

NAFTA ADVISORY COMMITTEE ON PRIVATE COMMERCIAL DISPUTES

Minutes of the XXV Meeting

August 27-29, 2015

Mexico City

Mexico

Thursday, August 27, 2015

The Ministry of Economy hosted a welcoming cocktail at the Sheraton Maria Isabel Hotel. The Mexican co-chairs Carlos Véjar and Cindy Rayo welcomed the government co-chairs and 2022 members.

Friday, August 28, 2015 (Outreach Event)

The outreach event “Experiences on enforcement of judgments and awards in the NAFTA region & the energy reform in Mexico and arbitration” was organized in collaboration with the ANADE (National Association for Corporate Lawyers) and was held at the Hacienda de los Morales.

The NAFTA 2022 Committee panelists were Jim Nelson (U.S. member), Bill Horton (Canada member) and Carlos Loperena (Mexican member). They talked about the mechanisms for the implementation of an arbitration award in their own jurisdictions and the problems related with the execution of those judgments.

From the ANADE, the panelists were two of the more prestigious lawyers in arbitration in Mexico, Nicolas Borda and Adrian Magallanes. Both of them talked about the energy reform in Mexico and its implications for arbitration. For them, this reform is a new opportunity for doing business in Mexico and provides more legal certainty to the investor.

Friday, August 28, 2015 (Plenary Session)

The Mexican government co-chair, Carlos Véjar, opened the meeting and formally welcomed the participants, outlined the agenda for the Committee’s XXVth meeting and reviewed the meeting’s materials.

The U.S. and Canadian government co-chairs, Michael Coffee and Reuben East, respectively, made opening remarks.

The Minutes of the XXIV meeting in Saint Johns, Canada, which were circulated several months before, in advance of the XXV meeting, were formally adopted.

The Mexican government co-chair, Carlos Véjar, mentioned that over the course of these twenty-five meetings the organization and work of the subcommittees have evolved over time. Initially, they examined and assessed the state of alternative dispute resolution mechanisms in each of the NAFTA countries. This work was used as the basis to determine whether there was a need for legislative reform

in the NAFTA countries and for additional education and outreach. Then, the Committee considered the role of other forms of ADR such as mediation and conciliation; and conducted outreach with respect to judicial education.

In addition, the Mexican co-chair stated that there are new opportunities for Arbitration and ADR in Mexico due to the legal reforms on energy and telecommunication so the Committee will have something else to address.

The Mexican government co-chair also mentioned that the Committee has always fulfilled the primary objectives of its mandate, giving way to new targets around its main functions. The studies and reports issued by the different Subcommittees represent an excellent analytical framework to guide and understand better the way we should delineate the future works of the Committee. He also mentioned that the government official should also reflect how to re-launch all those past works from the Committee that are already in a website that Canada has been sustained for a long time and promote those works to people access those works.

The U.S. and Canadian government co-chairs agreed with Mexico to promote ADR, especially due to the development of mediation and arbitration in the sector where there were significant reform acts such as energy, telecommunications, labor, taxation, financial, etcetera. These reforms seek to open new business opportunities for our major trading partners of NAFTA.

Legal Issues Subcommittee

Enforcement of arbitral awards

While the delegations decided to refer to this task force as a Subcommittee, the government representatives sought to review a mandate for the Subcommittee. Mexican co-chairs confirmed that for Mexican side the representative would be Carlos McCadden.

In this regard, the delegations asked Carlos McCadden, from the Mexican delegation, to draft a mandate for the Subcommittee and to provide it to the government co-chairs for their review. Upon the approval of the government co-chairs, the U.S. and Canadian delegations would identify members to participate in the Subcommittee.

For further details, please see the Action Items at the end of the Minute.

Arbitration Agreements

Delegations decided to refer to this task force as a Subcommittee. The Committee discussed the two documents that the subcommittee had presented to the XXIV Committee meeting – a discussion document and a building blocks document.

The U.S. co-chair reported that it had recently completed its review of both documents and that it would share these comments with the other co-chairs. It was decided that, upon review by the other co-chairs, the documents would be returned to the Subcommittee for any modification.

The final documents would be recirculated by the Subcommittee for Committee approval. As a courtesy, the documents will be sent to Bill Horton for his review.

For further details, please see the Action Items at the end of the Minute.

Preparation of annual reports on national legal developments concerning ADR

The Committee decided to conclude the work of, and dissolve, this task force because the co-chairs ensure that appropriate reports are prepared for Committee meetings.

Outreach Subcommittee

The Outreach Subcommittee was asked to consider and prioritize outreach initiatives.

The Outreach Subcommittee submitted a report, which is attached as an Appendix to these Minutes.

In addition, the members agreed that the Subcommittee should draft a recommendation for the FTC encouraging that judicial training institutes include in their training commercial arbitration agreements.

Finally, all members were invited to collaborate and cooperate with this Subcommittee.

For further details, please see the Action Items at the end of the Minute.

Mediation Subcommittee

The members discussed about the necessity of promoting mediation in the NAFTA region. In this sense, the Committee approved the mandate of the Subcommittee.

The members involved in this Subcommittee will develop a working plan.

For further details, please see the Action Items at the end of the Minute.

Website Subcommittee

The Subcommittee submitted a written and oral report, and the Mexican government co-chair confirmed that Cecilia Flores will be the Mexican member involved in this Subcommittee.

All members were invited to collaborate and cooperate with the works of the Website Subcommittee. In particular, members were reminded to provide short bios.

For further details, please see the Action Items at the end of the Minutes.

Sectorial ADR

Energy Sector

The members discussed the convenience of having an energy sector Subcommittee. In the next meetings, the Committee should analyze the convenience to have more specific Subcommittees of ADR.

The Mexican co-chair offered to coordinate into his delegation the efforts to achieve a report about Arbitration in Mexican Energy Sector for next meeting.

For further details, please see the Action Items at the end of the Minute.

Transportation Sector

This Subcommittee submitted a written and oral report during the meeting regarding the results of the survey conducted during 2014.

The members involved in both ADR sector Subcommittees will contact associations asking about their particular interests on ADR.

For further details, please see the Action Items at the end of the Minute.

Cultural activities

The day concluded with a visit to the National Museum of Anthropology.

Saturday, August 29, 2015

The Mexican government co-chair reviewed work plans for each Subcommittee for 2015-2016 and the Committee, acting Plenary, agreed the Action Items attached at the end of the Minute.

During the closing remarks of the meeting, some members expressed their ideas supporting the closure of the Legal Subcommittee in the sense that all what the Committee study are legal issues which are covered by the others Subcommittees.

The Mexican co-chair mentioned that in 1998 or 1999 the Committee published a brochure sponsored by the U.S. Department of Commerce and the Ministry of Economy of Mexico, and that it would be a good idea to publish an updated version of the brochure. Mexican co-chairs will email to other co-chairs the brochure for its distribution to the delegates (for further details about, please see the Action Items at the end of the Minute).

Government co-chairs agreed that the chairperson of each Subcommittee would be the host delegate of the meeting and will be in charge to follow up the intercessional work. Additionally, the government co-chairs may participate in the work of the Subcommittees through conference calls.

Regarding logistical issues, the members suggested that the meetings would be celebrated in cities where there is a significant development of arbitration and easily accessible places.

The Mexican co-chair appreciated the participation to all of those who came to Mexico and those who contributed in the realization of the meeting. Michael Coffee and Reuben East thanked the hospitality and the productive meeting.

Michael Coffee announced that the next meeting will be held in Washington D.C., USA during the summer.

Action Items

General agreements

- The government co-chairs will discuss and take a decision about the creation of a new subcommittee on other ADR with the inputs and recommendations of the Mediation Subcommittee.
- Each Subcommittee will draft its game plan on the topics for the next meeting.
- The chair of each Subcommittee will be the one where the meeting will take place on that year unless otherwise agreed.

1. Enforcement of Arbitral Awards Subcommittee

- Carlos McCadden will draft the mandate of the enforcement of arbitral awards Subcommittee (including the reference that will be posted in the Website Subcommittee). After approval of the mandate, Canada and U.S. will appoint members for the Subcommittee.

2. Arbitration Agreements Subcommittee

- The U.S. co-chair will provide to the other co-chairs comments on the two documents prepared by the Subcommittee.
- The other co-chairs will provide any additional comments.
- The co-chairs will return the documents, with comments, to the Subcommittee for update.
- The Subcommittee will update the documents and provide to the Committee for approval.

3. Outreach Subcommittee

- The Subcommittee will prepare a recommendation for the FTC about judicial training.
- The Subcommittee will seek input from the Committee in this draft. Co-chairs will then review the draft.

4. Mediation Subcommittee

- All members will provide comments and suggestions to the mediation Subcommittee in order to draft a work plan and submit it to the Committee for the next meeting.
- Government co-chairs will search in the historical library of the Committee the material related on mediation and conciliation, and then they will distribute it with all the members in order to assess and delineate the future works of the Subcommittee.

5. Website Subcommittee

- Upload Bill Horton's documents to the website after the co-chairs agree to the documents.

- Publication of Brochure: The website subcommittee will launch a first draft (deadline: three months for having comments and then circulate it).
- Mexico will circulate in electronic the brochure made by the Committee 2022 and after circulation, the parties have three months to comment and discuss it. After that, the co-chairs will circulate the final version in order to republish in the official languages of NAFTA.

6. Independent task forces on sectorial ADR

- Contact associations in order to see if they have a particular interest on ADR.
- For the next meeting, the Mexican delegation will draft a report about Arbitration in the Mexican Energy Sector.
