

# LATIN LAWYER

## ICC hears Chinese-Costa Rican refinery dispute

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A tribunal at the International Chamber of Commerce (ICC) has begun hearing a diplomatically sensitive joint-venture dispute between Chinese and Costa Rican state-owned entities over a cancelled US\$1.5 billion project to upgrade an oil refinery.

CNPC International, a subsidiary of China National Petroleum Corporation, filed the arbitration in August last year against Costa Rica's oil and gas-refining monopolist Refinadora Costarricense de Petroleo, or Recope.

A London-seated tribunal has been formed to hear the case, chaired by Italian-British arbitrator Luca Radicati di Brozolo of ArbLit in Milan. CNPCI

has appointed Dutch arbitrator Albert Jan van den Berg of Hanotiau & van den Berg in Brussels, while Recope's appointee is Chile's Andrés Jana of [Bofill Mir & Alvarez Jana Abogados](#) in Santiago.

A team from Allen & Overy LLP led by Matthew Hodgson in Hong Kong is representing CNPCI while Recope has retained a Latham & Watkins LLP team headed by Fernando Mantilla-Serrano in Paris.

The dispute relates to Soresco, a 50-50 joint venture formed by the two state entities under a 2008 agreement for the purpose of modernising and expanding the Moín refinery near the Costa Rican port of Limón. The deal came a year after Costa Rica and China established diplomatic relations for the first time.

The upgrade would have increased the refinery's capacity to 60,000 barrels per day and enabled it to produce cleaner fuels. The China Development Bank was to provide a US\$900 million loan for the project, with the joint venture partners financing the rest.

But the project was suspended in 2013 by order of the Comptroller General's Office, the body in charge of Costa Rica's public finances, which determined that Recope could not rely on environmental impact and feasibility studies it had commissioned for the project because the Chinese contractor that prepared one of the studies was an affiliate of CNPCI.

Work on the project never resumed. Recope announced in April 2016 that it was terminating the joint venture, saying it had made efforts to overcome the legal obstacles to the project but that CNPCI had refused to accept the solutions it had proposed.

Since then, CNPCI and Recope have failed to reach agreement on the liquidation of Soresco, which has so far spent more than US\$68 million of the US\$100 million the partners initially invested in it, most of which went on the impact and feasibility studies.

Recope officials [indicated](#) in February last year that CNPCI was demanding damages on three grounds: the alleged breach of a Costa Rican law on official translations; Recope's decision to withdraw a lawsuit against the Comptroller General's Office without consulting Soresco or CNPCI; and the decision to begin the process to dissolve Soresco.

The officials said at the time that either side could end up taking the dispute to international arbitration. *Latin Lawyer's* sister publication *GAR* understands it was CNPCI that pulled the trigger first, submitting a request for arbitration in which it claimed approximately US\$60 million in damages.

While the arbitration is seated in London, Costa Rican law applies to the contract.

Recope also [applied](#) to the Costa Rican courts last year for an injunction to prevent Soresco from spending any more funds. The joint venture has eight Chinese employees who earn salaries totalling more than US\$50,000 per month.

Local newspaper *La Nación* [reported](#) in May last year that Costa Rica's public prosecutor's office has been investigating Soresco's finances since 2012 to determine whether any embezzlement, malfeasance or other offences occurred. The paper said no responsible parties had yet been identified or charges filed.

The arbitration is diplomatically sensitive in view of the priority Costa Rica has given to its relationship with China. Celebrating the 10th anniversary of formal relations between the two countries in June last year, Costa Rican foreign minister Alejandro Solano [noted](#) the relationship has resulted in numerous infrastructure projects in Costa Rica, including a national stadium and police academy, both funded by China. A Chinese navy hospital ship has also provided free medical care to local residents.

The countries signed a strategic partnership agreement in 2015 as well as a five-year joint action plan. They also signed a bilateral investment treaty in 2007, but according to the United Nations Conference on Trade and Development (UNCTAD) it is not in force.

*CNPC International v Refinadora Costarricense de Petroleo (ICC case)*

### **Tribunal**

Luca Radicati di Brozolo (Italy/UK) (chair)

Albert Jan van den Berg (Netherlands) (appointed by CNPCI)

Andrés Jana (Chile)

### **Counsel to CNPC International**

Allen & Overy LLP

Partner Matthew Hodgson in Hong Kong

**Counsel to** Recope  
Latham & Watkins LLP

Partner Fernando Mantilla-Serrano in Paris

Practice area :

Arbitration

Country :

Costa Rica, International

Industry :

Oil & Gas

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