Editorial

Trade liberalization against a background of the globalization and its corollary, the increase in litigations, makes it more necessary to provide companies the means to settle their disputes. Meeting the expectations of the business world is not, in this context, the least of the challenges facing the International Arbitration Chamber of Paris like any other permanent arbitration institution. This is particularly true for the IACP which provides operators security, privacy and unrivaled speed. However, we are aware of the reservations expressed by companies with regard to this mode of dispute settlement. 50% of them express dissatisfaction of the action of arbitrators, of the excessive costs and delays generated by the procedure. Efficiency, confidence, independence, transparency, celerity, control of deadlines, better forecasting of costs, justification of decision, confidentiality... So many stakes in a changing world, at the heart of an arbitral institution as the CAIP which always have to be more reactive, efficient and professional. Such qualities could not be effective without the help of good arbitrators, and also without the support of competent and dedicated services in charge of the administration of procedures... And even if the Arbitration Chamber already benefits a good reputation and recognition unmatched throughout Europe, where it is perceived as one of the best arbitration institutions, and probably the first European institution statistically - it also intends to make known its activity beyond French borders.

Baudouin Delforge, President of the International Arbitration Chamber of Paris.

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“The International Arbitration Chamber of Paris had always the ability to fit in with economic and legal context”

Irina Guérif, Secretary General of the CAIP

At the time when the CAIP is evolving by moving into new offices and by acquiring new communication tools and a Scientific Council, its Secretary General, Irina Guérif, talks about the news of the Chamber. An occasion to discuss, particularly from procedural perspective, the key role of the General Secretariat within a permanent arbitration center. With, underlying, an idea: being provide companies of all sizes the means to settle their disputes by arbitration or conciliation.
Can you introduce us to the international Arbitration Chamber?

It is important to remember that the CAIP has a long existence: it will celebrate its 87th anniversary in March. Therefore, this institution has a long experience of arbitration matters. Few people know that the Chamber has played a very important role in the development of arbitration in France. It was at the origin of the legislation defining the current structure of arbitration. Since the mid-19th century, at a time when the Court of Cassation considered null, the arbitration clause in a contract, it is the “founder” of the Arbitration Chamber, the deputy and grain trader Louis Louis-Dreyfus, succeeded in getting the law of 31 December 1925 which has made the arbitration clause in commercial matter lawful.

Historically associated with the grain trade sector, the Chamber has over time extended its jurisdiction to other fields of industry and commerce. How did it achieve this?

The Chamber had always the ability to fit in with the economic and legal context. Originally, the CAIP was a professional center which offered its users arbitration rules which were highly simplified and provided arbitrators who knew the customs of cereals. Over time before it has become competent in all agri-food sectors (dairy, fruits and vegetables trade, wine, hides and skins ...).

Then its jurisdiction was extended to fields out of the agri-food sector: franchising, industrial property, warranties ... in which the IACP provides specific rules. Its jurisdiction is now general: it intervenes in almost all types of economic conflict, even if the grain trade and agribusiness remains its “core business”. This progression is the result of our ambition and the confidence that companies of all sizes have in us.

What is the confirmation rate of awards rendered under the aegis of the Chamber?

Since 1990, the Paris Court of Appeal has overturned only 0.1% of our decisions, namely an award in a thousand. This rate stamps from the great importance we attach to the composition of arbitral tribunals: we strive to appoint two professionals in a sector and one specialist in arbitration law for each tribunal in order to ensure that awards are rendered in harmony with the reality of the business and in accordance with law.

What is, in the procedure framework, the role of the Secretary General?

Responsible for assuring the functioning of the Chamber, particularly the Secretary General puts in place and oversees the organization of arbitration procedures at every step in order to ensure parties the neutrality and reliability they are entitled to expect from an arbitral institution. The Secretary General supervises the proceedings. The Secretary General verifies that the Rules are complied with. Before the arbitral tribunal is seized, he monitors compliance with the general principles of due process governing the procedure. She plays the role of secretary of arbitration within the institutional framework and also in ad hoc arbitrations. Typically, the Secretariat remains available to the parties in order to explain in a neutral way, the formal requirements which must be met to seize the Chamber, the fees involved, and their rights under the Rules of the Chamber.

And once the arbitral tribunal constituted?

The Secretariat provides all necessary assistance to arbitrators. For example, it sends the files provided by the parties to the arbitrators, since all communications between arbitrators and parties must go through it.

Apart from monitoring the arbitral procedure, what are the other functions of the General Secretariat?

Excluding the day-to-day management, the General Secretariat conducts several actions. For example, the Chamber continues the tradition of realizing the publication of international arbitration awards - of course in accordance with relevant privacy policy – in the ICCA Yearbook and on the Westlaw website.

In 2011, we amended our arbitration Rules and our scale of costs of arbitration to adapt them to the international arbitration cases thereby remaining an institution adapted to its environment. It is important to add that the Chamber is making every effort to be accessible to companies, including small business by proposing low arbitration costs and very short deadlines, notwithstanding present financial pressures.

For example, if the conventional time limit for make the award is six months, awards are actually rendered in a period of 2 to 3 months. And for fast track procedures for which the conventional time limit is normally 1 to 3 months, the actual time is even shorter.

How do you see the future of the Chamber?

The Arbitral Chamber of the future? Reliable, innovative and indispensable. Due to globalization, arbitration is growing at an incredible speed. Concomitantly, the arbitration landscape is also changing. It is now difficult to imagine that just a few decades ago, arbitration was still unknown. Today, for a company, it is a great way to resolve a dispute with a business partner: as we know, 80% of awards are enforced spontaneously. The
Arbitration Chamber must continue to ensure the reliability of its decisions, as it does today, to be proactive in responding to this changing environment. And companies who use the Arbitration Chamber recognize its value, accessibility, and efficiency. They trust it. Companies know that our institution is aware of the stakes of recourse to arbitration and their need to manage conflicts. I never get tired of citing the case of a losing party who nevertheless called to thank us for "giving him this lesson" by the arbitration procedure that allowed it to improve its relations with the other party and to refrain from making the same mistakes with other trading partners. For us, this is the best evidence of our usefulness.

REPORT

Independence and impartiality : the arbitrator's duty of disclosure

This assertion is a truism: vested with the power of juris dictio, the arbitrator must be impartial and independent. Yet, among the reproaches addressed frequently to arbitration, all too often companies point out the lack of independence and thus the risk of impartiality of arbitrators. Only one tool exists to ensure the compliance with this fundamental guarantee of a good justice: the disclosure obligation relating the arbitrators, which must be as complete as possible. Otherwise, the discovery of a ground for challenge by a party, during the arbitration proceedings or at the end of it, can lead to the setting aside of the award.

Consustantial virtues inherent in the function of judging, independence and impartiality of the arbitrator shall be assessed through the duty to disclose to which it is liable. As Alexandre Job, Senior Legal Counsel in the Legal Department of the Total group has rightly pointed out last September at the annual conference of the French Association of Arbitration, "disclosure is the key element in building the parties’ confidence in the arbitrator; essential element in the arbitral process. It is precisely the honesty of the arbitrator, its ability to act with transparency and its serenity to disclose any factor that may, in eyes of the parties, give raise to reasonable doubts as to the arbitrator’s independence, which will contribute to gain their trust".

This disclosure obligation, which avoids potential defects that may subsequently affect the arbitration award rendered by the arbitral tribunal, was already provided in Article 10 of the CAIP Arbitration Rules. Now it is laid down in the French code of civil procedure: the new article 1456 as amended by the Decree No. 2011-48 of January 13th, 2011, providing that "before accepting a mandate, an arbitrator shall disclose any circumstance that may affect his or her independence or impartiality. He or she also shall disclose promptly any such circumstance that may arise after accepting the mandate".

The arbitrator is therefore required to disclose, both at the time of accepting an appointment to act as arbitrator and during the entire course of the proceedings, any circumstances likely to affect its independence and impartiality. Arbitrator must also demonstrate reactivity: this disclosure must be done in as soon as possible in order to allow the other party to object to this appointment in a reasonable time.

Now clearly asserted in the text, the duty of disclosure has also been the subject of recent clarifications by the French Court de Cassation.

A decision of the Court of cassation rendered one year ago came to reaffirm the importance of this duty: "before accepting a mandate, an arbitrator is required to disclose any circumstance that may affect his or her independence or impartiality, in order to allow the party to exercise its right of disqualification"


More recently, the Court of Cassation (Cass. Civ. 1st, Oct. 10, 2012) held that the party challenging the independence of the arbitrator shall justify how the facts not revealed achieved this independence: "[...] by determining on the basis on these only grounds, without explaining how these elements were likely to cause, in the minds of the parties, a reasonable doubt relating to the impartiality and independence of Mr. X ..., the Court of Appeal did not put the Court of Cassation able to exercise its control over the decision [...] ». This of course does not exempt the arbitrator to reveal his past relationships with counsels or, more generally, any fact which may affect his impartiality or independence.

In summary, "all links between an arbitrator and one of the parties, one of the counsels and/or one of the co-arbitrators must be disclosed. Excessive prudence is a venial sin without consequence. The opposite is not" (Alexandre Job, op. cit.).

In this domain, the role of arbitration centers is crucial as underlined by Irina Guérif, Secretary General of the CAIP (see infra. Interview).

Duty to disclose : the Court of cassation confirms an award rendered under the aegis of the CAIP
"Holding, first, that, from the beginning of the arbitration procedure of second degree, Company X had the leisure to note that all the arbitrators were French and that the list of arbitrators of the Arbitration Chamber of Paris did not specify to each their employers, (Holding) then, that in the case of corporate arbitration, Company X could not ignore that the arbitrators, or some of them, could have professional relationships, (Holding) finally that it had refrained from asking their disqualification while the arbitration rules of the arbitration center to which she acceded provided it, only invoking rumors, five days before the sentencing, the Court of Appeal has exactly deduced, without reversing the burden of proof, that the company X by invoking late grievance she did not establish that it would not have had or have known previously, breached his duty of loyalty procedural, so it was inadmissible to criticize the award alleging the arbitrators breach of their duty of revelation"


POINT OF VIEW

What is a “good arbitrator”?

At a time when half of companies having recourse to arbitration declare themselves disappointed with benefits of arbitrators (are singled out pell-mell the decisions, the slowness of arbitrators, the motivation of their decisions and sometimes their competence, their independence and the excessive fees they charge), we asked to three arbitration practitioners the following question: what is a "good arbitrator"?

Jacques Pellerin
Counsel at the Paris Bar
Former President of the “Chambre des Avoués de Paris”
Arbitrator

Several key ideas help define what should be a “good arbitrator”:

• the good arbitrator must first ensure the disclosure of all the circumstances in his professional life likely to put him in a situation of conflicts of interest considering the arbitration case, in order to ensure personal independence but also and especially the legal security of the award he will be led to render. The aim is to avoid having to come back later on circumstances which certainly could at first seem petty, but finally endangering the award in the context of actions for annulment and therefore a waste of time detrimental to business litigants;

• then, the good arbitrator is someone who must necessarily know the arbitral procedure. This is obvious for the sole arbitrator; and within an arbitral board, it is essential that at least one of arbitrators is sensitized to procedural issues, mainly to the observance of the adversarial principle both relating to parties and to his own reasoning. Otherwise, the arbitrator risk to undermine the future award;

• the good arbitrator is also the one that will bring the necessary attention to the merits of the case, with the underlying idea of being able to understand all the facts. This is the whole point of an arbitral tribunal, because then, it will be possible to "play" with the composition of the arbitral board, appointing an "expert" arbitrator as a former professional in a given sector or a professional of accounting matters.

• The good arbitrator should also be "interested" in the life of the company, i.e. he must understand that he does not render a decision as a state judge but a decision which, although legal, will serve companies with sustainable solutions for them, and which has the merit of getting companies parties out of the dispute.

• Finally, the good arbitrator should be diligent: he must be aware that he has to render the award in a reasonable time. He must not let the dispute persist and complicate needlessly.

Philippe Cavalieros
Counsel at the Paris Bar
Of Counsel, Winston & Strawn
Former Eurasia Legal Director, Renault s. a. s.
Arbitrator
Arbitration is criticized, even sometimes vilified on the altar of politics. It remains, however, particularly in international matters, the suitable resolution mode of trade disputes. It would be detrimental, and not only for operators who live from arbitration, that under fire and explosion of procedures, this noble institution perish. If the critics come primarily from companies, they have - dare we say - a particular responsibility in this supposedly inevitable drift of time and cost, as well as their counsel or arbitration centers. But what remains from the legacy of these great arbitrators whose, by their talent and their prestige, have shaped arbitration to the point of making of it an efficient justice reference today challenged? “Tant vaut l’arbitre, tant vaut l’arbitrage” (“As is the arbitrator, as is arbitration”). Arbitrators, main and easy targets of critics, would have lost their former luster. Therefore, maybe it would be time to remember what should be the essential qualities of the arbitrator, beyond those unavoidable, - and which are not really qualities - of independence and impartiality, true paragons of arbitrator’s freedom for which all agree to believe that they guarantee in all circumstances the free will.

Now raised to the same rank by some institutions, the availability of the arbitrator shall be assessed not only in terms of time, but also of mind. The open-mindedness of the arbitrator will enable him, by his curiosity and listening, to better appreciate the contours of the dispute, and to win the confidence of the parties whatever their legal traditions. Thus, he will establish his authority, subtle blend of seduction, legitimacy and panache without falling into the arbitral narcissism already mentioned by some. This authority will not only allow him to control the debates with effective guidance, but also simply setting example by his pro-activity, particularly in the drafting of the sentence. And the true value of the arbitrator will be appreciated in the light of his courage precisely in the dispute he will settle. This is at this price that the trust perpetuates. Finally, he will have to maintain, in all circumstances, an ethical and height necessary for both the parties themselves and his own mission, to the scale, even broader, of the international trade operators’ community, whose aim, yesterday as today, remains the search of pragmatism and efficiency.

Jean-Claude Girard
Former General Director
Interbrau Gmbh

In the world of grains, arbitration is used to settle a dispute relating to an issue which can be contractual, of product quality, logistical or financial. To respond, the good arbitrator is the one who meets all the following skills:

- a long professional experience;
- a thorough knowledge of reference contracts (Incograin);
- a good knowledge of the product sector submit to arbitration;
- a knowledge of the specific qualities of the product and of the requirements of the sector;
- a knowledge of logistic flows and packaging of the product;
- a good knowledge of customary practices of marketing.
- Arbitrators appointed for arbitration must be open to the arguments of the opposing parties to analyze the case without biases.

Arbitral awards must be fully consistent with the terms and conditions of the contracts concluded between the parties and the reference contract(s) (Incograin).

The International Arbitration Chamber of Paris moves

International Arbitration Chamber of Paris is pleased to inform you that, on December 1st 2012, it has installed its new offices at the following address:

6 Avenue Pierre 1er de Serbie
75116 Paris.

Telephone numbers, fax and email remain unchanged. More information on our website

The International Arbitration Chamber of Paris creates a scientific Council

The International Arbitration Chamber of Paris has just set up a Scientific Council. This new advisory body which
includes members of the IACP, but also judges, lawyers, academics and business leaders from key sectors, aims to study, reflect and diffuse the law and practice of arbitration and mediation.

To this end, it will organize conferences and seminars, and will ensure the establishment and diffusion of the deontology rules to arbitrators and mediators.

**Actions of the International Arbitration Chamber of Paris**

The International Arbitration Chamber of Paris is always available to receive arbitration centers and delegations of foreign states in order to explain its role, function and mission. Receiving delegations and our participation in conferences abroad give us the opportunity to make contact with the protagonists of arbitration and international trade.

- **Receiving the Tajikistan's delegation**
  The International Arbitration Chamber of Paris welcomed the Tajikistan’s delegation on July 18th, 2012.

- **Receiving the Arbitration Court of Togo**
  The International Arbitration Chamber of Paris welcomed members of the Arbitration Court of Togo on October 17th, 2012.

- **Participation in the “Grain Industry in the 21st Century” Conference in Moscow**
  At this conference which was held on November 22, 2012, Irina Guérif, Secretary General of the Chamber, intervened on the theme: "The Grain Industry in the globalization: contractual instruments".

Participants at the conference had, in addition, the opportunity to consult the Repertory of contracts including Incograin contracts, technical Addenda, Synacomex contracts and the Rules of the International Arbitration Chamber of Paris as well as other additional information about it.

Interested operators learned about all this tools which can be used in grain trade by commercial services or in the event of litigations.

• **International Arbitration Chamber for Fruits and Vegetables**
  Located in Strasbourg, the International Chamber of Arbitration for Fruits and Vegetables, for which the Arbitration Chamber of Paris organizes the arbitral proceedings, has renewed the members of his board on December 12th, 2012, electing at its head Philippe Ruelle, president, director of the UgpbBan union of cooperatives, which sells bananas, and also director of the Fruidor company, which sells bananas and yellow fruits and vegetables..

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**ON EN PARLE**

The British law firm Pinsent Masons, which opened its Paris office on 1 September 2012, has announced, at the beginning of the year, he welcomed among its members Frederic Gillon as partner and launched his international arbitration activity in Paris. Previously counsel at Fenwick Elliot, Frederic Gillon graduated in French and English law from the King's College of London and the University of Paris I Panthéon-Sorbonne. He has worked with some of the greatest international companies in the energy and construction sectors, particularly in arbitration cases.

+ **En savoir plus**

A new law firm specializing in arbitration has just emerged: Betto Seraglini. Created by Jean-Georges Betto, former partner at Hogan Lovells, Christophe Seraglini, Of counsel at White & Case, Gaëlle Le Quillec, former counsel at Hogan Lovells, and Thierry Tomasi, of counsel at STC Partners, the law firm particularly intervenes in defense, aerospace and energy sectors. Christophe Seraglini, aggregated, teaches international private law, arbitration, international litigation and international contracts at the University of Paris Sud XI, and arbitration at Paris I. He is the author of a book devoted to “French law of domestic and international arbitration” (Domat Montchrestien), forthcoming in a few weeks.

+ **En savoir plus**

Last September, the U.S. law firm Winston & Strawn announced the arrival of Philippe Cavalieros as of Counsel in the Litigation Department of the Paris office, to develop alongside Patrick Dunaud and Maria Kostytska practice and pan-European expertise offered by the firm in arbitration. Specialized in international arbitration for more than ten years, Philippe Cavalieros - who began his career as assistant counselor at the ICC International Court of Arbitration - previously exercised the functions of Eurasia Legal Office Director and head of the International Arbitration division at Renault Group. With over seven years of experience with the automaker, he
also brings its knowledge about the functioning of a legal department in a multinational structure. A major advantage to better meet customer expectations.

INTERNATIONAL ARBITRATION CHAMBER OF PARIS

The International Arbitration Chamber of Paris is a not-for-profit institution which has a general competence in arbitration. It offers the companies of all sizes, all necessary services for their disputes resolution through the means of arbitration or mediation.

Established in 1926, the International Arbitration Chamber of Paris is the first arbitration center in France. Having resolved about 40,000 disputes arising from transactions of all commercial and industrial sectors, the I.A.C.P. has acquired today an important international reputation.