

In the Arbitration Under the Treaty Between
the United States of America and the Republic of Ecuador
Concerning the Encouragement and Reciprocal Protection of
Investments
and the UNCITRAL Arbitration Rules (1976)
Between

Republic of Ecuador
Claimant

v.

The United States of America
Respondent

PCA Case No. 2012-5

STATEMENT OF LUIS BENIGNO GALLEGOS

I, LUIS BENIGNO GALLEGOS, hereby declare the following:

1. In 2010, I served as the Ambassador of the Republic of Ecuador to the United States of America.
2. On 30 March 2010, the arbitral tribunal in *Chevron v. Ecuador* issued a Partial Award that interpreted Article II(7) of the Treaty between the United States and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment in a manner that Ecuador considered to be erroneous. As a result, the Ecuadorian government decided to engage the United States in discussions regarding the interpretation of Article II(7).
3. A diplomatic note was therefore prepared that set out Ecuador's views on what it understood to be the Contracting Parties' common intentions with respect to Article II(7), and asked the United States to confirm that it, in fact, shared Ecuador's interpretation of that provision. The diplomatic note further observed that, if the United States had a different understanding of Article II(7) than was described in the note, or if the United States did not respond, Ecuador would consider itself to be in dispute with the United States over the interpretation of the Treaty. The note, dated 8 June 2010, was signed by the Minister of Foreign Affairs,

Trade and Integration, Mr. Ricardo Paniño Aroca, and was addressed to Secretary of State Hillary Clinton.

4. My office requested a meeting with the Legal Advisor of the United States Department of State, Mr. Harold Koh. The request was granted and I met Mr. Koh at the State Department. We were accompanied by our respective staff and advisors. At the meeting, Mr. Koh was provided a copy of Ecuador's diplomatic note asking for the United States' interpretation of Article II (7).
5. Mr. Koh advised that the Department of State would study Ecuador's views and would initiate the United States Government's consultation process for obtaining an interpretation of Article II(7).
6. Mr. Koh asked why the Ecuadorian government was seeking an interpretation of the Treaty in light of the fact that, he understood, Ecuador contemplated withdrawing from the Treaty. In response, I explained that Ecuador had not, in fact, taken a decision to withdraw from the Treaty.
7. Later, when the State Department did not provide a response to Ecuador's request for the United States' interpretation of Article II(7), the Embassy placed telephone calls to Mr. Koh's office in an effort to ask for a reply to the diplomatic note. The United States returned a call on October 4, 2010, when I received a telephone call from Mr. Koh. I was in my office at the Ecuadorian Embassy. Two of my staff, Mr. Juan Carlos Castrillón and Ms. Isabel Albornoz, were also present.
8. The telephone conversation with Mr. Koh, which was on speaker phone so that Mr. Castrillón and Ms. Albornoz could hear, was brief. Mr. Koh stated that the United States would not provide a response to Ecuador's request for an interpretation of Article II(7). I told him that I would report the decision of the United States to Quito.
9. That day,, the Embassy prepared a report addressed to the Minister of Foreign Affairs, Trade and Integration notifying the Ecuadorian government about the answer of the United States. A copy of my report is attached hereto. It was written in Spanish; it did not quote Mr. Koh's statement in English, but instead, described in Spanish what he had said in English.
10. I declare that the above is, to my knowledge and understanding, true and accurate in its entirety.



LUIS BENIGNO GALLEGOS

Date: {23} May 2012

Place: Geneva, Switzerland

EMBAJADA DEL ECUADOR EN ESTADOS UNIDOS DE AMERICA

C.E. No. 1 - 718 / 2010

PARA: Ricardo Patiño
Ministro de Relaciones Exteriores, Comercio e Integración

CC: Pablo Villagómez
Subsecretario de Relaciones Bilaterales

Marco Albuja
Asesor del Canciller

DE: Luis Gallegos Chiriboga,
Embajador en Estados Unidos

REF: Su Nota No. 13528-GM/2010, de 8 de junio de 2010 y mi C.E. No.
1-410/10 de 14 de junio de 2010.

FECHA: 4 de octubre de 2010.

ASUNTO: INTERPRETACION ERRONEA DEL ARTICULO II (7) DEL TRATADO DE PROMOCION Y PROTECCION RECIPROCA DE INVERSIONES POR PARTE DE TRIBUNAL ARBITRAL EN CASO CHEVRON.

Como alcance a las comunicaciones de la referencia, respecto del requerimiento hecho al Gobierno de los Estados Unidos para que emita un pronunciamiento de la interpretación del Artículo II (7) del Tratado de Promoción y Protección Recíproca de Inversiones, en virtud del reciente laudo dictado por el Tribunal Arbitral bajo las reglas de arbitraje de Naciones Unidas para el Derecho Mercantil Internacional, dentro del reclamo de *Chevron Corporation* y *Texaco Company* contra el Ecuador, me permito informar que, luego de varias gestiones con el Departamento de Estado y en coordinación con la Procuraduría General del Estado y con el despacho de abogados "Foley Hoag", mantuve una conversación con el señor Harold Koh, Asesor Legal del Departamento de Estado, quien me informó que su Gobierno no se pronunciará al respecto.

Mucho agradeceré disponer a quien corresponda, se transmita esta información al señor Procurador General del Estado, en orden a continuar con el siguiente paso de la estrategia delineada por el señor Presidente de la República.

Atentamente,
MECUADOR.EEUU.EC

THE EMBASSY OF ECUADOR IN THE UNITED STATES OF AMERICA

C.E. No. 1- 718 / 2010

FOR: Ricardo Patiño
Minister of Foreign Relations, Trade, and Integration

CC: Pablo Villagómez
Under-Secretary for Bilateral Relations

Marco Albuja
Advisor to the Chancellor

FROM: Luis Gallegos Chiriboga,
Ambassador to the United States

RE: Your Letter No. 13528-GM, dd. June 8, 2010 and my C.E. No 1-410/10 dd.
June 14, 2010

DATE: October 4, 2010.

SUBJECT
MATTER: ERRONEOUS INTERPRETATION OF ARTICLE II (7) OF THE TREATY
FOR RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS
BY THE ARBITRAL TRIBUNAL IN THE CHEVRON CASE

With the purpose of following up on the above-stated communications regarding the request made to the Government of the United States that it issue a statement involving the interpretation of Article II (7) of the Treaty for Reciprocal Promotion and Protection of Investments, by virtue of the recent award issued by the Arbitral Tribunal pursuant to the United Nations Conference on Trade and Development arbitration rules, in the *Chevron Corporation and Texaco Company v. Ecuador* claim, I am informing you that after several attempts made with the Department of State and in coordination with the Office of the Attorney General of the State, as well as Foley Hoag, LLP, I held a conversation with the Legal Advisor of the Department of State, Mr. Harold Koh, who informed me that his Government would not answer.

I would greatly appreciate this information being made available by appropriate channels to the Attorney General of the State, in order to proceed to the next level of the strategy outlined by the President of the Republic.

Sincerely,
MECUADOR.EEUU.EC