

PUBLIC DOCUMENT

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

2012 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

U.S. law requires the President to withdraw or suspend GSP benefits if a beneficiary country fails to act in good faith in enforcing arbitral awards in favor of a U.S. company. Ecuador is such a country. Continuing a pattern that has been ongoing for almost seven years, Ecuador recently announced its refusal to comply with a unanimous final award in favor of Chevron Corporation (“Chevron”). That announcement is consistent with Ecuador’s multi-year failure to recognize or enforce in good faith a series of interim awards from an arbitral Tribunal constituted under the U.S.-Ecuador Bilateral Investment Treaty (the “BIT”), which ordered Ecuador to use all means necessary to suspend the enforcement—within and outside Ecuador—of an Ecuadorian court’s fraudulent \$9.5 billion judgment against Chevron (the “Lago Agrio Judgment”).¹ Although labeled “interim” (in recognition of the phase of the arbitration in which they were rendered), the First, Second, and Fourth Interim Awards were final as to the subject matter they covered and immediately enforceable.

Now the BIT Tribunal has issued a 521-page Partial Final Award on Track II (the “Track II Award”)² addressing the merits of Chevron’s claims and declaring that the Ecuadorian court’s judgment against Chevron was procured through fraud, bribery, and corruption and was based on claims that the Republic of Ecuador had already settled and released years earlier, following completion of an agreed environmental remediation program. That finding makes Ecuador’s compliance with the mandate of the First, Second, and Fourth Interim Awards even more imperative, as the Track II Award once again specifically confirmed. Yet contrary to the unwavering directive from the Tribunal stretching back many years and recently reconfirmed, Ecuador continues to openly defy the BIT Tribunal by publicly supporting enforcement of the fraudulent Lago Agrio Judgment.

Chevron 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.³

¹ *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”) (Exhibit to Chevron’s Petition (Dkt. No. USTR-2013-0013-0003)) (requiring Ecuador to take “all measures necessary to suspend or cause to be suspended the enforcement and recognition within and without Ecuador” of the Lago Agrio Judgment); *see also Chevron Corp. et al. v. Ecuador*, First Interim Award on Interim Measures, PCA Case No. 2009-23, Jan. 25, 2012, at p. 16 (“First Interim Award”) (Exhibit 2 to Chevron’s January 2016 Pre-Hearing Brief) (requiring Ecuador to take “all measures at its disposal to suspend or cause to be suspended the enforcement or recognition” of the Lago Agrio Judgment); *Chevron Corp. et al. v. Ecuador*, Fourth Interim Award on Interim Measures, PCA Case No. 2009-23, Feb. 7, 2013, pt. IV, ¶ 1 (“Fourth Interim Award”) (Exhibit to the First Supplement to Chevron’s Petition (Dkt. No. USTR-2013-0013-0004)) (“The Tribunal declares that the Respondent has violated the First and Second Interim Awards under the Treaty, the UNCITRAL Rules and international law in regard to the finalisation and enforcement subject to execution of the Lago Agrio Judgment within and outside Ecuador, including (but not limited to) Canada, Brazil and Argentina[.]”).

² *Chevron Corp. et al. v. Ecuador*, PCA Case No. 2009-23, Second Partial Award on Track II, Aug. 30, 2018 (“Track II Award”) (Exh. 96). In this brief, Chevron refers to a number of documents, some of which are readily accessible from public sources and others of which are not. The documents that may not be readily accessible are identified by exhibit number and may be accessed at this 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.)

³ Dkt. No. USTR-2013-0013-0003; *see also* Dkt. No. USTR-2013-0013-0004, Feb. 11, 2013 (supplemental information in support of petition); Dkt. No. USTR-2013-0013-0007, Mar. 18, 2013 (second supplemental information in support of petition); Dkt. No. USTR-2013-0013-0014, Jan. 4, 2016 (hereinafter “Chevron Jan. 2016 Pre-Hearing Brief”); Dkt. USTR-2013-0013-0023, Feb. 12, 2016 (hereinafter “Chevron Feb. 2016 Post-Hearing

Chevron also requests the opportunity for its Supervising Counsel, Enterprise Litigation, Mr. Andres Romero-Delmaestro, to appear before the GSP Subcommittee at the November 29, 2018 third hearing on the Petition. Chevron assumes the Subcommittee’s familiarity with prior briefing outlining the reasons why Ecuador’s long-standing failure to comply with the BIT Tribunal’s Awards constitutes grounds for suspending Ecuador’s GSP eligibility. This pre-hearing brief instead will focus on two recent developments that underscore Ecuador’s ineligibility for GSP preferences and the inequity of Ecuador facing no sanction for its overt defiance of binding arbitral awards.

First, the BIT Tribunal’s Track II Award found “overwhelming” evidence that the Lago Agrio Judgment was fraudulent and corrupt, that it was based on claims that Ecuador had already settled and released years earlier, and that it should not be enforced anywhere in the world (**Section II**).⁴ “Short of a signed confession,” the Tribunal found the evidence before it to “be the most thorough documentary, video, and testimonial proof of fraud ever put before an arbitral tribunal.”⁵ The Tribunal then held that “by issuing, rendering enforceable . . . , and knowingly facilitating [the Lago Agrio Judgment’s] enforcement,” Ecuador “committed a denial of justice” under the BIT and customary international law,⁶ and that accordingly “no part” of the Lago Agrio Judgment “should be recognised or enforced by any State with knowledge of [Ecuador’s] said denial of justice.”⁷ The Tribunal further “confirm[ed]” that Ecuador had “violated” the Interim Awards by failing to suspend the enforcement of the Lago Agrio Judgment.⁸

Second, despite the Tribunal reconfirming its directive that Ecuador must take “immediate steps” to “remove the status of enforceability from the Lago Agrio Judgment,”⁹ Ecuador persists in its long-standing refusal to recognize or enforce the Tribunal’s Awards in good faith—an intent Ecuador confessed directly to the Subcommittee at the 2017 hearing by refusing to commit to compliance (**Section III**).¹⁰ At that same hearing, Ecuador also entreated the GSP Subcommittee not to withdraw or suspend GSP benefits and not to “prioritize the particular interest of one company over the broader, vibrant bilateral relations” given the then new administrations in both the United States and Ecuador.¹¹ According to Ecuador, “the [new] governments have expressed their intention to continue in the path to bring both countries closer together,” and “[d]eveloping stronger ties and strengthening the bilateral relations require the political will and effort of both countries.”¹² Yet Ecuador’s current administration clearly does

Brief”); Dkt. USTR-2013-0013-0027, Sept. 12, 2017 (hereinafter “Chevron Sept. 2017 Pre-Hearing Brief”); Dkt. USTR-2013-0013-0032, Oct. 17, 2017 (hereinafter “Chevron Oct. 2017 Post-Hearing Brief”). All docket ID numbers refer to documents available on <http://federal.eregulations.us>.

⁴ Track II Award ¶ 8.54 (Exh. 96).

⁵ *Ibid.*

⁶ *Id.* ¶ 10.5.

⁷ *Id.* ¶ 10.10.

⁸ *Id.* ¶ 10.18.

⁹ *Id.* ¶ 10.13(i).

¹⁰ *See* Sept. 27, 2017, Hearing Tr. at 317:16-319:16.

¹¹ *Id.* at 339:2-5; *see also id.* at 339:5-7 (“The opportunities that two new administrations offer should not be hindered by the interest of one company”); Ecuador’s Sept. 12, 2017, Pre-Hearing Br. at 7 (“The relationship between the two Administrations should not be undermined on the basis of alleged non-compliance with interim awards To do otherwise would be to threaten the two States’ mutual aspirations for increased cooperation on shared political and economic goals on the basis of interim arbitral awards that could in a matter of months be declared unlawful, invalid and contrary to international law.”).

¹² Sept. 27, 2017, Hearing Tr. at 338:14-20.

not have the “political will” to strengthen its relations with the United States by respecting the GSP eligibility criterion and enforcing the BIT Awards in good faith. To the contrary, Ecuador has openly pronounced that its “fundamental” goal is to “avoid” enforcement of the Track II Award.¹³ In doing so, Ecuador continues to align itself publicly with the Lago Agrio Plaintiffs’ (“LAPs”) efforts to enforce the fraudulent Lago Agrio Judgment. Ecuador continues to this day to work closely with Pablo Fajardo—the Ecuadorian attorney the BIT Tribunal found had engaged in serious acts of fraud and corruption—to establish a “roadmap” to circumvent the Award.¹⁴

Indeed, as shown in **Section III** and **Annex A**, Ecuador’s current administration consistently and unequivocally has supported the LAPs and their fraudulent judgment against Chevron, both privately and in public. Following in the steps of the prior administration, Ecuador’s current administration has entirely disregarded the BIT Tribunal’s Interim Awards, disparaged the Track II Award, and continued its alignment with the LAPs’ corrupt team.

Ecuador’s failure to take even a single step to comply with the Track II Award is only the latest instance of Ecuador’s utter defiance of international arbitral awards, contrary to the eligibility criterion under the GSP statute. Years of open defiance of such awards—free of any repercussions or consequences—have only emboldened Ecuador to continue in its current trajectory and risk inspiring other countries receiving GSP benefits to emulate Ecuador’s misconduct. This is entirely contrary to Congress’ unambiguous intent reflected in the GSP statute,¹⁵ namely that a country’s persistent refusal to comply in good faith with arbitral awards—like Ecuador has refused to do with the Track II Award and the Interim Awards that preceded it—dictates only one possible outcome: the President “shall . . . withdraw or suspend” GSP eligibility (**Section IV**).¹⁶

The continuation of Ecuador’s GSP benefits under these circumstances would render meaningless the Administration’s enforcement priorities for GSP.¹⁷ Moreover, although Chevron’s Petition is based on Ecuador’s failure in good faith to recognize and enforce arbitral awards, other factors support suspending Ecuador’s beneficiary country status. Those other factors, noted in **Section V** below, include the granting of preferential treatment to products of

¹³ TV Interview of Vice President Maria Alejandra Vicuña, TC TV (Sept. 14, 2018), *available at* <https://www.youtube.com/watch?v=65qnUBp43Cc&feature=youtube>.

¹⁴ Press Conference, Lago Agrio Plaintiffs’ Representatives (Sept. 10, 2018), *available at* <https://www.youtube.com/watch?v=CD4kpFFED1g&feature=youtu.be> (stating that Pablo Fajardo met that day with the Attorney General who according to Fajardo was “very open,” Fajardo also states that “a roadmap can be established in the future for [the LAPs] and the Attorney General’s Office to face the Chevron case”). *See also* Twitter Account of WAMBRA, Sept. 10, 2018, *available at* <https://twitter.com/wambraEc/status/1039199296078471168> (quoting Pablo Fajardo as stating that “[w]ith the Attorney General’s Office of #Ecuador we will establish a roadmap to promote a just judgment in favor of those affected by #Chevron” and “will go to Geneva so that our demand can be heard worldwide”) (Exh. 97). *See also Ecuador has two options to appeal the arbitration award in the Chevron case*, El Universo (Sept. 13, 2018), *available at* <https://www.eluniverso.com/noticias/2018/09/13/nota/6950828/dos-opciones-tiene-ecuador-impugnar-laudoarbitral> (noting Pablo Fajardo’s endorsement of the Attorney General’s decision to file a set aside petition and clarification of the Award) (Exh. 98).

¹⁵ *See* 19 U.S.C. § 2462(b)(2)(E).

¹⁶ *Id.* § 2462(d)(2).

¹⁷ Press Release, Office of the United States Trade Representative, *USTR Announces New Enforcement Priorities for GSP* (Oct. 25, 2017), *available at* <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/october/ustr-announces-new-enforcement>.

other countries, lax enforcement of intellectual property rights, and denial of equitable and reasonable market access to U.S. goods. Although not the basis for Chevron’s Petition, these other factors are also relevant in “ensur[ing] that countries that are not playing by the rules do not receive U.S. trade preferences.”¹⁸

Ecuador has flouted the GSP eligibility criterion long enough, and the GSP Subcommittee should recommend to the President that he withdraw or suspend Ecuador’s status as a designated beneficiary country forthwith until it comes into compliance with the Awards against it.

II. THE TRACK II AWARD CONFIRMED THE LAGO AGRIO JUDGMENT WAS PROCURED THROUGH FRAUD AND WAS BASED ON CLAIMS ALREADY SETTLED AND RELEASED BY ECUADOR

On August 30, 2018, the BIT Tribunal issued its Track II Award, which is a final award on the merits in the ongoing arbitration. The award is a 521-page indictment of the Lago Agrio Judgment and the manner in which it was procured. In the Tribunal’s own words, 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.”¹⁹

To assist the Subcommittee in appreciating the import of the extensive Track II Award, Chevron highlights below four of the Tribunal’s conclusions. Specifically, the Tribunal concluded that: (1) the \$9.5 billion Lago Agrio Judgment, which held Chevron liable for alleged environmental damages in Ecuador, was the result of fraud, bribery, and corruption; (2) Ecuador’s national judicial system at all levels failed to address or correct that fraud and other misconduct; (3) following completion of an agreed environmental remediation program in Ecuador, Ecuador released Chevron’s subsidiary from the environmental claims on which the Lago Agrio Judgment is based; and (4) Ecuador remains in breach of the Tribunal’s Interim Awards, and now the Track II Award that confirms them.

A. The Lago Agrio Judgment is the Product of Fraud, Bribery, and Corruption

The Track II Award provides a thorough account of the fraud and corruption that permeated the Lago Agrio litigation and the resulting Lago Agrio Judgment against Chevron in Ecuador, in violation of the BIT and international law.

After carefully cataloguing the evidence of the LAPs’ “prolonged, malign conduct towards [Ecuador’s] legal system generally and, particularly, the Lago Agrio Court,”²⁰ the BIT Tribunal found that the LAPs’ representatives, Mr. Fajardo and now-suspended U.S. attorney Steven Donziger, improperly met with, blackmailed, and bribed Ecuadorian judges who presided over the Lago Agrio litigation as well as other court officials.²¹ For instance, the LAPs’ representatives “blackmail[ed]” the then presiding Ecuadorian judge into cancelling judicial inspections of allegedly contaminated sites by experts whose reports did not support the LAPs’ contamination claims and appointing in their place as the court’s global expert, Richard Cabrera, with whom the LAPs’ representatives had reached a corrupt deal in advance to ensure that he

¹⁸ *Ibid.*

¹⁹ Track II Award ¶ 5.229 (Exh. 96).

²⁰ *Ibid.*

²¹ *Id.* ¶ 4.232.

would “play ball” with them.²² Mr. Cabrera’s role as the court’s own expert was meant to be “one of complete impartiality and transparency.”²³ But the LAPs’ representatives secretly met with Mr. Cabrera in order to devise a plan by which they would ghostwrite his expert report. As the Tribunal found, “[n]o-one present at this meeting could have misunderstood the plan, namely to have Mr. Cabrera formally appointed as the sole expert to the Lago Agrio Court;” “for the Lago Agrio Plaintiffs’ representatives and advisers (but not Mr. Cabrera) covertly to write the Cabrera Report;” and “to disguise that report, dishonestly, as the work of Mr. Cabrera.”²⁴ To facilitate that plan, the LAPs’ representatives made “covert payments” to Mr. Cabrera through a “‘secret’ bank account,”²⁵ payments that the Tribunal expressly found to have been made “corruptly as bribes.”²⁶ The LAPs’ own experts admitted that they “covertly ghostwrote” the Cabrera report, a fact that Ecuador did not dispute.²⁷

The Tribunal also found that the LAPs’ representatives bribed former Ecuadorian judge Alberto Guerra to draft orders for the presiding judge that favored the plaintiffs.²⁸ The Tribunal reached that conclusion by comparing evidence of withdrawals from the LAPs’ representatives’ account with matching deposits into Mr. Guerra’s bank account, as well as shipments of packages from Mr. Guerra to the Lago Agrio Court that contained “Dr Guerra’s draft order intended for Judge Zambrano.”²⁹ The Tribunal also tracked eleven draft orders saved on Mr. Guerra’s computer and matched them to orders with “materially identical” text that Judge Zambrano issued, further confirming the LAPs’ ghostwriting and bribery scheme.³⁰ The Tribunal additionally noted that the LAPs’ representatives used code-names when discussing Judges Guerra and Zambrano, which the Tribunal found to betray “nefarious conduct and guilty minds by both the sender and recipients.”³¹

The LAPs’ campaign of bribery and corruption was so pervasive that it extended to the presiding judge Nicolás Zambrano, who allowed the LAPs’ representatives to ghostwrite the Lago Agrio Judgment itself in return for a promise of a bribe paid from the proceeds of the Judgment enforcement,³² conduct the Tribunal condemned as “grossly improper by any moral, professional and legal standards; and it directly impacted, adversely, the rights of Chevron.”³³ Specifically, the Tribunal concluded that Judge Zambrano “did not draft the entirety of the Lago Agrio Judgment by himself, as he falsely testified on oath in the [U.S.] RICO Litigation.”³⁴ Instead, Judge Zambrano “allowed certain of the [LAPs’] representatives, corruptly, to ‘ghostwrite’ at least material parts of the Lago Agrio Judgment” in return for a “promised reward.”³⁵

²² *Id.* ¶¶ 4.265, 4.291-4.292.

²³ *Id.* ¶ 4.304.

²⁴ *Id.* ¶ 4.277.

²⁵ *Id.* ¶ 4.300.

²⁶ *Id.* ¶ 4.303.

²⁷ *Id.* ¶ 4.318.

²⁸ *Id.* ¶ 4.357.

²⁹ *Id.* ¶ 4.360.

³⁰ *Id.* ¶¶ 4.352, 4.356, 4.361, 4.364-4.367, 4.372, 4.373, 4.375.

³¹ *Id.* ¶ 4.345.

³² *Id.* ¶ 8.59.

³³ *Id.* ¶ 10.4.

³⁴ *Id.* ¶ 5.231.

³⁵ *Ibid.*

The Tribunal cited “overwhelming” evidence in support of that conclusion.³⁶ For instance, Judge Zambrano claimed that he drafted the 188-page Lago Agrio Judgment, based on over 200,000 pages of documents, completely alone, in 81 consecutive days.³⁷ The Tribunal rejected this explanation as “incredible,”³⁸ noting that to read the entirety of the 200,000-page record, Judge Zambrano would have needed “at least 138 consecutive 24-hour working days,”³⁹ which was substantially more than the 81 days that Judge Zambrano claimed.⁴⁰ And that was for reading alone, without considering any time for drafting. Thus, “[e]ven allowing for the fact[] that not every page in every [notebook] might require Judge Zambrano’s consideration,” *and* assuming that Judge Zambrano “might be a better than average speed-reader of technical documentation,” *and* assuming that Judge Zambrano was “a superlatively efficient judicial draftsman,” the Tribunal *still* found “troubling questions as to the feasibility of his preparing, alone, the Lago Agrio Court Judgment from the court file in the time and manner described by him.”⁴¹

Numerous other sources of evidence proved that Judge Zambrano corruptly permitted the LAPs to write their own judgment. For instance, the Tribunal found that the Lago Agrio Judgment was drafted by copying nearly verbatim from eight documents that were the LAPs’ counsel’s internal work product, and that were never filed with the Lago Agrio Court.⁴² Unsurprisingly, Ecuador was unable to advance any “cogent explanation” as to how these materials appeared in the Lago Agrio Judgment yet “cannot be found in the [court] record.”⁴³ Moreover, the LAPs’ own emails referenced the “covert plan,”⁴⁴ to draft the Lago Agrio Judgment as “the other project”⁴⁵ and “the plan for the judgment,”⁴⁶ among others.⁴⁷

Thus, the Tribunal found overwhelming evidence that the Lago Agrio Judgment was not the result of a fair and impartial proceeding. To the contrary, the LAPs’ representatives conducted a campaign of corruption that successfully resulted in the LAPs’ own representatives drafting both the Lago Agrio Court’s supposedly “impartial” expert report and the ultimate Lago Agrio Judgment that relied on that report. As the Tribunal concluded, “[s]hort of a signed confession by the miscreants . . . the evidence establishing ‘ghosting’ in this arbitration ‘must be the most thorough documentary, video, and testimonial proof of fraud ever put before an arbitral tribunal.’”⁴⁸

³⁶ *Id.* ¶ 8.54.

³⁷ *Id.* ¶ 5.11.

³⁸ *Id.* ¶ 5.150.

³⁹ *Id.* ¶ 5.15.

⁴⁰ *Id.* ¶¶ 5.11-5.13.

⁴¹ *Id.* ¶ 5.14.

⁴² *Id.* ¶ 5.24.

⁴³ *Id.* ¶ 5.33.

⁴⁴ *Id.* ¶ 4.370.

⁴⁵ *Id.* ¶ 4.354.

⁴⁶ *Id.* ¶ 4.369.

⁴⁷ *See also id.* ¶¶ 4.332, 4.337.

⁴⁸ *Id.* ¶ 8.54.

B. Ecuador Failed to Correct that Obvious Fraud

Despite this overwhelming evidence of fraud and corruption, “the Lago Agrio Judgment was left unremedied” by the Ecuadorian courts,⁴⁹ even though Ecuador had “sufficient knowledge of [Chevron’s] allegations regarding gross judicial improprieties.”⁵⁰

In fact, the Lago Agrio Appellate Court, Cassation and Constitutional Courts all reviewed the Lago Agrio Judgment “in full knowledge of the complaints of serious procedural impropriety.”⁵¹ Nonetheless, these courts “did not investigate Chevron’s allegations of procedural fraud and judicial misconduct” or “the allegedly corrupt ‘ghostwriting’ of the Lago Agrio Judgment.”⁵² Again, “[t]his was not done in ignorance of Chevron’s specific allegations at the time.”⁵³ To the contrary, “[i]n the Tribunal’s view, these Courts had sufficient information available to them so as to amount (at least) to a strong prima facie case of judicial misconduct, procedural fraud in the Lago Agrio Litigation and . . . the ‘ghostwriting’ of the Lago Agrio Judgment.”⁵⁴ Yet “no appropriate steps were taken” by any of Ecuador’s courts.⁵⁵ Instead, the Judgment was “accorded the status of a court judgment under Ecuadorian law; and it was (and remains) subject to enforcement and execution by [Ecuador’s] judicial branch within [Ecuador’s] national legal system.”⁵⁶

C. Ecuador Released Chevron’s Subsidiary from the Claims on which the Judgment is Based, Following Completion of an Agreed Environmental Remediation Program

The Tribunal found that Texaco Petroleum Company (“TexPet”), Chevron’s subsidiary, fully complied with the environmental remediation obligations that it undertook in its post-concession settlement with Ecuador.

Specifically, the Tribunal held that Ecuador breached its obligations under a 1995 settlement agreement releasing TexPet and its affiliates (including Chevron) from public environmental claims—the same claims on which the \$9.5 billion Ecuadorian judgment is exclusively based. The Tribunal found that “TexPet spent approximately \$40 million in environmental remediation and community development under the 1995 Settlement Agreement”⁵⁷ carried out by a “well-known engineering firm specializing in environmental remediation,”⁵⁸ and that Ecuador in 1998 executed a final release agreement “certifying that TexPet had performed all of its obligations under the 1995 Settlement Agreement.”⁵⁹

The Tribunal found “no cogent evidence” supporting Ecuador’s claim that TexPet failed to comply with the terms of the remediation plan approved by Ecuador.⁶⁰ To the contrary, the

⁴⁹ *Id.* ¶ 8.51.

⁵⁰ *Ibid.*

⁵¹ *Id.* ¶ 8.27.

⁵² *Id.* ¶ 8.28.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Id.* ¶ 8.34.

⁵⁶ *Id.* ¶ 8.46.

⁵⁷ *Id.* ¶ 4.68.

⁵⁸ *Id.* ¶ 4.67.

⁵⁹ *Id.* ¶ 4.69.

⁶⁰ *Id.* ¶ 4.179.

Track II Award states that Ecuadorian officials recognized TexPet’s environmental compliance on at least three occasions. *First*, on September 30, 1998, Ecuador signed a Final Release “certifying that TexPet had performed all its obligations under the 1995 Settlement Agreement.”⁶¹ *Second*, in 2006, Mr. Manuel Muñoz, Ecuador’s Director of the National Environmental Protection Management of the Ministry of Energy, informed the Ecuadorian government that “Texaco completed the remediation of the pits that were their responsibility.”⁶² *Third*, Mr. Giovanni Rosanía Schiavone, Ecuador’s Under-Secretary of Environmental Protection from 1995 to 1996, testified during the arbitration that TexPet’s “technical work and environmental work was done well.”⁶³ TexPet’s prompt and thorough remediation contrasts to Ecuador’s own admission that, as of 2006, “[PetroEcuador] had done absolutely nothing with regard to the pits that were the state-owned company’s responsibility to remediate,”⁶⁴ even though Ecuador and its national oil company received 97.3% of the oil production revenues (in excess of \$22 billion) from the project⁶⁵ while Chevron’s subsidiary received only \$480 million in revenues,⁶⁶ out of which it invested approximately \$40 million in the remediation program approved by Ecuador.⁶⁷

The conclusion that Chevron’s subsidiary fully complied with its environmental remediation obligations found further support in the testimony of numerous former members of the LAPs’ environmental team and scientific experts, who admitted under oath that they found no evidence to support the LAPs’ environmental claims against Chevron and TexPet. For example, the LAPs’ own environmental expert, David Russell, stated that between 2003 and 2005 he spent “several months investigating the environment at the oil production sites in the Oriente” and found that “the environmental evidence did not . . . support” the LAPs’ claims against Chevron.⁶⁸ In fact, Mr. Russell “saw no evidence of any widespread health effects caused by oil contamination from Texaco, and no evidence of drinking water contaminated with petroleum from Texaco’s operations.”⁶⁹ Indeed, “there was no evidence” at all “linking residents’ health problems to Texaco operations.”⁷⁰ Mr. Russell was not alone in these admissions, as other environmental experts from the LAPs’ team echoed his views that the scientific evidence disproved the LAPs’ environmental claims: Dr. Charles Calmbacher testified under oath that “the sites that he inspected, in fact, did not indicate a danger to human health or pose a risk to the environment,”⁷¹ and Mr. Douglas Beltman confirmed that he “did not find any clear instances where TexPet did not meet the conditions required in the cleanup.”⁷²

In short, following a thorough analysis of the evidence, including visits to the former area of operations by the Tribunal, the Tribunal found that Ecuador violated the settlement and release agreements that certified the successful completion of Chevron’s subsidiary’s

⁶¹ *Id.* ¶ 4.69.

⁶² *Id.* ¶ 4.181.

⁶³ *Id.* ¶ 4.180.

⁶⁴ *Id.* ¶ 4.181.

⁶⁵ *Id.* ¶ 4.64.

⁶⁶ *Id.*

⁶⁷ *Id.* ¶ 4.68.

⁶⁸ *Id.* ¶ 4.231.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Id.* ¶ 4.213.

⁷² *Id.* ¶ 4.183.

remediation and released the same claims on which the Lago Agrio Judgment against Chevron is based exclusively.

D. Ecuador Violated the Tribunal's Interim Awards

Finally, in the Track II Award, the Tribunal “confirm[ed], as declared in its Fourth Interim Award,” that Ecuador had violated the Tribunal’s First and Second Interim Awards, “in breach of Article VI of the Treaty, Article 32(3) of the UNCITRAL Arbitration Rules and international law.”⁷³

Specifically, Ecuador issued a certificate of enforceability for the Lago Agrio Judgment on March 1, 2012, “in non-compliance with the Tribunal’s several Orders for Interim Measures.”⁷⁴ And it did so despite the fact that Ecuador’s Appellate, Cassation, and Constitutional Courts, as well as its prosecutors, were all aware of the evidence of serious procedural fraud. Nonetheless, they took no steps to comply with the Tribunal’s Interim Awards by suspending enforcement of the Lago Agrio Judgment, nor did they take any steps to remedy the denial of justice perpetrated through the fraud, bribery and corruption.⁷⁵

The Tribunal then, once again, ordered Ecuador to “[t]ake immediate steps, of its own choosing, to remove the status of enforceability from the Lago Agrio Judgment,”⁷⁶ thus reconfirming the substance of the Tribunal’s Interim Awards in the operative part of the Tribunal’s final award on the merits.

III. ECUADOR IS OPENLY DEFYING THE TRACK II AWARD

As a result of the “overwhelming” evidence of fraud and corruption outlined above, the Tribunal ordered Ecuador, “to the satisfaction of the Tribunal and as unconditional obligations of result” to, *inter alia*, take “immediate” steps to:

1. “remove the status of enforceability from the Lago Agrio Judgment;”⁷⁷
2. “preclude any of the [LAPs] . . . from enforcing any part of the Lago Agrio Judgment;”⁷⁸
3. advise in writing any of the national courts in which enforcement actions remain pending of Ecuador’s “internationally wrongful acts comprising a denial of justice;”⁷⁹ *and*
4. “wipe out all the consequences” of Ecuador’s internationally wrongful acts in regard to the Lago Agrio Judgment.⁸⁰

Yet despite these direct orders from the Tribunal, Ecuador has taken no steps whatsoever, much less “immediate” steps, to comply with even a single one of the Tribunal’s directives. As Ecuador recently admitted in a November 1, 2018 letter to the BIT Tribunal, all it has done is to communicate a copy of the Award to the President and the Office of the General Prosecutor—

⁷³ *Id.* ¶ 10.18.

⁷⁴ *Id.* ¶ 4.462.

⁷⁵ *Id.* ¶¶ 8.33-8.34.

⁷⁶ *Id.* ¶ 10.13(i).

⁷⁷ *Ibid.*

⁷⁸ *Id.* ¶ 10.13(ii).

⁷⁹ *Id.* ¶ 10.13(iii).

⁸⁰ *Id.* ¶ 10.13(vi).

nothing more. Instead of taking a single step to comply with the Track II Award, Ecuador has done exactly the opposite by publicly aligning itself with the LAPs' counsel, Mr. Fajardo, whom the Tribunal found personally committed serious wrongdoing.⁸¹ Ecuador's continued refusal to comply with the Track II Award in good faith is a matter of governmental policy, as evidenced by public statements from the highest levels of Ecuador's government, which are detailed in **Annex A** to this pre-hearing brief and excerpted below.

Only days after the Tribunal published the Track II Award, Ecuador's Vice President, Maria Alejandra Vicuña, stated that the Chevron case is a "national cause" and that all Ecuadorians should "condemn the arbitral award."⁸² Vice President Vicuña further demanded that "[a]ll efforts must be exhausted to defend" Ecuador from the Award.⁸³ In a television interview the next day, Ecuador's Attorney General Iñigo Salvador Crespo declared that it would be "seriously difficult" for Ecuador to comply with the Track II Award, purportedly because of concerns relating to Ecuador's separation of powers and human rights obligations⁸⁴—arguments that the BIT Tribunal has rejected repeatedly.⁸⁵

⁸¹ *Id.* ¶ 4.378 (this wrongdoing included "bribing" supposedly neutral experts; "blackmailing . . . Judge Yáñez;" "collu[ding] with [the court appointed expert] Mr. Cabrera;" "ghostwriting" Mr. Cabrera's Report; "bribing Dr. Guerra to draft Judge Zambrano's orders;" holding "inappropriate private meetings with several judges of the Lago Agrio Court;" and "covert[ly] plan[ning] for 'ghostwriting' the Lago Agrio Judgment"). *See also id.* ¶¶ 4.303 (finding that "payments to Mr Cabrera were made corruptly as bribes by certain of the [LAPs'] representatives, including Mr Fajardo"), 4.232 (concluding that "Judge Yáñez h[eld] private meetings with Messrs Donziger and Fajardo nine times more during 2006 and 2007, at his house, a warehouse and elsewhere, to discuss the withdrawal of judicial inspections and the appointment of a sole global expert"), 4.261 (concluding that "Judge Yáñez's decision to accede to the LAPs' applications was the direct result of the blackmail committed by Mr Fajardo"), 4.275 (noting Pablo Fajardo's statement "that [Mr Cabrera] will 'sign the report [ghostwritten by the plaintiffs] and review it.' But all of us . . . have to contribute to that report."), 4.355 (finding that the "use of code-names indicates nefarious conduct and guilty minds by both [the email's] sender [Fajardo] and recipient [Donziger]"), 4.412 (noting that Mr Fajardo stands to gain US\$ 363,138,720 if the corrupt Ecuadorian judgment is ever enforced), 5.229 (finding that "[Fajardo and Donziger] engaged in prolonged, malign conduct . . . in a manner that almost beggars belief in its arrogant contempt for elemental principles of truth and justice), 5.231 (finding that "Judge Zambrano, in return for his promised reward, allowed certain of the [LAPs'] representatives, corruptly, to 'ghostwrite' at least material parts of the Lago Agrio Judgment (with its Clarification). These representatives included Mr Fajardo and Mr Donziger.").

⁸² Vice President of Ecuador, Maria Alejandra Vicuña's Twitter Account, Sept. 8, 2018, *available at* <https://twitter.com/mariaalevicuna/status/1038533796705067008> (Exh. 99).

⁸³ *Ibid.*

⁸⁴ TV Interview of Attorney General Salvador and Secretary to the President Jurado, TeleAmazonas (Sept. 9, 2018), *available at* <http://www.teleamazonas.com/2018/09/el-ecuador-tiene-90-dias-para-presentar-pedido-de-nulidad-de-laudo-arbitral/> (in the same interview Secretary Jurado confirmed that "[t]he administration has asked the Attorney General to begin actions to immediately defend the State of Ecuador," vowing to "exhaust every last appeal to defend the interests of Ecuador"). *See also Iñigo Salvador: 'I will renegotiate the contracts with law offices,'* El Comercio (Sept. 17, 2018), *available at* <https://www.elcomercio.com/actualidad/entrevista-inigosalvador-renegociacion-contratos-estudiosjuridicos.html> (quoting Attorney General Salvador as stating that it is his "duty . . . to use all of the remedies that international law provides to try to avoid" the Award) (Exh. 100).

⁸⁵ Fourth Interim Award ¶ 78 ("Neither disagreement with the Tribunal's orders and awards on interim measures nor constraints under Ecuadorian law can excuse the failure of the Respondent through any of its branches or organs, to fulfil its obligations under international law imposed by the Treaty, the UNCITRAL Rules and the Tribunal's orders and awards thereunder, particularly the First and Second Interim Awards on Interim Measures."); *see also Republic of Ecuador v. Chevron Corp. and Texaco Petroleum Co.*, Decision of The Hague Court of Appeal (July 18, 2017), ¶ 12.2 (Exh. 58) (holding that the Interim Awards "did not order Ecuador to intervene with her executive power in the tasks that are reserved for the judicial power" and thus did not interfere with separation of powers; rather the Interim Awards "extend[] to all government bodies whose cooperation is required to execute" the

Attorney General Salvador subsequently met with Mr. Fajardo, the Ecuadorian lawyer whom the Tribunal found personally committed serious wrongdoing, including “bribing” supposedly neutral experts; “blackmailing . . . Judge Yáñez;” “collu[ding] with [the court appointed expert] Mr. Cabrera;” “ghostwriting” Mr. Cabrera’s report; paying “bribes [] to Dr. Guerra for drafting Judge Zambrano’s orders;” holding “inappropriate private meetings with several judges of the Lago Agrio Court;” and “covert[ly] plan[ning] for ‘ghostwriting’ the Lago Agrio Judgment.”⁸⁶ Together, the Attorney General and Mr. Fajardo discussed a “roadmap” to circumvent the Award.⁸⁷ The next day, Attorney General Salvador publicly expressed his “absolute empathy” for the LAPs, confirmed that they “could work together,” and announced that the LAPs had met with the Office of the Presidency.⁸⁸ On September 14, 2018, Vice President Vicuña stated during an interview that the “fundamental” goal was to “avoid that [the Award] could effectively” be enforced.⁸⁹

Also in September 2018, Ecuador’s Ombudsman’s Office (*Defensoria del Pueblo*)—an Ecuadorian government agency—issued an order granting a recent request from Mr. Fajardo seeking relief from potential disruptions to the enforcement of the Lago Agrio Judgment against Chevron due to the Track II Award.⁹⁰ The order directs the Sucumbíos Ombudsman’s Office to “oversee” the continued enforcement of the Lago Agrio Judgment against Chevron despite the Track II Award. The order further directs the enforcement court in Lago Agrio to notify the Ombudsman’s Office of all developments in the enforcement proceedings in Ecuador and authorizes a representative of the Ombudsman’s Office to appear and act in the enforcement proceedings to safeguard the due process rights of the LAPs. The order, clearly designed to promote enforcement of the Award, was issued without service or notice to Chevron and makes no mention at all of the fraud, bribery, and corruption through which the Judgment was obtained, nor how Chevron’s due process rights should be preserved.

Even more recently, and in further support of the LAPs, Ecuador’s Secretary of Science, Higher Education, Innovation and Technology granted the Frente de Defensa de la Amazonia

Awards); Chevron Feb. 2016 Post-Hearing Br. at 22-25; Chevron Sept. 2017 Pre-Hearing Br. at 5-7; Chevron Oct. 2017 Post-Hearing Br. at 20-21.

⁸⁶ Track II Award ¶ 4.378.

⁸⁷ Press Conference, Lago Agrio Plaintiffs’ Representatives (Sept. 10, 2018), *available at* <https://www.youtube.com/watch?v=CD4kpFFED1g&feature=youtu.be> (informing that Pablo Fajardo met that day with the Attorney General who, according to Fajardo, was “very open,” and stating that “a roadmap can be established in the future for [the LAPs] and the Attorney General’s Office to face the Chevron case”). *See also* Twitter Account of WAMBRA, Sept. 10, 2018 *available at* <https://twitter.com/wambraEc/status/1039199296078471168> (stating that “[w]ith the Attorney General’s Office of #Ecuador we will establish a roadmap to promote a just judgment in favor of those affected by #Chevron” and “will go to Geneva so that our demand can be heard worldwide’ Pablo Fajardo”) (Exh. 97). *See also Ecuador has two options to appeal the arbitration award in the Chevron case*, El Universo (Sept. 13, 2018), *available at* <https://www.eluniverso.com/noticias/2018/09/13/nota/6950828/dos-opciones-tiene-ecuador-impugnar-laudoarbitral> (noting Pablo Fajardo’s endorsement of the Attorney General’s decision to file a set aside petition and clarification of the Award) (Exh. 98).

⁸⁸ Radio Interview of Attorney General Salvador, Radio Centro (Sept. 11, 2018), *available at* <http://www.juiciocrudo.com/video/entrevista-radio-centro-inigo-salvador-11-sep-2018/285>, at minute 30.

⁸⁹ TV Interview of Vice President Maria Alejandra Vicuña, TC TV (Sept. 14, 2018), *available at* <https://www.youtube.com/watch?v=65qnUBp43Cc&feature=youtu.be>.

⁹⁰ *See* 25 September 2018, Ombudsman’s Order of Admission, No. 001-DPE-DPS-2018-001218-KB, at 4 (Exh. 101).

public funding in October 2018.⁹¹ The Frente de Defensa de la Amazonia is the nominal beneficiary of the fraudulent Judgment and the entity used by Mr. Donziger to continue the pressure campaign against Chevron, purportedly on behalf of the LAPs.⁹² The entity has close ties to both Mr. Donziger and Mr. Fajardo, whom the BIT Tribunal determined were personally involved in fraud, bribery, and corruption with the Ecuadorian courts.⁹³

There is no doubt that Ecuador has chosen to ally itself with the very individuals who procured the Lago Agrio Judgment through fraud, bribery, and corruption. In doing so, Ecuador continues to fail to take any action to recognize or enforce the Track II Award in good faith.

IV. ECUADOR'S GSP ELIGIBILITY MUST BE SUSPENDED DUE TO ITS FAILURE TO RECOGNIZE AND ENFORCE ARBITRAL AWARDS IN GOOD FAITH

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.”⁹⁴ Such failure after a country has been designated is cause for suspending that designation.⁹⁵ The GSP statute therefore mandates that the President revoke Ecuador’s beneficiary status because: the Track II Award—like the three Interim Awards that preceded it—is a final arbitral award in favor of Chevron, a U.S.-owned company (**Subsection A**), and Ecuador has failed to recognize or enforce that award in good faith, continuing the course of conduct that began with its defiance of the BIT Tribunal’s Interim Awards and, before that, its Interim Orders (**Subsection B**).

A. The Track II Award is a “Final” Award

Ecuador has argued throughout these proceedings that it is not in violation of the GSP statute because the Tribunal’s Interim Awards were not “final” arbitral awards within the meaning of the GSP eligibility criteria.⁹⁶ 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 further here.⁹⁷ Nonetheless, even assuming *arguendo* that the GSP framework deals only with awards labeled “final” (which it does not), the Track II Award eviscerates Ecuador’s argument for two reasons.

⁹¹ *ISS wins grant to monitor socio-economic change in Ecuador*, International Institute of Social Studies (Oct. 11, 2018), available at <https://www.iss.nl/en/news/iss-wins-grant-monitor-socio-economic-change-ecuador>.

⁹² *See Chevron Corp. v. Donziger*, 833 F.3d 74, 84 (2d Cir. 2016) (“[T]he LAPs sought to have ‘any and all sums recovered’ in the action controlled by the [Frente de Defensa de la Amazonia].”).

⁹³ *See id.* (stating that the Frente de Defensa de la Amazonia was “formed” and “controlled by” Donziger), 95 (stating that Donziger used a Frente de Defensa de la Amazonia bank account to pay bribes to Cabrera); *see also* Track II Award ¶ 5.229 (finding that Donziger “engaged in prolonged, malign conduct towards [Ecuador’s] legal system generally and, particularly, the Lago Agrio Court in a manner that almost beggars belief in its arrogant contempt for elemental principles of truth and justice”).

⁹⁴ 19 U.S.C. § 2462(b)(2)(E) (emphasis added).

⁹⁵ *Id.* § 2462(d)(2).

⁹⁶ *See, e.g.*, Ecuador’s Sept. 12, 2017, Pre-Hearing Br. at 2.

⁹⁷ *See* Chevron’s Oct. 17, 2017, Post-Hearing Br. at 2-7; Chevron’s Feb. 12, 2016, Post-Hearing Br. at 16-17.

First, the Tribunal confirmed its prior holding (*i.e.*, in the Fourth Interim Award) that Ecuador violated the Tribunal’s First and Second Interim Awards by rendering the Lago Agrio Judgment enforceable.⁹⁸ The Tribunal then reconfirmed this holding in the Operative Part of the Track II Award by ordering the same relief that it had ordered in the Interim Awards—namely, that Ecuador use all means necessary to achieve the result of suspending enforcement and recognition of the Lago Agrio Judgment—and this time the Tribunal did so in the form of a partial final arbitral award.⁹⁹

Second, the Tribunal expressly made these determinations in the Track II Award as “final conclusions.”¹⁰⁰ The Tribunal further expressly issued the Track II Award—as it had done with the First, Second, and Fourth Interim Awards—“under Article 32 of the UNCITRAL Arbitration Rules,”¹⁰¹ which provides that an arbitral award is “final and binding” and that a party “undertakes to carry out [the award] without delay.”¹⁰² Thus, there is no “interim” quality at all to the Track II Award.

The relief granted in the Track II Award is final, binding, and permanent,¹⁰³ and Ecuador’s planned set-aside action in the Netherlands does not affect the immediately enforceable nature of the Track II Award. Indeed, in the context of litigation over recognition and enforcement of another arbitral award against Ecuador and in favor of Chevron (in the matter that we have referred to as the “*Commercial Cases*” dispute), 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.”¹⁰⁴ Ecuador is thus “obliged to abide by [the Track II Award] notwithstanding any annulment proceeding.”¹⁰⁵

As Ecuador had telegraphed,¹⁰⁶ on September 28, 2018, Ecuador sought “interpretation and clarification” of certain provisions of the Track II Award from the BIT Tribunal. Such request, however, provided no reprieve from Ecuador’s duty to take “immediate” steps to comply with the Track II Award. It is “well settled” that a request for interpretation “is limited to an interpretation of the award in the form of clarification; and that it cannot extend to a request to modify or annul the award or take the form of an appeal or review of the award.”¹⁰⁷

⁹⁸ Track II Award ¶ 4.462 (Exh. 96).

⁹⁹ *Id.* ¶ 10.13(i).

¹⁰⁰ *Id.* ¶¶ 7.181-82, 8.78.

¹⁰¹ *Id.* ¶ 10.24.

¹⁰² 1976 UNCITRAL Rules, Art. 32(2).

¹⁰³ The Tribunal’s issuance of the Track II Award “under Article 32 of the UNCITRAL Rules” and its express reconfirmation of the relief afforded in the Interim Awards, strongly undermine any argument by Ecuador that the Tribunal intends to reconsider its Interim Awards or the relief ordered.

¹⁰⁴ *Chevron Corp. v. Ecuador*, 949 F. Supp. 2d 57, 60, 72 (D.D.C. 2013) (Exh. 102).

¹⁰⁵ 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).

¹⁰⁶ *Ecuador has two options to appeal the arbitration award in the Chevron case*, El Universo (Sept. 13, 2018), available at <https://www.eluniverso.com/noticias/2018/09/13/nota/6950828/dos-opciones-tiene-ecuador-impugnar-laudoarbitral> (noting Pablo Fajardo’s endorsement of the Attorney General’s decision to file a set-aside petition and clarification of the Award) (Exh. 98).

¹⁰⁷ *Methanex Corp. v. United States*, NAFTA Tribunal’s Letter Re: Request for Interpretation of Award (Sept. 25, 2002) (Exh. 103); see also *American Bell Int’l Inc. v. Islamic Republic of Iran et al.*, Case No. 48, Decision No. 58-

Ecuador's request for interpretation of an award in which there is no ambiguity was nothing more than the latest ploy in Ecuador's longstanding efforts to delay, defy, and discredit the arbitration. In any event, the Tribunal rejected Ecuador's "interpretation and clarification" request on November 6, 2018.

Thus, as was the case with the First, Second, and Fourth Interim Awards, there is (yet again) a final award in favor of Chevron,¹⁰⁸ a U.S.-owned company. To maintain its GSP eligibility, therefore, Ecuador is obligated to recognize or enforce that award in good faith. Ecuador has failed to do so and has affirmed that it will not do so.

B. Ecuador's Past Excuses for Its Failure to Act in "Good Faith" are Unavailing

As evidenced by the public comments of Ecuador's highest officials outlined above, it is state policy in Ecuador to defy, delay, and discredit the Track II Award (not to mention the Interim Awards that preceded it). Indeed, as Vice President Vicuña has expressly stated, Ecuador's "fundamental" goal is to "avoid that [the Award] could effectively" be enforced.¹⁰⁹ Ecuador's strategy of discrediting and circumventing the Track II Award's enforcement, as opposed to coming into immediate compliance with its international obligations, is not "good faith" recognition and enforcement as the GSP statute requires. Ecuador's alliance with the very individuals who perpetrated the fraud, bribery, and corruption in the Lago Agrio proceedings only underscores this fact.

Nonetheless, Ecuador has offered a plethora of excuses throughout these proceedings in its attempts to justify its violations of the GSP statute's good faith recognition requirement. While framed in myriad ways, Ecuador's arguments to attempt to justify its past non-compliance have boiled down to four main points. None has any merit as demonstrated by the Track II Award.

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."¹¹⁰ The Tribunal concluded that the presiding judge, Judge Zambrano, knowingly issued the fraudulent Lago Agrio Judgment "cloaked with [Ecuadorian] governmental authority" and while "[holding] himself out as a judge acting in the name of Ecuador."¹¹¹ The Ecuadorian judiciary subsequently "left unremedied" that judgment, and in fact did not even "investigate Chevron's allegations of procedural fraud and judicial misconduct,"¹¹² despite "full knowledge of the complaints of serious procedural impropriety."¹¹³ Ecuador's officials therefore had a direct role in the underlying fraud, which was the basis for the Tribunal's conclusion 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.

48-3, 1987 WL 503833, at *1 (Mar. 19, 1987) (Iran-US Claims Tr.) (rejecting an Article 35 request for clarification that would "require the Tribunal to review or revise its Award") (Exh. 104).

¹⁰⁸ Ecuador itself has accepted that the term "arbitral awards" in the GSP statute encompasses "final awards on the merits." *See* Ecuador's Sept. 12, 2017, Pre-Hearing Br. at 2.

¹⁰⁹ TV Interview of Vice President Maria Alejandra Vicuña, TC TV (Sept. 14, 2018), *available at* <https://www.youtube.com/watch?v=65qnUBp43Cc&feature=youtu.be>.

¹¹⁰ Ecuador's Sept. 12, 2017, Pre-Hearing Br. at 13.

¹¹¹ Track II Award ¶ 8.50 (Exh. 96).

¹¹² *Id.* ¶ 8.28.

¹¹³ *Id.* ¶ 8.27.

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.”¹¹⁴ The Track II Award—to borrow from the Dutch courts 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 of the judiciary.”¹¹⁵ Rather, the Track II Award “extends to all government bodies whose cooperation is required to execute the award.”¹¹⁶ 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.”¹¹⁷ Accordingly, Ecuador may comply with the Track II Award through “her executive power, her legislative power, or her judicial power, or a combination thereof.”¹¹⁸ 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.”¹¹⁹ Ecuador’s refusal to take actions to stop these international wrongs is not the sort of “good faith” recognition and enforcement contemplated by the GSP statute.

Third, the Track II Award’s conclusions put to rest any argument that the 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.”¹²⁰ 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.¹²¹ 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 that such a right exists under international law. Nor could it, as Chevron has argued throughout these proceedings.

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 United States 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;¹²² (2) the United States-Ecuador BIT;¹²³ (3) the

¹¹⁴ See *ibid.*

¹¹⁵ See *Republic of Ecuador v. Chevron*, Case No. C/09/477457/HA ZA 14-1291, ¶ 4.27 (Dutch Dist. Ct. 2016) (Exh. 46).

¹¹⁶ See *Republic of Ecuador v. Chevron*, Case No. 200.193.418/01, ¶ 12.2 (Hague Ct. Appeals 2017) (Exh. 58).

¹¹⁷ See *ibid.*

¹¹⁸ See *ibid.*

¹¹⁹ See *Republic of Ecuador v. Chevron*, Case No. C/09/477457/HA ZA 14-1291, ¶ 4.27 (Dutch Dist. Ct. 2016) (Exh. 46).

¹²⁰ Track II Award ¶ 5.229 (Exh. 96).

¹²¹ *Id.* ¶ 8.59.

¹²² *Chevron Corp. v. Ecuador*, 949 F. Supp. 2d 57, 60, 72 (D.D.C. 2013) (Exh. 102).

¹²³ 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.”).

applicable UNCITRAL Arbitration Rules;¹²⁴ 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.”¹²⁵ Any attempt by Ecuador to re-litigate this issue is the very epitome of bad faith.

V. ECUADOR ALSO FAILS TO MEET OTHER ELIGIBILITY CRITERIA UNDER THE GSP STATUTE

Since at least 1985, the United States has had a persistent, material trade deficit with Ecuador, while Ecuador has continued to enjoy increasing trade benefits under the GSP program. In the years since Chevron filed its Petition, Ecuador has grown from the eighteenth largest beneficiary of the GSP program in 2013 to the eighth largest beneficiary in 2017.¹²⁶ During that period, Ecuador’s GSP exports to the United States have risen from \$55 million in 2013 to \$435 million in 2017.¹²⁷ Over the same period, Ecuador’s goods trade deficit averaged over \$2.3 billion.¹²⁸ In other words, Ecuador is reaping growing trade benefits provided by the United States while simultaneously refusing to honor its obligations under the GSP statute.

In addition to the failure to enforce arbitral awards, which is the basis for Chevron’s Petition, the GSP statute also contains other eligibility criteria that Ecuador is failing to satisfy and that are relevant to this Subcommittee.¹²⁹

First, countries are ineligible for GSP benefits if they provide “preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce.”¹³⁰ Rather than using U.S. preferences to buy more from the United States and decrease its longstanding trade deficit with the U.S., Ecuador is providing preferential treatment to products of other countries—pursuant to new free trade agreements¹³¹—in a manner contrary to the eligibility requirement under the GSP statute.

Second, in assessing GSP eligibility, the President must take into account the extent to which Ecuador provides U.S. companies equitable and reasonable access to its markets and basic

¹²⁴ 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.”).

¹²⁵ 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 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”).

¹²⁶ Compare USTR, GSP by the Numbers (2013), available at <https://ustr.gov/sites/default/files/gsp-by-the-numbers-10072014-final.pdf>, with USTR, GSP by the Numbers (2018) available at <https://ustr.gov/sites/default/files/gsp/GSP%20by%20the%20numbers%February%202018.pdf>.

¹²⁷ Compare USTR, GSP by the Numbers (2013), available at <https://ustr.gov/sites/default/files/gsp-by-the-numbers-10072014-final.pdf>, with USTR, GSP by the Numbers (2018), available at <https://ustr.gov/sites/default/files/gsp/GSP%20by%20the%20numbers%February%202018.pdf>.

¹²⁸ United States Census Bureau, Trade in Goods with Ecuador, available at <https://www.census.gov/foreign-trade/balance/c3310.html>.

¹²⁹ 19 U.S.C. § 2462(b). See also 15 C.F.R. § 2007.2(h) (2018) (requiring consideration of “any other information [in addition to information provided pursuant to a petition] which may be available relevant to the statutory prerequisites for Presidential action” granting GSP benefits).

¹³⁰ 19 U.S.C. § 2462(b)(2)(C).

¹³¹ International Centre for Trade and Sustainable Development, *Andean Community: Ecuador Joins EU Trade Pact with Colombia, Peru* (Nov. 17, 2016), available at <https://www.ictsd.org/bridges-news/bridges/news/andean-community-ecuador-joins-eu-trade-pact-with-colombia-peru> (Exh. 105).

commodity resources.¹³² According to USTR, Ecuador has imposed, among a range of trade barriers, an increasing number of restrictions on imports through tariff surcharges, local content requirements, and the failure to phase out the Andean price band system.¹³³ Ecuador's measures continue to deny U.S. companies equitable or reasonable access to its market and warrant the revocation of GSP trade preferences.

Third, the President also must assess the extent to which Ecuador "is providing adequate and effective protection of intellectual property rights."¹³⁴ Ecuador deprives U.S. companies of their legitimate intellectual property rights and has been characterized as one of the most restrictive countries with respect to intellectual property, second only to China.¹³⁵ The Ecuadorian courts even used the corrupt Lago Agrio Judgment against Chevron to seize certain trademarks and other intellectual property in Ecuador owned by Chevron's subsidiaries in violation of the Tribunal's Interim Awards.¹³⁶ Moreover, in January 2017, Ecuador withdrew from the Intellectual Property Agreement that it signed with the United States in 1973. Although Ecuador entered into a Memorandum of Understanding with the United States in 2017, Ecuador remains on USTR's Special 301 Watch List and, through various actions and inactions, continues its systematic failure to protect U.S. intellectual property rights "despite years of encouragement and assistance from the U.S. Government."¹³⁷

The withdrawal or suspension of Ecuador's GSP benefits based on failure to comply with the Track II Award and the Interim Awards in favor of Chevron would be a clear statement that the U.S. government is serious about enforcing mandatory GSP eligibility criteria and would incentivize Ecuador to remedy its failure to play by the rules under other GSP eligibility criteria.

¹³² 19 U.S.C. § 2462(c)(4).

¹³³ USTR, *2018 National Trade Estimate Report on Foreign Trade Barriers* 130 (2018), available at <https://ustr.gov/sites/default/files/files/Press/Reports/2018%20National%20Trade%20Estimate%20Report.pdf> ("Ecuador has imposed a broad range of tariff and nontariff restrictions on trade in goods and services. This trend began several years ago, but accelerated in 2014 and 2015 as Ecuador's balance of payments circumstances worsened and economic growth declined. These measures, such as tariff surcharges implemented in March 2015 that remain in effect, contributed to sharply reduced U.S. exports to Ecuador.").

¹³⁴ 19 U.S.C. § 2462(c)(5).

¹³⁵ Economic Commission for Latin America and the Caribbean, *2018 International Trade Outlook for Latin America and the Caribbean* 155 (2018) (Exh. 106).

¹³⁶ In October 2012, an Ecuadorian court issued an order that "the execution of the [*Lago Agrio*] judgment be applicable to the entirety of the assets of Chevron Corporation, until such time as the entire obligation has been satisfied." The attached assets included intellectual property in both Ecuador and Argentina.

¹³⁷ USTR, *2018 Special 301 Report* 9, 80 (Apr. 2018), available at <https://ustr.gov/sites/default/files/files/Press/Reports/2018%20Special%20301.pdf>. See also Press Release, USTR, *Trump Administration Enforces Trade Preference Program Eligibility* (Dec. 2017), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/december/trump-administration-enforces> ("President Trump has sent a clear message that the United States will vigorously enforce eligibility criteria for preferential access to the U.S. market," said Ambassador Lighthizer. "Beneficiary countries choose to either work with USTR to meet trade preference eligibility criteria or face enforcement actions. The Administration is committed to ensuring that other countries keep their end of the bargain in our trade relationships." Ukraine's partial suspension from GSP stems from its failure to provide adequate and effective protection of intellectual property rights (IPR) despite years of encouragement and assistance from the U.S. Government.").

VI. CONCLUSION

The Track II Award requires Ecuador to take “immediate steps, of its own choosing, to remove the status of enforceability from the Lago Agrio Judgment.”¹³⁸ Instead of acting to recognize or enforce the Track II Award in good faith, Ecuador has chosen to disparage the Award, continue its alignment with the Lago Agrio Plaintiffs’ corrupt lawyers, and continue its almost-seven-year refusal to take action to suspend the enforceability of the Judgment as required by the Award and the Interim Awards that came before it.

In such circumstances, there is only one result contemplated by federal law: the President “shall” revoke Ecuador’s GSP eligibility for “fail[ing] to act in good faith” to recognize arbitral awards in favor of a U.S. company. Withdrawing or suspending Ecuador’s GSP eligibility would be consistent with prior practice of this Subcommittee. In 2012, the United States suspended Argentina’s eligibility after the United States found that Argentina had failed to enforce arbitral awards in favor of two U.S. companies. Argentina’s GSP status was later restored in January 2018, but only after Argentina resolved the outstanding disputes.

Chevron supports the U.S. commitment to working with the Ecuadorian people and the government of Ecuador to expand bilateral trade and investment, strengthen security cooperation in the region, and increase cultural and education exchanges. The United States is Ecuador’s biggest trading partner¹³⁹ and has provided critical support to Ecuador in its efforts to combat narcoterrorism and narco-trafficking.¹⁴⁰ Only by coming into compliance with the GSP statute and the Awards in favor of Chevron can Ecuador restore confidence in the bilateral U.S.-Ecuador relationship and provide a platform to develop a more prosperous and mutually beneficial trade and investment relationship, including through the expansion of trade preferences to additional products.

¹³⁸ Track II Award ¶ 10.13(i) (Exh. 96).

¹³⁹ U.S. Department of State, *Fact Sheet: U.S. Relations with Ecuador* (Aug. 1, 2018), available at <https://www.state.gov/r/pa/ei/bgn/35761.htm>.

¹⁴⁰ *Ibid.*

ANNEX A

ECUADOR'S CURRENT ADMINISTRATION CONTINUES TO SUPPORT THE LAGO AGRIO JUDGMENT IN BREACH OF THE BIT AWARDS

Ecuador's current President took office on May 24, 2017. From the outset, the new administration has continued with the Ecuadorian government's longstanding support for the Lago Agrio Plaintiffs' ("LAPs") corrupt team and their fraudulent judgment against Chevron, both privately and in public. The evidence disproves the notion that the current administration is inheriting a problem created by the Correa administration or has attempted to comply in good faith with the BIT Tribunal's Awards. To the contrary, following in the steps of the Correa administration, the current administration has entirely disregarded the BIT Tribunal's Interim Awards—in place since 2012—which require Ecuador to take “all measures necessary to suspend or cause to be suspended” the enforcement of the fraudulent Lago Agrio Judgment. And, instead of “taking corrective measures” “to ‘wipe out all the consequences’ of” the “internationally wrongful acts” that the Track II Award conclusively found had been committed by Ecuador,¹ the current administration has disparaged the Track II Award and continued its alignment with the corrupt lawyers behind the fraudulent Ecuadorian judgment. The following are some examples of the current administration's public actions in favor of the LAPs and the fraudulent judgment:

- **July 21, 2017:** Ecuador's then Ecuadorian Minister of Foreign Affairs, Maria Fernanda Espinosa, organizes a meeting attended by Pablo Fajardo, Ecuadorian attorney for the LAPs found by the BIT Tribunal to have been one of the key players in the fraud,² and

¹ Track II Award ¶ 10.13(vi).

² In the Track II Award, the BIT Tribunal found that Mr. Fajardo personally committed serious wrongdoing, including judicial bribery, blackmail, ghostwriting of the judgment, and inappropriate secret meetings with judges. *See* Track II Award ¶ 4.378 (this wrongdoing included “bribing” supposedly neutral experts; “blackmailing . . . Judge Yáñez;” “collu[ding] with [the court appointed expert] Mr. Cabrera;” “ghostwriting” Mr. Cabrera's Report; “bribing Dr. Guerra to draft Judge Zambrano's orders;” holding “inappropriate private meetings with several judges of the Lago Agrio Court;” and “covert[ly] plan[ning] for ‘ghostwriting’ the Lago Agrio Judgment”); *see also id.* ¶¶ 4.303 (finding that “payments to Mr Cabrera were made corruptly as bribes by certain of the [LAPs'] representatives, including Mr Fajardo”), 4.232 (concluding that “Judge Yáñez h[eld] private meetings with Messrs Donziger and Fajardo nine times more during 2006 and 2007, at his house, a warehouse and elsewhere, to discuss the withdrawal of judicial inspections and the appointment of a sole global expert”), 4.261 (concluding that “Judge Yáñez's decision to accede to the LAPs' applications was the direct result of the blackmail committed by Mr Fajardo”), 4.275 (noting Pablo Fajardo's statement “that [Mr Cabrera] will ‘sign the report [ghostwritten by the plaintiffs] and review it.’ But all of us . . . have to contribute to that report.”), 4.355 (finding that the “use of code-names indicates nefarious conduct and guilty minds by both [the email's] sender [Fajardo] and recipient [Donziger]”), 4.412 (noting that Mr Fajardo stands to gain US\$ 363,138,720 if the corrupt Ecuadorian judgment is ever enforced), 5.229 (finding that “[Fajardo and Donziger] engaged in prolonged, malign conduct . . . in a manner that almost beggars belief in its arrogant contempt for elemental principles of truth and justice), 5.231 (finding that “Judge Zambrano, in return for his promised reward, allowed certain of the [LAPs'] representatives, corruptly, to ‘ghostwrite’ at least material parts of the Lago Agrio Judgment (with its Clarification). These representatives included Mr Fajardo and Mr Donziger”).

members of the European Parliament seeking to garner support against Chevron. Continuing with the false narrative against Chevron from the Correa administration, a press release from the Ministry of Foreign Affairs announced that members of the European Parliament traveled to see, “first hand, the effects of Chevron-Texaco's actions in the Ecuadorian Amazon as a paradigmatic example of environmental crime.”³ Mr. Fajardo can be seen attending the meeting (in the white shirt in the photograph below). Ms. Espinosa sits at the head of the table.



- **November 15, 2017:** Dr. Julio César Trujillo signs and submits an *amicus curiae* brief on behalf of the LAPs, opposing Chevron’s Extraordinary Action for Protection petition (“AEP”) pending before the Constitutional Court.⁴ Months later, in March 2018, Dr. Trujillo was appointed by the government of Ecuador as president of Ecuador’s Transitional Council and was tasked with evaluating the same judges on Ecuador’s Constitutional Court considering his *amicus curiae* brief to determine whether they should be removed from the bench, as they ultimately were. The *amicus* brief argues that:
 - The “justices of the Constitutional Court [should] immediately reject the ungrounded extraordinary action for protection filed by Chevron Corporation, No. 0105-14-EP.”⁵

³ Press Release, Ecuadorian Ministry of Foreign Affairs, Meeting of the Chancellor and delegation of the European Parliament reinforces support for a binding instrument that regulates transnationals (Jul. 21, 2017), available at: <https://www.cancilleria.gob.ec/reunion-de-canciller-y-delegacion-del-parlamento-europeo-refuerza-apoyo-para-instrumento-vinculante-que-regule-a-transnacionales/>.

⁴ See Motion for the Recusal of Transitional Council Members, dated May 22, 2018 in the Extraordinary Action for Protection No. 0105-14-EP.

⁵ *Ibid.*

- The “unnecessary delay” in the Constitutional Court’s consideration of the AEP “favors [Chevron] and its interests and seriously harms the communities and affected people, many of whom have died before they could see justice done.”⁶
- The *amicus* brief then directly and expressly instructs the judges how they should decide the case, including specific proposals on restoration for alleged damage to the health, water, soil, and culture.⁷
- **March 1, 2018:** Ecuador appoints Dr. Trujillo and Dr. Luis Macas as members of the Transitional Council previously mentioned, with Dr. Trujillo serving as its president. As stated above, Dr. Trujillo had previously filed an *amicus* brief demanding that the Constitutional Court “*immediately*” rule against Chevron and “*deny*” its petition to nullify the fraudulent Ecuadorian judgment. Dr. Macas was a long-time team member and public spokesman for the LAPs. In that role, he personally attended unlawful *ex parte* meetings with Judge Yanez (then presiding over the litigation against Chevron) as part of the LAPs’ ultimately successful efforts to blackmail Yanez into truncating the judicial inspections and appointing the LAPs’ secretly hand-picked operative, Richard Cabrera, as the court’s supposedly independent global expert. As the BIT Tribunal has found, the LAPs then paid Mr. Cabrera through a secret bank account and fraudulently ghostwrote his expert report. Dr. Macas had earlier petitioned Ecuadorian prosecutors to open a criminal investigation against Texaco’s attorneys to try to force Chevron into a settlement. After Dr. Trujillo’s and Dr. Macas’ appointments, the Transitional Council released a series of resolutions containing thinly veiled threats to remove Constitutional Court judges who did not rule against Chevron.⁸
 - **March 28, 2018:** The Transitional Council issues a resolution stating that the Council has a “public mandate [that] requires it to perform an evaluation of state authorities and, if necessary, to remove them from office before their term ends.”⁹
 - **May 9, 2018:** The Transitional Council issues a resolution stating that it has begun “the process of evaluating the judges of the Constitutional Court of

⁶ *Ibid.*

⁷ *Id.* at 4.

⁸ On May 22, 2018, Chevron Corporation filed a motion with the Constitutional Court in Chevron’s Extraordinary Action for Protection (“AEP” by its Spanish initials), requesting that the judges of the Constitutional Court refrain from acting on the AEP while the Transitional Council’s performance evaluation of the Constitutional Court’s judges remains underway. The motion is based on the fact that Dr. Trujillo and Dr. Macas have publicly and repeatedly aligned themselves in favor of the LAPs, including in the Lago Agrio litigation itself, suggesting that if the Constitutional Court judges do not rule in favor of the LAPs, the judges’ jobs could be at stake, thus giving the judges a personal interest in the case and depriving Chevron of its rights to due process and an impartial and independent judiciary. The Constitutional Court did not delay its decision on the AEP, instead dismissing Chevron’s AEP action on June 27, 2018.

⁹ Transitional Council Resolution No. PLE-CPCCS-T-O-009-28-03-2018, issued March 28, 2018, available at: <http://www.cpccs.gob.ec/es/resoluciones-cpccs-transitorio-2018/>.

Ecuador,” adding that it might “remove judges of the Constitutional Court from office before their constitutional terms have ended.”¹⁰

- **June 27, 2018:** The Constitutional Court unanimously rejects the AEP, which was Chevron’s final challenge against the Lago Agrio Judgment under Ecuadorian law.¹¹
- **August 17, 2018:** The Transitional Council, during a hearing regarding the evaluation and potential removal of the Constitutional Court judges, openly criticizes the judges’ delay in ruling against Chevron on the AEP.¹²
- **August 23, 2018:** The Transitional Council resolves to remove all nine judges of the Constitutional Court. One of the reasons upon which the Transitional Council justifies the judges’ removal is their delay in resolving the Chevron case.¹³
- **July 11, 2018:** Ecuador’s Office of the Ombudsman (“Defensoría del Pueblo”) issues a press release celebrating the Constitutional Court’s June 27, 2018, rejection of Chevron’s AEP, falsely claiming that the Court’s decision constitutes, among other things, an advance for the protection of the rights of those “affected by the operations of Chevron Texaco.”¹⁴
- **August 30, 2018:** The BIT Tribunal issues its Track II Award finding that Ecuador had committed multiple violations under international law and ordering Ecuador to, among other things, take “immediate steps” to “remove the status of enforceability of the fraudulent Lago Agrio Judgment” and to prevent its enforcement by the LAPs or their representatives.
- **September 6, 2018:** The Secretary to the President of Ecuador (equivalent to the Chief of Staff), Eduardo Jurado, reinforces the Government’s support for the LAPs, calling the Chevron case a “national cause” and confirming that the Government will exhaust all available avenues to protect the interests of the LAPs and oppose Chevron.¹⁵
- **September 7, 2018:** Two senior government officials make public statements parroting the false allegations against Chevron found in the fraudulent Ecuadorian judgment.

¹⁰ Transitional Council Resolution No. PLE-CPCCS-T-026-09-05-2018, issued May 9, 2018, available at: <http://www.cpccs.gob.ec/wp-content/uploads/2018/03/resol.-026.pdf>.

¹¹ *Constitutional Court resolves Chevron protection action*, El Telegrafo (June 27, 2018), available at: <https://www.eltelegrafo.com.ec/noticias/judicial/12/corteconstitucional-accionproteccion-chevron-ecuador>.

¹² *Judge of the Constitutional Court launch warnings at Transitional Council*, Ecuavisa (Aug. 17, 2018), available at: <https://www.ecuavisa.com/articulo/noticias/actualidad/409356-jueces-corte-constitucional-lanzan-advertencia-cpccs>.

¹³ Transitional Council Resolution No. PLE-CPCCS-T-O-089-23-08-2018, issued August 23, 2018, available at: <http://www.cpccs.gob.ec/es/resoluciones-cpccs-transitorio-2018/>.

¹⁴ Press Release, Ecuadorian Office of the Ombudsman (July 11, 2018), available at: <http://www.dpe.gob.ec/la-defensoria-del-pueblo-ante-la-sentencia-de-la-corte-constitucional-frente-al-caso-chevron-texaco/>.

¹⁵ Press Release, Ecuadorian Secretary of Communications, Government proposes legal actions against Rafael Correa (Sept. 6, 2018), available at: <https://www.comunicacion.gob.ec/gobierno-propone-acciones-legales-contra-rafael-correa/>.

Ecuador's Minister of Education, Fander Falconí, tweets that: "Chevron's grave harm against our people and ecosystem is obvious... We must condemn the ruling and those responsible, its contents threaten the right of the people of the Amazon."¹⁶ On the same day, Ecuadorian Minister of the Environment, Humberto Cholango, tweets: "We have not reached an agreement with anyone, less with Chevron. We owe it to the Ecuadorian people, that is why we will defend the interests of Ecuador and the affected Amazon peoples, and exhaust all the necessary instances to protect the interests of our Nation."¹⁷

- **September 8, 2018:** Ecuador's Vice President, Maria Alejandra Vicuña, tweets that the Chevron case is a "National Cause," calls for the BIT Award to be condemned, and urges taking all "efforts" against the BIT Award.¹⁸ Also on September 8, the Ecuadorian Ombudsman's office issues a "declaration" condemning the BIT Award in favor of Chevron.¹⁹ The declaration states that the BIT Award "imposes unacceptable obligations on the Ecuadorian state" because it allegedly "orders Ecuador to meddle into justice and abandon its obligations over human rights."²⁰ It adds that the arbitral tribunal should "under no circumstance impose obligations that entail meddling in the independence of the different State powers, much less ask to impose limitations or to disregard constitutional rights and the corresponding mechanisms to ensure their protection and assurance."²¹ It demands that the Ecuadorian government not comply with the Award and instead "give preference to the protection of human rights and those of nature."²²
- **September 9, 2018:** Ecuador's Attorney General, Iñigo Salvador, states during a televised interview that "[t]he fact that the State picked an arbitrator and participated in the arbitration does not necessarily mean that Ecuador, ultimately, was going to accept the decision." During the same interview, the Secretary to the President, Eduardo Jurado, added that Ecuador will do all in its power to challenge the BIT Award and "will exhaust every last appeal" to avoid complying with it.²³
- **September 10, 2018:** Attorney General Salvador meets with LAP representative Pablo Fajardo, the Ecuadorian lawyer whom the Tribunal found personally committed serious wrongdoing, including, bribing the court appointed expert and the judge, blackmailing a

¹⁶ Minister of Education, Fander Falconí's Twitter Account, Sept. 7, 2018, available at: <https://twitter.com/fanderfalconi/status/1038177364629495808>.

¹⁷ Minister of Environment, Humberto Cholango's Twitter Account, dated Sept. 7, 2018, available at: <https://twitter.com/HumbertoCholang/status/1038234794809810944>.

¹⁸ Vice President of Ecuador, Maria Alejandra Vicuña's Twitter Account, Sept. 8, 2018, available at: <https://twitter.com/mariaalevicuna/status/1038533796705067008>.

¹⁹ Press Release, Office of the Ecuadorian Ombudsman (Sept. 8, 2018), available at: <http://www.dpe.gob.ec/pronunciamiento-por-laudo-arbitral-caso-chevron-texaco/>.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ Television Interview with Attorney General Salvador, TeleAmazona (Sept. 9, 2018), available at: <http://www.teleamazonas.com/2018/09/el-ecuador-tiene-90-dias-para-presentar-pedido-de-nulidad-de-laudo-arbitral/>.

judge, ghostwriting the report of the court appointment expert and the judgment, among others.²⁴ Attorney General Salvador and Mr. Fajardo discussed a “roadmap” to circumvent the Award.²⁵

- **September 11, 2018:** Attorney General Salvador confirms his office’s intention to “work together” with the LAPs and announces that the LAPs would also meet with the President of Ecuador.²⁶
- **September 12, 2018:** Ecuador’s Secretary of Communications, Andrés Michelena, states that the Moreno administration will fight against the BIT Award and stand with the LAPs, stating that: “We have to prepare a legal strategy. We’re with the Amazon people, supporting their rights.”²⁷ On the same day, Attorney General Salvador states that Ecuador was “in talks with [the LAPs] to see how to, at the same time, defend the interests of the State against the Chevron ruling, while protecting the interests of these indigenous populations of the Amazon.”²⁸
- **September 12, 2018:** Attorney General Salvador announces Ecuador’s intention to file a request for clarification and annulment of the award during testimony before a subcommittee of the National Assembly (equivalent to Congress) and suggests that the Amazon residents should bring new claims for environmental damages against Chevron. Attorney General Salvador also states that an arbitration filed by a private company should not abrogate a legitimate aspiration by the Amazonian community.²⁹ Press reports reveal that Pablo Fajardo was present at this meeting and requested the State’s help.³⁰ Attorney General Salvador is seen meeting with Mr. Fajardo—the key Ecuadorian lawyer behind the fraud—in the picture below.

²⁴ See *supra* n.2.

²⁵ Press Conference, Lago Agrio Plaintiffs’ representatives including Pablo Fajardo (Sept. 10, 2018), available at: <https://www.youtube.com/watch?v=CD4kpFFED1g&feature=youtu.be>. Also available at: <https://twitter.com/wambraEc/status/1039199296078471168>.

²⁶ Radio Interview by Radio Centro with Attorney General Salvador (Sept. 11, 2018), available at: <http://www.juiciocrudo.com/video/entrevista-radio-centro-inigo-salvador-11-sep-2018/285>.

²⁷ *In national chain, President Moreno will announce actions regarding Chevron Case*, Ecuadorinmediato (Sept. 12, 2018), available at: http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=2818842609.

²⁸ Television Interview with Attorney General Salvador, TeleAmazonas (Sept. 12, 2018), at 1:34-1:50, available at: <https://www.youtube.com/watch?v=FmqGu1YcQpo>.

²⁹ *The Chevron ruling is not clear*, El Diaro (Sept 13, 2018), available at: <http://www.eldiario.ec/noticias-manabi-ecuador/482556-el-fallo-en-el-caso-chevron-no-es-claro/>.

³⁰ *Government of Ecuador prepares its defense against the award in the Chevron case*, El Telegrafo (Sept. 12, 2018), available at: <https://www.eltelegrafo.com.ec/noticias/politica/3/ecuador-chevron-anulacion-fallo>.



- **September 14, 2018:** Vice President Vicuña states during an interview that the “fundamental” goal is to “avoid that [the BIT Award] could effectively” be enforced. She again refers to the Chevron case as a “national cause” and states that the “National Government will exhaust all avenues” of appeal.³¹
- **September 17, 2018:** Attorney General Salvador states that it is his “duty . . . to use all of the remedies that international law provides to try to avoid” obeying the Award.³²
- **September 19, 2018:** Attorney General Salvador, sitting alongside the LAPs’ lawyer Pablo Fajardo, states at a press conference in the National Assembly that Ecuador will “vigorously exercise the actions provided by international law to reverse the arbitration award in the Chevron case.”³³ Following the press conference, Attorney General Salvador is shown standing in solidarity with Mr. Fajardo below.

³¹ News Broadcast, TC TV (Sept. 14, 2018), available at: <https://www.youtube.com/watch?v=65qnUBp43Cc&feature=youtu.be>.

³² *Inigo Salvador: “I will renegotiate the contracts with law firms,”* El Comercio (Sept. 17, 2018), available at: <https://www.elcomercio.com/actualidad/entrevista-inigosalvador-renegociacion-contratos-estudiosjuridicos.html>.

³³ *Inigo Salvador: we will exercise vigorously actions to annul the award in the Chevron case,* The World News (Sept. 19, 2018), available at: <https://theworldnews.net/ec-news/inigo-salvador-ejerceremos-vigorosamente-acciones-para-dejar-sin-efecto-el-laudo-en-caso-chevron>.



- **September 19, 2018:** Attorney General Salvador states in a newspaper interview that, “By complying with the arbitral decision, the country would be complicit in the violation of human rights of its own citizens and will be violating its own Constitution and international law.”³⁴
- **October 11, 2018:** It is announced that Ecuador’s Ministry of Science, Higher Education, Innovation and Technology grants the Frente de Defensa de la Amazonia and others a grant for \$194,626.³⁵ The Frente de Defensa de la Amazonia is an organization created and controlled by Steven Donziger, the U.S. lawyer found by the Arbitral Tribunal and U.S. courts to have led the efforts to procure the fraudulent Ecuadorian judgment against Chevron.³⁶
- **October 25, 2018:** Representatives from Ecuador’s Constitutional Court, Ombudsman’s Office, and the Ecuadorian police participate in a screening and subsequent discussion of the film *Crude*, an anti-Chevron film orchestrated and financed by Steven Donziger, found by the arbitral Tribunal and U.S. courts to be the mastermind behind the fraudulent judgment against Chevron.³⁷ The Constitutional Court tweets, falsely, that the film depicts “environmental damages caused by Chevron’s petroleum extraction during 2006 and 2007.”³⁸ The film was found by U.S. courts to have been part of an unlawful pressure campaign to extort a settlement from Chevron.³⁹

³⁴ *Victory for Rainforest Communities Over Chevron as Ecuador Government Vows to Fight “Illegal” Private Arbitral Award*, The Corporate Responsibility News Wire (Sept. 19, 2018), available at: http://www.csrwire.com/press_releases/41372-Victory-for-Rainforest-Communities-Over-Chevron-as-Ecuador-Government-Vows-to-Fight-Illegal-Private-Arbitral-Award.

³⁵ *ISS wins grant to monitor socio-economic change in Ecuador*, International Institute of Social Studies (Oct. 11, 2018), available at: <https://www.iss.nl/en/news/iss-wins-grant-monitor-socio-economic-change-ecuador>.

³⁶ *See Chevron Corp. v. Donziger*, 833 F.3d 74, 84 (2d Cir. 2016) (stating that the Frente de Defensa de la Amazonia was “formed” and “controlled by” Donziger); *see also* Track II Award ¶ 5.229 (finding that Donziger “engaged in prolonged, malign conduct towards [Ecuador’s] legal system generally and, particularly, the Lago Agrio Court in a manner that almost beggars belief in its arrogant contempt for elemental principles of truth and justice.”).

³⁷ Constitutional Court of Ecuador’s Twitter Account, Oct. 25, 2018, available at: <https://twitter.com/CorteConstEcu/status/1055493593891250177>.

³⁸ *Ibid.*

³⁹ *See Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362, 453-54 (S.D.N.Y. 2014) (discussing how Donziger fraudulently controlled the substance of *Crude* while publicly indicating that the film was independently produced).



- November 10-12, 2018:** Luis Macas, a member of Ecuador’s Transitory Council of Citizenship Participation (*Transitory Consejo de Participacion Ciudadana*), chairs a panel at a conference in Banff, Canada, orchestrated and funded by Steven Donziger to support enforcement of the Ecuadorian judgment.⁴⁰ In the words of one of the co-organizers (whose common law husband holds a 0.25% interest in the Lago Agrio Judgment), this event is designed to apply “pressure to bear on Chevron to come to the table” to settle.⁴¹ As reported in the press and shown in court filings, the list of speakers at the conference is packed with parties who secretly hold “shares” in the Ecuadorian judgment or have been paid by Mr. Donziger, either in cash, through the award of interests in the Ecuadorian judgment, or both, to support the judgment against Chevron.⁴²
- Present:** Ecuador has taken no steps to comply with any of the Tribunal’s orders, including a complete failure to even inform the Argentinean or Canadian courts before which enforcement proceedings are pending of the Track II Award, as required by the Tribunal’s Award.

⁴⁰ Conference program and list of sponsors available at <https://banffconference2018.com/>. The Frente de Defensa de la Amazonia—the organization created and controlled by Steven Donziger, the U.S. lawyer found by the BIT Tribunal and U.S. courts to be the mastermind behind the fraudulent Ecuadorian judgment against Chevron—is a Platinum Sponsor (more than \$50,000) of the conference, which seeks to bolster the legitimacy, recognition, and enforcement of the Lago Agrio Judgment.

⁴¹ Peter Foster, *Corruption, Pink Floyd and Aboriginal rights walk into Banff’s ‘post-normal’ law conference*, The Financial Post (Nov. 9, 2018), available at: <https://business.financialpost.com/opinion/peter-foster-corruption-pink-floyd-and-aboriginal-rights-walk-into-banffs-post-normal-law-conference>; Michael I. Krauss, *Further Details of the Contempt Motion Against Steven Donziger*, Forbes (Oct. 27, 2018), available at: <https://www.forbes.com/sites/michaelkrauss/2018/10/27/further-details-of-the-contempt-motion-against-steven-donziger/#3c1f1ead79c9>.

⁴² Michael I. Krauss, *Further Details of the Contempt Motion Against Steven Donziger*, Forbes (Oct. 27, 2018), available at: <https://www.forbes.com/sites/michaelkrauss/2018/10/27/further-details-of-the-contempt-motion-against-steven-donziger/#3c1f1ead79c9>.