

NATIONAL FOREIGN TRADE COUNCIL, INC.

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May 22, 2012

Mr. Bennett Harman
Deputy Assistant USTR for Latin America
Office of the United States Trade Representative
600 17th Street, NW
Washington DC 20508

Dear Mr. Harman:

The National Foreign Trade Council (NFTC), an association of some 300 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 April 24, 2012 (77 Fed. Reg. 24,555, FR Doc. 2012-9838) requesting comment with respect to Ecuador's compliance with the eligibility criteria of the Andean Trade Preference Act (ATPA).

The NFTC concurs with the submission of the Chevron Corporation that Ecuador should be declared ineligible for U.S. trade preferences under the Andean Trade Preference Act and the Generalized System of Preferences. The NFTC has long supported the integrity of arbitration under Bilateral Investment Treaties (BITs) to afford fair and equitable treatment for U.S. companies as a bedrock principle. These treaties commit both parties to honor and enforce the judgments of arbitration panels. In this case an international tribunal convened under the U.S.-Ecuador BIT, following the judgment of an Ecuadorian court against Chevron in the *Lago Agrio* case, issued an interim judgment directing Ecuador to prevent enforcement of the judgment against Chevron both in Ecuador and outside of Ecuador.

This ruling was reached on the basis of indisputable evidence that the Ecuadorian court's judgment against Chevron was obtained by fraud and corruption. Consequently Chevron asked the arbitration panel to prevent enforcement of the court's judgment which the tribunal did in February of this year. An Ecuadorian appellate court has subsequently issued a ruling that it does not consider itself bound by the BIT panel's decision and the President of Ecuador has called the BIT panel's ruling a "monstrosity."

These steps by the Ecuadorian government have breached its obligation to abide by provisions of the ATPA which commit parties to abide by and enforce an arbitral award. If Ecuador continues to ignore its obligations under the BIT and the ATPA, the U.S. should revoke the country's trade preference privileges. Such a step by the United States would send a clear message that international obligations cannot be violated without consequence. In particular it 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", is written over a light blue horizontal line.

William A. Reinsch
President