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Occidental files BIT claim against Ecuador at ICSID,
By Luke Eric Peterson

US-based Occidental Petroleum has responded swiftly to a move by the Ecuadorian Government to kick the company out of Ecuador. The firm filed a request for arbitration with the Washington-based International Centre for Settlement of Investment Disputes (ICSID) yesterday.

The company's claim is expected to be for at least \$1 Billion (US) in damages.

Occidental alleges that Ecuador's actions violate the terms of a contract between Oxy and Petroecuador, as well as the terms of the US-Ecuador bilateral investment treaty (BIT).

The firm is requesting that ICSID take interim measures to protect Occidental's interests in Ecuador, and to prevent a third party from taking over its operations in the country, until an arbitration decision has been rendered.

The arbitration claim marks the second by Occidental against Ecuador in recent years. In 2004, the company prevailed in an arbitration under the US-Ecuador BIT, holding Ecuador liable for refusing refunds of Value-Added Taxes allegedly owing to Occidental. That arbitration award is now the subject of litigation in the UK courts.

For its part, Ecuador's Energy Ministry declared this week that Occidental improperly transferred a portion of its contract for Block 15 in the Amazon Forest to a Canadian company, Encana, in 2000.

According to an Associated Press report, Energy Minister Ivan Rodriguez signaled that the voiding of Occidental's contract necessitated "the immediate return to the state of contracted areas and the handover of all equipment, machinery and other elements of exploration or of production, industrial installations or of transport."

While the US Government has suspended free trade talks with Ecuador, citing recent actions against US energy companies as a catalyst for such a move, Reuters reports that US trade officials have not closed the door on those talks altogether.

One legal source who spoke to ITN on condition of anonymity, on account of his involvement in advising US companies with interests in Ecuador, tells ITN that several more BIT claims could be filed against the country in the coming months, as a result of a hydrocarbons windfall tax imposed on foreign investors last month.

At present, Ecuador is embroiled in 5 international arbitration claims at the ICSID facility, 4 of which arise out of alleged breaches of the US-Ecuador bilateral investment treaty.

Current arbitration claims involving Ecuador at ICSID are surveyed below.

- Repsol YPF Ecuador S.A. v. Petroecuador

This contract arbitration was resolved in favour of the Spanish energy firm Repsol in 2004, but is now the subject of an annulment proceeding at ICSID.

- M.C.I. Power Group and New Turbine Inc. v. Ecuador

This BIT claim related to a power plant investment in Ecuador was filed in 2003 under the US-Ecuador BIT. A hearing on the merits was held in March of 2006, and an award is expected in the coming months.

- Duke Energy Electroquil Partners and Electroquil S.A. v. Ecuador

This dispute arises out Ecuador's alleged non-performance under two power purchase agreements signed in the 1990s during Ecuador's move to privatize its electricity sector. The claimants complain of late payments for power purchased, as well as a series of improper fines levied on the company.

- Empresa Electrica del Ecuador, Inc. (EMELEC) v. Ecuador

This dispute relates to the alleged expropriation of an electricity firm in Ecuador. In the claimant's request for arbitration, a copy of which has been seen by ITN, they allege that "On March 21, 2000 the Ecuadorian Government took by force and occupied the main offices of EMELEC using armed members of the Ecuadorian Army, Navy, Air Force and Police. ... After said date, and up to the present moment, the Ecuadorian State has retained the assets and the income of the claimant enterprise, as well as all of its documents."

- Noble Energy Inc. and Machala Power cia Ltd. v. Republic of Ecuador and Consejo Nacional de Electricidad

This dispute relates to alleged violations by Ecuador of Noble's rights under a concession agreement. The claimants allege that Ecuador has made various changes to the legal and regulatory environment contrary to its commitments in the concession agreement, and that these also violate the US-Ecuador BIT. Among the disputed issues, is the question of subsidies provided by Ecuador to the liquid fuels sector, which is alleged to have an adverse effect on Noble Energy and its local subsidiary.

Sources:

ITN interviews

Press Release: "Occidental files claim against Government of Ecuador", May 17, 2006, available [here](#).

“US door not shut on Ecuador trade deal”, Reuters, May 17, 2006, available [here](#).