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REGION AMAZONICA - ECUADOR

03 March 2006

Ambassador Rob Portman
U.S. Trade Representative
600 17th Street, N.W.
Washington, DC 20508
fax: 202-395-4549
VIA FAX

Dear Ambassador Portman:

We write to clarify issues surrounding *Aguinda v. ChevronTexaco*, a historic environmental litigation brought by 30,000 rainforest dwellers against the Chevron Corporation in Ecuador. Senators Patrick Leahy and Barack Obama outlined some of these issues in a letter to your office dated February 2, 2006. In their letter, the Senators expressed concern that Chevron lobbyists were inappropriately trying to pressure the USTR to persuade Ecuador's government to undermine the *Aguinda* case as a condition of Ecuador's participation in the Andean Free Trade Agreement (AFTA). We believe Chevron's position on this matter is inherently undermining of the rule of law, fundamentally at odds with the goals of U.S. trade policy, and potentially illegal in that it violates an express promise the company made in 2001 before the United States Federal Court, Southern District of New York, that it would voluntarily accept jurisdiction of the Ecuador courts in the *Aguinda* case.¹ We urge you to reject these latest attempts by Chevron to use the USTR and the AFTA negotiations as a vehicle for what appears to be a self-interested attempt by a private American company to undermine U.S. policy and the rule of law in a developing Latin American democracy.

Representatives of the Chevron Corporation have insisted publicly that "the government of Ecuador has failed to honor th[eir] contractual obligation"² with Chevron by permitting the *Aguinda* lawsuit to proceed. In reality, the "contract" to which Chevron refers did not release Chevron from potential litigation brought by private citizens in Ecuador, which is exactly the *Aguinda* litigation. The only parties to this agreement were Texaco (today Chevron) and the government of Ecuador.³ This agreement contains no clause or language releasing Chevron from

¹ *Aguinda v. Texaco*, 142 F.Supp.2d 534, 539 (S.D.N.Y. 2001) ("Here, Texaco has now unambiguously agreed in writing to being sued on these claims (or their Ecuadorian equivalents) in Ecuador, to accept service of process in Ecuador, and to waive...any statute of limitations-based defenses.")

² Kate Ackley, *Two Senators Urge USTR Not to Intervene in Suit*, ROLL CALL, Feb. 7, 2006.

³ *Contrato Para La Ejecucion de Trabajos de Reparacion Medio Ambiental y Liberacion de Obligaciones, Responsabilidades y Demandas*, signed by Minister of Energy & Mines, President of Petroecuador, Legal Representative of Texaco Petroleum Company, and Vice President of Texaco Petroleum Company, May 4, 1995; *Acta Final*, signed by Minister of Energy & Mines, President of Petroecuador, Chief of Petroproduccion, Vice President of Texaco Petroleum Company, and Legal Representative of Texaco Petroleum Company, Sept. 30, 1998.

suit under Ecuadorian law by private citizens seeking to vindicate their own rights. This critical fact, which Chevron fails to mention in its lobbying efforts and public statements, essentially nullifies Chevron's claim that Ecuador is violating the terms of the "contract" by allowing a private lawsuit for environmental damage to proceed in its courts. We further note that Chevron asserted this very argument in the Ecuadorian court, which apparently rejected this technical defense, as the litigation has continued.

Chevron's lobbying efforts before the USTR also undermine the rule of law in Ecuador. To provide context, the *Aguinda* litigation alleges that Chevron committed the worst oil-related environmental contamination in the world today, forcing two indigenous groups to the brink of extinction and leading to the deaths of untold numbers of innocent people from cancers and other oil-related illnesses. The lawsuit asserts the company dumped more than 18 billion gallons of toxic waste water directly into the pristine rainforest, and discharged an amount of pure crude 30 times larger than that spilled in the Exxon Valdez disaster. The potential liability for this unprecedented toxic disaster is upwards of \$6 billion for clean-up alone. To use a back-door lobbying effort to pressure Ecuador's government to terminate the case when it has existed for thirteen years and concerns matters of life and death for some of the most vulnerable people on the planet, is an egregious affront to justice and the rule of law – that they are using this tactic in a developing country with a struggling economy is arguably more offensive. Contrary to Chevron's sectarian wishes, the United States government should be encouraging people with valid legal claims – such as the *Aguinda* plaintiffs – to seek justice through their national court systems, as such activities strengthen civil society, contribute to the growth of judicial systems and the rule of law, and enhance the investment climate for all participants.

As referenced above, you should also be aware that Chevron's lobbying activities before the USTR may well violate a court stipulation the company entered before the court.⁴ Since 1993, Chevron has repeatedly argued in its legal filings and public statements that the proper venue for the *Aguinda* litigation was Ecuador. As a condition of the removal of the case to Ecuador from U.S. federal court – the preferred choice of forum for the plaintiffs – Chevron voluntarily stipulated that it would subject itself to the jurisdiction of Ecuador's courts for the *Aguinda* matter. In effect, Chevron is lobbying the USTR and the U.S. Congress to end a case that the corporation voluntarily and formally agreed to litigate as part of a stipulation before the U.S. court. Chevron has certainly acted unethically and may well have violated the stipulation that it entered before the U.S. court, which could potentially result in court-imposed sanctions.

Finally, in regard to the so-called "contract" that Chevron refers to its lobbying campaign, evidence adduced in the *Aguinda* case in Ecuador raises serious questions about Chevron's ethics and corporate governance practices. Convincing evidence has recently come to light suggesting that Chevron executives fraudulently induced Ecuador's government to sign the settlement agreement referenced above. Several of the waste pits that were allegedly "remediated" by Chevron are now showing life-threatening levels of toxic contaminants, which are much higher than the levels presented by the company to the government of Ecuador at the end of the clean-up process, *even though the pits have been unused since the "remediation"*. Thus, it now appears that Chevron may have manipulated or completely faked test results to induce Ecuador's

⁴ *Aguinda*, *supra* note 1, at 539 (referencing "Texaco Inc.'s Notice of Agreements in Satisfying Forum Non Conveniens and International Comity Conditions").

government to certify the remediation. Ecuador's Fiscal (the equivalent of a national prosecutor) is currently investigating Chevron on precisely this issue, which could potentially result in criminal charges, a civil action against the company, and the rescission of this agreement.

Consequently, the Ecuadorian government has clearly not breached any contractual obligation, if any such obligation even exists. In fact, we believe it is Chevron who has violated a promise – one made to the U.S. Federal Court to litigate the *Aguinda* case in Ecuador. We respectfully ask your office to reject Chevron's attempt to use the good name and the credibility of the USTR to undermine our historic legal case. In the words of Senators Leahy and Obama, we ask the USTR to respect that we "deserve our day in court."⁵

We kindly appreciate your consideration.

Sincerely,



Luis Yanza
Legal Coordinator
Aguinda v. ChevronTexaco



Alejandro Ponce Villacís
Lawyer for the Plaintiffs
Aguinda v. ChevronTexaco

Cc:

U.S. Senator - Vermont
Senator Patrick Leahy

U.S. Senator - Illinois
Senator Barack Obama

U.S. Ambassador to Ecuador
Ambassador Linda J. Jewell

Senior Editor, Country Reports Team, U.S. Department of State
Mr. Leonel Miranda

Minister of Foreign Relations of Ecuador
Dr. Francisco Carrion Mena

Minister of Foreign Commerce of Ecuador
Dr. Jorge Illingworth

Ambassador of Ecuador to the United States of America
Dr. Luis Gallegos

Chief Negotiator for Ecuador, Andean Free Trade Agreement
Dr. Manuel Chiriboga

⁵ Ackley, *supra* note 2.