

Dantzer, Eva J

From: Teel, Wynne M RELEASED IN PART B5,B6
Sent: Monday, October 08, 2012 7:04 PM
To: Kovar, Jeffrey D; Peters, Catherine L; Caplan, Lee M; Sharpe, Jeremy; Grosh, Lisa J; Loken, Keith; Bischoff, James L; Salie, David P
Subject: RE: Ecuador's Solicitor General Meetings with USG

This was the interim award - no monetary damages, just a direction not to allow further steps towards recovery.

From: Kovar, Jeffrey D
Sent: Monday, October 08, 2012 6:55 PM
To: Peters, Catherine L; Teel, Wynne M; Caplan, Lee M; Sharpe, Jeremy; Grosh, Lisa J.; Loken, Keith; Bischoff, James L; Salie, David P
Subject: Re: Ecuador's Solicitor General Meetings with USG

Counsel for Ecuador told the tribunal in the Ecuador v. USA case that Ecuador had paid all arbitral awards against the.

From: Peters, Catherine L
Sent: Monday, October 08, 2012 05:52 PM
To: Teel, Wynne M; Caplan, Lee M; Sharpe, Jeremy; Grosh, Lisa J.; Loken, Keith; Kovar, Jeffrey D; Bischoff, James L; Salie, David P
Subject: RE: Ecuador's Solicitor General Meetings with USG

Yes, I'll take a look at the statutory history this week.

Cassie

From: Teel, Wynne M
Sent: Monday, October 08, 2012 2:48 PM
To: Caplan, Lee M; Sharpe, Jeremy; Grosh, Lisa J.; Loken, Keith; Kovar, Jeffrey D; Bischoff, James L; Salie, David P; Peters, Catherine L
Subject: RE: Ecuador's Solicitor General Meetings with USG



B5

From: Caplan, Lee M
Sent: Thursday, September 27, 2012 11:47 AM
To: Sharpe, Jeremy; Teel, Wynne M; Grosh, Lisa J.; Loken, Keith; Kovar, Jeffrey D; Bischoff, James L; Salie, David P
Cc: Peters, Catherine L
Subject: RE: Ecuador's Solicitor General Meetings with USG

REVIEW AUTHORITY: Adolph Eisner, Senior Reviewer

Thanks, Jeremy. Due to scheduling conflicts on both sides, it looks like we will not be able to hold a separate L meeting in the end. However, Wynne plans to attend the E meeting, and we are happy to see if we can get you into the meeting as well.

Lisa, Jeremy, and David, as you may know, Chevron's new ATPDA petition (attached) seeks to deny Ecuador's trade benefits because Ecuador allegedly failed to comply with an interim award requiring Ecuador to take necessary steps to prevent enforcement of the Lago Agrio judgment. Chevron seeks to analogize the situation to Argentina's failure to pay final and binding ICSID awards

[Redacted]

B5

Thanks,
Lee

From: Sharpe, Jeremy
Sent: Monday, September 24, 2012 5:09 PM
To: Caplan, Lee M; Teel, Wynne M; Grosh, Lisa J.; Loken, Keith; Kovar, Jeffrey D; Bischoff, James L; Salie, David P
Subject: RE: Ecuador's Solicitor General Meetings with USG

Thanks, Lee.

I think it would be useful for someone from L to attend the Hormats meeting with Carrion.

Also, previous meetings with Chevron have been useful at times. David Salie, who covers Latin America for L/CID, is out this week. But I'd be happy to attend a lawyers meeting.

Best,
Jeremy

This email is UNCLASSIFIED.

From: Caplan, Lee M
Sent: Monday, September 24, 2012 10:28 AM
To: Teel, Wynne M; Grosh, Lisa J.; Loken, Keith; Kovar, Jeffrey D; Bischoff, James L
Cc: Sharpe, Jeremy
Subject: RE: Ecuador's Solicitor General Meetings with USG

Looping in Jeremy in light of Lisa's out-of-office message.

From: Caplan, Lee M
Sent: Monday, September 24, 2012 10:26 AM
To: Teel, Wynne M; Grosh, Lisa J.; Loken, Keith; Kovar, Jeffrey D; Bischoff, James L
Subject: FW: Ecuador's Solicitor General Meetings with USG

All - Chevron notes below that Ecuador's Solicitor General is in town this week to discuss ATPA matters and encourages the USG to keep the company's interests in mind. Chevron is meeting with E on October 4 (which is news to me), but

asks if it would be possible to hold a separate meeting with L. Keith and I are out on October 4, but if others are interested in meeting with Chevron, please let me know. It doesn't appear to be urgent, particularly if someone from L can cover the Hormats meeting.

Lee

From: Irwin, William T [redacted] [mailto:[redacted]@chevron.com]
Sent: Monday, September 24, 2012 9:35 AM
To: Caplan, Lee M
Cc: [redacted]@weil.com
Subject: RE: Ecuador's Solicitor General Meetings with USG

B6

Thanks, Lee. Just so you know, Ed Scott will be in town for something less than a day on Thursday, October 4th. He will be seeing Bob Hormats, so I imagine someone from L may attend that. If we can make the schedules work, do you think there would be interest among your colleagues for a separate meeting at L? Bill

From: Caplan, Lee M [mailto:CaplanLM@state.gov]
Sent: Monday, September 24, 2012 9:28 AM
To: Irwin, William T [redacted]
Cc: [redacted]@weil.com
Subject: Re: Ecuador's Solicitor General Meetings with USG

B6

Many thanks, Bill. I will review and let you know if I have any questions.

Best,
 Lee

From: Irwin, William T [redacted] [mailto:[redacted]@chevron.com]
Sent: Monday, September 24, 2012 08:29 AM
To: Caplan, Lee M
Cc: 'Posner, Ted' <[redacted]@weil.com>
Subject: Ecuador's Solicitor General Meetings with USG

B6

Lee,

We have learned that Ecuador's Solicitor General Diego Garcia Carrion will be visiting Washington later this week. We understand that one of his goals will be to try to address concerns that have been raised by policymakers in WDC about Ecuador's violation of its treaty obligations with the United States and the status of the ATPA program.

As you know, Chevron has raised issues about Ecuador's eligibility under the Andean Trade Preferences Program given that we believe they are in violation of an arbitral award. An arbitral tribunal convened under the authority of the BIT is reviewing Chevron's claims of unfair treatment in the longstanding Lago Agrio trial in Ecuador, and last February directed Ecuador to take all necessary measures to prevent untimely enforcement of the more than \$18 billion judgment against Chevron. The award was issued to preserve the status quo while the tribunal examined the facts of the case. Ecuador has flouted this award by public condemnation, by failing to take any action by plaintiffs to enforce the judgment in two jurisdictions to date, and by issuing certifications which in effect "authorize" enforcement of the judgment.

Chevron's concerns about Ecuador's unwillingness to recognize and honor the arbitral award are shared by many in the US business community who are now seeking to have Ecuador's trade preferences revoked given that failing to honor arbitral awards violates criteria for participation in the program. The US business community fought long and hard to secure high standard investment provisions in the draft Model BIT and we believe it is critical to send a strong message to countries that don't abide by the investor state provisions of the BIT. The Congress is also very concerned. In August,

Congressmen Mack and Engel introduced a resolution outlining Congressional concerns with Ecuador's behavior including its violation of the treaty obligation with the USG associated with the Chevron case. Twenty eight members from both parties have already signed onto the resolution calling for the withdrawal of Ecuador's trade preferences. The Chairman of the House Foreign Relations Committee has also communicated directly about withdrawal of the preferences.

Ecuador does not seem willing to even acknowledge that there is a BIT tribunal reviewing this issue. Misinformation is being spread from the Ecuadorian embassy in Washington as well as in Quito. Ecuador seems on a course opposite to the arbitral award by consistently providing misleading statements about the nature of the dispute, falsely characterizing it as a solely dispute between private parties. It is not. With the filing of the BIT action, this is clearly a matter between Chevron and the Government of Ecuador, and yet Ecuador has been unwilling to take the measures required to uphold the arbitral award. Beyond that most, if not all, of the myriad of distracting points that the GOE has been communicating are matters that will be sorted out in the arbitral process itself – further underscoring Ecuador's need to cooperate with the arbitral process by honoring the awards that provide the tribunal time and space to deliberate over the merits. Time and space the tribunal has availed itself through its award on enforcement.

We believe it is critical that the USG communicate clearly and directly to the GOE that it expects Ecuador to abide by the eligibility criteria associated with the ATPA program. One of the mandatory eligibility criteria involves adherence to internal arbitral awards. Right now, Ecuador is in breach of an international award and unless and until it complies with the award and takes all measures necessary to prevent enforcement of the award, its trade preferences are at risk.

Resolution of this conundrum is clearly and directly in the hands of the Ecuador – and they should be encouraged to understand this and refrain from shifting blame. It is vital that the GOE takes measures immediately to redress the problems they have created. Without such action, support for trade preferences, which clearly spell out adherence to arbitral awards as a mandatory criteria for eligibility, will evaporate.

Please find Chevron's most recent submission to USTR requesting withdrawal of Ecuador's ATPA trade preferences and also some related background material. We the Administration will make it consistently clear that Ecuador's continued access to trade preferences requires that they meet existing eligibility criteria including abiding by their international treaty obligations with the United States.

Thanks again and please let us know if there is any more information that you need. Ed Scott and I are at your disposal.

Regards,
Bill