



The Informative E-Newsletter for the
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Law Student Reception

*April 5, 2012
6-8 p.m.*

The WSBA International Practice Section (IPS) cordially invites you to this year's Law Student Reception! Come meet and network with attorneys practicing in international law and students interested in this practice area. Hors d'oeuvres and beverages will be served.

Location:

Schwabe, Williamson & Wyatt
U.S. Bank Centre
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010

Cost of Attendance:

Free for WSBA IPS members and law students.
Non-Members: \$40 (this amount includes membership to IPS).

Please contact Max Yoshimura with questions.

YoshimuraM@gmail.com

[Membership Renewal Reminder](#)

Please remember to renew your membership. The Section would like to ensure you continue to receive the benefits of membership.

Student Liaison Introduction

Greetings International Practice Section newsletter readers:

I would like to introduce myself as this year's student liaison. I am in my final year of law school at Seattle University and have been a member of the International Practice Section since my first year of law school. I am honored to help in the publication of this newsletter and to get more involved with the Section in general.

Because of my interest in both public and private international law, I have dedicated much of my time in law school to learning about and working in international criminal law and international human rights. This past summer, I worked in Cambodia for an NGO monitoring the tribunal adjudicating the Khmer Rouge. In addition, I have also studied international business and international arbitration and hope to continue work in one of these fascinating areas of law upon graduation.

I look forward to meeting, working with, or aiding you in any way I can throughout the remainder of the year as the student liaison.

~Amanda Banik

Using Free Trade Agreements to Enforce Core Labor Rights: the Case of Guatemala

~ Sarah Sprinkle ~

On August 9, 2011, Ambassador Ron Kirk, the United States Trade Representative ("USTR"), requested the formation of an arbitral panel to review a case involving the Government of Guatemala's apparent failure to meet its obligations under the Dominican Republic-Central America-United States Free Trade Agreement ("CAFTA-DR"), with respect to the enforcement of Guatemalan labor laws.¹ While trade agreements have long been known for their impact in reducing tariffs and non-tariff barriers, the current dispute with Guatemala highlights how free trade agreements are being used to promote labor standards.

The United States has included labor provisions in all the Free Trade Agreements ("FTAs") negotiated, beginning with a side agreement to the North American Free Trade Agreement ("NAFTA").² Over time, these provisions have increased in strength. For example, in NAFTA, the labor language was in a side agreement, not in the primary text, and included mostly "soft," or non-enforceable, provisions related to labor. The most recent FTAs, which include the stricter "May 10th" language negotiated by Congress in 2007,³ include "hard" provisions establishing

¹ Ron Kirk, United States Trade Representative, *Letter to Guatemala requesting an Arbitral Panel*, (2011), available at http://www.ustr.gov/webfm_send/3042 (last visited Aug. 29, 2011).

² U.S. Department of Labor, Office of Trade and Labor, *Free Trade Agreements (FTAs)*, available at <http://www.dol.gov/ilab/programs/otla/freetradeagreement.htm> (last visited Aug. 29, 2011).

³ "May 10th" language refers to language agreed to by Congress and President Bush on May 10, 2007, in the Bipartisan Trade Deal, which provides standard language, including standard

explicit standards in the main body of the text, which are enforceable through formal dispute resolution processes and subject to sanctions and removal of benefits.⁴ All the FTAs that include labor language (with the exception of the side agreement to NAFTA) refer to the core labor standards referenced by the International Labor Organization's Declaration on Fundamental Principles and Rights at Work; namely, freedom of association and effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labor, the effective abolition of child labor, and the elimination of discrimination in respect of employment and occupation.⁵ These obligations are binding or non-binding, depending on the agreement.⁶ In addition, all FTAs subsequent to

provisions on labor, to be adopted in all U.S. FTAs negotiated under Trade Promotion Authority. United States Trade Representative, *Trade Facts: Bipartisan Trade Deal*, available at http://www.ustr.gov/sites/default/files/uploads/factsheets/2007/asset_upload_file127_11319.pdf (last visited Aug. 29, 2011).

⁴ United States Trade Representative, *Labor in the U.S.-Panama Trade Promotion Agreement: Protecting and Enhancing Labor Rights*, Aug. 27, 2011, <http://www.ustr.gov/about-us/press-office/factsheets/2011/may/labor-us-panama-trade-promotion-agreement-protecting-and>.

⁵ International Labor Organization, *Declaration on Fundamental Principles and Rights at Work*, June 1998, available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc86/com-dtxt.htm> (last visited Aug. 29, 2011).

⁶ Some of the agreements, such as the U.S.-Jordan FTA, contain what is referred to as “soft” provisions, which state that the Parties “shall strive to ensure that such labor principles...are recognized and protected by domestic law.” Other agreements, such as the U.S.-Peru FTA, contain what is referred to as “hard” provisions, which state that a Party “shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights as stated in the *ILO Declaration*...” (United States-Jordan Free Trade Agreement, Oct. 24, 2000, <http://www.ustr.gov/trade-agreements/free-trade-agreements/jordan-fta/final-text>; United States-Peru Trade Promotion Agreement, Apr. 12, 2006, http://www.ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset_upload_file73_9496.pdf).

NAFTA contain an obligation to enforce national labor laws.⁷ The current claim against Guatemala is based on this obligation to enforce its national labor laws.⁸

The American Federation of Labor and Congress of Industrial Organizations (“AFL-CIO”) and six Guatemalan unions initiated the case against Guatemala through the submission of a petition on April 23, 2008, in accordance with Chapter 16 of CAFTA-DR, concerning the failure of the Guatemalan government to effectively enforce laws protecting the right of association, the right to organize, bargain collectively and acceptable conditions of work.⁹ The petition was submitted to the Office of Trade & Labor Affairs (“OTLA”) in the United States Department of Labor, which serves as the point of contact for all labor disputes related to U.S. FTAs.¹⁰ When OTLA receives a petition, it is required to make an initial determination as to whether certain baseline criteria¹¹ are met before it can accept

⁷ DOL, *supra* at note 2.

⁸ Kirk, *supra* at note 1.

⁹ AFL-CIO, *Public Submission to the Office of Trade & Labor Affairs (OTLA) Under Chapters 16 (Labor) and 20 (Dispute Settlement) of the Dominican Republic – Central America Free Trade Agreement (DR-CAFTA)*, 2008, http://www.aflcio.org/issues/jobseconomy/globaleconomy/upload/guatemala_petition.pdf.

¹⁰ Notice of Procedural Guidelines, 73 Fed. Reg. 34793 (Dec. 21, 2006), available at <http://www.dol.gov/ilab/programs/otla/2006021837.pdf> (last visited Aug. 29, 2011).

¹¹ Petitions are to be accepted for review if the following criteria are met: (a) the submission raises issues relevant to the labor chapter; (b) a review would further the objectives of the labor chapter; (c) the submitter is clearly identified, the submission is signed and dated, and the submission is sufficiently specific; (d) the claims in the submission, if true, would demonstrate non-compliance with the provisions in the labor chapter; (e) the statements contained in the submission or available information demonstrate that appropriate relief has been sought under the domestic laws of the other Party, or that the matter or a related matter is pending before an international body; and (f) the submission is not substantially similar to another recent submission. *Id.* at 34794.

the petition for review.¹² In the case of Guatemala, OTLA determined that baseline criteria had been met on June 12, 2008.¹³ OTLA then conducted a review of the claims noted in the submission and published a public report on January 16, 2009, indicating that it found that the allegations had merit. Furthermore, OTLA suggested additional concrete actions that the government could take to resolve the issues highlighted by the claims, despite finding that the Guatemalan government had taken action to address concerns.¹⁴

Subsequent to the report, no formal steps were taken related to the case until July 30, 2010, when USTR Kirk and Secretary of Labor Hilda Solis requested consultations with the Government of Guatemala pursuant to Article 16.6.1 of CAFTA-DR.¹⁵ Consultations were held in September and December of 2010.¹⁶ These consultations, however, did not yield an acceptable resolution to the matter. On May 16, 2011, USTR Kirk took the next step in the dispute resolution process established in CAFTA-DR and requested a meeting of the Free Trade Commission (“FTC”) under Article 20.5.2,

¹² *Id.* at 34794—95.

¹³ OTLA, DOL, *Public Report on a Review of Guatemala under the CAFTA-DR*, Jan. 16, 2009, available at

http://www.dol.gov/ilab/media/reports/otla/20090116_Guatemala.pdf (last visited Aug. 29, 2011).

¹⁴ *Id.* at 3–4. OTLA found allegations relating to the following issues particularly problematic: impunity for threats and violence toward labor union members and leaders; the existence of a climate where trade union rights cannot be freely exercised; frequent unlawful dismissal of union leaders and continued failure to reinstate workers in violation of court orders to do so; other forms of anti-union retaliation; failure to protect union rights where company ownership changes; and a failure to enforce provisions of Guatemalan labor laws requiring employers to negotiate in good faith with unions.

¹⁵ Ron Kirk and Hilda Solis, *Letter requesting consultations*, July 30, 2010, available at http://www.ustr.gov/webfm_send/2114 (last visited Aug. 29, 2011).

¹⁶ USTR, *Guatemala Submission under CAFTA-DR*, <http://www.ustr.gov/trade-topics/labor/bilateral-and-regional-trade-agreements/guatemala-submission-under-cafta-dr>.

which brought together the trade ministers of the U.S. and Guatemala on June 7, 2011.¹⁷ This step was significant because it moved the dispute out of the Labor Chapter and into the Dispute Resolution Chapter of CAFTA-DR, as the Dispute Resolution Chapter can lead to punitive action whereas the Labor Chapter provides for non-punitive negotiations. Nevertheless, even a meeting of the FTC failed to resolve these issues, and USTR Kirk requested the formation of an arbitral panel on August 9, 2011.¹⁸ The request for an arbitral panel is the final phase in the dispute resolution process outlined in CAFTA-DR. The panel is to be composed of three panelists selected from a roster of previously agreed upon arbiters.¹⁹ The arbitral panel will hear arguments before reaching a decision ranging from finding no fault to assigning a monetary assessment of up to 15 million U.S. dollars, to be adjusted for inflation and can be applied annually, which would be paid into a fund designated to improve labor enforcement.²⁰

This is the first dispute settlement case related to labor provisions brought by the U.S. government under a FTA and will pave the way for future enforcement of these provisions in other agreements.²¹ As the United States continues to

¹⁷ Ron Kirk, *Letter requesting Free Trade Commission Meeting*, May 16, 2011, available at http://www.ustr.gov/webfm_send/3041 (last visited Aug. 29, 2011); USTR, *Guatemala Submission*, *supra* at 14.

¹⁸ Ron Kirk, *Letter requesting an Arbitral Panel*, August 9, 2011, available at http://www.ustr.gov/webfm_send/3042 (last visited Aug. 9, 2011).

¹⁹ Per 20.9.2, the arbiters do not have to come from the roster, but it is likely that the Parties will select them from this roster. Dominican Republic-Central America-United States Free Trade Agreement, Aug. 25, 2004, <http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta/final-text>.

²⁰ *Id.* at Article 20.2.

²¹ OTLA has accepted submissions from Peru and Bahrain for review, but the reviews are not yet complete. United States-Peru Trade Promotion Agreement Notice of Submission #2010-03, 76 Fed.

negotiate bilateral and multilateral trade agreements,²² and other countries begin to insist on including labor provisions in their own agreements,²³ this case could establish precedence on labor provision enforcement. As countries are looking more and more to FTAs as one method for enforcing labor provisions, this is a case to follow closely.

Sarah Sprinkle is law student at the University of Washington School of Law and is the current Student Liaison Coordinator for the International Practice Section.

Reg. 44609 (Jul. 26, 2011); Bahrain-United States Free Trade Agreement; Notice of Determination Regarding Review of Submission #2011-01, 76 Fed. Reg. 35244 (Jun. 16, 2011).

²² The U.S. is currently in negotiations for a Trans-Pacific Partnership Agreement with several Pacific Rim countries. United States Trade Representative, *Trans-Pacific Partnership*, <http://www.ustr.gov/tpp>.

²³ Canada, the European Union, and Japan have included labor provisions in FTAs since the U.S. started to include them. Foreign Affairs and International Trade Canada, *Canada-Colombia Free Trade Agreement*, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/andean-andin/can-colombia-colombie.aspx?view=d>; International Labor Organization, *European FTAs* (2009), http://www.ilo.org/global/standards/information-resources-and-publications/free-trade-agreements-and-labour-rights/WCMS_115822/lang-en/index.htm; Ministry of Foreign Affairs of Japan, *Free Trade Agreement (FTA) and Economic Partnership Agreement (EPA)* (2011), <http://www.mofa.go.jp/policy/economy/fta/index.htm>; International Labor Organization, *Selection of other relevant trade agreements from various countries (Japan, China, Australia, New-Zealand, Chile, Eastern and Southern Africa, Caribbean region)* (2009), http://www.ilo.org/global/standards/information-resources-and-publications/free-trade-agreements-and-labour-rights/WCMS_115876/lang-en/index.htm.

Exports to China Are a Vital Part of the U.S. Economy

~ *The US-China Business Council* ~

<https://www.uschina.org/public/documents/2011/08/exports-to-china-vital.html>

Exports to China from U.S. congressional districts outpaced their exports to the rest of the world, a clear trend that began in 2000 continued in 2010, according to the US-China Business Council's (USCBC) annual U.S. Congressional District Exports to China report. Out of 435 districts, 333 districts had higher growth in exports to China in 2010 than they did to the rest of the world.

"Exports to China are a vital part of the U.S. economy. China is our third largest export market and is growing faster than many of our other major destinations for American manufactured goods and agriculture products," USCBC Vice President Erin Ennis said. "The nearly \$76 billion increase in exports to China during 2000–10 exceeded growth in every other market for US goods and farm products. U.S. exports to Canada and Mexico rose \$69.3 billion and \$52 billion, respectively. Brazil was a distant fourth with just a \$20 billion increase.

"Exports to China contributed to growth and jobs in almost all congressional districts. In 2010, exports to China rose 32 percent — faster than export growth to any of America's top-five export destinations," Ennis said. "Even in states that have had a mixed export story over the previous eight years — such as Maine, Wisconsin, and Tennessee — exports from congressional districts to China generally rose faster than those to the rest of the world."

"What is most satisfying about this report is that in 2010, 404 congressional districts increased exports to China—that's 93 percent of districts," continued Ennis. "Even better, between 2000

and 2010, 408 congressional districts experienced triple-digit growth.”

China is Washington State’s largest export market.

https://www.uschina.org/public/exports/2000_2010/full_state_report.pdf

Export Control Reform Initiative

~ Export.gov ~

<http://export.gov/ecr/index.asp>

In August 2009, the President directed a broad-based interagency review of the U.S. export control system, with the goal of strengthening national security and the competitiveness of key U.S. manufacturing and technology sectors by focusing on current threats, as well as adapting to the changing economic and technological landscape. This review determined that the current export control system is overly complicated, contains too many redundancies, and, in trying to protect too much, diminishes our ability to focus our efforts on the most critical national security priorities.

As a result, the Administration launched the Export Control Reform Initiative (ECR Initiative), which will fundamentally reform the U.S. export control system. The ECR Initiative, which is not related to the President’s National Export Initiative, is designed to enhance U.S.

national security and strengthen the United States’ ability to counter threats such as the proliferation of weapons of mass destruction.

As part of the ECR Initiative, the Department of State, Directorate of Defense Controls (DDTC) published a final rule amending the International Traffic in Arms Regulations (ITAR) to include a new license exemption for transfers of defense articles to dual nationals or third country national employees of foreign end-users. The new rule, which became effective on August 15, 2011, eliminates the need to obtain prior approval from DDTC for transfers of unclassified defense articles (including unclassified technical data) to dual national or third country national employees of foreign business entities, foreign government entities, or international organizations that are approved end-users or consignees (including approved sub-licensees) for such defense articles. Use of the exemption is subject to satisfying certain screening and recordkeeping requirements. In particular, in lieu of prior approval, the new ITAR Section 126.18 requires eligible companies and organizations to implement “effective procedures to prevent diversion to destinations, entities, or for purposes other than those authorized by the applicable export license or other authorization.”

<http://www.cov.com/files/Publication/7e79756a-5569-4668-a237-ebde1845f025/Presentation/PublicationAttachment/93d9eb74-d90b-4440-9303-fbe01d493c5d/New%20Dual%20and%20Third%20Country%20Nationals%20Rule.pdf>

Hot Topic: International Business and Trade News Vis-à-Vis the Pacific Northwest

~ Braden Pence ~

Canadian green energy measures challenged in WTO. The EU is challenging a Canadian policy of using Canadian-made parts in environmentally friendly wind-turbine power projects. Challenges to distortions on green-energy trade are increasing as the sector has grown increasingly popular and profitable. <http://www.reuters.com/article/2011/08/11/us-eu-canada-trade-idUSTRE77A2WU20110811>

Chinese measures distorting global market for rare earth metals? Chinese taxes and export limits on rare earth metals, vital to electronics and high-end manufacturing production, lower the price and increase the availability of the materials within China, creating an incentive for foreign producers to establish factories there. http://www.nytimes.com/2011/08/25/business/global/chasing-rare-earths-foreign-companies-expand-in-china.html?_r=1&pagewanted=1

Dry bulk shipping market hit by global trade depression. Major shippers, like the COSCO ships often seen in Elliott Bay, are seeing their bottom line affected by an oversupply of vessels and a global slowdown in trade. <http://www.channelnewsasia.com/stories/corporatenews/view/1148957/1.html>

If you have suggestions for other themes, please email them to: eic@globalgavelnews.org.

Upcoming Events:

To post an upcoming event with the *Gavel*, please contact the Editor-in-Chief at: eic@globalgavelnews.org

CLE OPPORTUNITIES

9th Annual Trust and Estate Litigation Seminar

March 2, 2012, 8:25 a.m. – 4:30 p.m.
Seattle, WA

For more information, please visit: <http://www.mywsba.org/Default.aspx?tabid=90&action=MTGProductDetails&args=6772>

32nd Annual Northwest Securities Institute

April 13-14, 2012, 8:20 a.m. – 12:05 p.m.
Seattle, WA

For more information, please visit: <http://www.mywsba.org/Default.aspx?tabid=90&action=MTGProductDetails&args=6819>

CLEs Sponsored by the American Bar Association

Fundamental Concepts in Drafting Contracts: What Most Attorneys Fail to Consider

February 8, 2012

Live Webinar (recording available for purchase)

For more information, please visit: <http://apps.americanbar.org/cle/programs/t12fcc1.html>

M&A Negotiation Trends: Insights from the 2011 Private Target Deal Points Study

February 14, 2012

Webinar (recording available for purchase)

For more information, please visit: <http://apps.americanbar.org/cle/programs/t12mnt1.html>

General Counsel: Principled Advisor to Management and the Directors

*February 27, 2012
Webinar*

For more information, please visit:

http://www.americanbar.org/calendar/2012/02/general_counsel.html

How to Ethically Prepare Corporate Witnesses for Deposition and Trial

*April 10, 2012
Webinar*

For more information, please visit:

<http://apps.americanbar.org/cle/programs/112apr1.html>

Conferences sponsored by the International Bar Association (IBA)

17th Annual International Wealth Transfer Practice Conference

*March 5–6, 2012
London, England*

For more information, please visit:

<http://www.ibanet.org/Article/Detail.aspx?ArticleUID=6d05ec86-a447-4618-acfb-5359b6efe33a>

15th Annual IBA International Arbitration Day

*March 8–9, 2012
Stockholm, Sweden*

For more information, please visit:

<http://www.ibanet.org/Article/Detail.aspx?ArticleUID=eb8bde10-085a-4e7a-9a0b-e410249d0031>

IBA Biennial Conference of the Section on Energy, Environment, Natural Resources and Infrastructure Law

*April 22–25, 2012
Santiago, Chile*

For more information, please visit:

<http://www.ibanet.org/Article/Detail.aspx?ArticleUID=972eef64-f614-41dd-8a26-85edfb7a09fc>

4th Annual Real Estate Investments Conference: Trends, Opportunities and New Frontiers

*April 25–27, 2012
Barcelona, Spain*

For more information, please visit:

<http://www.ibanet.org/Article/Detail.aspx?ArticleUID=ECFE5626-B8A3-4874-A027-5078339652C8>

LOCAL EVENTS

4th Annual International Washington Day Reception

February 7, 2012, 5:30 p.m. – 7:30 p.m.

Sponsored by: Trade Development Alliance of Greater Seattle

Location: Governor's Mansion, Capitol Grounds
Olympia, WA

For more information, please visit:

<http://www.seattletradealliance.com/blog/?p=7095>

Business Climate in Russia: New WTO Member, 2012 Presidential Election and Position within the Global Economic Rebound

February 9, 2012, 12:00 p.m. – 1:30 p.m.

Sponsored by: The Council for U.S. – Russia Relations and The Trade Development Alliance of Greater Seattle

Location: Seattle Metropolitan Chamber of Commerce

1301 5th Avenue, Suite 2500, Seattle

For more information, please visit:

<http://seattletradealliance.com/blog/?p=7112>

Complying with Export Controls

June 14–15, 2012

Sponsored by: Bureau of Industry and Security & Trade Development Alliance of Greater Seattle

Location: SeaTac International Airport
17338 International Boulevard, SeaTac, WA

For more information, please visit:

<http://seattletradealliance.com/blog/?p=7112>

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Notices and Employment Opportunities:

To post a notice, employment opportunity, or an editorial piece with the *Gavel*, please contact the Editor-in-Chief at:
eic@globalgavelnews.org.

UW LawConnect

The Center for Professional and Leadership Development at UW School of Law seeks to connect law students interested in associate positions and contract law work with firms that may have openings. If you or someone you know would like to interview UW law students for open positions, please contact Naomi Sanchez, assistant dean, at [206-616-1366](tel:206-616-1366) or naomiks@u.washington.edu.

Seattle University School of Law

The Center for Professional Development at Seattle University School of Law connects dynamic law students interested in legal internships, associate positions, and contract law work with firms and public interest organizations. If you or someone you know is interested in posting an opportunity, please contact Shawn Lipton, assistant dean, at [206-398-4104](tel:206-398-4104) or liptons@seattleu.edu.

Gonzaga University School of Law

The Career Services Office performs a variety of services for employers. We work with you to schedule on-campus, off-campus, and video-conference interviews.

We forward student résumés and application materials, advertise positions for which students and graduates can apply, and coordinate off-campus interview programs.

Detailed information about Career Services is available on our website www.law.gonzaga.edu, or call us at 509-313-6122. Holly Brajcich, J.D.,

Director of Career Services, at
hbrajcich@lawschool.gonzaga.edu.

New from the International Practice Section and WSBA-CLE:

Doing Business in Washington State: A Guide for Foreign Business and Investment.

Available in spiral-bound print format or on CD, this concise guide covers the A to Z of international business law in Washington—from entity creation to bankruptcy and creditor protection; from clean energy technology to industrial insurance and workplace safety; and from the Uniform Commercial Code to commercial litigation and alternative dispute resolution. Washington attorneys will want this resource for themselves and their clients—and for potential clients. \$75 plus S&H and tax for the print or the CD version, with volume discounts available for larger orders. [Review full table of contents or order your copy.](#) Questions? Call WSBA-CLE Order Fulfillment at (206) 733-5918 or email orders@wsba.org.



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