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ECUADOR WEEKLY REPORT[®]

KEY INDICATORS

For the week of Aug 15 – Aug 19, 2016

The End is Near

US oil major Chevron recently won a key victory in the long-running saga over environmental damages attributed to the company in the Ecuadorian Amazon in the 1970s and 1980s. The 2nd U.S. Circuit Court of Appeals in New York city dismissed an appeal of judge Lewis Kaplan’s 2014 ruling finding Steven Donziger, the lead US attorney suing the company, used racketeering to win the giant damage award against Chevron in Lago Agrio three years earlier. While Ecuador’s attorney general noted that the decision has no bearing on the Ecuadorian ruling, which has gone through all instances, it heavily influences the crucial financial issue: enforceability, i.e. the ability of the plaintiffs, a group of several dozen Ecuadoreans living in the affected area, to collect a damage award understood by the court of appeals as standing at \$8.65b (estimates vary).

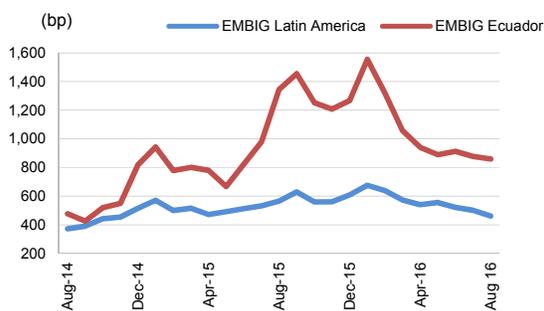
No contest exists regarding the scale of the original pollution, around 16 billion gallons of oil and formation water dumped into rivers and streams sprinkled over a broad arc of Amazon territory during the first decades of oil production in Ecuador, managed by Texaco and the state oil company, CEPE, now called Petroamazonas. The decades-old case was tried in Ecuador, where Chevron, which bought Texaco in 2000, has virtually no assets. To obtain the damage award, the ruling had to be enforceable outside the country, implying not a fresh trial, but at least a review of the propriety of the Lago

Ecuador’s Global Bond Prices

Bond	Last Price							
	19/08/2016	Jul-16	Jun-16	May-16	Apr-16	Mar-16	Feb-16	Jan-16
Global 2020	102.90	100.49	99.38	100.28	95.21	90.54	79.08	74.92
Global 2022	103.19	100.03	N/A	N/A	N/A	N/A	N/A	N/A
Global 2024	88.11	87.49	87.64	89.44	88.04	82.88	72.81	69.63

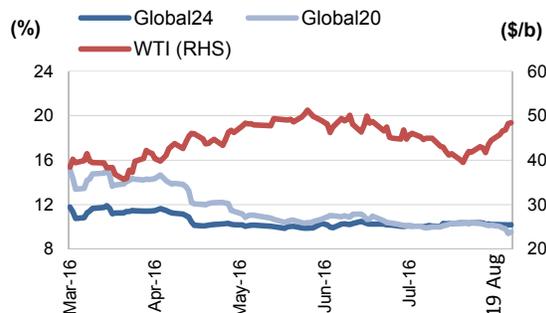
Source: Bloomberg and Analytica

EMBIG Spread



Source: JP Morgan and Analytica

Bond Yields vs. WTI in 2016



Source: Bloomberg and Analytica

International Reserves



Source: BCE and Analytica

Agrio ruling. Here, the plaintiffs' lawyers stumbled badly, as ruled by Kaplan and confirmed by the court of appeals. (After Kaplan's ruling, we noted "wheels coming off" the Lago Agrio victory; Donziger rebutted our view in a letter, which we published).

The judges who reviewed the appeal repeated Kaplan's comment that, even in the case of responsibility by the company, plaintiffs must win the trial fairly. "Even innocent clients may not benefit from the fraud of their attorney," they wrote, as well as noting that even Donziger's lawyer had not contested the allegation of criminal wrongdoing, instead using procedural arguments to contest Kaplan's ruling. The Ecuadorian ruling is "illegitimate" and "unenforceable," Chevron again said. On his part, "Today's decision is unprecedented in American law," said Donziger's attorney Deepak Gupta. "Never before has a U.S. court allowed someone who lost a case in another country to come to the U.S. to attack a foreign court's damages award." While Ecuador's superior instances have upheld it, the Constitutional Court noted that the judge had overstepped his legal capacity by doubling the indemnity if Chevron didn't apologize to them. But it didn't invalidate the ruling as a whole; the CC simply cut the damage award in half.

While the lawyers for the plaintiffs, who have for years been the protagonists in the case, have vowed to fight on, it has even become unclear who is actually in charge. Lawyer Pablo Fajardo, who with Luis Yanza won the Goldman environmental prize in 2008, told *El País* that the fight would continue before the US Supreme Court, and that Donziger no longer has an active role in the case. But according to Donziger spokeswoman Karen Hinton, "no decision about appeals have been made because the US attorneys representing Donziger and the Ecuadorians are reviewing it," and that only US lawyers may practice in US courts. "Donziger represents the Frente (de Defensa de la Amazonía), who are the plaintiffs in the case." On the one hand, according to the Union of People Affected by Texaco, Fajardo

continues to participate in the case. On the other hand, the Frente, led by Yanza, issued a statement on August 1 in which it said that it had fired Fajardo after he asked the court to drop an injunction ordering the government to pay a \$96m arbitration award, which had ballooned to \$112m thanks to interest accumulated amid appeals. While Ecuador's president Rafael Correa applauded the action, which allowed it to comply with a legal deadline as it sought to place \$1b in international bonds, the Frente took a dim view of the move. "This is an unfortunate situation that appears to reflect a serious error in judgment by Mr. Fajardo, who in our opinion was clearly operating outside the scope of his authority," said Frente president Carlos Guamán in a statement announcing Fajardo's replacement by lawyer Patricio Salazar. With the legal team divided and fighting among itself, the outlook for its case is looking ever dimmer.

Fajardo's filing did provide crucial help for the government, which could not have carried out its latest bond issue for \$1b as Chevron's arbitration ruling was meanwhile enforceable; this implied a legal risk of confiscation by the company, as Correa publicly complained once the finance ministry had placed the bonds. In an ironic twist, the administration clearly had to lean on the legal system, in this case the Lago Agrio court via Fajardo, to obtain sorely needed external finance. Butting in the civil trial through its open support for the plaintiffs' case didn't just reflect poorly on the government and Ecuador's judiciary: as the Kaplan ruling and appeal reveal, it damaged the reputation of the plaintiffs' case as a whole, while pollution still festers in the affected areas.

Assange, Again

Wikileaks has again made news by the release of a large trove of US and Turkish e-mails. International coverage has focused on the political overtones of the US release, which looked to target Democratic

presidential candidate Hillary Clinton; as well as the refusal of Wikileaks leader Julian Assange to protect the identity of those mentioned in the documents – a monumental but essential task whose omission US whistleblower Edward Snowden and journalist Glenn Greenwald strongly criticized. For Ecuador, the latest scandals have led to further embarrassment considering Assange's current domicile, the country's embassy in London. Former diplomats worry about the long-term implications of Assange's continued use of the facility as a Wikileaks platform, which Ecuador's political leadership continues to tolerate

Now into his fifth year in the embassy, Assange has continued to give interviews and release hacked information from what Ecuadorian former minister and ambassador Mauricio Gándara in an opinion column in *El Universo* termed a "diplomatic lair." Indeed, Assange's activities add another layer of dubiousness over the entire proceeding. According to the Ecuadorian administration, Assange's asylum is based on a threat of extradition the Australian faces to the US for his role in releasing classified military documents. Sweden however seeks him for questioning for alleged sexual assault, and the United Kingdom says European treaties oblige it to extradite him there. According to Gándara, Ecuador's official silence makes it complicit in Assange's involvement in destabilizing the Clinton candidacy, while favoring Republican candidate Donald Trump, whose camp has celebrated the hacks. Assange has said that he might hack Trump's tax returns, which Trump has refused to make public, going against almost 50 years of US presidential campaign tradition.

For the moment at least, president Correa believes that housing Assange in the small embassy, amid ongoing daily operations and documented conflicts between him and embassy staff, constitutes an asset outweighing endangering the relationship with the US and UK. With Assange there as a martyr, he continues to repress Ecuadorian journalists, most recently television journalist Janeth Hinostroza and

investigative journalist Fernando Villavicencio. A judge last week stripped Villavicencio of his political rights and declared him insolvent. Unless he can come up with \$141,000 to quickly pay Correa in damages won in a controversial libel suit, the court will seize and auction off all of his property to force him to pay up). Ecuador last week said that it will allow the Swedish prosecution to question Assange, but added that it could take weeks to decide a date. On the background of Ecuador's own elections in February, Assange will be fervently hoping for a *correísta* win. Through his indiscreet activities, which could easily be construed as having damaged his host country's image, he has undermined his protected status, analysts say. That would make it easy for a new president to show him the door come next May.

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