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On March 18, a British judge rejected a previous ruling that froze US$12 billion of assets belonging to Venezuela's state-owned oil-company Petroleos de Venezuela S.A. (PDVSA). The ruling was a reversal for Exxon Mobil Corporation (see NotiSur, 2008-02-29), which has been seeking to freeze PDVSA assets in Europe prior to an arbitration process regarding Exxon claims the Venezuelan government failed to compensate the company adequately when President Hugo Chavez nationalized the country's large oil resources.

Judge: No suggestion of fraud by PDVSA, no British jurisdiction Judge Paul Walker of the High Court tossed out the order to freeze US$12 billion in assets belonging to Venezuela's state oil company in a case that stemmed from the nationalization of a project in 2007 (see NotiSur, 2007-07-20). Walker noted that such freezing orders are rare and occur in cases where there is "usually compelling evidence of serious international fraud." "In the present case there is no suggestion whatever of fraud on the part of PDVSA or any entity or person associated with it," Walker said in a summary of conclusions released by the court. During the court case, Walker also signaled that he agreed with PDVSA's argument that the case didn't fall under British jurisdiction since it isn't a British company and has no assets, businesses, or bank accounts there.

"Today we have a firm decision 100% in our favor," Energy and Oil Minister Rafael Ramirez told state television. "We've defeated ExxonMobil." The case pits Texas-based ExxonMobil, the world's largest corporation both in revenue and market capitalization, which is also the world's largest multinational, nonstate-owned oil company, against the populist Chavez government, which has made oil nationalization a central plank in its governing strategy. Long, "nasty" legal battle anticipated Exxon is pursuing dual claims against Venezuela through the International Chamber of Commerce in New York and the World Bank's International Center for Settlement of Investment Disputes in Washington. If either panel awards Exxon compensation, the company may have to return to local courts to enforce the awards, said Joseph Profaizer, a lawyer at Paul, Hastings, Janofsky & Walker LLP in Washington. "If they win such an order and Caracas doesn't agree to comply, then they go to the courts where the assets are, whether that's London, Madrid, New York, Mexico City, or wherever," said Profaizer, who specializes in international arbitration.

The dispute stems from a 1997 agreement between Mobil Corporation and PDVSA to explore for extra-heavy crude in the Orinoco River basin's oil belt. Exxon, which later acquired Mobil, claimed PDVSA agreed to indemnify Mobil if it later expropriated Mobil's interests. The Financial Times of London said the March 18 judgment ends only the first round of what has already become a protracted, and nasty, legal battle between Chavez's government and ExxonMobil. Venezuela is still bound by similar asset freezes put in place by courts in the Netherlands and Dutch Antilles, pending arbitration proceedings in New York. The attorney representing PDVSA in Britain accused ExxonMobil of "forum shopping," by taking its case to courts around the world before the arbitration. PDVSA told the London court in February that the company had too few contacts to the United Kingdom (UK) for a court to freeze its assets around the world, said PDVSA lawyer Gordon Pollock, calling Exxon "forum-shopping tourists." PDVSA is a "stranger to this country, and the same could of course be said of Exxon," Pollock said on the second day of a hearing in the case on Feb. 29. PDVSA has worldwide assets of approximately $100 billion, according to preliminary financial results through September 2007, Pollock said. Pollock also said Exxon had no reason to seek an emergency injunction last month without notifying PDVSA. ExxonMobil sought the injunction because it believed there was a risk of PDVSA quickly moving or "dissipating" its UK assets. "The application based on urgency is entirely bogus, and simply designed to get an ex parte injunction," Pollock said. ExxonMobil had previously secured court orders in Britain, among other countries, to freeze PDVSA's international assets, saying it needed to ensure that it would get paid for the loss of the project and future revenues if an international court ruled in its favor. The UK freeze obtained by ExxonMobil listed PDVSA holdings in refineries in Dundee, Scotland, and Ellesmere Port, England, and bank accounts related to those businesses, according to a court filing in the US case. Exxon's legal team rejected Pollock's call that the company should go to forums in countries more connected to the dispute, like the US. "There is no power in any court in New York that can issue a worldwide freezing order," Exxon lawyer Catharine Otton-Goulder told the High Court in London on March4. "The courts don't have the power to grant a freezing order prior to judgment." While New York courts are empowered to freeze specified assets, such as a house or a bank account, Otton-Goulder argued, they cannot put a block on "unascertained assets." In cases where a foreign court lacks the power a UK court possesses, the British court can grant an order assisting the foreign court in certain circumstances, such as international fraud cases, Otton-Goulder said.

Once the corporation lost the case, however, ExxonMobil spokesman Alan Jeffers said that the company had no plans to appeal the ruling and that the judge based his decision on jurisdictional issues. "The important thing, from our perspective, is the court did not question the merits of our underlying claim," he said. ExxonMobil did not question Venezuela's right to expropriate, Jeffers said. But he said it signed a contract with PDVSA in the 1990s that specifically said the Venezuelan company would compensate ExxonMobil for such moves. "We have a contractual commitment from PDVSA to compensate us in the event of that, and we're seeking that PDVSA honor the terms of that agreement," Jeffers said. Jeffers said ExxonMobil was trying to prevent PDVSA from disposing of assets that might be used to settle future claims. Court rulings in the Netherlands and New York to seize Venezuelan assets in exchange for nationalized oil fields remain in place, he said. But he said ExxonMobil was still willing to try to negotiate a solution with Venezuela. US District Judge Deborah Batts said in February that ExxonMobil was likely to prevail in the arbitration when she extended a freeze on as much as US$315 million that would have been transferred to PDVSA in a bond buyback transaction on Feb. 13. Venezuela, meanwhile, is now considering suing ExxonMobil, Ramirez said. "ExxonMobil is going to have to answer now for the damage that has been caused to our company, to our country," he said. Ramirez said ExxonMobil has been "very arrogant," while other companies including the US company Chevron Corporation, France's Total SA, Britain's BP PLC, and Norway's StatoilHydro ASA have negotiated deals to continue as minority partners in the nationalized projects. "Exxon is isolated in its abusive position," Ramirez said. Decision improves PDVSA's prospects for financing projects "This is the beginning of the end of the harassment campaign Exxon instigated against Venezuela....We are planning to fight all of the way," Samuel Moncada, Venezuela's ambassador to Britain, said on March 18. The decision meant PDVSA would face less skepticism from lenders as it sought financing for a US$70 billion expansion to double crude output in the next four years, said Erich Arispe, an analyst at Fitch Inc. in New York. "It's an early skirmish in a war of conflicting philosophies," said Chris Ross, a vice president at Boston-based CRA International Inc., who advised Venezuela in the 1990s on opening the country's oil sector to foreign companies. "Venezuela's won that skirmish."

The asset-freezing measures had forced PDVSA to postpone a US$1 billion refinery refinancing and threatened to hamper plans to tap new fields to reverse a 34% slide in crude output since 1999. "The Venezuelans have an ambitious plan that involves injecting a lot of money in new projects to double production," Arispe, a sovereign-debt analyst, said. "If the assets had remained frozen, that could have triggered additional declines in production, which is already falling, and that would have trickled into reduced revenues to the government." Exxon must pay 380,000 pounds (US$767,000) of PDVSA's legal fees within 21 days after the ruling, said Pollock. He said his client would be seeking higher legal costs. The Venezuelan company also would seek, by June 18, compensation for damages suffered because of the freeze, he said.

OPEC backs Venezuela against Exxon In early March, Venezuela successfully called on the Organization of Petroleum Exporting Countries (OPEC) for its support in the conflict with ExxonMobil. "We are interested in explaining in detail what they are trying to do to us," Ramirez said on March 3, asking OPEC to put the topic on the addenda for its March 5 meeting. "They could do the same against Algeria, Saudi Arabia, any other country within OPEC." OPEC President and Algerian Energy Minister Chakib Khelil said, "Our organization is very sensitive to [Venezuela's request]." "In the past, OPEC has supported countries that had conflicts with companies." Venezuela is a founding member of OPEC and the world's fifth-largest exporter of crude oil, with a daily production of 3.2 million barrels per day, according to official figures. On March 5, OPEC backed Venezuela, stating its "support for Venezuela and its national company, PDVSA, in the exercise of its sovereign rights over its natural resources."

Chavez celebrates court victory Caracas heavily criticized Exxon's tactics in the dispute, which was putting heavy strain on already tense relations between the US and Venezuela and forcing up the South American country's cost of borrowing. Chavez, who has suspended oil shipments to Exxon, at one point threatened to cut off all crude supplies to the US, pushing oil prices higher even as they hit record levels. The US is Venezuela's largest export market. Chavez praised the legal victory over ExxonMobil on March 25, calling the ruling a defeat for Washington. Chavez lauded the decision as "a victory against [US] imperialism." Speaking to PDVSA employees in a nationally televised address, he added, "I feel like a baseball manager who suddenly has his team in the major leagues, winning against the Yankees." Chavez vowed to soon levy a new tax on foreign oil companies to recoup a larger share of their rising profits although he said it has not yet been determined what the tax rate would be. "They're earning money that they haven't accounted for," he said. "Those large additional earnings aren't a product of any extraordinary effort....It isn't that they've invested more." Chavez called it a tax on "windfall profits" as a result of sudden rises in world oil prices. He could approve the new tax by decree if he chooses to, under fast-track powers that the solidly pro-Chavez Asamblea Nacional (AN) granted him early in 2007, at the start of his second full term in office (see NotiSur, 2007-01-26). Those powers expire in July. In 2005, Chavez raised royalty rates to 30% from 16.6% on foreign firms operating heavy-oil projects in the Orinoco region, an increase from a prior royalty hike (see NotiSur, 2004-11-05).