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3 International Arbitration Trends To Watch In 2026

By **Caroline Simson**

Law360 (January 2, 2026, 12:03 PM EST) -- Going into 2026, experts tell Law360 that they're expecting environmental issues to become front and center in international arbitration, while geopolitical uncertainty will continue to contribute to disputes. Over in China, meanwhile, a post-COVID-19 boom in investment is seeing more life sciences disputes going to arbitration. Here are three trends we're going to be watching as the new year unfolds.

Are Environmental Claims About to Surge?

Investor-state arbitration has long been used by fossil fuel and mining companies to claim damages from countries if their assets are seized or their projects shut down in a way they argue is unlawful. And while those claims are still being pursued, experts tell Law360 that a significant number of new claims could instead focus on environmental issues, thanks to an important decision issued this past summer by the globe's top court: the International Court of Justice.

In July, the ICJ issued a rare unanimous decision opening the door for nations harmed by human-caused greenhouse gas emissions to seek reparations. There, the United Nations court concluded that treaties, including the United Nations Framework Convention on Climate Change and the Paris agreement, impose "binding obligations" for countries to ensure the protection of the environment from "anthropogenic" greenhouse gas emissions.

The ICJ opinion — characterized by Tiffany N. Comprés, a co-chair of Pierson Ferdinand LLP's international disputes practice area, as a "landmark" decision — is expected to have significant impacts in the investor-state space.

That's despite the fact that the opinion is advisory and nonbinding, Comprés said. A separate decision issued earlier in the year by the Inter-American Court of Human Rights, in which the court found climate change to be a human rights emergency, is expected to have a similar impact.

It's likely that investors pursuing renewable energy projects will cite the ICJ opinion in cases brought against countries, as happened with European countries like Spain in recent years after they dialed back financial incentives for solar energy projects. But another area in which these two opinions could prove particularly important is with respect to counterclaims, i.e., claims asserted by countries against investors that have brought investor-state cases, Comprés said.

In one 2017 case involving Ecuador, the tribunal concluded that oil and gas company Burlington

Resources Inc. was liable for more than \$39 million in damages for causing environmental harm in the Amazon.

"That was a landmark decision in this particular niche area of" investor-state dispute settlement, Comprés told Law360. "Given that, combined with these two advisory opinions, which although not binding, are highly influential, I think that we're going to be seeing more cases using these opinions," she added.

"With the increasing number of cases and the increasing importance of climate change in terms of these specific kinds of cases, I think this could not be more timely," she said. "This will embolden states."

The broader trend of environmental-related disputes is likely to occur in the U.S. as well, where the Trump administration has taken a hardline stance against alternative energy, particularly wind.

In December, a Massachusetts federal judge ruled that President Donald Trump's day-one executive order directing federal agencies to suspend issuing permits for offshore and onshore wind projects was arbitrary, capricious and unlawful. The decision, which will almost certainly be appealed, is just one example of how companies involved in such projects are having to navigate the unpredictable landscape.

Skadden Arps Slate Meagher & Flom LLP partner Jennifer Permesly said the administration could ultimately warm up to alternative energy as the demand for power, fueled by the insatiable needs of artificial intelligence data centers, grows.

"I think we're going to be living in four years, at least, of uncertainty for renewables as all this plays out, contrasted against a rising and incredible demand for energy that will make this an interesting area to navigate," she said.

Tariffs, Geopolitical Uncertainty Will Contribute to Global Disputes

2025 has been marked with uncertainty over the fallout of Trump's mercurial agenda, particularly with respect to tariffs, as well as sanctions imposed by countries around the world. With 2026 gearing up to forge a similar path, experts say disputes could be the one certainty going into the new year.

"If 2025 was the year when we were witnessing these historic levels of volatility, from the tariffs to the sanctions, other international supply chain disruptions — which is really at the core of an international commercial arbitration practice for many of us — 2026 is really the year of when these disruptions will mature into disputes, and how they're going to be handled, and the impact of all of the geopolitical whiplash and what that's going to look like on dispute resolution," Crowell & Moring LLP partner Randa Adra said.

When it comes to sanctions, the conflict between Russia and Ukraine has become "ground zero, so to speak, for testing these geopolitical-influenced arbitrations," Foley & Lardner LLP partner Roland Potts said. Already in 2025, Russian oligarchs have filed multiple investment treaty cases challenging sanctions imposed on them, he said.

While the basis of such claims is government overreach — long a common theme in investor-state arbitration — he called claims challenging sanctions a "new arm" of investor-state arbitration.

"That's a significant move, and it's interesting to see how sanctions are being challenged through civil litigation," Potts said. "I don't think investor-state disputes really contemplated, when this occurred, [that] sanctions would result in governments having to consider whether or not they're going to sanction somebody, and therefore end up in a multiyear dispute over whether or not those sanctions were appropriate."

Back in the U.S., Trump's agenda has experts wondering whether an investor-state claim against the U.S. filed by a foreign company targeted by the administration could be forthcoming.

Gaela Gehring Flores, who co-chairs Hughes Hubbard & Reed LLP's international arbitration practice group in the Washington, D.C., office, provided as an example the U.S. Department of Health and Human Services' announcement in September that acetaminophen had been linked to autism. Trump at the time claimed there was "no downside" to women avoiding use of Tylenol or other acetaminophen products while pregnant.

"Just think, what if Tylenol had been a foreign-owned company, and you have the president of the United States, on television, essentially singling out that company," she said. "If the Trump administration continues to act in arbitrary, capricious and lawless manners, they're going to affect a foreign investment at some point that is actually covered under a [bilateral investment treaty] or the investment chapter of a free trade agreement."

She added: "And then, we will see if the foreign investor affected is willing to stand down and not bring an investment treaty case because they don't want to agitate the Trump administration, or whether they will actually bring a case. I do think that, unfortunately for the United States, there will be consequences to these actions."

On the commercial side, no discussion of possible disputes caused by the Trump administration's agenda can escape mentioning tariffs, which were broadly imposed throughout 2025 and have caused companies to begin checking with their lawyers about legal action against trading partners. This is also true for the Trump administration's decision to dial back incentives and approvals for renewables projects.

DLA Piper partner Kiera Gans noted that the tariffs had created substantial supply chain issues.

"We're anticipating that we're going to see force majeure-type claims, reputational and price-adjustment issues, terminations, and other types of disputes among suppliers, [original equipment manufacturers], miners, all related to the pressure in this market from this volatility," she said. "Some of that was put off in 2025 as people were waiting for the other shoe to drop, but I don't think parties are going to be able to indefinitely suspend those disputes."

"The dispute trend out of all this uncertainty makes for difficult commercial relationships," Skadden's Permesly said. "Uncertainty leads to financing being very hard to obtain, and for structuring your relationships with your counterparties, taking on supplies, meeting deadlines, etc., very difficult to manage. And so you're going to have contracts be at risk based on the uncertainty that the sector is generating, and clients having to decide what position they want to be in."

Post-COVID Disputes Increasingly Going to Arbitration in China

Far away from the U.S., some experts say they're noticing an interesting trend starting to take hold in

China: an increasing use of arbitration for life sciences disputes, particularly in the past 18 months.

Chinese biotech companies have over the past few years demonstrated their discovery and early clinical developmental capabilities, according to Skadden Arps Slate Meagher & Flom LLP partner Friven Yeoh, who heads up his firm's international litigation and arbitration group in Asia.

As that's happened, "more and more multinational biotech and biopharmaceutical companies are seeking opportunities to collaborate with China-based biotech companies in relation to their pipeline drugs, in an effort to further develop and/or commercialize the products," he told Law360.

Moreover, following the COVID-19 pandemic, companies jumped to invest in the Chinese life sciences sector. As the market has evolved, pharmaceutical companies new and old, alongside so-called contract development and manufacturing organizations from South Korea, Taiwan, the U.S., Europe and beyond began thinking about how best to use a surplus of investment. And it wasn't just vaccines — interest began growing in novel cancer treatments and other types of drugs.

Whether it was a product developed outside China being brought into the Chinese market or a Chinese pharmaceutical innovation being licensed outside the country, companies inked numerous licensing agreements, according to Covington & Burling LLP of counsel William Lowery.

"China has long been an emerging market," he said.

As with any industry, with more contracts comes the possibility of more disputes. And that's been the case in China for the past year or so, Lowery said. A typical dispute might involve a licensing agreement around milestone payments that are owed depending upon the development of the technology or the drug over time, and whether the conditions for the payments have been met.

While this trend is part of a broader one involving the increasing use of arbitration in the life sciences sector, what makes this particular disputes boom unique is the Chinese regulatory process, Lowery said.

"What's different here is that I think a lot of the confusion and a lot of the wiggle room in these agreements — where there's room for negotiation — relates to what exactly are the regulatory standards or processes in the Chinese market," he said. "I think that's what makes this somewhat unique, is you have these foreign players who are looking at a Chinese regulatory process and saying, 'Well, it was supposed to operate this way.' And maybe Chinese companies are saying, 'Well, no, actually, it was supposed to operate this way.'"

--Editing by Nick Siwek.
