

August 25, 2011

Ambassador  
Ron Kirk  
Trade Representative of the United States of America  
Washington D.C. USA

Dear Ambassador:

I am pleased to address you in relation to your communication of August 23, 2011, in which the Government of the United States reiterated the formation of a panel in accordance with Article 20.6.1 of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR).

Regarding the second paragraph of this communication, the U.S. Government states that it has fully complied with the procedures set out in Chapters sixteen and twenty of the Treaty. The Government of Guatemala reiterates once again consistently, that the procedure of Cooperative Labor Consultations was not known substantive provisions of Article 16.2.1 (a), which is the only circumstance that can be used in the chapter on dispute settlement.

On the other side, in regard to the twentieth chapter of the Treaty, the Government of Guatemala insisted that the bilateral meeting of the Free Trade Commission meeting on June 7th this year, also submitted for discussion the substantive issue that sends the Article 16.2.1 (a), however, the Government of Guatemala, at the meeting, specifically asked to analyze and discuss the causal effect between the alleged lack of enforcement of labor laws and their effects on trade, a proposal that was ignored by the Government of the United States, since then arguing that such an approach would have done when the panel constituted, which denotes the intention of the Government of the United States to avoid exhaustively conditions contained in the Treaty.

The United States Government states in its communication indicated, that as the Government of Guatemala continue considering the application to form a panel has been inappropriate, it may present its case to the panel once it has been agreed. In this regard, the Government of Guatemala reiterates again that form the group to accept arbitration, agreeing that the matter would be substantially contained in Article 16.2.1 (a) was discussed and therefore violate the due process established in the Treaty.

Regarding the integration of a panel, the Government of Guatemala insisted that have not been given the assumptions outlined above; notwithstanding the above, there are issues that are not defined in the Treaty or the Model Rules of Procedure, such as:

- a) The Commission has not set the amounts of remuneration and expenses payable to arbitrators and experts (Appendix 19.3.1).
- b) Has not been established methodology for conducting the draw for the selection of the presiding arbitrator or the arbitrator to represent each of the Parties to integrate the panel, when it is agreed by the Parties.

All this shows that in the time trial in which we find ourselves, there are points that are subject to divergent interpretations of each of the Parties as well as unforeseen events, so in accordance with the provisions of Article 20.1 of the Treaty, it is essential to the convening of the Free Trade Commission under the provisions of Annex 19.1, that in exercising its enforcement functions to:

- Article 19.1.2:  
The Commission shall: ...  
(c) Seek to resolve disputes that may arise regarding the interpretation or application of this Agreement;  
(e) Consider any other matter that may affect the operation of this Agreement.
  
- Article 19.3:  
The Commission may: ...  
(c) Issue interpretations of the provisions of this Agreement;

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

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

Mr. Manuel García Arévalo  
Minister of Industry and Trade  
Dominican Republic

Mr. Héctor Miguel Antonio Dada Hirezi  
Minister of Economy  
Republic of El Salvador

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

Mr. Orlando Solorzano Delgadillo  
Minister of Industry and Trade  
Republic of Nicaragua

Mr. Raul Trejo Esquivel  
ViceMinister for Integration and Foreign Trade  
Republic of Guatemala

Mr. Hilda Solis  
Secretary of Labor  
USA