and the enactment of the *Código Ingenios*, Ecuadorian border officials not only had the power to seize suspected IP-infringing goods but were legally obliged and compelled to do so with failure to act constituting a potential offense. Article 342 of the Intellectual Property Law, 2006\_13, stated that "The Ecuadorian Customs Corporation and all those that have control over the entry or exit of goods into or from Ecuador shall be obliged to prevent the entry or export of goods that in any way infringe intellectual property rights. Where, at the request of an interested party, they do not prevent the entry or export of such goods, they shall be considered accessories to the offense committed, without prejudice to the relevant administrative penalty." This right to act was granted through both a rightsholder notification process and through *ex officio* powers.

Article 575 of the *Código Ingenios*, as well as Articles 458 to 465 of the 2020 Implementing Regulations, removed this right of action from customs officials and instead transferred both the notification process and *ex officio* authority to the national IP office SENADI. National customs officers are the first line of defense against the menace of counterfeit goods. It is essential that they can act expeditiously and effectively against suspected IP-infringing goods.

As Ecuadorian customs and border officials continue to lack this power of action, the score for this indicator was reduced in last year's edition to 0.

In 2023, Ecuador concluded a new Trade Association Agreement (*Acuerdo de Asociación Comercial*) with Costa Rica. This agreement was ratified by both economies and came into effect in 2024. Chapter 16 of this agreement is dedicated to IP rights. This is a positive feature of the agreement, and both parties should be congratulated for recognizing the importance of IP-intensive industries and the centrality of IP rights to future trade and economic development in all economies. As has been noted in the Index, this is not always the case. Many 21st-century post-TRIPS FTAs do not include a dedicated IP chapter or skirt meaningful provisions on IP rights altogether. Unfortunately, the agreement does not conform to the standards of a modern post-TRIPS FTA because the IP chapters do not include substantive IP provisions in line with international best practices and identified in the Index. Indeed, much of the IP chapter is linked to rights defined and specified in TRIPS. When signed in 1994, the TRIPS Agreement represented an unprecedented commitment and recognition of minimum global IP standards. But 30 years after Marrakesh, TRIPS is outdated and no longer represents or includes all the standards and protections that a modern, innovation-based economy needs.

In terms of specific features and IP rights missing from the agreement, there is no reference to patent protection or related rights; copyright provisions are relatively limited with no reference to the challenges that the online environment or infringement represents to rightsholders; and there is no or limited reference to sector-specific provisions, including biopharmaceutical IP rights such as RDP and patent term restoration.

On a positive note, the agreement includes a clear and unambiguous requirement that border officials in all contracting parties have the right to take *ex officio* action against suspected infringing goods, including against goods in transit, destined for export, and not intended for the domestic market. Specifically, Article 16.12(6) states, “Each Party shall provide that the competent authorities are empowered to initiate border measures *ex officio*, without the need for a formal request from the right holder or a third party, when there are reasons to believe or suspect that the goods being imported, exported or in transit are counterfeit or pirated.” Should Ecuador fully transpose and implement this requirement, its score for this indicator would increase. The Index will monitor this in 2025.

## Incentives for Cutting-Edge Innovation

*44. Special market exclusivity incentives for orphan medicinal product development; 45. Special market exclusivity incentives for orphan medicinal product development, term of protection; and 46. Restrictions on the effective use of existing market exclusivity incentives for orphan medicinal product development:*

The national health law (Ley 67 *Organica de Salud*) includes five separate articles dedicated to defining the rights of patients with rare diseases and accompanying obligations on behalf of the government and relevant national authorities. Specifically, the law outlines an obligation on the part of the Ministry of Health and related health service authorities to provide for medical treatment, access to medicines, the creation of a national registry, the timely supply and distribution of relevant treatments, and incentives for R&D. The law does not include any reference to or definition of any special IP-based market exclusivity incentives for orphan medicinal product development.