

Kluwer Arbitration Blog

In Recap: ICC Asia-Pacific Conference on International Arbitration 2022 (Part 2)

Tony Andriotis (DLA Piper) and Anran Zhang (ICC) · Friday, July 1st, 2022

Though the world is in a constant state of flux, the last few years have been particularly taxing on the global economy. As the world emerges from a pandemic, it has lurched into a state of geopolitical tension arguably not seen since the end of the Cold War. The [7th ICC Asia-Pacific Conference on International Arbitration](#), held in Singapore on 22 June 2022, sought to address the challenges currently facing the pharmaceutical/biotechnology industry and the logistics/shipping industry.

After commenting that declarations that Asia is the future miss sight of the reality that Asia is actually the present and then [announcing the new branded ICC Belt and Road Commission](#), the President of the ICC International Court Arbitration, Ms [Claudia Salomon](#) moderated an insightful fireside chat with Mr [Stephan Jansma](#), CFO of [Trafigura Asia Pacific](#), a global commodity trading enterprise, and Mr [Bani M. Mulia](#), CEO of PT Samudera, an Indonesia-based shipping company. The discussed current state of the global supply chain.

From shortages of cream cheese in the United States to beer droughts for Oktoberfest in Germany, the global pandemic has, for many reasons, made a significant impact on the global supply chain. One key reason related to labor issues that have arisen as employees in the logistics space have been unable to report to work and labor shortages continue, despite the continued relaxing of pandemic related restrictions. Mr Mulia explained that while some politicians, like [President Biden of the United States](#), [blame recent shipping industry pricing practices for recent inflationary spikes](#), the current labor shortage is actually responsible for many of the increasingly higher prices we are witnessing. Moreover, the continued lockdowns, closed borders and port limitations in China have served to further disrupt the global economy.

The on-going Russia-Ukraine conflict and the corresponding global sanctions imposed upon Russia further changes the landscape of the global supply chain; especially in energy sectors. The Black Sea is a major water way utilized in the global trading fabric, but, that fabric is now torn, and companies in the supply chain sector are implementing risk management strategies, such as cooperating with the insurance industry for minimizing conflict related risk.

The global move towards a greener economy, is another key reason for the price fluctuations. Environmentally friendly technology may come with a high price tag, but the real affect can be seen through environmentally driven policies limiting the extraction of natural resources, and thus raising prices of said resources as well as any finished manufactured products in the same stream of

commerce as those limited resources.

As to future prognostications, Mr Jansma is optimistic in the supply chain's ability to adjust to become more efficient, but generally pessimistic on the global economy. Conversely, Bani is optimistic in terms of the world's need for commodities and stated that he prefers to stay positive in the economic trajectory, using a maritime pun to suggest the way forward – the wave may be strong and high, but, we need to ride the wave in order to properly succeed.

The panelists concluded by summarizing supply chain trends to watch for: (1) security, (2) corporate social responsibility, and (3) trade digitalization.

After the fireside chat, the pharma industry panel, moderated by Ms [Sae Youn Kim](#) (Attorney at [Kim & Chang](#)), was specifically on the role of arbitration and other alternative dispute resolution mechanisms in settling industry specific disputes. Ms Kim was joined by panelists, Mr [Alexander G. Fessas](#) (Secretary General of [ICC International Court of Arbitration](#)), Mr [Alex Parker](#) (Assistant General Counsel of APAC Investigations and Dispute Resolution), Ms [Earl Rivera-Dolera](#) (Head of International Arbitration Practice, [Frasers Law](#)) and remotely by Mr [Yin Ye](#) (CEO of [BGI Group](#)).

From a perspective of an entrepreneur and researcher, Mr Ye opened the panel with a presentation on discovery and development of the human genome. He then shifted to a discussion on the importance of the popularization of science, data security and privacy, ethical technology use and affordable and equitable access to new developments. As to dispute resolution, he pointed out that consensus building and cooperation is essential in the biomedical field and that the view from China is that negotiated settlements to disputes would create win-win solutions, while maintaining efficiency and confidentiality. He, however, ended his remote presentation on a humble note, by paraphrasing the Socratic axiom that the more we know the less we know; thus making it clear that none of us may truly know the best way to move forward in regards to this complicated matter.

Mr Parker chimed in by stating that flexible, private and confidential procedures with full legitimacy are welcome by the majority of the dispute resolution community. The panel did, however, stress that the complexity of life science disputes tended to lead to overly detailed party submissions which more often than not serve to extend the timing of the process.

Mr Fessas gave a statistical overview of ICC cases in the life science space, now in top 5 of dispute types that the ICC handles, and stressed that the ICC recently saw a 50% increase in life science disputes, growing from 4% of the ICC docket to 6%. The amount in dispute also went from 500 million (USD) to less than 2 billion (USD) prior to the pandemic, and then shot up to 10 billion (USD) in 2020. The parties to these specific disputes were representative of a wide scope of entities, inclusive of pharmaceutical companies, governments, state-owned enterprises, and academic institutions. The disputes heard were related to all aspects of industry, inclusive of distribution, buyer-seller payments, misrepresentation on invoices, development, branding and marketing. Issues related to IP rights and registration may also allow for the filing of investment treaty-based claims.

Ms Rivera-Dolera noted that as many parties from the economic south were still using pre-pandemic boilerplate, even whilst lockdowns were the norm, this was leading to a spike in disputes. Customized and flexible contracts were needed in such an uncertain commercial environment. Furthermore, though the pharma industry tends to be highly regulated globally, Asian

jurisdictions, such as Vietnam, require stakeholders to comply to particularly strict regulations inclusive of IP licensing, payment of royalties, distributorship agreements, supply chain issues, sale and purchase contracts, and employment issues related to the poaching of workers and key personnel.

In response to Ms Kim's query on the advantages of ICC arbitration in resolving pharma disputes, Mr Fessas stressed that parties to a dispute can choose the level of confidentiality, privacy and data protection in which a dispute will move forward. The ICC has already been asked to intervene to assist where parties to a dispute have purportedly strayed from agreed upon privacy provisions. Additionally, parties to ICC disputes tend to take full charge of the arbitrator appointment process and often choose arbitrators with backgrounds in life sciences. The complexity of life science disputes was also raised as possibly leading to longer running tribunal's time, but, the ICC secretariat was well situated to assist parties in efficiently making their submissions and moving the process along in a timely manner. ICC scrutiny was also raised as a vital tool, allowing the broad experience of the participants and members of the court to act as a bridge for a fair conclusion.

Despite the clear warmth towards ICC Arbitration at the end of the panel discussion, the panelists were not of the view that arbitration was appropriate in every circumstance. The fact that domestic awards may be automatically enforceable, while international ones likely need to go through New York Convention mechanism, along with client preferences for court litigation in Singapore where a group of interrelated contracts may have separate and different dispute resolution clauses. Ms Rivera-Dolera also raised that interim relief was also an important element, as Vietnam can potentially allow interested banks to block proceedings.

Mr Fessas concluded the session by surprising the audience by reciting the Socratic axiom on the acquisition of knowledge raised by Ye in the original Greek, and stressing that those ancient words do in fact continue to ring true today. The more we learn about a specific issue, the less we seem to know, we should keep this idea close to heart as we continue to move down the road of improvement and reform.

The social, economic and political shockwaves we have witnessed over the past few years have yielded many commercial disputes, while also raising questions as to the best methods of settling such disputes. Conflicts arising from the industry need effective and prompt dispute settlement mechanisms. Asia being not the future but "the now," as per the comments of Ms Salomon, is in a position to forge new ground and show the rest of the world how to best handle the recent stresses forced upon the world economy. The current era may not be easy but as heard during the fireside chat, we need to ride the wave in order to succeed.

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