

# NATIONAL FOREIGN TRADE COUNCIL, INC.

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September 17, 2012

Mr. Bennett Harman  
Chairman, Andean Subcommittee  
Trade Policy Staff Committee  
Office of the United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

RE: Petition Requesting withdrawal or Suspension of the Designation of Ecuador as an Andean Trade Preference Act Beneficiary Country

Dear Mr. Harman:

The National Foreign Trade Council (NFTC), an association of some 250 American companies engaged in international trade and investment, is pleased to submit comments in response to the Office of the U.S. Trade Representative's Federal Register notice of August 10, 2012, requesting comment with respect to Ecuador's compliance with the eligibility criteria of the Andean Trade Preference Act (ATPA).

The NFTC believes that Ecuador's designation as a "beneficiary country" within the meaning of Section 203 of the ATPA must be withdrawn or suspended. Ecuador has failed to act in good faith to recognize and enforce the binding arbitral awards by a panel established under the U.S.-Ecuador Bilateral Investment Treaty (BIT). Subsequent to the panel's Second Interim Award "to take all measures necessary to suspend or cause to be suspended the enforcement and recognition within Ecuador" of the *Lago Agrio* judgment, under which Chevron now has a liability of \$19 billion, Ecuador has persisted in efforts to enforce the judgment.

As we noted in our submission of May 21, 2012, this judgment was indisputably obtained by fraud and corruption. In violation of the unambiguous panel ruling to desist from efforts to collect on the Ecuadorian court's ruling, the government of Ecuador has encouraged the *Lago Agrio* creditors to begin the process of enforcing the judgment in Canada and Brazil and has indicated that it may do so in other venues in Latin America. In doing so, Ecuador's actions would cause significant harm to Chevron which could not be undone by an eventual monetary award. Moreover, the government of Ecuador continues to violate a binding arbitral award in favor of Chevron under the U.S.-Ecuador Bilateral Investment Treaty. The NFTC has long supported the integrity of arbitration under BITs to afford fair and equitable treatment of U.S. companies as a bedrock principle.

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Consequently, Ecuador has breached its obligation to abide by the provisions of the ATPA which commits parties to honor and enforce an arbitral award. We urge the U.S. Trade Representative to revoke or suspend Ecuador's trade privileges under the ATPA. This would send a clear message that international obligations cannot be violated without consequence and would confirm the commitment of the U.S. to uphold the integrity of arbitral decisions by BIT tribunals.

Sincerely,

A handwritten signature in black ink, appearing to read "W. A. Reinsch". The signature is fluid and cursive, with a prominent initial "W" and a long, sweeping tail.

William A. Reinsch  
President