

Protecting Human Health under International Investment Law

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Abstract : In the past 20 years, under the high standard of international investment protection, there have been numerous cases of investors ignoring the host country's measures to protect human health. Examples include investment disputes triggered by the Argentine government's measures related to human health, quality, and price of drinking water under the North American Free Trade Agreement. Examples also include Philip Morris v. Australia, in which case the Australian government announced the passing of the Plain Packing of Cigarettes Act to address the threat of smoking to public health in 2010. In order to take advantage of the investment treaty protection between Hong Kong and Australia, Philip Morris Asia acquired Philip Morris Australia in February 2011 and initiated investment arbitration under the treaty before the passage of the Act in July 2011. Philip Morris claimed the Act constitutes indirect expropriation and violation of fair and equitable treatment and claimed 4.16 billion US dollars compensation. Fortunately, the case ended at the admissibility decision stage and did not enter the substantive stage. Generally, even if the host country raises a human health defense, most arbitral tribunals will rule that the host country revoke the corresponding policy and make huge compensation in accordance with the clauses in the bilateral investment treaty to protect the rights of investors. The significant imbalance in the rights and obligations of host states and investors in international investment treaties undermines the ability of host states to act in pursuit of human health and social interests beyond economic interests. This squeeze on the nation's public policy space and disregard for the human health costs of investors' activities raises the need to include human health in investment rulemaking. The current international investment law system that emphasizes investor protection fails to fully reflect the requirements of the host country for the healthy development of human beings and even often brings negative impacts to human health. At a critical moment in the reform of the international investment law system, in order to achieve mutual enhancement of investment returns and human health development, human health should play a greater role in influencing and shaping international investment rules. International investment agreements should not be limited to investment protection tools but should also be part of national development strategies to serve sustainable development and human health. In order to meet the requirements of the new sustainable development goals of the United Nations, human health should be emphasized in the formulation of international investment rules, and efforts should be made to shape a new generation of international investment rules that meet the requirements of human health and sustainable development.

Keywords : human health, international investment law, Philip Morris v. Australia, investor protection

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