



MINISTERIO DE ECONOMIA

GUATEMALA, C. A.

August 17, 2011

Mr. Ambassador
Ron Kirk
The United States Trade Representative
Washington, D.C. USA

Mr. Ambassador:

It is a pleasure for me to respond to your communication of August 16, 2011, in which the U.S. government reiterated its position to establish a panel in accordance with the provisions of Article 20.6.2, about the Government of Guatemala to put forward the following considerations:

- a) The Government of Guatemala has never expressed opposition to the provisions of the Treaty, regarding the establishment of a panel to resolve disputes arising from it, provided for the formation of the panel have been duly exhausted all instances prior to its establishment as stipulated in the Treaty.
- b) In your letter you state that the Government of the United States has fully complied with the provisions of Chapters Sixteen and Twenty of the Treaty, and requested consultation on the Government of Guatemala to discuss issues related to Guatemala's obligations under Article 16.2.1 (a). In this regard, the Government of Guatemala agreed to these consultations as you have already mentioned, there was extensive discussion, but only on issues such as the functioning of the Guatemalan labor law, lack of enforcement of labor laws and the requirement U.S. Government to strengthen the capacity of the Ministry of Labor and Social Welfare, without these consultations have been addressed the issue substantially referred to in Article 16.2.1 to the substantial matter to in Article 16.2.1 (a), which we insist, has never been addressed within the extensive discussions within the themes of Chapter Sixteen.
- c) The bilateral meeting of the Free Trade Commission, United States, Guatemala, this was held in Guatemala City on June 7 this year, in which the U.S. government presented a document entitled "Implementation Plan ", as the result of the information that Guatemala provided in consultation phase, as well as an additional information submitted this year by the Ministry of Labor and Social Welfare. That document focused only to commitments on labor from Guatemala, but at no time discussed the scope of Article 16.2.1 (a), although Guatemala has expressly asked United States to analyze the adverse effect of the alleged lack of enforcement of labor laws and their effects on trade, under the Treaty, a proposal that was ignored by the Government of the United States.
- d) It is important to note that in your letter you said that the Commission meeting was held as stipulated in note 3 of Article 20.5, and that matter is not resolved within thirty days following the meeting. The Government of Guatemala considers it impossible to resolve a dispute on a bilateral basis under



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Article 20.5.4, it is directed to the Free Trade Commission, composed of all Parties to the Treaty, pursuant to Annex 19.1, since only the Commission whole can comply with the provisions in subparagraphs a), b) and c) of this Article.

- e) Regarding the request for the establishment of the panel, the same procedure only in cases in which there is a causal link between the breach of employment legislation and how this affects trade between the Parties, as noted by the Article 16.6 numeral 7) and 8), Guatemala has repeatedly said that the application of his Government's request for the establishment of the panel is not proceed because the issue has not analyzed between the Parties consultants.
- f) As pointed out in the communication of August 10 this year, the Government of Guatemala again confirms the inappropriateness of applying the Establishment of an Arbitral Panel, since accepting the request, Guatemala admit that he has discussed the Article 16.2.1 (a) and admit incur a clear violation of due process under the provisions of the Treaty.

Therefore, the Government of Guatemala reiterates its willingness to reach a mutually satisfactory solution in that regard, we propose to you the following options:

- 1) Insist on a Meeting of the Free Trade Commission, made up of all Parties to the Treaty, pursuant to Annex 19.1, to the provisions of Article 20.5.4, to support the consulting Parties in order to be able to use:
 - a. technical advisers or create convene working groups or experts it deems necessary;
 - b. recourse to good offices, conciliation, mediation;
 - c. make recommendations;

to support the consulting Parties to reach a mutually satisfactory resolution of the matter.

- 2) Take up the meeting between the consulting Parties, in order to exhaust the discussions related to Article 16.2.1 (a), since the meeting of June 7 this year, this issue was not addressed and the only scenario to trigger an event of settlement of labor disputes on the basis of Article 16.6 numeral 7) and 8).

I take this opportunity to renew to you the assurances of my highest consideration.

cc. Ms. Anabel González
Minister of Foreign Trade
Republic of Costa Rica

Mr. Manuel Garcia Arevalo
Minister of Industry and Trade
Dominican Republic



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Given Mr. Hector Miguel Antonio Hirezi
Minister of Economy
Republic of El Salvador

José Francisco Zelaya
Secretary of State for Industry and Commerce
Republic of Honduras

Orlando Solorzano Delgadillo Mr.
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Mrs. Hilda Solis
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