

Tribunal rejects Guatemala's objection to jurisdiction

21-Nov-2008

An ICSID tribunal has produced the first jurisdictional award under DR-CAFTA, allowing the case to proceed.

The tribunal rejected Guatemala's arguments that the case was barred by similar cases in Guatemala, instigated by US investor Railroad Development Corporation. The state contended that the company was "forum shopping" when it filed its claim at ICSID.

In 2005, Railroad Development filed two arbitrations in Guatemala for breach of contract. The company claimed that Guatemala had failed to remove squatters who were obstructing the rail and that the state had failed to make payments to a Trust Fund. The fund was created for the rehabilitation and modernization of the railroad.

Railroad Development filed for arbitration last year seeking US\$65 million compensation from Guatemala for forcing its railway operations out of business. Through its local subsidiary, Ferrovías Guatemala, the US company was contracted in 1997 to restore the country's defunct national railway. In 1999 it succeeded in reopening the country's Atlantic line.

Railroad Development is now arguing that a 2006 government decree to re-nationalize the rail industry made it difficult for Ferrovías Guatemala to obtain credit and eventually caused services to be suspended. Its filing also mentioned other problems, such as the problem with the squatters and the non-payments to the fund.

The ICSID tribunal has decided that the matter can be regarded as functionally separate and that its waiver of the two other claims does not encompass its new argument at ICSID.

The tribunal has now ordered "the continuation of the proceedings on the merits."

USBS

Arbitral tribunal

- **Andrés Rigo Sureda** (Spain) (President)
- **Stuart Eizenstat** (US)
- **James Crawford** (Australia)

Counsel to Railroad Development Corporation and Ferrovías Guatemala

- Díaz-Durán & Asociados Central-Law
Partner **Juan Pablo Carrasco de Groote** in Guatemala City
- Greenberg Traurig LLP
Senior director **Regina Vargo**, partners **Allen Foster** and **Ruth Espey-Romero** in Washington, DC

Counsel to Republic of Guatemala

- Counsel provided by Guatemala's Ministry of Economy