

IN THE ARBITRATION UNDER THE UNCITRAL ARBITRATION RULES
BETWEEN

CHEVRON CORPORATION AND TEXACO
PETROLEUM COMPANY,

Claimants,

-and-

THE REPUBLIC OF ECUADOR,

Respondent.

RESPONDENT'S REQUEST FOR ENFORCEMENT OF INTERIM MEASURES

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I. INTRODUCTION

1. Chevron is relying upon the provisional findings contained in this Tribunal's Fourth Interim Award in its effort to persuade the U.S. Government to terminate trade preference programs for Ecuador that account for billions of dollars each year in trade revenues for Ecuador's economy and that generate employment for its citizens. As this Tribunal knows, the Fourth Interim Award is currently the subject of a request for reconsideration. Chevron's lobbying campaign, and in particular its reliance on this Tribunal's Interim Award, is a clear attempt to widen the dispute between the Parties and thus to eviscerate the status quo in breach of the Tribunal's First Order on Interim Measures and the First Interim Award.

2. The Tribunal has time and again underscored that it has not decided, in any part, the merits of the Parties' dispute. By definition, interim findings are subject to change and indeed will be superseded when the Tribunal issues a final award, or even sooner if the Respondent prevails in its request for reconsideration of the Fourth Interim Award. Chevron is exploiting the Tribunal's conversion of its orders on interim measures into awards pursuant to Article 26.2 of the UNCITRAL Rules to lobby the U.S. Government not to renew the trade preference programs on the basis that Ecuador has "fail[ed] to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of U.S. citizens [or corporations]"

3. When the Tribunal does issue its final award on this matter, even with Claimants' present undertaking, it will probably be far too late, and the undertaking insufficient, to make Ecuador whole for the billions of dollars in annual trade benefits it stands to lose as a result of Claimants' lobbying campaign. Congress will likely decide the fate of its trade programs with Ecuador by **July 31, 2013**. Whatever rights Chevron has to petition the U.S. Government may be exercised once this Tribunal has issued a final award in this matter. Chevron chose to bring

its claims before this Tribunal and should not be permitted to use its provisional findings to inflict irreparable harm in the bilateral trade relations between two democratic nations.

4. Chevron cannot have it both ways: on the one hand seeking compensatory relief from this Tribunal, via the show cause procedure, for any supposed harm caused to Chevron by the Respondent's alleged breaches of the First and Second Interim Awards, while simultaneously asking the U.S. Trade Representative ("USTR") to punish the Republic for these same alleged breaches by depriving the Republic of billions in trade revenues. Given the delay that Chevron has introduced into the show cause procedure through its insistence that information relating to its alleged losses must remain confidential, it is clear that Chevron's priority is, and has always been, to use the Fourth Interim Award for a collateral purpose: to widen this dispute significantly by undermining the trade regime between the U.S. and Ecuador.

II. FACTUAL BACKGROUND

5. While the Republic has previously requested that the Tribunal prevent Chevron from attempting to have the U.S. Governmental entities deprive the Republic of its trade benefits under the U.S. Andean Trade Preference Act ("ATPA") and the Andean Trade Promotion and Drug Eradication Act ("ATPDEA"), Claimants' lobbying efforts have escalated dramatically in the interim. Chevron has now expanded its lobbying campaign in two significant respects. First, as mentioned above, Chevron is now using this Tribunal's interim awards as the cornerstone of its anti-Ecuador lobbying campaign.¹ Second, Chevron's lobbying campaign targets not only the benefits that the Republic receives under the ATPA/ATPDEA, but also Ecuador's only other U.S. trade program, the Generalized System of Preferences ("GSP"), which significantly increases the magnitude of benefits at issue.

¹ See R-848, Chevron Letter to USTR, 11 Feb. 2013; R-860, Chevron Letter to USTR, 6 May 2013.

A. Chevron Is Attempting To Deprive Ecuador Of ATPA & ATPDEA Benefits

6. The ATPA was enacted by the U.S. Congress and signed into law in 1991.² It provides duty-free treatment of exports to the U.S. from four Andean states — Bolivia, Colombia, Ecuador, and Peru — for the express purpose of promoting (1) “broad-based economic development,” (2) “diversification of exports,” (3) “consolidation of democracy,” and (4) the “defeat [of] the scourge of drug trafficking by providing sustainable economic alternatives to drug-crop production in beneficiary countries.”³ Shortly after the ATPA’s expiration in 2001, Congress enacted the ATPDEA, which renewed and expanded the ATPA to include specific products previously excluded.⁴ The ATPA, as renewed and extended by the ATPDEA, was slated to expire on December 31, 2006, but Congress has since extended the program six times.⁵ The program is scheduled to expire on July 31, 2013, unless further renewed.⁶

7. Today, Ecuador is the only remaining Andean beneficiary country.⁷ In the past 22 years, the Republic has received substantial trade benefits from the ATPA/ATPDEA program that have covered more than 50 percent, and as much as 75 percent, of Ecuador’s exports to the

² R-440, Office of USTR, Sixth Report to the Congress on the Operation of the Andean Trade Preference Act as Amended (30 Jun. 2012) at 3.

³ *Id.* at 1. The Report concludes that “the ATPA/ATPDEA continued to make progress achieving these goals.” *Id.*

⁴ *Id.* at 3.

⁵ *Id.*

⁶ RLA-439, 19 U.S.C. §3206(a)(2); *see also* R-440, Office of USTR, Sixth Report to the Congress on the Operation of the Andean Trade Preference Act as Amended (30 Jun. 2012) at 3.

⁷ R-440, Office of USTR, Sixth Report to the Congress on the Operation of the Andean Trade Preference Act as Amended (30 June 2012) at 1. Trade benefits under the ATPA/ATPDEA were terminated for Peru and Colombia as they entered respective free trade agreements with the United States. *See* R-863, U.S. International Trade Commission Report on ATPA (Sept. 2012) at n. 4 (“The U.S.-Peru Trade Promotion Agreement (TPA) entered into force on February 1, 2009. Peru retained its ATPA eligibility after the TPA entered into force until December 31, 2010. The U.S.-Colombia TPA entered into force on May 15, 2012. Colombia lost ATPA beneficiary status at that time.”).

U.S.⁸ These exports amounted to \$2.8 billion in 2009, \$4.2 billion in 2010, and \$1.7 billion in 2011.⁹ The ATPA/ATPDEA program is credited for giving some of the poorest Ecuadorians a viable means of employment.¹⁰ The program also supports jobs in the U.S. (in transportation and distribution, for example) and enhances the businesses of U.S. vendors.¹¹ The ATPA/ATPDEA has also fulfilled one of its critical goals, which is to curb the narcotics trade by encouraging farmers to avoid the drug trade and instead grow goods covered by the program.¹²

B. Chevron Is Attempting To Deprive Ecuador Of GSP Benefits

8. In addition to receiving ATPA/ATPDEA benefits, the Republic is also a beneficiary of the GSP program. The GSP was enacted by Congress in 1974 to stimulate the exports of developing countries to assist with expanding their economies. The GSP provides for the duty-free treatment of certain identified products imported to the U.S. by any of the

⁸ R-418, Office of USTR, Fifth Report to the Congress on the Operation of the Andean Trade Preference Act as Amended (30 June 2010) at 9, 31; R-440, Office of USTR, Sixth Report to the Congress on the Operation of the Andean Trade Preference Act as Amended (30 June 2012) at 8. Trade under the ATPA/ATPDEA program as a percentage of all Ecuadorian imports to the U.S. was 18 percent in 2011 as the program had lapsed for more than eight months (between February 12, 2011 and October 21, 2011) before it was renewed. *Id.* at 24.

⁹ R-440, Office of USTR, Sixth Report to the Congress on the Operation of the Andean Trade Preference Act as Amended (30 June 2012) at 8.

¹⁰ *Id.* at 3. (“The ATPA was enacted in December 1991 to help four Andean countries (Bolivia, Colombia, Ecuador, and Peru) in their fight against drug production and trafficking by expanding their economic alternatives.”). *See also* R-864, Ecuadorian Embassy Letter to USTR, 8 May 2013 at 5 (“At least 31,869 employees are estimated to lose their jobs within the first five years of ATPDEA non-renewal alone.”); *id.* at 2 (“ATPDEA supports thousands of jobs for farmers, transportation and distribution employees, and vendors.”); *id.* at 4 (“The success of ATPDEA in providing sustainable economic alternatives to the drug trade cannot be understated. As the Department of State has noted, ‘the government has maintained Ecuador virtually free of coca production.’”).

¹¹ R-864, Ecuadorian Embassy Letter to USTR, 8 May 2013 at 2 (“ATPDEA supports thousands of jobs for farmers, transportation and distribution employees, and vendors and customers both in the United States and Ecuador.”). *See e.g.* R-865, Gateway Americas Air Cargo Letter to USTR, 1 May 2013 (“The entire logistics chain that supports the importation of fresh flowers from Ecuador to the US would be negatively affected including US airports, cargo agents, ground handling companies, air cargo and ground transportation companies, small and large retail businesses in the Chicagoland and Midwest regions.”).

¹² R-864, Ecuadorian Embassy Letter to USTR, 8 May 2013 at 3.

beneficiary States.¹³ Today, the program covers 127 countries and territories and over 5,000 products.¹⁴ Like the ATPA/ATPDEA, unless renewed, the GSP expires on July 31, 2013.¹⁵

9. The GSP's goals are universally applauded. As detailed in President Obama's 2013 Trade Policy Agenda:

The United States has an obligation — the Obama Administration has the intent — to partner where possible with the poorest countries to lift people out of poverty and foster opportunity for more of our fellow men and women around the world. Promoting economic development by creating trade opportunities for some of the world's least-advantaged workers today can help to reduce the appeal of corruption and violence, and increase the likelihood of societal change through peaceful, democratic means. Helping developing countries grow and expand their economies through trade also helps the United States by providing U.S. exporters greater opportunity to sell products made in America to billions of new consumers abroad; these sales in turn help to grow and support higher-wage jobs at home.¹⁶

In 2011, under the GSP program the Republic exported goods to the U.S. valued at approximately \$147 million.¹⁷

10. Although it is expected that Congress will renew the GSP program generally for eligible countries, Chevron has recently petitioned the USTR to withdraw or suspend all GSP benefits to the Republic.¹⁸ In addition, the Republic recently petitioned the USTR to add three goods (currently covered by the ATPA/ATPDEA) to the GSP program.¹⁹ Adding these items —

¹³ R-866, Vivian C. Jones, *Generalized System of Preferences: Background and Renewal Debate*, Congressional Research Service (9 Jan. 2013) at Summary.

¹⁴ *Id.*

¹⁵ RLA-440, 19 U.S.C. §2465; *see also* R-867, U.S. Generalized System of Preferences Guidebook, Office of the USTR, Dec. 2012 at 3.

¹⁶ R-868, United States Trade Representative, 2013 President's Trade Policy Agenda (28 Feb. 2013) at 18.

¹⁷ R-440, Office of USTR, Sixth Report to the Congress on the Operation of the Andean Trade Preference Act as Amended (30 June 2012) at 8.

¹⁸ R-869, Chevron Letter to USTR, 2 Oct. 2012.

¹⁹ *See* R-870, Ambassador Nathalie Cely's Testimony Before the GSP Subcommittee (Feb. 2013).

fresh cut roses, frozen broccoli, and preserved artichokes — would support employment for some of the poorest populations in Ecuador and advance the other beneficial effects of the ATPA/ATPDEA program.²⁰ Chevron immediately responded to the Republic’s petition by opposing the expansion of the GSP program to cover these farm products, thereby attempting (again) to deprive Ecuador’s economy of revenues and to deny Ecuadorian farmers of their livelihood. And Chevron does all this in the name of the Fourth Interim Award.

C. Chevron’s Campaign Substantially Relies Upon This Tribunal’s Interim Awards

11. Chevron has intensified its lobbying campaign to deprive the Republic of its important U.S. trade benefits, relying primarily upon this Tribunal’s Interim Awards. On September 17, 2012, Chevron submitted an “urgent” petition to the USTR requesting withdrawal or suspension of Ecuador’s designation as an ATPA/ATPDEA beneficiary country.²¹ The basis for Chevron’s petition was Ecuador’s alleged failure to recognize and enforce the Tribunal’s First and Second Interim Awards. But at the time this letter was submitted to the USTR, the Tribunal had not yet even addressed Chevron’s request to this Tribunal for a finding of “breach.”

12. The reason Claimants asserted a violation of the *interim* awards is because the Republic has satisfied every final adverse award against it. To date, only three awards have become final: (1) *Occidental Exploration and Production Company v. Republic of Ecuador*; (2) *Duke Energy Electoquil v. Republic of Ecuador*; and (3) *Varaderos y Talleres Duran, Vatadur v. Republic of Ecuador*. One additional award is currently outstanding – *Chevron Corp. and Texaco Petroleum Co. v. Republic of Ecuador*, UNCITRAL PCA Case No. AA277. In that case, set-aside proceedings are underway in the Netherlands, and the Republic has committed in

²⁰ *Id.* at 2.

²¹ R-871, Chevron Letter to USTR, 17 Sept. 2012.

writing to satisfy the award if the Dutch courts uphold the award. Claimants have nonetheless falsely represented to this Tribunal that the Republic had refused to comply with such award.

13. Less than two weeks later, on October 2, 2012, Chevron submitted another letter to the USTR demanding the withdrawal or suspension of Ecuador as a beneficiary country under the GSP program.²² It again alleged that the Republic breached the First and Second Interim Awards and sought “immediate review” of its petition.²³

14. On October 11, 2012, Chevron submitted a public comment to the USTR on the National Trade Estimate Report on Foreign Trade Barriers, an annual report by the Office of the USTR that takes “inventory of the most important foreign barriers affecting U.S. exports.”²⁴ In its submission, Chevron alleged that the Republic had failed to honor the First and Second Interim Awards, and “strongly urge[d] that the...[Report] clearly and unequivocally highlight Ecuador’s failures to abide by its treaty obligations and honor final and binding investment dispute arbitral awards as serious investment barriers that can and do nullify investor protections promoted by decades of U.S. policy.”²⁵

15. On February 11, 2013, just two business days after the Tribunal issued its Fourth Interim Award that promised to compensate Chevron for any breaches of the First and Second Interim Awards via a show cause procedure, Chevron again wrote to the USTR to *reaffirm* its petition for the withdrawal of Ecuador’s benefits under the GSP on the basis of the breaches of the First and Second Interim Awards described in the Fourth Interim Award.²⁶

²² R-869, Chevron Letter to USTR, 2 Oct. 2012.

²³ *Id.* at 1.

²⁴ R-872, 2013 National Trade Estimate Report on Foreign Trade Barriers, Office of the USTR at 1.

²⁵ R-873, Chevron Letter to USTR, 11 Oct. 2012.

²⁶ R-848, Chevron Letter to USTR, 11 Feb. 2013.

16. On February 14, 2013, Chevron provided yet additional written comments to the USTR to object to the Ecuadorian Embassy's petition to add three additional export items to the GSP's list of eligible trade goods – fresh cut roses, frozen broccoli, and preserved artichokes.²⁷

17. On February 28, 2013, Chevron enlisted its ally, the U.S. Council for International Business (“USCIB”), to testify at the GSP Subcommittee hearing on the expansion of trade benefits to fresh cut roses, frozen broccoli, and preserved artichokes. Effectively acting as a proxy for Chevron, USCIB testified *against* decreasing trade barriers for Ecuador even though USCIB has been “traditionally [a] very strong supporter[] of open trade and investment regimes and policies [and] of the GSP program.”²⁸

18. On March 27, 2013, Chevron submitted post-hearing comments in relation to the GSP program, arguing that the USTR should withdraw, suspend and certainly not expand Ecuador's GSP benefits to include these new agrarian products because doing so “would circumvent congressional intent as reflected in the anticipated decision not to renew [the ATPA], of which Ecuador is the sole remaining beneficiary, when it expires on July 31, 2013.”²⁹

19. On May 6, 2013, Chevron again submitted a comment to the USTR concerning Ecuador's receipt of ATPA benefits, citing the Fourth Interim Award as a “new development[] giving even greater cause for concern . . . about Ecuador's continued receipt of unilateral U.S. trade preferences.”³⁰ The USTR will consider such comments from Chevron to prepare its

²⁷ R-874, Chevron Letter to USTR, 14 Feb. 2013.

²⁸ R-875, GSP Hearing Transcript (28 Feb. 2013) at 45:13-17.

²⁹ R-876, Chevron Letter to USTR, 27 Mar. 2013 at 2.

³⁰ R-860, Chevron Letter to USTR, 6 May 2013 at 2.

annual report on the operation of the program due to Congress on **June 30, 2013**.³¹ This report will be crucial to the ultimate decision of the U.S. President on whether to continue to allow Ecuador to receive benefits under U.S. trade preference programs.

20. In furtherance of these efforts to strip Ecuador of valuable trade preference benefits, Chevron has enlisted the help of its business allies, such as trade associations, including USCIB, the National Association of Manufacturers (“NAM”), and the Emergency Committee for American Trade (“ECAT”), and has hired multiple lobbying firms.³²

21. In 2012 alone, Chevron spent US\$ 9.91 million on in-house and external lobbyists.³³ Among the activities listed on these government-mandated lobbying reports are “[i]ssues relating to the Andean Trade Preferences Act” and “Ecuador rule of law and trade issues.”³⁴

³¹ RLA-441, 19 U.S.C. §3202(f) (mandating that USTR reports are due annually on June 30). *See* R-877, Federal Register, Vol. 78, No. 67 (8 Apr. 2013) (“Section 203(f) of the ATPA (19 U.S.C. 3202(f)) requires the USTR, not later than June 30, 2013, to submit to Congress a report on the operation of the ATPA.”); *id.* (“This information will be used in the preparation of a report to the Congress on the operation of the program.”).

³² *See* R-878, NAM and ECAT Amici Curiae Brief in Support of Chevron, *Republic of Ecuador, et. al v. Chevron*, 2d Circuit, Case No. 10-1020-cv(L) at 6; *see also* R-879, USCIB Membership List, available at <http://www.uscib.org/index.asp?documentID=1846>. *See e.g.*, R-417, Q1 2012 Lobbying Report by Akin Gump Strauss Hauer & Feld on behalf of Chevron Corp. to the Clerk of the U.S. House of Representatives and Secretary of the U.S. Senate.

³³ *See* R-416, Q1 2012 Lobbying Report by Chevron Corp. to the Clerk of the U.S. House of Representatives and Secretary of the U.S. Senate; R-625, Q2 2012 Lobbying Report by Chevron Corp. to the Clerk of the U.S. House of Representatives and Secretary of the U.S. Senate; R-627, Q3 2012 Lobbying Report by Chevron Corp. to the Clerk of the U.S. House of Representatives and Secretary of the U.S. Senate; R-880, Q4 2012 Lobbying Report by Chevron Corp. to the Clerk of the U.S. House of Representatives and Secretary of the U.S. Senate; R-417, Q1 2012 Lobbying Report by Akin Gump Strauss Hauer & Feld on behalf of Chevron Corp. to the Clerk of the U.S. House of Representatives and Secretary of the U.S. Senate; R-626, Q2 2012 Lobbying Report by Akin Gump Strauss Hauer & Feld on behalf of Chevron Corp. to the Clerk of the U.S. House of Representatives and Secretary of the U.S. Senate; R-628, Q3 2012 Lobbying Report by Akin Gump Strauss Hauer & Feld on behalf of Chevron Corp. to the Clerk of the U.S. House of Representatives and Secretary of the U.S. Senate; R-881, Q4 2012 Lobbying Report by Akin Gump Strauss Hauer & Feld on behalf of Chevron Corp. to the Clerk of the U.S. House of Representatives and Secretary of the U.S. Senate.

³⁴ R-416, Q1 2012 Lobbying Report by Chevron Corp. to the Clerk of the U.S. House of Representatives and Secretary of the U.S. Senate at 7; R-417, Q1 2012 Lobbying Report by Akin Gump Strauss Hauer & Feld on behalf of Chevron Corp. to the Clerk of the U.S. House of Representatives and Secretary of the U.S. Senate at 4.

III. CHEVRON HAS BREACHED THE TRIBUNAL’S DIRECTIVE TO MAINTAIN THE STATUS QUO

A. The Tribunal’s First Order And Award On Interim Measures Enjoined A Change In Status Quo

22. The Tribunal issued its First Order on Interim Measures three years ago in May 2010 requiring the Parties to, *inter alia*: (1) “maintain, as far as possible the *status quo* . . .”; and (2) “refrain from any conduct likely to impair or otherwise adversely affect, directly or indirectly, the ability of the Tribunal to address fairly any issue raised by the Parties before this Tribunal.”³⁵ The Tribunal reaffirmed the same instruction to the Parties in its Second Order on Interim Measures³⁶ and its Further Orders on Interim Measures.³⁷ The Tribunal’s First Interim Award confirmed and re-issued the Order on Interim Measures dated 9 February 2011, which in turn incorporated by reference Paragraph C (1) to (3) of its order of 28 January 2011, which contains a status quo order.³⁸ Thus the Tribunal’s First Interim Award and the Tribunal’s various interim measures orders require Claimants — and not just Respondent — to maintain the status quo.

23. The Republic emphasizes that the present request for relief and its reliance on the Tribunal’s interim awards and orders does not constitute an acceptance of the Tribunal’s jurisdiction. The Republic maintains its objection to the Tribunal’s jurisdiction and reserves all rights in this respect.

³⁵ Order on Interim Measures (14 May 2010) at ¶¶ 1(i), 1(ii).

³⁶ Second Order on Interim Measures (6 Dec. 2010) at ¶¶ 1(i), 1(ii).

³⁷ Procedural Order and Further Order on Interim Measures (28 Jan. 2011) at ¶¶ (C)1(i), (C)1(ii); Order on Interim Measures (9 Feb. 2011) at ¶ (G).

³⁸ First Interim Award on Interim Measures (25 Jan. 2012) at 16, Operative Paragraph 1. To the extent the Tribunal in Paragraph 1 of the First Interim Award only intended to confirm and re-issue Paragraph (E) of Interim Measures Order dated 9 February 2011, then the Republic alleges that the Chevron has breached the Tribunal’s Interim Measures Orders, as opposed to the First Interim Award.

B. Claimants Are Flagrantly Attempting To Alter The Status Quo

24. Chevron's attempts to eliminate Ecuador's trade benefits violate this Tribunal's orders to maintain the status quo. Additionally, Chevron's lobbying campaign intends to club the Republic into submission and compromises its rights in this case by threatening to destroy its access to longstanding U.S. trade benefits providing jobs for Ecuadorian citizens and helping curtail the drug trade.

25. In particular, Claimants are targeting not just one trade preference program, but *all* programs in which Ecuador is participating — the ATPA/ATPDEA and GSP. Furthermore, Claimants are now misusing the Fourth Interim Award as a powerful but unfair collateral weapon to realize an unrelated objective — capitulation in this arbitration. Prior to the Fourth Interim Award, Chevron had alleged that the Republic did not satisfy its eligibility requirements because it had (1) attempted to nullify its settlement and release agreements with Chevron and (2) purportedly breached the First and Second Awards (prior to the issuance of the Fourth Interim Award). Today, Claimants tout the Fourth Interim Award as a reason for finding Ecuador ineligible for all its trade programs with the U.S.

26. Under the ATPA/ATPDEA and GSP, the President of the U.S. will not designate as a beneficiary any country that “fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of U.S. citizens [or corporations]”³⁹ Armed with the Fourth Interim Award, Chevron seeks to inflict upon Ecuador irreparable economic and other harm upon its citizens under circumstances that are unfair since the Fourth Interim Award is presently under reconsideration and no decision on the merits of Chevron's ever-evolving case has been taken. If Chevron succeeds in depriving Ecuador of all its trade benefits under these

³⁹ RLA-441, 19 U.S.C. §3202(c)(3) (ATPA/ATPDEA eligibility criteria); RLA-442, 19 U.S.C. §2462(b)(2)(E) (GSP eligibility criteria).

programs, Ecuador's exports to the U.S. will likely suffer dramatically not just this year, but each year for which such trade benefits are not in effect. That, in turn, raises the specter of a rising narcotics trade to fill the gap.

27. Additionally, Chevron's effort to deprive the Republic of these significant trade benefits will constitute a punitive measure that will cause the Republic to suffer damages beyond whatever sanction the Tribunal may later consider appropriate in light of the show cause procedure set forth in the Fourth Interim Award. Chevron cannot have it both ways, on the one hand seeking compensatory relief from this Tribunal for any supposed harm caused to Chevron by the Respondent's breaches of the First and Second Interim Awards, while simultaneously asking the USTR to punish the Republic for these same breaches by depriving the Republic of billions in trade revenues. In light of the show cause procedure established under the Fourth Interim Award and the fact that the Tribunal is currently reconsidering the Fourth Interim Award, Chevron's lobbying campaign serves no legitimate purpose and is an attempt to misuse the Tribunal's various interim awards.

C. Claimants Have Impaired The Ability Of The Tribunal To Fairly Address The Pending Request For Reconsideration And Other Pending Issues

28. Chevron's effort to harm the Republic's economy and damage its bilateral trade relations with the U.S. frustrates the Tribunal's ability to fairly adjudicate certain rights and claims in the arbitration.

29. In particular, the Republic has requested that the Tribunal reconsider its Fourth Interim Award and the Tribunal has agreed to permit the Parties to submit pleadings on this issue. As the very existence of the Fourth Interim Award is still being debated and reconsidered

by the Tribunal, it is wholly inappropriate for Chevron to exploit it as the basis of its petitions with the USTR.

30. Chevron is attempting to litigate in the political arena the very issues that it seeks to litigate before the Tribunal. In particular, Claimants are requesting other bodies, here, the USTR and its various subcommittees, to make findings that Claimants have brought within the Tribunal's purview and which the Tribunal has yet to make itself. In its submissions and petitions regarding Ecuador's trade benefits, Chevron asserts the same allegations it makes in this arbitration: that the Lago Agrio case was fraudulent, that there is judicial corruption in Ecuador, and that there exists no rule of law in Ecuador.⁴⁰

D. Claimants' Violations Of The Tribunal's Interim Award Leaves The Republic Susceptible To Imminent Harm

31. Without the Tribunal's immediate intervention, Claimants' contravention of the Tribunal's directives to maintain the status quo pending resolution of this arbitration will cause severe and lasting harm to the Republic. The Republic respectfully requests that the Tribunal act without delay for the following reasons.

32. First, the USTR, which evaluates Ecuador's eligibility under the ATPA/ATPDEA and GSP, is scheduled to prepare a report of its findings on **June 30, 2013**.⁴¹ This report will carry significant weight with respect to Congress's decision on whether to renew these programs on July 31, 2013, and on the U.S. President's determination on whether Ecuador satisfies the eligibility criteria of each trade preference program.

⁴⁰ See e.g., R-414, Chevron Letter to USTR, 18 May 2012.

⁴¹ RLA-441, 19 U.S.C. §3202(f) (establishing that USTR reports are due annually on 30 June).

33. Second, even if the GSP program is renewed, the USTR will still have to consider whether to add three trade items to the duty-free goods list as petitioned by the Ecuadorian Embassy (and opposed by Chevron and USCIB) as a part of the annual product review. The GSP Subcommittee of the USTR held a hearing on the trade items and the issue is now open for public comment through June 30, 2013.⁴² The President is expected to make modifications to the GSP program, if any, by a proclamation before **July 1, 2013** – the mandated effective date for changes to the program resulting from the product review.⁴³

E. The Republic’s Prior Applications For Relief Should Be Resolved

34. Separately, the Republic has pending a number of requests regarding Chevron’s ongoing international public relations campaign against the Republic, a campaign that spans multiple forums and various types of media. This Tribunal has previously acknowledged that the applications have “caused us some difficulty,”⁴⁴ explaining that the Tribunal—while not intending to infringe on the right of the “leading individuals on both sides” to comment on matters of public interest—nonetheless remains concerned about the conduct of the parties’ attorneys.⁴⁵

35. For its part, the Republic is concerned that in Procedural Order No. 4 of June 14, 2010 the Tribunal admonished one of Respondent’s Counsel for statements to the press, yet the Tribunal has not addressed any of the Respondent’s applications over the last sixteen months as

⁴² R-882, Federal Register, Vol. 77, No. 134 (12 Jul. 2012).

⁴³ R-883, Federal Register, Vol. 77, No. 249 (28 Dec. 2012) (“July 1, 2013—Effective date for any modifications that the President proclaims to the list of articles eligible for duty-free treatment under the GSP resulting from the 2012 Annual Product Review and for determinations related to CNL waivers”).

⁴⁴ Transcript of Track 1 Hearing on the Merits (Day 3) at 630:5-24.

⁴⁵ *Id.*

they related to *Claimants' Counsel's* statements to and repeated use of the media—all of which conduct post-dated this Tribunal's express warnings to all counsel in Procedural Order No. 4.⁴⁶

36. The Republic does not here seek to re-argue these matters, but it instead seeks to remind the Tribunal that these applications remain outstanding, and notes that the Tribunal's perceived reluctance in addressing these applications and applying the principles in Procedural Order No. 4 in the complained-of instances has ramifications beyond the narrow issues raised therein.

IV. RELIEF REQUESTED

37. For the foregoing reasons, the Republic respectfully requests that the Tribunal:

- a. find that Claimants have violated the Tribunal's First Interim Award and/or its First, Second, and Further Interim Measures Orders requiring the maintenance of the status quo;
- b. order Chevron to comply with such award and orders by: (i) withdrawing its pending petitions before the USTR and all other U.S. Governmental entities; (ii) ceasing all future lobbying and other efforts to deprive Ecuador of its trade preference benefits with the U.S.; and

⁴⁶ By letter dated February 1, 2012, the Republic advised the Tribunal that Claimants' counsel (Mr. Bishop) offered comment to the media on the arbitration (*see* R-313), and by letter dated March 8, 2012, the Republic further noted that another of Chevron's counsel (Mr. Boutrous) submitted for publication an OpEd article on the dispute (*see* R-401). By letter dated March 15, 2012, Respondent advised the Tribunal of an escalating series of attacks in Chevron's continuing press releases including comments critical of Ecuador. By letter dated April 23, 2012, the Republic informed the Tribunal that Chevron's counsel (Mr. Castello) wrote to Don Wallace, Chairman of the International Law Institution (ILI) and, unbeknownst to the author, Of Counsel at Winston & Strawn, to recruit him "to get the word out about what's actually in that [arbitral] record to people whose views are taken seriously in our field and who may in the future be called upon in whatever circumstance (OGEMID? a faculty forum? a law conference?) to express a view." (*See* R-412). By letter dated May 21, 2012, the Republic advised the Tribunal that Chevron in furtherance of its public relations campaign against the Republic had disseminated in Ecuadorian legal community a document summarizing Chevron's cassation appeal arguments called *Summary of the Cassation Appeal filed by Chevron, Allegation to defeat the fraud of the century*. (*See* R-413). *See also* the Republic's Letter to the Tribunal dated February 28, 2011.

- c. enter such other orders as this Tribunal finds appropriate to mitigate the harm caused by Chevron's breach of the interim measures, including without limitation an order requiring Chevron to file a submission before the USTR and all other U.S. Governmental entities to the effect that no decision on the merits of this dispute has been taken by the Tribunal such that its reliance upon the Fourth Interim Award in its previous submissions was inappropriate.

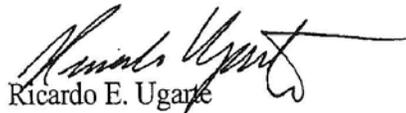
Respectfully submitted,

A handwritten signature in blue ink that reads "Christel Gaibor". The signature is written in a cursive style and is underlined with a long, horizontal stroke that extends to the right.

Christel Gaibor
Procuraduría General del Estado

A handwritten signature in black ink that reads "Zachary Douglas". The signature is written in a cursive style.

Zachary Douglas
Matrix Chambers

A handwritten signature in black ink that reads "Ricardo E. Ugarte". The signature is written in a cursive style.

Ricardo E. Ugarte
Winston and Strawn LLP