

NAFTA 2022 COMMITTEE
2014 ANNUAL REPORT OF WEBSITE SUB-COMMITTEE

This Report includes a summary of the work completed by the Website Sub-Committee in the last year.

1. Current Co-Chairs
2. Website Revisions
3. Removal of Principal Arbitration Institutions Page
4. Addition of Committee Member Bios
5. Other Updates

Annex I: Proposed Textual Changes to Website for Committee Approval

Annex II: NAFTA 2022 Committee Member Bio Request Form

1. Current Co-Chairs

Canada: Kevin Banks

Mexico: No Current Representative

United States: Elizabeth Pocock

2. Website Revisions

At the 2013 Annual Meeting of the NAFTA 2022 Committee, the Website Sub-Committee presented the larger Committee with a summary of the work it had undertaken in the 2012-2013 year. Included in this summary was a report of the formatting changes that were completed to the website as approved at the 2012 Annual Meeting and a proposed draft of additional textual changes that it considered necessary to improve some of the information on the existing website.

The Committee requested distribution of an electronic version of these suggested changes so that they could review them after the conclusion of the meeting. Additionally, the Committee requested that the Website Sub-Committee make certain revisions and highlight specifically the sections of the text that needed attention and input from those that were not a part of the Website Sub-Committee.

Attached as Annex I to this report is an updated version of these revisions with the changes requested by the Committee and the sections highlighted that require additional Committee input. An electronic version of these proposed changes has been circulated to the larger Committee and it is expected these changes will be voted on during the 2014 Annual Meeting in Canada.

In particular, the Website Sub-Committee needs volunteers from the Committee to help drafting text for the highlighted areas in the document:

- a. Add sentences from Legal Development Subcommittee about how ADR is used within the Region – include statistics if possible
- b. Consider adding paragraph on the limited Enforcement and Recognition of Mediation Settlements (certain states)
- c. Consider adding more information on Enforcement of Awards
- d. For a discussion on enforcement of arbitral awards in the NAFTA region, see "Enforcing Agreements to Arbitrate and Arbitral Awards in the NAFTA countries." (Need to locate this Document)
- e. Section on Conciliation – Needs to be added and re-drafted

3. Removal of Principal Arbitration Institutions Page

In addition to the changes in text, the Website Sub-Committee also recommended that the page featuring "Principal Arbitration Institutions" be removed entirely since much of the information was out of date and since the Committee had no formal process for adding new Arbitral Institutions to this page. The larger Committee agreed with this and tasked the Website Sub-Committee with deciding upon the best method for removal of this page. The Website Sub-

Committee was also tasked with deciding whether or not the Sub-Committee would provide notice to those institutions listed or replace this page with alternative text.

Since the 2013 Meeting, the Website Sub-Committee has removed this page from the NAFTA 2022 Website and determined that they would not replace this with any other text nor would they contact the institutions listed there. Instead, they decided that should they receive any inquiries from institutions that had previously been listed as a part of this page, they would reply to these inquiries on a case-by-case basis with guidance from the Government Co-Chairs.

The following other changes related to the removal of this page from the Website were also completed.

- Removed the page entitled “Principal Arbitration Institutions”
- Removed this tab from the side bar and all other links within the website that go or refer to this page.
 - Main Page: Removed link to Principal Arbitration Page from list
 - Methods/Forms Available: Removed entire 4th bullet point that says “identification of some of the principal not-for-profit arbitration institutions in the NAFTA region;”
 - Creating an Arbitration Clause:
 - In section 1. Removed text crossed out here in the following paragraph: Institutional arbitration are dispute settlement proceedings supervised by an organization or institution (~~such as the American Arbitration Association / International Centre for Dispute Resolution, the British Columbia International Commercial Arbitration Centre, CANACO [Mexico City Chamber of Commerce], the Commercial Arbitration and Mediation Center for the Americas or the International Chamber of Commerce~~) in accordance with the rules of arbitration established or approved by that institution.
 - Removed text in paragraph that reads: Ad-hoc arbitration means there is no formal administration of the arbitration or dispute settlement process by any established arbitral organization. Instead, the parties create their own procedures for the arbitration. This can be accomplished, for example, either by: (i) drafting a set of ad-hoc procedures in a contract; (ii) referring to a set of generally accepted ad-hoc arbitration rules, such as the UNCITRAL Arbitration Rules, ~~the ADR Institute of Canada, Inc. National Arbitration Rules, or the Center for Public Resources Rules for Non-Administered Arbitration of International Disputes~~; or (iii) allowing the arbitration tribunal to produce its own procedures after the dispute has arisen. Ad-hoc arbitration can sometimes be less expensive, but it places more of a burden on the parties to organize and administer the arbitration.
 - In Section 2 Removed the link that says “[view list of institutions]” located at the end of the last paragraph for that section
 - Selecting an Arbitration Institution: Removed “Section F” entirely

4. Addition of Committee Member Bios

Besides the textual and formatting changes made to the Website, the Website Sub-Committee continued work on adding Committee Member Bios to the Website. At the 2013 Annual Meeting, the Website Sub-Committee presented the results from the survey completed during the 2012-2013 work year. These results were used in the discussion of how to limit the bio information that would be posted for each Committee member. The Committee approved the addition of biographical information for all members. These bios are to be limited to 100 words and include only information related to education and work experience that is relevant to International Commercial Arbitration.

To gather this information, the Website Sub-Committee prepared a Bio Form to be distributed to all Committee members by their Government Co-Chairs. This Bio Form is attached to this report as Annex II. It was sent electronically to all members during the 2013-2014 work year and will also be passed out at the 2014 Annual Meeting in Canada. Upon receipt of all bios, the Website Sub-Committee will format a document with all member bios and will pass this document to the Government Co-Chairs for approval before posting these to the Website.

5. Other Updates

During the 2012-2013 year the Secretariat's website platform was changed and they did not have the capability of capturing statistics related to the website hits. Since then, they have been able to set up a monthly reporting tool however it can only track visitors' activity on the website as a whole and not total visits to the website. The Secretariat now believes that further customization allowing for this type of reporting can be fixed when the application is updated to an enhanced edition which should be completed by December 2014. Upon this implementation, it is anticipated that they will then be able to provide us with the types of statistics we are looking for.

Lastly, at the 2013 Annual Meeting, the Website Sub-Committee presented information about the use of a Linked In Group to replace the forum that previously existed on the Website for Committee communications. The Government Co-Chairs were reviewing this option during the 2013-2014 year and it is anticipated they will report on their decision at the 2014 Annual Meeting.

ANNEX I: PROPOSED TEXTUAL CHANGES TO WEBSITE FOR COMMITTEE APPROVAL

Page Title	Suggested Changes	Proposed Edits	Direct Webpage Link
Alternative Dispute Resolution	Short Intro Sentences to ADR and the NAFTA 2022 Committee, followed by "On this Website you will find" and information about what is contained	<p>Private Dispute Resolution in the NAFTA Region</p> <p>Expanding international trade creates a growing need for fair, expeditious and cost-effective resolution of disputes arising out of international commercial transactions. <u>Alternative dispute resolution</u> (ADR) is a set of private, consensual processes, such as mediation or arbitration, designed to meet these needs and is the method of choice to resolve disputes that arise when doing business in today’s world.</p> <p>The countries of NAFTA recognized the importance of facilitating these types of private international dispute resolution by establishing the <u>Advisory Committee on Private Commercial Disputes</u> (The NAFTA 2022 Committee). To assist private investors and businesses, the NAFTA 2022 Committee has prepared and posted on this website materials designed to guide individuals and businesses in the decision making process with respect to ADR and to facilitate its use throughout the NAFTA Region.</p> <p>On this web site you will find the following resources:</p> <ul style="list-style-type: none"> • ADR in the NAFTA Region • NAFTA 2022 Committee • Committee Members • Methods of Private Dispute Resolution • Creating an Arbitration Clause • Model ADR Clauses • Selecting an Arbitration Institution • Committee Events • Notice / Disclaimer 	https://www.nafta-sec-alena.org/Default.aspx?tabid=89&language=en-US
ADR in the NAFTA Region	Definition of ADR, Intro to	ADR IN THE NAFTA REGION	https://www.nafta-sec-

	NAFTA 2022 Committee	<p>Alternative Dispute Resolution (ADR) refers to any method of settling a dispute outside of traditional litigation and the courtroom. In the context of NAFTA, it is unfeasible to have ever-expanding international trade without a system for resolving disputes that will inevitably arise out of such trade. ADR is the method of choice for resolving these disputes in business today.</p> <p>The three NAFTA countries identified ADR as import for the resolution of international commercial contracts and as such, the NAFTA 2022 Committee was established during the NAFTA negotiations to assess the availability and enforcement of private ADR awards within the region. [View NAFTA 2022 Committee Mandate].</p> <p>(Add sentences from Legal Development Subcommittee about how ADR is used within the Region – include statistics if possible)</p>	alena.org/Default.aspx?tabid=103&language=en-US
NAFTA 2022 Committee	Simple language on mandate of 2022 committee with link to mandate, Intro to the work of 2022	<p>NAFTA 2022 Committee</p> <p>Article 2022 of the North American Free Trade Agreement establishes the Advisory Committee on Private Commercial Disputes, also known as the NAFTA 2022 Committee. The Committee reports and provides recommendations to the NAFTA Commission on the availability, use and effectiveness of arbitration and other procedures for resolving private international commercial disputes in the free trade area. The Commission has asked the Committee to:</p> <ul style="list-style-type: none"> • identify sectors and types of businesses that would particularly benefit from the use of alternative dispute resolution (ADR); • promote and facilitate the use of such procedures in the NAFTA region; • increase private sector awareness of their benefits; • identify opportunities for expanded cooperation between institutions with an interest or involvement in ADR in the NAFTA region; and • report and provide recommendations on issues relating to the enforcement of arbitration agreements and awards, and other litigation issues related to ADR <p>Since established in 1994, the Committee has completed various outreach events within the NAFTA Region to complete these goals. To learn more about the Committee and its work, click on the following links:</p> <ul style="list-style-type: none"> • NAFTA Article 2022 • Mandate of the Committee 	https://www.nafta-sec-alena.org/Default.aspx?tabid=1098&language=en-US

		<ul style="list-style-type: none"> • NAFTA 2022 15-Year Retrospective • 1996 Committee Report • Minutes of Committee Meetings • All Member and Committee Reports 	
<p>Methods of Private Dispute Resolution</p>	<p>Change overall language to make easier for reader; Add particularities of mechanisms in each country (for example, conciliation in Mexico)</p>	<p>Alternative Methods of Private Commercial Dispute Resolution Parties entering into international business contracts should consider, at the outset of negotiations, whether they wish to resort to the courts or use Alternative Dispute Resolution ("ADR") in the event a dispute arises. Well-designed ADR offers neutral, private proceedings responding to the particular needs of the parties. A well-drafted ADR clause may not only result in more effective dispute resolution, but also deter breaches of the parties' agreement.</p> <ol style="list-style-type: none"> 1. On this web site you can find: <ul style="list-style-type: none"> • Overview of ADR methods • Model ADR Clauses • Arbitration Clause Checklist • Criteria for selecting an appropriate ADR institution <p>The principles described here can necessarily only be basic. The reader should consider consulting one established arbitral institutions or others with expertise, before finalizing any contract terms.</p> <p>Private Sector Dispute Resolution and ADR Mechanisms There are many forms of ADR. The two most commonly used are mediation and arbitration however conciliation is also used in the NAFTA Region.</p> <p>Mediation Mediation usually provides a private and confidential forum in which an impartial third party -- the mediator -- facilitates communication between the parties with the aim of achieving a settlement of the dispute. The mediator acts as an intermediary with whom each party should feel comfortable discussing its view of the dispute. The mediator seeks to focus the parties on the critical issues in dispute and on the interests of each party in achieving a settlement. The mediator may propose settlement options for the parties to consider, but the recommendations of the mediator are not binding on the parties.</p>	<p>https://www.nafta-sec-alena.org/Default.aspx?tabid=106&language=en-US</p>

		<p>The mediator may or may not be an attorney. It is recommended that he or she be someone whom both parties trust. Mediation is often conducted without involvement of legal counsel representing the parties.</p> <p><u>Model Mediation Clause (LINK)</u> Consider adding paragraph on the limited Enforcement and Recognition of Mediation Settlements (certain states)</p> <p>Arbitration While mediation is designed to encourage the parties to find a mutually acceptable settlement, arbitration is an adversarial process that results in an award that is binding on the parties. Depending on the provisions of the arbitration clause, the decision may be rendered by one or three arbitrators. The parties generally present arguments, witnesses and documentary evidence to the arbitrators. Rules of procedure and evidence that judges apply in court do not usually apply at arbitration. The rules followed in arbitration are generally very flexible. Attorneys are frequently involved in representing the parties, but it is not always necessary to retain counsel. Arbitrators are often attorneys, but they may also be business people or other professionals with knowledge or skills relevant to the dispute. Most arbitration awards are observed voluntarily by the losing party. However, if the losing party does not voluntarily comply with the award rendered by the arbitrators, it may be enforced by local courts with jurisdiction over the losing party. Canada, Mexico and the United States are parties to various international treaties that require their courts to enforce arbitration awards with very few exceptions (such as fraud or corruption). Thus, unlike a court judgment, there are very few grounds to appeal an adverse arbitration award.</p> <p><u>Model Arbitration Clause (LINK)</u> Consider adding more information on Enforcement of Awards For a discussion on enforcement of arbitral awards in the NAFTA region, see "Enforcing Agreements to Arbitrate and Arbitral Awards in the NAFTA countries." (Need to locate this Document)</p> <p>Conciliation – NEEDS TO BE ADDED/DRAFTED</p>	
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<p>Creating an Arbitration Clause</p>	<p>Add section at end explaining use of Model ADR Clauses at end</p>	<p>To see a model arbitration and mediation clauses addressing some (but not all) of the issues listed above, click here. Note that these clauses are meant to serve only as a starting point for drafting such clauses and that parties may need to consider additional issues before finalizing contract terms.</p>	<p>https://www.nafta-sec-alena.org/Default.aspx?tabid=108&language=en-US</p>
<p>Model ADR Clauses</p>	<p>Add explanation on what model clauses are, when they might be used, and how they might be changed for different situations or needs</p>	<p>Model ADR Clauses Model arbitration and mediation clauses for international contracts are set forth below. These model clauses can help parties begin to draft contract terms that meet their needs. While they offer a number of specific options, they are not exhaustive and do not include all possible provisions that may need to be considered or may be desirable in particular contracts. They should not be treated as the final product of the process of drafting an ADR clause. Parties may, for example, need to deal with additional issues like which law should apply to a given dispute, specific discovery rules or the power of arbitrators to order interim relief. For a list of issues that should be considered in drafting an arbitration clause, see the Arbitration Clause Checklist.</p> <p>Arbitration A model arbitration clause for international contracts is set forth below.</p> <ol style="list-style-type: none"> i. <i>Any dispute, controversy or claim arising out of, relating to, or in connection with, this contract, or the breach, termination or validity thereof, shall be finally settled by arbitration. The arbitration shall be conducted in accordance with [identify rules] in effect at the time of the arbitration, except as they may be modified herein or by mutual agreement of the parties. The seat of the arbitration shall be [city, country], and it shall be conducted in the [specify] language. The arbitration shall be conducted by [one or three] arbitrators, who shall be selected in accordance with [the rules selected above].</i> ii. <i>The arbitral award shall be in writing and shall be final and binding on the parties. The award may include an award of costs, including reasonable attorneys' fees and disbursements. Judgment upon the award may be entered by any court having jurisdiction thereof or having jurisdiction over the parties or their assets.</i> <p>Mediation A model mediation clause for international contracts is set forth below.</p>	<p>https://www.nafta-sec-alena.org/Default.aspx?tabid=107&language=en-US</p>

		<p><i>If a dispute, controversy or claim arises out of or relates to this contract, or the breach, termination or validity thereof, and if either party decides that the dispute cannot be settled through direct discussions, the parties agree to endeavor to settle the dispute in an amicable manner by mediation pursuant to [identify rules]. If this mediation does not result in a settlement, then the dispute shall be resolved by arbitration pursuant to [clause (b) below]. [Alternatively, the parties may provide for litigation in a court specified by the parties.]</i></p>	
Committee Events	Summarize past events in order from most recent to oldest	<p>Committee Events One of the roles of the NAFTA 2022 Committee is education. It is an ongoing process for business representatives, lawyers and judges to learn about the advantages of arbitration and mediation and to become comfortable with these mechanisms. Many contracts are done in form basis and they do not necessarily address ADR or anticipate problems that may arise specifically as a result of the international nature of the transactions. Likewise, many contracts are negotiated by businesses themselves; and many small and medium-sized businesses, as well as in-house lawyers, may not be familiar with ADR mechanisms, or may only be familiar with ADR in the domestic (rather than international) context. As such, Education constitutes an important part of the Committee outreach efforts.</p> <p>Annual Committee Meeting Outreach Events The Committee has undertaken a number of outreach activities in conjunction with its regularly-scheduled meetings.</p> <p>Outreach sessions have occurred at the following Annual meetings: Mexico City (June 1999) Calgary (June 2000) Denver (January 2002) Oaxaca (September 2003) Santa Fe (September 2004) Ottawa (October 2005) Morelia (June 2006) San Juan, Puerto Rico (March 2007) Vancouver, B.C. (March 2008) Queretaro (September 2009) Houston (June 2010)</p>	<p>https://www.nafta-sec-alena.org/Default.aspx?tabid=1089&language=en-US</p>

	<p>Puebla (October 2012) Los Angeles (September 2013)</p> <p>Additional Outreach Activities In recent years, the Committee has been working with the National Law Center for Inter-American Free Trade (NatLaw) to provide additional opportunities for businesses (and their lawyers) to learn more about how they can benefit from the use of ADR in their operations. As part of these efforts, the Committee and NatLaw have coordinated panel presentations on ADR in various locations and for various participants. In these presentations, government and private sector representatives from all three NAFTA countries have addressed the importance and benefits of resorting to alternative dispute resolution mechanisms.</p> <p><u>2014</u> June, Tucson AZ, US – “Best Practices in International Arbitration” Panel at the AZ State Bar Convention Organized by NatLaw, the 2022 Committee and the State Bar of Arizona, Arbitration Section</p> <p>June, Tucson, AZ, US – “Making ADR Accessible to All” Presentation to business community Organized by NatLaw and the 2022 Committee</p> <p><u>2013</u> September, Los Angeles, CA, US - Panel on Entertainment and Media Industries and their Uses of ADR Organized by the 2022 Committee and Southwestern Law School</p> <p>September, Los Angeles, CA, US - Overview on Arbitration and Mediation in the NAFTA Countries: Legal, Judicial and Practical Considerations Organized by NatLaw, the 2022 Committee and Southwestern Law School</p> <p><u>2012</u> September, Mexico City, Mexico - Symposium on Alternative Dispute Resolution Mechanisms at the Federal Judicial Institute Organized by NatLaw, the 2022 Committee, the Federal Judicial Institute and the</p>	
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		<p>Barra Mexicana de Abogados</p> <p>October, Puebla, Mexico - Round Table on the use of ADR mechanisms in the NAFTA Region Organized by NatLaw and the 2022 Committee</p> <p>October, Puebla, Mexico - Presentation by Local Representatives on the development of ADR in Puebla Organized by the 2022 Committee and the Mediation Center of the State of Puebla</p> <p><u>2011</u> May, Mexico City, Mexico – Conference on Mediation and Arbitration in Mexico and the Judiciary Organized by NatLaw and the 2022 Committee</p> <p><u>2010</u> May, Mexico City, Mexico – ADR Working Session on various commercial matters Organized by NatLaw, the Federal Judicial Institute and the CAJ</p> <p>May, Mexico City, Mexico – ADR Program and Panel Presentations on commercial law reform in Mexico and the development of model contracts Organized by NatLaw and the 2022 Committee</p> <p>June, Houston, TX, US – Outreach session for the judiciary on international and domestic ADR in the NAFTA region Organized by NatLaw and the 2022 Committee</p> <p>June, Houston, TX, US – Outreach sessions for lawyers, businesspersons, and members of the academic community on ADR in the NAFTA region Organized by NatLaw, the 2022 Committee and the South Texas College of Law</p> <p><u>2009</u> August, Mexico City, Mexico – ADR Outreach Panel for members of the judiciary on ADR mechanisms in Mexico Organized by NatLaw</p>	
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		<p>Organized by the Border Trade Alliance (BTA) to discuss various aspects of trade relations in the NAFTA countries</p> <p>Calgary, Canada – ADR Presentation, Outreach Program to address trade and customs issues Organized by the Canadian Association of Importers and Exporters (IE Canada)</p> <p>Vancouver, Canada - ADR Presentation, Outreach Program to address trade and customs issues Organized by the Canadian Association of Importers and Exporters (IE Canada)</p> <p><u>2003</u></p> <p>March, Washington D.C., US – ADR Panel at Meeting on capital formation and capacity building in Central America as part of the CAFTA negotiations Sponsored by U.S. Department of Commerce, NatLaw, INCAE (Instituto Centroamericano de Administración de Empresas in Costa Rica) and the North-South Center at the University of Miami.</p> <p>March and April, Charlotte, NC, US – Panel on the use of ADR and the insertion of an ADR clause in the context of the new NAFTA bill of lading and ADR implications for the transportation industry Sponsored by Belmont Abbey College, Expide Logistics, in collaboration with the NatLaw and the Council of Logistics Management's Charlotte Roundtable</p> <p>September, Washington, D.C., US – ADR Panel as part of the Small & Medium Enterprise (SME) Congress of the Americas Meeting Organized by the U.S. Small Business Administration (SBA), as a sub-program within its National Entrepreneurial Conference & Expo</p>	
Notice/ Disclaimer	Update text	<p>Disclaimer The materials on this website are made available solely to facilitate the study and use of ADR in the NAFTA region. While they are believed to be accurate and complete, neither the NAFTA Secretariat nor the NAFTA 2022 Committee assumes any responsibility for their content.</p> <p>These documents may be reproduced, in whole or in part without further permission,</p>	https://www.nafta-sec-alena.org/Default.aspx?tabid=239&language=en-US

		<p>subject to any copyright or other notices stated on specific materials or linked sites. No such reproduction shall indicate that the NAFTA Secretariat or the NAFTA 2022 Committee is in any way responsible for the accuracy or reliability of the reproduction; nor shall any such reproduction indicate that it was made with the endorsement of, or in affiliation with, the NAFTA Secretariat or the NAFTA 2022 Committee.</p> <p>The NAFTA governments do not take responsibility for the text on the NAFTA ADR website.</p>	
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ANNEX II:

NAFTA 2022 Committee Member Bio Forms

Name:

Country Represented:

Firm/Affiliation:

Title:

Bio Paragraph: (Please limited to 100 words and include only education and work experience relevant to International Commercial Arbitration)