

# New York Dispute Resolution Lawyer

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Just Across the Border: The New Jersey Solution for International Disputes

Why the New York City Bar Association Report on the State of Mediation Confidentiality in New York Is Required Reading

# Just Across the Border: The New Jersey Solution for International Disputes

By Laura A. Kaster

The enormous increase in international transactions in goods and services has had a substantial impact on the need for dispute resolution mechanisms around the world. Cross-border transactions have grown significantly in recent years. Regarding business-to-business (B2B) transactions, encompassing goods and services, in the three months ending in May of 2024 compared to the *three months* ending in May 2023:

- Average exports increased \$9.3 billion from May 2023.
- Average imports increased \$15.6 billion from May 2023.<sup>1</sup>

Total exports were \$261.7 billion, and imports were \$336.7 billion.<sup>2</sup> The U.S. trade-to-GDP ratio, which measures the total value of imports and exports of goods and services as a percentage of GDP, was 27.36% in 2022, showing a 1.81% increase from 2021.<sup>3</sup> And this percentage is lower in the U.S than in many other industrialized countries. This trend, and the potential for even greater international commerce, has important implications for dispute resolution mechanisms in international commerce.

As cross-border transactions increase, so does the potential for disputes. Businesses recognize the need for risk management in the form of cost-effective methods to anticipate and address these disputes and to assure that solutions yield enforceable results across different jurisdictions. The Global Pound Conference series, which gathered data from stakeholders in the dispute resolution field across multiple countries, highlighted the growing importance of efficient dispute resolution mechanisms in international commerce. A report summarizing the findings of the series was published in 2018, finding that efficiency is the key priority of the parties when choosing dispute resolution processes and that the parties expect a more integrated process leading to solutions.<sup>4</sup> While advocates and neutrals may define and understand separate processes, parties are seeking resolution and do not necessarily understand the process distinctions. They want efficiency and binding resolution across methods and techniques.

In 2021, New York Dispute Resolution Lawyer published the findings of the Mixed Mode Task Force of the College of Commercial Arbitrators, the International Mediation Institute and the Straus Institute for Dispute Resolution, Pepperdine School of Law.<sup>5</sup> The term “mixed mode” refers to

combinations of different dispute resolution processes (e.g., adjudicative processes, such as litigation and arbitration, with non-adjudicative processes, such as conciliation or mediation). Well known examples are MED-ARB (mediation followed by arbitration), ARB-MED (arbitration followed by mediation), dispute resolution boards and MEDOLOA (mediation followed by last-offer arbitration). The combinations and permutations of these mechanisms can help parties achieve a direct path to solving their disputes and respect the expressed desire for processes that include mediation.

The Singapore Convention on Mediation, which came into force in September 2020, is a significant development in this area. It provides a framework for the enforcement of mediated settlement agreements across borders, addressing a key concern in international dispute resolution. The convention aims to facilitate international trade by making it easier for businesses to enforce mediated settlements in signatory countries, thus providing a more cost-effective and efficient alternative to litigation or arbitration. As of July 7, 2024, the convention has 57 signatories and 14 parties.<sup>6</sup> Until it is more widely adopted, the Singapore Convention is not yet a viable solution for most parties.

As international commerce continues to evolve, the need for effective dispute resolution methods becomes even more critical. Lawyers and businesses alike must stay informed about these trends and the available tools for anticipating and resolving international commercial disputes efficiently and cost-effectively. International arbitration has been an enormous success but is not realistic for disputes that cannot justify the filing fees and arbitrator costs. All arbitral administrators are focused on new solutions through online dispute resolution and rule changes. One hybrid, mixed mode solution is just across the New York border in New Jersey. New Jersey has stepped up to address this need with a groundbreaking approach to international dispute resolution

## New Jersey's International Mediation and Arbitration Act

Effective May 7, 2017, New Jersey enacted the International Mediation and Arbitration Act, offering a novel solution for resolving cross-border disputes. This innovative legislation allows counterparties to file a dispute as an arbitration and allows the same appointed arbitrator to change hats to become a mediator and then to mediate that dispute. If

mediation is successful, the mediator returns to the role of arbitrator and converts the mediated settlement agreements into consent arbitral awards, which can be enforced under the New York Convention in over 170 countries worldwide.<sup>7</sup>

The New Jersey Act applies to disputes involving: (a) at least one non-U.S. resident; (b) U.S. residents dealing with property located outside the United States; (c) contracts involving performance or enforcement outside the U.S.; and (d) disputes bearing some relation to foreign countries. It is important to note that the statute does not limit its coverage to residents of or businesses incorporated in New Jersey. Any U.S. residents can submit their cross-border dispute for resolution before GMXC Resolutions, the non-for-profit administrator of the statute.

### Key Benefits of the New Jersey Statute

The New Jersey International Mediation and Arbitration Act offers several advantages for businesses involved in cross-border disputes:

1. **Cost-effectiveness:** Mediation is typically less expensive than traditional litigation or arbitration.
2. **Efficiency:** The process allows for quicker resolution of disputes compared to court proceedings or arbitration.
3. **Flexibility:** Parties have more control over the process and can tailor solutions to their specific needs.
4. **Confidentiality:** Unlike public court proceedings, mediation offers privacy for sensitive business matters.
5. **Relationship preservation:** The collaborative nature of mediation can help maintain business relationships.
6. **Global enforceability:** By converting mediated settlements into arbitral awards, the act ensures enforceability in countries that are signatories to the New York Convention.

The New Jersey statute responds to the evolving needs of business.

New Jersey's International Mediation and Arbitration Act represents a significant step forward in international dispute resolution. By offering a bridge between mediation and arbitration, it recognizes that the process should not impede but instead should foster resolution and provides businesses with a cost-effective, efficient and globally enforceable method to resolve cross-border disputes. As international trade continues to grow, particularly with neighboring countries like Canada and Mexico, this innovative approach positions New Jersey as a leader in addressing the complex challenges of global commerce.

The push for international mediation as a preferred method of dispute resolution extends beyond New Jersey's borders. The Global Pound Conference series of events highlighted the growing demand for mediation in international commercial disputes, while the United Nations Commission on International Trade Law Working Group II is developing uniform standards for international mediation. The U.S. Chamber of Commerce has also thrown its weight behind changes in dispute resolution practices to better serve global businesses, recognizing the need for more flexible and efficient conflict management tools. Global corporations are increasingly demanding mediation as a first-line approach to dispute resolution. As international trade continues to grow, particularly with neighboring countries under agreements such as the United States-Mexico-Canada Agreement, the need for innovative dispute resolution mechanisms becomes ever more pressing. New Jersey's act, in taking advantage of the widely accepted New York Convention, represents a significant step forward in addressing this need. New Jersey's innovative solution offers a glimpse into the future of international conflict management, promising a more streamlined and cooperative approach to resolving the inevitable disputes that arise in the course of global business.

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### Endnotes

1. *News Release: U.S. International Trade in Goods and Services, May 2024*, Bureau of Economic Analysis, U.S. Dep't of Comm., July 3, 2024, <https://www.bea.gov/news/2024/us-international-trade-goods-and-services-may-2024>.
2. *Id.*
3. *U.S. Trade to GDP Ratio 1960-2024*, Macrotrends, [https://www.macrotrends.net/global-metrics/countries/USA/united-states/trade-gdp-ratio#google\\_vignette](https://www.macrotrends.net/global-metrics/countries/USA/united-states/trade-gdp-ratio#google_vignette).
4. *Global Data Trends and Regional Differences*, Global Pound Conference Series, [https://res.cloudinary.com/lbresearch/image/upload/v1526381676/gpc\\_report\\_154118\\_1154.pdf](https://res.cloudinary.com/lbresearch/image/upload/v1526381676/gpc_report_154118_1154.pdf).
5. *See* New York Dispute Resolution Lawyer (NYDRL), vol. 14, no. 1 (2021).
6. *Background to the Convention*, Singapore Convention on Mediation, Singapore International Dispute Resolution Academy, Singapore Management University, <https://www.singaporeconvention.org/convention/about>.
7. United Nations Commission on International Trade Law, *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, United Nations (New York, 1958; reprinted 2015), <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/new-york-convention-e.pdf>.