

REPORT OF THE TASK FORCE ON ADR FOR THE TRUCKING SECTOR

OCTOBER 2012

The co-chairs designated for this group are:

Canada: Selma Lussenburg

United States: Barrett Avigdor (recently substituted by Cristina Castaneda)

Mexico: Alejandro Ogarrio

The group decided that the best way to proceed was to prepare a questionnaire to be sent to organizations representing the trucking industries in the NAFTA region in order to find out if there is any interest in tailoring a specific ADR procedure for their needs.

A questionnaire was prepared in the terms of Annex I which was sent to some organizations. Selma Lussenburg proposed to broaden the scope of the questionnaire to include not only the trucking sector, but also the industries engaged in intermodal transportation; if such groups would view the initial questionnaire they might decline to participate since the focus of such questionnaire could be considered too narrow.

In light of the above it was decided to extend the questionnaire in the following manner:

- Rename the questionnaire as "International Transportation" Sector ADR Questionnaire
- In the introductory paragraph, make reference to "international transportation, including trucking and other forms of intermodal transportation" in lieu of 'cross-border trucking'
- Provide a later due date (eg. Mid September)
- Q #8 refer to "international transportation"
- Q #8, if the answer is "yes" then ask that the respondent identify whether it is intermodal, trucking (road), air, sea, rail
- Add the following supplementary questions after #9 (which asks where the dispute was resolved): "Was the law of your home country applied? Yes, no, don't know"
- Q #10 change the reference to cross-border to "international" [transportation/trucking]
- Q #11 change the reference to international transportation/trucking [by adding transportation]

- Q #15 refer to cross border/international transportation, including trucking disputes

The revised form is attached under Annex II. The language in the questionnaire has also been simplified and the order of questions reorganized. The group is in the process of sending the expanded questionnaire to the different associations in the three countries, and in receiving their input to come to the conclusion if a specific ADR system may be required for the trucking industry. The United States has informed that as of October 10, 2012 there have been seven responses to the initial questionnaire on line.

In Mexico the questionnaire has been sent to CANACAR, which represents most of the trucking companies in the country, and a response is still pending. In Canada we are also waiting for the response of the industries involved. After receiving a number of responses the task force will be in a position to determine whether there is sufficient interest to start with the analysis of specific ADR requirements for the trucking industry.

ANNEX I

Trucking Sector Alternative Dispute Resolution Questionnaire

This questionnaire is part of a feasibility study to determine whether specialized alternative disputes resolution mechanisms would encourage cross-border trucking between Mexico, the U.S. and Canada. It should take only about 10 minutes to complete.

Please respond no later than July 12, 2012.

Thank you!

*** Required**

Name and Organization *

Please provide your name, title and the organization or company with whom you work.

1. Have you been involved in a legal dispute related to trucking in the past 10 years? *

If you were involved in a dispute in any capacity (e.g. litigant, legal counsel, witness, etc.), please answer yes.

- Yes
 No
 Unsure

2. If yes, which process or processes did you use to resolve the dispute?

Please check all that apply

- Courts
 Arbitration
 Mediation

3. If yes, did you get the result you expected?

Please answer this question for each process checked in Question 2.

4. If yes, did you consider the dispute resolution process and outcome to be fair and reasonable?

Please answer for each process checked in Question 2.

5. Did you consider the dispute resolution to be cost effective?

Please answer for each process checked in Question 2.

6. In the event of a future dispute, which mechanism for dispute resolution would you choose? *

- Court
 Arbitration
 Mediation

7. Please indicate which, if any, of the following alternative dispute resolution institutions with which you are familiar *

Check all that apply

- The International Chamber of Commerce
 The American Arbitration Association
 JAMA
 Other
 None

8. Have you ever been a party to or have you represented a party in a dispute relating to cross-border trucking? *

- Yes
 No
 Not sure

9. If yes, was the dispute resolved in your home country? *

- Yes
 No
 It was settled before going to court or ADR

10. Do you believe there is a need to train arbitrators or mediators to improve their expertise about the issues that are unique to cross border transportation/trucking? *

- Yes
 No
 Not sure

11. Would you consider the creation of an alternative dispute resolution process and rules created specifically for international trucking disputes between Mexico, the U.S. and Canada beneficial for you? *

- Yes
 No

Not sure

12. If you do consider an industry specific ADR process beneficial, would you be willing to provide input into the creation of that process?

If you answer yes to this question, please provide your email address and phone number at the end of the survey.

Yes

No

13. If you do not consider such unique ADR process beneficial, why not?

14. Would you be willing to contractually agree in your agreements and bills of lading to the ADR process instead of courts as your first dispute resolution option? *

Yes

No

Not sure

Is there anything else you would like us to consider regarding the value of specialized alternative dispute resolution for cross-border trucking disputes?

Would you be interested in having a speaker or panel at your organization's next meeting to discuss ADR? *

If yes, please provide your contact information and the name of your organization in the box below.

Submit

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ANNEX II

Questionnaire on ADR: International Transportation Sector

Help us determine whether specialized alternative disputes resolution mechanisms would encourage international transportation between Canada, Mexico and the United States. Please submit by December 28, 2012. We greatly appreciate your time.

Name and Organization *

Please provide your name, title, and organization or company you work with.

What type of transportation are you involved in (select all applicable) *

- Truck
- Rail
- Ship
- Air
- Logistics/Intermodal
- All of the Above

Have you been involved in a legal dispute related to international transportation in the past 10 years? *

Select YES if you have been involved whether as plaintiff, defendant, lawyer, other.

- Yes
- No

How did you resolve it?

Select all that apply

- Courts
- Mediation
- Arbitration
- Private Settlement
- All of the above

Did you resolve it in your country

- Yes
- No

Where the laws of your country applied?

- Yes
- No
- Do not know

Did you get the results you expected?

- Yes
- No
- No, but was fair

Did you think the process was fast and fair?

Did you think the cost was reasonable and reflected the effectiveness of the process?

In case of a future dispute, which mechanism would you prefer? *

- Mediation
- Arbitration
- Courts
- No preference

Explain why? *

Do you or would you consider including an ADR clause in your contracts? *

- Yes
- No

Are you familiar with any of the following institutions? *

- International Chamber of Commerce
- American Arbitration Association
- JAMA
- All of the Above
- None of the Above

Do you think arbitrators should be specialized in international transportation and receive specialized training? *

- Yes
- No

Do you think it would be beneficial to have an entity that specializes in arbitration for international transportation between the Canada, Mexico and the United States? *

- Yes
- No

If you answered YES, would you be interested in participating in the creation of such entity? If you answered NO, explain why.

If yes, please provide your name, affiliation and contact information

Would you be interested in having a speaker on ADR at your organization for expanding knowledge in this area? *

If yes, please provide your name, affiliation and contact information.

Please provide any additional comments or suggestions