

PUBLIC DOCUMENT

**Before the Trade Policy Staff Committee
Subcommittee on the Generalized System of Preferences
Office of the United States Trade Representative**

2020 Annual GSP Country Practices Review

**Request to Appear and
Pre-Hearing Brief of Chevron Corporation in Support of:**

**Petition to Withdraw or Suspend the Republic of Ecuador's Designation
as a Beneficiary Developing Country
Under the Generalized System of Preferences**

Docket No. USTR-2013-0013

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I. INTRODUCTION

Chevron Corporation (“Chevron”) hereby submits this pre-hearing brief in further support of its October 2, 2012 Petition requesting that the President withdraw or suspend Ecuador’s GSP eligibility as required by law. Chevron also requests the opportunity for its Supervising Counsel, Disputes and Investigations, Mr. Andres Romero-Delmastro, to appear before the GSP Subcommittee at the January 30, 2020 hearing on the Petition.

On August 31, 2018, an arbitral tribunal established under the U.S.-Ecuador Bilateral Investment Treaty (the “BIT”) declared Ecuador internationally responsible for issuing a “clearly improper and discreditable” multi-billion-dollar judgment against Chevron that was secured through “procedural fraud, judicial misconduct and corruption.”¹ The Tribunal further condemned the Ecuadorian judgment (the “Lago Agrio Judgment”) for resting exclusively on environmental claims from which Chevron had been released years earlier following the implementation of a \$40 million remediation program certified and accepted by Ecuador.² The evidence establishing Ecuador’s misconduct was so overwhelming that the Tribunal described it as “the most thorough documentary, video, and testimonial proof of fraud ever put before an arbitral tribunal.”³ Both the federal district court for the Southern District of New York and the United States Court of Appeals for the Second Circuit have independently reached the same conclusion, and the U.S. Supreme Court denied *certiorari*.⁴

In an attempt to protect Chevron from the irreparable harm that would flow from the enforcement of that corrupt, multi-billion-dollar judgment, the Tribunal has issued *four* final arbitral awards in favor of Chevron, starting in 2012, ordering Ecuador to render the fraudulent judgment unenforceable.⁵ Yet despite “overwhelming” evidence of corruption and the Tribunal’s unequivocal ruling that “no part” of the Lago Agrio Judgment “should be recognized or enforced,”⁶ Ecuador *continues* to defy the Tribunal’s awards. Indeed, Ecuador has chosen to provide material support to the very individuals who have engaged in a corrupt, multi-jurisdictional campaign to extort \$9.5 billion from Chevron.

As a direct result of Ecuador’s defiance of the Tribunal’s final arbitral awards, Chevron has been forced to spend 16 years battling this unprecedented, extortionate campaign by resisting enforcement of the corrupt Lago Agrio Judgment around the globe. Although Chevron has to date

¹ *Chevron Corp. et al. v. Ecuador*, PCA Case No. 2009-23, Second Partial Award on Track II, Aug. 30, 2018 (“Track II Award”) ¶¶ 8.17(vii), 8.38 (Exh. 96). In this brief, Chevron refers to a number of documents, some of which are accessible from public sources and others which are not. The documents that may not be readily accessible are identified by the same exhibit number as Chevron’s 2018 pre-hearing brief (USTR-2013-0013-0033) and may be accessed at the same website: <https://www.weil.com/~media/files/pdfs/2018/chevron-filings/chevron-brief-supporting-exhibits-1113.pdf> by clicking on the hyperlink associated with each document in the exhibit list at that website. (Such documents are cited herein as “Exh.” and the corresponding exhibit number.)

² *Id.* ¶¶ 4.68, 4.69, 4.180, 4.181.

³ *Id.* ¶ 8.54.

⁴ *Chevron Corp. v. Donziger*, 833 F.3d 74, 132-34 (2d Cir. 2016); *Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362, 644 (S.D.N.Y. 2014) (“The decision in the Lago Agrio case was obtained by corrupt means.”).

⁵ *Chevron Corp. et al. v. Ecuador*, First Interim Award on Interim Measures, PCA Case No. 2009-23, Jan. 25, 2012, pt. VI, ¶ 2(i) (“First Interim Award”) (Exh. 2); *Chevron Corp. et al. v. Ecuador*, Second Interim Award on Interim Measures, PCA Case No. 2009-23, Feb. 16, 2012, ¶ 3(i) (“Second Interim Award”) (Exh. 107); *Chevron Corp. et al. v. Ecuador*, Fourth Interim Award on Interim Measures, PCA Case No. 2009-23, Feb. 7, 2013, ¶¶ 77-81 (“Fourth Interim Award”) (Exh. 108); Track II Award ¶ 10.13(i) (Exh. 96).

⁶ Track II Award ¶¶ 8.54, 10.10 (Exh. 96).

been successful in defending itself against these extortionate claims, those victories have cost Chevron millions of dollars, and Ecuador's continued refusal to comply with the Tribunal's awards by rendering the judgment unenforceable means that Chevron remains exposed to additional attempts to enforce this corrupt \$9.5 billion dollar judgment. Ecuador is fully aware of the Tribunal's findings that the Lago Agrio Judgment was procured through corruption and fraud in Ecuador's courts and that the Tribunal has ordered Ecuador to render the judgment unenforceable. By flouting this order, Ecuador allows the continued possibility of additional enforcement proceedings—which lead plaintiffs' counsel threatened just six months ago after the dismissal of their enforcement efforts in Canada: "Chevron has substantial assets in dozens of countries around the world. Stay tuned."⁷ Still, Ecuador openly defies the Tribunal's arbitral awards in favor of Chevron by refusing to prevent enforcement of the Lago Agrio Judgment.

As especially relevant to the mandate of this Subcommittee, GSP eligibility requires compliance with foreign arbitral awards in favor of U.S. companies. Ecuador has chosen, however, to blatantly defy the Tribunal's awards in favor of Chevron. If the Subcommittee does not promptly recommend withdrawal or suspension of Ecuador's GSP eligibility, Ecuador will continue to reap the benefit of millions of dollars of unilateral trade preferences despite Ecuador's: (1) internationally adjudicated violation, by means of a corrupt, multi-billion-dollar judgment based on fraud and bribery, of a U.S. company's right under the BIT to an impartial judiciary and a fair trial; (2) open defiance of binding arbitral awards designed to protect that U.S. company from the consequences of the GSP beneficiary's *own* corrupt conduct; and (3) public provision of material support to the very individuals who perpetrated the fraud and corruption and who are continuing in their efforts to enforce that judgment against the U.S. company.

Such a result would contravene both the letter and spirit of the GSP eligibility criteria, which are meant to ensure (among other things) that a country acting unjustly and unlawfully in its dealings with a U.S. company does not enjoy this unilateral trade preference. In fact, the GSP statute contemplates only one possible outcome in such circumstances: the withdrawal or suspension of Ecuador's GSP eligibility for "fail[ing] to act in good faith" to recognize arbitral awards in favor of a U.S. company.⁸ The Subcommittee should promptly recommend such action here.

The GSP Subcommittee previously has received three rounds of briefing and held three hearings regarding Chevron's Petition. In its present brief, Chevron will avoid unnecessary repetition of points made in its earlier submissions (a list of which is set forth in Attachment A hereto) and instead focus on developments since it filed its last brief on December 17, 2018. For

⁷ Twitter Account of Steven Donziger, Tweets dated July 9, 2019, available at: <https://mobile.twitter.com/SDonziger/status/1148675113098862593>.

⁸ See 19 U.S.C. §§ 2462(b)(2)(E) (providing that the President "shall not designate" a country as a GSP beneficiary country if that country fails to "act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or [entities]") & (d)(2) (providing that "[t]he President shall . . . withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, the President determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing county" under subsection (b)(2)).

the avoidance of doubt, Chevron continues to stand by the arguments made in its earlier submissions, all of which should be considered as incorporated by reference.

II. ECUADOR'S GSP ELIGIBILITY MUST BE WITHDRAWN OR SUSPENDED

Under the GSP statute, the President “*shall* not designate any country a beneficiary developing country” if “[s]uch country fails to act in good faith in recognizing as binding or enforcing arbitral awards in favor of United States citizens or a corporation . . . which is 50 percent or more beneficially owned by United States citizens.”⁹ Such failure is cause for withdrawing or suspending that designation.¹⁰ Accordingly, in this case, the GSP statute *mandates* that the President withdraw or suspend Ecuador’s beneficiary status because: (1) there are four final arbitral awards in favor of Chevron, a U.S.-owned company, ordering Ecuador to render the corrupt Lago Agrio Judgment unenforceable (**Subsection A**); and (2) Ecuador has failed to recognize or enforce those awards in good faith and, in fact, has openly defied those arbitral awards (**Subsection B**).

A. There Are Four Final Awards Against Ecuador and in Favor of Chevron

On January 25, 2012, the Tribunal issued its first interim arbitral award ordering Ecuador to “take all measures at its disposal to suspend or cause to be suspended the enforcement or recognition within and without Ecuador” of the Lago Agrio Judgment.¹¹ The Tribunal repeated that order on February 16, 2012, through the issuance of its Second Interim Award.¹² Then again, on February 7, 2013, the Tribunal “confirm[ed] and restate[d] with full force and effect its earlier orders and awards on interim measures,” which the Tribunal noted were “binding” upon Ecuador “under the [BIT] Treaty, the UNCITRAL Rules and international law.”¹³ Ecuador and Chevron have referred to this series of awards collectively as the Interim Awards throughout these proceedings.

Ecuador has argued throughout these proceedings that the Interim Awards are not “final” arbitral awards within the meaning of the GSP eligibility criteria.¹⁴ Chevron has debunked that false argument at length, demonstrating that those earlier awards were final as to the subject matter they covered and that the label “interim” refers only to the phase of the proceeding in which the Awards were rendered. Chevron refers to its prior briefing and will not address Ecuador’s erroneous argument at length here.¹⁵

However, Chevron calls attention to Ecuador’s argument that it could not be required to comply with the Interim Awards pending the outcome of Ecuador’s challenge of those awards before the Dutch courts.¹⁶ As Chevron has established previously, the idea that the Interim Awards

⁹ *Id.* § 2462(b)(2)(E) (emphasis added).

¹⁰ *Id.* § 2462(d)(2).

¹¹ First Interim Award, pt. VI, ¶ 2(i).

¹² Second Interim Award, ¶ 3(i).

¹³ Fourth Interim Award, ¶ 77.

¹⁴ *See, e.g.*, Ecuador’s Sept. 12, 2017, Pre-Hearing Br. at 2.

¹⁵ *See* Chevron’s Oct. 17, 2017, Post-Hearing Br. at 2-7; Chevron’s Feb. 12, 2016, Post-Hearing Br. at 16-17.

¹⁶ *See, e.g.*, Ecuador’s Dec. 17, 2018, Post-Hearing Br. at 1-2; Ecuador’s Feb. 12, 2016, Post-Hearing Brief at 7-8.

were not final and binding pending Dutch court review is wrong as a matter of law.¹⁷ In any event, and as stated below, the Dutch Supreme Court rejected Ecuador’s final challenge to the Interim Awards in April 2019. It is, therefore, beyond dispute now that the Interim Awards are final and binding, yet Ecuador continues to ignore them.

In addition to the Interim Awards, the Tribunal has issued its Track II Award, which is the Tribunal’s final and binding determination on the merits that Ecuador is liable for breaches of its obligations under the BIT. In the Track II Award, the Tribunal again ordered Ecuador to use all means necessary to achieve the result of suspending enforcement and recognition of the Lago Agrio Judgment.¹⁸ The Tribunal expressly made “final conclusions”¹⁹ “under Article 32 of the UNCITRAL Arbitration Rules,”²⁰ which provides that an arbitral award is “final and binding” and that a party “undertakes to carry out [the award] without delay.”²¹ The relief granted in the Track II Award is therefore the *fourth* final and binding arbitral award in favor of Chevron requiring Ecuador to render the corrupt Lago Agrio Judgment unenforceable, and it comes after Ecuador’s liability has been definitively established after a full merits hearing.

Instead of immediately complying with the Track II Award, in December 2018, however, Ecuador commenced further actions before the Dutch courts in an attempt to annul the Track II Award. As with Ecuador’s failed attempt to annul the Interim Awards, the current set-aside action in the Netherlands does not affect the immediately enforceable nature of the Track II Award. As Chevron has previously demonstrated, in the context of litigation over recognition and enforcement of another arbitral award, notably *also* against Ecuador and in favor of Chevron (in a different dispute, unrelated to the Lago Agrio matter, known as the “Commercial Cases” arbitration), the U.S. District Court for the District of Columbia declined to “stay” recognition of an award “while Ecuador attempt[ed] to have [the award] set aside by courts in the Netherlands,” reasoning that “the general objectives of arbitration” weighed “strongly in favor of confirmation” because the “BIT, the UNCITRAL Rules, and the New York Convention all require immediate satisfaction of arbitral awards.”²² Ecuador is thus “obliged to abide by [the Track II Award] notwithstanding any annulment [or set-aside] proceeding.”²³

In sum, there are currently *four* final, binding, and immediately enforceable arbitral awards against Ecuador and in favor of Chevron which require Ecuador to immediately suspend the enforceability of the corrupt Lago Agrio Judgment. To maintain its GSP eligibility, therefore, Ecuador must comply with those awards in good faith. Ecuador has refused to do so and has

¹⁷ See *Burlington Res., Inc. v. Ecuador*, Decision on Stay of Enforcement of the Award, ICSID Case No. ARB/08/5, Aug. 31, 2017, ¶ 72 (Exh. 56); *Chevron Corp. v. Ecuador*, 949 F. Supp. 2d 57, 60, 72 (D.D.C. 2013) (Exh. 102).

¹⁸ Track II Award, ¶ 10.13(i).

¹⁹ *Id.* ¶¶ 7.181-82, 8.78.

²⁰ *Id.* ¶ 10.24.

²¹ 1976 UNCITRAL Rules, Art. 32(2) (emphasis added).

²² *Chevron Corp. v. Ecuador*, 949 F. Supp. 2d 57, 60, 72 (D.D.C. 2013) (Exh. 102).

²³ See *Burlington Res., Inc. v. Ecuador*, Decision on Stay of Enforcement of the Award, ICSID Case No. ARB/08/5, Aug. 31, 2017, ¶ 72 (Exh. 56).

affirmed that it will not do so.²⁴ The consequences of Ecuador’s actions under the GSP statute are clear.

B. Ecuador’s Past Excuses for Its Failure to Act in “Good Faith” are Unavailing

It is undisputed that Ecuador has refused to comply with the Tribunal’s awards in good faith, as evidenced by: (1) the Tribunal’s February 7, 2013 determination of Ecuador’s non-compliance with the First and Second Interim Awards;²⁵ (2) the Tribunal’s August 31, 2018 determination of Ecuador’s continued non-compliance;²⁶ (3) public comments by Ecuador’s highest officials that establish an intent to defy the arbitral awards as a matter of national policy;²⁷ and (4) Ecuador’s efforts to actively promote enforcement of the corrupt Lago Agrio Judgment.²⁸ Indeed, in its arguments to the Subcommittee, Ecuador has never even suggested that it has complied or will comply with any of the Tribunal’s awards.

Ecuador’s strategy of discrediting and circumventing the Tribunal’s awards, and its alliance with the very individuals who perpetrated the fraud, bribery, and corruption in the Lago Agrio proceedings, is not the “good faith” recognition and enforcement that the GSP statute requires. Ecuador has offered a plethora of excuses throughout these proceedings in its attempts to justify its violations of the GSP statute’s requirements, which while framed in myriad ways, boil down to four main arguments. All are meritless.

First, the Track II Award completely dispels Ecuador’s argument that it is an innocent third party that has never been found “guilty or complicit in a fraudulent scheme.”²⁹ The Tribunal concluded that the presiding judge in the Lago Agrio trial, Judge Zambrano, accepted a bribe and knowingly issued the fraudulent Lago Agrio Judgment “cloaked with [Ecuadorian] governmental authority,” while “[holding] himself out as a judge acting in the name of Ecuador.”³⁰ The Ecuadorian judiciary subsequently “left unremedied” that judgment, and in fact did not even “investigate Chevron’s allegations of procedural fraud and judicial misconduct,”³¹ despite “full knowledge of the complaints of serious procedural impropriety.”³² Ecuador’s officials therefore had a direct role in the underlying fraud, which was the basis for the Tribunal’s conclusion in its Track II Award that Ecuador committed a denial of justice and is internationally responsible for the Lago Agrio Judgment. Thus, it is clear that Ecuador is neither an innocent nor a disinterested party to the Lago Agrio proceedings.

Second, as the BIT Tribunal concluded, Ecuador’s “reliance on the independence of [its judiciary] does not constitute a valid reason to allow breaches of obligations under international law to continue to exist.”³³ The Track II Award—as the Dutch courts stated in the context of Ecuador’s attempts to set aside the Interim Awards—“cannot be interpreted to mean that (the executive or legislative bodies) of [Ecuador] should breach the separation of powers at the expense

²⁴ See, e.g., Sept. 27, 2017, Hearing Tr. at 317:16-319:16. (Ecuador communicated its refusal to commit to compliance directly to the Subcommittee).

²⁵ Fourth Interim Award, pt. IV, ¶ 1.

²⁶ Track II Award ¶ 10.18 (Exh. 96).

²⁷ Chevron’s Nov. 13, 2018, Pre-Hearing Br. at 9-12 & Annex A.

²⁸ Chevron’s Jan. 4, 2016, Pre-Hearing Br. at 10-12.

²⁹ Ecuador’s Sept. 12, 2017, Pre-Hearing Br. at 13.

³⁰ Track II Award ¶ 8.50 (Exh. 96).

³¹ *Id.* ¶ 8.28.

³² *Id.* ¶ 8.27.

³³ *See ibid.*

of the judiciary.”³⁴ Rather, the Track II Award “extends to all government bodies whose cooperation is required to execute the award.”³⁵ It is therefore “up to the Republic of Ecuador to determine by whom and in which manner the measures as imposed by the [Tribunal] are executed.”³⁶ Accordingly, Ecuador may comply with the Track II Award through “her executive power, her legislative power, or her judicial power, or a combination thereof.”³⁷ But Ecuador may not in good faith hide behind its domestic law in order to avoid its obligations under the BIT, obligations to which Ecuador “voluntarily, unambiguously and unconditionally bound itself.”³⁸ Ecuador’s refusal to take actions to stop these international wrongs is not the “good faith” recognition and enforcement contemplated by the GSP statute.

Third, the Track II Award’s conclusions put to rest any argument that the Lago Agrio Plaintiffs (“LAPs”) have a human right to enforce the Lago Agrio Judgment. As the Tribunal concluded, the extent of the fraud, bribery, and corruption underlying the Lago Agrio Judgment “almost beggars belief in its arrogant contempt for elemental principles of truth and justice.”³⁹ In fact, the Lago Agrio Judgment represents a complete “denial of justice” to *Chevron* based on judicial and other action that was “grossly improper” and that “directly impacted, adversely,” *Chevron*’s procedural rights.⁴⁰ Thus, Ecuador’s human rights argument now boils down to the assertion that the LAPs have a human right to the enforcement of a judgment against *Chevron* that was corruptly and fraudulently procured through “gross” violations of international norms by the LAPs’ own representatives. Ecuador cites no authority supporting such an absurd proposition, because none exists, as *Chevron* has shown throughout these proceedings.⁴¹

Fourth, as stated above, Ecuador’s challenges in national courts do not in any way affect the immediate enforceability of the Track II Award. This is well-established by: (1) a U.S. federal court’s decision relating to the *Commercial Cases* Award against Ecuador and in favor of *Chevron*, in which the federal court rejected Ecuador’s attempt to stay enforcement of the award pending Dutch set-aside proceedings;⁴² (2) the text of the United States-Ecuador BIT;⁴³ (3) the text of the applicable UNCITRAL Arbitration Rules;⁴⁴ and (4) a 2017 ICSID decision against Ecuador pursuant to the United States-Ecuador BIT, holding that “both parties to the dispute are obliged to abide by an award notwithstanding an annulment proceeding.”⁴⁵ Indeed, Ecuador itself admitted

³⁴ See *Republic of Ecuador v. Chevron*, Case No. C/09/477457/HA ZA 14-1291, ¶ 4.27 (Dutch Dist. Ct. 2016) (Exh. 46).

³⁵ See *Republic of Ecuador v. Chevron*, Case No. 200.193.418/01, ¶ 12.2 (Hague Ct. Appeals 2017) (Exh. 58).

³⁶ See *id.*

³⁷ See *id.*

³⁸ See *Republic of Ecuador v. Chevron*, Case No. C/09/477457/HA ZA 14-1291, ¶ 4.27 (Dutch Dist. Ct. 2016) (Exh. 46).

³⁹ Track II Award ¶ 5.229 (Exh. 96).

⁴⁰ *Id.* ¶ 8.59.

⁴¹ See, e.g., *Chevron*’s Nov. 13, 2018 Pre-hearing Brief, p. 15 (Dkt. No. USTR-2013-0013-0033).

⁴² *Chevron Corp. v. Ecuador*, 949 F. Supp. 2d 57, 60, 72 (D.D.C. 2013) (Exh. 102).

⁴³ Treaty Between the United States of America and the Republic of Ecuador Concerning the Encouragement and Reciprocal Protection of Investment, Art. VI(6). S. Treaty Doc. 103-15, 103d Cong., 1st Sess., Aug. 27, 1993 (“Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Party undertakes to carry out without delay the provisions of any such award and to provide in its territory for its enforcement.”).

⁴⁴ 1976 UNCITRAL Rules, Art. 32(2) (“The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.”).

⁴⁵ See *Burlington Res. v. Ecuador*, Decision on Stay of Enforcement of the Award, ICSID Case No. ARB/08/5, Aug. 31, 2017, ¶ 72 (Exh. 56) (lifting provisional stay of enforcement pending annulment proceedings); see

in writing to the BIT Tribunal that “it is *undisputed between the parties* that the [Track II Award] is the *final and binding* decision of the Arbitral Tribunal on the issues adjudicated there.”⁴⁶ Any attempt by Ecuador to re-litigate this issue is the very epitome of bad faith.

Ecuador has not complied in good faith with the Tribunal’s arbitral awards in favor of Chevron. The GSP statute therefore mandates that Ecuador’s GSP benefits must be withdrawn or suspended, and this Subcommittee should recommend that the President do so.⁴⁷

III. DEVELOPMENTS SINCE THE LAST GSP REVIEW

The petition to withdraw Ecuador’s GSP benefits for non-compliance with arbitral awards in favor of a U.S. company was last before the Subcommittee during the November 2018 hearing. Chevron provides below an update on key developments in Ecuador’s continuing failure to comply with the Tribunal’s awards since that time.

A. Update on International Enforcement Actions

As a direct consequence of Ecuador’s failure to comply with the Tribunal’s order to render the Lago Agrio Judgment unenforceable, the LAPs initiated enforcement actions against Chevron in Canada, Brazil, and Argentina. A brief overview of each action and its current status is provided immediately below.

Canada: On May 30, 2012, the LAPs filed an action in Ontario, Canada to enforce the fraudulent Lago Agrio Judgment against Chevron and its indirect subsidiary in Canada, Chevron Canada Limited. The Court of Appeal for Ontario subsequently dismissed Chevron Canada Limited from the action on the grounds that it is a separate entity from Chevron Corporation, such that the LAPs cannot seize Chevron Canada Limited’s shares and assets. On April 4, 2019, the Supreme Court of Canada rejected the LAPs’ request to review the Court of Appeal’s decision, rendering the dismissal of Chevron’s subsidiary from the action final. Chevron remained a party to the enforcement action.

However, on July 5, 2019, the Ontario Superior Court dismissed the Canadian enforcement action brought against Chevron after the LAPs consented to an order dismissing the action and awarding costs in favor of Chevron. The court’s dismissal finally ended the LAPs’ enforcement efforts in Canada.

Brazil: On June 27, 2012, the LAPs filed legal proceedings in Brazil to enforce the fraudulent Lago Agrio Judgment there. In November 2017, Brazil’s Superior Court of Justice (“STJ”), which is the highest court in Brazil on non-constitutional federal law, unanimously denied the LAPs’ request for recognition of the Lago Agrio Judgment on the grounds that the Brazilian courts lacked jurisdiction to hear the case.

Nonetheless, on March 22, 2018, the LAPs filed a motion for clarification seeking a ruling from the STJ that it had dismissed the recognition action without considering the merits of the case (the implication being that the decision did not preclude further enforcement actions). The STJ

also id. ¶ 84 (rejecting Ecuador’s “concept of compliance, which includes post-award negotiations and a settlement, including a cut in the amount awarded by a tribunal” which the Tribunal found not to be “what compliance means under the ICSID Convention”).

⁴⁶ Letter from the Republic of Ecuador to BIT Tribunal dated Nov. 1, 2018 at 20 (Exh. 109) (emphasis added).

⁴⁷ 19 U.S.C. § 2462(b)(2)(E).

rejected the LAPs' request in May 2018, and on June 15, 2018, the STJ ruled that its decision denying recognition became final.

Argentina: In November 2012, the LAPs continued their efforts to enforce the Lago Agrio Judgment by filing enforcement proceedings in Argentina. The LAPs were initially successful in obtaining, on an *ex parte* basis, a multi-billion-dollar attachment order against the assets of Chevron's subsidiaries. After eight months, following rejection of the LAPs' motion for reconsideration and an appeal, the Argentine Supreme Court reversed the order.

In parallel, the LAPs pursued recognition of the fraudulent judgment through an exequatur proceeding against Chevron seeking the recognition and enforcement of the Lago Agrio Judgment in Argentina. In the face of multiple filings made by Chevron, apprising the trial court of the extensive evidence of fraud, corruption, and bribery in the Lago Agrio litigation, the public prosecutor reviewing the file issued an opinion recommending that the trial court deny the LAPs' exequatur, because the Argentine courts lacked personal jurisdiction over Chevron, which never operated in Argentina and had no assets in Argentina, and because the recognition of a judgment would violate the public policy of Argentina. The trial court and intermediate appellate court ultimately rejected the exequatur, with the LAPs' final appeal now pending before the Supreme Court of Argentina.⁴⁸

As demonstrated above, Chevron has thus far been successful in defending against enforcement of the corrupt Lago Agrio Judgment, but it has done so only after significant costs and effort. Ecuador's open defiance of the Tribunal's order to render the Lago Agrio Judgment unenforceable has subjected Chevron and its subsidiaries not only to the risk of enforcement but also to the costs of its successful defense against the judgment.

B. LAPs Threaten to Pursue Enforcement in Other Jurisdictions

In spite of the failure of their enforcement actions in Brazil and Canada (and Argentina to date), the LAPs have threatened to launch potentially dozens of new enforcement actions in other jurisdictions. This is consistent with the LAPs' strategy laid out in an internal memorandum—obtained by Chevron through discovery—of launching multiple enforcement actions in several jurisdictions to extort a settlement out of Chevron. The memorandum designated certain foreign jurisdictions as of particular interest for enforcement actions, including the Philippines, Singapore, Australia, Argentina, Brazil, Colombia, Venezuela, Canada, Kuwait, Nigeria, Saudi Arabia, Indonesia, Russia, and the United Kingdom.⁴⁹

As recent statements by the LAPs' legal team indicate, this list is only a small sample of the nearly “sixty” foreign jurisdictions in which the LAPs continue to assess the possibility of seeking to enforce the corrupt Lago Agrio Judgment around the world.⁵⁰

- **April 4, 2019:** The LAPs stated that, in “spite of [the] decision in Canada,” they had the “intention to open [enforcement actions] in other jurisdictions” and that

⁴⁸ Although Ecuador did recently notify the Argentine courts of the Track II award, which is one of Ecuador's obligations under the Track II award, that action does nothing to comply with the only action by Ecuador that can truly relieve Chevron from the burden of defending itself from the enforcement of the corrupt judgment: immediate suspension of the Lago Agrio Judgment's enforceability.

⁴⁹ Track II Award, ¶¶ 4.390-4.391 (Exh. 96).

⁵⁰ *Demandantes de Chevron afirman que llevarán su caso a otros países*, La República (April 6, 2019), available at: <https://www.larepublica.ec/blog/economia/2019/04/06/demandantes-chevron-afirman-llevaran-caso-otros-paises/>.

“in the near future they will be able to announce the countries in which new executur actions will be initiated[.]”⁵¹

- **April 4, 2019:** Pablo Fajardo, the LAPs’ Ecuadorian attorney, tweeted that the LAPs “will continue [their enforcement actions] in other jurisdictions.”⁵²
- **April 6, 2019:** A news article reported that the LAPs “will look for ‘possible opportunities in other jurisdictions until Chevron pays the [Lago Agrio Judgment].”⁵³
- **May 28, 2019:** Steven Donziger, the LAPs’ disgraced American counsel, stated that he would, “[a]s long as practicable,” continue to “focus on helping [the LAPs] enforce their judgment[.]”⁵⁴
- **July 8, 2019:** The Amazon Defense Front (“ADF”), which is a proxy for the LAPs’ legal team, stated that the LAPs remain “determined” to ensure that enforcement is achieved “as soon as possible” and that they are “exploring further options and will make an announcement at the appropriate time.”⁵⁵
- **July 8, 2019:** Steven Donziger tweeted that although the LAPs consented to dismissal of the Canadian enforcement action, they were “weigh[ing] [their options] to enforce in other jurisdictions.”⁵⁶ A day later, Donziger tweeted that “[m]any options exist to enforce the judgment outside [Canada],”⁵⁷ noting that

⁵¹ *Canada Denies Justice to Ecuadorians*, UDAPT (April 4, 2019), available at: <http://texacotoxico.net/en/canada-denies-justice-to-ecuadorians/>.

⁵² Twitter Account of Pablo Fajardo, Tweet dated April 4, 2019 (translated from Spanish original), available at: <https://twitter.com/Pablofame/status/1113812773509709829>.

⁵³ *Demandantes ecuatorianos contra Chevron aceptan que Canadá ‘cerró la Puerta,’*, El Comercio (April 6, 2019), available at: <https://www.elcomercio.com/actualidad/demandantes-chevron-canada-chevron-justicia.html>.

⁵⁴ Statement of Steven Donziger In Response To Contempt Finding (May 28, 2019), available at: <https://chevroninecuador.org/assets/docs/2019-05-28-donziger-statement.pdf>.

⁵⁵ Press Release, Amazon Defense Front, *Ecuadorians Agree to End Ontario Enforcement Action As Focus Turns To Chevron Assets In Other Jurisdictions* (July 8, 2019), available at: <https://www.makechevroncleanup.com/press-releases/2019/7/8/ecuadorians-consent-to-dismiss-ontario-enforcement-action>.

⁵⁶ Twitter Account of Steven Donziger, Tweet dated July 8, 2019, available at: <https://twitter.com/sdonziger/status/1148397698896318465>.

⁵⁷ Twitter Account of Steven Donziger, Tweet dated July 9, 2019, available at: <https://mobile.twitter.com/SDonziger/status/1148675056513499136>.

“Chevron has substantial assets in dozens of countries around the world. Stay tuned.”⁵⁸

- **July 9, 2019:** Patricio Salazar, a lawyer representing the LAPs, declared that “the Ecuadorians are exploring other options and will make an announcement at the proper time.”⁵⁹
- **July 10, 2019:** News media reported that the LAPs are “preparing two new suits to try to collect the award in other countries.”⁶⁰
- **July 11, 2019:** Ernel Chavez, President of the ADF, stated that the LAPs will continue “until their . . . judgment is enforced[.]”⁶¹
- **July 11, 2019:** Steven Donziger tweeted that there were “plans for the Amazon communities to enforce . . . \$12b judgment elsewhere.”⁶²
- **July 11, 2019:** Patricio Salazar stated that the termination of the Canadian enforcement action would allow the LAPs to refocus their resources in order “to collect the judgment in a more appropriate venue where the company’s substantial assets will be available for seizure.”⁶³
- **October 28, 2019:** Pablo Fajardo tweeted that it “is a privilege to take the fight against Chevron’s crimes and corporate power to all possible places. The fight is ours, and it continues.”⁶⁴

Accordingly, despite Chevron’s successful defense against enforcement of the Lago Agrio Judgment to date, the LAPs continue to announce that they will pursue further enforcement actions against Chevron’s assets across the world. The risk of further enforcement actions is made

⁵⁸ Twitter Account of Steven Donziger, Tweet dated July 9, 2019, available at: <https://mobile.twitter.com/SDonziger/status/1148675113098862593>.

⁵⁹ *Ecuadorianos desisten de demanda contra Chevron en Canadá*, AFP (July 9, 2019), available at: <https://es.finance.yahoo.com/noticias/ecuatorianos-desisten-demanda-contra-chevron-en-canadá-205948729.html>.

⁶⁰ *Chevron genera pugna interna*, Expreso (July 10, 2019), available at: <https://www.juiciocrudo.com/articulo/chevron-genera-pugna-interna/12148>.

⁶¹ Press Release, Amazon Defense Front, *Chevron Putting Out Inaccurate Information About Ontario Enforcement Action To Hide Risk of \$12b Ecuador Pollution Judgment* (July 11, 2019), available at: <https://www.makechevroncleanup.com/press-releases/2019/7/11/chevron-putting-out-inaccurate-information-about-ontario-enforcement-action-to-hide-risk-of-12b-ecuador-pollution-judgment>.

⁶² Twitter Account of Steven Donziger, Tweet dated July 11, 2019, available at: <https://twitter.com/SDonziger/status/1149450451634577409>.

⁶³ Press Release, Amazon Defense Front, *Chevron Putting Out Inaccurate Information About Ontario Enforcement Action To Hide Risk of \$12b Ecuador Pollution Judgment* (July 11, 2019), available at: <https://www.makechevroncleanup.com/press-releases/2019/7/11/chevron-putting-out-inaccurate-information-about-ontario-enforcement-action-to-hide-risk-of-12b-ecuador-pollution-judgment>.

⁶⁴ Twitter Account of Pablo Fajardo, Tweet dated October 28, 2019 (translated from Spanish original), available at: <https://twitter.com/Pablofame/status/1113812773509709829>.

possible only by Ecuador's continued open defiance of the Tribunal's order to render the Lago Agrio Judgment unenforceable.

C. Update on the Dutch Court Proceedings

Ecuador has sought to annul each of the Tribunal's awards before the Dutch courts in two separate sets of proceedings.

First, Ecuador sought the annulment of the First, Second, Third, and Fourth Interim Awards and the First Partial Award. The Dutch Supreme Court finally rejected Ecuador's application on April 12, 2019. In doing so, the Supreme Court (1) upheld as legally correct and sufficiently reasoned the Dutch Court of Appeals' decision to reject Ecuador's public policy grievance with respect to the alleged violation of the fundamental rights of the LAPs, and (2) rejected all of Ecuador's other cassation complaints—including Ecuador's argument that the Awards violated its sovereignty and separation of powers.

Second, on December 10, 2018, Ecuador filed a new set-aside proceeding against the Track II Award on the merits. In its set-aside application, Ecuador argues that the Track II Award violates public policy and that the tribunal exceeded its mandate and failed to address an essential defense. Notably, however, Ecuador does not challenge the factual basis for the Track II award, including its findings of fraud and corruption. Chevron made its procedural appearance in the case on March 13, 2019, and filed its Statement of Defense on June 5, 2019. The Hague District Court has set a date for the oral hearing to be held on March 24, 2020.

D. Update on BIT Proceedings

As stated above, on August 31, 2018, the Tribunal issued its Track II Award, which declared Ecuador internationally responsible for issuing a "clearly improper and discreditable," multi-billion-dollar judgment against Chevron that was secured through "procedural fraud, judicial misconduct and corruption."⁶⁵ The Track II Award is the Tribunal's final determination that Ecuador is liable for breaches of obligations under the BIT.

The BIT proceedings have now progressed to Track III, in which the Tribunal will determine the amount of damages for which Ecuador is responsible as a result of its international wrongs in rendering and upholding the corrupt Lago Agrio Judgment. Chevron filed its initial brief on quantum in May 2019 and is currently waiting for Ecuador's response brief.

IV. CONCLUSION

The facts before the Subcommittee are clear and indisputable. Ecuador's conduct directly contradicts the text and purpose of the arbitral awards eligibility criterion of the GSP statute. An international arbitral tribunal has, on four occasions, issued final awards in favor of Chevron ordering Ecuador to render the corrupt Lago Agrio Judgment unenforceable. Yet, for nearly eight years, Ecuador has acted in open defiance of those awards by instead aligning itself with the very individuals who committed the fraud. Ecuador's continued GSP eligibility sends an unmistakable signal to other GSP beneficiary countries that they may be able to maintain preferential access to the U.S. market while ignoring U.S. statutory requirements. Under these circumstances, the GSP

⁶⁵ Track II Award, ¶¶ 8.28, 8.60 (Exh. 96).

statute requires that the President “shall” withdraw or suspend Ecuador’s designation as a GSP beneficiary developing country.⁶⁶

⁶⁶ See 19 U.S.C. §§ 2462(b)(2)(E) (providing that the President “shall not designate” a country as a GSP beneficiary country if that country fails to “act in good faith in recognizing or enforcing arbitral awards in favor of United States citizens or [entities]”) & (d)(2) (providing that “[t]he President shall . . . withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, the President determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing county under subsection (b)(2)”).

Attachment A

Ecuador – Arbitral Awards

Docket No. USTR-2013-0013

Submissions by Chevron Corp.

<u>Submission</u>	<u>Date</u>	<u>Docket ID No.</u>
Petition	Oct. 2, 2012	USTR-2013-0013-0003
First Supplement to Petition	Feb. 11, 2013	USTR-2013-0013-0004
Second Supplement to Petition	Mar. 18, 2013	USTR-2013-0013-0007
<u>FIRST BRIEFING AND HEARING</u>		
Pre-Hearing Brief	Jan. 4, 2016	USTR-2013-0013-0014
Hearing Testimony	Jan. 15, 2016	USTR-2013-0013-0019 (at pp. 212-241)
Post-Hearing Brief	Feb. 12, 2016	USTR-2013-0013-0023
Additional Information	Aug. 10, 2016	N/A
<u>SECOND BRIEFING AND HEARING</u>		
Pre-Hearing Brief	Sep. 12, 2017	USTR-2013-0013-0027
Hearing Testimony	Sep. 27, 2017	USTR-2013-0013-0030 (at pp. 283-311)
Post-Hearing Brief	Oct. 17, 2017	USTR-2013-0013-0032
<u>THIRD BRIEFING AND HEARING</u>		
Pre-Hearing Brief	Nov. 13, 2018	USTR-2013-0013-0033
Hearing Testimony	Nov. 29, 2018	USTR-2013-0013-0037 (at pp. 69-93)
Post-Hearing Brief	Dec. 17, 2018	USTR-2013-0013-0041