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Looking ahead to 2026: Trends and expectations

Dear Clients and Friends,

International arbitration has continued to absorb macro shocks while widening the set of disputes where valuation is a primary battleground. Across both investor-state and commercial cases, quantum debates have recently turned on attribution under concurrent shocks, the interaction of contract terms with market dynamics, and damages measurement in volatile regulatory and supply-chain conditions. Looking ahead to 2026, these dynamics show no signs of easing and are increasingly shaping the claims parties choose to pursue and the way tribunals evaluate them.

One prominent theme is policy volatility. Based on an increasing number of disputes shaped by sanctions, tariffs, shifting industrial policy, and other state measures, we expect exogenous policy factors to continue altering the economics of contracts and investments via price resets, cost inflation, changed demand, constrained access to inputs, and tighter financing conditions. These measures also sharpen causation debates, as parties weigh the relative strengths of party conduct versus broader dislocation as drivers of losses.

Another set of themes reflects sector-specific points that we anticipate will continue to be prominent, namely strategic resources and the energy transition. Regulatory and legislative measures targeted at the security of mineral resources are increasingly featured in our matters. We expect early-stage assets to continue being more prominent than mainstay disputes around supply agreements. As countries pursue transition goals and also security of energy supply, disputes will continue to arise in hydrocarbons, renewable projects, and grid arrangements, with ESG dimensions surfacing in those matters as well as directly in remediation and biodiversity questions.

An additional set of themes to look out for in 2026 reflect valuation-intensive disputes in technology, IP, and life sciences, involving intangible assets, regulated pricing, licensing economics, early-stage development risk, among others.

We also include updates that we are witnessing in mainstays of our work in international arbitration, namely commercial damages due to breach of contract and infrastructure/ construction. While infrastructure, construction, and concession disputes continue to generate increasingly complex delay and underperformance questions, we expect more traditional commercial damages will involve more economic sophistication.

This review highlights the themes that we believe will most consistently shape quantum questions in our work in 2026. It begins with policy volatility and state measures, turning to supply chain and long-term supply disputes, and then covering strategic resources, the energy transition, and ESG related valuation questions. This update also addresses disputes in technology, IP, and life sciences, and concludes with updates on commercial damages and arbitrations in infrastructure and construction.

We welcome the opportunity to discuss any of these topics, or how they may affect future disputes and contract strategy.

Best regards,

Tiago Duarte-Silva

Policy volatility and State measures: Tariffs, sanctions, taxes, incentives

We are increasingly seeing that tariff shocks, sanctions regimes, and other state measures are the immediate catalyst for commercial arbitrations and treaty claims. This means that rapidly changing tariff regimes and policy shifts can push long-term contracts into renegotiation, suspension, or termination. These disputes usually center on how policy risk was allocated in the contract, whether the parties have acted consistently with that allocation when conditions changed, and whether the disputed measure was foreseeable at the relevant decision points.

Trade policy will also become more episodic. Tariff announcements, exemptions, and enforcement changes have tended to arrive in rapid sequence, often alongside industrial subsidies and local content rules. This will likely lead to more frequent contract repricing conversations in energy, manufacturing, and commodities, with counterparties facing not only price moves but also uncertainty over whether particular trades, inputs, or payment flows remain permissible at a given moment.

This also means that tariffs, sanctions, and energy policy shifts may be recurring drivers of cross-border arbitrations. From a damages perspective, these cases tend to crystallize around linked questions: the correct counterfactual in a world where costs, demand, and financing conditions changed materially and for multiple reasons; how the analysis treats pass-through and price mechanics, including the degree to which tariffs or taxes were priced in or absorbed; what mitigation was realistically available given contractual constraints, lead times, and regulatory frictions.

In tariff settings, for example, a recurring question concerns how contract mechanics, Incoterms allocation, and tax clauses interact with change-in-law provisions and price adjustment formulas. For instance, Seabron Adamson opined on gas trading and quantum issues as the lead liability and damages expert in an ICDR arbitration concerning a long-term LNG tolling agreement, which required isolating performance and pricing issues from broader market and policy dynamics.

This theme extends beyond tariffs and into non-tariff barriers, including value added taxes and measures affecting digital products such as Digital Services Taxes. We have explored these issues in recent publications on discriminatory and extraterritorial taxes and on approaches to measuring and mitigating related economic harm.

These disputes touch on a recurring point for quantum of carefully considering the contract timeline, the timing of the policy change, and the feasible commercial responses open to the parties while making mitigation and pass-through assumptions that are consistent with observed market alternatives. We expect these considerations to be at the center of our work this next year.

Supply-chain constraints and long-term supply disputes

State measures have recently become a key factor driving supply-chain constraints to a primary fact pattern in our matters. Parties have been facing blocked payments, restricted counterparties, licensing requirements, and shifting interpretations across jurisdictions. We have noted how these constraints can shape what performance was feasible, when, and at what cost, and how they can force parties to make fast decisions with imperfect information.

Supply-chain strategies are also shifting. Dual sourcing, re-routing through alternative hubs, and tighter screening of counterparties have become more common. Thus, we anticipate these adjustments are capable of changing the relevant benchmark, transport differential, and timing assumptions that appear in pricing disputes, especially where long-term formulas were drafted for more stable settings. Relatedly, volatility in energy and freight costs is creating economic pressure, leading to price reopener provisions in long-duration agreements.

When assessing damages, a recurring issue will continue to be identifying what substitute supply and logistics options existed, what approvals were required, what could be done without violating sanctions rules, and whether particular steps were commercially reasonable at the time they were taken. These damages questions were raised, for example, in a dispute over iron ore pricing and the appropriate benchmark and adjustment framework. Led by David Persampieri, this matter exemplifies how persuasive expert work connects procurement constraints and logistics to pricing mechanics. It clearly explains why the proposed damages measure is consistent with feasible market alternatives during the disruption window and highlights the ability to profitably use the supply given market constraints.

We also foresee a stream of long-term commodities and industrial contracts affected by sharp movements in benchmarks, leading to invoked hardship, force majeure, or price reopener mechanisms.

Across these matters, the practical through-line is disciplined attribution. Models that separate contractual effects from market effects, and make those separations explicit, are generally more persuasive. In this vein, the work often involves mapping feasible performance pathways under the applicable regime, documenting the commercial logic of mitigation decisions, and building models that distinguish contract effects from market effects without hiding those distinctions behind opaque assumptions.

Minerals and mining

Critical minerals and mining disputes remain closely tied to geopolitics and industrial policy. Given the continued competition for natural resources, with governments revising mining frameworks, expanding state participation, and, in some instances, taking measures characterized as expropriatory or discriminatory, negotiations and disputes will continue to increase. This dynamic is expanding into some jurisdictions that were traditionally not considered high-risk. Regulatory and political shifts in a wider set of states have increased investor focus on political risk and dispute planning. This has touched on or caused various disputes in battery metals and various other materials.

We have noticed that the mining assets at issue are increasingly early-stage or development-phase projects, where value depends on permitting, technical studies, financing, and the credibility of a development timeline. That makes them especially sensitive to probability of technical success, time to production, long-run price decks, and capital and operating cost curves. These factors will remain central in our work as they have been, for example, in quantum opinions that my colleagues and I provided in 2025 across five countries on copper, gold, bauxite, silver, zinc, uranium, and rare earths in early-stage and development stage assets.

The interaction between valuable resources and ESG concerns continues to be a theme

influencing disputes. As we discuss more below, ESG considerations will appear not only as context, but also as a source of counterclaims and defenses, e.g., with states arguing that environmental or social obligations justify regulatory measures or support lower compensation. This brings remediation, compliance cost, and incremental harm questions closer to the quantum debate, alongside more traditional damages issues.

Energy transition, European power markets, and execution risk in renewables

We expect energy transition objectives, grid constraints, and shifting regulatory priorities to continue driving a wide range of arbitration disputes. Renewables and power projects introduce distinctive execution risks: new or untested technology, complex interfaces across contractors and grid operators, regulatory delays, and evolving subsidy and permitting frameworks. At the same time, traditional energy markets remain volatile, and that volatility may stress future long-term contracts and accelerate disagreements about pricing, performance, and termination rights.

From a quantum standpoint, we have previously anticipated how energy disputes will continue to converge on pricing mechanics and timing. In power and offtake disputes, a recurring question is often what the contract would have produced if performed as designed, and how to measure the loss due to the alleged breach versus broader market conditions. In LNG and gas matters, we have also repeatedly witnessed how disputes turn on commissioning and commercial operation definitions, volume and take-or-pay mechanics, and the appropriateness of using spot versus term pricing to measure replacement costs or lost margin.

Power and renewables projects will find themselves at the intersection of contract performance and market redesign: permitting timelines shift, grid constraints emerge, subsidy and incentive regimes evolve, and system operators change dispatch rules. For example, in a recent arbitration about a power purchase agreement in Europe, Seabron Adamson provided expert opinions on liability and quantum which considered economics that depended on power price dynamics and contractual allocation of market risk. These fact patterns will also create recurring attribution problems. Projects may experience delay or underperformance for multiple reasons: design and interface issues, weather windows, permitting slippage, grid readiness, and cost inflation. Separating those drivers can materially affect the damages assessment, particularly when the counterfactual is tied to constraints visible at the time.

ESG-related damages, from compliance narratives to quantified harm

ESG-related issues will likely continue to emerge in the energy and natural resources sectors. With more and more parties invoking sustainability commitments, climate-related obligations, and human rights standards, both as affirmative claims and as defenses, environmental issues will increasingly show up as quantified harm questions. This will not only be used as background narrative, but also wherever remediation, restoration, and biodiversity impacts are argued to affect value and compensation.

This will shape our work in at least two ways. First, it will expand the menu of quantification frameworks to go beyond familiar lost profits debates to remediation cost, restoration value, and valuation approaches designed to measure non-market impacts. It will also create new causation and scope questions, such as whether the alleged harm is incremental to baseline conditions,

whether it is attributable to the disputed conduct versus other drivers, and whether the proposed measure matches the legal standard for compensation in the case. Already in 2025, we provided support and testimony about claims for lost profits and environmental damages in Latin America, with the damages work involving also the value of biodiversity.

Life sciences, pharma, and cross-border licensing: Royalties, audits, and launch timing

We anticipate that life sciences and pharma disputes will remain a steady source of arbitration, based on the sector's reliance on licensing, distribution, and collaboration agreements with high embedded option value. These disputes often arise from long development timelines, regulatory uncertainty, milestone-based economics, and asymmetric information about sales, pricing, and deductions. Cross-border dimensions can add further friction, including differences in regulation, distribution channels, and audit practices.

Quantum questions in life sciences will tend to sit at the intersection of contract interpretation and industry practice. Royalty disputes can turn on the definition of net sales, the treatment of deductions, transfer pricing, and audit mechanics. Launch timing and milestone disputes can hinge on what would have happened in a counterfactual regulatory and commercial pathway, including realistic timelines and probabilities.

Across our recent matters in this space, the common theme has been linking contract terms to market reality: launch timing, competitive entry, product life cycles, and feasible alternatives. For example, in 2025, Christopher Gerardi testified on the accuracy and completeness of the calculation of patent and trademark royalties by a large global pharmaceutical company. Andrew Tepperman also provided expert analysis of pharmaceutical patent license agreements, focusing on economic and industry norms, including provisions affecting deductions from the royalty base and the term of royalty obligations. Greg Bell supported disputes involving the evaluation of product development and commercialization activities, including how to allocate such costs for differences in ownership rights across the globe. We anticipate such trends will continue developing in 2026.

Technology, IP, and trade secrets: Royalties, renewal disputes, and valuation of intangible rights

Technology and IP disputes are increasingly framed around the economics of intangible rights, rather than being limited to the technical contours of infringement or misuse. We expect to continue witnessing growth in licensing disputes being brought to arbitration and, in parallel, disputes arising from cybersecurity incidents and technology failures. These matters typically depend on a small number of contested economic levers. This was evident in a dispute from 2025 over a worldwide semiconductor technology license in which Dan McGavock provided expert licensing and valuation opinions. His team supported legal counsel in gathering relevant information concerning the nature, development stage, usage, and economic benefits of trade secrets, achieving a favorable settlement for their client.

Also, standard-essential patent licensing will expectedly remain active as 5G, Wi-Fi, and other standardized technologies spread across devices and industrial applications, and arbitration is

increasingly used as a forum for resolving portfolio licensing terms. Chris Bakewell worked on a license renewal-related arbitration involving two large multinational companies, which involved European and standards essential patents in the enterprise network infrastructure equipment space.

In software and trade secret disputes, switching costs and development timelines are becoming as important as revenue, and we predict damages will hinge on whether the alleged misappropriation shortened time-to-market or reduced development cost. We observed this already in a matter where Julia Rowe served as an expert witness in arbitration proceedings related to the unauthorized use and distribution of software and trade secrets between a software company and a major dental services provider.

Commercial damages in specialized markets, infrastructure, shareholder disputes

A mainstay of international arbitration – commercial damages due to breach of contract – has grown more sophisticated in the past couple of years. Certain commercial arbitrations have revealed a reoccurring challenge: the market is specialized, pricing is complex, and the claimant's counterfactual is hard to test with clean benchmarks. This will become more common as disputes move into platform, data, and other multi-sided business models where value is created through network effects, pricing discrimination, and bundles rather than a single transparent price.

This increasingly requires models that are richer but also more complex to create and audit. Such counterfactuals have often been constructed from adoption curves, switching patterns, capacity limits, and contractual frictions, with explicit treatment of substitution and competitive response. For example, in various arbitrations concerning alleged breaches of contract, micro-economics and industrial economics are becoming central, requiring an examination of economic causal links and logic, assumptions about the competitive landscape, and pricing. We have worked on commercial damages and causation in matters at this very intersection, evaluating the economics of realistic market entry and customer switching.

Another pillar of international arbitration – infrastructure concessions and public-private contracts – has become increasingly more technical and data intensive. We can expect more project structures to involve complex interfaces, specialized design processes, and data-rich performance regimes. State actions and macro conditions such as inflation, supply-chain disruption, and tighter financing will also amplify delays and cost overruns, stressing the ex-ante assumptions underlying investments and bid pricing. We have had to consider each one of these factors in recent arbitrations involving airport concessions, and we expect to see more arise in disputes through 2026. Separately, the data center build-out has become a driver for power, utilities, and construction, which adds scheduling and procurement pressure. In summary, infrastructure damages will increasingly turn on disciplined integration of schedule logic, operational evidence, financial modeling, and economics.

We expect the same macro factors described above to continue affecting business combinations. Recent deal structures and governance arrangements underscore how arbitration is increasingly being used to resolve high-stakes corporate control and valuation disagreements. Likely as a result of all these conditions, post-M&A, business dissolutions, and various types of shareholder

disputes have increased in number in the past three years. In addition, valuation dispersion, tightened financing, and strategic divergence have tended to make these conflicts more acute.

This past year, we have provided support and testimony in various disputes arising from shareholder deadlocks and governance breakdowns, where the disputes required an explicit but-for narrative for how the business could have evolved under functional governance and what exit alternatives were realistically available. A recurring thread we expect to see in 2026 is causation: separating the economic effect of alleged governance conduct from broader market conditions and from the operational realities of the business.

About CRA's International Arbitration Group

Our International Arbitration Group combines finance, accounting, and quantum expertise with industry expertise from energy, oil and gas, metals and materials, pharmaceuticals and life sciences, banking, financial services, and various other industries to offer a one-stop solution for clients in disputes that might otherwise require several firms. We have been engaged in some of the most complex and high-profile disputes

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