OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Petition under Section 302 on Alleged Expropriations by the Dominican Republic; Decision Not to Initiate Investigation

AGENCY: Office of the United States Trade Representative

ACTION: Decision not to initiate investigation.

SUMMARY: On May 24, 2011, the Office of the United States Trade Representative (USTR) received a petition under Section 302 of the Trade Act of 1974, as amended (“Trade Act”), requesting that the United States Trade Representative (“Trade Representative”) initiate an investigation under sections 301-309 of the Trade Act (“Section 301”) with respect to alleged expropriations without adequate compensation by the Government of the Dominican Republic, resulting in an alleged breach of the Dominican Republic’s obligations under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), as well as being otherwise unreasonable and discriminatory. In accordance with the advice of the interagency Section 301 Committee, the Trade Representative has determined not to initiate a Section 301 investigation.

EFFECTIVE DATE: July 8, 2011
FOR FURTHER INFORMATION CONTACT: Jonathan Weinberger, Associate General Counsel, (202) 395-0317; Leslie O'Connor, Deputy Assistant USTR for Central America and the Dominican Republic, (202) 395-5190; Kimberley Claman, Senior Director for Investment Affairs & Financial Services, (202) 395-4510; and William Busis, Deputy Assistant USTR for Monitoring and Enforcement and Chair of the Section 301 Committee, (202) 395-3150.

SUPPLEMENTARY INFORMATION

On May 24, 2011, representatives of two individuals – Mauricio Gadala Maria and Carolina Maratos Gadala Maria – filed a petition requesting that the Trade Representative initiate a Section 301 investigation with respect to alleged expropriations without adequate compensation by the Government of the Dominican Republic. The petition states that Elias Gadala Maria – the father of the two petitioners – was a national of El Salvador who invested in the Dominican Republic in the early 1950s, during the Trujillo regime. The property of Mr. Gadala Maria, according to the petition, was nationalized in 1961 and 1962 following the end of the Trujillo regime. The two petitioners – U.S. nationals who reside in Florida – allege to be heirs of Mr. Gadala Maria, and thus claim a property interest in having the Dominican Republic provide adequate compensation for the alleged expropriations. The petition also alleges that the Government of the Dominican Republic has continued to takes actions – as recently as March 2011 – that infringe petitioners’ property rights.
Petitioners allege that the Government of the Dominican Republic breached its CAFTA-DR obligations to accord “fair and equitable treatment and full protection and security,” and to provide “prompt, adequate and, effective compensation,” with respect to investments covered by the CAFTA-DR. Petitioners also contend that the Government of the Dominican Republic has acted unreasonably in denying compensation for the alleged expropriations. Petitioners further claim that the government of the Dominican Republic acted in a “discriminatory” manner because Mr. Gadala Maria allegedly received less favorable treatment than other investors whose property allegedly was expropriated in 1961/62 at the end of the Trujillo regime.

Pursuant to the advice of the interagency Section 301 Committee, the Trade Representative has determined not to initiate a Section 301 investigation in response to the petition on three separate grounds. First, to the extent that the petition is alleging the expropriation of the property of the petitioners’ father – Mr. Gadala Maria – the petition does not allege the expropriation of any property of a U.S. investor because, according to the petition, Mr. Gadala Maria was not a U.S. national. Second, USTR is not in a position to investigate events that occurred five decades ago – well before both the enactment of the Trade Act and the entry into force of the CAFTA-DR – and thus a Section 301 investigation would not be effective in addressing the matters raised in the petition. Third, with regard to more recent acts, policies, and practices of the Dominican Republic that petitioners allege to breach the Dominican Republic’s investment obligations under the CAFTA-DR, such allegations can be addressed more effectively and directly through Investor-State dispute resolution under Chapter Ten of the CAFTA-DR, which affords U.S. investors the right to pursue claims for resolution of Investor-State disputes without requiring intervention by the U.S. Government. The merits of any such claims would be determined by an
international arbitration panel formed to hear the dispute.

William Busis
Chair, Section 301 Committee

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