

# USTR NEWS

## UNITED STATES TRADE REPRESENTATIVE

[www.ustr.gov](http://www.ustr.gov)

Washington, D.C. 20508

202-395-3230

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**Contact:**

Carol Guthrie

[cguthrie@ustr.eop.gov](mailto:cguthrie@ustr.eop.gov)

### **United States Trade Representative Kirk Announces Labor Rights Trade Enforcement Case Against Guatemala**

**Washington, Pennsylvania** – In a major speech this morning about the Obama Administration’s trade enforcement efforts, United States Trade Representative Ron Kirk announced that that the United States will file a case against Guatemala under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), for apparent violations of obligations on labor rights. This is the first labor case the United States has ever brought against a trade agreement partner.

**“We want to see the Government of Guatemala take specific and effective action – including, if appropriate, legislative reforms – to improve the systemic failures in enforcement of Guatemalan labor law,”** Ambassador Kirk said. **“In addition, the issue of labor-related violence is a matter of serious concern to the United States. Our request for consultations also expresses our grave concerns about this problem and indicates that we intend to take this issue up with the Government of Guatemala in the near future.”**

Following is general background information about the case:

#### **What CAFTA-DR Obligations Are at Issue?**

Under Article 16.2.1(a) of The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), each Party to the agreement has committed that it will not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties.

## **What Concerns Does the United States Have With Guatemala's Compliance With its Obligations under Chapter 16 (Labor) of the CAFTA-DR?**

In April 2008 the AFL-CIO and six Guatemalan unions filed a public submission under the CAFTA-DR alleging that the Guatemalan government is failing to effectively enforce its labor law. Since then the U.S. Government has conducted an extensive examination of Guatemala's compliance with its obligations under the Labor Chapter of the CAFTA-DR. This examination has included (1) a careful review of Guatemala's labor laws, (2) extensive collection of factual evidence, and (3) a careful analysis of Guatemala's obligations under Article 16.2.1(a). Based on this examination, it appears that the Government of Guatemala is failing to meet its obligations under Article 16.2.1(a), with respect to effective enforcement of Guatemalan labor laws related to the right of association, the right to organize and bargain collectively, and acceptable conditions of work. For example, we have identified a significant number of failures to enforce Guatemalan labor law, constituting a sustained or recurring course of action or inaction, including:

- 1) Ministry of Labor failures to investigate alleged labor law violations;
- 2) Ministry of Labor failures to take enforcement action once the Ministry has identified a labor law violation; and
- 3) Court failures to enforce Labor Court orders in cases involving labor law violations.

The United States also has grave concerns about the problem of labor-related violence in Guatemala, which is serious and apparently deteriorating. The United States is seriously concerned about the Government of Guatemala's response to the use and threats of violence that appear to be related to the exercise or attempted exercise of labor rights in Guatemala, including the right of association and the right to organize and bargain collectively. The concerns of the United States include apparent failures by the Government of Guatemala to adequately protect those threatened with violence and apparent failures to adequately investigate and prosecute such crimes. Our request for consultations expresses our grave concerns about this problem and indicates that we intend to examine and take this issue up with the Government of Guatemala in the near future.

## **How do Guatemala's Apparent Failures to Enforce its Labor Laws Disadvantage U.S. Businesses and Workers?**

The Government of Guatemala's apparent failure to effectively enforce its labor laws harms U.S. workers by forcing them to compete against substandard labor practices and tilts the playing field away from American workers and businesses. By holding the Government of Guatemala accountable to its labor commitments under the CAFTA-DR we can help to ensure that U.S. businesses and workers are able to compete on fair terms.

## **Why Request Chapter 16 Consultations at This Time?**

The U.S. Government has been engaged in informal government-to-government discussions with the Government of Guatemala since the U.S. Department of Labor issued a report in January 2009, where it found systemic weaknesses in the Government of Guatemala's enforcement of its labor laws and raised concerns about labor-related violence. The report stemmed from an April 2008 submission filed with the U.S. Department of Labor under Chapter 16 of the CAFTA-DR by U.S. and Guatemalan labor unions. To date, the Government of Guatemala has not undertaken effective steps to correct systemic failures in the enforcement of its labor laws. By invoking consultations under Chapter 16 and formally putting the enforcement issues on track for possible dispute settlement proceedings, we hope to see the problem effectively resolved.

## **What Happens Next?**

The United States and Guatemala will engage in formal consultations. The CAFTA-DR provides that if the matter involves the effective enforcement of domestic labor law and the consulting Parties have failed to resolve the matter within 60 days after the delivery of the consultation request, the complaining Party may request a meeting of the agreement's Free Trade Commission. The U.S. Government will assess what it learns in consultations, whether the problem is being effectively resolved, and will determine whether it will seek to resolve outstanding issues through a Chapter 20 dispute settlement process. Only matters arising under Article 16.2.1(a), which relate to the effective enforcement of labor laws, may proceed to Chapter 20 dispute settlement.

## **What is the Scope of Consultations under the Labor Chapter of the CAFTA-DR?**

Article 16.6.1 of the CAFTA-DR expressly contemplates and permits a Party to raise in consultations any "matter arising under the agreement," which may include both justiciable and nonjusticiable matters. Justiciable claims are those that could proceed to formal dispute settlement under Chapter 20 of the CAFTA-DR (i.e., issues related to the failure to effectively enforce labor laws).

## **Additional Background:**

In April 2008, the AFL-CIO and six Guatemalan unions filed the first public submission under the CAFTA-DR labor procedures, alleging that the Guatemalan government is failing to effectively enforce its labor laws with regard to freedom of association, the right to bargain collectively, and acceptable conditions of work in five separate cases. The Department of Labor (DOL) conducted a review of the submission and issued a public report on January 16, 2009. DOL found significant weaknesses in Guatemala's enforcement of its labor laws and made specific recommendations on steps that Guatemala should take to address these matters. USTR, DOL, and the Department of State engaged extensively with the Guatemalan government during the past year and a half in an effort to resolve the individual cases in the unions' submission and, more broadly, to address systemic concerns with the enforcement of labor law in Guatemala. Our engagement has yielded limited results.

Under the CAFTA-DR, a Party may request consultations with another Party regarding any matter arising under the labor chapter. If the matter involves the effective enforcement of domestic labor law and the consultations do not resolve the matter within 60 days, the complaining Party may then request a meeting of the agreement's Free Trade Commission, the ministerial level body that supervises the implementation of the agreement. If the Parties do not resolve the matter through ministerial consultations within 30 days, the complaining Party may request the establishment of a dispute settlement panel to consider the matter. If the panel finds that the Party complained against has failed to effectively enforce its labor law, the panel may, at the request of the complaining Party, impose an annual monetary assessment of up to \$15 million (adjusted for inflation), if the disputing Parties are unable to reach agreement on a resolution of the matter or, after reaching agreement, the complaining Party considers that the responding Party has failed to observe the terms of the agreement. Any such assessments are to be paid into a fund established by the trade ministers of the disputing Parties and expended at their direction on appropriate labor initiatives, including efforts to improve or enhance labor law enforcement in the territory of the responding Party.

More information about the CAFTA-DR is available on USTR's website. For information about the CAFTA-DR labor submission, go to DOL's website, [www.dol.gov](http://www.dol.gov).

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