



Tribunal refuses to clarify decision on jurisdiction in Railroad Development Corporation v. Republic of Guatemala

20 January 2009

By: Damon Vis-Dunbar

The tribunal hearing a dispute between the Railroad Development Corporation (RDC) and Guatemala under the Dominican Republic – Central America – United States Free Trade Agreement (DR-CAFTA) has declined to clarify its 17 November 2008 decision on jurisdiction, following a petition by Guatemala.

Guatemala had contested the tribunal's jurisdiction to hear RDC's claim—the first investment claim under the 2004 DR-CAFTA—on the grounds that local arbitration proceedings launched by the RDC's subsidiary in Guatemala were already dealing with the same complaints. (Under DR-CAFTA rules, the RDC waived its right continue proceedings that pertain to the same measures alleged to constitute a breach of DR-CAFTA.)

In accepting jurisdiction, however, the tribunal held that the RDC's waiver was only “partially defective”. In the tribunal's view, the RDC had submitted a package of multiple claims, some of which overlapped with local arbitration proceedings, while others concerned measures that occurred after these proceedings had begun. As such, the tribunal decided to proceed by distinguishing between the two: judging the merits only of those claims which were not being handled through local arbitration.

In a subsequent response to the tribunal, Guatemala said that it was “gravely concerned” by the decision, and sought clarification on what claims had been excluded as a result of the partially defective waiver. Guatemala offered that its concern could be assuaged if the tribunal declined jurisdiction in respect to the RDC's claim of an alleged violation the Minimum Standard of Treatment article in DR-CAFTA. This particular claim, according to Guatemala, contains “impermissible overlap” between the local arbitration proceedings and the DR-CAFTA proceedings.

In a 13 January 2009 decision, Guatemala's petition has been rejected. The decision on jurisdiction “is not vague or internally inconsistent,” wrote the tribunal. Furthermore, the tribunal considered that it would be “inappropriate” for it to exclude the claim based on Minimum Standard of Treatment before considering its merits, given that the standard is “general and wide ranging.”

The RDC is an American company that deals in railway investment and management. Its dispute with Guatemala relates to an agreement between its Guatemalan subsidiary *Compañía Desarrolladora Ferroviaria (FVG)* and a state owned-company responsible for managing Guatemala's railway services. In 2005, FVG initiated arbitration proceedings in Guatemala for alleged breaches of contract. Guatemala subsequently terminated its agreement with FVG, declaring it injurious to the state.

RDC is seeking some \$US65 million in lost profits and damages in its DR-CAFTA claim, which is being conducted under the auspices of the International Centre for the Settlement of Investment Disputes (ICSID).

The *Decision on Clarification Request of the Decision on Jurisdiction in Railroad Development Corporation and the Republic of Guatemala* is available [here](#)

Further ITN reporting on *Railroad Development Corporation v. the Republic of Guatemala* includes:

“Guatemala's objection to jurisdiction dismissed in DR-CAFTA arbitration”, By Damon Vis-Dunbar, 26 November, 2008, available [here](#)

“US railway investor's claim against Guatemala tests CAFTA transparency provisions”, By Fernando Cabrera Diaz and Luke Eric Peterson, September 7, 2007, available [here](#)

<http://www.investmenttreatynews.org/cms/news/archive/2009/01/20/tribunal-refuses-to-clarify-decision-on-jurisdiction-in-railroad-development-corporation-v-republic-of-guatemala.aspx>