

From Metalclad to Ruby River Capital LLC: Mexico's NAFTA Experience and the Future of Investment Arbitration Under the USMCA *

Summary

*** Please note that this summary of the panel was AI-generated and therefore has not been fully vetted for accuracy.**

The session from the Washington Arbitration Update focused on the contributions of NAFTA to investment arbitration, the differences between NAFTA and the USMCA, and the future of investment arbitration in Mexico. Moderated by Carlos Manuel Torres, the panel featured experts Cindy Volume, Arista Lopez, and Bernardo Sepulveda, who provided insights on various aspects of international arbitration.

Jose Antonio Rivas, one of the co-founders of the World Arbitration Update, expressed gratitude to the Mexican hosts and emphasized the event's goal of decentralizing international arbitration by providing a platform for diverse voices from around the world, particularly those from developing countries.

The panel began with a discussion on Mexico's experience with NAFTA arbitration, highlighting significant cases that shaped the legal landscape, including the MetroCard case, which was pivotal in establishing Mexico's involvement in international arbitration. The experts noted that NAFTA's dispute resolution mechanisms had a substantial impact on the development of international arbitration norms.

The discussion then shifted to the differences between NAFTA and the USMCA. Key points included the USMCA's more precise definition of investment and the introduction of government sectors that receive enhanced protections. The panelists raised concerns that the new framework might limit the rights of investors not covered by these privileged sectors, potentially discouraging investment in Mexico.

Finally, the panelists reflected on the future of investment arbitration under the USMCA, noting the upcoming review of the agreement in 2027 and the need for certainty and stability in the legal framework to encourage investment. They highlighted ongoing discussions about the coherence and impartiality of arbitration processes and the importance of transparency in proceedings.



The session concluded with a call for continued attention to the evolving landscape of investment arbitration, particularly in light of the recent changes brought by the USMCA.

Authors

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Topics

NAFTA, USMCA, NAFTA Arbitration, ISDS, NAFTA Jurisprudence, NAFTA Transition Period, Metalclad, Mexican NAFTA Cases, US investors, Canadian investors, Mexican investors

Category

WAU

Full Transcript

00:00:11

volume Asia welcome, good morning,

00:00:41

everyone and bienvenida stores. Mexico

00:00:46

City invest in arbitration days

00:00:48

and two World arbitration update

00:00:54

before giving You stay a

00:00:59

before beginning with this panel,

00:01:02

which of course is most

00:01:06

important importance. I would like

00:01:08

to. Give special thanks to

00:01:11

all the organizers because we

00:01:13

we have been incredibly hosted

00:01:17

by the Mexican college and

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undo Nam show. I would

00:01:24

like to give a huge

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thanks to everyone here and

00:01:28

not only by the organisers

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but but by every Mexican

00:01:33

person whether organizer or not,

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we we have been really

00:01:37

really being welcomed in the

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most warm way and I

00:01:42

could not think our for



00:01:43

a better partner to do

00:01:45

with the world arbitration update

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forms as a reminder of

00:01:51

the world arbitration update forms

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and forgive me again. My

00:01:55

name is Jose Antonio Rivas

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and one of the co-founders

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of the world of attrition

00:02:01

update. The world of attrition

00:02:03

update has to focus has

00:02:05

one is to update on

00:02:08

issues of Investment treaty arbitration

00:02:12

on issues of international commercial

00:02:15

arbitration and on issues of

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public international law and it

00:02:20

really started as a as

00:02:22

an anecdote. I was sharing

00:02:23

yesterday with some how it

00:02:25

started. We were in the

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midst of another form and

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and a woman very kindly

00:02:34

sent me her recent draft

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close to being published by

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or you pee on a

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topic that that is very

00:02:45

dear to watch which is

00:02:46

fair and Equitable treatment about

00:02:48

but her book is on

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Fair and Equitable treatment from

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the perspective of developing States

00:02:52

and and I read a

00:02:55

couple of chapters of that

00:02:57

book and I was impressed

00:03:00

and the next thing was

00:03:02

okay. Where was was this

00:03:04

lady and it happens that

00:03:06

she's from Bangladesh and the

00:03:09

neck The next thought was

00:03:11

why isn't she here? But

00:03:13

why isn't she being featured

00:03:15
in the main International arbitration

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forums and and it was

00:03:22
it was simply adding OnePlus

00:03:25
2 and saying well, there

00:03:27
should be a forum that

00:03:28
gives or provides a platform

00:03:31
for incredible Council arbitrators diverse

00:03:37
individuals from many Geographic parts

00:03:41
of the world and not

00:03:43
only focusing on Paris and

00:03:46
I love Paris in York

00:03:47
and I love New York

00:03:48
and Washington and of course,

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I love in Washington because

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I leave there and so

00:03:53

on and so forth. Why

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couldn't we have a form

00:03:57

that gives the platform to

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everyone who may be I

00:04:01

don't know in Mexico or

00:04:02

Bolivia or in Nigeria. It's

00:04:04

some parts of Europe which

00:04:06

are not the main sensors

00:04:07

etcetera so that that was

00:04:09

so rude. so one one

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objective of this type of

00:04:14

worm is decentralization of international

00:04:17

arbitration and the other part

00:04:19

is exit now, it is

00:04:31

impossible 300. I'm going cases.

00:04:35

This is a new medium.

00:04:36

We have a a library

00:04:39

of videos of all the

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panels everything is recorded. And

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as as some news we're

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working on an application, which

00:04:48

is based on having an

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automatic a transcripts of the

00:04:53

proceedings. So that is for

00:04:55

research purposes for people to

00:04:58

watch and anybody can watch

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it. Luckily. We have had

00:05:01

sponsors, but that the other

00:05:03

interesting bit of the wild

00:05:06

or the world of attrition

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of it is that there

00:05:09

is no fee for registration

00:05:10

unlike other very prestigious forms

00:05:13

at there is nobody pays

00:05:15

to be here as a

00:05:18

student or as a research

00:05:20

person you come you can

00:05:22

watch the video and that's

00:05:23

it. So no, maybe maybe

00:05:26

some might not be happy.

00:05:28

But I think that this

00:05:30

is the best form yesterday

00:05:32

Spanos were reading credibly. Stop

00:05:35

since I learned a lot,

00:05:37

so thank you. And with

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that I would like to

00:05:41

introduce. Carlos Manuel Torres. Yes,

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who is our moderator? And

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I must say I'm kind

00:05:49

of embarrassed to is a

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researcher and an academic and

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a professor but also practitioner

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he's also an arbitrator, you

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know that he has a

00:06:00

more than 20 years of

00:06:01

teaching experience in subjects in

00:06:03

the area of international economic

00:06:05

law. He has taught undergraduate

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and postgraduate classes at the

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faculty of law when I'm

00:06:11

in the postgraduate course in

00:06:13

law at face like a

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plan and in the Ghost

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Rider course in international relations

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at the faculty of political

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and social sciences all at

00:06:24

Unum here. He is a

00:06:27

Kinect Whitey level National researcher

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to receive the National University

00:06:33

recognition for young academic in

00:06:36

teaching in social sciences in

00:06:37

2007, and he has been

00:06:40

a panelist for NAFTA chapter

00:06:42

19 and in 2020, he

00:06:45

was proposed. On the list

00:06:47

of the technicalities of the

00:06:51

commercial remedies chapter. He's an

00:06:54

arbitrator on energy issues in

00:06:57

the London Court else. Ye

00:06:59

and the court of the

00:07:01

international Chamber of Commerce. He

00:07:03

is also an author and

00:07:05

of work international economic law

00:07:07

both international trade and investment

00:07:10

arbitration, and we did that

00:07:11

I give you the floor.

00:07:13

Thank you. Thank you very

00:07:23

much. Antonio, really generous presentation.

00:07:28

Welcome everybody. I would like

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to start by thanking the

00:07:33

opportunity to moderate this panel

00:07:36

the University of Mexico and

00:07:39

its Institute for legal research

00:07:43

welcomes you to our second

00:07:45

working day of the Mexico

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City investment Laura tration days

00:07:48

in the world arbitration update

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2023 is one of the

00:07:53

best events on investment arbitration

00:07:56

worldwide in Mexico place a

00:07:57

very active role in is

00:07:59

vs. Proceedings with many bilateral

00:08:03

investment treaties and treaties with

00:08:05

investment probations enforce Mexico as

00:08:09

well said yesterday still ranked

00:08:13

sixth place as respondents State.

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This event is a great

00:08:17

opportunity to enhance the relevance

00:08:19

of the International Investment law

00:08:21

and arbitration by hosting experts

00:08:24

at the highest level. Thanks

00:08:27

to the sponsors are real

00:08:29

chicken from Taurus and Bumble

00:08:32

and beliefs as well as

00:08:34

our panelists here. Yo do

00:08:37

the audience and all the

00:08:38

people involved in the organization

00:08:40

for this relevant events. Today,

00:08:44

we have a great fan

00:08:45

of gold from metal clasp

00:08:47

to Ruby River Capital LLC.

00:08:49

Mexico's not experience and the

00:08:52

future of investment arbitration under

00:08:54

the usmca three international experts

00:08:58

my colleagues and Friends. Cindy

00:09:02

volume Arista Lopez in Bernardo

00:09:04

Sepulveda, they will address this

00:09:06

topic in a little more

00:09:08

than one hour a challenging

00:09:11

task indeed. We have decided

00:09:14

to separate this panel in

00:09:16

three parts first. Contributions of

00:09:21

NAFTA to is arbitration second

00:09:24

similarities and differences between NAFTA

00:09:27

and usmca and third. What

00:09:31

is the future of investment?

00:09:47

today introduced a fuel rim

00:09:54

is International RV trailer trade

00:09:57

and investment attorney Cindy has

00:09:59

over 15 years of experience

00:10:01

in trade in services and

00:10:02

investment as well as investment

00:10:05

arbitration. She served as deputy

00:10:07

chief advisor investment arbitrations for

00:10:11

the government of Mexico where

00:10:13

she represented the country in

00:10:15

17 International Investment arbitration exit

00:10:19

NAFTA. Various International Trade forums

00:10:28

in particular in the discussions

00:10:32

for the SDA reform and

00:10:34

the drafting of a code

00:10:35

of conduct for arbitrators and

00:10:37

the judicators among others Cindy

00:10:40

also served as counsel in

00:10:43

Mexico's lead negotiator in 17

00:10:45

investment agreements in second place

00:10:48

at Lopez. It's a legal

00:10:52

consultant specializing in international trade

00:10:54

in arbitration at Clark Hill

00:10:56

PLC before joining Clark Hill.

00:11:00

He held positions of the

00:11:01

ministry of economy of Mexico.

00:11:04

First of Deputy legal counsel

00:11:06

for international trade and later

00:11:09

as legal counsel to the

00:11:10

NAFTA office of Embassy of

00:11:12

Mexico in Washington d.c. Serve

00:11:16

as Mexico's lead negotiator of

00:11:18

several investment agreements, including the

00:11:21

investment chapters of the US

00:11:23

and Mexico Canada agreement usmca

00:11:25

and the comprehensive Progressive agreement

00:11:28

for trans-pacific partnership TPP. How

00:11:32

do you spell also Council

00:11:33

Mexico in isds cases under

00:11:35

NAFTA nwit, Mexico Spain? Last

00:11:42

but not least Bernardo Sepulveda

00:11:44

more is a former judge

00:11:46

of the international court of

00:11:48

justice from 2006 to 2015

00:11:52

elected as its vice president

00:11:55

of the period 2012 to

00:11:57

2015. Judge, Sepulveda Moore has

00:12:01

a wide experience of the

00:12:02

presiding arbitrator in cases on

00:12:04

their own Supply rules the

00:12:06

exit convention and the ICC

00:12:08

rules as well as an

00:12:09

appointed arbitrator in mining investment

00:12:11

regionals. Bernardo is of counsel

00:12:15

a Krill a leading law

00:12:17

firm based in Mexico City

00:12:19

where he's head of dispute

00:12:22

resolution Department. Jorge Sepulveda more

00:12:25

has been Secretary of Foreign

00:12:27

Relations of Mexico from 1982

00:12:31

to 1988 and ambassador of

00:12:34

Mexico to the United States

00:12:35

of America and the United

00:12:37

Kingdom welcome you all. Thank

00:12:40

you so much for being

00:12:41

here. now Begin our session.

00:12:46

I will ask with the

00:12:49

topic of Mexico's experience in

00:12:51

contributions of NAFTA to isds

00:12:53

arbitration for that. I asked

00:12:56

at least able to take

00:12:58

the floor, please. Waco cast

00:13:16

here we go. Better now.

00:13:20

Thank you. Good morning. Thank

00:13:23

you very much. And thanks

00:13:24

for the update for the

00:13:29
invitation and not sufficient to

00:13:32
see a lot of time

00:13:33
if your face is on

00:13:34
the whole collection that I'm

00:13:36
really really happy about that

00:13:37
and I will say that

00:13:40
this topic is is is

00:13:41
is fascinating because he would

00:13:44
you have to go back

00:13:45
to it and take a

00:13:46
shower need to 20 25

00:13:48
years ago and take a

00:13:49
look tube to the first

00:13:51

cases and see how they

00:13:52

slow has been developed over

00:13:54

the years, but I think

00:13:56

it would have to recognize

00:13:57

that to talk about makes

00:13:58

the experience and I use

00:13:59

use cases and the contribution

00:14:01

of the NAFTA case law

00:14:02

to the very creation system

00:14:05

or be possible to do

00:14:08

it in 10 or 15

00:14:09

minutes, but I will try

00:14:10

to do my best to

00:14:11

to just emphasize of made

00:14:13

reference to a few aspects

00:14:14

that hopefully would cover to

00:14:17

some extent of that. They

00:14:18

most of the The 25-year

00:14:21

sofa existence of of NAFTA

00:14:23

turn to 40 1994. There

00:14:27

was an expectation that Mexico

00:14:28

was going to be the

00:14:29

party. He was going to

00:14:30

be facing most of the

00:14:31

cases. I may have to

00:14:33

go as a case. But

00:14:34

I was mentioned yesterday. I'm

00:14:36

no one expected that the

00:14:37

amount of caseload was going

00:14:38

to be developed as we

00:14:39

see it today and that's

00:14:41

something that is remarkable and

00:14:42

an n and then on

00:14:45

the record, I will start

00:14:46

by setting the starting point

00:14:47

to you. And you say

00:14:48

it my presentation will be

00:14:49

the MetroCard case which is

00:14:50

referred to in the title

00:14:52

of this panel. And and

00:14:54

I think it's a good

00:14:55

starting point to talk about

00:14:56

the Mexico experience and participation

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in after cases. And the

00:14:59

now. Who is she also?

00:15:01

I think you should be

00:15:03

doing this this priest part

00:15:04

of the presentation as well

00:15:05

because he was there in

00:15:07

that case but Lisa is

00:15:11

is is is is is

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not the first case even

00:15:13

though this is starting point

00:15:15

presentation. I have to say

00:15:16

that these were among the

00:15:16

first case for Mexico Robert.

00:15:18

I seen there was only

00:15:19

the first one. And also

00:15:20

the Brazilian has the emergence

00:15:22

of in the first that

00:15:23

baby is going to be

00:15:23

resolved on the merits and

00:15:26

underneath that. So that's something

00:15:28

that that goes in the

00:15:30

in the Air day in

00:15:31

history. And also it was

00:15:37

the first victory for Mexico

00:15:39
under the leadership of his

00:15:41
kennel and the legal team

00:15:43
at the Secretary of call

00:15:44
me. So that's what the

00:15:46
weather be the First Transformation

00:15:48
cutting. It was a good

00:15:49
a good first step now

00:15:52
going back to being always

00:15:56
there has been subject for

00:15:57
many articles review and discussion

00:15:59
debate in the reason why

00:16:04
men is because of the

00:16:05
interpretations that providing it in

00:16:07

their work. I think they

00:16:08

they one of the most

00:16:11

relevant will be the interpretation

00:16:14

of article 11:05 a minimum

00:16:16

standard treatment in that case

00:16:18

that they can allege that

00:16:18

the lack of prints. Municipal

00:16:20

authority of gaster Sans Souci

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Bridge the article 11:05 and

00:16:26

and the tribunal sided with

00:16:27

the claim and the Computing

00:16:30

that transparency in its lack

00:16:33

of transparency is a windy

00:16:35

to play bridge your article

00:16:36

live in a fight a

00:16:38

Mexican government a challenge. This

00:16:42

this war before day's been

00:16:45

caught off a British Columbia

00:16:46

in Canada. And Mexico made

00:16:50

a great great job in

00:16:51

in in in trying to

00:16:52

to set aside is a

00:16:54

world. I was not set

00:16:55

aside completely. I mean at

00:16:56

least Mexico succeeded in in

00:16:57

in in a setting aside

00:16:58

this interpretation of expansive interpretation

00:17:01

of awful article, 11:05 and

00:17:04

also Mexico succeeded in a

00:17:06

no-sew setting aside a portion

00:17:08

of the Year award that

00:17:09

the found expropriation a on

00:17:13

basis of on Hunters party

00:17:14

as well. So Indian Mexico

00:17:17

how to to pay compensation

00:17:19

Hey, babe for this before

00:17:22

in this case, and it

00:17:23

was a second case in

00:17:24

Mexico lost it in the

00:17:26

case. But but he was

00:17:28

a good example of where

00:17:30

things are starting to go

00:17:31

in terms of a potential

00:17:33

Quran interpretations of an after-dinner

00:17:35

in the early in the

00:17:36

earlier cases. And and that

00:17:38

that is it that they

00:17:40

that is also important because

00:17:42

it has started this trend

00:17:43

of grand interpretation son at

00:17:46

the party started to be

00:17:47

concerned about these and there

00:17:51

another couple of cases that

00:17:52

I seen our word mention

00:17:54

it because you can understand

00:17:56

the context of first method

00:17:57

class medical case and those

00:18:00

cases are as ye spires

00:18:01

and I'm hoping David with

00:18:03

you were against Canada against

00:18:05

Mexico, but there is a

00:18:07

potential of interpretation delete applications

00:18:10

on on an article 11:05

00:18:12

continue to be a dangerously

00:18:16

going far beyond a what

00:18:18

an after-party sale in Tangent.

00:18:19

And I and I bring

00:18:21

something is the mayor say

00:18:23

that you going to turn

00:18:25

me that the breach of

00:18:25

article. Let me know to

00:18:27

which national treatment is essential

00:18:29

establish a breach also to

00:18:31

watch School 11:05. So again

00:18:32

going to be John but

00:18:35

enough directly 1105 Discovery Park

00:18:39

11:05. So by taking this

00:18:43

decision that you took the

00:18:45

breach of a combination of

00:18:46

international law and equated to

00:18:48

water to reach about minimal

00:18:50

standard treatment, which is something

00:18:52

that I have also caused

00:18:53

a concern among didn't have

00:18:55

two parties on the third

00:18:56

case. I'm just to induce

00:18:59

a Trilogy is the popular

00:19:00

vote against the governor of

00:19:02

Canada in that case that

00:19:03

you going to stay the

00:19:04

night for the possible that

00:19:05

a possible interpretation of the

00:19:06

presence of the France elements

00:19:08

in article 11:05 is that

00:19:10

they are additives to the

00:19:11

requirements of international law so

00:19:13

I can this was Stella

00:19:14

Kay, I guess enough for

00:19:15

enough for parties and this

00:19:16

that's why they decided to

00:19:19

To use what I think

00:19:21

it's one of the important

00:19:23

at 2 to guard the

00:19:26

correct interpretation of the treaty

00:19:29

which is colder north north

00:19:30

of interpretation of upset by

00:19:32

the Free Trade Commission. And

00:19:34
this is a tool that

00:19:36
has been used your swamps

00:19:37
and in life of NAFTA.

00:19:39
It was some attempts to

00:19:42
to agree on a notification

00:19:45
at some point but didn't

00:19:46
work but these and in

00:19:48
this in this in this

00:19:50
context did not have the

00:19:51
party decided to add open

00:19:53
up to another interpretation which

00:19:54
on their own article 11:05

00:19:57
and basically when you read

00:19:59

it, you know that your

00:19:59

patient accounting of it basically

00:20:01

is like a response to

00:20:02

those two tribunal's and and

00:20:04

saying that basic projecting what

00:20:07

they don't even have a

00:20:08

house I had said about

00:20:09

the way the scope of

00:20:11

the minimum standard of treatment

00:20:13

so because he's not of

00:20:15

interpretations are binding under NAFTA

00:20:17

is the TV. Future cases

00:20:20

how to be a hassle

00:20:22

served at the content of

00:20:23

his notice of interpretation. So

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this was a way to

00:20:27

correct and this expansive interpretation

00:20:29

by tribunal's I need I

00:20:32

think I mean to eat

00:20:34

it also had an impact

00:20:36

on the drafting of 3D

00:20:38

cinema in the future for

00:20:40

instance in in 2004 USA

00:20:44

babe updated model. And as

00:20:47

you can see the meaning

00:20:50

of Star Treatment by Appalachian

00:20:51

minimum standard treatment a provision

00:20:54

change it and was adjusted

00:20:58

to reflect the contact off

00:20:59

of off of this matter

00:21:00

of interpretation and and and

00:21:03

that was kind of the

00:21:04

new warden for for this

00:21:06

is thunder in in independent

00:21:09

return negotiation. It's all day

00:21:11

if I could Feast of

00:21:12

this note is is really

00:21:15

really really bad for for

00:21:16

the evolution of a case

00:21:17

law under NAFTA. what else

00:21:21

can I say also in

00:21:22

the case of an impact

00:21:27

on on on cases that

00:21:29

are not what they were

00:21:29

not on the underneath of

00:21:31

the famous case thickness it

00:21:35

take me there was another

00:21:36

another discussion and it should

00:21:38

be between the parties about

00:21:40

the scope of our tee

00:21:40

Coley live in the fair

00:21:43

and Equitable treatment is different

00:21:45

to what we have enough.

00:21:46

But in the end they

00:21:48

leave the decision in that

00:21:51

case was a very expensive

00:21:55

also as well and Mexico

00:21:58

after this decision decided to

00:22:00

pay suggest the Spain Italy

00:22:02

Spain to Rene Boucher to

00:22:03

be 80 and a new

00:22:05

vit 2006 reflected the contact

00:22:08

basically been out of interpretations

00:22:09

of the computer changes that

00:22:11

they believe they are the

00:22:12

standard a Boston dv80r with

00:22:14

one that is more consistent

00:22:17

with what would have enough.

00:22:19

So, I think that's another

00:22:20

can of a Effective from

00:22:22

side effect of beast mode

00:22:23

of interpretation that it did

00:22:24

not accept station happy in

00:22:26

the engine in another treaties.

00:22:29

And now that I'm turning

00:22:33

the notification, I think it's

00:22:34

also a word I need

00:22:36

people important to mention another

00:22:38

component of another interpretation which

00:22:40

is transparency half of a

00:22:42

notification talks about transparency in

00:22:44

that sounds really really bad

00:22:46

for nap. Because after you

00:22:48

basically have no other provisions

00:22:50

on transparency, they said for

00:22:54

the annex perhaps one publication

00:22:55

Awards, there was no provision

00:22:58

something spicy. And for the

00:22:59

first time today, then after

00:23:01

party decide to agree on

00:23:02

the set of provision that

00:23:03

will make all the information

00:23:06

submitted to the tribunal and

00:23:08

let me know you made

00:23:10

it available to the public

00:23:11

that the thing that was

00:23:12

an important also an important

00:23:15

change in the development of

00:23:18

case law as well. We

00:23:21

after that that that the

00:23:23

decision we start to see

00:23:26

a lot of information posted

00:23:28

in the websites of the

00:23:29

Canada the US and Mexico.

00:23:47

Morning contribution that I like

00:23:48

to mention that it's not

00:23:50

too often discussed is and

00:23:52

statement by the Free Trade

00:23:54

Commission on non disputing party

00:23:57

participation participation. And I think

00:23:59

this is another important contribution

00:24:01

because also there was no

00:24:03

provision on on on on

00:24:04

the on NAFTA on on

00:24:06

this side and finally calling

00:24:08

cuz Kaia submissions. So third-party

00:24:11

security joined a reason that

00:24:14

communication to the tribunal and

00:24:17

there was nothing about it.

00:24:19

And I think this was

00:24:20

an important precedent as well

00:24:22

because it has set the

00:24:24

standard bracelet for future investment

00:24:27

agreements as well. It did

00:24:30

nothing is worth mentioning. Of

00:24:32

course. This statement was not

00:24:34

binding as a notification that

00:24:35

two thousand one north of

00:24:36

temptation, but it was a

00:24:38

good thank Mark for for

00:24:39

future treaties and 19th at

00:24:41

nowadays in the more than

00:24:43

3 days. We see is

00:24:45

coming to see this type

00:24:46

of provisions. Included in the

00:24:48

text of the thing of

00:24:49

the dream is so it's

00:24:50

a good thing to to

00:24:51

mention as well. They finally

00:24:54

I would like to briefly

00:24:55

refer to another important contribution

00:24:57

in my view it. He

00:25:00

said there's no disputing parties

00:25:02

in missions on garage code

00:25:03

1128 distilled in my view

00:25:06

allowed also contributed to the

00:25:08

development of case law in

00:25:10

in in after a because

00:25:12

Francis. I mean Debbie Deb

00:25:15

responding party. If not only

00:25:19

was it the one who

00:25:20

was participating in the in

00:25:21

the in the case, but

00:25:22

also didn't understand parties a

00:25:24

world where even able to

00:25:25

2% us with me, You

00:25:28

should self interpretation it on

00:25:30

the Anglican than 10:30. Not

00:25:32

the case. And that's in

00:25:34

the first in the early

00:25:35

days of NAFTA was not

00:25:36

at a two very often

00:25:38

used but I will say

00:25:40

that after Frances and Robert

00:25:42

operation the first cases. I

00:25:45

don't see any in 1120

00:25:48

submission but but after medical

00:25:51

perhaps I started to see

00:25:53

like an increment of rent

00:25:54

increase for 11:20 submission and

00:25:56

nowadays. I mean, if you

00:25:57

do you can see where

00:26:02

is likely that you will

00:26:02

find Laurin 11:20 information by

00:26:06

either the us or Canada

00:26:07

or both. So this is

00:26:09

like a day became a

00:26:11

practice for the NAFTA parties

00:26:12

to to participate in every

00:26:16

occasion for NAFTA. And I

00:26:19

think that's a good practice

00:26:20

because it's another day another

00:26:22

way to prevent the wrong

00:26:25

interpretation, even though not always

00:26:26

how it works. Well, just

00:26:32

to briefly mention I seen

00:26:34

the other. It's already been

00:26:36

cases that I that bad

00:26:39

thing. I really want to

00:26:39

hear that. I think we're

00:26:40

mentioning is a firman farmers

00:26:44

phone against Mexico's. Well, that's

00:26:47

the case that I think

00:26:49

was the day the day

00:26:51

the first ICS case on

00:26:53

hunting and financial services. They

00:26:55

under a different chapter chapter

00:26:56

14 of NAFTA and it

00:26:59

wasn't favors and I also

00:27:00

enter both Mexico and I

00:27:02

also led the team in

00:27:04

that case as well and

00:27:06

financial services remains to be

00:27:14

like at it in a

00:27:16

separate way and that stuff

00:27:17

that you can see in

00:27:18

cptpp your usmca that kept

00:27:21

the same architecture of the

00:27:22

sign of keeping on a

00:27:23

specific set of Provisions for

00:27:24

ICS on on financial services

00:27:26

and that remains to be

00:27:27

there in case of today.

00:27:28

So I think it's another

00:27:29

good contribution of not and

00:27:31

finally they they other cases

00:27:33

okay that I would like

00:27:34

to mention is e p

00:27:35

i n ATM because this

00:27:37

in this case is it

00:27:37

was the first time but

00:27:39

they they consolidation that article

00:27:41

was flight. It was a

00:27:43

special educational to determine whether

00:27:45

these two cases were going

00:27:47

to be at Consolidated so

00:27:49

that this I think that's

00:27:49

another important thing because that

00:27:51

consolidation paper Vision remains to

00:27:53

be in cptpp usmca. So

00:27:55

is its prove to be

00:27:57

worth keeping it and funny

00:27:59

and just make up for

00:28:00

last place coming all this

00:28:02

contribution in Maggie have resulted

00:28:04

in the air from the

00:28:07

active participation of between of

00:28:08

the party is not a

00:28:09

u.s. United States Canada Mexico

00:28:11

for some 25 years after

00:28:22

cases under the usmca Legacy

00:28:25

close a computer, but the

00:28:26

real Legacy will continue to

00:28:28

the existence of the other

00:28:30

investment treaties influence by NAFTA.

00:28:32

Thank you very much. Thank

00:28:39

you so much. I still

00:28:40

really very important information concentrated

00:28:43

in a few minutes. Thank

00:28:44

you. Thank you. Thank you

00:29:02

very much, Andy. Let me

00:29:04

see what the privilege it

00:29:06

is to be a participant

00:29:08

in the conference in the

00:29:11

Mexican national Mexican University to

00:29:13

the University of not only

00:29:18

because of the high quality

00:29:21

participants in the conference members

00:29:26

of the community as a

00:29:29

whole because it means an

00:29:33

educational process in the case

00:29:36

of students in Mexico who

00:29:39

made as a result of

00:29:41

these circumference increase their interest

00:29:45

in dispute settlement through arbitration.

00:29:53

It's obvious that are you

00:29:57

still has indicated the trip

00:30:00

itself was not very important

00:30:06

instrument in the development of

00:30:08

arbitration matters. And it said

00:30:13

he has precedence over the

00:30:18

way. I returned to review

00:30:21

notes work and the decisions

00:30:23

of those arbitral tribunal have

00:30:25

been most influential in the

00:30:29

development of arbitral. Let me

00:30:34

have also that in the

00:30:36

case of Mexico the signing

00:30:39

of the treaty tell men

00:30:41

to illegals revolution in the

00:30:43

domestic sphere because as a

00:30:46

result of the signing of

00:30:48

the treaty we had to

00:30:50

modify a number of Legal

00:30:54

instrument starts with their we're

00:30:56

already Obsolete and as a

00:30:59

result of that process of

00:31:03

amendments has performed in the

00:31:06

Mexican legislation became an important

00:31:09

issue. So it's three of

00:31:13

us has to be delivered

00:31:16

to the way the tribunal

00:31:20

supplied in NAFTA principles have

00:31:23

influenced us a hold the

00:31:25

evolution of arbitration as a

00:31:30

hole in my case. My

00:31:32

desk is one that has

00:31:35

to do with a comparison

00:31:38

between NAFTA principles and usmca.

00:31:53

Important differences on the I

00:31:55

will pinpoint one that I

00:31:58

regard as an essential one.

00:32:00

Perhaps the most important one

00:32:02

not only in terms of

00:32:04

what this will mean for

00:32:07

arbitration and flow of investment

00:32:11

in Mexico, but also the

00:32:14

question of the impact that

00:32:17

the questions. Usmca has in

00:32:23

the road to be play

00:32:26

in the future of our

00:32:27

International arbitration as a whole

00:32:31

Let me start by saying

00:32:33

that there is a bridge

00:32:36

between NAFTA and the usmca

00:32:40

which is the so-called Legacy

00:32:44

rule to my notes to

00:32:50

say that on the 1st

00:32:52

of July 2020. NAFTA was

00:32:56

terminated as a result of

00:32:58

a political controversy. We all

00:33:02

know the controversy. I am

00:33:04

referring to however if certain

00:33:08

requirements provided in usmca, I

00:33:13

meant Nestor will still apply

00:33:15

its termination apply only for

00:33:22

arbitration in between July 1st,

00:33:25

2020 where that's to say

00:33:28

the entry into force of

00:33:30

um, smca on 5th, July

00:33:33

1st 2023. So that's getting

00:33:37

pretty close in D. Then

00:33:40

trying to force of... That

00:33:47

means 33 years after the

00:33:51

entry into force of you

00:33:53

and of you in some

00:33:58

sort of usmca important thing

00:34:04

is that up to now

00:34:05

as far as the information

00:34:07

is provided 13 cases in

00:34:13

which these Liga League Legacy

00:34:15

is being invoked as far

00:34:21

as I can know that

00:34:24

there are nine cases I

00:34:27

can make see KO 3

00:34:28

against Canada and won against

00:34:31

the US. No, substantial differences.

00:34:36

I indicated before relevant because

00:34:42

it is wrongly assumed that

00:34:46

the NAFTA and The usmca

00:34:48

Identical. They are not essential

00:34:53

differences that have to be

00:34:55

mentions. Of course. It is

00:35:00

very important to take notice

00:35:03

that in the case of

00:35:05

Canada the government of Canada

00:35:08

decided to be a part

00:35:12

of the isds chapter. So

00:35:16

that means that basically the

00:35:18

US and Mexico are the

00:35:20

ones who have the chapters

00:35:23

related to dispute resolution on

00:35:26

the matter of investment and

00:35:28

not Canada Canada perhaps for

00:35:33

Domestic reasons decided not to

00:35:36

join those chapters. The first

00:35:40

important difference that I notice

00:35:43

indication of usmca is the

00:35:46

definition of investment. It's interesting

00:35:49

to note this and I

00:35:50

still has already mentioned the

00:35:53

contributions made by the tribunal

00:35:55

to to the development of

00:36:00

Thrones International arbitration and definition

00:36:05

of investment in the case

00:36:07

of the usmca is an

00:36:09

example of that. Let me

00:36:11

tell you the reason for

00:36:13

that because it isn't expired

00:36:16

somehow in decisions of arbitral

00:36:21

tribunal indicates that you. In

00:36:26

contrast to not that it

00:36:28

provides a more precise definition

00:36:30

of investment inspired to Sonic.

00:36:33

Sent by the seashore lines

00:36:35

of fixing a truck drive

00:36:37

you nuts. The definition is

00:36:40

the following every asset that

00:36:42

owns or controls directly or

00:36:48

indirectly will be considered as

00:36:51

an investment. Additionally that has

00:36:55

the character that eat that

00:36:58

investment has a characteristic of

00:37:03

capital or other resources. I'm

00:37:09

sorry, I expect expectation of

00:37:11

gains of profits or the

00:37:14

Assumption of risk with me

00:37:16

or remember the decisions that

00:37:18

have been taken by arbitral

00:37:20

tribunal at the finding these

00:37:23

elements in investment of all

00:37:27

sorts of usmca includes many

00:37:30

other items that are somehow

00:37:32

similar. The ones not the

00:37:35

provides but I'm not necessarily

00:37:37

identical in all cases. The

00:37:42

question that is far more

00:37:45

different that signifies somehow and

00:37:51

abandonment of certain rules in

00:37:54

a ritual. Principles is the

00:37:59

so-called government sectors that are

00:38:03

included in the usmca that

00:38:06

is not a novelty in

00:38:09

my knowledge. There's no that

00:38:11

a treaty that provides a

00:38:13

similar treatment as the one

00:38:16

included in the usmca. Under

00:38:20

this treaty a privileged group

00:38:23

of us or Mexican investors,

00:38:27

not Canada not Canadians over

00:38:32

the government contract and that

00:38:34

operate in the government sector

00:38:36

enjoyed strong and extensive protection

00:38:41

in terms of both procedure

00:38:43

and material investment plans to

00:38:47

qualify. As a member of

00:38:48

this Elite group of investors,

00:38:51

the investment must operate in

00:38:54

15 / sectors, which are

00:39:00

the following oil and gas

00:39:04

activities power generation Services telecommunications

00:39:09

transportation services infrastructure. But all

00:39:15

other sectors are excluded I

00:39:19

would have mentioned that later

00:39:20

on government contracts benefits with

00:39:28

a series of substantive rights

00:39:31

such as the following a

00:39:34

minimum standard of treatment which

00:39:37

includes fair and Equitable treatment

00:39:39

and for protection and security

00:39:42

protection against direct and indirect

00:39:47

expropriation and exception from the

00:39:51

requirement to exhaust local Court

00:39:53

proceedings as a as a

00:39:55

prerequisite to resort to investment

00:39:59

arbitration. It is in a

00:40:02

very privileged situation. Those investors

00:40:07

not belonging to the government

00:40:09

sector will have on the

00:40:11

usmca and less substantial protection

00:40:15

in their rights than the

00:40:17

one they have under NAFTA.

00:40:19

Their claims will be limited

00:40:22

to invoke a breach of

00:40:24

national treatment course to most-favored-nation

00:40:29

treatment and the possibility of

00:40:32

a claim of expropriation provided

00:40:36

by the way. Only Direct

00:40:38

Express creation. Not in direct

00:40:41

express pH. That may happen

00:40:45

only after these investors first

00:40:50

successfully exhaust local remedies. I

00:40:55

said requisite to initiating investment

00:40:59

arbitration proceedings. The legal reach

00:41:05

they will be able to

00:41:07

play in violation of fair

00:41:11

and Equitable treatment or the

00:41:13
existence of an indirect expropriation

00:41:16
as I indicated before so

00:41:19
usmca considerably limits the scope

00:41:22
of the notion of national

00:41:25
treatment by providing that in

00:41:28
determining whether a foreign investor

00:41:31
visa for the national treatment

00:41:35
and it has another important

00:41:38
qualification like it so cold

00:41:43
Circumstances applies which means that

00:41:47
the decision to allow National

00:41:50
treatment will depend on this

00:41:52
is what the treaty says

00:41:53
on the totality of the

00:41:56
circumstances including whether the relevant

00:41:59
treatment distinguishes between investors or

00:42:02
Investments on the basis of

00:42:05
legitimate welfare objectives. So this

00:42:10
means highly flexible interpretation that

00:42:15
can be applied in like

00:42:21
circumstances inside and interpretation that

00:42:24
would be provided perhaps to

00:42:26
the national government and additionally

00:42:30
usmca as I said before

00:42:33
explicitly excludes indirect expropriation. After

00:42:39
noticing some of the dramatic

00:42:41

differences that apply appear in

00:42:44

the comparison between the NAFTA

00:42:46

rules and the usmca rules.

00:42:49

It is not an easy

00:42:50

thing to explain and Juice

00:42:53

justify the introduction of a

00:42:56

privilege scheme that substantially benefits

00:43:00

the investor and their investment

00:43:03

included in the five government

00:43:05

sectors in your view that

00:43:08

treatment of the incentives and

00:43:11

writes that other investors operating

00:43:14

in all sectors of the

00:43:16

economy system will be entitled

00:43:18
to claim. I will just

00:43:21
want to say that it's

00:43:24
too early to know what

00:43:27
how usmca would be applied

00:43:30
and interpreted by tribe units.

00:43:32
We still have not a

00:43:35
single case that resorts to

00:43:38
This treaty approved will come

00:43:43
once the flow of investment

00:43:46
starts to. Under usmca and

00:43:54
perhaps the fact that the

00:43:59
five sectors of that tree.

00:44:02
It made me that there

00:44:04

will be a large amount

00:44:07

of investment in these five

00:44:10

sectors, but perhaps in detriment

00:44:14

of the amount owed for

00:44:16

investment. Make all those sectors.

00:44:20

Don't don't don't have the

00:44:22

privilege of being covered by

00:44:26

the corporate sector. Thank you.

00:44:34

Thank you very much for

00:44:35

the normal Bernardo just referred

00:44:41

to some similarities and differences

00:44:44

from NAFTA and the usmca.

00:44:45

Are you thought something on

00:44:48

the stove? Good morning to

00:44:54

everyone first. I would like

00:44:55

to thank them and organizers

00:44:58

for having me today. It's

00:45:00

a great honor to share

00:45:01

this panel with with friends

00:45:03

and and colleagues. Well, I

00:45:05

think that a Bernardo and

00:45:08

I still have said a

00:45:10

lot of of the of

00:45:11

the difference and the influence

00:45:13

of of NAFTA in the

00:45:14

usmca. So I'm going to

00:45:17

focus on other difference that

00:45:19

I consider also that are

00:45:21

very important but first sight

00:45:25

I want to start my

00:45:26

intervention giving historical context of

00:45:30

of the best Men chapter

00:45:31

because it is important to

00:45:33

to take this into account

00:45:35

to understand what the outcome

00:45:38

of the of the chapter

00:45:41

14 of the usmca on

00:45:44

doing the negotiations that the

00:45:45

the usmca of the usmca

00:45:49

the political context the Did

00:45:52

the Konami Caswell influence the

00:45:56

discussions on the future of

00:45:59

the of the of the

00:46:02

investment chapter on doing that

00:46:04

time that the Sita were

00:46:06

where was recently negotiated by

00:46:09

by by Canada with the

00:46:12

European Union and Canada established

00:46:15

a for the first time

00:46:17

an investment Court also influence

00:46:21

these these negotiations. For instance

00:46:25

one one important feature of

00:46:27

of nasty stuff in the

00:46:28

Attic play Eric Chou system.

00:46:30

And this was on there

00:46:32

where where is about the

00:46:37

functioning of this of the

00:46:39

system. And also when the

00:46:41

negotiations to start the day

00:46:43

did us we're considering an

00:46:48

unquestioning very seriously that there

00:46:51

is dies. Officials in in

00:46:53

the US as well as

00:46:55

the trade representative does not

00:46:57

like the the the isds

00:46:59

they consider it is a

00:47:00

problematic and and and they

00:47:04

also Beauty as acid violets.

00:47:06

They they they the US

00:47:08

Open today. So at the

00:47:11

time us did not have

00:47:13

any texts you look kind

00:47:16

of that was proposing something

00:47:18

similar about the Sita and

00:47:19

Mexico Montaine the traditional approach

00:47:22

during the negotiation and also

00:47:25

and a note of out

00:47:27

of town with a a

00:47:28

discussion or approach. We're also

00:47:30

in on in the discussion,

00:47:32

but I think that this

00:47:34

context to go help to

00:47:36

explain the outcome of the

00:47:38

of the of the investment

00:47:40

chapter and I still did

00:47:42

a very good job and

00:47:43

explaining how the Gnostic a

00:47:46

slow influence in the usmca

00:47:49

and most of the Usmca

00:47:53

Provisions in the investment chapter

00:47:55

including DISD as were influenced

00:47:58

by the by the case

00:47:59

law and and also by

00:48:01

the TPP and fpp TPP

00:48:03

investment in Des Moines chapter.

00:48:06

So I will say that

00:48:07

in many aspects the usmca

00:48:10

Investments chapter is an update

00:48:14

of the investment chapter in

00:48:17

Indianapolis that I'm going to

00:48:21

mention very generally about it

00:48:23

for sampling the substantive probation

00:48:25

and The usmca Preserve and

00:48:30

improve are most of the

00:48:32

substantive provisions of the NAFTA

00:48:34

such as National treatment expropriation

00:48:37

and Misty Heather Bernardo already

00:48:41
mentioned. They stayed the national

00:48:44
treatment probation. Were there the

00:48:46
party decided to to get

00:48:48
some clarity about the meaning

00:48:51
of likes you. There is

00:48:53
a specific language to get

00:48:57
clarity on for greater certainty.

00:48:59
What is the meaning of

00:49:01
life circumstances also on on

00:49:05
expropriation and MST? Are they

00:49:08
influence as a service to

00:49:10
mention of the case law

00:49:12
in these provisions? And what

00:49:15

time did I just want

00:49:17

to mention that for example

00:49:18

United States 14 a +

00:49:21

14b do Sonic says bring

00:49:24

Clarity to the substantive probation

00:49:26

and this business Onyx is

00:49:29

contained a common understanding of

00:49:32

the parties about the meaning

00:49:34

of customary international law about

00:49:37

the meaning of what is

00:49:38

expropriation and what constitutes direct

00:49:42

and indirect expectation in addition

00:49:47

to these provisions on the

00:49:49

substantive section. There were also

00:49:52

You probation such as the

00:49:53

corporate social responsibility probation to

00:49:57

encourage. The Enterprise's to adopt

00:50:00

in turcia internationally recognized standards

00:50:04

such as the violence of

00:50:06

the ocde and distribution comes

00:50:10

from also other treaties that

00:50:12

Mexico had have on the

00:50:15

Pacific Alliance framework agreement and

00:50:18

also on day on the

00:50:19

cptpp. So if the protection

00:50:22

and the protection is is

00:50:26

very similar. That's under the

00:50:28

NAFTA book. Procedurally. The rules

00:50:31

are substantially different from last

00:50:34

time the Ambassador Bernardo have

00:50:36

already highlighted those main difference.

00:50:39

So I am going I'm

00:50:42

not going to enter into

00:50:42

the details about the Legacy

00:50:44

at about the Legacy he

00:50:45

claims just to mention that

00:50:47

on July 21st 2020. And

00:50:53

the time frame from being

00:50:55

claims on their dish after

00:50:56

11 after NAFTA and and

00:51:00

there are too many to

00:51:02

mail requirements for doing that

00:51:03

one is that the established

00:51:06

investment must be have been

00:51:08

established established during the lifetime

00:51:12

of NAFTA and the second

00:51:13

that they they have to

00:51:15

submit a notice of intent

00:51:16

90 days before the July

00:51:19

1st of the of this

00:51:21

year and these deadlines have

00:51:23

already expired. So I know

00:51:27

they're important difference is that

00:51:29

despite the fact that the

00:51:33

standards of protection or to

00:51:37

investors and investment supplied to

00:51:39

the tree and USMC parties

00:51:42

in day is Dias mechanism

00:51:45

as it was mentioned in

00:51:47

previous panels, and I need

00:51:49

this one does not apply

00:51:50

to to the trip on

00:51:52

Canada a result on their

00:52:00

day cptpp entering into into

00:52:05

another main differences. I would

00:52:09

like to highlight that most

00:52:11

us investors in Mexico lose

00:52:16
the meaningful access today is

00:52:19
dies, and and and one

00:52:20
of these of this it

00:52:22
changes, is there a exhaustion

00:52:23
exhaustion of of domestic remedies.

00:52:26
This means that they have

00:52:28
to first litigate in domestic

00:52:31
court's the case before submitting

00:52:35
a claim on there under

00:52:36
the the usmca and another

00:52:39
important change is what Ambassador

00:52:41
has already mentioned that only

00:52:43
cover investors that are in

00:52:46

the key cover sectors that

00:52:48

that you have already mentioned

00:52:49

it with a cover contract.

00:52:52

Cambric can bring a claim

00:52:54

for all the substantive provisions

00:52:57

and I do not have

00:52:58

to litigate in Domestic Court.

00:53:01

It is an important in

00:53:03

an important a point and

00:53:06

a for those investors that

00:53:09

are not under the covers

00:53:12

sectors or recover contract investors

00:53:16

only a can bring National

00:53:19

treatment claims and a for

00:53:23

Direct Express creation know and

00:53:26

there it is probation. And

00:53:28

another procedural changes. Is that

00:53:32

a day procedural rules applicable

00:53:36

to education are now extended

00:53:39

to any agreed by the

00:53:42

parties. And also they did

00:53:45

the Restriction to use the

00:53:47

digital arbitration rules from 90-60

00:53:50

Sydney 1970. Jake's in the

00:53:52

NAFTA was change and now

00:53:55

it's flexible. So the parties

00:53:56

can choose a mate choose

00:53:58

a more recent versions of

00:54:02

the of the of the

00:54:03

rules for some place. For

00:54:07

example that they statute of

00:54:08

limitation was increased from 3

00:54:11

to 4 years is another

00:54:13

important change and there were

00:54:16

concerns about the date date

00:54:18

date date independent Independence and

00:54:21

impartiality of arbitrators City arbitrators.

00:54:23

So it will that ain't

00:54:25

a there was included a

00:54:27

provision Incorporated the USMC Incorporated

00:54:33

International bar association association guidelines

00:54:36

on conflicts of interest. I

00:54:39

need also contain a double

00:54:42

hiding rules which star which

00:54:44

has the probation to ask

00:54:47

for the duration of the

00:54:49

proceeding as a council. Party

00:54:53

aboard an expert witness in

00:54:56

in any pending arbitration on

00:54:58

their teeth and axis of

00:55:00

the of the chapter and

00:55:03

another important Improvement of the

00:55:05

of the agreement is the

00:55:07

inclusion of the transparency rules.

00:55:09

I still has already told

00:55:11

her about the Kalo and

00:55:12

and the importance of this

00:55:13

of this principle and most

00:55:16

of the NAFTA it cases

00:55:18

where it relied on the

00:55:20

maximum principal of transparency of

00:55:22

the arbitral proceedings. And this

00:55:26

was reflected in the usmca

00:55:29

which provides that the old

00:55:31

a date that they arbitration

00:55:33

hearings and the documents. We're

00:55:35

available or available to the

00:55:37
to the to the public

00:55:38
another important difference is the

00:55:41
and recognizing the importance of

00:55:43
the Amigos Korean usmca included

00:55:49
rules to ensure. Interested stakeholders,

00:55:54
including labor unions and civil

00:55:57
society and organizations can submit

00:56:02
we are or Friends of

00:56:05
the Court in brace and

00:56:08
finally to close this this

00:56:10
interbation. There were some Provisions

00:56:12
about the discontinuance of proceedings.

00:56:15
It is the feuding parties

00:56:16

for sample sale to to

00:56:19

take any further steps in

00:56:21

the proceedings for more than

00:56:23

150 days. They they they

00:56:27

they they put a procedure

00:56:32

that discontinuance of the proceedings

00:56:34

and this is due to

00:56:35

the fact that Mexico has

00:56:36

already faced some places. Where

00:56:38

are they submitted a notice

00:56:42

of intent but they don't

00:56:43

take any further steps for

00:56:46

many years. So this is

00:56:47

an important Provisions to avoid

00:56:50

those kind of abusive. Of

00:56:52

the system finally are there

00:56:54

were older older older improvements

00:56:59

on an interim give you

00:57:01

a status that Disney's up

00:57:04

at the request of a

00:57:05

berry or a disputing parties

00:57:08

at 3 when I met

00:57:09

before issuing the award may

00:57:13

may review or transmit these

00:57:15

proposed hour today today the

00:57:18

end of the session today

00:57:19

to the party. So those

00:57:21

are some of the of

00:57:22

the of the many examples

00:57:23

of difference is that I

00:57:24

that that are the updates

00:57:27

on improvements from from NAFTA

00:57:29

today USMC. Thank you. Very

00:57:38

much Cindy. We have a

00:57:41

few minutes left and I

00:57:43

want to I want you

00:57:45

to to give us. every

00:57:48

one of you few minutes

00:57:49

to to say about to

00:57:53

stress about the future of

00:57:54
the usmca, especially Precision dark

00:57:58
Navy on whether US Canadian

00:58:02
and Mexican investor still have

00:58:04
Wilhite will still have access

00:58:07
to investment arbitration of the

00:58:09
usmca. We have a few

00:58:12
minutes. So please be still.

00:58:15
What do you think about

00:58:15
this? Thank you, Carlos. The

00:58:24
answer your answer will be

00:58:26
yes and Kennedy and eating

00:58:28
investors will be still available

00:58:29
25 years claims against Mexico

00:58:32

on their date ctppt not

00:58:35

the usmca now they've about

00:58:39

final comments on the on

00:58:40

the future of arbitration in

00:58:43

division. I mean, I will

00:58:44

set foot inside a little

00:58:45

bit the discussion of arbitration.

00:58:47

I would like us to

00:58:48

22 Mission day in the

00:58:50

case for Mexico because Mexico

00:58:53

has now agreed to negotiate

00:58:55

it like a different set

00:58:57

of file different air conditioning

00:58:59

probation. We have someone mention

00:59:01

we were discussing yesterday the

00:59:03

Brazilian model Mexico's what's this

00:59:05

unitary one of those agreements

00:59:06

with Brazil we have they

00:59:08

received PPP model to say

00:59:10

is the usmca with his

00:59:13

unique and then we have

00:59:17

the the treaty with the

00:59:18

European Union. Hey, which even

00:59:21

though it's not easy to

00:59:22

enforce provide Lake a different

00:59:24

approach to I use he

00:59:25

is so the question he

00:59:26

will be what he's going

00:59:27

to do Mexico the next

00:59:28

time they decided to negotiate

00:59:30

investment agreement. They have like

00:59:32

a fool of a range

00:59:34

of options out of favour

00:59:39

of the natural the natural

00:59:43

flow will be going to

00:59:45

something more similar to cptpp

00:59:47

cuz it's kind of a

00:59:49

natural evolution of for NAFTA

00:59:50

the question about the permanent

00:59:55

Court approached by the European

00:59:58

Union. I think you should

00:59:58
still in there a lot

00:59:59
of the bed so that

01:00:00
it's important to me to

01:00:02
see what's going to be

01:00:03
the next step for Mexico

01:00:04
are there has been no

01:00:05
not a lot of action

01:00:07
in that side of a

01:00:08
demonstration last night Mexico doesn't

01:00:13
have a day or two

01:00:14
to do to do that,

01:00:15
but I'll let you know

01:00:16
what the future brings. Do

01:00:21

you agree? Thank you very

01:00:32

much. I think that the

01:00:35

issue that bothers me most

01:00:38

is the one related to

01:00:40

the corporate sectors in the

01:00:43

future by that they mean

01:00:45

the possibility that there would

01:00:49

be a discouragement on the

01:00:51

part of some investors. I

01:00:56

know that I'm thinking of

01:00:57

her I met you as

01:00:59

investors because they would not

01:01:02

have the same protection that

01:01:04
the government sectors have that

01:01:07
may mean in restriction that

01:01:12
will mean additional incentive to

01:01:16
invest in Mexico because more

01:01:19
obstacles are provided for in

01:01:22
the case of the ones

01:01:23
not covered by the cover

01:01:25
sectors than the privileged ones.

01:01:29
So it may happen. For

01:01:31
example in the case of

01:01:32
the mining sector, which is

01:01:35
one that is being excluded

01:01:37
from the full protection. Let's

01:01:40

call it at the waist

01:01:41

or issues related to public

01:01:43

health issues related to education

01:01:47

and other sectors that may

01:01:51

feel that they could be

01:01:53

so fun to see the

01:01:56

potential breaches of Rules by

01:02:01

the authorities and that their

01:02:04

capacity to result arbitration will

01:02:08

be very much limited. Their

01:02:12

situation is even worse than

01:02:14

the one they have to

01:02:16

provide it. I mean that

01:02:17

the provided a very substantial

01:02:20

set of rules in order

01:02:22

to protect all for investors

01:02:25

in Mexico coming from the

01:02:27

US and from can In

01:02:30

the case of the new

01:02:31

3D that doesn't happen that

01:02:34

protection for those that are

01:02:37

not privileged is far more

01:02:40

Elusive and restricted. So, I

01:02:44

wonder how much the flow

01:02:47

of investment will come to

01:02:49

Mexico as a result of

01:02:52

the Spheres don't cover sectors

01:02:56

may have and that the

01:02:58

resort to Armijo Recreation May

01:03:04

mean for those non-covered sectors

01:03:07

something that is no longer

01:03:10

as attractive as it used

01:03:13

to be in the case

01:03:14

of left. Thank you. Very

01:03:21

controversial measures of the usmca

01:03:25

Cindy. What what do you

01:03:26

think about this future in

01:03:29

the special case of the

01:03:32

u.s. Canadian Mexican possibilities of

01:03:35

access to have access to

01:03:37

invest in arbitration under the

01:03:38

usmca. Well, I won't say

01:03:42

Tremaine thinks if the first

01:03:44

one is that we we

01:03:47

should have in mind that

01:03:48

in 2027 and we will

01:03:54

have a revision of the

01:03:55

usmca and the usmca will

01:03:59

be subject to to a

01:04:00

revision by the three parts

01:04:02

to decide whether they want

01:04:05

to extend the term of

01:04:07

of of the agreement or

01:04:09

tutamen terminate. So from my

01:04:12
perspective many many issues will

01:04:15
be at the state to

01:04:17
eat at the stake in

01:04:18
in in the revision. They

01:04:20
are the political the commercial

01:04:22
the rise of the investment

01:04:24
claims, of course, and the

01:04:27
price of this meant it

01:04:29
will depend on to what

01:04:31
extent did they contribute the

01:04:34
controversial issues that are are

01:04:36
part are taking part of

01:04:39
the of the Of the

01:04:41

three countries during the last

01:04:42

years of many issues being

01:04:45

resolved and also the the

01:04:48

effectiveness of of the mechanisms

01:04:51

to resolve this this this

01:04:54

controversial issues. We wish you

01:04:58

would have to remind that

01:04:59

the usmca negotiations. Where is

01:05:03

was hit at a time

01:05:04

by day political economic and

01:05:06

Commercial contacts. So it is

01:05:09

very likely that the same

01:05:10

will happen during the derivation

01:05:12

of the agreement. Another front

01:05:15

or another important thing is

01:05:18

the population in Latin America.

01:05:21

And in many of our

01:05:22

country makes more necessary to

01:05:28

to provide certainty and stability

01:05:31

and and mechanisms to enforce

01:05:35

the rule of law at

01:05:37

International level. This is something

01:05:39

that was discussed just They

01:05:40

in in the last panel

01:05:42

and a source of great

01:05:44

importance in a context of

01:05:46

nearshoring pressuring. So we need

01:05:49

near trusting in doing business

01:05:51

and I think that at

01:05:54

this is fantastic. Also will

01:05:56

influence this discussion. And finally,

01:05:59

I would like to talk

01:06:01

to her like that discussions

01:06:03

that are taking place in

01:06:05

in the UNC Travel Group

01:06:06

three, there were discussions about

01:06:09

the lack of coherence of

01:06:14

lack of Independence and impartiality

01:06:19

of arbitrators the duration and

01:06:22

cost of arbitration of of

01:06:25

of of arbitration. So under

01:06:29

this group, there were many

01:06:31

concerns raised by the states

01:06:32

and they're also in discussions

01:06:35

about the reforms to resolve

01:06:38

this concept of of a

01:06:39

state. So we should follow

01:06:42

did the outcome of of

01:06:44

this reform and and and

01:06:47

and be very pleased with

01:06:52

this outcome of the outcome

01:06:54

of this discussion was really

01:06:57

a cheap the expectations of

01:07:00

a state do today several

01:07:03

concerns that we're right by

01:07:04

the states. I I want

01:07:06

to highlighted recently in the

01:07:08

in the last meeting in

01:07:09

in New York or approve

01:07:11

was approved. They they they

01:07:12

first outcome of the of

01:07:14

the group that is a

01:07:15

great achievement the code of

01:07:18

conduct of adjudicators. I congratulated

01:07:22

him a cleaner who is

01:07:24

also part of the discussion

01:07:25

because it was something that

01:07:27

was it done between juicy

01:07:30

Thailand and they did so

01:07:31

from my perspective dose are

01:07:33

the main aspect that wish

01:07:36

you a very pending cat.

01:07:40

A lot of attention and

01:07:41

I think that will of

01:07:42

course those will influence TD.

01:07:44

The future of is dies

01:07:46

in the in the reach.

01:07:47

Thank you. Thank you so

01:07:50

much Cindy. Unfortunately time is

01:07:54

implacable in and we are

01:07:56

out of time right now.

01:07:57

But before we finished I

01:07:59

want to thank the three

01:08:00

of you for the very

01:08:01

reason interesting approach to this

01:08:03

topic very complex topic and

01:08:07

thank you all for your

01:08:09

patience. I believe we have

01:08:11

a brief recess of 10

01:08:13

minutes maybe and we fall

01:08:15

to the second panel of

01:08:17

the day. Thank you so

01:08:18

much. volume Asia welcome, good

00:00:41

morning, everyone and bienvenida stores.

00:00:45

Mexico City invest in arbitration

00:00:48

days and two World arbitration

00:00:52

update before giving You stay

00:00:59

a before beginning with this

00:01:02

panel, which of course is

00:01:04

most important importance. I would

00:01:08

like to. Give special thanks

00:01:11

to all the organizers because

00:01:13

we we have been incredibly

00:01:15

hosted by the Mexican college

00:01:21

and undo Nam show. I

00:01:24

would like to give a

00:01:26

huge thanks to everyone here

00:01:28
and not only by the

00:01:30
organisers but but by every

00:01:32
Mexican person whether organizer or

00:01:35
not, we we have been

00:01:36
really really being welcomed in

00:01:39
the most warm way and

00:01:41
I could not think our

00:01:43
for a better partner to

00:01:45
do with the world arbitration

00:01:47
update forms as a reminder

00:01:50
of the world arbitration update

00:01:53
forms and forgive me again.

00:01:55
My name is Jose Antonio

00:01:56

Rivas and one of the

00:01:58

co-founders of the world of

00:02:01

attrition update. The world of

00:02:03

attrition update has to focus

00:02:05

has one is to update

00:02:08

on issues of Investment treaty

00:02:11

arbitration on issues of international

00:02:14

commercial arbitration and on issues

00:02:17

of public international law and

00:02:20

it really started as a

00:02:21

as an anecdote. I was

00:02:23

sharing yesterday with some how

00:02:24

it started. We were in

00:02:26

the midst of another form

00:02:28

and and a woman very

00:02:33

kindly sent me her recent

00:02:37

draft close to being published

00:02:41

by or you pee on

00:02:43

a topic that that is

00:02:45

very dear to watch which

00:02:46

is fair and Equitable treatment

00:02:47

about but her book is

00:02:49

on Fair and Equitable treatment

00:02:50

from the perspective of developing

00:02:52

States and and I read

00:02:55

a couple of chapters of

00:02:57

that book and I was

00:02:59

impressed and the next thing

00:03:02

was okay. Where was was

00:03:04

this lady and it happens

00:03:06

that she's from Bangladesh and

00:03:09

the neck The next thought

00:03:10

was why isn't she here?

00:03:12

But why isn't she being

00:03:14

featured in the main International

00:03:18

arbitration forums and and it

00:03:22

was it was simply adding

00:03:24

OnePlus 2 and saying well,

00:03:27

there should be a forum

00:03:28

that gives or provides a

00:03:31

platform for incredible Council arbitrators

00:03:34

diverse individuals from many Geographic

00:03:40

parts of the world and

00:03:43

not only focusing on Paris

00:03:45

and I love Paris in

00:03:47

York and I love New

00:03:48

York and Washington and of

00:03:50

course, I love in Washington

00:03:52

because I leave there and

00:03:53

so on and so forth.

00:03:54

Why couldn't we have a

00:03:56

form that gives the platform

00:03:58

to everyone who may be

00:04:00

I don't know in Mexico

00:04:02

or Bolivia or in Nigeria.

00:04:03

It's some parts of Europe

00:04:06

which are not the main

00:04:07

sensors etcetera so that that

00:04:08

was so rude. so one

00:04:12

one objective of this type

00:04:14

of worm is decentralization of

00:04:16

international arbitration and the other

00:04:18

part is exit now, it

00:04:30

is impossible 300. I'm going

00:04:32

cases. This is a new

00:04:36

medium. We have a a

00:04:38

library of videos of all

00:04:42
the panels everything is recorded.

00:04:43
And as as some news

00:04:46
we're working on an application,

00:04:48
which is based on having

00:04:51
an automatic a transcripts of

00:04:53
the proceedings. So that is

00:04:55
for research purposes for people

00:04:57
to watch and anybody can

00:04:59
watch it. Luckily. We have

00:05:01
had sponsors, but that the

00:05:03
other interesting bit of the

00:05:06
wild or the world of

00:05:07
attrition of it is that

00:05:08
there is no fee for

00:05:10
registration unlike other very prestigious

00:05:13
forms at there is nobody

00:05:14
pays to be here as

00:05:18
a student or as a

00:05:19
research person you come you

00:05:22
can watch the video and

00:05:23
that's it. So no, maybe

00:05:25
maybe some might not be

00:05:27
happy. But I think that

00:05:28
this is the best form

00:05:31
yesterday Spanos were reading credibly.

00:05:35
Stop since I learned a

00:05:37

lot, so thank you. And

00:05:39

with that I would like

00:05:40

to introduce. Carlos Manuel Torres.

00:05:44

Yes, who is our moderator?

00:05:47

And I must say I'm

00:05:49

kind of embarrassed to is

00:05:51

a researcher and an academic

00:05:55

and a professor but also

00:05:56

practitioner he's also an arbitrator,

00:05:58

you know that he has

00:05:59

a more than 20 years

00:06:01

of teaching experience in subjects

00:06:03

in the area of international

00:06:05

economic law. He has taught

00:06:07
undergraduate and postgraduate classes at

00:06:09
the faculty of law when

00:06:11
I'm in the postgraduate course

00:06:13
in law at face like

00:06:16
a plan and in the

00:06:18
Ghost Rider course in international

00:06:20
relations at the faculty of

00:06:22
political and social sciences all

00:06:24
at Unum here. He is

00:06:26
a Kinect Whitey level National

00:06:31
researcher to receive the National

00:06:33
University recognition for young academic

00:06:36
in teaching in social sciences

00:06:37
in 2007, and he has

00:06:40
been a panelist for NAFTA

00:06:41
chapter 19 and in 2020,

00:06:45
he was proposed. On the

00:06:47
list of the technicalities of

00:06:50
the commercial remedies chapter. He's

00:06:54
an arbitrator on energy issues

00:06:56
in the London Court else.

00:06:59
Ye and the court of

00:07:01
the international Chamber of Commerce.

00:07:02
He is also an author

00:07:04
and of work international economic

00:07:07
law both international trade and

00:07:09

investment arbitration, and we did

00:07:11
that I give you the

00:07:13
floor. Thank you. Thank you

00:07:23
very much. Antonio, really generous

00:07:26
presentation. Welcome everybody. I would

00:07:30
like to start by thanking

00:07:33
the opportunity to moderate this

00:07:36
panel the University of Mexico

00:07:38
and its Institute for legal

00:07:42
research welcomes you to our

00:07:44
second working day of the

00:07:46
Mexico City investment Laura tration

00:07:48
days in the world arbitration

00:07:50
update 2023 is one of

00:07:53

the best events on investment

00:07:55

arbitration worldwide in Mexico place

00:07:57

a very active role in

00:07:59

is vs. Proceedings with many

00:08:02

bilateral investment treaties and treaties

00:08:05

with investment probations enforce Mexico

00:08:09

as well said yesterday still

00:08:12

ranked sixth place as respondents

00:08:15

State. This event is a

00:08:17

great opportunity to enhance the

00:08:19

relevance of the International Investment

00:08:21

law and arbitration by hosting

00:08:23

experts at the highest level.

00:08:26

Thanks to the sponsors are

00:08:29

real chicken from Taurus and

00:08:30

Bumble and beliefs as well

00:08:34

as our panelists here. Yo

00:08:36

do the audience and all

00:08:38

the people involved in the

00:08:39

organization for this relevant events.

00:08:43

Today, we have a great

00:08:45

fan of gold from metal

00:08:47

clasp to Ruby River Capital

00:08:49

LLC. Mexico's not experience and

00:08:52

the future of investment arbitration

00:08:54

under the usmca three international

00:08:57

experts my colleagues and Friends.

00:09:01

Cindy volume Arista Lopez in

00:09:04

Bernardo Sepulveda, they will address

00:09:06

this topic in a little

00:09:08

more than one hour a

00:09:10

challenging task indeed. We have

00:09:14

decided to separate this panel

00:09:16

in three parts first. Contributions

00:09:20

of NAFTA to is arbitration

00:09:22

second similarities and differences between

00:09:26

NAFTA and usmca and third.

00:09:30

What is the future of

00:09:32

investment? today introduced a fuel

00:09:49

rim is International RV trailer

00:09:56

trade and investment attorney Cindy

00:09:59

has over 15 years of

00:10:00

experience in trade in services

00:10:02

and investment as well as

00:10:04

investment arbitration. She served as

00:10:07

deputy chief advisor investment arbitrations

00:10:11

for the government of Mexico

00:10:12

where she represented the country

00:10:14

in 17 International Investment arbitration

00:10:17

exit NAFTA. Various International Trade

00:10:28

forums in particular in the

00:10:31

discussions for the SDA reform

00:10:33

and the drafting of a

00:10:35

code of conduct for arbitrators

00:10:37

and the judicators among others

00:10:39

Cindy also served as counsel

00:10:42

in Mexico's lead negotiator in

00:10:45

17 investment agreements in second

00:10:48

place at Lopez. It's a

00:10:52

legal consultant specializing in international

00:10:54

trade in arbitration at Clark

00:10:56

Hill PLC before joining Clark

00:10:59

Hill. He held positions of

00:11:01

the ministry of economy of

00:11:03

Mexico. First of Deputy legal

00:11:06

counsel for international trade and

00:11:08

later as legal counsel to

00:11:10

the NAFTA office of Embassy

00:11:12

of Mexico in Washington d.c.

00:11:13

Serve as Mexico's lead negotiator

00:11:18

of several investment agreements, including

00:11:21

the investment chapters of the

00:11:22

US and Mexico Canada agreement

00:11:25

usmca and the comprehensive Progressive

00:11:28

agreement for trans-pacific partnership TPP.

00:11:32

How do you spell also

00:11:33

Council Mexico in isds cases

00:11:35

under NAFTA nwit, Mexico Spain?

00:11:41

Last but not least Bernardo

00:11:43

Sepulveda more is a former

00:11:46

judge of the international court

00:11:48

of justice from 2006 to

00:11:51

2015 elected as its vice

00:11:54

president of the period 2012

00:11:57

to 2015. Judge, Sepulveda Moore

00:12:00

has a wide experience of

00:12:02

the presiding arbitrator in cases

00:12:04

on their own Supply rules

00:12:05

the exit convention and the

00:12:07

ICC rules as well as

00:12:09

an appointed arbitrator in mining

00:12:11

investment regionals. Bernardo is of

00:12:15

counsel a Krill a leading

00:12:17

law firm based in Mexico

00:12:19

City where he's head of

00:12:21

dispute resolution Department. Jorge Sepulveda

00:12:25

more has been Secretary of

00:12:27

Foreign Relations of Mexico from

00:12:30

1982 to 1988 and ambassador

00:12:33

of Mexico to the United

00:12:35

States of America and the

00:12:37

United Kingdom welcome you all.

00:12:40

Thank you so much for

00:12:41

being here. now Begin our

00:12:46

session. I will ask with

00:12:49

the topic of Mexico's experience

00:12:51

in contributions of NAFTA to

00:12:53

isds arbitration for that. I

00:12:56

asked at least able to

00:12:57

take the floor, please. Waco

00:13:11

cast here we go. Better

00:13:20

now. Thank you. Good morning.

00:13:23

Thank you very much. And

00:13:24

thanks for the update for

00:13:29

the invitation and not sufficient

00:13:32

to see a lot of

00:13:32

time if your face is

00:13:34

on the whole collection that

00:13:36

I'm really really happy about

00:13:37

that and I will say

00:13:39
that this topic is is

00:13:41
is is fascinating because he

00:13:44
would you have to go

00:13:45
back to it and take

00:13:46
a shower need to 20

00:13:48
25 years ago and take

00:13:49
a look tube to the

00:13:50
first cases and see how

00:13:52
they slow has been developed

00:13:53
over the years, but I

00:13:55
think it would have to

00:13:57
recognize that to talk about

00:13:58
makes the experience and I

00:13:59

use use cases and the

00:14:01

contribution of the NAFTA case

00:14:02

law to the very creation

00:14:04

system or be possible to

00:14:08

do it in 10 or

00:14:09

15 minutes, but I will

00:14:10

try to do my best

00:14:11

to to just emphasize of

00:14:13

made reference to a few

00:14:14

aspects that hopefully would cover

00:14:16

to some extent of that.

00:14:18

They most of the The

00:14:20

25-year sofa existence of of

00:14:22

NAFTA turn to 40 1994.

00:14:26

There was an expectation that

00:14:28

Mexico was going to be

00:14:28

the party. He was going

00:14:30

to be facing most of

00:14:31

the cases. I may have

00:14:33

to go as a case.

00:14:34

But I was mentioned yesterday.

00:14:36

I'm no one expected that

00:14:37

the amount of caseload was

00:14:38

going to be developed as

00:14:39

we see it today and

00:14:40

that's something that is remarkable

00:14:42

and an n and then

00:14:44
on the record, I will

00:14:45
start by setting the starting

00:14:47
point to you. And you

00:14:48
say it my presentation will

00:14:49
be the MetroCard case which

00:14:50
is referred to in the

00:14:51
title of this panel. And

00:14:53
and I think it's a

00:14:54
good starting point to talk

00:14:56
about the Mexico experience and

00:14:58
participation in after cases. And

00:14:59
the now. Who is she

00:15:01
also? I think you should

00:15:03

be doing this this priest

00:15:04

part of the presentation as

00:15:05

well because he was there

00:15:06

in that case but Lisa

00:15:10

is is is is is

00:15:11

is not the first case

00:15:13

even though this is starting

00:15:14

point presentation. I have to

00:15:16

say that these were among

00:15:16

the first case for Mexico

00:15:18

Robert. I seen there was

00:15:18

only the first one. And

00:15:20

also the Brazilian has the

00:15:21

emergence of in the first

00:15:22

that baby is going to

00:15:23

be resolved on the merits

00:15:26

and underneath that. So that's

00:15:27

something that that goes in

00:15:30

the in the Air day

00:15:31

in history. And also it

00:15:34

was the first victory for

00:15:38

Mexico under the leadership of

00:15:40

his kennel and the legal

00:15:43

team at the Secretary of

00:15:44

call me. So that's what

00:15:46

the weather be the First

00:15:47

Transformation cutting. It was a

00:15:49

good a good first step

00:15:50

now going back to being

00:15:56

always there has been subject

00:15:57

for many articles review and

00:15:59

discussion debate in the reason

00:16:03

why men is because of

00:16:04

the interpretations that providing it

00:16:07

in their work. I think

00:16:08

they they one of the

00:16:09

most relevant will be the

00:16:13

interpretation of article 11:05 a

00:16:15

minimum standard treatment in that

00:16:17

case that they can allege

00:16:18

that the lack of prints.

00:16:19

Municipal authority of gaster Sans

00:16:22

Souci Bridge the article 11:05

00:16:26

and and the tribunal sided

00:16:27

with the claim and the

00:16:28

Computing that transparency in its

00:16:33

lack of transparency is a

00:16:34

windy to play bridge your

00:16:36

article live in a fight

00:16:37

a Mexican government a challenge.

00:16:42

This this war before day's

00:16:45

been caught off a British

00:16:46

Columbia in Canada. And Mexico

00:16:49

made a great great job

00:16:51
in in in in trying

00:16:52
to to set aside is

00:16:53
a world. I was not

00:16:54
set aside completely. I mean

00:16:56
at least Mexico succeeded in

00:16:57
in in in a setting

00:16:58
aside this interpretation of expansive

00:17:01
interpretation of awful article, 11:05

00:17:04
and also Mexico succeeded in

00:17:06
a no-sew setting aside a

00:17:08
portion of the Year award

00:17:09
that the found expropriation a

00:17:11
on basis of on Hunters

00:17:14

party as well. So Indian

00:17:16

Mexico how to to pay

00:17:18

compensation Hey, babe for this

00:17:22

before in this case, and

00:17:23

it was a second case

00:17:24

in Mexico lost it in

00:17:25

the case. But but he

00:17:28

was a good example of

00:17:30

where things are starting to

00:17:31

go in terms of a

00:17:32

potential Quran interpretations of an

00:17:34

after-dinner in the early in

00:17:36

the earlier cases. And and

00:17:38
that that is it that

00:17:40
they that is also important

00:17:41
because it has started this

00:17:43
trend of grand interpretation son

00:17:46
at the party started to

00:17:47
be concerned about these and

00:17:49
there another couple of cases

00:17:52
that I seen our word

00:17:54
mention it because you can

00:17:55
understand the context of first

00:17:57
method class medical case and

00:18:00
those cases are as ye

00:18:00
spires and I'm hoping David

00:18:02

with you were against Canada

00:18:04

against Mexico, but there is

00:18:07

a potential of interpretation delete

00:18:10

applications on on an article

00:18:11

11:05 continue to be a

00:18:13

dangerously going far beyond a

00:18:17

what an after-party sale in

00:18:19

Tangent. And I and I

00:18:21

bring something is the mayor

00:18:22

say that you going to

00:18:23

turn me that the breach

00:18:25

of article. Let me know

00:18:26

to which national treatment is

00:18:28

essential establish a breach also

00:18:30
to watch School 11:05. So

00:18:32
again going to be John

00:18:35
but enough directly 1105 Discovery

00:18:39
Park 11:05. So by taking

00:18:42
this decision that you took

00:18:45
the breach of a combination

00:18:46
of international law and equated

00:18:48
to water to reach about

00:18:50
minimal standard treatment, which is

00:18:51
something that I have also

00:18:52
caused a concern among didn't

00:18:55
have two parties on the

00:18:56
third case. I'm just to

00:18:58

induce a Trilogy is the

00:19:00

popular vote against the governor

00:19:02

of Canada in that case

00:19:03

that you going to stay

00:19:03

the night for the possible

00:19:05

that a possible interpretation of

00:19:06

the presence of the France

00:19:07

elements in article 11:05 is

00:19:09

that they are additives to

00:19:11

the requirements of international law

00:19:12

so I can this was

00:19:14

Stella Kay, I guess enough

00:19:15

for enough for parties and

00:19:16

this that's why they decided

00:19:18
to To use what I

00:19:21
think it's one of the

00:19:22
important at 2 to guard

00:19:26
the correct interpretation of the

00:19:28
treaty which is colder north

00:19:29
north of interpretation of upset

00:19:32
by the Free Trade Commission.

00:19:33
And this is a tool

00:19:36
that has been used your

00:19:37
swamps and in life of

00:19:38
NAFTA. It was some attempts

00:19:41
to to agree on a

00:19:43
notification at some point but

00:19:46

didn't work but these and

00:19:48

in this in this in

00:19:49

this context did not have

00:19:51

the party decided to add

00:19:52

open up to another interpretation

00:19:54

which on their own article

00:19:56

11:05 and basically when you

00:19:58

read it, you know that

00:19:59

your patient accounting of it

00:20:00

basically is like a response

00:20:02

to those two tribunal's and

00:20:04

and saying that basic projecting

00:20:06

what they don't even have

00:20:07

a house I had said

00:20:09

about the way the scope

00:20:11

of the minimum standard of

00:20:12

treatment so because he's not

00:20:15

of interpretations are binding under

00:20:17

NAFTA is the TV. Future

00:20:20

cases how to be a

00:20:21

hassle served at the content

00:20:23

of his notice of interpretation.

00:20:24

So this was a way

00:20:27

to correct and this expansive

00:20:29

interpretation by tribunal's I need

00:20:32

I think I mean to

00:20:33

eat it also had an

00:20:36

impact on the drafting of

00:20:38

3D cinema in the future

00:20:39

for instance in in 2004

00:20:41

USA babe updated model. And

00:20:47

as you can see the

00:20:48

meaning of Star Treatment by

00:20:50

Appalachian minimum standard treatment a

00:20:54

provision change it and was

00:20:57

adjusted to reflect the contact

00:20:59

off of off of this

00:21:00

matter of interpretation and and

00:21:03

and that was kind of

00:21:04

the new warden for for

00:21:05

this is thunder in in

00:21:07

independent return negotiation. It's all

00:21:11

day if I could Feast

00:21:12

of this note is is

00:21:14

really really really bad for

00:21:16

for the evolution of a

00:21:17

case law under NAFTA. what

00:21:21

else can I say also

00:21:22

in the case of an

00:21:27

impact on on on cases

00:21:28

that are not what they

00:21:29

were not on the underneath

00:21:30

of the famous case thickness

00:21:34

it take me there was

00:21:35

another another discussion and it

00:21:38

should be between the parties

00:21:39

about the scope of our

00:21:40

tee Coley live in the

00:21:42

fair and Equitable treatment is

00:21:44

different to what we have

00:21:45

enough. But in the end

00:21:47

they leave the decision in

00:21:51

that case was a very

00:21:54

expensive also as well and

00:21:58

Mexico after this decision decided

00:22:00

to pay suggest the Spain

00:22:02

Italy Spain to Rene Boucher

00:22:03
to be 80 and a

00:22:04
new vit 2006 reflected the

00:22:07
contact basically been out of

00:22:08
interpretations of the computer changes

00:22:11
that they believe they are

00:22:12
the standard a Boston dv80r

00:22:14
with one that is more

00:22:16
consistent with what would have

00:22:18
enough. So, I think that's

00:22:20
another can of a Effective

00:22:22
from side effect of beast

00:22:23
mode of interpretation that it

00:22:24
did not accept station happy

00:22:25

in the engine in another

00:22:28

treaties. And now that I'm

00:22:31

turning the notification, I think

00:22:34

it's also a word I

00:22:36

need people important to mention

00:22:38

another component of another interpretation

00:22:40

which is transparency half of

00:22:42

a notification talks about transparency

00:22:44

in that sounds really really

00:22:45

bad for nap. Because after

00:22:47

you basically have no other

00:22:49

provisions on transparency, they said

00:22:53

for the annex perhaps one

00:22:54

publication Awards, there was no

00:22:57

provision something spicy. And for

00:22:59

the first time today, then

00:23:00

after party decide to agree

00:23:02

on the set of provision

00:23:03

that will make all the

00:23:05

information submitted to the tribunal

00:23:07

and let me know you

00:23:10

made it available to the

00:23:11

public that the thing that

00:23:12

was an important also an

00:23:15

important change in the development

00:23:17

of case law as well.

00:23:21

We after that that that

00:23:23

the decision we start to

00:23:26

see a lot of information

00:23:27

posted in the websites of

00:23:28

the Canada the US and

00:23:30

Mexico. Morning contribution that I

00:23:48

like to mention that it's

00:23:49

not too often discussed is

00:23:52

and statement by the Free

00:23:53

Trade Commission on non disputing

00:23:56

party participation participation. And I

00:23:59

think this is another important

00:24:00

contribution because also there was

00:24:02

no provision on on on

00:24:04

on the on NAFTA on

00:24:06

on this side and finally

00:24:08

calling cuz Kaia submissions. So

00:24:11

third-party security joined a reason

00:24:14

that communication to the tribunal

00:24:15

and there was nothing about

00:24:18

it. And I think this

00:24:20

was an important precedent as

00:24:22

well because it has set

00:24:23

the standard bracelet for future

00:24:26

investment agreements as well. It

00:24:30

did nothing is worth mentioning.

00:24:32

Of course. This statement was

00:24:33
not binding as a notification

00:24:35
that two thousand one north

00:24:36
of temptation, but it was

00:24:38
a good thank Mark for

00:24:39
for future treaties and 19th

00:24:41
at nowadays in the more

00:24:43
than 3 days. We see

00:24:44
is coming to see this

00:24:46
type of provisions. Included in

00:24:48
the text of the thing

00:24:48
of the dream is so

00:24:49
it's a good thing to

00:24:51
to mention as well. They

00:24:53

finally I would like to

00:24:54

briefly refer to another important

00:24:57

contribution in my view it.

00:25:00

He said there's no disputing

00:25:02

parties in missions on garage

00:25:03

code 1128 distilled in my

00:25:06

view allowed also contributed to

00:25:08

the development of case law

00:25:09

in in in after a

00:25:11

because Francis. I mean Debbie

00:25:14

Deb responding party. If not

00:25:19

only was it the one

00:25:20

who was participating in the

00:25:21

in the in the case,

00:25:22

but also didn't understand parties

00:25:23

a world where even able

00:25:25

to 2% us with me,

00:25:27

You should self interpretation it

00:25:30

on the Anglican than 10:30.

00:25:31

Not the case. And that's

00:25:33

in the first in the

00:25:34

early days of NAFTA was

00:25:36

not at a two very

00:25:38

often used but I will

00:25:40

say that after Frances and

00:25:42

Robert operation the first cases.

00:25:45

I don't see any in

00:25:47

1120 submission but but after

00:25:50

medical perhaps I started to

00:25:53

see like an increment of

00:25:54

rent increase for 11:20 submission

00:25:56

and nowadays. I mean, if

00:25:57

you do you can see

00:26:01

where is likely that you

00:26:02

will find Laurin 11:20 information

00:26:06

by either the us or

00:26:07

Canada or both. So this

00:26:09

is like a day became

00:26:10

a practice for the NAFTA

00:26:12

parties to to participate in

00:26:14

every occasion for NAFTA. And

00:26:18

I think that's a good

00:26:19

practice because it's another day

00:26:21

another way to prevent the

00:26:23

wrong interpretation, even though not

00:26:26

always how it works. Well,

00:26:32

just to briefly mention I

00:26:34

seen the other. It's already

00:26:36

been cases that I that

00:26:37

bad thing. I really want

00:26:39

to hear that. I think

00:26:40

we're mentioning is a firman

00:26:43

farmers phone against Mexico's. Well,

00:26:46

that's the case that I

00:26:49

think was the day the

00:26:50

day the first ICS case

00:26:53

on hunting and financial services.

00:26:54

They under a different chapter

00:26:56

chapter 14 of NAFTA and

00:26:58

it wasn't favors and I

00:27:00

also enter both Mexico and

00:27:01

I also led the team

00:27:04

in that case as well

00:27:05

and financial services remains to

00:27:14

be like at it in

00:27:15

a separate way and that

00:27:17

stuff that you can see

00:27:18

in cptpp your usmca that

00:27:20

kept the same architecture of

00:27:22

the sign of keeping on

00:27:23

a specific set of Provisions

00:27:24

for ICS on on financial

00:27:26

services and that remains to

00:27:27

be there in case of

00:27:28

today. So I think it's

00:27:29

another good contribution of not

00:27:30

and finally they they other

00:27:33

cases okay that I would

00:27:34

like to mention is e

00:27:35

p i n ATM because

00:27:36

this in this case is

00:27:37

it was the first time

00:27:39

but they they consolidation that

00:27:41

article was flight. It was

00:27:43

a special educational to determine

00:27:45

whether these two cases were

00:27:46

going to be at Consolidated

00:27:48

so that this I think

00:27:49

that's another important thing because

00:27:51

that consolidation paper Vision remains

00:27:52

to be in cptpp usmca.

00:27:55

So is its prove to

00:27:57

be worth keeping it and

00:27:59

funny and just make up

00:28:00

for last place coming all

00:28:02

this contribution in Maggie have

00:28:04

resulted in the air from

00:28:05

the active participation of between

00:28:08

of the party is not

00:28:09

a u.s. United States Canada

00:28:11

Mexico for some 25 years

00:28:13

after cases under the usmca

00:28:24

Legacy close a computer, but

00:28:26

the real Legacy will continue

00:28:27

to the existence of the

00:28:30

other investment treaties influence by

00:28:31

NAFTA. Thank you very much.

00:28:39

Thank you so much. I

00:28:40

still really very important information

00:28:42

concentrated in a few minutes.

00:28:44

Thank you. Thank you. Thank

00:29:02

you very much, Andy. Let

00:29:04

me see what the privilege

00:29:06

it is to be a

00:29:07

participant in the conference in

00:29:11

the Mexican national Mexican University

00:29:13

to the University of not

00:29:18

only because of the high

00:29:21

quality participants in the conference

00:29:25

members of the community as

00:29:29

a whole because it means

00:29:31

an educational process in the

00:29:35

case of students in Mexico

00:29:38

who made as a result

00:29:41

of these circumference increase their

00:29:45

interest in dispute settlement through

00:29:50

arbitration. It's obvious that are

00:29:56

you still has indicated the

00:30:00

trip itself was not very

00:30:05

important instrument in the development

00:30:07

of arbitration matters. And it

00:30:13

said he has precedence over

00:30:18

the way. I returned to

00:30:20

review notes work and the

00:30:22

decisions of those arbitral tribunal

00:30:25

have been most influential in

00:30:28

the development of arbitral. Let

00:30:34

me have also that in

00:30:36

the case of Mexico the

00:30:38

signing of the treaty tell

00:30:40

men to illegals revolution in

00:30:43

the domestic sphere because as

00:30:45

a result of the signing

00:30:48

of the treaty we had

00:30:49

to modify a number of

00:30:53

Legal instrument starts with their

00:30:55

we're already Obsolete and as

00:30:59

a result of that process

00:31:02

of amendments has performed in

00:31:06

the Mexican legislation became an

00:31:09

important issue. So it's three

00:31:13

of us has to be

00:31:13

delivered to the way the

00:31:18

tribunal supplied in NAFTA principles

00:31:23

have influenced us a hold

00:31:25

the evolution of arbitration as

00:31:30

a hole in my case.

00:31:32

My desk is one that

00:31:35

has to do with a

00:31:38

comparison between NAFTA principles and

00:31:42

usmca. Important differences on the

00:31:55

I will pinpoint one that

00:31:58

I regard as an essential

00:32:00

one. Perhaps the most important

00:32:02

one not only in terms

00:32:04

of what this will mean

00:32:06

for arbitration and flow of

00:32:10

investment in Mexico, but also

00:32:13

the question of the impact

00:32:16

that the questions. Usmca has

00:32:22

in the road to be

00:32:25

play in the future of

00:32:27

our International arbitration as a

00:32:30

whole Let me start by

00:32:33

saying that there is a

00:32:36

bridge between NAFTA and the

00:32:39

usmca which is the so-called

00:32:42

Legacy rule to my notes

00:32:50

to say that on the

00:32:51

1st of July 2020. NAFTA

00:32:56

was terminated as a result

00:32:58

of a political controversy. We

00:33:02

all know the controversy. I

00:33:04

am referring to however if

00:33:07

certain requirements provided in usmca,

00:33:12

I meant Nestor will still

00:33:15

apply its termination apply only

00:33:21

for arbitration in between July

00:33:24

1st, 2020 where that's to

00:33:28

say the entry into force

00:33:29

of um, smca on 5th,

00:33:32

July 1st 2023. So that's

00:33:36

getting pretty close in D.

00:33:39

Then trying to force of...

00:33:45

That means 33 years after

00:33:51

the entry into force of

00:33:53

you and of you in

00:33:56

some sort of usmca important

00:34:03

thing is that up to

00:34:05

now as far as the

00:34:07

information is provided 13 cases

00:34:12

in which these Liga League

00:34:15

Legacy is being invoked as

00:34:20

far as I can know

00:34:23

that there are nine cases

00:34:26

I can make see KO

00:34:28

3 against Canada and won

00:34:31

against the US. No, substantial

00:34:36

differences. I indicated before relevant

00:34:41

because it is wrongly assumed

00:34:45

that the NAFTA and The

00:34:47

usmca Identical. They are not

00:34:51

essential differences that have to

00:34:55

be mentions. Of course. It

00:34:59

is very important to take

00:35:03

notice that in the case

00:35:04

of Canada the government of

00:35:08

Canada decided to be a

00:35:11

part of the isds chapter.

00:35:15

So that means that basically

00:35:17

the US and Mexico are

00:35:20

the ones who have the

00:35:22

chapters related to dispute resolution

00:35:26

on the matter of investment

00:35:28

and not Canada Canada perhaps

00:35:32

for Domestic reasons decided not

00:35:36

to join those chapters. The

00:35:39

first important difference that I

00:35:42

notice indication of usmca is

00:35:45

the definition of investment. It's

00:35:48

interesting to note this and

00:35:50

I still has already mentioned

00:35:52

the contributions made by the

00:35:54

tribunal to to the development

00:35:59

of Thrones International arbitration and

00:36:04

definition of investment in the

00:36:07

case of the usmca is

00:36:09

an example of that. Let

00:36:11

me tell you the reason

00:36:13

for that because it isn't

00:36:15

expired somehow in decisions of

00:36:20

arbitral tribunal indicates that you.

00:36:26

In contrast to not that

00:36:27

it provides a more precise

00:36:29

definition of investment inspired to

00:36:32

Sonic. Sent by the seashore

00:36:35

lines of fixing a truck

00:36:36

drive you nuts. The definition

00:36:39

is the following every asset

00:36:42

that owns or controls directly

00:36:48

or indirectly will be considered

00:36:51

as an investment. Additionally that

00:36:55

has the character that eat

00:36:57

that investment has a characteristic

00:37:00
of capital or other resources.

00:37:08
I'm sorry, I expect expectation

00:37:11
of gains of profits or

00:37:14
the Assumption of risk with

00:37:16
me or remember the decisions

00:37:18
that have been taken by

00:37:20
arbitral tribunal at the finding

00:37:22
these elements in investment of

00:37:27
all sorts of usmca includes

00:37:30
many other items that are

00:37:32
somehow similar. The ones not

00:37:34
the provides but I'm not

00:37:36
necessarily identical in all cases.

00:37:40

The question that is far

00:37:45

more different that signifies somehow

00:37:51

and abandonment of certain rules

00:37:54

in a ritual. Principles is

00:37:59

the so-called government sectors that

00:38:03

are included in the usmca

00:38:05

that is not a novelty

00:38:07

in my knowledge. There's no

00:38:11

that a treaty that provides

00:38:13

a similar treatment as the

00:38:15

one included in the usmca.

00:38:19

Under this treaty a privileged

00:38:23

group of us or Mexican

00:38:26

investors, not Canada not Canadians

00:38:30

over the government contract and

00:38:34

that operate in the government

00:38:36

sector enjoyed strong and extensive

00:38:40

protection in terms of both

00:38:42

procedure and material investment plans

00:38:45

to qualify. As a member

00:38:48

of this Elite group of

00:38:50

investors, the investment must operate

00:38:53

in 15 / sectors, which

00:39:00

are the following oil and

00:39:03

gas activities power generation Services

00:39:07

telecommunications transportation services infrastructure. But

00:39:14

all other sectors are excluded

00:39:17

I would have mentioned that

00:39:20

later on government contracts benefits

00:39:27

with a series of substantive

00:39:30

rights such as the following

00:39:33

a minimum standard of treatment

00:39:36

which includes fair and Equitable

00:39:38

treatment and for protection and

00:39:41

security protection against direct and

00:39:46

indirect expropriation and exception from

00:39:51

the requirement to exhaust local

00:39:53

Court proceedings as a as

00:39:55

a prerequisite to resort to

00:39:58

investment arbitration. It is in

00:40:02

a very privileged situation. Those

00:40:06

investors not belonging to the

00:40:09

government sector will have on

00:40:11

the usmca and less substantial

00:40:14

protection in their rights than

00:40:17

the one they have under

00:40:19

NAFTA. Their claims will be

00:40:22

limited to invoke a breach

00:40:24

of national treatment course to

00:40:28

most-favored-nation treatment and the possibility

00:40:32

of a claim of expropriation

00:40:35

provided by the way. Only

00:40:37

Direct Express creation. Not in

00:40:40

direct express pH. That may

00:40:45

happen only after these investors

00:40:49

first successfully exhaust local remedies.

00:40:53

I said requisite to initiating

00:40:58

investment arbitration proceedings. The legal

00:41:04

reach they will be able

00:41:07

to play in violation of

00:41:10

fair and Equitable treatment or

00:41:13

the existence of an indirect

00:41:15

expropriation as I indicated before

00:41:18

so usmca considerably limits the

00:41:22

scope of the notion of

00:41:24

national treatment by providing that

00:41:27

in determining whether a foreign

00:41:30

investor visa for the national

00:41:34

treatment and it has another

00:41:37

important qualification like it so

00:41:42

could Circumstances applies which means

00:41:47

that the decision to allow

00:41:49

National treatment will depend on

00:41:52

this is what the treaty

00:41:53

says on the totality of

00:41:56

the circumstances including whether the

00:41:58

relevant treatment distinguishes between investors

00:42:02

or Investments on the basis

00:42:05

of legitimate welfare objectives. So

00:42:10

this means highly flexible interpretation

00:42:14

that can be applied in

00:42:17

like circumstances inside and interpretation

00:42:24

that would be provided perhaps

00:42:26

to the national government and

00:42:29

additionally usmca as I said

00:42:33

before explicitly excludes indirect expropriation.

00:42:38

After noticing some of the

00:42:41

dramatic differences that apply appear

00:42:43

in the comparison between the

00:42:46

NAFTA rules and the usmca

00:42:48

rules. It is not an

00:42:50

easy thing to explain and

00:42:53

Juice justify the introduction of

00:42:56

a privilege scheme that substantially

00:42:59

benefits the investor and their

00:43:02

investment included in the five

00:43:05

government sectors in your view

00:43:07

that treatment of the incentives

00:43:10

and writes that other investors

00:43:13

operating in all sectors of

00:43:15

the economy system will be

00:43:17

entitled to claim. I will

00:43:21

just want to say that

00:43:23

it's too early to know

00:43:25

what how usmca would be

00:43:29

applied and interpreted by tribe

00:43:32

units. We still have not

00:43:35

a single case that resorts

00:43:38

to This treaty approved will

00:43:43

come once the flow of

00:43:46

investment starts to. Under usmca

00:43:53

and perhaps the fact that

00:43:58

the five sectors of that

00:44:02

tree. It made me that

00:44:04

there will be a large

00:44:06

amount of investment in these

00:44:10

five sectors, but perhaps in

00:44:13

detriment of the amount owed

00:44:15

for investment. Make all those

00:44:19

sectors. Don't don't don't have

00:44:22

the privilege of being covered

00:44:26

by the corporate sector. Thank

00:44:28

you. Thank you very much

00:44:35

for the normal Bernardo just

00:44:40

referred to some similarities and

00:44:43

differences from NAFTA and the

00:44:45

usmca. Are you thought something

00:44:47

on the stove? Good morning

00:44:54

to everyone first. I would

00:44:55

like to thank them and

00:44:57

organizers for having me today.

00:44:59

It's a great honor to

00:45:01

share this panel with with

00:45:02

friends and and colleagues. Well,

00:45:05

I think that a Bernardo

00:45:08

and I still have said

00:45:10

a lot of of the

00:45:11

of the difference and the

00:45:12

influence of of NAFTA in

00:45:14

the usmca. So I'm going

00:45:17

to focus on other difference

00:45:19

that I consider also that

00:45:21

are very important but first

00:45:24

sight I want to start

00:45:26

my intervention giving historical context

00:45:29

of of the best Men

00:45:31

chapter because it is important

00:45:32

to to take this into

00:45:34

account to understand what the

00:45:37

outcome of the of the

00:45:39

chapter 14 of the usmca

00:45:43

on doing the negotiations that

00:45:45

the the usmca of the

00:45:48

usmca the political context the

00:45:52

Did the Konami Caswell influence

00:45:56

the discussions on the future

00:45:59

of the of the of

00:46:01

the investment chapter on doing

00:46:04

that time that the Sita

00:46:06

were where was recently negotiated

00:46:08

by by by Canada with

00:46:12

the European Union and Canada

00:46:14

established a for the first

00:46:17

time an investment Court also

00:46:20

influence these these negotiations. For

00:46:24

instance one one important feature

00:46:26

of of nasty stuff in

00:46:28

the Attic play Eric Chou

00:46:30

system. And this was on

00:46:32

there where where is about

00:46:37

the functioning of this of

00:46:39

the system. And also when

00:46:41

the negotiations to start the

00:46:43

day did us we're considering

00:46:47

an unquestioning very seriously that

00:46:50

there is dies. Officiants in

00:46:53

in the US as well

00:46:54

as the trade representative does

00:46:56

not like the the the

00:46:57

isds they consider it is

00:47:00

a problematic and and and

00:47:03

they also Beauty as acid

00:47:05

violets. They they they the

00:47:07

US Open today. So at

00:47:10

the time us did not

00:47:13

have any texts you look

00:47:15

kind of that was proposing

00:47:17

something similar about the Sita

00:47:19

and Mexico Montaine the traditional

00:47:22

approach during the negotiation and

00:47:25

also and a note of

00:47:27

out of town with a

00:47:28

a discussion or approach. We're

00:47:30

also in on in the

00:47:32

discussion, but I think that

00:47:33

this context to go help

00:47:36

to explain the outcome of

00:47:38

the of the of the

00:47:39

investment chapter and I still

00:47:41

did a very good job

00:47:42

and explaining how the Gnostic

00:47:46

a slow influence in the

00:47:48

usmca and most of the

00:47:52

Usmca Provisions in the investment

00:47:54

chapter including DISD as were

00:47:57

influenced by the by the

00:47:59

case law and and also

00:48:01

by the TPP and fpp

00:48:03

TPP investment in Des Moines

00:48:05

chapter. So I will say

00:48:07

that in many aspects the

00:48:09

usmca Investments chapter is an

00:48:13

update of the investment chapter

00:48:17

in Indianapolis that I'm going

00:48:21

to mention very generally about

00:48:23

it for sampling the substantive

00:48:25

probation and The usmca Preserve

00:48:30

and improve are most of

00:48:32

the substantive provisions of the

00:48:33

NAFTA such as National treatment

00:48:36

expropriation and Misty Heather Bernardo

00:48:40

already mentioned. They stayed the

00:48:43

national treatment probation. Were there

00:48:46

the party decided to to

00:48:48

get some clarity about the

00:48:50

meaning of likes you. There

00:48:53

is a specific language to

00:48:57

get clarity on for greater

00:48:59

certainty. What is the meaning

00:49:01

of life circumstances also on

00:49:05

on expropriation and MST? Are

00:49:08

they influence as a service

00:49:10

to mention of the case

00:49:11

law in these provisions? And

00:49:15

what time did I just

00:49:17

want to mention that for

00:49:18

example United States 14 a

00:49:20

+ 14b do Sonic says

00:49:23

bring Clarity to the substantive

00:49:25

probation and this business Onyx

00:49:29

is contained a common understanding

00:49:31

of the parties about the

00:49:34

meaning of customary international law

00:49:36

about the meaning of what

00:49:38

is expropriation and what constitutes

00:49:42

direct and indirect expectation in

00:49:46

addition to these provisions on

00:49:49

the substantive section. There were

00:49:51

also You probation such as

00:49:53

the corporate social responsibility probation

00:49:56

to encourage. The Enterprise's to

00:50:00

adopt in turcia internationally recognized

00:50:03

standards such as the violence

00:50:06

of the ocde and distribution

00:50:09

comes from also other treaties

00:50:11

that Mexico had have on

00:50:15

the Pacific Alliance framework agreement

00:50:18

and also on day on

00:50:19

the cptpp. So if the

00:50:22

protection and the protection is

00:50:25

is very similar. That's under

00:50:28

the NAFTA book. Procedurally. The

00:50:31

rules are substantially different from

00:50:33

last time the Ambassador Bernardo

00:50:36

have already highlighted those main

00:50:39

difference. So I am going

00:50:41

I'm not going to enter

00:50:42

into the details about the

00:50:43

Legacy at about the Legacy

00:50:45

he claims just to mention

00:50:47

that on July 21st 2020.

00:50:52

And the time frame from

00:50:55

being claims on their dish

00:50:56

after 11 after NAFTA and

00:50:59

and there are too many

00:51:01

to mail requirements for doing

00:51:03

that one is that the

00:51:06

established investment must be have

00:51:08

been established established during the

00:51:10

lifetime of NAFTA and the

00:51:13

second that they they have

00:51:15

to submit a notice of

00:51:16

intent 90 days before the

00:51:18

July 1st of the of

00:51:21

this year and these deadlines

00:51:23

have already expired. So I

00:51:26

know they're important difference is

00:51:29

that despite the fact that

00:51:33

the standards of protection or

00:51:36

to investors and investment supplied

00:51:39

to the tree and USMC

00:51:41

parties in day is Dias

00:51:44

mechanism as it was mentioned

00:51:46

in previous panels, and I

00:51:49

need this one does not

00:51:50

apply to to the trip

00:51:51

on Canada a result on

00:52:00

their day cptpp entering into

00:52:05

into another main differences. I

00:52:09

would like to highlight that

00:52:10

most us investors in Mexico

00:52:14

lose the meaningful access today

00:52:18

is dies, and and and

00:52:20

one of these of this

00:52:21

it changes, is there a

00:52:23

exhaustion exhaustion of of domestic

00:52:25

remedies. This means that they

00:52:28

have to first litigate in

00:52:31

domestic court's the case before

00:52:34

submitting a claim on there

00:52:36

under the the usmca and

00:52:39

another important change is what

00:52:41

Ambassador has already mentioned that

00:52:43

only cover investors that are

00:52:46

in the key cover sectors

00:52:48

that that you have already

00:52:49

mentioned it with a cover

00:52:51

contract. Cambric can bring a

00:52:54

claim for all the substantive

00:52:56

provisions and I do not

00:52:58

have to litigate 8in Domestic

00:53:00

Court. It is an important

00:53:02

in an important a point

00:53:05

and a for those investors

00:53:08

that are not under the

00:53:12

covers sectors or recover contract

00:53:16

investors only a can bring

00:53:19

National treatment claims and a

00:53:22

for Direct Express creation know

00:53:25

and there it is probation.

00:53:27

And another procedural changes. Is

00:53:31

that a day procedural rules

00:53:35

applicable to education are now

00:53:39

extended to any agreed by

00:53:42

the parties. And also they

00:53:45

did the Restriction to use

00:53:47

the digital arbitration rules from

00:53:50

90-60 Sydney 1970. Jake's in

00:53:52

the NAFTA was change and

00:53:55

now it's flexible. So the

00:53:56

parties can choose a mate

00:53:58

choose a more recent versions

00:54:02

of the of the of

00:54:03

the rules for some place.

00:54:06

For example that they statute

00:54:08

of limitation was increased from

00:54:11

3 to 4 years is

00:54:12

another important change and there

00:54:16

were concerns about the date

00:54:18

date date date independent Independence

00:54:20

and impartiality of arbitrators City

00:54:23

arbitrators. So it will that

00:54:25

ain't a there was included

00:54:27

a provision Incorporated the USMC

00:54:32

Incorporated International bar association association

00:54:36

guidelines on conflicts of interest.

00:54:39

I need also contain a

00:54:41

double hiding rules which star

00:54:44

which has the probation to

00:54:46

ask for the duration of

00:54:49

the proceeding as a council.

00:54:52

Party aboard an expert witness

00:54:56

in in any pending arbitration

00:54:58

on their teeth and axis

00:54:59

of the of the chapter

00:55:01

and another important Improvement of

00:55:05

the of the agreement is

00:55:07

the inclusion of the transparency

00:55:09

rules. I still has already

00:55:10

told her about the Kalo

00:55:12

and and the importance of

00:55:13

this of this principle and

00:55:16

most of the NAFTA it

00:55:18

cases where it relied on

00:55:20

the maximum principal of transparency

00:55:22

of the arbitral proceedings. And

00:55:25

this was reflected in the

00:55:28

usmca which provides that the

00:55:30

old a date that they

00:55:32

arbitration hearings and the documents.

00:55:34

We're available or available to

00:55:37

the to the to the

00:55:38

public another important difference is

00:55:41

the and recognizing the importance

00:55:43

of the Amigos Korean usmca

00:55:48

included rules to ensure. Interested

00:55:53

stakeholders, including labor unions and

00:55:57

civil society and organizations can

00:56:02

submit we are or Friends

00:56:05

of the Court in brace

00:56:06

and finally to close this

00:56:09

this interbation. There were some

00:56:12

Provisions about the discontinuance of

00:56:14

proceedings. It is the feuding

00:56:16

parties for sample sale to

00:56:18

to take any further steps

00:56:21

in the proceedings for more

00:56:23

than 150 days. They they

00:56:27

they they they put a

00:56:29

procedure that discontinuance of the

00:56:33

proceedings and this is due

00:56:35

to the fact that Mexico

00:56:36

has already faced some places.

00:56:38

Where are they submitted a

00:56:41

notice of intent but they

00:56:43

don't take any further steps

00:56:45

for many years. So this

00:56:47

is an important Provisions to

00:56:49

avoid those kind of abusive.

00:56:51

Of the system finally are

00:56:54

there were older older older

00:56:58

improvements on an interim give

00:57:00

you a status that Disney's

00:57:04

up at the request of

00:57:05

a berry or a disputing

00:57:08

parties at 3 when I

00:57:09

met before issuing the award

00:57:12

may may review or transmit

00:57:15

these proposed hour today today

00:57:18

the end of the session

00:57:19

today to the party. So

00:57:20

those are some of the

00:57:22

of the of the many

00:57:23

examples of difference is that

00:57:24

I that that are the

00:57:27

updates on improvements from from

00:57:29

NAFTA today USMC. Thank you.

00:57:37

Very much Cindy. We have

00:57:40

a few minutes left and

00:57:43

I want to I want

00:57:45

you to to give us.

00:57:47

every one of you few

00:57:49

minutes to to say about

00:57:52

to stress about the future

00:57:54

of the usmca, especially Precision

00:57:58

dark Navy on whether US

00:58:02

Canadian and Mexican investor still

00:58:04

have Wilhite will still have

00:58:06

access to investment arbitration of

00:58:08

the usmca. We have a

00:58:12

few minutes. So please be

00:58:14

still. What do you think

00:58:15

about this? Thank you, Carlos.

00:58:24

The answer your answer will

00:58:26

be yes and Kennedy and

00:58:27

eating investors will be still

00:58:29

available 25 years claims against

00:58:32

Mexico on their date ctp

00:58:34

not the usmca now they've

00:58:38

about final comments on the

00:58:40

on the future of arbitration

00:58:43

in division. I mean, I

00:58:44

will set foot inside a

00:58:45

little bit the discussion of

00:58:46

arbitration. I would like us

00:58:48

to 22 Mission day in

00:58:50

the case for Mexico because

00:58:51

Mexico has now agreed to

00:58:55

negotiate it like a different

00:58:56

set of file different air

00:58:58

conditioning probation. We have someone

00:59:01

mention we were discussing yesterday

00:59:02

the Brazilian model Mexico's what's

00:59:05

this unitary one of those

00:59:06

agreements with Brazil we have

00:59:07

they received PPP model to

00:59:10

say is the usmca with

00:59:13

his unique and then we

00:59:17

have the the treaty with

00:59:18

the European Union. Hey, which

00:59:21

even though it's not easy

00:59:22

to enforce provide Lake a

00:59:24

different approach to I use

00:59:25

he is so the question

00:59:26

he will be what he's

00:59:27

going to do Mexico the

00:59:28

next time they decided to

00:59:29

negotiate investment agreement. They have

00:59:32

like a fool of a

00:59:33

range of options out of

00:59:36

favour of the natural the

00:59:43

natural flow will be going

00:59:45

to something more similar to

00:59:46

cptpp cuz it's kind of

00:59:48

a natural evolution of for

00:59:50

NAFTA the question about the

00:59:54

permanent Court approached by the

00:59:57

European Union. I think you

00:59:58

should still in there a

00:59:59

lot of the bed so

01:00:00

that it's important to me

01:00:02

to see what's going to

01:00:03

be the next step for

01:00:03

Mexico are there has been

01:00:04
no not a lot of

01:00:06
action in that side of

01:00:08
a demonstration last night Mexico

01:00:12
doesn't have a day or

01:00:14
two to do to do

01:00:15
that, but I'll let you

01:00:16
know what the future brings.

01:00:20
Do you agree? Thank you

01:00:32
very much. I think that

01:00:34
the issue that bothers me

01:00:37
most is the one related

01:00:40
to the corporate sectors in

01:00:43
the future by that they

01:00:45
mean the possibility that there

01:00:49
would be a discouragement on

01:00:51
the part of some investors.

01:00:55
I know that I'm thinking

01:00:57
of her I met you

01:00:58
as investors because they would

01:01:02
not have the same protection

01:01:04
that the government sectors have

01:01:06
that may mean in restriction

01:01:11
that will mean additional incentive

01:01:15
to invest in Mexico because

01:01:18
more obstacles are provided for

01:01:21
in the case of the

01:01:22

ones not covered by the

01:01:25

cover sectors than the privileged

01:01:27

ones. So it may happen.

01:01:30

For example in the case

01:01:32

of the mining sector, which

01:01:34

is one that is being

01:01:36

excluded from the full protection.

01:01:39

Let's call it at the

01:01:41

waist or issues related to

01:01:43

public health issues related to

01:01:46

education and other sectors that

01:01:51

may feel that they could

01:01:53

be so fun to see

01:01:54

the potential breaches of Rules

01:02:00

by the authorities and that

01:02:04

their capacity to result arbitration

01:02:07

will be very much limited.

01:02:10

Their situation is even worse

01:02:13

than the one they have

01:02:15

to provide it. I mean

01:02:16

that the provided a very

01:02:18

substantial set of rules in

01:02:21

order to protect all for

01:02:24

investors in Mexico coming from

01:02:27

the US and from can

01:02:29

In the case of the

01:02:30

new 3D that doesn't happen

01:02:33
that protection for those that

01:02:37
are not privileged is far

01:02:40
more Elusive and restricted. So,

01:02:44
I wonder how much the

01:02:47
flow of investment will come

01:02:49
to Mexico as a result

01:02:52
of the Spheres don't cover

01:02:55
sectors may have and that

01:02:58
the resort to Armijo Recreation

01:03:02
May mean for those non-covered

01:03:06
sectors something that is no

01:03:09
longer as attractive as it

01:03:12
used to be in the

01:03:14

case of left. Thank you.

01:03:17

Very controversial measures of the

01:03:24

usmca Cindy. What what do

01:03:26

you think about this future

01:03:28

in the special case of

01:03:32

the u.s. Canadian Mexican possibilities

01:03:35

of access to have access

01:03:37

to invest in arbitration under

01:03:38

the usmca. Well, I won't

01:03:42

say Tremaine thinks if the

01:03:44

first one is that we

01:03:47

we should have in mind

01:03:48

that in 2027 and we

01:03:53

will have a revision of

01:03:55

the usmca and the usmca

01:03:59

will be subject to to

01:04:00

a revision by the three

01:04:02

parts to decide whether they

01:04:05

want to extend the term

01:04:06

of of of the agreement

01:04:08

or tutamen terminate. So from

01:04:12

my perspective many many issues

01:04:15

will be at the state

01:04:17

to eat at the stake

01:04:18

in in in the revision.

01:04:19

They are the political the

01:04:21

commercial the rise of the

01:04:23

investment claims, of course, and

01:04:26

the price of this meant

01:04:29

it will depend on to

01:04:31

what extent did they contribute

01:04:34

the controversial issues that are

01:04:36

are part are taking part

01:04:39

of the of the Of

01:04:41

the three countries during the

01:04:42

last years of many issues

01:04:44

being resolved and also the

01:04:48

the effectiveness of of the

01:04:50

mechanisms to resolve this this

01:04:53

this controversial issues. We wish

01:04:58

you would have to remind

01:04:59

that the usmca negotiations. Where

01:05:03

is was hit at a

01:05:04

time by day political economic

01:05:06

and Commercial contacts. So it

01:05:08

is very likely that the

01:05:10

same will happen during the

01:05:11

derivation of the agreement. Another

01:05:15

front or another important thing

01:05:18

is the population in Latin

01:05:20

America. And in many of

01:05:22

our country makes more necessary

01:05:27

to to provide certainty and

01:05:31

stability and mechanisms to

01:05:34

enforce the rule of law

01:05:36

at International level. This is

01:05:38

something that was discussed just

01:05:40

They in in the last

01:05:41

panel and a source of

01:05:44

great importance in a context

01:05:45

of nearshoring pressuring. So we

01:05:48

need near trusting in doing

01:05:51

business and I think that

01:05:53

at this is fantastic. Also

01:05:56

will influence this discussion. And

01:05:59

finally, I would like to

01:06:00

talk to her like that

01:06:01

discussions that are taking place

01:06:04

in in the UNC Travel

01:06:06

Group three, there were discussions

01:06:08

about the lack of coherence

01:06:14

of lack of Independence and

01:06:19

impartiality of arbitrators the duration

01:06:22

and cost of arbitration of

01:06:24

of of of arbitration. So

01:06:28

under this group, there were

01:06:30

many concerns raised by the

01:06:32

states and they're also in

01:06:35

discussions about the reforms to

01:06:37

resolve this concept of of

01:06:39

a state. So we should

01:06:42

follow did the outcome of

01:06:44

of this reform and and

01:06:46

and and be very pleased

01:06:48

with this outcome of the

01:06:54

outcome of this discussion was

01:06:57

really a cheap the expectations

01:07:00

of a state do today

01:07:02

several concerns that we're right

01:07:04

by the states. I I

01:07:06

want to highlighted recently in

01:07:07

the in the last meeting

01:07:09

in in New York or

01:07:10

approve was approved. They they

01:07:12

they first outcome of the

01:07:14

of the group that is

01:07:15

a great achievement the code

01:07:18

of conduct of adjudicators. I

01:07:20

congratulated him a cleaner who

01:07:23

is also part of the

01:07:24

discussion because it was something

01:07:27

that was it done between

01:07:29

juicy Thailand and they did

01:07:31

so from my perspective dose

01:07:33

are the main aspect that

01:07:36

wish you a very pending

01:07:39

cat. A lot of attention

01:07:41

and I think that will

01:07:42

of course those will influence

01:07:44

TD. The future of is

01:07:46

dies in the in the

01:07:47

reach. Thank you. Thank you

01:07:50

so much Cindy. Unfortunately time

01:07:54

is implacable in and we

01:07:56

are out of time right

01:07:57

now. But before we finished

01:07:59

I want to thank the

01:08:00

three of you for the

01:08:01

very reason interesting approach to

01:08:03

this topic very complex topic

01:08:06
and thank you all for

01:08:08
your patience. I believe we

01:08:11
have a brief recess of

01:08:13
10 minutes maybe and we

01:08:15
fall to the second panel

01:08:16
of the day. Thank you

01:08:18
so much.