U.S. Charges Guatemala with Rampant CAFTA-DR Labor Violations

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On Aug. 9, 2011, the United States requested an arbitral panel under the CAFTA-DR dispute settlement chapter to address Guatemala’s alleged failure to effectively enforce its labor laws. The parties subsequently agreed to suspend the arbitral panel pending the negotiation and implementation of an enforcement plan signed in April 2013. Over the last 17 months the suspension has been prolonged three times to allow Guatemala to implement its commitments. However, the U.S. alleges that the terms of the enforcement plan have not been met and concerns over the enforcement of Guatemala’s labor laws have not been resolved. Hence, the U.S. is proceeding with the dispute settlement process.

On Nov. 3 the U.S. filed its first initial written submission, which cited over a 70-page brief more than 400 instances in which Guatemala allegedly failed to enforce its labor laws. The U.S. claims that Guatemala has therefore breached its obligations under Article 16.2.1(a) of the CAFTA-DR to effectively enforce its labor laws through a “sustained and recurring course of inaction” in a manner affecting trade between the CAFTA-DR parties. The U.S. sought to demonstrate this contention by citing a number of cases that ostensibly show that Guatemala breached Article 16.2.1(a) in three different ways: the Guatemalan Ministry of Labor’s failure to investigate alleged labor law violations, its failure to take enforcement action once it had identified a labor law violation, and the judicial system’s failure to enforce labor court orders in cases involving labor law violations. The U.S. believes that this pattern of inaction with respect to enforcing court orders constitutes a sustained course of inaction and a recurring course of inaction in the meaning of Article 16.2.1(a).

The U.S. also contends that Guatemala’s failures have occurred in a manner affecting trade between the parties by affecting the conditions of competition. For example, the failure to enforce applicable labor requirements has ostensibly allowed manufacturers in the apparel, stevedore, agricultural and other industries to evade associated compliance
costs.

Guatemala will now submit its own brief within the next month, after which an opportunity will be given for rebuttals. A hearing will take place afterward, likely sometime in January.

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