

FOURTH MEETING

NAFTA ADVISORY COMMITTEE ON PRIVATE COMMERCIAL DISPUTES
November 14 and 15, 1996
Guadalajara, Jalisco

MINUTES

The NAFTA Advisory Committee on Private Commercial Disputes (Committee) convened its fourth meeting on November 14 and 15, 1996 in Guadalajara Jalisco. The meeting was co-chaired by Hugo Perezcano Díaz and Ricardo Ramírez Hernández of the Secretariat of Trade and Industrial Development (see Annex I for a complete list of attendees).

The meeting proceeded in accordance with the agreed agenda (attached as Annex II).

I. New Mexican Alternate Members

The Mexican co-chairs introduced the new Mexican alternate members to the Committee. The new alternate members have undertaken to participate actively in the future work of the Committee, in coordination with the principal members.

II. Reports of the Subcommittees

I. Promotion of the use of arbitration and other ADR (Subcommittee III)

Subcommittee III was asked to consider three issues: 1) assessment of the availability of education and training on arbitration and other ADR in the NAFTA region; 2) steps the Committee can take to enhance the promotion of arbitration and other ADR; and 3) means of disseminating the work of the Committee.

In regard to the availability of education and training programs on arbitration and other ADR, the Subcommittee pointed out that members often receive promotional information, such as flyers, notices or other publications, relating to programs and seminars on arbitration. In order to have a sample of the programs and seminars available, the Subcommittee proposed that all members collect such information for the next meeting.

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Subcommittee III also noted the need to acquaint judges in the three NAFTA countries with arbitration and other ADR. In this regard, the Subcommittee reported that there are institutions which conduct specific programs for judges on arbitration and mediation such as the Federal Judicial Center in the U.S. and the Canadian Institute for the Administration of Justice in Canada. The Subcommittee circulated information regarding these programs. It was noted that the benchbook on ADR prepared by the Arizona-Sonora judicial authorities could serve as a useful model for future compilation work. In addition the Subcommittee reported that there are institutions that have expressed interest in providing information on arbitration and other ADR to judges and working with the Committee in developing such programs. In this regard, the Government of Mexico has also contacted the Mexican Supreme Court and the High Court of Appeals for the Federal District in order to develop a program with each branch of the judiciary to acquaint judges with the objectives of the Article 2022 Committee and the recognition and enforcement of arbitral awards in Mexico.

In light of the above, there was consensus among members of the need to acquaint judges with arbitration and other ADR. Therefore, the Committee created a new subcommittee (VI) on liaison with the judiciary. It was agreed that Committee Co-Chairs will appoint special advisors to the Subcommittee that will include judges. The specific tasks for this Subcommittee are in an action plan (Annex III). In addition, members recommended that a seminar for the judiciary should be set one or two days before the Committee's next meeting.

With regard to promotion of arbitration and other ADR, and dissemination of the Committee's brochure and other materials, the Committee determined that it was necessary to refocus the promotion efforts. Accordingly, the Committee agreed that it was primarily necessary to promote the use of arbitration among: 1) small and medium-sized businesses engaged in, or considering engaging in, trade or investment in the NAFTA region, 2) in-house counsel, and 3) universities and other educational institutions. As to dissemination of the brochure and other material prepared by the Subcommittees, the Committee agreed that such dissemination should be aimed at the identified targeted audiences by electronic and other possible means. This work was assigned to Subcommittee III in the new action plan.

**2. Issues relating to enforcement of arbitration agreements and arbitral awards
(Subcommittee IV)**

Subcommittee IV was asked to continue to analyze enforcement issues in the three countries. The issues analyzed were: consolidation of related areas in a single arbitration, interim relief, discovery, liability of arbitrators, immunity from liability and court-ordered mediation.

The Subcommittee submitted a report which contained a detailed analysis of these issues in each country. The Committee decided that it would be useful to make a comparative study of these issues in the three countries. The Committee also considered that this Subcommittee should continue its analysis and assessment of existing laws and institutions for arbitration and other ADR. Thus, this Subcommittee will continue its work according to the new action plan.

3. Mediation/Conciliation (Subcommittee V)

This Subcommittee was established at the Phoenix meeting to examine mediation/conciliation as an alternate means of dispute resolution. The Subcommittee examined the following topics related to mediation/conciliation: definition of mediation/conciliation; laws and regulations dealing with mediation/conciliation; procedures and processes in use; and description, analysis and enforceability of mediation settlement agreements.

The Committee concluded that mediation/conciliation is recognized and used as a method for alternative dispute resolution in the NAFTA area. However, the Committee considered that further work was necessary for promotion, for elaboration of comparative studies on the subject, as well as for the analysis of enforcement and other issues relating to mediation/conciliation. Accordingly the Committee agreed that this Subcommittee shall continue its work in accordance with the new action plan.

III. Information from Governments

Article 707 Committee

The Mexican co-chairs informed the Committee of the status of the Advisory Committee on Private Commercial Disputes Regarding Agricultural Goods. This Committee has agreed

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V. Next Meeting

Canadian co-chairs offered to host the Committee's next meeting on June 16-17 in Montreal, Canada. There may also be a seminar for the judiciary on June 15.

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***List of Attendees
(Annex I)***

	<i>México</i>	<i>Canada</i>	<i>United States</i>
<i>Government</i>	<i>Co-chairs</i> <i>Hugo Perezcano Díaz</i> <i>Ricardo Ramírez Hernández</i> <i>Carla Tochijara</i>	<i>Co-chairs</i> <i>Valerie Hughes</i> <i>James Stringham</i>	<i>Co-chairs</i> <i>Susan Esserman</i> <i>Michael J. Matheson</i> <i>Jean Heilman Grier</i> <i>Jeffrey D. Kovar</i>
<i>Private members</i>	<i>José María Abascal Zamora</i> <i>Guillermo Aguilar Alvarez</i> <i>Miguel Estrada Sámano</i> <i>Carlos Loperena Ruíz</i> <i>José Luis Siqueiros</i> <i>Julio C. Treviño Azcué</i> <i>Claus von Wobeser</i>	<i>Cecil O.D. Branson</i> <i>Thomas C. Drucker</i> <i>Neil Gold</i> <i>David R. Haigh</i> <i>Selma M.</i> <i>Lussenburg</i> <i>Jeffrey Talpis</i>	<i>José I. Astigarraga</i> <i>José A. Cárdenas</i> <i>James H. Carter</i> <i>John M. Dickenson,</i> <i>III</i> <i>Debora Enix-Ross</i> <i>Rona R. Mears</i> <i>David W. Rivkin</i>
<i>Alternate Private members</i>	<i>Fernando Estavillo Castro</i> <i>César García Méndez</i> <i>Luis Enrique Graham Tapia</i> <i>Eduardo Medina Mora</i> <i>Fernando Villareal Gonda</i> <i>Ygnacio Reyes Retana</i>		

**AGENDA
(ANNEX II)**

**NAFTA ADVISORY COMMITTEE ON PRIVATE COMMERCIAL DISPUTES
November 14 and 15
Guadalajara, México**

Thursday, 14th

I. INTRODUCTION. 9:00

II. PRESENTATION OF NEW MEXICAN ALTERNATE MEMBERS.

III. REPORTS OF SUBCOMMITTEES.

- A. Subcommittee III: Promotion of the use of arbitration.*
- B. Subcommittee IV: Enforcement issues.*
- C. Subcommittee V: Mediation and other means of dispute resolution.*

Friday, 15th

IV. INFORMATION FROM GOVERNMENTS 9:00

- A. Advisory Committee on Private Commercial Disputes Regarding Agricultural Goods.*
- B. Plans for distribution of information about the Committee.*

V. OTHERS.

- A. Future work of the Committee.*
- B. Next Meeting.*
 - 1. Venue*
 - 2. Date*

**NEW ACTION PLAN OF THE COMMITTEE
(ANNEX III)**

Subcommittee III (Targeted Outreach)

Subcommittee III will be restructured to focus on targeted outreach. In consultation with the Subcommittee, the co-chairs of each Party will appoint up to 5 special advisors to assist the Subcommittee. The Subcommittee will focus, in particular, on:

- a) small and medium-sized businesses engaged in, or considering engaging in, trade or investment in the NAFTA region; and*
- b) in-house counsel.*

The Subcommittee should undertake the following, as appropriate:

- a) identify individuals and entities who comprise targeted audiences, and the means of contacting them, including through trade associations;*
- b) disseminate, to the targeted audiences, in coordination with Subcommittees IV and V, by electronic and other means, the brochure prepared by Subcommittee I and other relevant information, which includes the importance of planning for dispute settlement in negotiating contracts, the advantages and disadvantages of arbitration and mediation and other ADR mechanisms, the role and choice of institutions and choice of rules;*
- c) provide educational opportunities for the targeted audiences, including seminars and interactive on-line discussions;*
- d) explore with bar associations and other groups the formation of voluntary organizations to provide arbitration and mediation services for small international commercial claims;*
- e) explore the possibility of enhancing ADR education in universities and other educational institutions; and*
- f) develop recommendations for consideration by the Committee.*

Subcommittee IV (Enforcement Issues)

Subcommittee IV will undertake the following, as appropriate, in consultation with such outside experts as it deems necessary:

- a) prepare a comparative monograph on enforcement issues in the three countries, for possible publication in the Committee's name;*
- b) evaluate (and revise, as necessary) materials compiled by the Subcommittee for possible public dissemination, including by electronic means; and*
- c) develop recommendations for consideration by the Committee.*

Subcommittee V (Mediation/Conciliation)

To further its work on mediation/conciliation, Subcommittee V will undertake the following, as appropriate, in consultation with such outside experts as it deems necessary:

- a) prepare documents that:*
 - i) compare and contrast mediation/conciliation, in the three countries, and*
 - ii) explore legal issues related to mediation/conciliation, such as enforcement of mediation agreements, effects of combined mediation/conciliation processes and model clauses;*
- b) collect and analyze empirical information regarding the practice and use of mediation/conciliation by the business community;*
- c) prepare a summary of advantages and disadvantages of mediation/conciliation, especially in relation to arbitration, for public dissemination;*
- d) consider educational and promotional efforts regarding mediation/conciliation in coordination with Subcommittee III (Targeted Outreach), in particular electronic means, such as list servers and web pages, and examine the Committee's brochure to determine whether its treatment of mediation/conciliation is adequate, or whether a separate brochure should be prepared; and*

e) develop recommendations for consideration by the Committee.

Subcommittee VI (Liaison with the Judiciary)

A Subcommittee on Liaison with the Judiciary is established. In consultation with the Subcommittee, the co-chairs of each Party will appoint up to 5 special advisors, endeavoring to include at least one judge, to assist the Subcommittee. The Subcommittee will undertake the following, as appropriate:

a) consult with the relevant federal and state/provincial judicial authorities with regard to training;

b) develop, as necessary, and contribute information about ADR of international commercial disputes -- laws, methods and opportunities for application -- to judicial training programs at the federal and state/provincial levels;

c) prepare a reference book for judges -- federal and state/provincial -- that addresses issues involved in ADR of international commercial disputes;

d) assess the availability of court-related programs to aid in the resolution of small international commercial disputes, and analyze whether changes in laws are required;

e) enhance the opportunities for judges from the three countries to share and understand the commonality of their experiences, which could include fostering visits, seminars and dissemination of court decisions on ADR, including exploration of holding the first inter-judicial meeting at the next meeting of the Committee;

f) explore sources of funding for all of the above activities; and

g) develop recommendations for consideration by the Committee.