



The SCC Experience of Investor-State-Dispute-Settlement NAM-TABC, Brussels, 4 December 2014

Kristin Campbell-Wilson
Deputy Secretary-General



ARBITRATION INSTITUTE
OF THE STOCKHOLM CHAMBER OF COMMERCE

- International arbitration
- The Role of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) in Investor-State-Dispute-Settlement

International arbitration

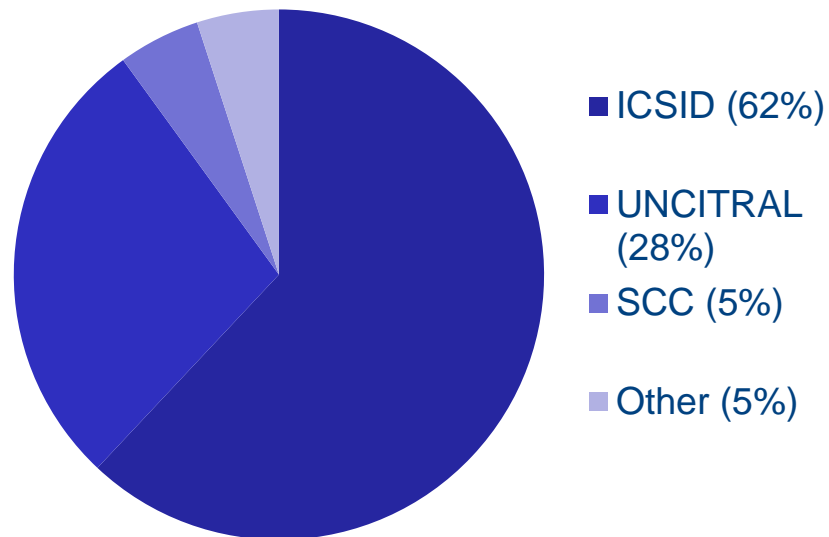
- Arbitration – one of several alternative methods of dispute resolution (e.g. mediation, conciliation, negotiation)
- International arbitration
 - Commercial disputes
 - State-State disputes
 - Investor-State

The attractive features of international arbitration

- Neutrality
- Predictability
- Specialists – parties may appoint an arbitrator each, ensuring specific competence in the arbitral tribunal; the chairperson is generally appointed by a neutral third party, e.g. the SCC
- Speedy process
- Enforceability possible in 150 states (New York Convention, 1958)

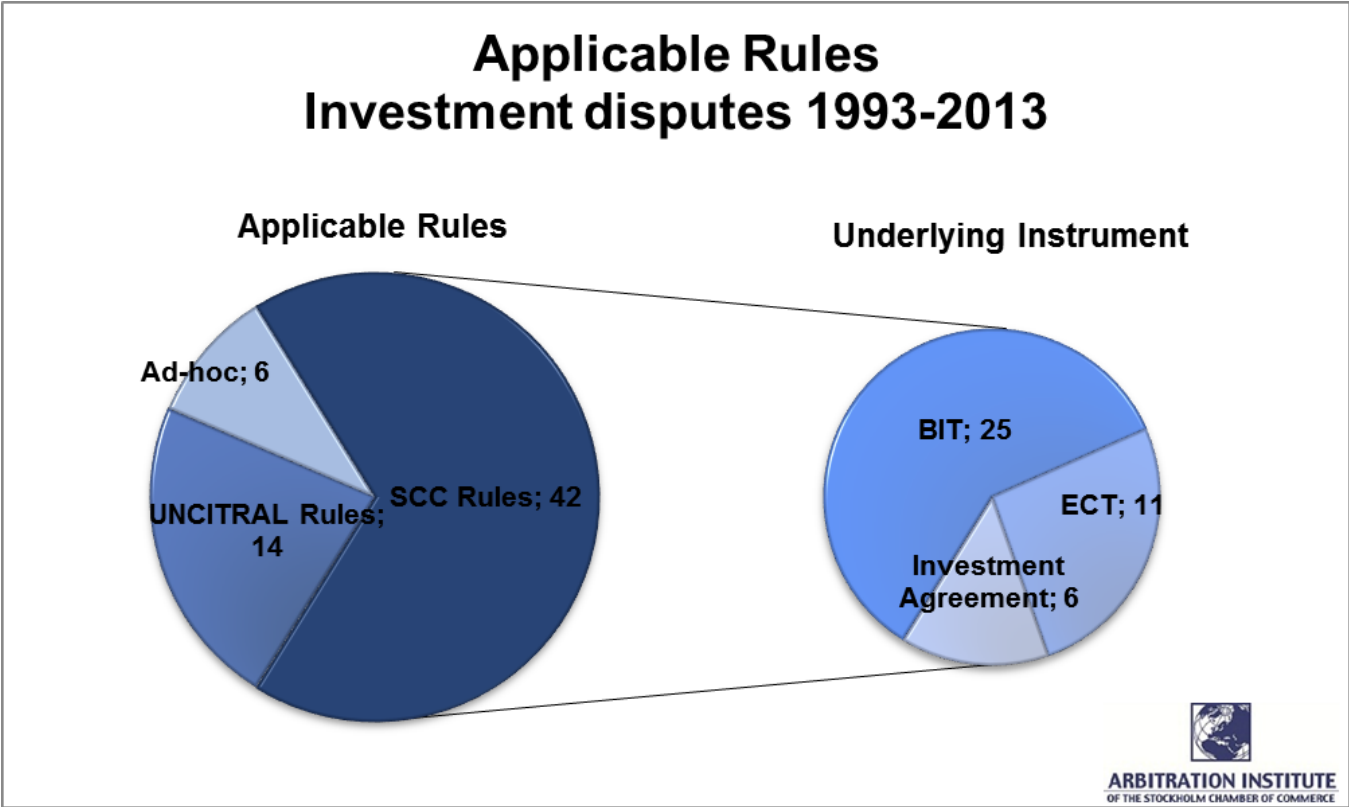
The SCC is the second largest arbitral institution to administer investor-state disputes under its own rules

Distribution of known investor-state cases among arbitral institutions/rules



[UNCTAD Report *Recent Developments in Investor-State Dispute Settlement*, IIA ISSUES NOTE No. 1 (2014)]

SCC and Sweden play a role in 120 BITs and the Energy Charter Treaty (ECT)



120 BIT ECT

- 61 refer to the SCC Rules
- 60 refer to the SCC as Appointing Authority or Sweden as seat

The majority of investors in the SCC cases come from Europe and most investments concern energy, chemicals, and the financial sector (1993-2013)

Nationality of investor

1. Germany
2. Russia
3. Netherlands
4. US
5. Italy
6. Sweden
7. UK
8. Luxembourg
9. Gibraltar/Cyprus/Moldova

Sector

1. Energy
2. Chemicals
3. Financial services

Respondent state

1. CIS (34)
2. EU (23)
3. Other (5)

The result of investor-state disputes

SCC*

- Claim dismissed on jurisdictional grounds (6%)
- State won (44%)
- Investor won in full or in part (50%):
 - Nearly full compensation (11%)
 - Ca half of the claimed amount (28%)
 - Significantly lower than the claimed amount (61%)

*[<http://www.sccinstitute.com/filearchive/4/47148/ISDS%20Metrics%20SCC.pdf>]

Globally**

- Settlements (26%)
- State won (43%)
- Investor won in full or in part (31%)

**[UNCTAD Report *Recent Developments in Investor-State Dispute Settlement*, IIA ISSUES NOTE No. 1 (2014)]

The ISDS-mechanism is used to a large extent by individuals and very small corporations with limited foreign operations

Size of the investors in ICSID and UNCITRAL cases*

- Individuals and very small corporations with limited foreign operations (22%)
- Top 100 multinational enterprises listed by UNCTAD (8%)

**[OECD Investor-State Dispute Settlement
Public Consultation: 16 May - 9 July 2012]*

ISDS is a system developed by states and international arbitration is supported by national legislation

- Efficient and predictable
- Potential to make states live up to their commitments in other areas, e.g. sustainable development and renewable energy



Thank you.

kristin.campbell-wilson@chamber.se



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