



Eighteenth Meeting of the NAFTA Advisory Committee on Private Commercial Disputes

**Dix-huitième réunion du Comité consultatif des
différends commerciaux privés de l'ALENA**

MINUTES

**Vancouver
April 17 and 18, 2008
Les 17 et 18 avril 2008**



Foreign Affairs and
International Trade Canada

Affaires étrangères et
Commerce international Canada

Canada

MINUTES

Eighteenth Meeting of the NAFTA Advisory Committee On International Private Commercial Disputes Vancouver, Canada April 16-18, 2008

Attendees:

Canada:

Nabil Antaki
Jan Davidson
Bill Horton
Eric Leroux
Andrew Newcombe
Pascal Paradis
Francis Price
Glenn Sigurdson
David Tavender
Richard Weiler
Cynthia Westaway
Jeffrey Talpis

Mexico:

Sofia Gomez Ruano
Luis Alberto Gonzalez Garcia
Elsa Ortega
Julian Trevino
Cecilia Flores Bueda
Carlos Mc.Cadden

United States:

Dana Haviland
Bob Lutz
James Nelson
Nancy Oretski
Kevin O'Shea
Philip Robbins
Tricia Smeltzer
David Stewart

Prevention as a Mode of Alternative Dispute Resolution

Participants met for an informal dinner held at the Water Street Café on April 16th to give members an opportunity to meet and to share information and to make final preparations for presentations.

I. Welcome & Introduction

The eighteenth meeting of the NAFTA Advisory Committee on Private Commercial Disputes convened in Vancouver, British Columbia, Canada, on April 17-19, 2008. Cynthia Westaway, Canadian Government Co-Chair, welcomed the 25 members in attendance and outlined the proposed order of business. She noted that the first day would be devoted to general reports and Subcommittee meetings, while the second day would consist of activities organized by the Outreach Committee and hosted by Glenn Sigurdson. The topic would be *Doing Business Better Across Borders: Proactive Strategies*.

II. Reports from Government Representatives

David Stewart, (US Co-Chair) reported on recent developments on the following US cases:

1. NAFTA Chapter 11

- BSE: Some 100 Canadian cattle farmers filed cases arising out of the closing of the border to Canadian cattle imports after the 2003 discovery of a case of bovine spongiform encephalopathy (mad cow disease). On January 28, 2008, the Tribunal issued its Award on Jurisdiction, dismissing the claims against the United States in their entirety.
- Glamis Gold Ltd.: A hearing on the merits in the case, which involves allegations of open-pit gold mining on Native American sacred sites, took place over two non-consecutive weeks in August and September 2007. In March 2008, the Tribunal sought additional information from the parties and requested certain documents from the United States. The parties responded on April 4, 2008.
- Grand River: A Canadian corporation involved in the manufacture and sale of tobacco products alleges damages resulting from the master settlement agreement between various state attorneys general and the major tobacco companies, and certain state legislation that partially implements the settlement. The parties are currently exchanging documents. Claimants are scheduled to submit their Memorial on May 12, 2008, and a hearing on the merits is scheduled for February 2-13, 2009.
- Tembec: In the September 2006 Softwood Lumber Agreement, Tembec agreed to dismiss its Federal District Court case, which sought to set aside the September 2005 NAFTA Chapter 11 Consolidation Order. In October 2006, Tembec asked the district court to set aside its stipulation of dismissal. In April 2007, the court denied Tembec's motion to reopen the case. In July 2007, the Consolidation Tribunal ordered Tembec to pay, *inter alia*, approximately \$272,000 of the United States' costs in the Article 1120 and 1126 proceedings. In response, in October 2007 Tembec petitioned the district court to vacate the award. The United States has moved to dismiss the motion on grounds of *res judicata* and *collateral estoppel*, and submitted its Reply on April 2, 2008.

2. **Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs)**

BITs

- The United States concluded a BIT with Rwanda that was signed by President Bush and Rwandan President Kagame on February 19, 2008 during the President's visit to Africa. It is a high-quality agreement that adheres closely to the U.S. model text. It is publicly available on the website at: <http://www.state.gov/e/eeb/ifa/c644.htm>.
- The U.S. has joined the negotiations on investment and financial services chapters of the free trade agreement among the so-called "P4 countries" (Brunei, Chile, New Zealand, and

Singapore) while it continues to explore the possibility of joining this agreement. The first meeting between the delegations was held in March.

- After an April 6, 2008 meeting between President Bush and President Putin, the U.S and Russia agreed to advance efforts on a new BIT between both countries.
- The U.S. is also continuing investment negotiations as part of both U.S.-Pakistan and U.S.-Malaysia BIT/FTA negotiations.
- The U.S. and India have begun exploratory talks about negotiating a BIT in meetings that took place in the run up to the Feb. 19 meeting of the bilateral Trade Policy Forum (TPF). The two countries are still trying to gauge whether they can find enough common ground to pursue BIT negotiations, as India has a different model for BITs than the U.S. The two sides are planning to hold a second exploratory meeting in the near future.
- U.S.-based Occidental Petroleum prevailed again in the UK courts in an effort to uphold a \$70 million arbitration award secured against Ecuador. Occidental won the underlying arbitration in 2004 when an Arbitrate Tribunal ruled that Ecuador had improperly denied certain tax refunds to the California energy company. In particular, the Tribunal held Ecuador violated certain obligations in a BIT earlier concluded with the U.S. government. Ecuador threatened to pull out of the BIT after the decision and has since requested review of the treaty.

FTAs

- U.S.-Malaysia FTA negotiations are ongoing.
- Congress approved the Peru FTA on December 4, 2007, and the implementing legislation was signed into law on December 14, 2007. The Peru and Oman FTAs have not yet entered into force, as both are pending ratification.
- The Panama FTA was signed on June 28, 2007, and the South Korea FTA was signed on June 30, 2007.
- The implementing bills for the Panama, Korea, and Colombia FTAs have not yet been transmitted to Congress. The implementing bill for the Colombia FTA was transmitted to Congress on Monday, April 7, 2008.
- DR-CAFTA, which was already in force with regard to El Salvador, Honduras, and Nicaragua, entered into force with regard to the Dominican Republic on March 1, 2007. The agreement is not yet in force with respect to Costa Rica.

3. World Trade Organization (WTO)

Disputes brought by the United States

- On April 10, 2007, the United States requested consultations with China regarding certain measures pertaining to the protection and enforcement of intellectual property rights in China.
- On the same day, the United States requested consultations with China regarding measures related to imported films and audiovisual entertainment products.

- On February 2, 2007 and April 27, 2007, the United States requested consultations and supplemental consultations, respectively, with China regarding subsidies provided in the form of refunds, reductions, or exemptions from income taxes or other payments. On December 19, 2007, the United States and China informed the DSB that they had reached an agreement with respect to this matter that could form the basis for settlement of the dispute.
- On March 6, 2007, the United States requested consultations with India with respect to “additional duties” or “extra additional duties” that India applies to imports from the United States, which include wines and distilled products (HS2204, 2205, 2206 and 2208.) The United States claims that the measures are inconsistent with Articles II:1(a) and (b), and III:2 and III:4 of the GATT 1994. Subsequently, India informed the DSB that it had accepted the request of the European Communities to join the consultations. On July 3, 2007, the panel was composed and expects to issue its final report to the parties in the course of March 2008.

Disputes Brought Against The United States

- On May 22, 2007, the Dispute Settlement Body adopted a Panel Report that found in favour of Antigua and adverse to the United States in a dispute concerning Internet gambling. Antigua is currently retaliating by controlling imports and allowing copyright infringement worth over \$25 billion.
- On January 9, 2007, the Appellate Body upheld a panel’s previous findings, in a case brought by Japan, regarding U.S. use of zeroing.
- In 2007, the WTO also established panels in two disputes brought by the European Union regarding the U.S. use of zeroing. Discussions started April 9, 2008, and public hearings will begin on April 22, 2008.
- On July 11, 2007, Brazil requested consultations with the United States concerning two distinct categories of U.S. agricultural measures: domestic support for agricultural products and export credit guarantees for agricultural products. The U.S. informed the DSB that it had accepted the requests of Argentina, Australia, Canada, Costa Rica, the European Communities, Guatemala, India, Nicaragua, Mexico and Thailand to join the consultations. At its meeting on 27 November 2007, the DSB deferred the establishment of a panel. Further to a second request to establish a panel from both Canada and Brazil, the DSB established a single panel at its meeting on 17 December 2007.
- On September 14, 2007, China requested consultations with the United States on the preliminary anti-dumping and countervailing duty determinations made by the U.S. Department of Commerce in respect of coated free sheet paper from China. China considers that the measures are inconsistent with the United States' obligations under, Article VI of the GATT 1994; Articles 1, 2, 10, 14, 17 and 32 of the SCM Agreement; and Articles 1, 2, 7, 9 and 18 of the Anti-Dumping Agreement.
- Suspension of obligations continued in the US-EC Hormones Dispute (DS320). On March 31, 2008, the WTO Panel said Brussels had failed to remove the justification for trade retaliation, as its arguments that beef treated with growth hormones could cause cancer did not meet WTO standards. It was the first time that a WTO dispute panel had ruled on whether trade retaliation should be lifted or continued when a party in breach says it has complied with the initial ruling. The Panel recommended that the Dispute Settlement Body request the United States to bring its measure into conformity with its obligations under the DSU.

Luis Alberto González García, Mexican Government Co-Chair, reported on recent developments on the following US cases:

1. Mexico's Investor – State Arbitrations

- CPI: CPI's hearing on damages will take place in July 2008.
- ADM: The Tribunal rendered its final award on November 21, 2007 which ruled against Mexico, with 33.5M in damages. Claimants filed a request for a supplementary decision. February 2008, application was filed to set decision only on damages award alone.
- CARGILL: An award is still pending.
- BAYVIEW: The Tribunal rendered an award last year and dismissed jurisdictional at the end of last year.
- GEMPLUS/ TALSUD: The hearing on merits took place in February 2008. An award will be rendered late this year or in 2009.

2. Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs)

BITs

- New BIT with Spain on force.
- India BIT on force.
- Ongoing negotiations: Belarus and Ukraine.

FTA's

- Ongoing negotiations with Korea, Peru and Colombia.

3. World Trade Organization (WTO)

- As Respondent: "Mexico - Definitive Countervailing Measures on Olive Oil from the European Communities", DS341.
- As Claimant: "United States - Final Anti-dumping Measures on Stainless Steel from Mexico", DS344.

Eric Leroux, Canadian Government Representative reported on the following cases:

1. NAFTA Chapter 11

Canada has eight active cases:

- Bilcon: In November 2004, the province of Nova Scotia and the Government of Canada established a Joint Review Panel to conduct an environmental assessment of a proposal by Bilcon of Nova Scotia Corporation to construct and operate a basalt quarry and marine terminal in Nova Scotia. The Claimants allegedly the sole owners of Bilcon of Nova Scotia, arise from this environmental assessment process.

After reviewing written submissions from Bilcon of Nova Scotia and written comments from other stakeholders, the Joint Review Panel held public hearings on the proposed project in Nova Scotia in June 2007. In October 2007, the Panel recommended that the project not be approved. The Panel found that the proposed quarry and marine terminal would result in significant adverse environmental effects that could not be mitigated. The Province of Nova Scotia accepted this recommendation on November 20, 2007. On December 17, 2007, the Government of Canada also accepted the Panel's conclusions.

The Claimants allege, pursuant to Article 1116, that NAFTA Articles 1102 (National Treatment), 1103 (Most-Favoured Nation Treatment) and 1105 (Minimum Standard of Treatment) have been violated. Damages are alleged to be in excess of \$188 million.

A Notice of Intent to Submit a Claim to Arbitration was served on February 5, 2008.

- Chemtura: Chemtura is the U.S. parent of a Canadian subsidiary that produced a pesticide whose active ingredient was the chemical Lindane. By the 1990s Lindane had been identified as a Persistent Organic Pollutant. By 1997 all foliate ('spray') uses of the product were banned in Canada. Its primary remaining Canadian use was as a seed treatment for canola, as of the late 1990s Canada's single biggest crop. No such authorization or 'tolerance' existed in the United States.
Chemtura has filed two Notices of Arbitration: one relating to PMRA's de-registration of Lindane for canola/rapeseed use, the other for PMRA's suspension of Lindane registrations for other all other uses. In its first two Notices of Intent, Chemtura alleges that Canada has breached its obligations under Articles 1102 (National Treatment), Articles 1103 (Most-Favoured Nation Treatment), 1104 (Standard of Treatment) 1105 (Minimum Standard of Treatment), 1106 (Performance Requirements) and 1110 (Expropriation) with respect to the de-registration of Lindane for canola/rapeseed use.
- Gallo: Vito G. Gallo ("Gallo") is a U.S. investor in Ontario that owns Adams Mine. Adams Mine is an abandoned open pit iron ore mine. Gallo claims that the Government of Ontario took steps to prevent the use of the mine as a landfill for waste from the Greater Toronto Area including enacting the *Adams Mine Lake Act*. The *Adams Mine Lake Act* offered compensation, but also prohibited the use of the mine as a landfill, revoked all existing regulatory approvals, and restricted recourse to domestic courts.

Gallo alleges that the *Adams Mine Lake Act* is inconsistent with Articles 1105 (Minimum Standard of Treatment) and 1110 (Expropriation) of NAFTA.

On June 4, 2008 the Tribunal issued Procedural Order #1 and the Confidentiality Order.

The Claimant Statement of Claim is scheduled for June 2008. Canada will file its Statement of Defence by September 15, 2008.

- Georgia Basin: Georgia Basin Holdings L.P. is a limited partnership based in Washington State which owns timber lands in British Columbia. It alleges that Canada's export controls on logs harvested from land in British Columbia under federal jurisdiction violate Canada's most-favoured-nation treatment, national treatment, minimum standard of treatment, performance requirements, and expropriation obligations.

The Deputy Attorney General for Canada was served with a Notice of Intent to Submit a Claim to Arbitration under Section B of NAFTA Chapter 11 on February 5, 2008.

- GL Farms: GL Farms LLC, a company incorporated under the laws of the State of Delaware, and Carl Adams, a national of the United States and President of GL Farms LLC, allege that measures taken by the Ontario Government and the Dairy Farmers of Ontario, prohibiting the marketing and production of milk by non-quota milk producers for export, violate Canada's obligations under NAFTA Chapter 11 and have caused damage to investments in Ontario. The Investors claim that the measures breach Articles 1102(3) (National Treatment), 1105(1) (Minimum Standard of Treatment), and 1502(3)(a) (Conduct of Monopolies and State Enterprises). They also claim that the measures will result in expropriation of their investments in breach of Article 1110 (Expropriation) if they are not granted extraordinary relief in ongoing domestic court proceedings.

Canada and the Claimants have both selected their party-appointed arbitrators, but have been unable to agree upon the appointment of a presiding arbitrator.

- Gottlieb: The Claimants are Marvin Gottlieb, Elaine Gottlieb, M. Gottlieb Associates, Inc., Marvin and Elaine Gottlieb Family Foundation, Gottlieb Investments LP and M. Gottlieb Associations, Inc. Profit Sharing Plan. All are located in Chicago, Illinois. They are alleging that the Government of Canada has acted in an arbitrary and discriminatory manner as a result of its tax treatment of Canadian income trusts. They are claiming a breach of NAFTA Articles 1102 (National Treatment), 1103 (Most-Favored-Nation Treatment), 1105 (Minimum Standard of Treatment) and 1110 (Expropriation and Compensation).
- Merrill and Ring Forestry: Merrill & Ring Forestry L.P. ("Investor") is a limited partnership based in Washington State which owns timber lands in British Columbia. It alleges that Canada's export controls on logs harvested from land in British Columbia under federal jurisdiction violate Canada's national treatment, minimum standard of treatment, performance requirements, and expropriation obligations.

The Investor served a Notice of Intent to Submit a Claim to Arbitration on September 25, 2006. The Notice of Arbitration and Statement of Claim were served on December 27, 2006. Counsel for the Claimant and the Government of Canada met for a First Procedural Meeting with the Tribunal in Washington, D.C. on November 15, 2007, at which time a number of procedural items were discussed and a timetable for submissions and document requests was set. The Tribunal determined the place of arbitration to be in Washington, D.C. The Investor also moved to add a new party, Georgia Basin Inc., to the arbitration. The Tribunal refused the request to add Georgia Basin Inc. as a new party on January 31, 2008. The Investor filed its Memorial on February 13, 2008.

Canada's Counter-Memorial to be filed on May 13, 2008.

- Mobil Investments Canada and Murphy Oil Corporation: In November 2004, the Canada-Newfoundland and Labrador Offshore Petroleum Board (Board) adopted the Guidelines for Research and Development Expenditures (Guidelines) that require investors in offshore petroleum projects to contribute annually to research and development (R&D) in the province of Newfoundland and Labrador. The Guidelines require investors to pay into a fund any money assessed that could not be spent on R&D. The Board added a new condition to the production operations authorizations for the Hibernia and Terra Nova projects, mandating that operators of the oil fields shall comply with the Guidelines as issued by the Board on November 5, 2004, and taking effect from April 1, 2004. Mobil and Murphy allege that the Guidelines amounts to the imposition of prohibited performance requirements under Article 1106(1) and affects their legitimate expectations that such requirements would not be imposed, in violation of Article 1105 of the NAFTA. Mobil and Murphy claim damages in excess of \$60 million.

Next step is appointment of arbitrators.

2. Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs)

BITs

Signed:

- European Free Trade Association (EFTA) (signed but not Ratified)
- First to go through our newly adopted Treaties in Parliament process

Currently Negotiating:

- Caribbean Community (CARICOM)
- Central America Four (El Salvador, Guatemala, Honduras, Nicaragua)
- Dominican Republic
- Jordan
- Peru (at Legal Scrub stage)
- Columbia
- Korea
- Singapore

3. World Trade Organization (WTO)

EC – Seals

- On September 25, 2007 the Government of Canada requested WTO consultations with the European Communities (EC) in response to bans in Belgium and the Netherlands on the importation and marketing of seal products. The Belgian measures ban the importation and marketing of all seal products and require an import licence for the importation of seal products. The ban went into effect April 28, 2007. The Dutch measure, which entered into force on October 23, 2007, bans the importation and trade of all harp seal and hooded seal products. The consultations took place in Brussels on November 14.

As of November 25, 2007, Canada was in a position to request the establishment of a panel.

Discussions are under way internally as to whether Canada should request a panel.

Key Issues: Whether the Belgian and Dutch measures violate Articles 2.1 and 2.2 of the *TBT Agreement* and Articles I, III, V, XI of the *GATT*. Where there is a violation of the *GATT 1994*, whether the measures are justified under the exceptions in *GATT 1994* Article XX.

EC - Hormones

- CANADA – Continued Suspension of Obligations in the EC – Hormones Dispute: On 13 February 1998, the WTO Dispute Settlement Body adopted the Panel and Appellate Body Reports in *EC – Hormones*, which had found that the EC ban on the importation of meat derived from cattle treated with growth-promoting hormones was not based on a risk assessment as required by the WTO Agreement on Sanitary and Phytosanitary Measures. Subsequently, the EC failed to comply with those WTO rulings, prompting Canada to seek and then receive authority from the DSB to retaliate against the EC. Effective August 1, 1999, Canada imposed retaliatory tariffs of 100 percent on EC products in the amount of \$11.3 million annually. In October 2003, the EC announced that it was now in compliance with the WTO rulings, on the basis that its new Directive (2003/74/EC), which maintained and extended the import bans, was based on a risk assessment. Canada did not accept the EC's assertion that it was now in compliance and did not remove its retaliation.

On November 8, 2004, the EC requested consultations at the WTO with Canada relating to the retaliatory measures still in place. Subsequently, a dispute settlement Panel was established, which issued its confidential interim report on July 31, 2007 and its final report to the WTO Members on March 31, 2008. In its report, the Panel found that the EC's implementing measure was inconsistent with the SPS Agreement. However, the Panel also found that Canada had infringed procedural requirements of the WTO Dispute Settlement Understanding (DSU) by not having had recourse to the mechanisms in the DSU when the EC asserted its compliance. The parties to the dispute have 60 days following the release of the final Panel report to file a notice of appeal.

Key Issue: Whether Canada's continued retaliation against the EC is no longer compatible with WTO rules, either as a result of the EC now being presumed to have complied with the

recommendations and rulings of the DSB in *EC – Hormones* or as a result of a confirmation that the EC is now in actual compliance.

US – Upland Cotton (Canada – Third Party)

- In 2006, Brazil requested the establishment of an Article 21.5 Panel claiming, inter alia, that the U.S. was acting inconsistently with its obligations under the *SCM Agreement* to take appropriate steps to either remove the adverse effects of certain subsidies or to withdraw them altogether and with its obligations under the *Agreement on Agriculture* and the *SCM Agreement* with respect to certain export credit guarantees. In 2008, the US appealed the Panel's decision. Canada participated as a third party both during the panel and Appellate Body hearings, the latter heard in Geneva on 14-15 April 2008.

China Autos - Status

- On April 1, 2005, China introduced new measures that impose different charges on vehicles manufactured in China depending on the domestic content of the automobile parts used in manufacturing. Effective immediately, if a vehicle manufactured in China used a certain number of imported major assemblies (for example an engine and body), or assemblies made principally from imported parts, the parts would be charged at the whole vehicle rate, which is approximately 25% of the value of the parts (instead of the bound tariff rate of 10%). Starting July 1, 2008, the same increased charge will apply if more than 60% of the value of parts in a vehicle is imported. In addition, there are various reporting requirements for manufacturers in China that use imported parts. These measures make it less attractive to source imported parts.

Consultations held in May 2006 between China and Canada, the U.S. and the EC, with Japan, Australia and Mexico observing, did not result in a settlement. The matter proceeded to a Panel in 2007. The Panel heard from the parties, including numerous third parties, and consulted the World Customs Organization on certain points. The final report was issued to the parties on March 20, 2008. The report remains confidential until it is circulated to all WTO Members, which takes place once it has been translated.

We await the distribution to WTO Members of the translated final report.

Following distribution to Members (which we anticipate likely will happen before the end of July), China will have 60 days to file an appeal. The complainants (Canada, US, EC) are remaining in contact to ensure coordination.

Key Issues for Canada: Whether Chinese measures that impose additional charges on imported auto parts violate Articles II or III of *GATT 1994* and Article 2 of *TRIMS*.

FIPAs

- More than 20 Canadian BITs in force, (all are listed on the website). Concluded with India- not in force yet. They've gone back to address a couple of issues. Negotiators are ironing these out in the next few months.
- Also trying to conclude with China.

- Started FIPAs with Indonesia, Madagascar, mining sector are hoping these and will be wrapped-up quickly.

III. UNCITRAL Working Group on Arbitration

In José Maria Abascal Zamora's absence, Cecilia Flores Bueda reported on the UNCITRAL Working Group.

- Website update
- Issue of transparency
- Provide expedited service, reform
- End to long standing controversy
- Amendment, set of rules specifically small claims and uncitral
- Add procedural section to remove uncertainty

After adjourning for lunch at the Five Sails Restaurant, sponsored by Bordner Ladner Gervais LLP, David Stewart spoke about the Hague Choice of Court Convention:

- Hope US will sign within next few months. Would be parallel to New York convention. HC of National law...interest in instrument for cross border mediation.

A presentation on developments in ADR was presented by Cecilia Flores Rueda, Mexico (in the absence of Carlos Loperena, Mexico), and Professor Bob Lutz, USA.

Following these discussions, Frédéric Bachand, Canada, reviewed recent, noteworthy Canadian decisions (Tab A).

IV. Presentation & Review of Outreach Subcommittee

Kevin O'Shea, Bill Horton, Bob Lutz and Philip Robins

- The NAFTA 2022 website has been running for 3 years with over 15,000 visits, 4,000 of which were in the first year.
- The Committee meets regularly via conference call, website, and outreach programs.
- Its mission is to promote the use of ADR for the resolution of private/commercial disputes in the three NAFTA countries.
- The intent is not to duplicate what is already being done. The aim is to find a different target audience: small and medium sized businesses interested but concerned about how it will get disputes resolved or resources for advice and lawyers who don't have a lot of experience in this area but have clients who are entering into cross-border agreements.
- Be realistic about what can be done. Strength in membership of the committee.
- Little or no budget to carry these meetings out.
- Piggy-back programs that are already being put on: audience, locale, and logistics already provided.

- Continue trying to meet in conjunction with other groups.
- Role, function, and value

V. Discussion of Mandate

There was a discussion on the current vision of the committee and its future direction. The consensus was to move forward and revitalize the NAFTA 2022 Committee. After much discussion, the members decided to create two umbrella committees: 1. Outreach Committee and 2. Legal Issues Committee.

Discussion Points Raised:

- A sense that there are several disconnects between resources and mandate. Incredible talent, practitioners and academics. Commitment from the government side is limited to the annual meeting itself. There needs to be serious consideration with governments for NAFTA focus, being able to meet objectives. If it's a government-based project, should there be government-based resources? Why is there this current disconnect?
- Canada indicated that Ministerial trade priorities have been focussed on negotiations and advisory advice as well as defence of trade litigation. There is no separate or dedicated funding or staff resources available.
- Still many useful and practical objectives to fulfil. Committee should consider rejuvenating the mandate.
- Great interest to meet with the Commission. Need feedback from the Commission.
- Most remain convinced Committee is still useful. One new vision/mission for governments to consider. i.e., judicial education. We need to focus on what this Committee can bring that is not already available. Could re-evaluate the size of the committee. General agreement that committee is fulfilling.
- Suggestion to request to have funds set aside to contribute toward meeting expenses. Plenty of work to be done. Recommendations from the Committees should be forwarded to the Commission.
- Suggestion to reduce and restructure the number of sub-committees and to fund speaking engagements once a year and to publish the results of accomplishments.
- Need funding for staffing/admin to assist with communications/pre and post meetings, at a professional level, come with suggestions to ensure that the consensus of the meetings is recorded and completed, letterhead, communications can flow properly.
- Should focus on reducing costs associated cost savings with ADR, measuring effectiveness.
- Video conferences could be held between meetings.
- Invite guests to speak.

The following three new Sub-Subcommittees were created:

- Outreach Committee
- Legal Issues Committee
 - Mediation Committee
 - Arbitration Committee
 - Prevention & Other Committee

Suggested breakdowns of the Sub-Committee & Members are attached as Appendices A and B.

Those who were not present at the meeting are asked to please indicate which committee(s) they would like to join and send their choice(s) to James Adams at james.adams@international.gc.ca.

Next, Julian Trevino, Mexico, provided a copy of the last draft of the Report from 2005 – Ottawa to the NAFTA Free Trade Commission. The report was updated.

The meeting adjourned and members met at the Five Sails Restaurant for a cocktail reception arranged and sponsored by Borden Ladner Gervais LLP.

VI. Day 2 - Outreach Program - Doing Business Better Across Borders: Proactive Strategies

The Committee reconvened with opening remarks from the Canadian Government Co-Chair and her introduction of Glenn Sigurdson who would be hosting the day's program on behalf of the Outreach Committee. The following topics were presented by guest speakers:

Cross Border Challenges: Business Perspectives with an Extractive Industries Focus

- **Dave Thomas**, Professor of International Management, Simon Fraser University Faculty of Business
- **Jock Finlayson**, Executive VP of the Business Council of BC
- **Linda Thorstat**, CEO Oremex Resources Inc.

An interactive session to explore perspectives and insights of the business community on issues and challenges of cross border business began by members writing their cross-border complaints/issues on a piece of paper.

Presentations continued:

Building Effective Business Relationships

- **William G. Horton**, Arbitrator and Mediator, Toronto
- A panel discussion examining business relationships through big picture lens of culture, sustainability and indigenous relations was launched:
- The Cultural Dimension: **Nabil Antaki**, Professor, University of Montreal
 - The Sustainability Context: **Glenn Sigurdson**, CSE Group, and SFU Business School, Vancouver
 - Indigenous Realities and Relationships: **Patrick Kelly**, Consultant, Member of Leq:amel First Nation of the Stolo Nation, Lay Bencher, Law Society of British Columbia

Commentators:

Nancy Oretskin, Professor, Faculty of Business, New Mexico State University

Carlos McCadden, Departamento Académico de Estudios Generales, División Académica de Estudios Generales y Estudios Internacionales, Mexico City

The subsequent topics were also presented to attendees:

Preserving the Business Relationship: Implementing the Transaction and Anticipating Differences

- **Julian Trevino**, Partner, Borda y Quintana, S.C., Mexico City, Mexico

What does it take to build effective proactive strategies to implement the transaction and stay out in front of disputes?

- **Dana Nahlen**, Senior International Counsel, Electronic Data Systems Corporation (EDS), Plano, Texas
- **Sofia Gomez Ruano**, Partner, Azar, Ortega y Gomez Ruano, S.C., Mexico City, Mexico
- **Jeff Talpis**, Professor, Faculty of Law, University of Montréal, Montreal

VII. Next Meeting

Cynthia Westaway expressed her appreciation, on behalf of the committee, to all members present for taking the time to attend the meeting. She also acknowledged the tremendous effort put forth by the Outreach Committee in organizing the Program for day two. In addition, Selma Lussenburg and Glenn Sigurdson, among others, with the assistance of James Adams (Canada), creatively contacted over 30 businesses, in a very short period of time, providing information packages and invitations to participate in the Outreach Program.

The next meeting will be hosted by Mexico on a date and city to be determined by the Mexican Co-Chair.