

International Center for Settlement of Investment Disputes (ICSID)

Kimberly-Clark to sue Venezuela for expropriating abandoned factory

Friday 27 April 2018, by [DOBSON Paul](#) (Date first published: 23 April 2018).

US multinational Kimberly-Clark has filed a formal request to take Venezuela to court regarding the expropriation of its abandoned factory by the government of Nicolas Maduro in July 2016. The legal basis of the action is unclear as Venezuela withdrew from the World Bank arbitration body in 2012.

The Huggies diaper and Kleenex tissue producer has registered the request at the International Center for Settlement of Investment Disputes (ICSID) at the World Bank. The ICSID website shows a pending case filed on April 17 but offers no further details or the amounts of money involved.

The jurisdiction of ICSID to arbitrate over the issue is however unclear due to the fact that Venezuela followed Bolivia and Ecuador in withdrawing from the body in 2012.

The Aragua-based factory was expropriated by the Venezuelan government following its closure by the multinational firm who abruptly left the country, abandoning their infrastructure and reportedly informing its entire workforce by text message the day before.

Finding themselves without employment, the nearly 1000 workers filed a successful request for the government to intervene and reactivate the factory, renaming it the Cacique Maracay plant. The workers argued that in closing the plant,, Kimberly-Clark violated Venezuelan law which prohibits such an abrupt termination of employment, especially in the case of mass firings. The 2012 Labour Law also allows workers or the government to expropriate workplaces in the case of abandonment or deactivation by the mother company.

Production was rapidly reinitiated at the plant following the expropriation with the national government stepping in to provide financing worth US\$22 million. When operating at full capacity, the plant can reportedly meet 20% of national demand for diapers, sanitary pads, toilet paper, and other scarce personal care products.

At the time of its withdrawal from the ICSID, Venezuela had at least 20 cases pending. However, the unclear interpretation of article 71 of the ICSID convention casts doubt on Kimberly-Clark's legal ambitions,, with the opening of new cases against an ex-member of the body only permitted for the six months following withdrawal unless ICSID is named as the sole arbitrator in the moment of signing the bilateral investment treaty (BIT).

According to the ICSID website, case number ARB(AF)/18/3 is founded on BITs signed in 1991 between Venezuela and Kimberly Clark's holdings in Spain and the Netherlands, and in 1998 with their holdings in Belgium and Luxembourg. It is unknown whether the ICSID is listed as the sole arbitrator in these agreements.

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