

CAFTA Labour Arbitration Should Play Out on Fast Track

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If you've been watching the headlines this month, you may have noticed that the United States of America has launched a novel arbitration against the Republic of Guatemala.

The claim alleges that Guatemala is failing to enforce its own labour laws, thus falling afoul of international legal obligations written into the U.S. Free Trade Agreement with Central America and the Dominican Republic (CAFTA-DR).

While there have been a handful of arbitration claims brought under the CAFTA-DR's investor-state dispute process, the U.S.-Guatemala proceeding is apparently the first state-to-state claim to be brought pursuant to Chapter 20 of the same agreement.

Those familiar with the rather leisurely investor-state arbitration process might be surprised to discover that the CAFTA's state-to-state process provides for a *fast-track* form of dispute resolution.

Indeed, from the moment that a state-to-state claim is launched, parties have 15 days to select a chair for the three-member arbitration panel. And, once the chair is selected, the parties have a further 15 days to pick their respective arbitrators.

Failure to select a wing-arbitrator within that 15 day period, means that the choice will be made by lot - within a matter of 3 days - from a roster of approved Chapter

20 panelists.

(By contrast to this hasty process of arbitrator selection, parties in investor-state proceedings under the CAFTA-DR have 75 days in which to set up an arbitral panel, after which further time can elapse if an appointing authority needs to nominate the remaining panelists.)

All going according to plan, an arbitral panel in the U.S.-Guatemala case could be in place inside of a month. And, not only are arbitrators empaneled very swiftly under the state-to-state dispute resolution process, they are also expected to resolve cases in months, rather than years.

Within 120 days, and definitely no later than 180 days, arbitrators should have prepared an initial report setting forth findings of facts, and a preliminary determination as to whether the respondent state has breached its CAFTA obligations.

The parties then have two weeks to comment on the initial report, and the arbitrators must issue their final report a mere 30 days after the release of their initial report. While there is a bit of discretion for extending certain deadlines set out in Chapter 20 of the CAFTA, the default timetable for state-to-state arbitrations clearly envisions a very swift form of justice.

By my back-of-the-envelope math, an arbitral claim could be resolved in about 8 months.

By contrast, it took nearly 8 months to put together an arbitral tribunal to hear the first claim under CAFTA's investor-state chapter. That unrelated case, which also involves Guatemala, will celebrate its 4th anniversary later this month and oral hearings are still some distance off.

So, in principle, the newly-minted claim against Guatemala under Chapter 20 could be fully arbitrated before the longer-running investor-state proceeding sees a final award.

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