



Ecuador Country Practice Review
Responding to FRN Docket USTR-2013-0015 – Hearing January 30, 2020
Pre-Hearing Brief of the United States Council for International Business (USCIB)

- The United States Council for International Business is a leading U.S. business association, devoted to promoting private sector-driven economic growth and development here at home and around the world through open trade and investment and pro-market economic policies.
- We and our member companies have long been strong supporters of the U.S. Government’s program for a Generalized System of Preferences (GSP) for eligible developing countries.
- We believe the GSP program has benefitted the U.S. economy, companies, and workers and has also promoted development in eligible developing countries. We expect those benefits to continue for the U.S. and for the eligible countries for years into the future. GSP is a real “win-win” program.
- The GSP program has been, and in our view should continue to be, run with integrity, discipline and transparency. A well-run, disciplined program with careful attention from the interagency process to the country and product eligibility criteria laid out in the statute, is critical to maintaining the necessary support for the GSP program from the American Congress, business community, and general public.
- GSP tariff preferences were never intended to be, nor have they become, an entitlement for any developing country. GSP benefits are a privilege extended by the U.S. Government to developing countries who earn it, who meet the strict eligibility criteria laid out in the statute.
- There are several important criteria laid out in that statute; some are on the agenda for today’s GSP Review. I will focus my comments today on one country up for review – Ecuador – and one specific criterion requiring a beneficiary country “to act in good faith in recognizing as binding or in enforcing applicable arbitral awards.”

- These are not new issues for the committee or for us at USCIB. We have been submitting comments and testifying to the GSP Subcommittee on the subject of Ecuador and international arbitral awards, specifically investment arbitral awards, for nearly a decade. These are important issues and touch on some very important principles and precedents for our organization and our member companies.
- USCIB has offered formal comments to the committee on Ecuador’s performance and eligibility in 2013 and again in 2016. I testified before the subcommittee on those issues in 2013. I have also filed comments and testified to the subcommittee in 2013 and 2016 on the related topic of the Government of Ecuador’s request to add additional products to the eligibility list, as part of a “GSP Product Eligibility” review process. These issues, and the principles on which they are based, continue to be very important to us.
- The Government of Ecuador’s performance on the key eligibility criterion of respect for arbitral awards, specifically for arbitral awards and decisions under investment agreement obligations, has long been inadequate, indeed appalling. We have joined with other witnesses over the years in documenting that case. We continue to believe that the Government of Ecuador still falls far short of any reasonable standard on recognizing and enforcing arbitral awards. The record is clear and, unfortunately, American investors, including the very respected U.S. company, a member of our association, which originally filed the case challenging Ecuador’s GSP eligibility, continue to suffer from Ecuador’s failure to meet GSP standards.
- We at USCIB strongly support the request that Ecuador’s GSP eligibility be suspended until they come fully into compliance with the applicable standards laid out in the statute. Ecuador has had more than sufficient time and opportunities to demonstrate its compliance. And they have continued to fall short. The subcommittee has had this case before it for nearly seven years. It is time for action.
- For us at USCIB, three important principles and policies are in play and at stake here:
 1. International Investment – Foreign Direct Investment (FDI) drives economic growth, trade, development, and jobs, both in the home country and in the country receiving the investment. USCIB has long been a leading advocate in the U.S. and internationally on the importance of FDI as a fundamental driver of economic growth, development, trade, jobs, and better lives. Investment protections in a legally-binding investment agreement, in this case a Bilateral Investment Treaty (BIT) between the U.S. and Ecuador, are key to making FDI flows work. These treaties or agreements are, and must be, legally binding. The agreements clearly spell out the obligations of the two parties and the access to an international arbitral process to resolve disputes. Ecuador’s treatment of international investors has been, and remains, inadequate.

2. Corruption – Unfortunately, as this case has unfolded in international investment arbitration as well as in related court cases in Ecuador and the U.S., overwhelming evidence has emerged that the Ecuadorian plaintiffs and their legal team obtained a multibillion-dollar judgment against a U.S. company through corruption, bribery, and related criminal behavior. At significant cost and with great effort, the U.S. company targeted by this fraud and extortion scheme was able to expose the evidence of corruption, bribery, deceit, intimidation, and extortion against it. The Government of Ecuador took no effort to investigate or remedy the fraud, choosing instead to enable and support it at every step of the way. As a result, it is the Ecuadorian people who, unfortunately, are bearing the various costs and burdens of its own government’s decisions.
 3. Rule of Law – International relations, including economic relations, between countries such as trade and investment, require a foundation on all sides of respect for rule-of-law. It is our strong view that the Government of Ecuador has fallen far short in several key areas measured against any reasonable rule-of-law standard. In its deeply-flawed, corrupt original case in Ecuadorian courts against the U.S. company, in its political and financial support to the wrongdoers, in its aggressive efforts to support enforcement of that corrupt judgement in third countries, in its hesitancy to comply with specific orders and awards by the international investment tribunal, and in other ways, the Government of Ecuador has fallen short of basic standards for due process and respect of rule of law.
- Some may argue that the problems are in the past, that the current Government in Ecuador inherited this problem and its performance has been better than the previous government. Some may see improvement, other less so. But the key point is that the statute does not talk about “improved performance” or “movement toward” respect for arbitral awards. We are not grading on a curve here. The statute is clear “to act in good faith in recognizing as binding or in enforcing applicable arbitral awards.” That is the standard by which Ecuador, and every other GSP country, is to be held. And we are of the view that, until Ecuador meets that standard, their eligibility for GSP should be suspended.
 - This case was originally filed in 2013, seven years ago. And the aggrieved U.S. company did not rush to file the case. So, this one has been around a while. Ecuador has had more than enough time to come into full compliance. They have, in our strong view, not done so. Actions, or lack of actions, have consequences, or at least they should have consequences.

- Beyond policies, practices, and principles, we also care a great deal about precedents. Other countries watch how the U.S. or other countries deal with those countries which violate established or even statutory standards. Failure to effectively enforce disciplines against those who violate U.S. laws, regulations or standards, to look the other way and to treat the offenders the same as those countries fully complying with the standards, rewards poor performance and, in some case, law-breaking. Allowing a country like Ecuador which so clearly falls short of the standards laid out in the GSP statute, to continue to enjoy privileged access to the US market, is unfair to those other countries who are playing by the rules and can incentivize poor performance by others.
- We continue to believe that Ecuador, like all other eligible developing countries, must earn its access to GSP privileges. GSP should not be an entitlement for Ecuador or for any other country. For now, they clearly continue to fall short. But we look forward to the day Ecuador earns its way back to GSP privileges.