

仲裁与法律

ARBITRATION AND LAW

第140辑

《中国国际商事仲裁年度报告(2016)》特辑
(中英文)



主办

中国国际经济贸易仲裁委员会
中国海事仲裁委员会
中国国际商会仲裁研究所



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前 言

当前,“一带一路”倡议已逐渐从理念转化为行动,从愿景转变为现实。一大批合作项目陆续启动,基础设施联通网络初步成型,沿线产业合作形成势头,中国和“一带一路”参与国政府及民间的经贸交流合作迎来一个快速发展的新时期。但与此同时,在合作项目不断推进过程中也难免出现与贸易投资相关的争议和纠纷。因此,公正高效解决“一带一路”倡议中产生的纠纷,保护当事方正当权益,对于保障“一带一路”倡议的顺利实施意义重大,这也给中国国际商事仲裁创造了历史上最好的发展机遇。

2015年9月22日,中国国际经济贸易仲裁委员会(以下简称贸仲委,CIETAC)在北京首次发布《中国国际商事仲裁年度报告(2014)》,这是国内第一次针对中国国际商事仲裁(通常意义上的中国涉外仲裁)的发展所做的年度总结。2014年度、2015年度的中英文版《中国国际商事仲裁年度报告》发布后,受到了国内外仲裁理论界和实务界的广泛关注。为进一步总结中国国际商事仲裁法治建设情况,推动我国国际商事仲裁制度完善、行业发展和信息交流,扩大我国在国际商事仲裁舞台上的话语权和影响力,并为我国进一步发展国际商事仲裁事业提供参考,贸仲委决定继续编写并发布《中国国际商事仲裁年度报告(2016)》。

《中国国际商事仲裁年度报告(2016)》采用实证分析与理论研究相结合的研究方法,既有微观层面的数据分析和法制进展,又有中观层面的仲裁实践和制度完善,还有宏观层面的司法审查和行业拓展,力求展现中国国际商事仲裁发展亮点。具体而言,报告在分析2016年度中国国际商事仲裁案件数据的基

础上,跟踪中国国际商事仲裁法制发展和研究进展,探讨中国国际商事仲裁司法审查情况,以国际商会(ICC)发布的《国际贸易术语解释通则》(Incoterms)在中国国际商事仲裁中的适用作为本年度中国国际商事仲裁发展的特别观察,以大力推进知识产权纠纷仲裁解决为例分析中国国际商事仲裁特定领域的发展现状与前景。

《中国国际商事仲裁年度报告(2016)》除前言和年度小结外,共分为四章。第一章“中国国际商事仲裁发展概况”,概述2016年度全国仲裁案件的数据分析情况、有关中国国际商事仲裁法制的发展情况、我国最高人民法院对于国际商事仲裁案件的司法协助与监督情况,以及中国国际商事仲裁理论研究进展情况。2015年度报告“特别观察”研究的对象是《联合国国际货物销售合同公约》(CISG)在中国国际商事仲裁中的适用情况。在国际货物贸易领域,另一个最具影响力的法律文件当属Incoterms。因此,2016年度报告第二章特别观察“Incoterms在中国国际商事仲裁中的适用”,通过对典型案例的剖析,揭示国际贸易当事人在Incoterms使用过程中存在的共性问题,归纳并研究对中国国际商事仲裁实践的启示,并为国际贸易从业者和仲裁案件的潜在当事人提出建议。第三章“中国国际商事仲裁司法审查”,主要探讨中国国际商事仲裁中的仲裁协议效力的确认、仲裁裁决的撤销、仲裁裁决的执行等方面的司法审查情况。第四章通过结合贸仲委近年来处理过的知识产权仲裁案件,对我国知识产权仲裁实践现状进行深入考察,分析理论设想与实践操作之间存在的隔膜,并提出大力推进知识产权仲裁深入发展的建议。

2016年度报告委托中国人民大学组成课题组编写。课题组负责人为中国人民大学法学院党委副书记兼副院长、博士生导师杜焕芳教授和贸仲委仲裁研究所李兵主任,课题组主要成员为中国政法大学国际法学院博士生导师宋连斌教授、最高人民法院民事审判第四庭审判长沈红雨法官、安杰律师事务所合伙人董箫律师。具体任务分工如下:前言和年度小结由杜焕芳撰写。第一章由宋连斌牵头完成,董箫、沈红雨参与撰写。其中“三、中国商事仲裁司法审查情况”数据由沈红雨提供;最高人民法院应用法学研究所博士后研究人员廖宇

羿、中国政法大学国际私法方向博士生黄保持参与撰写了“四、中国国际商事仲裁理论研究”的部分内容。第二章由董箫律师团队完成。第三章由沈红雨完成。第四章由中国人民大学法学院国际法专业博士生李贤森执笔。年度报告初稿完成后,杜焕芳和李兵对报告全文进行了统稿,贸仲委副主任兼秘书长王承杰、党委书记兼副秘书长李虎、贸仲委仲裁院副院长赵健等对报告进行了审稿。

《中国国际商事仲裁年度报告(2016)》的编写,得到原国务院法制办公室政府法制协调司、最高人民法院民事审判第四庭、中国国际经济贸易仲裁委员会、安杰律师事务所、中国人民大学、中国政法大学等单位在资料提供、初稿撰写、中期评审等方面给予的便利条件和大力协助。贸仲委仲裁员岳洁女士和杨帆女士在报告编写过程中提出了中肯的建议。贸仲委仲裁研究所的张蓓、刘纲、赵劲欣、粟撒、蔡飞亦为本报告的数据收集、文字核校、排版印刷等工作付出了大量努力。在此一并表示由衷感谢!

《中国国际商事仲裁年度报告(2016)》课题组

2017年8月20日

Preface

Currently, the vision of “the Belt and Road” Initiative is becoming a reality. Governmental and non-governmental economic and trade exchanges and cooperation between China and other countries involved in “the Belt and Road” construction are entering into a new stage of rapid development with the initiation of a large number of cooperation projects, the preliminary shaping of an infrastructure network and the advancement of industrial cooperation along “the Belt and Road”. However, trade and investment disputes and conflicts are unavoidable along with the continuous progress of the cooperative projects. Therefore, efficient and impartial resolution of disputes and the protection of the legitimate rights and interests of all parties concerned are of great significance in the construction of “the Belt and Road”, which also creates a best development opportunity in history for international commercial arbitration in China.

The China International Economic and Trade Arbitration Commission (the CIETAC) released its 2014 Annual Report on International Commercial Arbitration in China at Beijing on 22 September 2015. That was the first annual report ever released in China on the development of international commercial arbitration in China, which is normally called the foreign-related arbitration in China. The release of the 2014 and 2015 Annual Reports on International Commercial Arbitration in China in both Chinese and English has attracted extensive attention of arbitration practitioners and researchers in and outside China. The CIETAC decides to carry out its preparation and publication of its 2016

Annual Report as an effort to sum up the annual development of the legal system of international commercial arbitration in China, promote the perfection of China's international commercial arbitration system, the development of arbitration and the exchange of information, enhance China's influence in international commercial arbitration arena, and provide suggestions and references for future development of international commercial arbitration in China.

Through empirical analysis and theoretical research, the 2016 Annual Report on International Commercial Arbitration in China covers data analysis and legal system progress in the micro level, the improvement of arbitration practice and system in the medium level and the judicial review and industry development in the macro level so as to show the highlights in the development of international commercial arbitration in China. Specifically, based on the analysis of the data of international commercial arbitration cases in 2016, the 2016 Annual Report follows the developments of the legal system of international commercial arbitration in China, discusses the judicial supervision in the field of international commercial arbitration in China, makes special observation on the application of the International Commercial Terms (the Incoterms) published by the International Chamber of Commerce (the ICC) in such field, and takes the promotion of resolving intellectual property disputes through arbitration as an example to analyze the current situation and prospect of specified sectors of international commercial arbitration in China.

The 2016 Annual Report is divided into four chapters in addition to the Preface and the Summary of the Year. Chapter One *Overview of the Development of International Commercial Arbitration in China* is an overview of the development of international commercial arbitration nationwide, the analysis of data regarding arbitration cases in China, judicial support and supervision of international commercial arbitration cases by the Supreme People's Court (the SPC), and the development of theoretical research on international commercial arbitration in China in 2016. In the 2015 Annual Report, special observation was



made on the application of the United Nations Convention on Contracts for the International Sale of Goods (the CISG) in China's international commercial arbitration. The Incoterms is another most influential legal document regarding the international sale of goods. Thus, Chapter Two of the 2016 Annual Report *Special Observation on International Commercial Arbitration in China—Application of the Incoterms in International Commercial Arbitration in China* makes a special observation on the application of the Incoterms in China's international commercial arbitration. Through analysis of typical cases, the Report reveals the common problems in the application of the Incoterms by parties involved in international trade, summarizes and studies experience for China's international commercial arbitration practice, and makes recommendations for international trade practitioners and potential parties of arbitration cases. Chapter Three *Judicial Supervision of International Commercial Arbitration in China* focuses on the judicial supervision of international commercial arbitration in China, including confirmation of validity of arbitration agreements, annulment and enforcement of arbitration awards. Chapter Four *Development of China's International Commercial Arbitration in Specific Sectors—Promotion of Resolving Intellectual Property Disputes through Arbitration* contains in-depth investigation on the status of China's intellectual property arbitration practice through analyzing relevant cases handled by the CIETAC in recent years, analyzes the existing gap between theories and practice, and puts forward proposals on pushing forward the development of intellectual property arbitration.

The 2016 Annual Report on International Commercial Arbitration in China is written by the research team of the Renmin University of China, led by Professor Du Huanfang, Vice President and Deputy Party Secretary of the Law School of Renmin University of China, and Mr. Li Bing, Director of the CIETAC Research Institute. Main team members are Professor Song Lianbin from the International Law School of China University of Political Science and Law, Dr. Shen Hongyu, judge of the 4th Civil Division of the SPC and Mr. Dong Xiao, Partner of Anjie

Law Firm. The work of the members is divided as follows: *Preface and Summary of the Year* by Professor Du Huanfang, Chapter One by Professor Song Lianbin's team with participation of Mr. Dong Xiao and Dr. Shen Hongyu with Dr. Shen providing the data for *Part III, Judicial Supervision of Commercial Arbitration in China*. Mr. Liao Yuyi, postdoctoral researcher of the SPC Applied Science of Law Research Institute, and Mr. Huang Baochi, PHD candidate of private international law of China University of Political Science and Law, participated in the composition of *Part IV, Theoretical Research on International Commercial Arbitration In China*. Chapter Two was accomplished by Mr. Dong Xiao's team. Chapter Three is written by Dr. Shen Hongyu while Chapter four by Mr. Li Xiansen, PHD candidate of International Law of the Law School of the Renmin University of China. Professor Du Huanfang and Director Li Bing compiled and edited this Report after the completion of the draft while Mr. Wang Chengjie, the CIETAC Vice Chairman and Secretary General, Dr. Li Hu, the CIETAC Party Chief and Deputy Secretary General, and Dr. Zhao Jian, the Vice President of the CIETAC Arbitration Court reviewed the draft.

We hereby acknowledge the kind support and generous assistance from the Legal System Coordination Department of the Office of Legislative Affairs of the State Council, the Fourth Civil Division of the SPC, the CIETAC, Anjie Law Firm, Renmin University of China, China University of Political Science and Law, etc. for providing information, drafting and providing advice and assessment for this Report, and extend our gratitude to Ms. Yue Jie and Ms. Yang Fan, who are both the CIETAC arbitrators, for their pertinent advice, to Ms. Zhang Bei, Mr. Liu Gang, Ms. Zhao Jinxin, Ms. Su Sa and Ms. Cai Fei of the CIETAC Research Institute for their great efforts in data collection, proofreading and typographical arrangement of the Report.

Our special thanks and appreciation also go to the following persons for their hard work in translating the Report into English: Ms. Gu Huaning for translating the Report into English, Ms. Jin Xi for proofreading of the translation of Preface

and Chapter One, Ms. Lu Yahan for proofreading of Chapter Two, Ms. Liu Yang for proofreading of Chapter Three, Ms. Li Shuzhen for proofreading of Chapter Four and Summary of the Year, and last but not the least, Ms. Jie Wang for the final proofreading of the whole English version of the Report.

The Research Team of 2016 Annual Report on
International Commercial Arbitration in China
20 August 2017

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