

# 以历史视角看中国与瑞典的仲裁渊源

## A historical perspective on the China-Sweden arbitration connection

上世纪 80 年代，中国政府出版的一份指导手册规定：与外国公司进行合同谈判的国有企业在订立争议解决条款时只有两种可获接受的选择：中国国际经济贸易仲裁委员会（贸仲）在中国进行的仲裁；或者根据斯德哥尔摩商会仲裁院（SCC）规则在瑞典斯德哥尔摩进行的仲裁。地处北欧且人口稀疏的瑞典为何会在中国政府眼中具有这样的地位呢？

中国和瑞典之间的仲裁渊源可以追溯到二战后。在两大阵营处于冷战状态的政治气候中，东、西方国家需要寻求一个中立的、不偏不倚的司法管辖区处理彼此间的商业争端。瑞典自 19 世纪开始一直奉行不结盟的外交政策，由此赢得了中立国的美誉。作为一个中立的法域，瑞典赢得了大多数当事人的信任。

得益于此，SCC 在 20 世纪后半叶成为了东、西方商业争端的解决中心。在这段时期，SCC 受理的争议案件数量变得日益国际化，一改其 1917 年成立以来主要受理瑞典国内案件的情形。1977 年，美国仲裁协会和苏联商会签署《任选条款协议》（Optional Clause Agreement），据此美苏商业争端可以根据 SCC 规则在瑞典得到裁决，这是 SCC 发展历史上的一大里程碑。

SCC 与中国国际贸易促进委员会（贸促会）于 1973 年开始接触。贸促会领导和长期担任 SCC 秘书长的 Ulf Franke 之间定期的互访和沟通进一步巩固了这种关系。1984 年，SCC 和贸促会签署合作协议，同意中国、瑞典两国仲裁界之间定期进行交流与合作。由于这一系列的互动，根据 SCC 规则在斯德哥尔摩进行仲裁最终成为除了贸仲仲裁之外，参与国际交易的中方当事人当时唯一可以选用的另一种仲裁方式。

虽然时至今日 SCC 在中国已经不再拥有以往的超然地位，但是中瑞仲裁界之间的长期关系依然稳固。依然不断有中国当事人将 SCC 的仲裁条款写入国际商业合同

中：2013 至 2014 年，SCC 受理的新增案例中有大约 5% 涉及中国当事人；如果扣除瑞典本地案例，涉及中国当事人的案例比重约为 10%。为了更好地为中国当事人服务，SCC 始终维持其中文版网站，在网站上提供 SCC 仲裁规则和《瑞典仲裁法》的中文翻译，以及其他许多资源。

在近期涉及中国当事人的仲裁案例中，我们最常见到的合同类型是购买合同，其次是服务合同及合作合同。这些案例涉及许多不同的行业及合同类型，其中以制造业合同最为常见。涉华案例的争议金额相差很大，自 18150 欧元（20300 美元）至逾 10 亿欧元不等，平均金额徘徊在 100 万欧元左右。

A 1980s-era government handbook instructed Chinese state-owned enterprises negotiating contracts with foreign entities that there were only two acceptable options for dispute resolution clauses: CIETAC arbitration in China, or arbitration in Stockholm under the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) Rules. How did Sweden, a sparsely populated country on the northern edge of Europe, gain that status in the eyes of the Chinese government?

The arbitration bonds between Sweden and China have their origins in the post-World War II global political climate. During the Cold War, the need arose for impartial venues in neutral jurisdictions for the resolution of commercial East-West



总体来看, SCC 每年受理的仲裁案件中大约有一半涉及至少一位非瑞典当事人。受理的案件涉及各行各业, 但大额案件多数关乎自然资源的勘探或采购, 特别集中在能源领域。事实上, 在 SCC 创立以来受理的争议金额最大的 20 件仲裁案中, 有 12 件涉及能源。

不仅如此, SCC 已经成为处理投资者与政府间争端的世界主流仲裁机构之一。1993 至 2014 年间, SCC 共受理 73 件投资争端, 今年亦有新增案例。今天, SCC 已经是继国际投资争端解决中心 (ICSID) 之后, 世界上第二大可以根据自己规则管辖投资争端的机构。SCC 受理的投资争端大多是在双边投资协定或《能源宪章条约》下产生的。至少有 120 份已知的协议指定瑞典和 SCC 作为管辖投资者与政府间争端的平台。

瑞典的司法部门非常支持仲裁, 瑞典的仲裁界发展成熟、生机勃勃。SCC 规则和《瑞典仲裁法》都便于使用, 以平实的语言撰写, 并推崇当事人意思自治原则。由于上述种种原因, 虽然来自中国等国家的当事人与瑞典没有明显的关系, 但是无论在过去的数十年还是未来, 瑞典对他们来说都会是一个值得信赖的仲裁地。



disputes. Sweden had pursued a policy of non-alignment in foreign affairs since the 19th century, and thus had earned a reputation as a neutral, middle-road country. It was a jurisdiction in whose neutrality most parties had confidence.

The SCC thus became a hub for East-West disputes during the second half of the 20th century. In that period, the SCC's case load became increasingly international, having been mainly domestic since the Institute's establishment in 1917. In 1977, a major milestone was reached when the American Arbitration Association and the USSR Chamber of Commerce and Industry signed the so-called Optional Clause Agreement, whereby US-Soviet commercial disputes would be resolved in Sweden under the SCC Rules.

Contacts between the SCC and the China Council for the Promotion of International Trade (CCPIT) had begun in 1973. Regular correspondence and visits between CCPIT officials and SCC's longtime secretary general, Ulf Franke, cemented those initial contacts. In 1984, the SCC and CCPIT signed a cooperation agreement providing for regular exchanges and cooperation between the Chinese and Swedish arbitral communities. Eventually, as a result of these interactions, arbitration in Stockholm under the SCC Rules became the only accepted alternative to CIETAC arbitration for Chinese parties to international transactions.

Although the SCC can no longer claim that kind of exclusive status in China, the long-standing connection between the Chinese and Swedish arbitral communities remains strong. And Chinese parties continue to include SCC arbitration clauses in their international commercial agreements. In 2013-14, around 5% of the new cases filed with the SCC involved a Chinese party; the figure is 10% if one excludes domestic cases from the calculation. In order to better serve its Chinese users, the SCC maintains a Chinese-language website, which provides translations of the SCC Rules, the Swedish Arbitration Act and many other resources.

In recent arbitrations involving Chinese parties, the most frequently occurring type of contract

has been purchase agreements, followed by service agreements and cooperation agreements. The cases have involved many different industries and branches of contracts, with manufacturing agreements being the most common. The disputed amounts in the China-related cases has varied greatly – from €18,150 (US\$20,300) to more than €1 billion – with the average value hovering around €1 million.

Generally about half of the arbitrations filed with the SCC each year involve at least one non-Swedish party. The case load spans a broad spectrum of industries, but a majority of SCC's large cases involve exploration or purchase of natural resources, particularly within the energy sector. Of the 20 highest-value arbitrations ever administered by the SCC, 12 concern energy.

The SCC also has emerged as one of the world's leading institutes for the resolution of investor-state disputes. Between 1993 and 2014, the SCC administered 73 investment disputes, with several more filed in 2015. Today, the SCC is the second largest forum in the world – after ICSID – for administering investment disputes under its own rules. Most investment disputes brought to the SCC arise under bilateral investment treaties or the Energy Charter Treaty. At least 120 known treaties designate Sweden and the SCC as a forum for disputes between investors and states.

Sweden's judiciary is exceptionally supportive of arbitration, and the arbitration community is both mature and thriving. The SCC Rules and the Swedish Arbitration Act are user friendly, written in plain language and enshrine the principle of party autonomy. These are among the reasons why the SCC, for several decades and counting, has remained a trusted arbitration venue for parties who, like China, have little apparent connection to Sweden.

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