The Honourable Maninder Sidhu, P.C., M.P.
Minister of International Trade
Global Affairs Canada
125 Sussex Drive
Ottawa, Ontario K1A 0G2
Canada

16 November 2026

Dear Honourable Minister Sidhu,

We write to you regarding the **Canada–Ecuador Free Trade Agreement** signed in Ottawa on 24 July 2026, and specifically the investor-State arbitration provisions in Chapter 15. We respectfully urge Canada not to proceed to implementing legislation or ratification while those provisions remain in the agreement.

We are not opposed to Canadian investment in Ecuador or to closer economic relations between our two countries. We write because we believe this agreement, as currently structured, places that relationship at risk. An investment chapter that rests on contested constitutional foundations offers Canadian-registered corporations far less certainty than it appears to, and exposes Ecuador to obligations its Constitution does not permit, a prohibition that Ecuadorian voters have upheld in three separate referendums.

I. The constitutional defect, and why footnote 12 does not cure it

Article 422 of Ecuador's 2008 Constitution[i] prohibits the State from concluding treaties that cede sovereign jurisdiction to international arbitration over disputes of a contractual or commercial nature with private individuals or corporations. Treaties of this kind are subject to prior constitutional review by Ecuador's Constitutional Court before ratification, and this agreement will be no exception.

On 28 July 2023,[ii] that Court held the investor-State arbitration provisions of the Costa Rica–Ecuador agreement incompatible with Article 422.[iii] On 30 March 2026,[iv] the Court departed from that precedent and conditionally approved the Ecuador–United Arab Emirates (UAE) investment treaty, subject to amendment of its text to expressly exclude disputes of a "contractual or commercial nature."

Chapter 15 of the Canada–Ecuador Free Trade Agreement (FTA) contains that exclusion, at footnote 12 to Article 15.23.1, although it is narrower than the one the Court required: it excludes only contractual or commercial disputes "not governed by this Chapter." Article 15.1 defines the forms an investment may take to include "a turnkey, construction, management, production, concession, revenue-sharing or other similar contract." The chapter therefore protects contractual rights as investments while purporting to exclude contractual disputes from arbitration. Either the exclusion is read narrowly, in which case it removes nothing of consequence and the constitutional objection is unanswered; or it is read according to its terms, in which case it withdraws protection from a substantial class of the investments Chapter 15 was written to protect. Canadian investors are entitled to know which.

The same difficulty arises, more sharply, with the word "commercial." Article 422 prohibits the cession of jurisdiction in disputes "of a contractual or commercial nature," and footnote 12 purports to exclude both. Yet Article 15.36.6 of the same chapter provides that "[a] claim submitted to arbitration under Article 15.23 shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention."

Canada has declared[v] under Article I(3) of the New York Convention that it will apply the Convention "only to differences arising out of legal relationships, whether contractual or not, which are

considered as commercial under the laws of Canada," except in the Province of Quebec. Thus, an award rendered under Chapter 15 is enforceable in most of Canada only if the dispute from which it arises is commercial. Article 15.36.6 is there to put that beyond doubt.

Canadian law already treats such claims that way. The Commercial Arbitration Act[vi] provides, "for greater certainty," that claims under the investor-State provisions of NAFTA, CUSMA and Canada's agreements with Chile, Peru, Colombia, Panama, Honduras, Korea, the CPTPP and Ukraine are "commercial arbitration," and Parliament has extended the list as it has implemented further agreements. On that practice, the implementing legislation for this agreement would do the same.

Chapter 15 thus characterizes every claim brought under it as commercial when the question is enforcement of an award in Canada, and as not commercial when the question is compatibility with Ecuador's Constitution. These are statements about the same disputes, in the same instrument, thirteen articles apart. We do not think both can be sustained, and the question of which one governs would fall to be decided by the arbitrators themselves (Article 15.28).

II. The design of the arbitration mechanism

The second paragraph of Article 422 of Ecuador's Constitution admits a narrow exception. It permits treaties that include mechanisms to settle disputes "between States and citizens in Latin America" before one of two kinds of forum—regional arbitral bodies, or "jurisdictional organs designated by the signatory countries"—and it bars judges of a State that is party to the dispute, or whose nationals are party to it, from sitting. Ecuadorian commentary[vii] has read the second of those fora as ad hoc arbitration, distinct from arbitration administered by an established institution.

Chapter 15 appears to have been built to that specification. Unlike Canada's recent treaty practice, including the Canada–UAE FIPA[viii] signed in November 2025, eight months before the FTA, it does not name the ICSID Convention, the ICSID Additional Facility, or the UNCITRAL Arbitration Rules. It instead creates a bespoke procedure in Annex 15-B (Article 15.23.6), with a tribunal constituted by the disputing parties (Article 15.26.1) and a bar on nationals of either Party sitting as arbitrators (Article 15.26.2), a restriction at least as strict as the one the second paragraph of Article 422 imposes. Two footnotes go further, stating expressly that neither the appointing authority nor the seat of arbitration entails adopting any dispute settlement mechanism beyond the one in the Chapter (footnotes 1 and 13)—clarifications an ordinary investment chapter would not need.

If the intention was to bring Chapter 15 within the exception, it cannot succeed. In a unanimous ruling of January 2024, the Constitutional Court described[ix] the exception as covering "regional arbitral bodies or jurisdictional organs designated by the signatory countries, for the settlement of disputes between States and citizens in Latin America" (para 94). Canada is not a Latin American State and Canadian investors are not Latin American citizens. The chapter appears to satisfy every element of the exception except the one that determines whether the exception is available at all.

If the intention was instead to give Latin American investors who hold their Ecuadorian assets through a Canadian company a treaty remedy against Ecuador that they could not obtain in their own name, the chapter achieves it. A Canadian company qualifies as an investor of Canada by virtue of its business activities there, whoever owns it (Article 15.1), and the denial-of-benefits clause (Article 15.16) applies only to investors subject to sanctions. The Ecuadorian conglomerate Nobis Group,[x] for example, held shares in Adventus Mining, a Canadian company whose principal asset was a mine in Ecuador. On this reading, Canada is offering itself as the gateway through which investors of any nationality in Latin America can obtain treaty arbitration against Ecuador.

If neither of these was the intention, Chapter 15 has set aside the established arbitral institutions, together with the administrative support they provide and, in the case of ICSID, the annulment mechanism, for no stated reason. We would welcome an explanation of why Chapter 15 departs from Canada's established practice in this way.

III. Canada identified this problem at the outset

In negotiating objectives tabled in the House of Commons[xi] in March 2024, Canada recorded "ongoing consideration in Ecuador of the legal compatibility between investment agreements and its domestic legal framework" and noted that investment and services provisions "may be set aside, in part or entirely, from an agreement if necessary during the negotiation process."

Canada identified both the difficulty and the remedy. The remedy remains available today. Setting Chapter 15's dispute settlement sections aside would leave the agreement's market access and tariff outcomes entirely intact. Ecuador's other partners have done exactly that. Its trade agreements with the European Union,[xii] the European Free Trade Association,[xiii] the United Kingdom,[xiv] and China[xv] contain no investor-State arbitration, and neither does the Agreement on Reciprocal Trade signed with the United States[xvi] on 13 March 2026 or the Sustainable Investment Facilitation Agreement concluded with the European Union[xvii] in September 2026. Among Ecuador's trade agreements, Canada's is the one that retains it.

IV. The democratic record

Ecuadorians have been asked directly whether to permit what Chapter 15 contains. In January and February 2024, Ecuador's Constitutional Court approved for the ballot a question on amending Article 422 to allow international arbitration in treaties, a decision that itself proceeded on the understanding that Article 422, as written, forbids such arbitration. The President's own petition[xviii] to the Court stated that Article 422 prevents Ecuador from submitting disputes with investors to international arbitration and that investment treaties had been declared unconstitutional on that ground (p 43). On 21 April 2024, about 65%[xix] voted No. In November 2025, more than 61% rejected the constituent assembly that offered the remaining route to amending Article 422.

Formal negotiations with Canada opened within days of the first vote, and the agreement was signed after the second. We do not question Canada's good faith. We raise the sequence because a treaty obligation that two national votes have declined to authorize is not a sound foundation for a long-term economic relationship between our countries.

V. The circumstances of the March 2026 ruling

The March 2026 ruling[xx] was issued by seven votes to two, in the course of a sustained campaign against the Court by the executive. A September 2026 report[xxi] by the Rule of Law Lab at New York University School of Law documents that campaign in detail. The President personally led a march[xxii] against the Court; the justices' images were displayed on mobile billboards; six justices were placed under audit by the Comptroller General, and two of them are now the subject of a preliminary criminal inquiry. The Court itself has publicly reported operating under "sustained institutional pressures," and the UN Special Rapporteur on the independence of judges and lawyers has warned[xxiii] that judicial independence in Ecuador is at risk.

The ruling on which Chapter 15 now depends was delivered in that setting, and the circumstances surrounding it are instructive. In March 2026, while the case was pending, the President's then Legal Secretary, Enrique Herrería Bonnet, who as a judge of the Court had written the 2023 ruling, publicly described[xxiv] a telephone call from a Court official. The official, he said, had been asked by the justices to tell him that if he continued to criticize the Court in the media, he should bear in mind that it had yet to rule. His reply, as he recounted it,[xxv] was that if the justices wanted him to stop, they should assure him that they would "issue an approving ruling, including on international arbitration for the Emirates." Whatever the truth of that account, the Court's decision on the arbitration clause was, on the public account of the President's own Legal Secretary, the subject of an exchange between the executive and the Court about its outcome while the case was pending. The Prosecutor General has opened preliminary criminal inquiries[xxvi] into Mr. Herrería and into the judge who authored the ruling.

On 2 April 2026, three days after the ruling, the Prosecutor General opened a preliminary criminal inquiry into two sitting justices,[xxvii] one of whom had dissented from the March 2026 ruling. Another justice resigned[xxviii] six days later. We draw no conclusion about the conduct of any individual judge. We observe only that the constitutional pathway on which Chapter 15 depends now rests on a ruling delivered under these conditions.

VI. Why Chapter 15 is unlikely to endure

That ruling reinterprets Article 422; it does not amend it. The text remains in force unchanged. When the Court approved the April 2024 referendum question, it proceeded on the basis that treaty-based international arbitration lay beyond what Article 422 permits, and Ecuadorians then declined to change the article. A constitutional position that one Court has reversed, another can restore. The Court's membership has already changed since 2023, the dissent in 2026 is on the record, and a successor government answerable to the same electorate may be expected to return to the question.

Two routes lead to the same place. Should a future Ecuadorian government withdraw from this agreement, the chapter's obligations would come to an end. Should the Court revisit the question, Ecuador would face a direct conflict between its Constitution and the treaty, which its government could resolve only by renegotiating the chapter or withdrawing from the agreement. On either route, Canada would have spent years negotiating, and Parliament would have spent its time enacting, a chapter whose practical life may be no longer than the political life of a single administration in Quito.

This bears on whether the investment chapter is worth the cost of proceeding. The tariff and market access outcomes of this agreement are not in constitutional doubt. The dispute settlement provisions in Chapter 15 are, and they are the only part of the agreement that Ecuadorian voters have been asked to approve. They declined.

Nor has Canadian investment depended on treaty protection. Ecuador terminated the 1996 Canada–Ecuador investment protection agreement in 2017, effective in 2018. As the House of Commons Standing Committee on International Trade recorded[xxix] in its June 2024 report on these negotiations, the stock of Canadian direct investment in Ecuador stood at $2.6 billion in 2022, having "tripled over the previous five years." That growth took place in the years after Ecuador terminated its 1996 investment treaty with Canada.

VII. Canada's own position

We note respectfully that Canada removed investor-State arbitration from its relationship with the United States under CUSMA, having concluded that the mechanism did not serve Canadian interests.[xxx] We note also that on 11 June 2026, six weeks before this agreement was signed, the Government eliminated[xxxi] the Office of the Canadian Ombudsperson for Responsible Enterprise, the federal body mandated to examine allegations of human rights abuse by Canadian companies abroad. Complainants have been redirected[xxxii] to Canada's National Contact Point for the OECD Guidelines, a unit within Global Affairs Canada that neither investigates[xxxiii] complaints nor recommends remedy.

Chapter 15 therefore extends to Canadian investors in Ecuador a remedy Canada declined for itself in its relationship with its largest trading partner, while Canada closed the federal office created to hear the complaints of people affected[xxxiv] by Canadian operations abroad and left them a process that does neither. That asymmetry will be noticed, and it will shape how this agreement is understood in Ecuador for as long as it remains in force.

VIII. Canada's stated commitments

Canada has made the promotion of democracy, constitutional governance and judicial independence an express element of its foreign policy. At the Summit for Democracy[xxxv] in December 2021, Canada

announced 35 commitments, the first theme of which was advancing democracy and defending against authoritarianism. Canada endorsed the G7 Open Societies Statement[xxxvi] of 13 June 2021, affirming "[t]he rule of law and effective, independent and impartial judicial systems free from corrupt influence or coercion," and the G7 Resilient Democracies Statement[xxxvii] of 27 June 2022.

Each of these carries an expectation about Canada's own conduct abroad. Taken together, they amount to an undertaking that Canadian action will respect the constitutional order of partner countries, the integrity of their democratic processes, and the independence of their public institutions. Action that legitimizes the circumvention of constitutional procedures or the erosion of judicial independence is inconsistent with what Canada has undertaken.

We do not claim that these commitments bind Canada in law. They are political undertakings, made publicly and in Canada's own name, and it is fair to measure Canadian conduct against them. Measured that way, an agreement that depends on a ruling obtained from a court under documented executive pressure, and signed after Ecuadorian voters had declined to permit what it contains, is hard to defend. Commitments of this kind mean little unless they hold when keeping them is inconvenient, and keeping them here would have cost Canada nothing more than an investment chapter it had already said it could do without.

IX. A path forward

Canada and Ecuador have substantial shared interests in trade, investment and development, and there is real scope to deepen them. It is because we value that prospect that we urge caution about an instrument likely to be contested for the duration of its life.

We respectfully ask that Canada:

1. ***Decline to table implementing legislation*** while Sections D and E of Chapter 15 remain in the agreement, and seek the removal of those sections, as Canada's own tabled objectives contemplated;
2. ***Set out Canada's assessment*** of the effect of footnote 12 to Article 15.23.1, of its compatibility with Article 15.36.6, Canada's own commitments under the New York Convention, and of Chapter 15's standing under Article 422 of Ecuador's Constitution;
3. ***Explain the design of the arbitration mechanism***, that is, why Chapter 15 departs from Canada's practice of offering ICSID and UNCITRAL arbitration in favour of the bespoke ad hoc procedure in Annex 15-B, and whether the exception in the second paragraph of Article 422 of Ecuador's Constitution informed that choice, and whether Canada considered that the chapter, as drafted, allows investors from Latin America to bring claims against Ecuador through Canadian companies; and
4. ***Pursue investment cooperation through the frameworks that Ecuador's Constitution permits*** and that its other treaty partners have accepted: State-to-State dispute settlement, recourse to Ecuadorian courts, and arbitration under investment contracts. Canadian investment in Ecuador tripled under those frameworks in the five years after the previous treaty ended.

An agreement built on sound legal and democratic foundations will serve the relationship between our countries considerably better than one that invites constitutional challenge from the day it enters into force.

We would welcome the opportunity to meet with you, or with officials of your department, to discuss these concerns. For any correspondence, to arrange a meeting, or for further information regarding this letter, please contact us at **long@cepr.net.**

Please accept, Minister, the assurances of our highest consideration.

Guillaume Long
Former Minister of Foreign Affairs and Human Mobility

Ricardo Patiño Aroca
Former Minister of Foreign Affairs and Human Mobility

Fernando Cordero Cueva
Former Minister of Defence and Former President of the National Constituent Assembly

Viviana Veloz Ramírez
Former President of the National Assembly

René Ramírez Gallegos
Former National Secretary of Planning and Development

Doris Soliz Carrión
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Wilma Salgado Tamayo
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Carlos de la Torre
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Andrés Arauz Galarza
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Gabriela Rivadeneira Burbano
Former President of the National Assembly

Gustavo Jalkh Röben
Former President of the Council of the Judiciary and Former Minister of the Interior

Carina Vance Mafla
Former Minister of Public Health

Rosa Mireya Cárdenas
Former Minister of Peoples, Social Movements and Citizen Participation

Diego Borja Cornejo
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Galo Mora Witt
Former Minister of Culture and Heritage and Former Private Secretary to the President

Xavier Lasso Mendoza
Former Vice Minister of Foreign Affairs and Human Mobility

Kintto Lucas
Former Vice Minister of Foreign Affairs and Human Mobility

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