

NAFTA 2022 Meeting 2016

August 18, 2016

Attendees:

Canada	Mexico	United States
Yasmin Shaker, Co-Chair Selma Lussenburg Jeffrey Talpis Jean-Francois Roberge Tina Cicchetti Barry Michael Fisher David McCutcheon	Cindy Rayo Zapata, Co-Chair Cecilia Azar Cecilia Flores Carlos Loperena Carlos McCadden Francisco Gonzalez de Cossio	Michael Coffee, Co-Chair Tricia Smeltzer, Co-Chair Elizabeth Pocock Dana Nahlen James Nelson Phil Robbins Ann Ryan Robertson Dana Haviland Carolyn Lamm Observers: Bill Henning Judge Ted Borek Isis Isunza

The government co-chairs made opening remarks.

The Committee adopted the agenda without objections or discussion

The Committee adopted the minutes from 2015 Meeting, which had been approved intersessionally, without objections or discussion

Discussion of the Mission of the Committee

Committee members were invited to share their views regarding the mission of the Committee. After a lengthy discussion, members were encouraged to think about methods of work when the Committee considered future work. Some members thought that the Committee should have a number of Subcommittees covering many issues, while others considered the idea of having the Committee work on a fewer number of priority issues.

Legal Developments Reports

Members from each delegation reported on relevant legal developments in their countries. Copies of reports and presentations are attached to these minutes.

Subcommittees and Task Forces

Enforcement of Arbitral Awards Subcommittee:

Based on a request from the 2015 meeting, Carlos McCadden prepared a draft mandate for the Subcommittee. After brief discussion, the government co-chairs agreed to review and then provide to the Committee intersessionally for its review.

Action Items: Co-chairs will review the mandate within 60 days and then provide to Committee members for their review. The goal is to approve the mandate intersessionally.

Arbitration Agreements Subcommittee:

The co-chairs have almost completed their review of the documents prepared by this Subcommittee. Upon completion of the co-chair review, the documents will be provided to the Subcommittee. After Subcommittee review, full versions will be recirculated for intersessional approval. After approval, these documents will be included on the NAFTA 2022 website.

Action Items: Co-chairs will send revised documents to Subcommittee. The Subcommittee will review and make appropriate revisions. Upon revision, the Subcommittee will provide to the co-chairs for intersessional approval.

Outreach Subcommittee:

The Subcommittee reported that it is collecting information using surveys to better inform in-reach and outreach, and to encourage greater collaboration. The Committee also discussed the Subcommittee's draft recommendation to the Free Trade Commission (FTC) concerning judicial education.

Action Items:

- 1) Outreach/Inreach: the Subcommittee will recirculate survey to allow all to complete it and to include their names. Members will have 60 days to reply. Survey answers will be compiled into easy-to-read document and will be sent to co-chairs for circulation amongst Committee members only. The Subcommittee will explore if packet would also be helpful
- 2) FTC Recommendation: The new Judicial Subcommittee will seek information on judicial practices that are relevant to the proposed Recommendation. With such additional information, co-chairs will discuss the wording of the Draft FTC Recommendation and consider, among other things, removal of the words "in educating".

Task Force – Energy:

Francisco Gonzalez de Cossio reported on relevant developments in Mexico during the Legal Developments Reports. No next steps were discussed.

Task Force – Transportation:

The Task Force proposed that it partner with the Transportation Lawyer's Association. This proposal was approved. A draft letter to that Association was approved in principle, with the final text to be approved intersessionally.

Action Items: Co-chairs will review draft letter and provide feedback to the Task Force. The Task Force will review any comments and circulate letter for intersessional approval.

Mediation Subcommittee:

The Committee was reminded that the mandate for the Mediation Subcommittee was approved in 2015. The Subcommittee was to meet on August 19, 2016.

Website Subcommittee:

The Subcommittee reported that it is still looking for volunteers to help with some of the suggested updates. It is still collecting bios and will reach out to the new members to get these within the next 60 days.

Action Items: The Subcommittee will send e-mails in the next 60 days to relevant Committee members to collect bios. After collecting the bios, the Subcommittee will compile and send to co-chairs for approval. Co-chairs will approve the bios and return them to the Subcommittee for posting on the website.

Discussion of Arbitration-related Immigration Issues:

Carolyn Lamm presented a report identifying immigration problems relating to certain arbitrations. In particular, she noted that witnesses may have difficulty obtaining visas. The Committee decided to establish a Task Force to look into this issue. It was suggested that the Task Force should coordinate with the Temporary Entry Working Group established pursuant to Article 1605 of the North American Free Trade Agreement.

Action Items: The co-chairs will consult with the Temporary Entry Working Group to ascertain what work this Task Force might accomplish. The co-chairs will assign persons to work on the Task Force.

Discussion of Future Work:

Members of the Committee discussed possible future work by the Committee. The Committee established a Task Force to look at on-line alternative dispute resolution. At the next meeting of the Committee, Jeffrey Talpis will make a proposal on work in the area of prevention of disputes.

The Enforcement of Arbitral Awards Subcommittee, Outreach Subcommittee, Mediation Subcommittee, Judicial Subcommittee and the On-Line Alternative Dispute Resolution Task Force met. The following reports were then provided:

- 1) Enforcement of Arbitral Awards Subcommittee: The Subcommittee will review historical documents, monitor domestic activities and identify recurring issues.
- 2) Outreach Subcommittee: The Subcommittee will continue to look for speaking and writing opportunities.
- 3) On-Line Alternative Dispute Resolution Task Force: The Task Force will conduct an overview of existing programs, attempt to identify an existing institution that it might be willing to support or cooperate with a pilot program, and will identify relevant international rules.
- 4) Judicial Subcommittee: Viewing its mission as involving outreach, the Subcommittee will review the status of judicial education in the region, prepare a 1-2 hour course that could be included in an existing training program and look to ways to train judicial administrators. It

was suggested that this Subcommittee could coordinate with an organization such as the International Council for Commercial Arbitration.

5) Mediation Subcommittee: The Subcommittee prepared for its meeting on August 19.

Solely for purposes of discussion at the meeting, the following Subcommittee and Task Force assignments were made:

	Canada	Mexico	United States
Enforcement	Tina Cicchetti	Carlos McCadden	Ann Ryan Robertson
Outreach	Selma Lussenburg	Cecilia Azar	Phil Robbins Isis Isunza
Online ADR	Jean-Francois Roberge	Carlos McCadden	Dana Haviland
Judicial	David McCutcheon	Carlos Loperena	Jim Nelson Dana Haviland
Arbitration Agreements (did not meet)			
Mediation	Jeffrey Talpis	Cecilia Flores	Liz Pocock
Website (did not meet)	Kevin Banks		Liz Pocock
Transportation (did not meet)	Selma Lussenburg		Liz Pocock
Energy (did not meet)			
Immigration (did not meet)			

It was agreed that more than one member from each country may participate on any Subcommittee or Task Force. The co-chairs will identify Subcommittee and Task Force membership for the longer term.

One of the U.S. co-chairs summarized the decisions of the day, which are identified in these minutes.

August 19, 2016

The Committee and the International Council for Commercial Arbitration held an outreach/inreach event.

The Mediation Subcommittee met with members of the Committee present and invited to participate. The Subcommittee decided to identify relevant work occurring at the International Mediation Institute as well as other relevant entities. The Subcommittee will utilize this information to determine where research is needed.