

**FIFTH MEETING**  
**OF THE**  
**NAFTA ADVISORY COMMITTEE ON PRIVATE COMMERCIAL DISPUTES**

**September 18 and 19, 1997**  
**Montréal, Québec, Canada**

**MINUTES**

The NAFTA Advisory Committee on Private Commercial Disputes ("Committee") convened its fifth meeting on September 18 and 19, 1997 in Montreal, Québec, Canada. The meeting was co-chaired by Valerie Hughes and James Stringham of Trade Law Division of the Department of Foreign Affairs and International Trade (see Annex I for a complete list of attendees).

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

**I. Reports of the Subcommittees**

**1. Subcommittee III: Targeted Outreach**

Subcommittee III was reconstituted at the last meeting, and was asked to examine, among other things, how the Committee could reach out to small businesses, universities and colleges, and in-house counsel.

The Subcommittee identified a number of potential targeted outreach activities:

- 1) forming a ASpeakers Bureau@ and a AWriters Bureau@ to disseminate ADR information;
- 2) co-sponsoring seminars, university and law faculty programs and other opportunities for disseminating ADR information;
- 3) obtaining assistance from Government offices to identify opportunities for co-sponsorship and for presentations by members of the Speakers and Writers Bureaux; and
- 4) developing specialized ADR programs directed to small contracts.

The Subcommittee provided an "Outline of Planned Activities", and asked for comments from the Committee.

The Subcommittee suggested that the Speakers and Writers Bureaux would be made up of members of the Committee, as well as persons (including non-lawyers) who were knowledgeable and interested in ADR. One issue that arose was how to ensure quality control of those who were not Committee members. One proposed solution was that the Committee should identify all candidates for the Bureaux. In addition, the Committee should monitor what engagements were being undertaken by the Bureaux.

As to fora for speaking engagements, it was suggested that the initial focus should be on existing, regional business fora. It was noted that while several such fora exist for Mexico-United States, and United States-Canada, there did not appear to be any for Mexico-Canada. In addition, it was noted that several business relationships are not limited on a geographical basis. It was also recalled that promoting ADR in universities, through core courses in law schools, would be an effective means of outreach.

There was some discussion as to who the target audience should be. One suggestion was that the focus should be less on the neutral, and more on the advocate, since many lawyers advising clients did not know enough about ADR. Others noted that small business persons rarely consulted lawyers when making a contract, and usually only consulted a lawyer when a dispute had arisen. It was suggested that the audience should be these small business entrepreneurs, and that the message be repeated, and kept to basics. It was also noted that lawyers may not be the best choice for speakers, as business persons may put more trust in another lay-person who is knowledgeable in ADR. Several Committee members commented that it seemed difficult to find Industry representatives willing to speak at the roundtable on outreach.

With respect to co-sponsorship, the Subcommittee noted that there were a number of opportunities for the Committee to extend its reach by co-sponsoring/facilitating/supporting seminars and other opportunities for disseminating information regarding ADR. While the Subcommittee recognized that there were some risks to co-sponsorship, it was thought that the benefits outweighed the disadvantages, and that the risks could be minimized by setting appropriate standards for co-sponsorship.

Turning to the development of a specialized ADR program directed to small contracts, the Subcommittee proposed exploring the possibility of developing a program that could be offered by ADR institutions alone, or by ADR institutions in conjunction with other organizations, such as trade associations, where the members of such organizations would be able to use such a program as a benefit of membership. It was noted that small businesses needed inexpensive ADR, or more precisely, that small disputes require inexpensive ADR. One member identified a

Quebec lawyer who had recently completed his PhD and who might be interested in doing some research on the topic of a specialized ADR program for small contracts. It was agreed that this person should be approached.

Committee members identified additional targeted outreach activities, including Internet fora. The Subcommittee undertook to revise the outline of planned activities, based on the discussion as well as the insights gleaned from the roundtable with business representatives (see section V below). The Subcommittee requested that Committee members: 1) identify potential speakers and writers for the Bureaux; and 2) identify potential fora for speaking engagements.

## **2. Subcommittee IV - Enforcement Issues**

Subcommittee IV reported that it had continued its analysis of enforcement issues in the three NAFTA countries. One element of the Subcommittee's action plan was the preparation of a comparative monograph on enforcement issues, for possible publication in the Committee's name. The Subcommittee reported significant progress in researching and writing on these issues, and it sought the views of the Committee on the form and scope of such a monograph. It noted that a publisher had expressed interest in the project.

Recalling the discussion on outreach, Committee members noted that it was important to identify the audience. It was suggested that there were two groups of constituents to educate: 1) advocates; and 2) business persons. It was noted that a comparative monograph for advocates was an ambitious project, and that it may be worthwhile to pass the project on to a university law faculty and students or to ask for their assistance. For the broader "outreach" audience, a simpler set of reference materials would be useful. It was agreed that this audience should be the focus of the Committee's efforts.

With respect to substantive issues on enforcement, the Subcommittee identified gaps in the existing international conventions dealing with the enforcement of foreign arbitral awards and the enforcement of agreements to arbitrate. It was noted that new bilateral and multilateral conventions were being considered to deal with these shortcomings. It was suggested that the Subcommittee could examine these issues further and could propose draft text for a new convention. In discussing this proposal, some Committee members noted that the strength of the New York Convention was its universality, and that adding a protocol to the Convention could result in a patchwork of coverage. As an alternative, it was suggested that the Subcommittee highlight the problems, and propose alternative solutions that could be raised in other fora, such as upcoming UNCITRAL meetings.

With respect to the liability of arbitrators, the Subcommittee noted that this issue had not been resolved in all jurisdictions, and could be addressed by a model statute. Finally, the

Subcommittee reported that a number of procedural issues had arisen after changes were made to the procedural rules of the Interamerican Commission on Commercial Arbitration.

### **3. Subcommittee V - Mediation/Conciliation**

Subcommittee V reported on two main areas of research:

- 1) the enforceability of agreements to mediate and of mediated settlements; and
- 2) a survey of studies on the efficacy of mediation in resolving private commercial disputes.

On the enforceability of agreements to mediate, the Subcommittee reported that there is no applicable international convention, and that the enforceability of these agreements depended largely upon domestic contract law. With respect to the enforcement of mediated settlements, the Subcommittee reported that again, there is no international convention, but concluded that the settlement should be binding under both the common law and civil law. The Subcommittee recommended that the Committee consider drafting model legislation to deal with the first issue, and drafting a model international agreement to deal with the second.

The Committee discussed these proposals at length. It was noted that the absence of a legislative framework in some ways made mediation less attractive, but that in contrast, enforcing agreements to mediate seemed to be contrary to the spirit of mediation and its consensual nature. It was observed that the New York Convention had been a catalyst to international commercial arbitration; a conventional framework for mediation might prove equally useful. It was also suggested that only an international convention could solve the problem of enforcing settlements, and that the Committee was in a unique position to recommend to the NAFTA Free Trade Commission that a convention was needed.

Some members expressed concern with devoting the Committee's time to the preparation of a model law and convention when outreach to the business community should be a priority. Experience had shown that model laws and conventions take a long time to prepare, and an even longer time to gain acceptance. It was suggested that a brochure on mediation would be a preferable next step, and that the Subcommittee could also examine what issues the model law and convention should address. A view was expressed, however, that without a legal framework, inviting business persons to use mediation as a means for dispute settlement was promoting a false hope, and that the Committee should proceed with the preparation of

brochures *and* a model law and convention at the same time. Another suggested that drafting clauses helped focus and crystallize the issues for debate; adding a paper discussing the draft clauses would also assist in promoting debate.

The Committee agreed that the Subcommittee should prepare a draft brochure on mediation for outreach, and prepare draft provisions governing international private commercial dispute mediation together with an analysis and discussion of those provisions.

With respect to its survey of studies on the efficacy of mediation in resolving private commercial disputes, the Subcommittee reported a paucity of such studies, and noted that there were none on such disputes in the international context. The Subcommittee reviewed several studies in other contexts, such as court-mandated mediation for civil suits. Surveys in the United States and Canada reported high rates of satisfaction. In Mexico, however, mediation is less popular; in areas where mediation is mandatory before a matter can proceed to trial, it is perceived as a formality.

#### **4. Subcommittee VI - Liaison with the Judiciary**

Subcommittee VI reported uneven results on the tasks set out in their action plan. For the United States, four judges - two federal, and two state - had agreed to act as advisors to the Subcommittee. In Canada, a request to the Canadian Judicial Council seeking assistance on how to proceed in arranging to have members of the judiciary serve as special advisors had been rejected, as the CJC concluded that acting as an advisor would not be something that a member of the Canadian judiciary should consider undertaking. Some Subcommittee members speculated that the CJC may have had some problems with the Subcommittee=s terms of reference and the role described for the special advisors. Mexico had also had difficulty in securing special advisors: the judiciary had been approached at the highest level, but did not seem interested in the project. It was suggested that the Mexican Government co-chairs should approach the Judiciary Council, which is responsible for judicial education.

The Committee discussed these events. It was noted that the Subcommittee=s action plan was not completely dependent on securing judicial advisors, and that aspects of the action plan could be pursued without them.

## **II. Information from Governments**

### **1. New Arbitration Centre in Mexico**

Mexico reported that a new arbitration centre had been established in Mexico: el *Centro de Arbitraje de Mexico* ("CAM"). Information brochures were distributed. CAM can be contacted by email at: [camex@data.net.mx](mailto:camex@data.net.mx), and on the Internet at: [www.camex.com.mx](http://www.camex.com.mx).

### **2. NAFTA Advisory Committee on Private Commercial Disputes Regarding Agricultural Goods**

Mexico reported on the meeting of the NAFTA Advisory Committee on Private Commercial Disputes Regarding Agricultural Goods, held in Mazatlan in February, 1997. At that meeting, industry representatives raised a number of issues concerning dispute settlement mechanisms for private agricultural disputes. It was noted that in contrast to the mechanisms set up under the U.S. *Perishable Agricultural Commodities Act* and the *Canada Agricultural Products Act*, Mexico does not have a special mechanism for the resolution of such disputes. Industry representatives also raised issues concerning standards, enforcement, and inspections.

At a subsequent meeting held in Washington D.C., it was agreed that a new dispute settlement mechanism was needed to address the concerns of this sector. A further meeting to be held in Anaheim will address the particulars of such a mechanism.

### **3. APEC Dispute Mediation Experts Group**

Canada reported that in 1994, the APEC leaders had agreed to examine the possibility of a voluntary consultative dispute mediation service, to supplement the WTO dispute settlement mechanism, and had set up an Experts Group on Dispute Mediation to conduct the research. The Experts Group met for the first time in June, 1995, and agreed to examine APEC dispute mediation under four broad headings:

1. Government-to-government dispute mediation;
2. Private-to-government dispute mediation;
3. Private-to-private dispute mediation; and
4. Avoidance of disputes through increased transparency.

The Experts Group met again in 1996 and in 1997. An "affirmation of principles" adopted by the Experts Group addresses themes familiar to the NAFTA 2022 Committee, in particular:

- (e) APEC members should be encouraged to work within the framework of existing international agreements and conventions for the resolution of disputes involving private parties and to adopt appropriate domestic legislative arrangements to give effect to the aims of these agreements and conventions, including adequate enforcement of them; and
- (f) priority should continue to be given to facilitating access to information on mediation, conciliation, and arbitration services available in member economies.

Paragraph (e) reflects a commitment undertaken by APEC member economies in the *Osaka Action Agenda* to:

- accede, where appropriate, by 1997 to international agreements (such as ICSID) for the settlement of disputes between governments and private entities,
- accede, where appropriate, by 1997 to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"), and
- facilitate and encourage the use of procedures for timely and effective resolution of disputes between private entities and governments.

At their most recent meeting, the Experts reviewed the individual action plans of the member economies and noted that most are parties to ICSID, and almost all have already acceded to the New York Convention.

The Experts' principal output for 1997 will be a guidebook on dispute mediation services available in APEC member economies for disputes between private parties and between private parties and governments. The guidebook is intended for the business community.

The guidebook is based on an outline and questionnaire prepared by an independent consultant. Member economies provided the consultant with answers to the questionnaire, and those replies had been compiled into a draft, entitled "International Commercial Disputes: A Guide to Arbitration and Dispute Resolution in APEC Members". It was noteworthy that the replies from the NAFTA Parties drew extensively on the work of the NAFTA 2022 Committee. A number of Committee members expressed interest in receiving copies of the guidebook when it is published.

#### **4. FTAA Dispute Settlement Working Group**

The United States reported that in the context of the Free Trade Area of the Americas process, a Dispute Settlement Working Group had been established to, among other things, "Exchange views, following internal consultations with the private sector, regarding mechanisms to encourage and facilitate the use of arbitration and other means of alternative dispute resolution

for the settlement of international commercial disputes." At the Working Group's first meeting, it decided to develop a list of domestic and international non-multilateral standards concerning dispute settlement measures in force in each Country.

### **III. Use of ADR in U.S. Corporations**

Deborah Enix-Ross presented a summary of a survey and report on the use of ADR among 1000 of the largest U.S. corporations, produced by Cornell University, Price Waterhouse LLP, and the Foundation for the Prevention and Early Resolution of Conflict (PERC). The survey showed that the vast majority of the corporations surveyed had used one or more ADR procedures in the last three years. The survey noted a number of important differences between mediation and arbitration: whereas mediation was predominantly triggered by the parties, used in most types of disputes, and perceived to provide some control of the process, arbitration, in contrast, was predominantly triggered by contract, was used in a narrow set of disputes, and parties noted concern regarding control of the process. The survey also registered some concern regarding the qualifications of ADR neutrals.

### **IV. Roundtable on Targeted Outreach with Industry Representatives**

Three representatives of small and medium-sized businesses in Canada and the United States accepted the Committee's invitation to participate in a roundtable discussion on targeted outreach:

**Mr. Erwin von Allmen** is the owner and CEO of World Technitrade Ltd., specializing in import and export management and representation. Until recently, Mr. von Allmen was also the owner and President of W.C. Smith, a confectionary production equipment manufacturer. For the past seventeen years, Mr. von Allmen has served as the Chairman of the Industry Sector Advisory Committee on Small and Minority Business for Trade Policy Matters, reporting to the Secretary of Commerce and the U.S. Trade Representative.

**Mr. Pierre Cleroux** is the Vice President, Québec, of the Canadian Federation of Independent Business (CFIB), specializing in policy analysis, financial analysis, and economic policy. Starting in the position of Research Assistant with the CFIB in 1986, and advancing to Senior Economist in 1990, Mr. Cleroux has been responsible for research activities on major economic policy issues for the CFIB.

**Mr. Jacques Morin** is the eastern sales manager for the Rayco Technology Group, responsible for sales of Rayco's electronic safety systems in the eastern United States and Central and South America.



By way of introduction, the Committee recalled that its terms of reference include the promotion of the use of arbitration and other procedures for the resolution of private international commercial disputes in the NAFTA region, including ways to increase private sector awareness of the benefits of using ADR.<sup>6</sup> This captured the theme of the roundtable: how can the Committee reach out to the business community, and increase their awareness of ADR?

The roundtable commenced with short presentations by each of the representatives. The Committee invited the representatives to provide their insights on the problems small and medium-sized businesses encounter in international business dealings, and their concerns regarding resolving disputes that may arise in international business.

Mr. von Allmen suggested that there are a number of reasons why some businesses are small. Among the positive reasons are the abilities of small businesses to provide high levels of personal service and to serve niche markets. In addition, many businesses are small simply because they are just at the beginning of their development.

He noted that small businesses have limited capacity for risk. Risk is also highly personalized: frequently, it is the entrepreneur's capital that is at stake. Consequently, small businesses take care to minimize risk. For example, in his candy machinery manufacturing business, they sold on confirmed lines of credit.

He observed that dispute resolution presents a significant impediment to small businesses: it is slow, costly, and inequitable, resulting in an opportunity cost that is frequently too great to bear.

Mr. von Allmen made three observations about small businesses and ADR. First, he noted that small firms frequently deal with big firms. As an example, his candy machinery manufacturing firm frequently sold to large candy manufacturers such as Laura Secord in Canada, and Azteca in Mexico. Second, he predicted that the most frequent users of ADR would be big businesses involved in small scale disputes. Third, he suggested that enforcement was a critical issue for small businesses. Recalling the U.S. television program *The People's Court*,<sup>7</sup> he suggested that there was a need for a *People's Court* to deal with small scale disputes that arose in international commercial transactions. In summary, he proposed three essential criteria for ADR: it must be fast, cheap, and equitable.

Mr. Cleroux suggested four criteria for ADR. First, awareness of ADR in the small business community is essential: a lack of ADR knowledge may be hindering small enterprises from engaging in international commerce. He noted that when small businesses do engage in it, their first bad experience in attempting to resolve a cross-border commercial dispute frequently marks their last attempt to export. Second, ADR must be fast. Small businesses cannot afford to wait months or years for a resolution: they need to know how much money they will lose as a result

of a dispute. Third, ADR must be fair, or at least perceived to be fair. Fourth, it must be consistent.

Mr. von Allmen agreed that the average small business entrepreneur is not aware that ADR is available for international business transactions. Referring to a common problem in such transactions - collection of bills - he asked whether international ADR settlements were enforceable.

The floor was then opened for questions from Committee members. One member asked what are the best means for promoting ADR in the small business community.

Mr. von Allmen observed that entrepreneurs cannot afford the time to attend half day seminars on ADR. He favoured promotion through government publications, trade associations, and chambers of commerce.

Mr. Cleroux agreed that seminars on ADR alone would not be attractive to small businesses, but suggested that seminars provided to small businesses on "how to export" should include an introduction to ADR for international commercial disputes.

Mr. Morin noted that Rayco=s contracts did not, at present, include provisions for ADR, and suggested that it was important that the lawyers advising small businesses know about ADR; the lawyers could be informed through a comprehensive advertising campaign.

Mr. von Allmen observed that contracts between small businesses are often "bare bones", if they are even reduced to writing. In contrast, contracts between small and large businesses were frequently written by the large businesses in terms that the small businesses were unable to understand. As for the best means to reach small businesses, he suggested that ADR promotional materials should be provided to small businesses that attend export trade fora. Those materials could also be included in "mailouts" to exporters. In addition, he observed that small business entrepreneurs are more likely to trust other small business entrepreneurs (in contrast to lawyers), suggesting therefore that the most persuasive spokespersons for ADR would be business persons that had used ADR successfully.

One Committee member questioned whether there was an irreconcilable difference between lawyers and small business entrepreneurs.

Mr. von Allmen replied that the difference was not irreconcilable, and that lawyers had an important function. Mr. Cleroux noted, however, that the scale of exports for small exporters made legal advice a practical impossibility: for example, a meat exporter shipping twenty to fifty thousand dollars of meat per transaction could not afford to seek legal advice on each transaction.

Another Committee member wondered whether the small business community was aware of the difference between arbitration and mediation.

Mr. Morin replied that there was little knowledge, if any. Mr. Cleroux observed that most of the disputes arising for small business exporters fell into two categories: first, disputes over collecting payments, and second, disputes over the quality/specifications of products supplied. He suggested that significant sources of information for small enterprises are their networks of similarly-situated companies. For example, in Quebec, trade associations provide an excellent opportunity for companies to share experience and information regarding the export market. He suggested putting ADR on the agendas of trade association meetings. He also suggested targeting the trade literature: small business persons do not have time to read the newspaper, but they do read magazines related to their businesses and trade association circulars.

Mr. von Allmen observed that while it was important to target those who were already exporting, it was also important to educate small business entrepreneurs who would export if they could be convinced that ADR would lower the risks involved in international commercial transactions. He suggested that the Internet could be a useful means of promoting ADR. Mr. Cleroux agreed that more and more small businesses were looking to the Internet for information, but at present, only about 20% of CFIB members have Internet access.

Returning to the issue of enforcement, one Committee member questioned whether an exporter would trust a foreign court and asked who could constitute a People's Court for international commercial disputes.

Mr. Cleroux suggested that small businesses would put the most faith in a mechanism that was set up and endorsed by the governments of the three NAFTA parties. Mr. von Allmen agreed that getting the three governments to set up a tribunal to deal with cross-border enforcement would be helpful, and suggested that NAFTA would be a good opportunity to accomplish this.

Another Committee member questioned whether the issue of cost would deter small businesses from using ADR.

Mr. von Allmen replied that he thought ADR was cheap, but that the real issue was whether it

was enforceable.

As the roundtable drew to a close, some Subcommittee III members observed that the industry representatives had, in part, confirmed the approach suggested by the Subcommittee for targeted outreach. In particular, it was important for the Committee to go to the *small businesses* - attend their seminars and their trade association meetings - to promote ADR. In addition, it was essential to keep the message basic. Members also remarked that a number of new ideas had emerged, such as engaging small business entrepreneurs to promote ADR to other small businesses.

Overall, the Committee members agreed that the roundtable had been a worthwhile exercise, and the industry representatives were thanked for their kind and generous assistance to the Committee.

#### **V. Future Work of the Committee**

The Committee agreed on new action plans for the subcommittees (see Annex III).

#### **VI. Next Meeting**

The United States offered to host the Committee's next meeting on March 16 and 17, 1998, in Miami Beach, Florida.

## ANNEX I

### List of Attendees

	México	Canada	United States
Government	Co-chairs: Hugo Perezcano Díaz Ricardo Ramírez Hernández  Assistant: Carlos Véjar	Co-chairs: Valerie Hughes James Stringham  Assistant: Linda Young	Co-chairs (acting): Jean Heilman Grier Jeffrey D. Kovar
Private members	José María Abascal Zamora Guillermo Aguilar Alvarez Carlos Loperena Ruíz	Nabil Antaki Cecil O.D. Branson Thomas C. Drucker Neil Gold David R. Haigh Robert Hall Selma Lussenburg Jeffrey Talpis	José A. Cárdenas James H. Carter Deborah Enix-Ross Rona R. Mears Dana G. Nahlen Richard Page David W. Rivkin Philip A. Robbins
Alternate Private members and Guests	Luis Enrique Graham Tapia Raul Medina Mora Alejandro Ogarrio Ramírez España Eduardo Siqueiros	Martin Ertl	

## **ANNEX II**

### **NAFTA ADVISORY COMMITTEE ON PRIVATE COMMERCIAL DISPUTES**

18 - 19 September 1997  
Montréal, Québec, Canada

#### **MEETING AGENDA**

##### **Thursday, 18 September**

1. Introduction and Welcome
2. Reports of Subcommittees and Discussion (4 hr.)

Subcommittee III: *Targeted Outreach*

Subcommittee IV: *Enforcement Issues*

Subcommittee V: *Mediation/Conciliation*

Subcommittee VI: *Liaison with the Judiciary*

3. Government Reports on Related ADR Activities (0.5 hr)

Arbitration Centre of Mexico

Advisory Committee on Private Commercial Disputes regarding Agricultural Goods

APEC Dispute Mediation Experts Group

FTAA Dispute Settlement Working Group

4. Use of ADR in U.S. Corporations (0.5 hr)  
Price Waterhouse - Cornell University Study

**Friday, September 19**

5. "Targeted outreach" roundtable with industry representatives (2 hr.)
6. New Work Program (1.5 hr.)
7. Next Meeting (0.5 hr.)
  1. Venue (United States)
  2. Date
8. Closing Remarks

### **ANNEX III**

#### **Subcommittee III (Targeted Outreach)**

The goals of Subcommittee III include targeted outreach to small and medium sized businesses and to in-house counsel. Subcommittee III intends the following plan of work to accomplish such goals, listed in order of priority:

1. Identify trade associations, small business organizations, chambers of commerce and other business organizations, as well as law-related organizations and institutions, within the three NAFTA countries that are appropriate to reach the targeted audiences, and contact each:
  - A. Offering to provide speakers and written materials, including brochures prepared by the Committee, regarding the importance of planning for dispute settlement, the advantages and disadvantages of arbitration, mediation and other ADR mechanisms, the role and choice of ADR institutions and rules, methods for dispute avoidance and other relevant matters.
  - B. To determine whether such organizations have newsletters or may identify other publications through which the Committee might disseminate similar information on dispute settlement of interest to the small business community and in-house counsel.
  - C. Identifying appropriate speakers and authors of such materials for presentation to the targeted audiences, with an emphasis on seeking participation by knowledgeable members of the small business community in making such presentations, as well as members of the Committee and other appropriate legal professionals.
  - D. To arrange for the publication or distribution of such materials and to schedule speakers.
2. Develop speakers= notes and article outlines to facilitate such presentations.
3. Make recommendations, where the Subcommittee determines appropriate, to the government co-chairs of the Committee for Committee co-sponsorship of conferences, seminars and other programs or publications aimed at delivering information regarding ADR to the target audiences.



4. Track presentations and publications by Committee members, and others arranged or co-sponsored by the Committee, regarding ADR and available to the targeted audiences in order to allow for measurement and verification of the efforts of the Committee in reaching the targeted groups.
5. Explore methods of use of the Internet and other electronic means to reach the small business community for delivery of information and materials regarding ADR.

**Subcommittee IV (Enforcement Issues)**

The Subcommittee will undertake the following, as appropriate:

1. Prepare a short brochure or brochures, appropriate for public dissemination, including by electronic means, on the process of enforcing agreements to arbitrate and arbitral awards in the NAFTA countries;
2. Continue to evaluate and if appropriate develop a fuller monograph on enforcement issues with the three countries, in collaboration with academic specialists;
3. Continue to evaluate and assist in efforts to publish collections of arbitration legislation and other materials in the NAFTA countries; and
4. Continue to report to the Committee on developing legal issues involving enforcement, and develop recommendations for consideration by the Committee.
5. Prepare a preliminary examination of new modalities for trilateral resolution of small claims in international commercial disputes.

**Subcommittee V (Mediation/Conciliation)**

The Subcommittee will undertake the following, as appropriate:

1. Prepare a draft brochure aimed at the consumers of mediation services setting out the main elements and advantages of mediation to resolve private international commercial disputes.
2. Explore legal frameworks for the mediation of international private commercial disputes and in particular prepare draft provisions governing international private commercial dispute mediation with an analysis and discussion of the reasons for and advantages and disadvantages of the various elements. The provisions and discussion will deal with the following among other issues:
  - enforceability of the agreement to mediate
  - enforceability of the settlement agreement.
3. Consolidate the work of the Committee on the state of the law relating to mediation in the three countries.
4. Consider its future work plan -- e.g.
  - mediation protocols
  - mediator selection
  - mediation in transaction management
  - communication and other devices for dispute prevention.

**Subcommittee VI (Liaison with the Judiciary)**

The Subcommittee will undertake the following, as appropriate:

- (a) Explore the nature of information about ADR of international commercial disputes -- laws, methods and opportunities for application -- that is or could be included in judicial training programs at the federal and state\provincial levels;
- (b) If appropriate, consider preparation of materials that may be helpful to judges -- federal and state\provincial -- concerning issues involved in ADR of international commercial disputes;
- (c) 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;
- (d) Enhance the opportunities for judges from the three countries to attend seminars on ADR and to share the commonality of their experiences relating to ADR; and
- (e) Develop recommendations for consideration by the Committee.

The Subcommittee may consult with relevant federal and state\provincial judicial authorities in order to achieve these objectives.