GSP Country Practice Reviews
Country: Ecuador (arbitral awards): USTR-2013-0013

PRE-HEARING BRIEF
BY
THE EMBASSY OF THE REPUBLIC OF ECUADOR IN THE UNITED STATES OF AMERICA, ON BEHALF OF THE GOVERNMENT OF ECUADOR

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Introduction

On behalf of the Government of Ecuador, the Embassy of Ecuador in the United States presents the Pre-hearing brief, regarding the notice on the Federal Register Vol. 84 No. 223, from November 19th, 2019, presented by the Office of the United States Trade Representative, in the context of the Annual GSP Country Practices Review – Docket No. USTR-2013-0013, and specifically in connection with the January 30th, 2020 public hearing. The first part of the document states the arguments that evidence Ecuador's compliance with the GSP eligibility criterion regarding recognition and enforcement of arbitral awards (19 U.S.C. § 2462(b)(2)(E)). The second part of the document presents the positive impact of the GSP benefits to the country.

Ecuador's compliance with 19 U.S.C. § 2462(b)(2)(E)

The Republic of Ecuador refers to the October 2, 2012 petition of Chevron Corporation and its related submission dated December 17, 2018, requesting the Office of the United States Trade Representative to withdraw or suspend Ecuador's eligibility status under the General Preferences System ("***GSP***") (the "***Petition***").

Since 2004, Chevron has continually sought to use trade with the United States to pressure and leverage Ecuador in connection with various court and arbitral proceedings around the world. To this end, for the last 16 years, Chevron has repeatedly requested the termination of Ecuador's trade beneficiary status, first under the Andean Trade Preference Act (ATPA), then under the Andean Trade Promotion and Drug Eradication Act (ATPDEA), and now the GSP, based on a never-ending and always-changing set of allegations.

In its last petition, dated December 17, 2018, Chevron has now argued that "Ecuador has refused to comply with four international arbitral awards in favor of Chevron"[1] and that "Ecuador is fully capable of coming into compliance with the Tribunal's awards, yet it has chosen not to do so based on its own domestic political considerations"[2]. Yet, Chevron's continuous requests to suspend or withdraw Ecuador's designation as a beneficiary to trade preferences have been submitted at least five years before it even commenced the arbitration and well before the awards it now refers to were issued.

The Company's intentions are plain—to use trade as a weapon to influence the legal process. The legal processes, however, should be permitted to play themselves out, free from political or economic interference. Chevron's petition should be denied by the reasons set below.

I. Introduction

The international arbitration initiated by Chevron Corporation ("***Chevron***") and Texaco Petroleum Company ("***TexPet***") against the Republic of Ecuador ("***Ecuador***") in 2009 (the "***Arbitration***") has been a lengthy proceeding where many decisions have been rendered. Based on these decisions, including the Second Partial Award on Track II issued on August 30, 2018 (the "***Track II Partial Award***")[3], Chevron claims that Ecuador has failed to act in good faith in recognizing or enforcing arbitral awards in favor of United States Citizens or U.S. Corporations.[4] In particular, it has stated that

[1] Chevron 2018 Post Hearing Brief, p 21.
[2] Chevron 2018 Post Hearing Brief, p 22.
[3] *Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador*, PCA Case No. 2009-23 (US/Ecuador BIT), *Second Partial Award on Track II*, August 30, 2018 ("***Track II Partial Award***").
[4] Chevron 2018 Post Hearing Brief, p 17-18.

"Ecuador has refused to comply with four international arbitral awards in favor of Chevron."[5] However, Chevron's allegations are misleading for at least three reasons:

First, Chevron's reliance on the *interim* awards as a basis for its request is misplaced. There is no precedent for finding a State ineligible to receive trade preferences for its alleged failure to comply with an interim award. And there is certainly no basis to do so, for the very first time, in the circumstances here. (Section II)

Second, Chevron's efforts to reframe the arbitral dispositive part on *Track II Partial Award* as final is misguided. *Track II Partial Award* is subject to change as its validity has not yet been determined by Dutch Courts. (Section III)

Third, the Republic of Ecuador has an exemplary record of compliance in good faith with awards, which it intends to maintain. (Section IV)

II. Chevron's reliance on the *interim* awards as a basis for its request is misplaced

Ecuador reiterates its arguments put forward in former submissions that compliance with *interim* awards is not a GSP eligibility requirement. Under 19 U.S. Code § 2462(b)(2)(E): "The President shall not designate any country a beneficiary developing country under this subchapter if … such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation." But Congress's use of the term "arbitral awards" refers to final and binding arbitration awards that put an end to the procedure.

The legislative history of § 2462(b)(2)(E) is instructive. The requirement that countries be compliant with arbitral awards as a precondition of GSP eligibility is not found in the original version of the statute.[6] Instead, the requirement was added as an amendment in 1974 by Senator Robert Taft, Jr., who proposed Amendment 2070 to address certain countries' "unwillingness to abide by solemn agreements to recognize as final and binding arbitration awards rendered in disputes between it and American parties."[7]

Senator Taft patterned his amendment "after that of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards[,]"[8] which mandates enforcement of only final arbitral awards.[9] It is thus not surprising that every example Senator Taft offered of countries' unwillingness to enforce arbitral awards involved foreign governments' repeated failures to recognize final arbitration awards in favor of

[5] Chevron 2018 Post Hearing Brief, p 21.
[6] See S. REP. 93-1298, 1974 U.S.C.C.A.N. 7186, 7216.
[7] 120 CONG. REC. 39,831 (Dec. 13, 1974) (statement of Sen. Robert Taft).
[8] *Id.*
[9] Convention Done at New York Jun. 10, 1958 Art. V(1)(e), T.I.A.S. No. 6997 (Dec. 29, 1970).

U.S. companies.[10] Presidential administrations have also focused on final awards when applying section 2462(b)(2)(E). In fact, only a single country has ever lost its GSP beneficiary status as a result of the cited statutory provision—and that was for its failure to enforce two final ICSID awards.[11]

It is beyond peradventure that Chevron seeks to expand the meaning of the congressionally-imposed condition of eligibility beyond that which Congress intended. As the United States Supreme Court observed, "the proper inquiry" regarding congressional intent "focuses on the ordinary meaning of the [statutory term] at the time Congress enacted it." BedRoc Ltd., LLC v. United States, 541 U.S. 176, 184 (2004) (emphasis added).[12]

Within this background, Chevron's allegation that "Ecuador has refused to comply with four international arbitral awards in favor of Chevron" [13] is completely inaccurate.

First, three of these awards refer to ***provisional*** measures decisions. The interim awards here are decidedly *not* final. By their own terms, they are provisional, subject to change; they were issued "strictly without prejudice to the merits of the Parties' substantive and other procedural disputes;" and in no way dispose of the arbitral claims submitted by Chevron. The fourth award, ***Track II Partial Award,*** has been challenged before Dutch courts, and its validity is to be determined during next months.

Second, the arbitral proceeding is ongoing and the tribunal has not yet issued a final award that will put an end to this lengthy procedure. On the contrary, a significant development has had a serious impact on the proceedings: On January 1, 2020, the Republic of Ecuador received correspondence from the Permanent Court of Arbitration informing the parties about the resignation of the presiding arbitrator, Mr. V.V. Veeder QC.[14] Further, on January 6, 2020, the Permanent Court of Arbitration, on behalf of the remaining members of the Tribunal, recommended the parties "consider the possibility of attempting a conciliated settlement of the remaining issues in the arbitration, for which the arbitration proceedings might be suspended for a short time."[15] All these new

[10] 120 CONG. REC. 39,831 (Dec. 13, 1974) (statement of Sen. Robert Taft).
[11] Presidential Memoranda – Trade Act of 1974 Argentina (Mar. 26, 2012), 2012 WL 992767.
[12] This proposition is neither controversial nor new. See MCI Telecommunications Corp. v. Am. Tel. & Tel. Co., 512 U.S. 218, 228 (1994) ("It is perhaps gilding the lily to add this: In 1934, when the Communications Act became law—the most relevant time for determining a statutory term's meaning . . . —Webster's Third was not yet even contemplated." (citing Perrin v. United States, 444 U.S. 37, 42, 1979)). See also Robinson v. Napolitano, 554 F.3d 358, 365 (3d Cir. 2009) ("A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning . . . at the time Congress enacted the statute." (quoting Perrin, 444 U.S. at 42) (emphasis added); United States v. Collins, 854 F.3d 1324, 1331 (11th Cir. 2017) ("Where, as here, a statute does not define a term or phrase, those words generally take 'their ordinary, contemporary, common meaning . . . at the time Congress enacted the statute.'") (quoting Perrin, 444 U.S. at 42) (emphasis added).
[13] Chevron 2018 Post Hearing Brief, p 21.
[14] See PCA's Letter to the Parties dated January 1, 2020.
[15] Id.

circumstances may delay the proceedings. However, they are not attributable to Ecuador.

Since the arbitration proceedings is not finished, a final award has not yet been rendered. As all the other decisions issued within this arbitration proceeding, the Track II Partial Award is not a final award. It is not possible to consider this award as a final award since it only contains the Tribunal's findings on certain issues. It is important to differentiate between a final award and a partial award. The first category pertains to the final decision of the arbitral tribunal that terminates the proceedings and with which the Tribunal loses its jurisdiction over the dispute. On the other hand, a *partial award* is the decision that "finally settles a portion of the dispute that can be separated from the remainder of the dispute but it does not necessarily terminate the arbitration or the mandate of the arbitrators to consider the remaining portions of the dispute".[16] The immediate effect of having settled issues within an arbitration is that those issues will not be discussed further. However, by any chance this means that the *overall dispute* is finally settled.

The Track II Partial Award is only another *partial award* in this arbitration and does not finally settle the dispute, but only certain issues within the overall dispute. Since there are several issues remaining for the Arbitral Tribunal to decide, this award cannot be considered, by any concept, a final award. The Track II Partial Award orders that all issues as to reparation in the form of compensation, including any assessment of different potential categories of damages be assigned for Track III of the arbitration.[17] Since the award that will be rendered in the third and final track of the Arbitration may affect, but not modify, the several decisions adopted within the proceedings, any diligent party would wait to have a final decision and adopt effective steps that ensure compliance with all of the Tribunal's orders rendered with the proceedings.

In this sense, Chevron is misusing the words "final" and "binding". According to *Redfern and Hunter*:

> All awards are final and binding, subject to any available challenges. However, the term 'final award' is customarily reserved for an award that completes the mission of the Arbitral Tribunal. Subject to certain exceptions, the delivery of a final award renders the Arbitral Tribunal functus officio: it ceases to have any further jurisdiction in respect of the dispute, and the special relationship that exists between the Arbitral Tribunal and the parties during the currency of the arbitration ends. This has significant consequences. An Arbitral Tribunal should not issue a final award until it is satisfied that its mission has actually been completed. If there are outstanding matters to be determined, such as questions relating to

[16] United Nations Conference on Trade and Development (UNCTAD). "International Commercial Arbitration. 5.6 Making the Award and Termination of Proceedings". *Dispute Settlement Course*. United Nations, New York and Geneva, 2005, p. 7.
[17] Track II Partial Award, ¶ 10.14.

> costs (including the Arbitral Tribunal's own costs), the Arbitral Tribunal should issue an award expressly designated as a partial award.[18]

III. The Track II Partial Award is subject to change, as its validity has not yet been determined by the Dutch Courts

Chevron argued that the "Tribunal's awards are final, binding, enforceable, and unappealable".[19] However, Chevron forgot to mention that arbitral awards are also subject to the review by the courts of the seat of the arbitration. The importance of national courts' intervention in the annulment and setting aside proceedings is based on the need "to guarantee that the minimum requirements of procedural fairness are fulfilled and exercise a supervisory function".[20] A decision of a U.S. appellate court in Yusuf Ahmed Alghanim & Sons WLL v. Toys "R" Us, Inc., interpreting Article V of the New York Convention, confirms the supervisory authority of domestic courts:

> There is no indication in the Convention of any intention to deprive the rendering state of its supervisory authority over an arbitral award, including its authority to set aside that award under domestic law.[21]

In fact, the Track II Partial Award is subject to review by the Dutch Courts. On December 10, 2018, Ecuador filed a set aside petition against the Track II Partial Award before the District Court of The Hague, the legal seat of the Arbitration. The set-aside proceedings are timely advancing. The District Court of The Hague will hold a hearing that will take place on March 24, 2020.

Even if the setting aside of arbitral awards is an extraordinary and restricted legal remedy, if provided by the law applicable to the arbitration, it is available for all the parties to an arbitration, unless a party waives its right to seek annulment of the award. Ecuador did not waive its right.

The Republic of Ecuador exercised its legitimate right to apply for the available post-award remedies under the applicable rules of arbitration and the *lex arbitri*. Ecuador sovereignly decided to seek the annulment of the Track II Partial Award and this decision: (i) should not be understood as an intention to evade its international obligations; and (ii) should not be considered as if Ecuador is unwilling to implement the Tribunal's orders. Besides, it is important to consider that, since the Tribunal's decisions affect third party rights, any premature conduct adopted by Ecuador, before having a decision on the validity of the award, may entail the violation of its international obligations under numerous International Human Rights Conventions.

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[18] BLACKABY, N. & PARTASIDES, C., *et al.*, '*Redfern and Hunter on International Arbitration*, 6th Ed., Kluwer Law International, Oxford University Press, 2015, paragraph 9.18.
[19] Chevron's December 17, 2018, Post Hearing Brief ("***Chevron 2018 Post Hearing Brief***"), p. 1-2.
[20] Julian D.M. Lew, Loukas Mistelis, et al., Comparative International Commercial Arbitration, KLUWER, p. 356 (2003).
[21] Yusuf Ahmed Alghanim & Sons WLL v. Toys "R" Us, Inc., 126 F.3d 15, 21-22 (2d Cir. 1997).

Chevron alleges that Ecuador "further acknowledged the finality of the award at issue when it instituted annulment proceedings in The Netherlands: under Dutch law, annulment proceedings cannot be initiated against an award that is not final."[22] Again, Chevron appears to be confused between a final award and a partial award that finally settles a portion of the existing disputes. By substance, a final award terminates the Tribunal's mandate, whilst a partial award does not. Chevron has correctly affirmed that "Dutch law further confirms that a tribunal's mandate only ends once it has deposited its *last, final award* in the Registry of the District Court" (emphasis added).[23] Unless Chevron believes that Track II Partial Award terminates the Arbitral Tribunal's mandate, it is not possible to agree that the award issued on August 30, 2018, is a final award in the sense 19 U.S.C. § 2462(b)(2)(E) refers to.

IV. The Republic of Ecuador has an exemplary record of good faith compliance with awards, which it intends to maintain.

Under 19 U.S.C. § 2462(b)(2)(E), the President may deny GSP beneficiary status to a country that:

> (…) fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

Chevron contends that Ecuador has lost its GSP eligibility status because it has allegedly failed to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States companies. Chevron is wrong. Chevron cannot point out one single case where Ecuador has failed to satisfy the orders of arbitral tribunals contained in final awards. The reason why Chevron cannot mention not even one example is simple: this example does not exist. Ecuador has always acted in good faith and complied with all its international obligations arising from arbitral awards. Indeed, Ecuador has *never* failed to satisfy a *final* adverse arbitral award.

Ecuador's exemplary track record of complying with international arbitral awards and predisposition to comply with its international obligations is shown in the chart annexed (Annex 1) which shows the results of 21 international arbitrations to which Ecuador was a party:

- In 7 cases Ecuador complied with the adverse award.
- In 6 cases Ecuador and Claimants reached amicable solutions.

[22] Chevron 2018 Post Hearing Brief, p. 4
[23] Letter from Chevron and Texaco Petroleum Company to the Tribunal dated October 13, 2018

- In the remaining 8 cases, Ecuador was not found liable for different reasons.

By way of example, Ecuador's history of satisfying final awards includes payments of:

- an ICSID award in favour of Duke Energy Electroquil, following which counsel for Duke publicly stated that "*Ecuador's compliance […] 'sets an example to other countries in the region'*";[24]
- an ICSID award in favour of Murphy Exploration and Production Company International.[25]
- an ICSID award in favour of Burlington Resources Inc where the Republic of Ecuador payed fully and to the company's satisfaction.[26]
- an UNCITRAL award in favour of Occidental (known as "*Oxy I*");
- over USD 1 billion in an ICSID arbitration initiated by Occidental (known as "*Oxy II*");
- USD 112 million to Chevron in 2016 in full satisfaction of commercial arbitration proceedings initiated by Chevron[27];
- USD 20 million to Copper Mesa Mining;[28]

Regarding Ecuador's good faith compliance with final awards, Counsel for Burlington, a US company that received a favorable arbitral award against Ecuador for more than USD 370 million publicly stated as follows:

> *Ecuador has complied voluntarily with all the awards issued against the Republic [and] it has never faced an enforcement procedure.*[29]

Finally, it is worth noting that, Chevron's allegation that "Ecuador is fully capable of coming into compliance with the Tribunal's awards, yet it has chosen not to do so based on its own domestic political considerations"[30] is also distorted.

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[24] GAR, "Ecuador Pays Duke without Delay," December 12, 2008 https://globalarbitrationreview.com/article/1027185/ecuador-pays-duke-without-delay.
[25] Murphy *Exploration & Production Company International* v. *Republic of* Ecuador, PCA Case No. 2012-16, *Final Award*, February 10, 2017.
[26] *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, *Decision on Reconsideration and Award*, February 7, 2017.
[27] In 2016 Ecuador paid, without delay, more than USD 112 million in full satisfaction of the *Commercial Cases* Award to Chevron, following a June 6, 2016 decision by the United States Supreme Court denying Ecuador's petition to reconsider a 2011 decision confirming the *Commercial Cases* Award issued by a United States district court, thus finally exhausting Ecuador's appeals.
[28] Copper Mesa Mining Corporation, Press Release, "Copper Mesa Mining Corporation Reaches USD 20 Million Settlement with Republic of Ecuador," Markets Insider, August 2, 2018, https://markets.businessinsider.com/news/stocks/copper-mesa-mining-corporation-reaches-us-20-million-settlement-with-republic-of-ecuador-1027427842.
[29] J. Robalino Orellana, M.T. Borja, D. Robalino-Orellana, "Investment Treaty Arbitration: Ecuador", https://gettingthedealthrough.com /jurisdiction/32 /ecuador, dated 14 November 2016 ¶ 23.
[30] Chevron 2018 Post Hearing Brief, p 22.

After the ***Track II Partial Award*** was notified to the parties, Ecuador undertook immediate steps in order to comply with the Tribunal's decisions which have not been subject to challenge before Dutch Courts. Therefore, Chevron's affirmation that "Ecuador clearly has no intention of complying with the Tribunal's awards"[31] is simply not true.

First, pursuant to the Tribunal's order contained in paragraph 10.13 (iii) of the Track II Partial Award and under Claimants' notice dated 7 September 2018, the Republic of Ecuador advised the following authorities about the Tribunal's declarations and orders contained in the Award:

In Canada:

(i) The Honourable Chrystia Freeland
Minister of Foreign Affairs of Canada
(ii) The Right Honourable Richard Wagner, P.C.
Chief Justice of Canada
(iii) The Honourable Jody Wilson-Raybould
Minister of Justice - Attorney General of Canada

In Argentina:

(i) Doctor Eduardo Ezequiel Casal
Procurador General de la Nación Argentina
(ii) Embajador Jorge Marcelo Faurie
Ministro de Relaciones Exteriores y Culto de Argentina
(iii) Doctor Sebastián Picasso
Presidente de la Sala 1 Civil de la Cámara Nacional de Apelaciones

Although Ecuador is not a party to any of the enforcement proceedings initiated by the plaintiffs in the Litigation against Chevron in the territory of Ecuador ("***the Lago Agrio Litigation***"), the letter of the Attorney General was filed in the enforcement proceeding before the Supreme Court of Canada on March 11, 2019 (*Daniel Carlos Lusitande Yaiguaje, et al. v. Chevron Corporation, et al.*).[32] Both parties – Chevron and the plaintiffs – had the opportunity to comment on the Attorney General's communication.[33] On April 5, 2019, the Supreme Court of Canada dismissed the plaintiffs' request.[34]

Second, on April 19,2019, Chevron informed the Attorney General about recent developments on the Lago Agrio Litigation before Ecuador's Constitutional Court. On its letter Chevron asserted:

[31] Chevron 2018 Post Hearing Brief, p. 5
[32] *Daniel Carlos Lusitande Yaiguaje, et al. v. Chevron Corporation, et al.*, Docket 38183, Supreme Court of Canada. Available at: https://www.scc-csc.ca/case-dossier/info/dock-regi-eng.aspx?cas=38183
[33] *Id.*
[34] *Daniel Carlos Lusitande Yaiguaje, et al. v. Chevron Corporation, et al.*, Docket 38183, Judgment of the Supreme Court of Canada, April 4, 2019.

> Because we do not know whether you are aware of this development, we wanted to bring it to your attention to avoid a further violation by Ecuador of the Tribunal's Track II Award an interim measure.

As a way to alert the newly appointed members of the Constitutional Court about the Track II Partial award and without any intention to interfere in their decision making process, the Office of the Attorney General informed the President of the Constitutional Court in relation to the findings of the Tribunal regarding the judgment ratified by the former members of the Constitutional Court.[35] The decision rendered by the Constitutional Court did not affect Chevron's rights and respected Ecuadorian and Public International Law.

V. Conclusion

All of above-mentioned arguments show that Ecuador cannot be rendered ineligible under 19 U.S.C. § 2462(b)(2)(E) since it applies to countries who "fail[] to act ***in good faith*** in recognizing as binding or in enforcing" final awards. The Republic of Ecuador has not acted in bad faith. To the contrary, Ecuador has an exemplary record of good faith compliance with final awards, which it intends to maintain.

Ecuador has repeatedly shown before the Office of the United States Trade Representative why the awards rendered in the Arbitration are not final awards. Furthermore, the Track II Partial Award is subject to change, as its validity has not yet been determined by the Dutch Courts. However, Ecuador's actions and recent steps undertaken to implement the orders of Track II Partial Award demonstrate that Ecuador acts in good faith. 19 U.S.C. § 2462(b)(2)(E) renders ineligible only those countries who fail to act in ***good faith*** in recognizing as binding or in enforcing awards. Chevron has not provided one single proof that Ecuador has failed to act in good faith.

For all the aforementioned reasons, Chevron's Petition should be denied.

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[35] See Attorney General's Official Communication No. 03468, April 22, 2019.

Benefits for Ecuador of the United States Generalized System of Preferences (GSP)

- The application of the GSP has an important backdrop in the international economy. While it is a recognition by the developed countries of the need to give developing countries a special and differential treatment so they can have a greater chance of participating on international trade, it has also been an important driver for the development and job creation in certain industries of the countries that grant the preferences. These industries benefit from imported inputs at zero tariffs. This is to say that the GSP benefits the economies of the countries that grant the preferences, as well as the beneficiary countries.

- The developmental and social importance of the GSP is reflected not only in the fact that it allows developing countries to improve their products' access to international markets, but also in the fact that it gives those countries incentives to maintain adequate environmental and labor standards, and in the specific case of the United States, it also promotes that countries compliance with intellectual property rights, as well as with investors rights.

- In the case of Ecuador, several products that benefit from the GSP come from small and medium-sized enterprises or are produced in rural and agricultural areas, and many of them belong to peasant family farming. The GSP has enabled these crops and enterprises to continue producing in a sustainable manner, especially in the provinces of Guayas, Pichincha and El Oro, where the majority of the GSP products that Ecuador exports are produced.

- In the last decade, the agricultural sector in Ecuador has helped reduce rural poverty from 61% to 38%. In addition, peasant family farming in Ecuador is one of the main sources of income and employment for the rural population, and accounts for 25% of the EAP (Economically Active Population).

- Therefore, the products that Ecuador exports under the GSP generate stable employment in our country, which in turn translates into reducing poverty, crime, migration to other countries, and also reduces the incentive to cultivate illegal crops (drugs).

- According to Ecuadorian statistics, when analyzing the main Ecuadorian products that benefit from the U.S. GSP, we can see that exports of products such as mango, plywood and taro have the U.S. as their main market for more than 90% of their production; and for the other products, the U.S. also represents a very important target market.

- The reason for this is that the producers have taken advantage of the preferences that their products enjoy. They have also adapted to the requirements of the U.S. market and specialized on them. Therefore, it would be very difficult for these producers, most of them small, to find or gain access to new markets.

- In this sense, the loss of preferences will surely mean the disappearance of these crops and businesses.

Main Products Imported by the United States from Ecuador that are under the GSP

2018, 2019 (January - October)

HS Code	Product	2018	% Particip.	2019 (Jan-Oct)	% Particip.
2008.99.1500	BANANAS EXCEPT PULP, PREPARED OR PRESERVED NESOI	47.659.557	10%	40.006.957	11%
0603.19.0160	CUT FLOWERS AND FLOWER BUDS, FRESH, OF A KIND SUITABLE FOR BOUQUETS OR FOR ORNAMENTAL PURPOSES, NESOI	35.997.653	8%	31.443.105	9%
7801.10.0000	REFINED LEAD, UNWROUGHT	26.455.598	6%	32.343.807	9%
0804.50.4055	MANGOES, FRESH, IF ENTERED DURING THE PERIOD FROM SEPTEMBER 1, IN ANY YEAR, TO THE FOLLOWING MAY 31, INCLUSIVE	46.927.429	10%	6.554.255	2%
0714.40.1001	TARO(COLOCASIA), FRESH OR CHILLED, WHETHER OR NOT SLICED OR IN THE FORM OF PELLETS	22.139.416	5%	24.872.872	7%
4412.34.3275	PLYWOOD WITH AT LEAST ONE OUTER PLY OF NCFRS(NT SPEC. 441233) WOOD, CONSISTING SOLELY OF SHEETS OF WOOD NT > 6 MM THICK, NT SURFACE COVERED, NESOI	10.277.869	2%	35.695.037	10%
8544.49.9000	INSULATED ELECTRIC CONDUCTORS FOR A VOLTAGE NOT EXCEEDING 1000 V, NESOI	20.760.441	5%	24.838.900	7%
4412.32.3275	PLYWOOD WITH AT LEAST ONE OUTER PLY OF NONCONIFEROUS WOOD, CONSISTING SOLELY OF SHEETS OF WOOD NOT OVER 6 MM THICK, NOT SURFACE COVERED, NESOI	38.651.971	8%	-	0%
0603.19.0120	GYPSOPHILA, FRESH, OF A KIND SUITABLE FOR BOUQUETS OR FOR ORNAMENTAL PURPOSES	20.048.468	4%	15.663.847	4%
2008.99.9190	FRUIT, NUTS AND OTHER EDIBLE PARTS OF PLANTS, PREPARED OR PRESERVED NESOI	19.362.901	4%	10.410.528	3%
0603.15.0000	LILIES, FRESH, OF A KIND SUITABLE FOR BOUQUETS OR FOR ORNAMENT	14.436.717	3%	12.512.162	3%
0810.90.4600	FRUITS, FRESH, NESOI	9.968.523	2%	14.033.590	4%
0811.90.1000	BANANAS AND PLANTAINS, UNCOOKED OR COOKED BY STEAMING OR	11.777.294	3%	8.282.539	2%
2005.99.9700	OTHER VEGETABLES AND MIXTURES OF VEGETABLES, NESOI, PREPARED OR PRESERVED OTHERWISE THAN BY VINEGAR OR ACETIC ACID, NOT FROZEN	12.744.910	3%	5.649.741	2%
2008.91.0000	PALM HEARTS, PREPARED OR PRESERVED NESOI	8.635.138	2%	7.542.256	2%
	Other Products	111.825.850	24%	97.384.014	27%
TOTAL		**457.669.735**	**100%**	**367.233.610**	**100%**

Source: USITC

Note: information organized considering the 2018-2019 average

- On the other hand, it is important to highlight what was previously mentioned. The GSP does not only benefit Ecuador, but also the American companies that import Ecuadorian products with the tariff preferences of the GSP. The GSP eliminates tariffs for non-sensitive products, which in many cases are not produced in the United States, and it also allows producers and workers in the United States to be more competitive.

- Many Ecuadorian products that the United States imports under the GSP require additional processing in the United States. This way, importing these products creates local employment in the United States.

- The GSP has gained greater importance as a percentage of Ecuadorian exports to the United States over the past few years. In other words, every year our exporters take more and better advantage of these preferences.

- Between 2010 and 2018, the participation of the imports made by the United States from Ecuador under the GSP has increased significantly, both in the number of products imported as well as on the imported value:

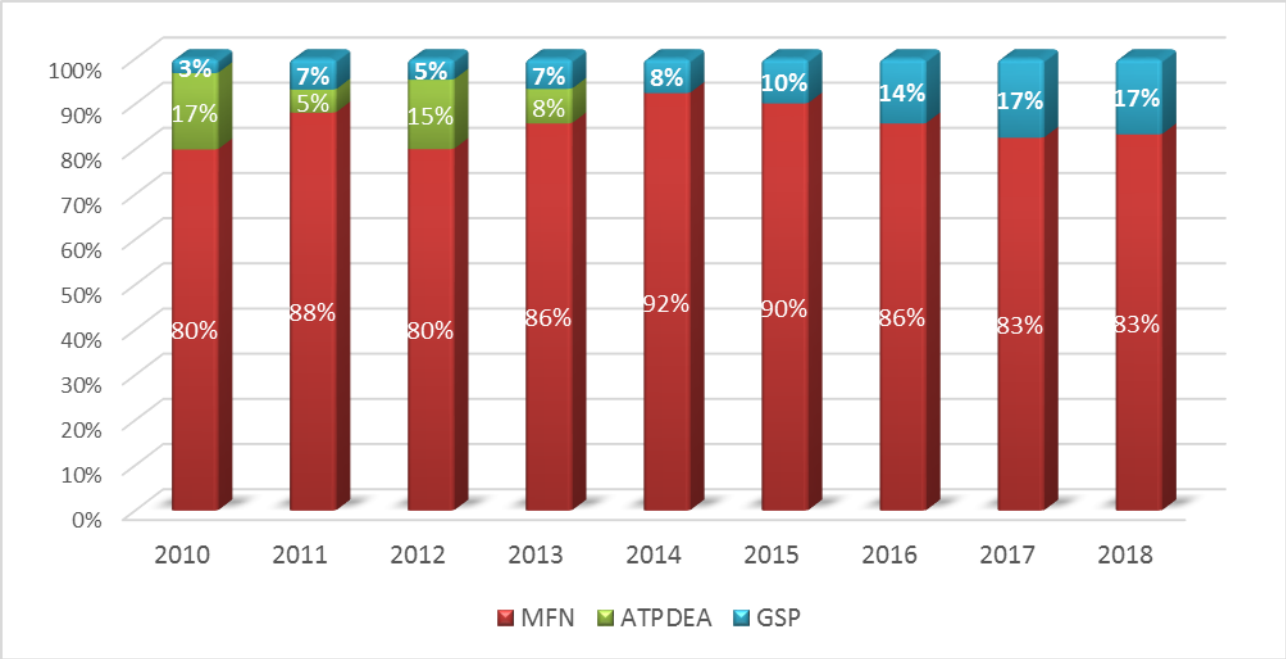
  - ✓ The imports made by the United States from Ecuador under the GSP went from **USD 54,4 million** (2010) to **USD 457,7 million** (2018)**.**

  - ✓ While in 2010 the imports made by the U.S. from Ecuador under the GSP represented on average 3% of total non-oil imports from our country, this percentage increased to **17%** in 2018.

  - ✓ During this same period, the number of products imported by the United States from Ecuador under the GSP also increased, from **168 to 343**, which is an **increase of 175 tariff subheadings** (a 10 digits).

  - ✓ In 2010, the number of Ecuadorian exporters of products that benefit from the U.S. GSP was 623. During 2018, that number rose to **801 exporters**, increasing by 178 exporters.

United States Non-Petroleum Imports from Ecuador – by Tariff Program



Source: USITC

- As it was already mentioned, the GSP favors a variety of Ecuadorian products, including those with value added such as plywood and other articles of wood, electrical conductors, refined lead; as well as products from the Popular and Solidarity Economy and family agriculture, such as mango, taro, flowers, brown sugar, dry fruits, among others.

- These products enter the United States with zero tariffs thanks to the GSP. Otherwise, they would have to pay tariffs ranging from 1% to 14%. Here lies to a large extent the importance of Ecuador maintaining its eligibility under the United States GSP. The Generalized System of Preferences helps these types of Ecuadorian products that are part of the non-traditional exportable offer, to remain competitive in the U.S. market, since Ecuador does not have a trade agreement with the U.S., as other competitor countries in the region do.

- Ecuador appreciates that the relations between our country and the United States have deepened since 2017, when Ecuador announced that one of the priorities of its trade policy was to revitalize its bilateral relations with the United States.

- Since that moment, several important milestones have taken place, like the visit of Vice President Mike Pence to Quito in June 2018; the reactivation of the Trade and Investment Council (TIC) in November 2018; the reactivation of the Bilateral Expanded Political Dialogue in May 2019; the visit of Secretary of State, Michael R. Pompeo, in July 2019, who commended Ecuador for its "renewed embrace under President Moreno of free markets, of robust security, and of democracy"; and the return of USAID to Ecuador.

- In trade matters, the main milestone has been the reactivation of the TIC, under which working groups for the different areas of the bilateral trade relationship were set up. These working groups have met regularly, and this has strengthened the dialogue and mutual understanding of each topic. The last meeting of the working groups was held in Quito, Ecuador, on December 4, 2019, in preparation for the III TIC meeting that will take place during the first quarter of 2020.

- Ecuador values the strong historical ties between our two countries, as well as the growth potential of our bilateral relation, especially in the trade and investment areas.

- In this sense, Ecuador asks the USTR not to allow a process that is not yet finalized at the judicial level to interrupt the positive and growing cooperation between our two countries and our mutual desire to strengthen bilateral trade relations.

Thank you for the opportunity to provide comments in this matter.

Annex 1

Case	Ecuador complied with the adverse award	Settlement between the parties	Discontinuance of the proceedings	Lack of jurisdiction of the tribunal	Claims against Ecuador rejected
Duke Energy Electroquil (ICSID Case No. ARB/04/19)	X				
Occidental Exploration and Production Company (Oxy I) (LCIA Case No. UN3467)	X				
Chevron Corporation & Texaco Petroleum Company (*Chevron II*) (PCA Case No. AA277)	X				
Oxy II	X				
Murphy Exploration III	X				
Burlington	X				
Copper Mesa Mining Corporation (PCA Case No. 2012-2)	X				
IBM World Trade Corp. (ICSID Case No. ARB/02/10)		X			
City Oriente Limited (ICSID Case No. ARB/06/21)		X			
Corporación Quiport S.A. and others (ICSID Case No. ARB/09/23)		X			
Noble Energy, Inc. and Machalapower Cia. Ltda. (ICSID Case No. ARB/05/12)		X			
OCP		X			
Únete Telecomunicaciones y Clay Pacific S.R.L		X			
Técnicas Reunidas, S.A. and Eurocontrol, S.A. (ICSID Case No. ARB/06/17)			X		
Murphy Exploration II			X		
Empresa Eléctrica del Ecuador, Inc. (ICSID Case No. ARB/05/9)				X	
Murphy Exploration and Production Company International (ICSID Case No. ARB/08/4)				X	
EnCana Corporation (LCIA Case No. UN3481)				X	X
M.C.I. Power Group, L.C. and New Turbine, Inc. (ICSID Case No. ARB/03/6)				X	X
Ulysseas, Inc. (PCA Case No. 2009-19					X
Albacora S.A (PCA Case No. 2016-11)					X