

MISSION STATEMENT

Stockholm International Arbitration Review illustrates the development of the international arbitral process, the enforcement of arbitral awards and the use of legal norms in the settlement of, primarily commercial transnational, disputes. By contributing to the scholarly debate on international arbitration, Stockholm International Arbitration Review seeks to advance ideas which will improve the knowledge and the functioning of the international arbitral process.

Emphasis is placed on the publication of extracts of arbitral awards and court decisions with in-depth comments by scholars and practitioners. The approach shall be comparative, articles and comments be reasoned and explanatory, accessible also to non-specialists.

Contributions in the Stockholm International Arbitration Review shall be published in the languages currently used in international arbitration.

Цели сборника

Сборник Stockholm International Arbitration Review содержит материалы о развитии международного арбитражного процесса, исполнении арбитражных решений и использовании правовых норм в урегулировании, в первую очередь, международных коммерческих споров. Сборник Stockholm International Arbitration Review, способствуя развитию научной дискуссии о международном арбитраже, направлен на распространение идей, повышающих уровень знаний и совершенствующих функционирование международного арбитражного процесса.

Акцент делается на публикации отрывков арбитражных и судебных решений в сопровождении подробных комментариев ученых и практикующих юристов. Материалы сборника предполагают использование сравнительного метода, статьи и комментарии должны быть аргументированны, содержать развернутые пояснения, доступные для понимания неспециалистов.

Материалы сборника Stockholm International Arbitration Review должны быть составлены на языках, используемых в настоящее время в международных арбитражных разбирательствах.

前言

斯德哥尔摩仲裁报告致力于研究国际仲裁程序的发展,仲裁裁决的强制执行以及如何利用法律规范来解决纠纷,尤其是国际商事纠纷.本报告通过促进对国际仲裁的学术性论争,来努力寻求先进理念,推动国际仲裁理论和实务的发展.

本报告着重摘录了部分仲裁裁决以及法院判决,并附有学者以及法律工作者的专业评论.报告中的文章和评论均采用比较的方法来阐述理由,非专业人士也能清楚明白.

本报告的稿件以国际仲裁通用的语言出版.

Stockholm International Arbitration Review is published by Juris Publishing Inc., in association with the Arbitration Institute of the Stockholm Chamber of Commerce, P.O. Box 16050, SE-103 21 Stockholm.

Mode of citation: Stockholm Int Arb Rev 2007:2

ISSN Number 1558-271X

All rights reserved. No part of this publication may be reproduced, stored in retrieval system, transmitted in any form or by any means, electronic, mechanical, photocopy, recording or otherwise without the written permission of the publisher.

STOCKHOLM INTERNATIONAL ARBITRATION REVIEW

Volume 2007:2
TABLE OF CONTENTS

EDITORIAL

Sigvard Jarvin, General Editor vii

ARTICLES

- The Application and Scope of Attorney-Client Privilege in
International Arbitration 1
Peter Rosher
- The Need for Establishing a Perfect Balance Between Confidentiality
and Transparency in Commercial Arbitration 25
Dr. Mohamed Aboul-Enein
- SNF v Cytec Industrie: National Courts Within the EC Apply
Different Standards to Review International Awards Allegedly
Contrary to Article 81 EC 39
Pierre Heitzmann and Jacob Grierson
- The “Minimalist” and “Maximalist” Approach to Reviewing
Competition Law Awards: A Never-Ending Saga 51
Gordon Blanke
-

COURT DECISIONS ON ARBITRATION

Belgium

- Decision by the First Instance Court of Brussels Rendered on 8 March
2007 in case No. 2005/7721/A
“The Belgian SNF Case” 79

Subject Matter:

Whether an arbitral award should be set-aside on the ground that the award violated public policy consisting of EC Competition Law (Art 81 of the EC Treaty).

France

Decision by the Paris Court of Appeal, rendered on 23 March 2006 in case No. 04/19673
“The French SNF case” 99

Subject Matter:

Whether an arbitral award should be set-aside on the ground that the award violated public policy consisting of EC Competition Law (Art 81 of the EC Treaty).

USA

Decision by the United States District Court for the District of New Jersey in 2007 case No. Misc 06-82-GEB 2007 U.S. Dist. LEXIS 24061
the “Oxus Gold” case 109

Subject Matter:

Whether a U. S. court may compel testimony and production of documents from third parties residing in the U.S. for use in an arbitration undertaken pursuant to an investment treaty.

Observations by Grant Hanessian 123

United States Court of Appeals for the District Court of Columbia Circuit in 2007 case No. 06-7058
The Termorio Case 133

Subject Matter:

Enforcement in the United States of an international arbitration award set aside in the country of origin.

Observations by Daniel Schimmel and Christopher Ryan 150

TABLE OF CONTENTS

iii

INVESTMENT DISPUTES

Order of Canada’s Federal Court on 13 January 2004 in the
Attorney General of Canada v S.D. Myers, Inc.(USA).
Docket T-225-01, T-81-03 161

Observations by Rajeev Sharma 197

ARBITRAL AWARDS

Final Arbitral Award Rendered in SCC case 090/2004 in 2006 211

Subject Matters:

- (1) Truncated Tribunal – Subsequent to the oral hearing the SCC informs the arbitral tribunal that the arbitrator appointed by the claimant had resigned and could not be reached.
- (2) Interpretation of an international purchase agreement under the CISG.

Observations by Teresa Giovannini 227

Interlocutory Arbitral Award Rendered in 2006 in
SCC case 10/2005 235

Subject Matters:

- (1) Jurisdiction
 - a) Pathological arbitration agreement lacking a clear identification of any arbitration institution
 - b) Two-tier clause (negotiation before arbitration)
 - c) Whether entry into a new arbitration agreement before arbitrating the dispute was necessary
- (2) Arbitrability – The arbitration agreement was allegedly against public policy in the respondents’ country.
- (3) Were the claimant and the second respondent parties to the arbitration agreement?
- (4) Applicable law as to the arbitration agreement.
- (5) Applicable law as to the substance of the dispute.

Observations by Phillip Capper 254

iii

NOTES & INFORMATION

Canada Signs the Washington Convention – Frédéric Bachand	263
5 th Petersberger Arbitration Days 2007: Arbitration in Construction and Industrial Plant Contracts – Dr. Alfred Escher, LL.M. and Dr. Götz Reichert, LL.M.	265
Recent Ratification of the 1965 Washington Convention (ICSID)	269
BOOK REVIEW – Tobias Zuiberbühler & Christian Oetiker (Eds.) <i>Practical Aspects of Arbitrating EC Competition Law</i>	271
LIST OF BOOKS RECEIVED	273