

Kluwer Arbitration Blog

California International Arbitration Week 2024: Strategies for Navigating Trade Wars and Cross-Border Dispute Resolution

Tuyana Molokhoeva (Quandary Peak Research) · Thursday, April 11th, 2024 · Young California Arbitration (Young CalArb)

In a world where trade tensions and geopolitical pressures are increasingly shaping the landscape of international relations, particularly between the U.S. and China, the panel “Arbitrating in Time of Trade War” brought together a distinguished group of experts to explore the complexities and evolving dynamics of international arbitration. The panel featured insights from [Luke Sobota](#) (Founding Partner, Three Crowns LLP, Washington, DC), [Christine Kang](#) (Partner, Hughes Hubbard, New York), [Patrick Zheng](#) (Partner, Llinks Law Offices, Los Angeles), [Sally Harpole](#) (Independent Arbitrator and Mediator, San Francisco), [Peter Neumann](#) (Independent Arbitrator, Adjunct Professor of Law, Straus Institute, Los Angeles), and [Sukhsimranjit Singh](#) (JAMS Neutral and Director, Straus Institute for Dispute Resolution, Malibu). Each contributed a unique perspective on the challenges and strategies necessary for navigating international arbitration in the midst of global trade tensions.

Sobota opened the panel discussion by providing an overview of the U.S.-China trade war’s impact on global trade dynamics and its implications for international arbitration. He detailed the strategic adjustments Chinese companies have made in response to heightened tariffs and geopolitical tensions, including diversifying their investments and manufacturing operations to countries like Mexico and Vietnam, as well as to lower-cost regions within China. Sobota highlighted significant legislative measures enacted by the United States, such as the [CHIPS and Science Act of 2022](#) and the [Inflation Reduction Act of 2022](#), aimed at bolstering domestic technology production and imposing restrictions on semiconductor imports. He also discussed broader geopolitical and economic shifts, including the strategic reallocation of Foreign Direct Investment (FDI) by China to circumvent trade barriers and the ripple effects of these actions on supply chains and international relations, as well as the omnipresent issue of Taiwan and the potential global economic repercussions of increased tensions in the region. By outlining these developments, Sobota stressed the complex interplay between trade policies, national security concerns, and the arbitration field. He pointed out the broader economic and legal ramifications of these trade tensions, emphasizing their influence on international arbitration as disputes become more entangled with issues of national interest and economic policy. This detailed examination offered a comprehensive view of the contentious landscape of global trade in the context of U.S.-China trade war, setting the stage for a deeper discussion on its implications for international dispute resolution.

Kang discussed the impact of current tensions between China and the U.S. on dispute resolution,

noting a significant increase in disputes, both domestic and cross-border, and identifying Hong Kong, Singapore, Paris, and California as preferred seats for cross-border arbitrations. She explored the practical challenges in international arbitration, especially in cases related to infrastructure construction and fraud, focusing on the complexities of managing evidence across different jurisdictions and dealing with parallel legal proceedings, including criminal investigations. Kang used a fraud case study to underline the important role of evidence rules in arbitration, emphasizing how evidence handling can influence case outcomes. She pointed out the unique challenges posed by investigations conducted across multiple jurisdictions, requiring arbitrators to navigate varying legal standards and procedural norms. Kang also discussed the strategic considerations regarding parallel proceedings, such as criminal investigations and ICC arbitrations, underscoring the importance of understanding the interplay between different legal processes. Kang finally discussed the challenges of cross-border data restrictions on evidence collection and presentation, stressing the importance for legal practitioners to adeptly manage evidence and strategize in complex international legal scenarios. Her insights highlighted the complexity of international arbitration in the context of global trade disputes, emphasizing the need for legal practitioners to be adept at handling evidence across different legal systems and to create effective strategies in cases involving parallel proceedings.

Zheng shared insights into the evidence practices in Chinese arbitration, contrasting China's inquisitorial approach with the adversarial systems in common law jurisdictions. He emphasized the preference for documentary evidence over testimonial evidence in China and outlined the challenges foreign entities face when conducting investigations or collecting evidence within Chinese territory due to legal restrictions. Zheng highlighted the procedural nuances of Chinese arbitration, including the limited scope for judicial intervention in the evidence preservation process, which contrasts with the broader powers granted to courts in some other jurisdictions for asset preservation. This aspect, according to Zheng, requires international arbitrators and legal practitioners to have a nuanced understanding of China's legal system and evidence rules to handle disputes effectively. Zheng also touched on the concept of legal privilege, noting its absence in China, which presents an additional layer of complexity for international arbitrators and legal practitioners accustomed to such protections. Through his presentation, Zheng highlighted the unique challenges and considerations involved in arbitrating disputes within or involving Chinese entities, stressing the need for arbitrators to familiarize themselves with China's legal culture and evidence rules to ensure a fair and efficient process.

Harpole highlighted California's potential as a prime arbitral jurisdiction, drawing comparisons with established hubs like Hong Kong and Singapore. She noted the commonalities in legal frameworks across these regions, noting their adoption of the [UNCITRAL Model Law](#), which offers a familiar and favorable legal environment for international arbitration. Harpole emphasized California's cultural diversity as a significant asset in the context of international arbitration. She provided compelling statistics to illustrate this point, such as the high percentage of California multilingual residents, including a substantial number of Chinese and Spanish speakers. This linguistic and cultural diversity, according to Harpole, enriches the pool of potential arbitrators and legal professionals, facilitating communication and understanding in cross-cultural disputes. Finally, Harpole discussed California's welcoming policy towards international arbitration institutions and professionals, contrasting this openness with the more restrictive environments in other jurisdictions, such as China. She argued that California's approach, combined with its robust legal infrastructure, geographic and cultural advantages and the absence of nationality restrictions on arbitrators, positions it as a competitive destination for international arbitration. Her detailed comparison not only highlighted California's potential but also offered insights into the critical

factors that parties and practitioners consider when selecting an arbitration jurisdiction, reinforcing the importance of adaptability, legal certainty, and cultural inclusivity.

Neumann shared his personal perspective on the dynamics of international arbitration, highlighting the field's collaborative spirit and the ongoing efforts to make dispute resolution more accessible and inclusive. Neumann highlighted the international arbitration community's welcoming attitude, emphasizing its openness to newcomers, which contrasts with some perceptions of exclusivity. This inclusivity, he noted, is crucial for the evolution and diversification of the arbitration field. Additionally, Neumann touched upon the global trend towards ADR as a response to the increasing costs associated with litigation proceedings. He suggested that the arbitration community's warmth and the push for more cost-effective dispute resolution alternatives could help mitigate some of the financial and procedural barriers facing parties in international disputes. Neumann's presentation provided a personal perspective on the dynamics of international arbitration, highlighting the field's collaborative spirit and the ongoing efforts to make dispute resolution more accessible and inclusive.

Singh highlighted the importance of cultural understanding in arbitration and mediation, drawing from his broad international experience. He stressed that culture profoundly affects dispute resolution, influencing not just the perception and management of disputes but also the arbitration methodology itself. Singh emphasized the need for arbitrators to be culturally competent and able to appreciate the diverse backgrounds of parties and the impact of their legal and cultural traditions on the arbitration process. He further stressed that effective dispute resolution requires more than just legal expertise, demanding sensitivity to the communication styles, negotiation techniques, and decision-making processes shaped by cultural contexts.

Conclusion

The panel provided an in-depth look at the critical intersections between international arbitration and the ongoing trade disputes that mark the current global landscape. Through the detailed insights offered by the panel of experts, it becomes evident that the realm of international arbitration is not just a legal field but a complex web of geopolitical, economic, and cultural threads. From Luke Sobota's analysis of the U.S.-China trade war to Christine Kang's exploration of evidence management in cross-border disputes, each speaker has contributed to a better understanding of the arbitration process in the face of global challenges.

Patrick Zheng's discussion on the unique practices within Chinese arbitration, Sally Harpole's advocacy for California as a competitive arbitral jurisdiction, Peter Neumann's reflections on the inclusive nature of the arbitration community, and Sukhsimranjit Singh's emphasis on cultural competence all highlight the multifaceted nature of international dispute resolution. These discussions underscore the importance of adaptability, cultural sensitivity, and a deep understanding of both the legal and the human elements that drive international arbitration.

As the world continues to navigate through the complexities of trade wars, sanctions, and geopolitical tensions, the insights garnered from the week underscore the indispensable role of international arbitration in resolving disputes that transcend national boundaries.

Tuyana Molokhoeva is a Co-Chair of Young California Arbitration (Young CalArb). Young CalArb believes that the future of international arbitration in California lies in the hands of our

promising young professionals. Its mission is to provide a dynamic platform that nurtures their growth and strengthens their network within the arbitration community. Young CalArb is sponsored by California Arbitration and is committed to advancing the cause of California Arbitration in developing and promoting California as a hub for international arbitration.

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