

PCA CASE No. 2009-23

IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS, SIGNED 27 AUGUST 1993 (THE “TREATY”) AND THE UNCITRAL ARBITRATION RULES 1976

BETWEEN -

- 1. CHEVRON CORPORATION (U.S.A.)**
- 2. TEXACO PETROLEUM COMPANY (U.S.A.)**

The Claimants

- and -

THE REPUBLIC OF ECUADOR

The Respondent

Order on Interim Measures

dated 14 May 2010

The Arbitration Tribunal:

**Dr. Horacio A. Grigera Naón;
Professor Vaughan Lowe, QC;
V.V. Veeder QC (President)**

WHEREAS on 23 September 2009, the Claimants served a Notice of Arbitration on the Respondent pursuant to Article VI(3)(a)(iii) of the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment, signed on 27 August 1993 (the “Treaty”), which provides that disputes arising under it may be submitted to an arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law of 1976 (the “UNCITRAL Rules”);

WHEREAS on 29 September 2009, the Respondent received the Notice of Arbitration;

WHEREAS in their Notice of Arbitration, the Claimants notified the Respondent of their appointment of Dr. Horacio A. Grigera Naón as the first arbitrator;

WHEREAS on 4 December 2009, the Respondent notified the Claimants of its appointment of Professor Vaughan Lowe QC as the second arbitrator;

WHEREAS on 25 February 2010, the Secretary-General of the PCA appointed V.V. Veeder QC as the presiding arbitrator;

WHEREAS on 21 March 2010, the Tribunal convened a telephone conference call between the Parties and the Tribunal for 26 March 2010;

WHEREAS by e-mail dated 25 March 2010, the Claimants indicated that they “anticipate filing in the very near future a request for provisional measures that is necessary to protect the rights of the Claimants. This request is urgent and will need to be decided quickly. We would ask that the Tribunal add this item to the Agenda for discussion and scheduling [for the telephone conference call of 26 March 2010.]”;

WHEREAS during the telephone conference call of 26 March 2010, the Tribunal (i) requested that the Claimants file their Request for Interim Measures no later than 2 April 2010, (ii) scheduled a second telephone conference call with the Parties for 9 April 2010 for the purpose of discussing a timetable for dealing with the Claimants’ Request for Interim Measures, and (iii) scheduled a first procedural meeting to take place on 10-11 May 2010 at the IDRC in London, the above schedule also being set out in writing in the presiding arbitrator’s e-mail of 31 March 2010;

WHEREAS by e-mail dated 1 April 2010, the Claimants submitted their Request for Interim Measures, with instructions for accessing exhibits and legal authorities electronically;

WHEREAS by letter dated 6 April 2010, the Respondent objected to the consideration of the Claimants’ Request for Interim Measures and requested the cancellation of the 9 April 2010 telephone conference call;

WHEREAS by letter dated 7 April 2010, the Claimants opposed the cancellation of the 9 April 2010 telephone conference call, pending consideration of a further application for immediate interim measures to be in force until a hearing is held on the Claimants’ Request for Interim Measures;

WHEREAS by e-mail dated 7 April 2010, the Tribunal decided to maintain the telephone conference call of 9 April 2010;

WHEREAS during the telephone conference call the Claimants orally confirmed their applications for immediate interim measures;

WHEREAS on 9 April 2010, following the telephone conference call with the Parties, the Tribunal issued a Procedural Order as follows:

The Tribunal thanks the Parties for their participation in today's second session held by telephone conference-call. It is appropriate for the Tribunal to issue the following order with immediate effect, although a formal order will follow in due course, addressing other matters discussed at the session:

A - Interim Measures:

As regards Item 1 of the Agenda, the Tribunal notes the Claimant's two cumulative applications for interim measures: (i) the first application for interim measures made by letter dated 1 April 2010, as set out in Paragraph 14 (pages 6 -7) and (ii) the second application for interim measures made by letter dated 7 April 2010, as set out in its last paragraph (being orally confirmed by the Claimant's Counsel during today's session).

The Tribunal decides that the Claimant shall be heard by the Tribunal as regards both applications at the first procedural meeting to be held in London on 10 and 11 May 2010 subject to further order, including directions as to procedure applicable before and during that meeting (e.g., as to the former, the Respondent's written answer to such applications, in whole or in part, and the Claimant's written reply before the meeting).

The Tribunal currently intends that such directions shall be made in the light of the Respondent's further letter regarding the Claimant's applications (to be received by the Tribunal as soon as practicable but no later than Friday, 16 April 2010) and any written response thereto by the Claimant, as directed by the Tribunal.

[...]

WHEREAS by letter dated 15 April 2010, the Respondent provided further comments regarding the Claimants' Request for Interim Measures, including a procedural proposal for the adjudication of the Request;

WHEREAS by letter dated 16 April 2010, the Claimants responded to the procedural proposal put forward by the Respondent;

WHEREAS by letter dated 23 April 2010, the Respondent requested clarification from the Tribunal on the agenda for the meeting in London on 10-11 May 2010;

WHEREAS on 27 April 2010, the Tribunal issued a Procedural Order as follows:

1. Further to the Tribunal's Procedural Order dated 9 April 2010, the Tribunal has considered the Respondent's letter dated 15 April, the Claimants' letter dated 16 April and the Respondent's letter dated 23 April 2010.
2. The Tribunal confirms that the Claimants' two applications for interim measures, namely:

- (i) the first application for interim measures made by the Claimants' letter dated 1 April 2010, as set out in paragraph 14 (pages 6-7), and
- (ii) the second application for interim measures made by the Claimants' letter dated 7 April 2010 (as set out in its last paragraph),

shall be heard at the first procedural meeting to be held at the IDRC, 70 Fleet Street, London ECY 1EU on 10 and 11 May 2010, beginning at 0930 hours on the first of these two days.

3. The Tribunal considers that the most immediate issue for this meeting lies in the Respondent's submission that "no urgency exists here" (as set out in the Respondent's letter dated 15 April 2010, at pages 3-4) and the Claimants' submission to the contrary (as set out in its letters dated 1 & 7 April 2010).
4. The Parties are requested to address this issue at the meeting, as well as any other related issue. To that end, in regard to such issue(s), the Respondent is requested to submit a written response to the Claimants' applications by 3 May 2010, to which the Claimants are requested to respond in writing by 7 May 2010.
5. Subject to further order, the meeting will begin with the Claimants' oral submissions in the morning of the first day (not to exceed 2.5 hours), to be followed by the Respondent's oral submissions in the afternoon (not to exceed 2.5 hours). On the second day, the Claimants and the Respondent may make oral submissions in reply (not to exceed 1.5 hours each).
6. Either at the end of the first day or in the afternoon of the second day (to be determined at the meeting), the Tribunal will address, in further consultation with the Parties, outstanding procedural matters, including the future procedural timetable, possibly based on different contingencies.

WHEREAS by e-mails dated 3 May 2010, the Respondent submitted its Response to the Request for Interim Measures and its Summary Description of Preliminary Jurisdictional and Admissibility Objections;

WHEREAS by e-mails dated 7 May 2010, the Claimants submitted their Reply on Interim Measures;

WHEREAS the meeting on interim measures and procedural matters was held in London on 10-11 May 2010; and

WHEREAS the Tribunal has considered the Parties' several written and oral submissions;

THE TRIBUNAL ORDERS AS FOLLOWS:

1. Until further decision the Tribunal takes, pursuant to Article 26(1) of the UNCITRAL Rules, the following interim measures up to and including the next procedural meeting beginning on 22 November 2010:
 - (i) The Claimants and the Respondent are both ordered to maintain, as far as possible the *status quo* and not to exacerbate the procedural and substantive disputes before this Tribunal, including (in particular but without limiting howsoever the generality of the foregoing) the avoidance of any public statement tending to compromise these arbitration proceedings;
 - (ii) The Claimants and the Respondent are both ordered to 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;
 - (iii) The Claimants and the Respondent are both ordered not to exert, directly or indirectly, any unlawful influence or pressure on the Court addressing the pending litigation in Ecuador known as the Lago Agrio Case;
 - (iv) The Claimants and the Respondent are ordered to inform the Tribunal (in writing) of the likely date for the issue by the Court of its judgment in the Lago Agrio Case as soon as such date becomes known to any of them;
 - (v) The Respondent is ordered to communicate (in writing and also by any other appropriate means) the Tribunal's invitation to the Court in the Lago Agrio Case to make known as a professional courtesy to the Tribunal the likely date for the issue by the Court of its judgment in the Lago Agrio Case; and, to that end, the Respondent is ordered to send to the Court the full text in Spanish and English of the Tribunal's present order; and
 - (vi) The Respondent is ordered to facilitate and not to discourage, by every appropriate means, the Claimants' engagement of legal experts, advisers and representatives from the Ecuadorian legal profession for the purpose of these arbitration proceedings (at the Claimants' own expense).
2. This Order is and shall remain subject to modification in the light of any future event, upon the Tribunal's own motion or upon any Party's application, particularly in the light of any new development in the Lago Agrio Case and the issue of the Court's judgement in such Case; and any of the Parties may apply to the Tribunal for such modification upon 24 hours' written notice.
3. This Order is made strictly without prejudice to the merits of the Parties' procedural and substantive disputes, including the Respondent's jurisdictional and admissibility objections and the merits of the Claimants' claims.

PLACE OF ARBITRATION: THE HAGUE, THE NETHERLANDS

DATE: 14 MAY 2010

THE TRIBUNAL:

Dr. Horacio A. Grigera Naón

Professor Vaughan Lowe QC

V.V. Veeder QC (President)