

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street NW
Washington, DC 20508

RELEASED IN FULL

Dear Ms. Blue:

Chevron is pleased to provide the following comments in response to the Office of the United States Trade Representative's (USTR's) request for our views on whether the designated beneficiary countries are meeting the ATPA eligibility criteria. Chevron has been working closely with USTR and the U.S. Government on a matter of great importance to the company in Ecuador, and we appreciate this opportunity to share our views on this question.

As a result of measures taken by Ecuador to repudiate and nullify existing contracts with one of Chevron's subsidiaries, Chevron has petitioned the President to consider these measures in light of eligibility criteria governing the extension of preferential trade benefits under ATPA.

Due to Ecuador's repudiation of contracts with Texaco Petroleum Company ("TexPet") Chevron has petitioned the President not to re-certify the Republic of Ecuador for preferential trade status, or to withdraw benefits for certain key products, under the Andean Trade Preferences Act ("ATPA"), 19 U.S.C. § 3201 *et seq.* In our September 2008 update, as well as in previous petitions submitted in 2004 and February 2008, Chevron explained that Ecuador had taken steps to repudiate and nullify existing contracts with TexPet in violation of § 3202(c)(2)(B)(i) of the ATPA, and therefore should not be re-certified as a beneficiary country.

We will not restate the issues raised in our petition here. However, Ecuador has made no progress toward resolving those issues. To the contrary, Ecuador's actions toward Chevron and other investors, as well as the country's deteriorating investment and trade environment, reinforce that Ecuador does not meet the letter or spirit of ATPA eligibility criteria and thus should not receive preferential trade treatment.

Since Chevron's 2008 petition, the circumstances in Ecuador have worsened, even though Chevron has tried both diplomatically and legally to resolve the dispute.

As part of the discussion surrounding our problems in Ecuador, the U.S. government suggested that Chevron explore the possibilities for finding a reasonable solution to the contract dispute. In that spirit, Chevron engaged in what it believed were good-faith discussions in February 2008 with Ministerial-level officials from the government of Ecuador. Indeed, the Ministry promised Chevron additional meetings to discuss the contract dispute and the ongoing litigation in Ecuador, but unfortunately no follow-up meetings were scheduled. Despite several attempts to re-engage the Ministry, Chevron was repeatedly rebuffed. Instead, the government of Ecuador publicly proclaimed that it would only "mediate" between Chevron and the private plaintiffs—to whom President

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Correa has publicly pledged his full support. Chevron sought another meeting with a Ministry official in July 2008 during a bilateral visit to Washington, and although this meeting did take place, the government of Ecuador once again failed to follow through on any subsequent action.

Chevron's efforts to secure a fair trial in Ecuador were dealt a serious blow in late August 2008 with the issuance of unwarranted criminal indictments against a Chevron executive in the United States and TexPet's legal representative in Ecuador. The indictments mark a renewal of Ecuador's attempts to disavow contractual obligations owed to Chevron from agreements signed in 1995 and 1998. The action also ignores the findings of prior Prosecutors General who have repeatedly investigated these same fraud allegations and found them to be meritless. The effort to revive indictments that were previously vetted and declared unjustified came after the plaintiffs in the Ecuador lawsuit stridently called for just such a measure in an effort to undermine one of Chevron's key defenses, and they have used that decision to make ever increasingly slanderous attacks on Chevron, its executives and investors. Further, inasmuch as the indictments were issued against key members of Chevron's legal team in Ecuador, they deprive Chevron of a full opportunity to defend itself as the Ecuador litigation reaches a critical stage.

The situation Chevron faces in Ecuador fits into a consistent pattern of behavior by the Government of Ecuador that undermines the ATPA.

Adherence to international norms regarding transparency and the rule of law has eroded significantly under the current administration in Ecuador. The Executive Branch has dissolved Congress, replaced all judges, censored media (including seizing control of television stations), and proposed a new Constitution that, among other things would ban international arbitration and give priority to local investors over foreigners. Ecuador recently severed ties with the World Bank and the International Monetary Fund as well. The government has compelled the renegotiation of existing oil contracts and has cancelled mining contracts and frozen exploration. The Ecuadorian judicial system is plagued by processing delays, unpredictable judgments in civil and commercial cases, inconsistent rulings, and limited access to the courts. This was documented in the most recent State Department Human Rights report. Transparency International has ranked Ecuador 151st out of 180 countries surveyed for its 2008 Corruption Perceptions Index, dropping significantly from the 2006 rank of 138. Finally, and right at the heart of any extension of ATPA, Ecuador has increased to 940 the number of items subject to import tariffs. Far from embracing trade liberalization, this signals that Ecuador has distanced itself from the letter and spirit of open trade.

Conclusion

Chevron remains concerned about its ability to secure fair treatment regarding its subsidiaries' contracts with state entities in Ecuador and notes that, despite its best efforts to engage, no progress have been made in resolving these outstanding contract disputes. Chevron believes that Ecuador is not meeting the established criteria in the ATPA and that this should be considered as the Administration determines whether to extend unilateral and preferential trade preferences for another six months.