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# An SCC Arbitration

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# Pre-arbitration stage

## Preparations before commencing case

- Possible to improve client's case?
- What relief(s) to seek?
- Interim measures?
- Jurisdictional issues?
- Factual investigations
- Legal research
- Potential documentary evidence
- Potential oral evidence
- Client's time sheets (where recoverable as costs)

# Minutes throughout the case

## During pre-arbitration preparations

- At interviews with client and potential witnesses
- Confirmation letters to witnesses?

## During the arbitration

- Chronology
  - help to quickly update the case and
  - quickly find documents during the written phase and oral hearings

# Request for Arbitration

Includes, on the merits (SCC Rules, Art. 2):

- A summary of the dispute
- A preliminary statement of the relief sought
- *Long or short Request?*
- *Anticipate jurisdictional objection?*

CIETAC Request more comprehensive (Art. 12):

- The claim, and the facts and grounds on which the claim is based
  - The documentary and other evidence on which the claim is based (PRC Act, Art. 23)
- (= “Statement of Claim” under SCC Rules)

# Answer

Includes, on the merits (SCC Rules, Art. 5):

- Any jurisdictional objections (however, objection may be raised up to the subsequent Statement of Defence)
- An admission or denial of the relief sought
- *Long or short Answer?*

CIETAC answer more comprehensive (Art. 15):

“Statement of Defence”

- The facts and grounds on which the defense is based
- The documentary and other evidence on which the defense is based

# Referral to the Tribunal, etc.

- SCC secretariat gives Claimant opportunity to comment on the Answer (Art. 5)
- Then, the case/file is referred to Tribunal when appointed (Art. 18)
- Final award to be made not later than six months thereafter, unless extension granted by SCC (Art. 37)
- Tribunal establishes a provisional timetable for the arbitration having consulted the parties (Art. 23)

# Statement of Claim

Statement of Claim includes, unless previously submitted (Art. 24):

- The specific relief sought
- The material circumstances relied on (CIETAC Art. 12.1.e facts and legal grounds)
- Documentary evidence
- Statements on oral evidence or written witness statements (if provisional timetable so provides)

# Statement of Claim, cont.

- Meaning of “specific relief sought”?
- Meaning of “material circumstances”?
- Monetary relief sought  
including specified interest
- Declaratory relief sought

*Declaratory relief in addition to or instead of monetary relief?*

Note: *res judicata* in Sweden: cause of action estoppel but not issue estoppel



# Statement of Claim – specific relief sought

- Respondent shall be ordered to pay EUR 10,000,000 to the Claimant
- Respondent shall be ordered to deliver substitute goods by delivering [amount and product] to the Respondent
- Respondent shall be ordered to pay damages with such amount the Tribunal deems reasonable
- Respondent shall be ordered to pay damages for loss of market share
- Claimant shall be granted any other remedy that the Arbitral Tribunal deems appropriate
- The Respondent shall be ordered to pay interest at such rate and for such period as the Tribunal deems appropriate

# Statement of Claim – “legal grounds”

- “For all of the reasons stated above in this Statement of Claim [380 pages], the Arbitral Tribunal shall grant the reliefs sought by the Claimant
- Sufficient “legal ground”?
- The claim is granted on a legal ground invoked by the claimant → challenge?
- The “chain”: specific relief sought → legal ground → specify circumstances intended to be proved

# Specifications of evidence

- Tribunal may order (e.g. in provisional timetable) parties to identify and specify (in Statement of Claim or otherwise) (Art. 26, 28):
  - documentary evidence relied on and the circumstances to be proved;
  - each witness of fact or expert they intend to call and the circumstances to be proved by each testimony
- Written testimonies of fact witnesses and party-appointed experts may be submitted
- Fact witnesses and experts are examined at a hearing, unless otherwise agreed by parties

# Statement of Defence

Statement of Defence includes, unless previously submitted (Art 24):

- Any jurisdictional objections
- Whether, and to what extent, the relief sought is admitted or denied
- The material circumstances relied on
- Any counterclaim or set-off
- Documentary evidence
- Statements on oral evidence or written witness statements (if provisional timetable so provides)

# Additional written submissions

- Tribunal may order parties to submit additional written submissions (Art. 24)
  - in the provisional timetable or otherwise
- Most often provided for in provisional timetable
- Sometimes written submissions directed by Tribunal in addition to those provided for in provisional timetable

# The hearing

A hearing shall be held if requested by a party or deemed appropriate by Tribunal (Art. 27)

- Opening submissions
- Documentary evidence
- Oral evidence
- Closing arguments (post-hearing?)
- Cost submissions (post-hearing?)

# Costs

- “Costs of the Arbitration” (Art. 43) and “Costs incurred by a party” (Art. 44)
- “Costs of the Arbitration” (Art. 43):  
arbitrators’ fees and expenses, and  
SCC’s administrative fee and expenses
- SCC determines the Costs of the Arbitration under its  
Schedule of Costs
- Tribunal includes SCC’s determination in the final award
- Tribunal apportions the Costs of the Arbitration between the  
parties, if a party so requests

# Costs, cont.

“Costs incurred by a party” (Art. 44):

- Tribunal may in the final award, if a party so requests, order the other party to pay any reasonable costs incurred, including costs for legal representation
- Parties’ own time/work (management, etc.) recoverable under Arbitration Act (s. 42)
- Interest on costs, on a party’s request only (Arbitration Act, s. 42)



# Thank you!

- Additional questions?

# Contact details

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