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United States brandishes threat of renewed state-to-state arbitration unless Guatemala ramps up labour rights improvements

Luke Eric Peterson (Investment Arbitration Reporter) · Monday, October 28th, 2013

The Office of the United States Trade Representative has issued another update on its long-running dispute with Guatemala over lax protection of worker rights in the latter country.

Readers of this blog may recall that the United States [initiated a state-to-state arbitration against Guatemala in 2011](#), invoking for the first time a fast-track arbitration mechanism contained in the U.S.-Central America Free Trade Agreement (CAFTA).

While requesting arbitration, the United States [seemed not to have pushed for the constitution of a tribunal](#), preferring instead to use the arbitration to pressure Guatemala to agree to a series of labour rights improvements.

Indeed, in April of this year, the [USTR reported that it had reached an accord with Guatemala on a series of wide-ranging improvements](#) to that country's labour laws. The USTR press release from April 2013 was notably circumspect about the role that arbitration had played in pressuring Guatemala to agree to such changes.

However, in [a new update on the controversy](#), the US Government has expressed "serious concerns" about Guatemala's enforcement of labour laws. What's more, the USTR has referred expressly to the possibility that the state-to-state arbitration could be resumed unless Guatemala makes further strides with respect to key areas:

"These areas include making every effort possible to swiftly pass legislation providing for an expedited process to sanction employers that violate labor laws and to implement a contingency mechanism to address payment to workers in cases where export enterprises have closed. Serious efforts are also needed to ensure that the instruments and procedures issued under the Plan are effectively implemented and enforced. If at any time, during the next six months, the U.S. government determines that Guatemala is not effectively implementing the Enforcement Plan, it can request that the panel resume its work."

The latest USTR press release is written in such a way that it sounds as if a panel *had been* selected to hear the case, but was then put in limbo. In particular, the USTR says that the United States "retains the right to reactivate an arbitration panel established in the 2011 labor enforcement case".

If a panel was indeed established prior to the suspension of the case, that contradicts information that I had received from a USTR spokesperson at an earlier juncture. So, I've asked the USTR for further clarification as to whether a tribunal was ever constituted to hear the dispute. I'll offer a further update if I learn more.

In the mean time, however, it looks like an arbitration could yet take place under the CAFTA's state-to-state mechanism in relation to this particular dispute. In brandishing the arbitration "stick" explicitly, the US Government has sounded a less conciliatory note than in its press statement of six months earlier. We'll continue to watch this space.

By Luke Eric Peterson

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