

Resolution of U.S.-Guatemala Dispute May Obviate CAFTA Labor Arbitration

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It looks like the first state-to-state arbitration under the U.S.-Central America Free Trade Agreement (CAFTA) may have fizzled out.

In August of 2011, I reported in this space that the United States of America was initiating arbitration against the Republic of Guatemala.

The U.S.A. turned to arbitration after determining that Guatemala was failing to enforce its own labor laws, thus running afoul of pledges made in the CAFTA itself.

In principle, the U.S.A. v. Guatemala arbitration should have played out rapidly, with Chapter 20 of the CAFTA providing for a fast-track arbitration process that is geared to take a mere 8 months to determine whether a government is not complying with its CAFTA obligations.

Indeed, I'd noted that the constitution of an arbitral tribunal was designed to take only a month - in stark contrast with the slow process seen in some investor-state arbitrations initiated under a separate CAFTA chapter.

However, as reported in a follow-up blog post in March of 2012, the months following the U.S. request for arbitration yielded no further news about the

constitution of an arbitral tribunal – much less arbitration of the merits.

Inquiries to the Office of the U.S. Trade Representative revealed that the U.S.A. had opted to “engage” with a newly-elected government in Guatemala City. While those diplomatic talks took place the parties agreed to put the CAFTA arbitration on hold.

More than a year has passed without further news on the arbitration.

Then, last week, the Office of the U.S. Trade Representative issued a lengthy press release hailing a series of enhanced labor enforcement measures that Guatemala has agreed to pursue. These measures include the hiring of significant numbers of new labor inspectors and the creation of fast-track processes for labor courts to adopt fines recommended by Guatemala’s Ministry of Labor for labor law violations.

The press release makes no mention of the “stick” used to bring about these enhanced enforcement efforts in Guatemala. However, the filing of a CAFTA state-to-state arbitration clearly led to the diplomatic “engagement” that ultimately yielded last week’s announcement.

Given the agreement reached between the U.S. and Guatemala, it looks like the first CAFTA state-to-state arbitration may be relegated to the dustbin. Thus, we’ll have to wait for a future case – be it trade, investment, labor or otherwise – in order to see whether the CAFTA’s expedited state-to-state arbitration process is capable of arbitrating such disputes in a mere 8 months.

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