

Two investors bring CAFTA claims

23 March 2007

The first-ever arbitration proceedings under DR-CAFTA have been launched. One is against Guatemala. The other against the Dominican Republic.

Guatemala is being pursued by Railroad Development Corporation, a US management company.

On 13 March, it filed a 'notice of intent' as required in the treaty, seeking arbitration before a neutral international panel. The notice was filed at Guatemala's ministry of economics.

The US company says its local subsidiary has struggled to operate since a government statement indicating plans to re-nationalise the rail industry. In particular it says that since the announcement Ferrovias Guatemala has struggled to obtain credit, to sign new business from freight transporters and to generate revenue from any of its other railway-related assets, such as station facilities.

Ferrovias Guatemala won a concession to operate rolling stock in 1997 during a privatisation. In 2006, the Guatemalan government issued a presidential decree describing that privatisation as flawed and harmful to the state and declaring its intention to take back the rolling stock. The legality of the decree is being argued before the national courts.

Comments **Regina Vargo** of Greenberg Traurig LLP, who is advising the US management company: "The government wants to take possession of the rolling stock without paying [our client] proper compensation."

She adds: "We think Guatemala is guilty of indirect expropriation and violates the treaty's terms of minimum standard and national treatment."

The DR-CAFTA dispute mechanism requires a claimant to wait a minimum of 90 days from the alleged moment of breach before filing the notice of intent. It says it has waited 180 days. Having filed the notice, it must now wait a further 90 days before submitting any claim to arbitration.

Under the treaty it can select ICSID rules, ICSID Additional Facility rules, or UNCITRAL rules. Vargo thinks the case will be heard under the auspices of ICSID.

The second claim is against the Dominican Republic. News of its action broke on 21 March when a state-owned company confirmed it had received a request for arbitration from US firm Trust Corporation of the West. Reports say the request was filed under UNCITRAL rules at the ICC.

Soon after the news broke, **Rhadames Segura**, a cabinet secretary to the Dominican Republic's government, gave local reporters a statement saying: "We had no idea that this type of lawsuit could happen. We never received any type of document or complaint." The

Dominican Republic has now retained US firm Cleary Gottlieb Steen & Hamilton LLP to resist the claim.

Trust Corporation of the West is believed to be seeking \$680 million connected to investments in the Dominican Republic's electricity network. It complains among other things that the government has prevented its businesses from charging a realistic tariff to customers.

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Claim against Guatemala

Counsel to RDC and Ferrovias Guatemala

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Partner **Juan Pablo Carrasco de Groote** in Guatemala City

Greenberg Traurig LLP

Senior director **Regina Vargo** and partners **Allen Foster** and **Ruth Espey-Romero** in Washington, DC

Note: **Regina Vargo** was chief US negotiator during drafting of DR-CAFTA

Claim against the Dominican Republic

Counsel to Trust Corporation of the West

Not available

Counsel to the Dominican Republic

Cleary Gottlieb Steen & Hamilton LLP

Partner **Roger Thomas** in New York

http://www.globalarbitrationreview.com/news/news_item.cfm?item_id=3747