

**NAFTA 2022 COMMITTEE  
2013 ANNUAL REPORT OF THE  
TASK FORCE ON SECTORAL ADR FOR THE TRANSPORTATION INDUSTRY**

This Report includes a summary of the work completed by the Task Force in the last year.

1. Baseline Study on the Transportation of Goods between the NAFTA countries excluding fruits and vegetables (Completed by NLCIFT for reference). Study includes:
  - a. Analysis of the most traded non-agricultural goods within the NAFTA countries and their modes of transportation
  - b. Overview of the key players involved in cross-border transportation transactions
  - c. Update on the U.S.-Mexico Cross-Border Trucking Pilot Program
  
2. Update on International Transportation Survey
  - a. Summary of Revisions
  - b. Summary of Research Process
  - c. Summary of Transportation Survey Responses
    - 1) Transportation Survey Responses in their Entirety
    - 2) List of Transportation Survey Contacts
    - 3) Copy of Transportation Survey (English and Spanish)

# **1. BASE-LINE STUDY ON GOODS TRANSPORTED BETWEEN THE NAFTA COUNTRIES (EXCLUDING FRUITS AND VEGETABLES)**

## **Prepared as Reference Material by the National Law Center for Inter-American Free Trade**

This study focuses on factors that impact the transportation of goods between the NAFTA countries. When gathering the baseline information, the NLCIFT focused on three main areas: a) an evaluation of the volume and preferred mode of transportation for non-agricultural goods within the NAFTA countries; b) a review of recent statistics from the U.S.-Mexico Cross-Border Trucking Pilot Program; and c) an overview of the key players within the transportation industry.

### **a. Analysis of the Most Traded Non-Agricultural Goods within the NAFTA Countries**

As part of the NLCIFT's baseline study, it was determined it would be useful to analyze the transportation methods and trade of the top goods passing between the three NAFTA countries. This Section presents specific statistics for the top four non-agricultural goods traded between the NAFTA countries. Disputes arising from or in relation to the cross-border transportation of produce (fruits and vegetables) are typically resolved through the Fruit and Vegetable Dispute Resolution Corporation. As such the transportation of fruits and vegetables in the NAFTA region is outside of the scope this analysis.

In 2011, of the non-agricultural goods traded between Canada, Mexico and the United States, the following categories produced the most trade, in descending order: mineral fuel and oil, vehicles, machinery and electrical machinery. For each of these categories, this Section will present statistics showing the total dollar amount of goods traded between the NAFTA countries as well as the specific dollar amounts of exports sent between each of the NAFTA countries for each category of goods. All dollar amounts used in this Section are presented in U.S. dollars. All data related to these import and export totals for the United States came directly from the Office of the United States Trade Representative's website on the country pages of Canada<sup>1</sup> and Mexico.<sup>2</sup> All data related to trade between Canada and Mexico came from the Parliament of Canada's website<sup>3</sup> and from e-mail communications with the Enquiry Services Department of the Foreign Affairs and International Trade Canada (Office of the Chief Economist).<sup>4</sup>

Individually, exports from Canada to the U.S. of Mineral Fuel and Oils ranked highest totaling \$100 billion. This was followed by the export of Electrical Machinery from Mexico to the U.S. equaling \$54.3 billion and of Vehicles from Canada to the U.S. equaling \$50 billion. Overall,

---

<sup>1</sup> U.S.-Canada Trade Facts, Office of the United States Trade Representative, *available at* <http://www.ustr.gov/countries-regions/americas/canada>.

<sup>2</sup> U.S.-Mexico Trade Facts, Office of the United States Trade Representative, *available at* <http://www.ustr.gov/countries-regions/americas/mexico>.

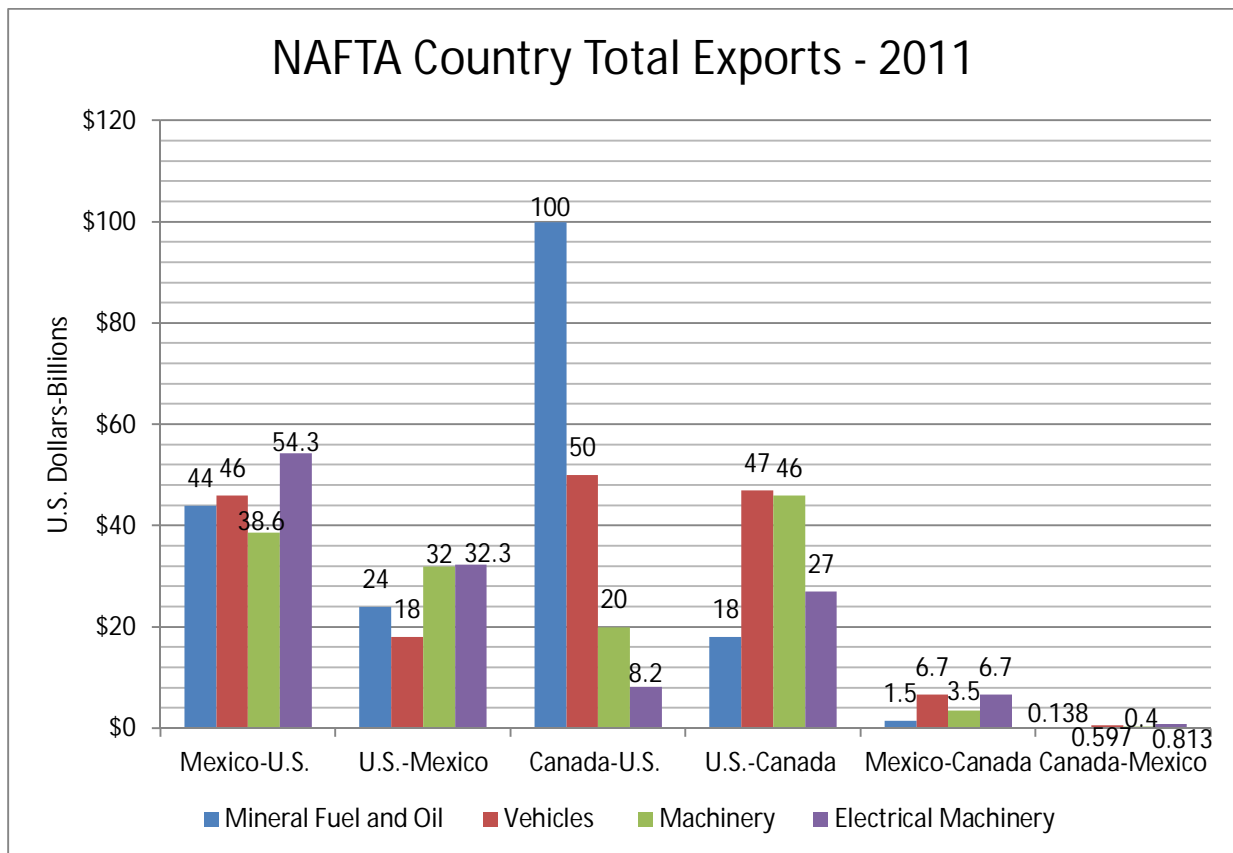
<sup>3</sup> Parliament of Canada, Canadian Trade and Investment Activity: Canada-Mexico, *available at* <http://www.parl.gc.ca/Content/LOP/ResearchPublications/2012-60-p-e.htm>.

<sup>4</sup> E-mails Communications with Rick Cameron, [tradestats,bea@international.gc.ca](mailto:tradestats,bea@international.gc.ca), Enquiry Services, Foreign Affairs and International Trade Canada (Office of the Chief Economist), to Adalberto Elias, [natlaw@natlaw.com](mailto:natlaw@natlaw.com), Intern, National Law Center for Inter-American Free Trade (June 7 and 10, 2013) (all emails on file with NLCIFT).

total exports of Mineral Fuel and Oil at \$187.6 billion made it the highest traded category of goods between the three countries. Electrical Machinery ranked the lowest of the four categories with a total of only \$129.3 billion. The following table and graph show the total exports of these four categories between each NAFTA country for 2011.

**TOTAL EXPORTS  
CANADA-MEXICO-UNITED STATES, 2011  
U.S. DOLLARS – BILLIONS**

	Mineral Fuel and Oil	Vehicles	Machinery	Electrical Machinery
<b>Mexico-U.S.</b>	44	46	38.6	54.3
<b>U.S.-Mexico</b>	24	18	32	32.3
<b>Canada-U.S.</b>	100	50	20	8.2
<b>U.S.-Canada</b>	18	47	46	27
<b>Mexico-Canada</b>	1.5	6.7	3.5	6.7
<b>Canada-Mexico</b>	0.138	0.597	0.4	0.813
<b>Totals</b>	<b>187.638</b>	<b>168.297</b>	<b>140.5</b>	<b>129.313</b>



Additionally, this Section includes data concerning the transportation method used by each country when importing and exporting their goods between the NAFTA countries. The dollar amounts and transportation statistics for goods coming into or leaving the U.S. are the result of multiple searches using the Research and Innovation Technology Administration Bureau of

Transportation Statistics, North American Transborder Freight Data Main Search Page.<sup>5</sup> The remainder of statistics concerning transport to and from Canada come again from e-mail communications with the Enquiry Services Department of the Foreign Affairs and International Trade Canada. From these collections of data, conclusions are drawn as to the preferred method of transportation for each of these categories of goods between the NAFTA countries.

### **i. Mineral Fuel and Oil**

The Harmonized Tariff Schedule of the U.S. (hereinafter HTS) is a categorical system managed by the U.S. International Trade Commission that contains descriptions of all goods in trade in order to monitor the imposition of tariffs and quotas.<sup>6</sup> All goods imported and exported by the NAFTA countries belong to a category within this system and, therefore, the categories of goods identified in this Report are consistent with the Chapters of the HTS. Of the non-agricultural goods traded by the NAFTA countries, those belonging to the “mineral fuel and oil” category generated the most trade in terms of dollar value.<sup>7</sup> HTS Chapter 27 defines this category to include articles such as coal, benzene, petroleum oils and oils obtained from bituminous minerals, crude, and petroleum gases.<sup>8</sup>

In 2011, the trade of mineral fuel and oil goods between the NAFTA countries amounted to almost \$200 billion worth, with trade between Canada and the U.S. accounting for \$120 billion of this amount. Of the three countries, Canada was the largest exporter of mineral fuel and oil, exporting more than \$100 billion worth of the goods to the U.S. It is worth noting that \$70 billion worth of mineral fuel and oil was transported using pipelines, \$20 billion by ocean vessel, \$4 billion by train and the remainder either by truck or air. Alternatively, the U.S. exported only \$18 billion worth of mineral fuel and oil to Canada in 2011. Exports worth \$6 billion were transported by pipeline, another \$6 billion by ocean vessel and the remainder was transported by either by truck or train.

In comparison, only \$67 billion worth of mineral fuel and oil goods was traded between Mexico and the U.S. in 2011. Mexican exports to the U.S. of these goods amounted to \$44 billion and were transported almost entirely by ocean vessel (\$43 billion). On the other hand, U.S. exports of mineral fuel and oil to Mexico amounted to \$24 billion. Again ocean vessels were the principal mode of transport, accounting for \$17 billion worth, while \$3 billion worth was transported by pipeline, \$2 billion by truck and the remainder through other means.

Finally in sharp contrast, the trade of mineral fuel and oil in 2011 between Mexico and Canada was relatively insignificant and amounted to less than \$2 billion. Mexican exports of mineral fuel and oil to Canada totaled \$1.5 billion and of this, \$1.3 billion worth was transported by truck

---

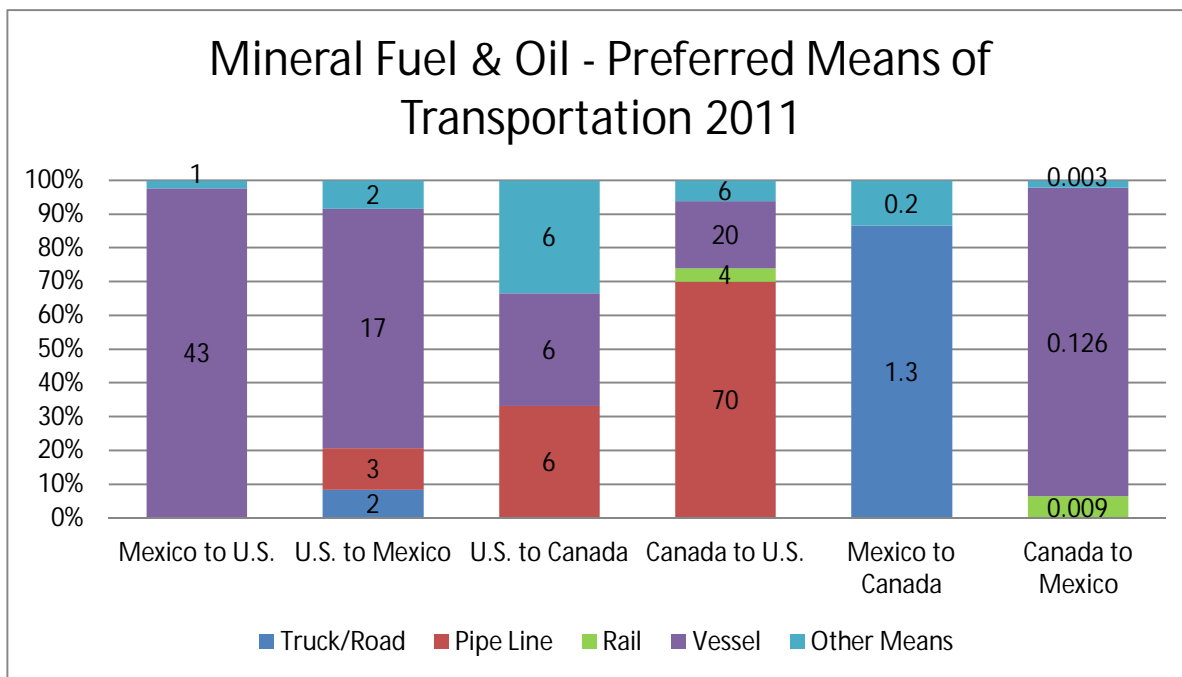
<sup>5</sup> North American Transborder Freight Data Main Search Page, North American Transborder Freight Data, including Port, Commodity, or State Origin/Destination, Research and Innovation Technology Administration Bureau of Transportation Statistics. available at [http://transborder.bts.gov/programs/international/transborder/TBDR\\_QA.html](http://transborder.bts.gov/programs/international/transborder/TBDR_QA.html).

<sup>6</sup> *About the Harmonized Tariff Schedule*, Tariff Affairs Information Center, United States International Trade Commission, available at [http://www.usitc.gov/tariff\\_affairs/about\\_hts.htm](http://www.usitc.gov/tariff_affairs/about_hts.htm)

<sup>7</sup> *Mineral Fuels, Mineral Oils and Products of their Distillation; Bituminous Substances; Mineral Waxes*, Chapter 27, Harmonized Tariff Schedule of the United States, (2013), available at <http://www.usitc.gov/publications/docs/tata/hts/bychapter/1300C27.pdf>

<sup>8</sup> *Id.*

or road with the remainder transported by other means. On the other hand, Canadian exports of this commodity to Mexico amounted only to \$138 million worth, with \$126 million transported by vessel, \$9 million by rail, and the remainder was by other means. The following graph compares the modes of transportation used by each country to export mineral fuel and oil within the NAFTA region.



As evident from the statistics and the graph above, the export and import of mineral fuel and oil between Mexico and the U.S. was conducted primarily through the use of ocean vessel transportation. This is also true for the mineral fuel and oil entering Mexico from Canada. Alternatively, the transport of mineral fuel and oil between Canada and the U.S. placed much more of a preference on the use of pipelines. This difference is likely related to the sheer volume of mineral fuel and oil being exported from Canada to the U.S. and therefore, the availability of a stronger support infrastructure.

## ii. Vehicles

Chapter 87 of the HTS defines the category of “vehicles” to include goods such as cars, pedestrian controlled tractors, road tractors for semi-trailers, log-skidders, motor vehicles designed to transport more than sixteen people, snow mobiles, golf carts, off-road vehicles, motor homes, ambulances, etc.<sup>9</sup>

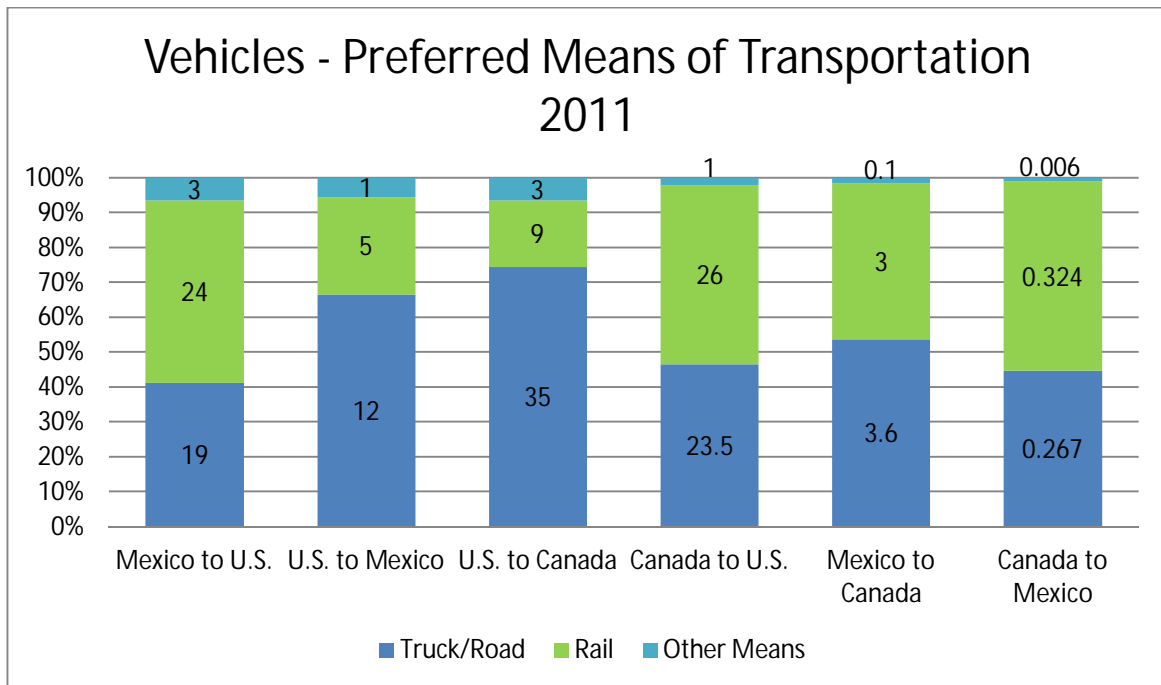
The trade of vehicles between the NAFTA countries in 2011 amounted to \$170 billion, making vehicles the second largest category of non-agricultural goods traded within the three countries.

<sup>9</sup> *Vehicles other than Railway or Tramway Rolling-Stock, and Parts and Accessories Thereof*, Chapter 87, Harmonized Tariff Schedule of the United States, (2013), available at <http://www.usitc.gov/publications/docs/tata/hts/bychapter/1300c87.pdf>

Of this, almost \$100 billion was traded only between the U.S. and Canada with the U.S. exporting almost \$47 billion worth of vehicles to Canada in 2011. Of these vehicle exports, \$35 billion worth was transported by truck or road, \$9 billion by train and the remainder was transported by other methods. In comparison, Canada exported \$50 billion worth of vehicles to the U.S. in 2011. Of these, \$26 billion worth was transported by train, \$23.5 billion by truck or road and the remainder by other methods.

Alternatively, the trade of vehicles between Mexico and the U.S. amounted to \$64 billion in 2011. Most of this trade originated in Mexico, with exports to the U.S. equaling \$46 billion. These exports were mainly transported by rail (\$24 billion) and truck or other road transportation (\$19 billion) with only \$2 billion worth transported by ocean vessel and the remainder was transported by other methods. On the other hand, U.S. exports to Mexico equaled only \$18 billion. Of these exports, \$12 billion worth were transported by truck, \$5 billion by rail, and the rest were transported either by air or ocean vessel.

Comparatively, in 2011, the trade of vehicles between Canada and Mexico was not as significant. Overall, Mexico exported \$6.7 billion worth of vehicles to Canada. Of these exports, \$3.6 billion worth was transported by truck or road, \$3 billion by rail and the remainder was transported by other means. Canada, on the other hand, exported even less, transporting only \$597 million worth of vehicles to Mexico. Of these exports, \$267 million worth of vehicles were transported by truck or road, \$324 million by rail and the remainder by other means. The following graph compares the methods of transportation used by each country to export vehicles within the NAFTA region.



Unlike goods transported within the mineral oil and fuel category, goods belonging to the vehicle category were transported mainly through the use of truck or road transportation and rail. The export of vehicles from the U.S. favored truck or road transportation slightly more than rail

transport while the import of vehicles to the U.S. from Canada and Mexico relied more on rail than truck or road. The transport of vehicles between Canada and Mexico was also primarily conducted through the use of truck or road and rail. This difference could be related to the cross-border trucking regulations of the U.S. These transportation methods are important to note as the Task Force continues to search for contacts within the transportation industry.

### iii. Machinery

Chapter 84 of the HTS defines the category of “machinery” to include a variety of goods such as aircraft engines and parts, fuel pumps, lubricating pumps, submersible pumps, air or vacuum pumps, air conditioning machines, bakery ovens, refrigerators, freezers, icemakers, solar water heaters, cooking stoves, dishwashers and parts, jacks, and elevators.<sup>10</sup>

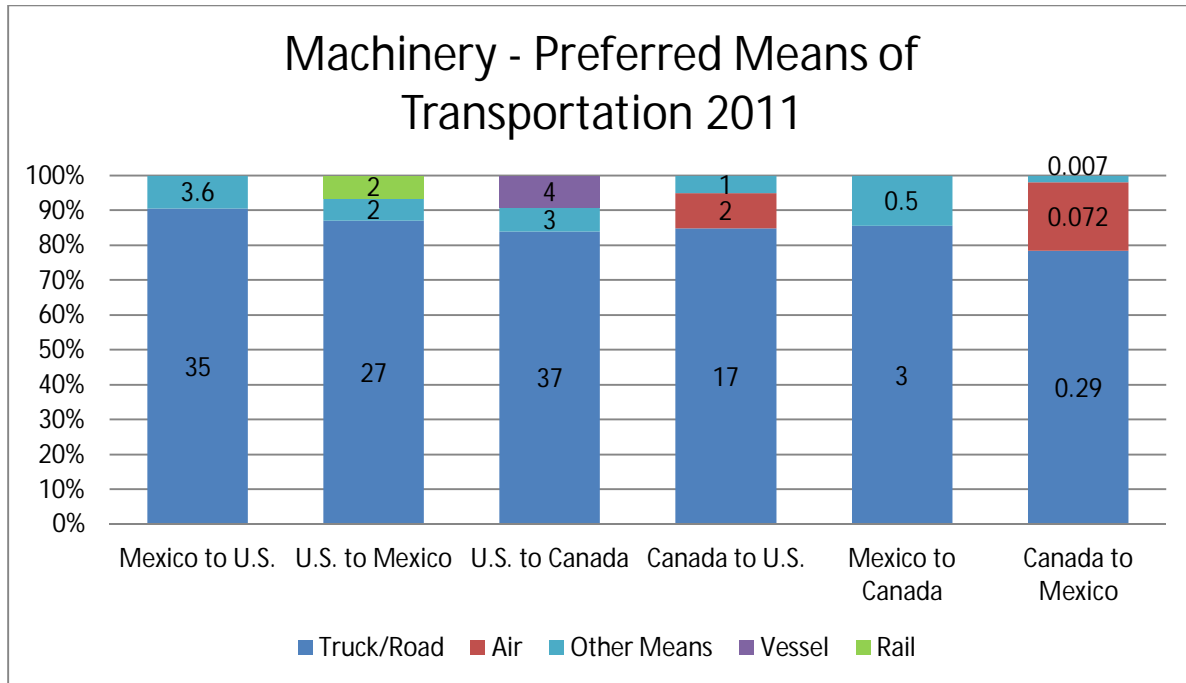
In 2011, the trade of machinery amounted to more than \$130 billion between the NAFTA countries. The greatest exporter of these types of goods was the U.S., exporting over \$75 billion worth of machinery goods to Canada and Mexico. U.S. exports to Mexico alone amounted to \$32 billion, of which \$27 billion worth of machinery was transported by truck or road, \$2 billion by rail, and the rest by either air or ocean vessel. On the other hand, Mexican exports of machinery to the U.S. amounted to \$38.6 billion. Of note, \$35 billion of this machinery was transported by truck or road and the remainder either by air, vessel, or train.

Alternatively, the U.S. exported \$46 billion worth of machinery to Canada in 2011. Of these exports, \$37 billion worth was transported by truck or road, \$4 billion by air and the remainder either by vessel or train. Exports of machinery from Canada to the U.S. equaled only \$20 billion, of which \$17 billion was transported by truck or road, almost \$2 billion by air and the remainder either by train or ocean vessel.

In comparison, there was less of an exchange of machinery between Mexico and Canada in 2011, with the total trade of machinery between the two countries not surpassing \$4 billion. Canada exported less than \$400 million worth of machinery goods to Mexico, transporting approximately 75% by truck, 18% by air, and the rest by other means of transportation. On the other hand, Mexico exported \$3.5 billion worth of machinery to Canada in 2011, transporting the vast majority (\$3 billion) by truck and the rest by other means. The following graph compares the methods of transportation used by each country to export machinery within the NAFTA region.

---

<sup>10</sup> *Nuclear Reactors, Boilers, Machinery and Mechanical appliances; parts thereof*, Chapter 84, Harmonized Tariff Schedule of the United States, (2013), available at <http://www.usitc.gov/publications/docs/tata/hts/bychapter/1300c84.pdf>



As was the case for the trade of vehicles, the preferred method of transportation for machinery the three NAFTA countries was truck or road transportation. However, it is important to note the significant use of ocean vessels for transporting machinery from the U.S. to Canada (10%), and the use of air transport from Canada to both Mexico and the U.S. (approximately 30% combined). These are unique to the trade of machinery within in the region and should be observed by the Task Force for future research.

#### iv. Electrical Machinery

The fourth highest traded good between the NAFTA countries and the last covered in this Report is electrical machinery. Under Chapter 85 of the HTS, the “electrical machinery” category includes items such as microwave ovens, cooking stoves, headphones, loudspeakers, vacuum cleaners, and juice extractors.<sup>11</sup>

In 2011, trade of electrical machinery between the NAFTA countries totaled more than \$125 billion. Specifically, the trade of electrical machinery between Mexico and the U.S. amounted to over \$85 billion with Mexican exports to the U.S. totaling \$54.3 billion. Of these exports, \$49 billion worth of electrical machinery exported from Mexico to the U.S. in 2011 was transported by truck or road, \$3.3 billion by air and the remainder was transported by rail or ocean vessel. Alternatively, exports of electrical machinery from the U.S. to Mexico totaled \$32.3 billion, of

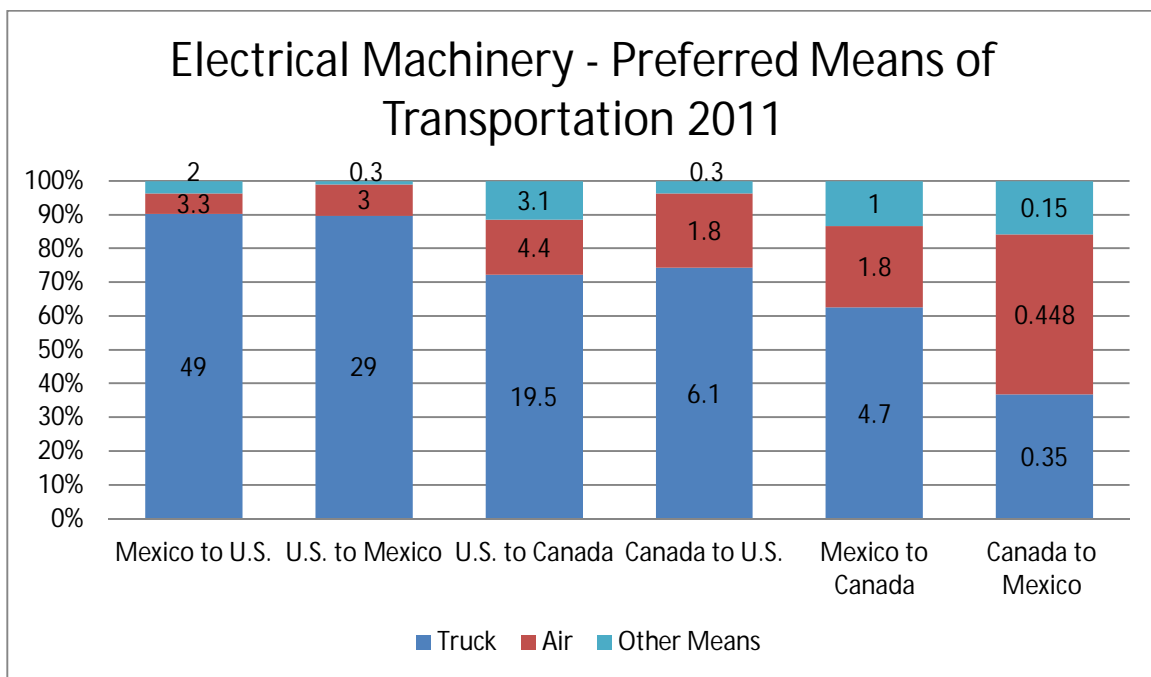
<sup>11</sup> *Electrical Machinery and Equipment; Parts Thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and Parts and Accessories of such articles*, Chapter 85, Harmonized Tariff Schedule of the United States, (2013), available at <http://www.usitc.gov/publications/docs/tata/hts/bychapter/1300c85.pdf>



which \$29 billion worth was transported by truck or road, \$3 billion by air, and the rest by other means including rail and ocean carrier.

In contrast, the trade of electrical machinery between Canada and U.S. totaled \$35.2 billion in 2011. The U.S. exported \$27 billion to Canada of which 72% (\$19.5 billion) was transported by truck or road and 16% (\$4.4 billion) by air. However, exports of electrical machinery from Canada to the U.S. equaled only \$8.2 billion in 2011. Of this, \$6.1 billion worth was transported by truck or road, and \$1.8 billion by air.

Lastly, the total trade between Mexico and Canada of goods belonging to the electrical machinery category was only \$7.5 billion in 2011. Mexican exports to Canada amounted to \$6.7 billion, of which \$4.7 billion worth of electrical machinery was transported by truck or road, \$1.8 billion by air, and the remainder by rail, ocean vessel or other means. On the other hand, Canadian exports to Mexico of electrical machinery amounted to \$813.7 million, of which \$448 million worth was transported by air, \$350 million by truck or road, and the rest was transported by other means. The following graph compares the methods of transport used by each country to export electrical machinery within the NAFTA region.



While some of these goods were transported by air or other means, trucking and road transportation was again the preferred mode of transportation for electrical machinery category between the NAFTA countries. This is true of both the U.S. imports and exports with Canada and Mexico. However, as with other traded goods previously mentioned, the transportation of goods between Canada and Mexico is primarily done by air transportation, especially on the Canadian export side.

Overall, the trade of non-agricultural goods between the NAFTA countries generates significant revenue for the three countries. As such, these categories of goods, as they relate to their preferred methods of transportation, are relevant when considering cross-border ADR. This data has also helped in identifying stakeholders and players within the industry.

## **b. Key Players of the Transportation Industry**

As outlined above, a myriad of products are transported between Canada, Mexico and the U.S. every day. Depending on the product and the final destination, each shipment undergoes a potentially unique method of entry and is subject to various interactions with specific players. However, within this group of specific players, there are a number of “key players” that remain constant no matter what product is being shipped. The following Sections provide an overview of the various key players in the ground transportation industry.

### **i. Shipper**

The Shipper is the party at any particular shipping point who either owns or purchases the goods for distribution or resale.<sup>12</sup> There may be more than one shipping point in any load as the product is moved to market. It is the Shipper who generally takes the risk and financial responsibility to move the product from a particular shipping point to the next destination.<sup>13</sup>

### **ii. Carrier**

The Carrier is the owner of the vehicle which transports the goods as ordered by the Shipper.<sup>14</sup> The Carrier will have liability for damage to or loss of cargo while in transport on his vehicle. A Carrier involved in both the domestic and foreign side of an international shipment is called an International Provider.

### **iii. Freight Forwarder**

A Freight Forwarder (aka Forwarder or Forwarding Agent) is a person or company that organizes shipments of goods from the manufacturer or producer to a final point of distribution. Forwarders contract with Carriers to move the goods. A forwarder does not move the goods itself but acts as an expert in supply chain management. Some of the services provided by a forwarder include advice on costs and fees, assisting with customs documentation and providing recommendations as to transportation, among others.<sup>15</sup>

---

<sup>12</sup> See 7 C.F.R. §46.2(o) and §46.31; DRC TRADING STANDARDS §18¶.23.

<sup>13</sup> John F. Munger, *Importation of Mexican Produce into the US: Procedures, Documentation, and Dispute Resolution*, 4 (2008) (on file with the NLCIFT).

<sup>14</sup> *Id.*

<sup>15</sup> Exports.gov, *What is a Freight Forwarder*, available at [http://export.gov/logistics/eg\\_main\\_018144.asp](http://export.gov/logistics/eg_main_018144.asp).

#### **iv. Transfer Agent**

The Transfer Agent is in charge of the transfer of goods and inspection that occurs at the border.<sup>16</sup> For example, in some instances truck, trailers and goods do not cross the border; rather, the goods are transloaded<sup>17</sup> (*i.e.*, taken off the truck and trailer) and placed in a warehouse where they pass through customs and are loaded onto separate domestic Carriers. Legally, the goods may stay on the same trailer but this is the exception not the common practice.

#### **v. Custom House Broker**

The Custom Broker is an agent who acts for merchants at port in the business of clearing goods and trucks for entry.<sup>18</sup> Brokers generally will perform the necessary steps to obtain custom clearance for goods in order to get shipments released and delivered to the final destination in a timely manner. “The [B]roker is expected to issue written or electronic confirmations showing all the contract terms to which the selling Dealer and the buying Dealer have agreed to, as well as the identity of both.”<sup>19</sup>

#### **vi. Consignee**

The Consignee is the person to whom the goods are to be delivered.<sup>20</sup> It may be a place of business but in international shipping it is generally a warehouse that has been contracted by a business to receive, house, and subsequently deliver the products to their final destination.

---

<sup>16</sup> Schneider National, *Keeping Cross-Border Simple and Clear*, available at <http://www.schneider.com/www1/groups/webassets/@marketing-public/documents/webcontent/knlg-borderxing-ppt-pdf.pdf>, also Phone Interview, Schneider Representative, May 20, 2013 on file with NLCIFT.

<sup>17</sup> Hofstra University, *The Geography of Transport Systems* available at [http://people.hofstra.edu/geotrans/eng/ch4en/conc4en/tbl\\_containertransloading.html](http://people.hofstra.edu/geotrans/eng/ch4en/conc4en/tbl_containertransloading.html)

<sup>18</sup> Exports.gov, *Freight Forwarders, Customs Brokers And INCOTERMS: Making Exporting Easier*, available at [http://export.gov/logistics/eg\\_main\\_018128.asp](http://export.gov/logistics/eg_main_018128.asp).

<sup>19</sup> DRC TRADING STANDARDS §20 *Glossary*; and see PACA REGS 46.27-.28.

<sup>20</sup> U.C.C. § 9-102(a)(19).

### c. Involvement of Key Players in Common Practice

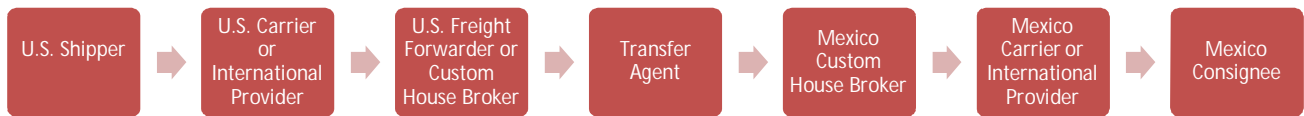
The diagrams below illustrate how the “key players” described above fit into the shipment process between NAFTA parties. Depending on the direction and eventual destination of the products, two different methods may be used.

The first of these methods applies for trade between Canada and the U.S. The following process is generally used for Canadian-bound products shipped from the U.S.<sup>21</sup>



U.S. bound products shipped from Canada usually follow a similar path, but substitute the U.S. Carrier for a Canadian Carrier. These transactions typically do not require the use of freight forwarders or custom house brokers.

The second method applies for products being transferred from the U.S. to Mexico; the following process is typically used:<sup>22</sup>



As apparent, this process involves additional steps and players than those involved in the first method described and above. The extra players involved in the transport of goods between the U.S. and Mexico is the result of the inability of U.S. and Mexican carriers to cross the border seamlessly. Due to safety regulations, U.S. truckers are forced to stop at the border and the goods are transferred to Mexican carriers. As mentioned in the previous Section, the creation of the 2011 Trucking Pilot Program is meant to address this issue. The program will allow U.S.-bound products from Mexico and Mexico-bound products from the U.S. to use Carriers from either the U.S. or Mexico provided the Carriers are part of the Pilot Program and pass certain standards and safety checks.<sup>23</sup>

<sup>21</sup>Schneider National, *Keeping Cross-Border Simple and Clear*, available at <http://www.schneider.com/www1/groups/webassets/@marketing-public/documents/webcontent/knlg-borderxing-ppt-pdf.pdf>.

<sup>22</sup>*Id.*

<sup>23</sup>The Federal Register, *Pilot Program on NAFTA Trucking Provisions* (Apr. 4, 2013), available at <https://www.federalregister.gov/articles/2013/04/04/2013-07867/pilot-program-on-nafta-trucking-provisions>.

#### d. Update on the U.S.-Mexico Cross-Border Trucking Pilot Program

Road transportation is the primary method used for trading goods between Canada and the U.S. In Canada, road transportation represents the most popular form of moving goods into and out of the U.S. with 45.1% or \$149 billion worth of the country's exports and 73.5% or \$162 billion worth of country's imports (not limited to the categories listed above) being transported by truck in 2011.<sup>24</sup> Likewise, in Mexico, over 48% of trade with Canada and over 63% of trade with the U.S. in 2011 was done using road or truck transportation.<sup>25</sup> Taken as a whole, the transnational trucking industry accounted for the shipment of over \$295 billion worth of trade in 2011.<sup>26</sup>

Despite the significant role that truck and road transportation of goods plays in trade between the NAFTA countries, Mexico and the U.S. have been negotiating cross-border movement of goods crossing of trucks since 1995.<sup>27</sup> Previously, the main concerns with regard to cross-border trucking were safety and environmental matters; however, an assessment of the potential three-year pilot trucking program found that it would have no significant impact on safety and the environment.<sup>28</sup> The U.S. Mexico Cross-Border Trucking Pilot Program<sup>29</sup> began operating in 2011 and the first Mexican trucking company authorized under the program crossed the border in October 2011.<sup>30</sup>

As evident by some of the statistics contained in the previous Section, these barriers to the freedom to transport goods using road or truck transportation methods results in the use of other possibly less efficient and more costly transportation methods. According to the U.S. Department of Transportation Federal Motor Carrier Safety Administration's (FMCSA), "[t]his program will test and demonstrate the ability of Mexico-based motor carriers to operate safely in the U.S. beyond the municipalities and commercial zones along the United States-Mexico border."<sup>31</sup> Overall, the hope is that through the use of this Pilot Program, barriers to the free transportation of goods between Mexico and the U.S. can be reduced and therefore profits of the industry can increase.

---

<sup>24</sup>Road Transportation, Transport Canada (a website of the Canadian Government), *available at* <http://www.tc.gc.ca/eng/policy/anre-menu-3021.htm>

<sup>25</sup>North American Transportation Statistics Database, *available at* [http://nats.sct.gob.mx/6-1b\\_en.html](http://nats.sct.gob.mx/6-1b_en.html)

<sup>26</sup>*Id.*

<sup>27</sup>North American Free Trade Agreement Arbitral Panel Established Pursuant to Chapter Twenty: In the Matter of Cross-Border Trucking Services (Feb 6, 2001), at 15-18, at <http://www.worldtradelaw.net/nafta20/truckingservices.pdf>.

<sup>28</sup>United States Department of Transportation, Federal Motor Carrier Safety Administration, Final Environmental Assessment (Sept. 2011) Document Id. FMCSA-2011-0097-2187.

<sup>29</sup>U.S. Department of Transportation Federal Motor Carrier Safety Administration, *U.S. Mexico Cross-Border Trucking Pilot Program*, at <http://www.fmcsa.dot.gov/intl-programs/trucking/trucking-program.aspx>.

<sup>30</sup>Chris Woodyard, *First Mexican Truck Under NAFTA heads to U.S. Interior* (USA Today) at <http://content.usatoday.com/communities/driveon/post/2011/10/first-mexican-truck-nafta/1>.

<sup>31</sup>U.S. Department of Transportation Federal Motor Carrier Safety Administration, *U.S. Mexico Cross-Border Trucking Pilot Program*, <http://www.fmcsa.dot.gov/intl-programs/trucking/trucking-program.aspx>.

Since its inception in 2011, the following table represents the number of carriers associated with each status level in the Pilot Program.<sup>32</sup>

### U.S.-Mexico Cross-Border Trucking Pilot Program Carriers

STATUS LEVEL	# of Carriers
Mexico-Domiciled Motor Carriers with Active Operating Authority	10
Mexico-Domiciled Motor Carriers with Pending Operating Authority	5
Mexican-Domiciled Carriers with Application Dismissed	13
Mexican-Domiciled Carriers with Application Withdrawn	4

The FMCSA’s website provides a wealth of information on the Pilot Program. For instance, data for all active participant carriers includes: their current status, the number of vehicles authorized for that carrier as well as identification information for such vehicles, the number of drivers, the number of crossings and inspections, and the percentage rate of out-of-service vehicles and drivers. In addition, compliance reviews of active carriers are also available and provide information regarding compliance with safety measures. The overall availability of this data to the public shows the Pilot Program’s level of transparency.

Aggregate data is also available in a weekly basis.<sup>33</sup> This aggregate data represents the cumulative vehicle and driver activity of participating carriers since the beginning of the Pilot Program. Data includes information on: 1) the number of northbound crossings per carrier; 2) the number of inspections per carrier; 3) the aggregate number of southern Border States miles traveled; 4) the aggregate number of non-Border States miles traveled; and 5) the number of crossings per port of entry.<sup>34</sup>

Based on the vast amount of trade occurring between the U.S. and Mexico, the number of the participants currently enrolled in the Pilot Program seems low. However, after reviewing the regulation process Mexican companies may be hesitant to invest the additional time and resources required to gain the extra trucking opportunities until a more permanent program is in place.

<sup>32</sup> *Id.* – Table compiled from Statistics shown on <http://www.fmcsa.dot.gov/intl-programs/trucking/trucking-program.aspx>.

<sup>33</sup> U.S. Department of Transportation Federal Motor Carrier Safety Administration, *Mexico-Domiciled Motor Carriers with Active Operating Authority – Aggregate Data Charts*, at [http://www.fmcsa.dot.gov/intl-programs/trucking/aggregate\\_charts.aspx](http://www.fmcsa.dot.gov/intl-programs/trucking/aggregate_charts.aspx).

<sup>34</sup> *Id.*

## **2. TASK FORCE SURVEY: RESOLVING CONFLICTS WITHIN THE INDUSTRY**

Since the NAFTA 2022 Annual 2012 Meeting, the Task Force on Sectoral ADR for International Transportation has been working to finalize and gather responses to the International Transportation Survey. During this past year, the Task Force has completed certain survey revisions and distributed the survey to members of the transportation industry from the three countries. This Report includes: a) a summary of the survey revisions completed by the Task Force; b) an explanation of the research and distribution method used to send out the completed survey; and c) summary of Transportation Survey Responses and the Transportation Survey Responses in their entirety along with a list of the Transportation Survey Contacts and copy of the final Transportation Survey (English and Spanish).

### **a. Survey Revisions**

Previously the Task Force created a “legal” and “non-legal” Transportation Survey. After reviewing these drafts, the Task Force determined it was unnecessary to distribute two separate versions of the Transportation Survey (i.e. the “legal” and “non-legal” surveys). Instead, the Task Force decided that the language in the non-legal survey should be used for all participants due to its overall simplicity and the understanding that there was no need to over-complicate the language for an audience with more background knowledge in dispute resolution.

Likewise, the Task Force determined that the few additional questions included only in the “legal” survey that addressed specific aspects of International Arbitration could be included for all participants. The Task Force reasoned that if participants were unfamiliar with the International Arbitration concepts, adding an “I don’t know” answer option could solve this issue.

After the surveys were combined into one version, the Task Force made several additional changes to the survey text and questions. These revisions included the addition of questions, question prompts and the replacement of certain questions with new ones. All revisions are included in the final version of the survey attached to this Report.

### **b. Survey Process**

Upon completion of the revisions by the Task Force, a final version of the survey was prepared by the NLCIFT as an online survey using Google Docs. The Google Docs method was chosen by the Task Force as the most efficient method to distribute the survey. When a participant completed the survey, her answers were automatically recorded in a live spreadsheet. This spreadsheet could then be shared between and edited by everyone in the Task Force.

Additionally, the online survey format automatically skips participants ahead in certain sections if they have not been involved in a specific type of dispute resolution. This ultimately reduces the amount of time a participant must spend to complete the survey by limiting questions to those relevant to each participant. A current version of this online survey can be accessed using the following

link:  
<https://docs.google.com/spreadsheet/viewform?formkey=dEd3RGdpek11Zm5sWS11RU1Bd01fVFE6MA#gid=0>.

The survey was initially sent via email to a total of fifty recipients from Mexico and the U.S. The survey was also translated to Spanish in order to have a further reach in responses. After this initial electronic mailing, the Task Force received a total of three responses to the English survey and zero responses to the Spanish survey.

As such, the Task Force, through the assistance of the NLCIFT, determined that more traditional methods of surveying may be more appropriate to reach those within the transportation industry. The NLCIFT proceeded to contact members of the transportation industry by phone. In total, the NLCIFT contacted approximately 600 individuals/companies and received 30 total responses. The response rate per country is included in the table below and a list of all individuals/companies contacted is included after this section of the report.

<b>Country</b>	<b>Number Contacted</b>	<b>Responses Received</b>
Canada	197	15
Mexico	150	15
United States	256	0

**c. Summary of Survey Responses**

The following Summary Table is meant to aid in the understanding and interpretation the 30 responses received at a glance. Additional specific information is presented below in the Summary of Quantifiable Responses and in the surveys themselves.

<b>Issue:</b>	<b>Responses:</b>
Involvement in a conflict/s that turned into a legal dispute?	10/30 – Yes 17/30 – No 3/30 – I don’t know
Legal Dispute International in nature?	5/10 – Yes 5/10 – No
Of those involved in International Disputes, method of resolution used –	2/5 – Court 5/5 – Private Settlement 0/5 – Mediation 2/5 – Arbitration
Based on your experience, do you think an arbitrator with special knowledge of the transportation industry would be useful?	3/5 – Yes 1/5 – No 1/5 – I don’t know
Based on your experience, do you see a need for an arbitration institution that specializes in international transportation between Canada, Mexico and the United States?	3/5 – Yes 1/5 – No 1/5 – I don’t know

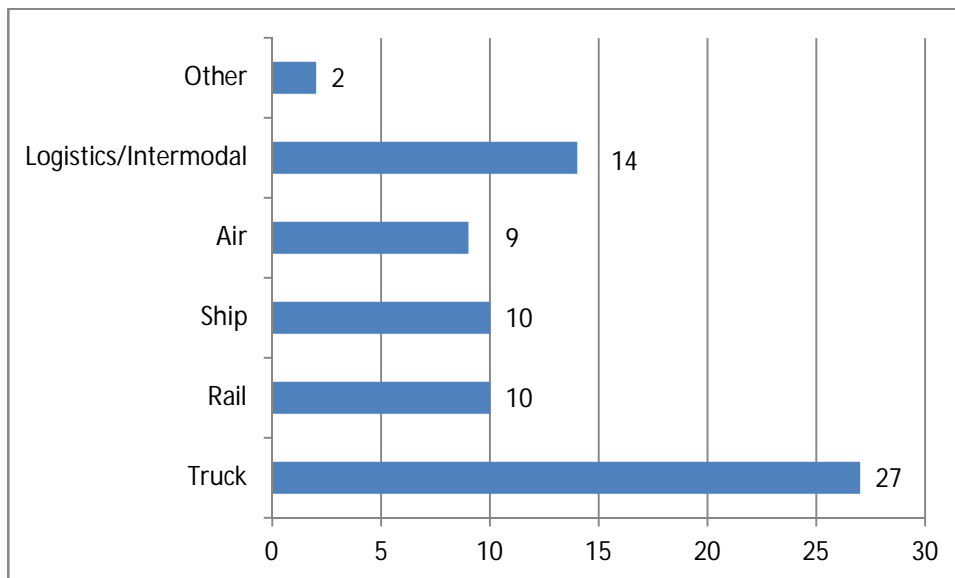


## Transportation Survey: Dispute Resolution within the Industry Summary of Quantifiable Responses

This section highlights certain sections/questions of the survey by providing graphs to represent the quantifiable data received (i.e. non-text answers). Following this section, the remainder of the survey data is included as received by individual respondents. Names have been removed from this section to protect the confidentiality of the survey respondents but otherwise the 30 responses received are included in their entirety. Additionally, the full list of those contacted to participate in the survey is attached by country. Lastly the final survey in both English and Spanish is included in the Meeting materials.

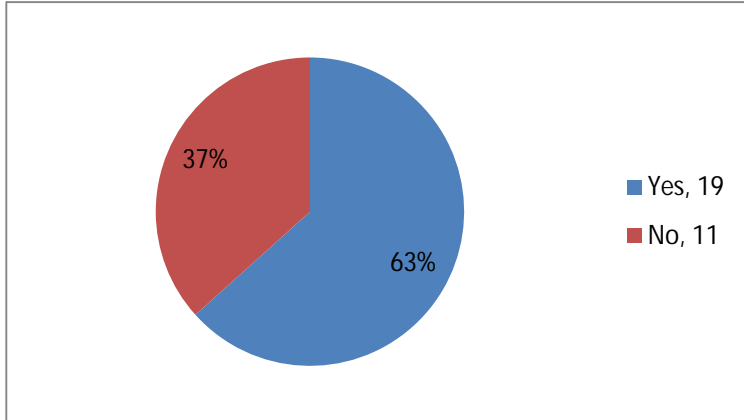
### **Section I. – Business and Personal Information**

- 5. What type of transportation are you (or your company) involved in? TOTAL OUT OF 30, NOTE: Respondents could select more than one checkbox, so data adds up to more than 30.**

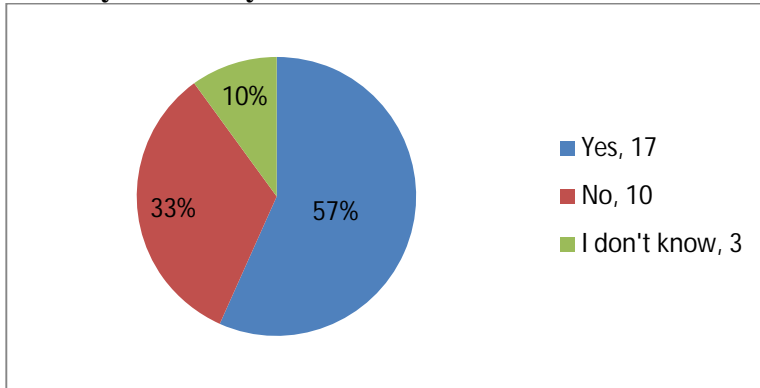


**Section II. - Resolving Conflicts within your Industry**

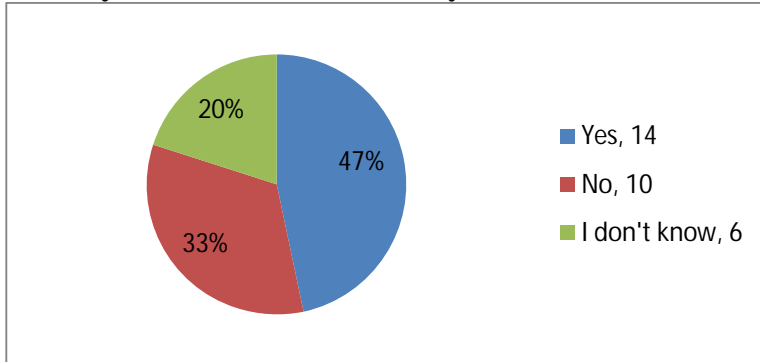
**1. Do you or your company have a lawyer that you regularly use for contracts or otherwise?**



**2. Do you use any form of standard contract while doing business?**

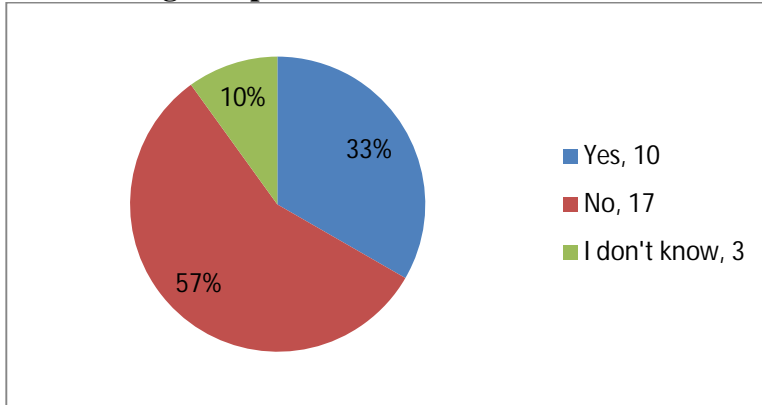


**3. Do your contracts include any arbitration or mediation clauses?**



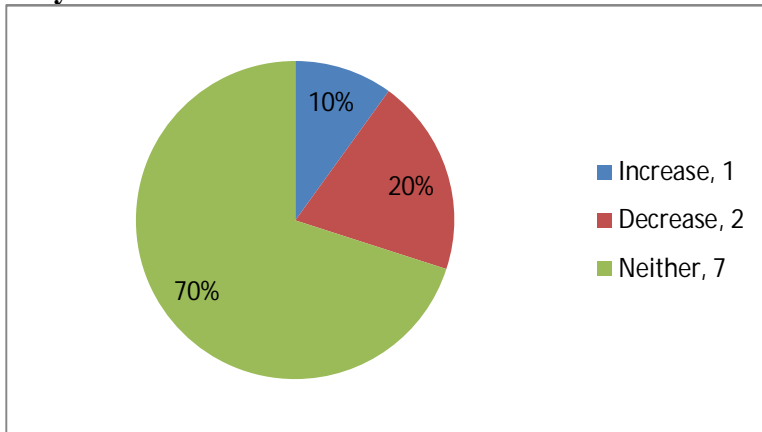
**Section III. - You or Your Company's/Association's Experience with Conflict Resolution**

1. **Have you or your company/association ever been involved in a conflict/s that turned into a legal dispute?**

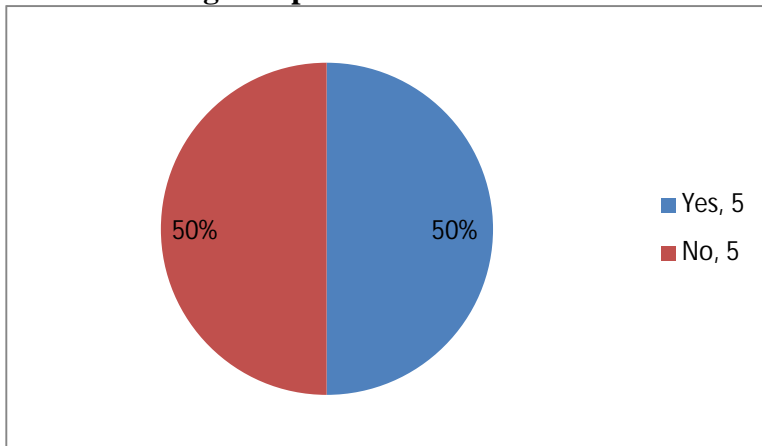


**NEW TOTAL OUT OF 10 because only 10 involved in legal dispute**

2. **Have you noticed an increase or decrease in the number of such disputes in the last 5 years?**

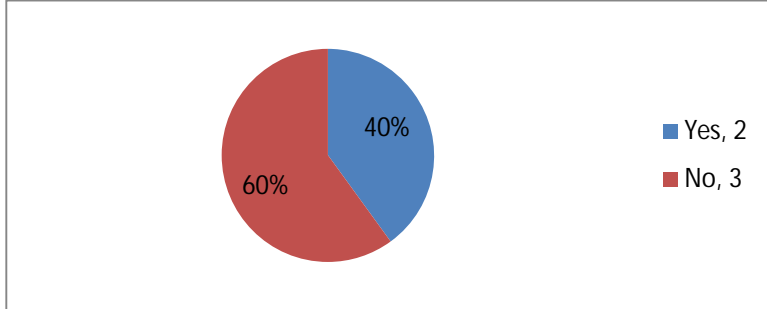


3. **Was this legal dispute/s international?**



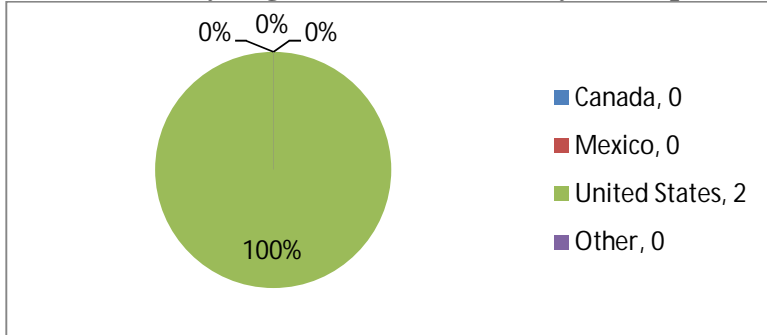
**NEW TOTAL OUT OF 5 because only 5 involved in International Dispute**  
**Section IV. - Method of Resolution – Court**

**1. Did you ever go to court to resolve your dispute/s**

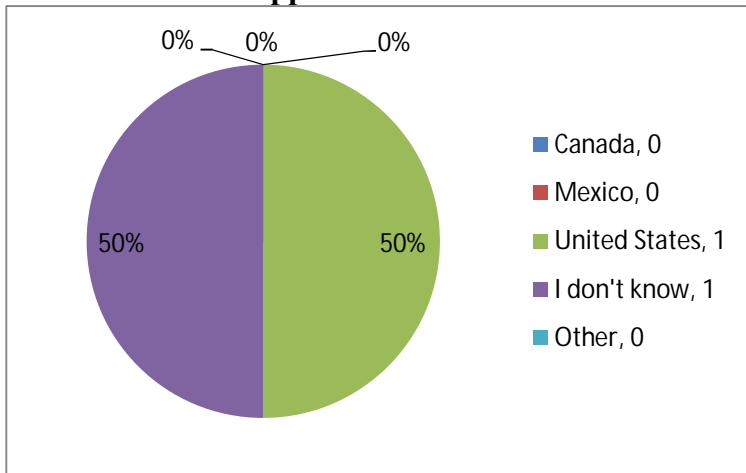


**NEW TOTAL OUT OF 2 because only 2 went to Court**

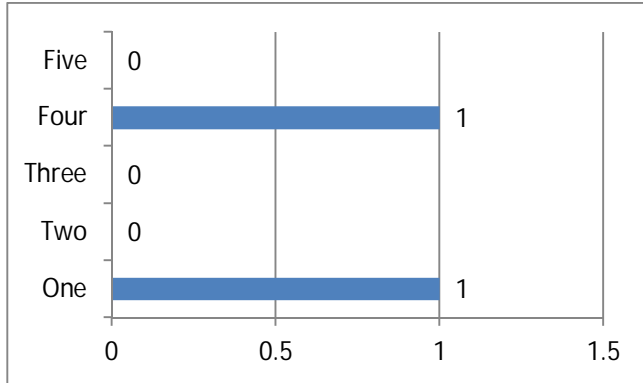
**1. Where did you go to court to resolve your dispute?**



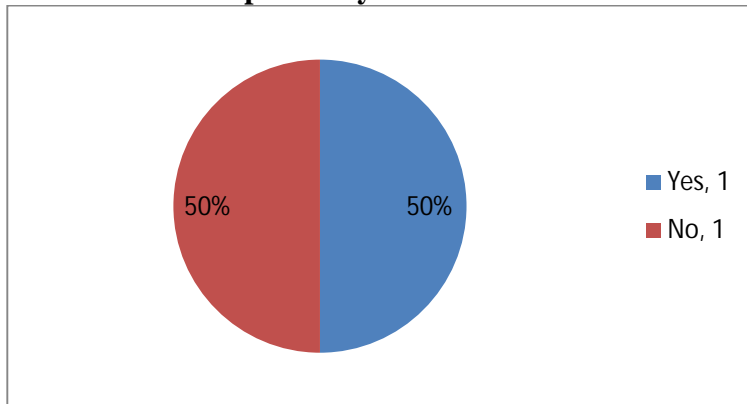
**2. What law was applied?**



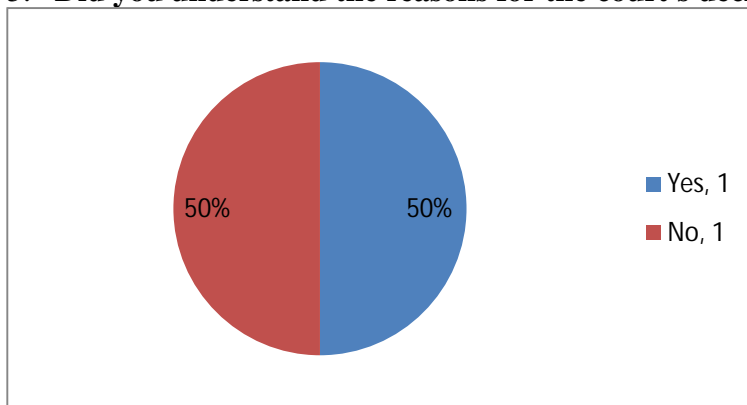
3. The court process was (1 being slow, 5 being fast):



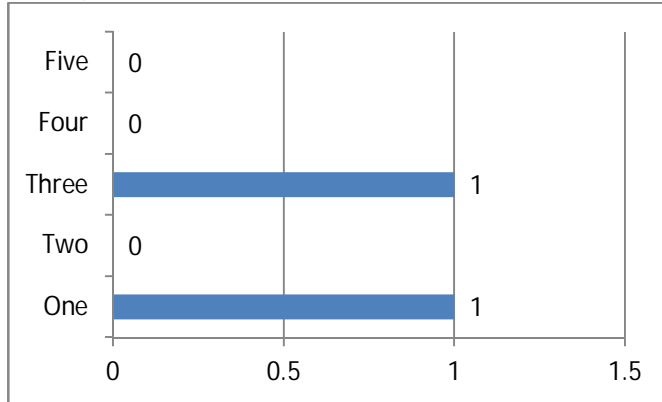
4. Did the court provide you with written reasons for their decision?



5. Did you understand the reasons for the court's decision?



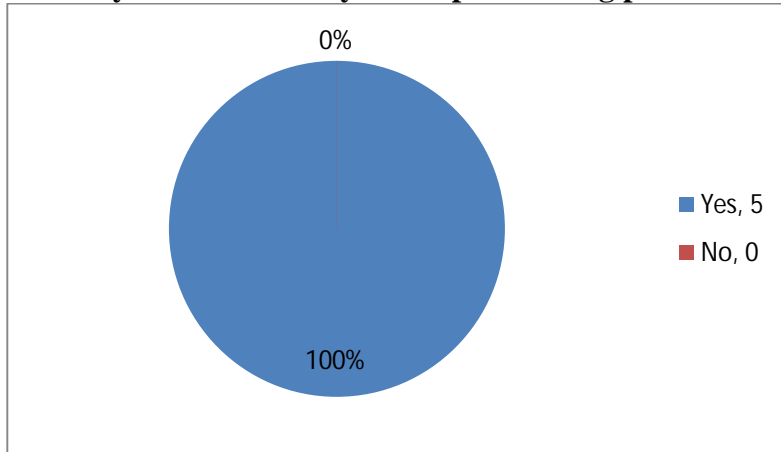
6. The cost of the process of going to court was (1 being unreasonable, 5 being reasonable):



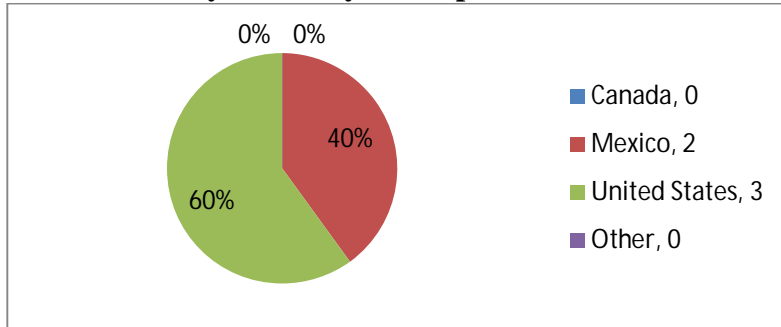
**Section V. - Method of Resolution - Private Settlement or Other**

**TOTAL OUT OF 5 because only 5 involved in International Dispute**

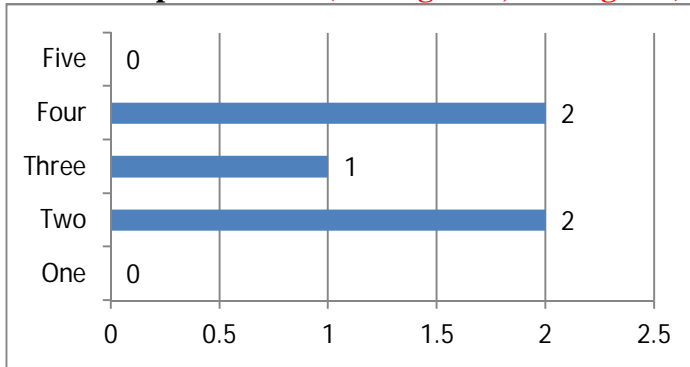
1. Did you ever resolve your dispute/s using private settlement or some other method?



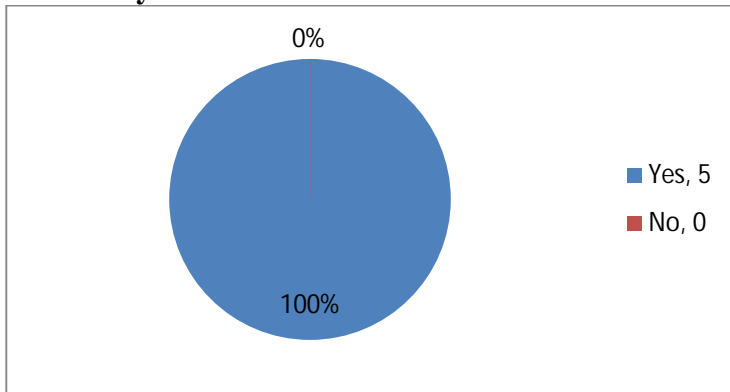
2. Where did you settle your dispute?



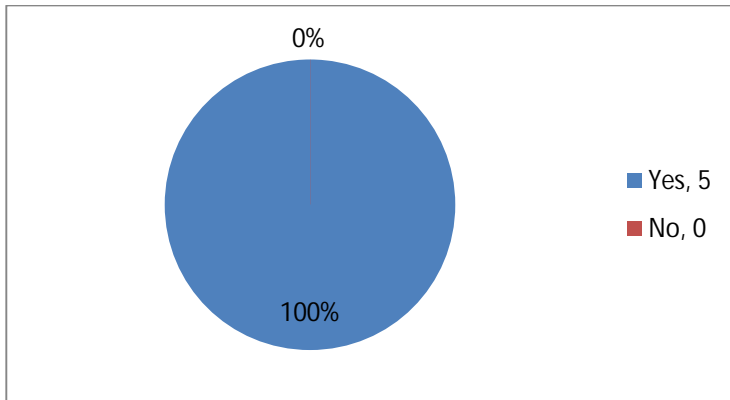
3. The settlement process was (1 being slow, 5 being fast):



4. Were you satisfied with the results achieved?



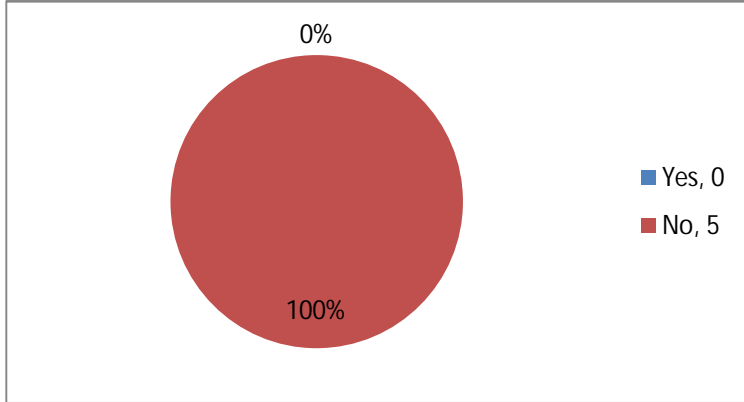
5. Was this a cost-effective method to resolve your dispute (keeping in mind the outcome)?



**Section VI. - Method of Resolution – Mediation**

**TOTAL OUT OF 5 because only 5 involved in International Dispute**

**1. Did you ever go to meditation to resolve your dispute/s?**

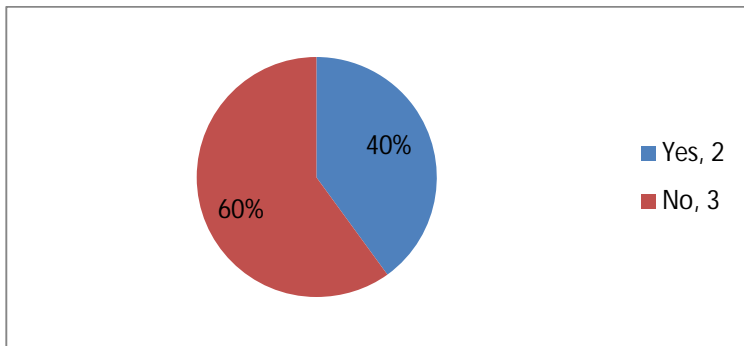


**No answers to remainder of Mediation questions because no one went to Mediation**

**Section VII. - Method of Resolution - Arbitration**

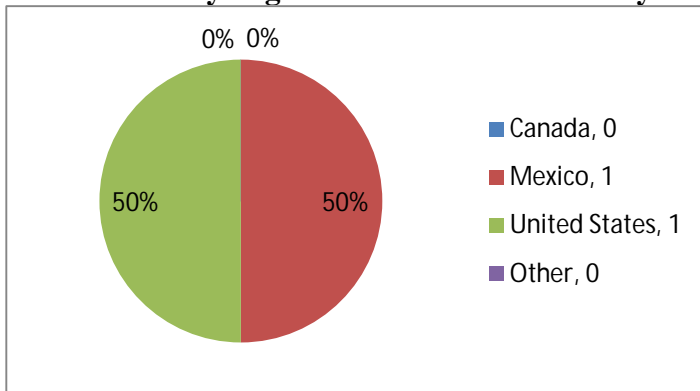
**TOTAL OUT OF 5 because only 5 involved in International Dispute**

**1. Did you ever go to arbitration to resolve your dispute/s?**



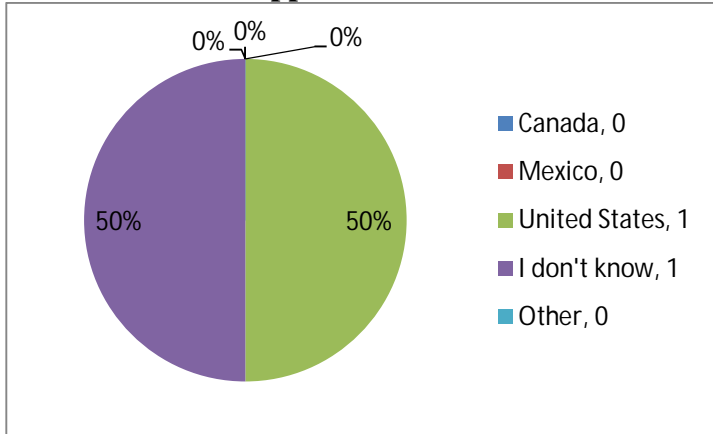
**NEW TOTAL OUT OF 2 because only 2 went to Arbitration**

**2. Where did you go to arbitration to resolve your dispute?**

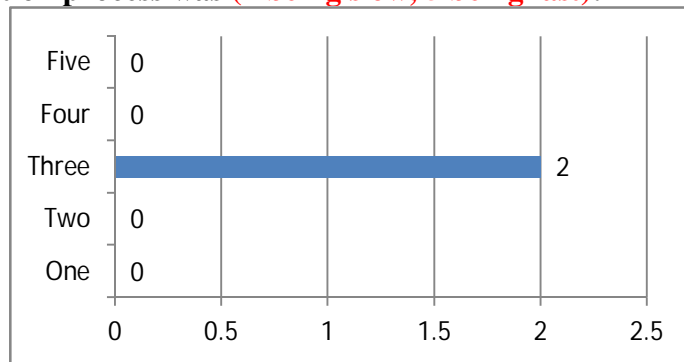




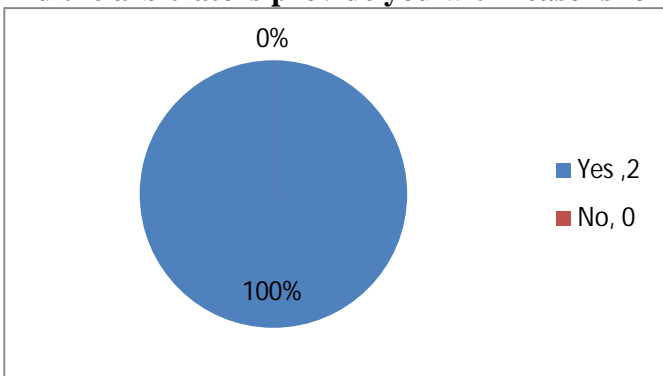
3. What law was applied?



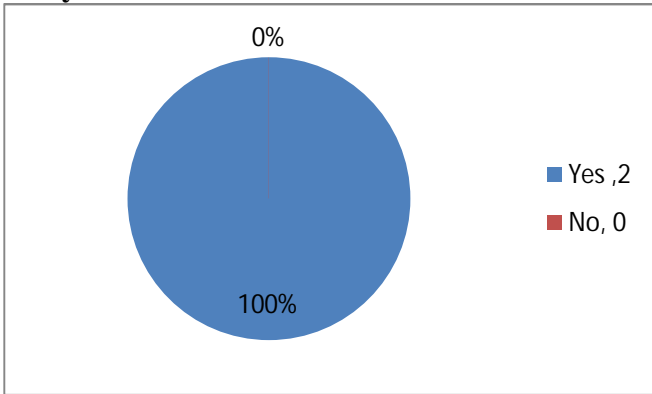
4. The arbitration process was (1 being slow, 5 being fast):



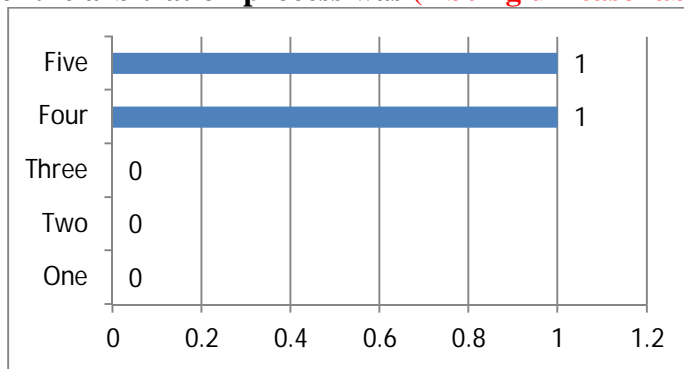
5. Did the arbitrators provide you with reasons for their decision (award)?



6. Did you understand the reasons for the decision?



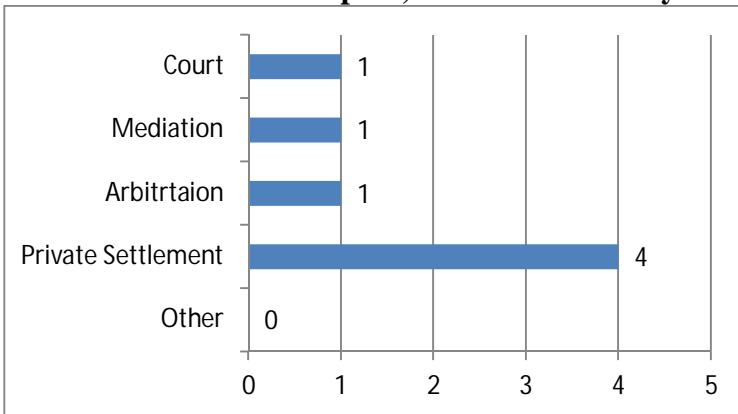
7. The cost of the arbitration process was (1 being unreasonable, 5 being reasonable):



**Section VIII. - Future Disputes**

**TOTAL OUT OF 5, NOTE: Respondents could select more than one checkbox**

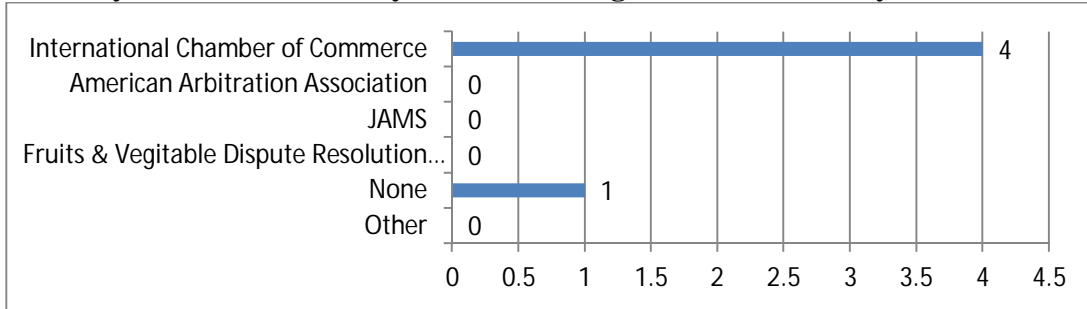
1. If faced with a future dispute, is there a method you would use (again)?



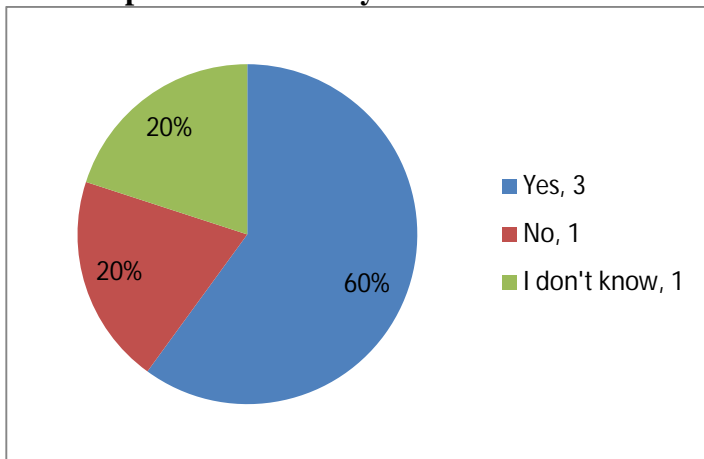
**Section IX. - International Arbitration**

**TOTAL OUT OF 5, NOTE: Respondents could select more than one checkbox**

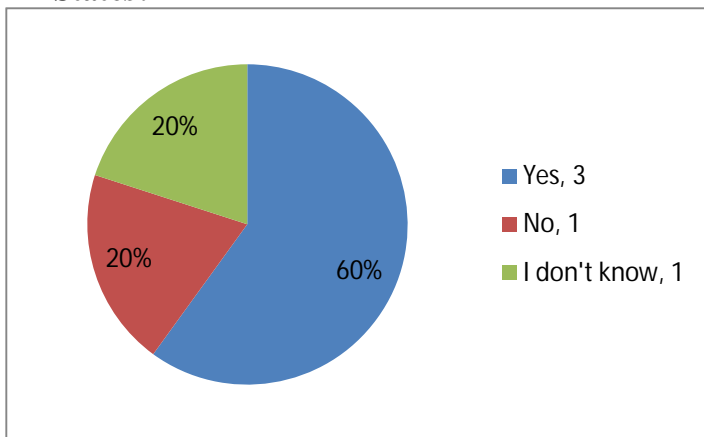
**1. Are you familiar with any of the following institutions or do you know of others?**



**2. Based on your experience, do you think an arbitrator with special knowledge of the transportation industry would be useful?**



**3. Based on your experience, do you see a need for an arbitration institution that specializes in international transportation between Canada, Mexico and the United States?**



**TOTAL OUT OF ALL 30 Respondents**

**While all answers will remain anonymous, please indicate if we can contact you if we have follow up questions or would like additional information.**

