

I. Importance of Investment Treaties

Foreign direct investment (FDI) plays a major role in the sustainable development of the global economy (expanded business opportunities for investors / benefits to host countries : the creation of domestic jobs and the introduction of innovative technologies and business models)

The world's FDI flows have been on a downward trend since 2015

The international situation has become volatile and the future of the world economy has become increasingly uncertain (ex. trade friction between the US and China, Brexit, political tension in the Middle East) → Acceleration of the downward trend of FDI

⇒ **Creating an environment that fosters FDI is an urgent task**
(Setting rules of promoting liberalization of FDI and ensuring the protection of investment assets)

Current Situation of Investment Treaties :

There have been cases of insertion of provisions in investment treaties that impose obligations to investors, unilateral abrogation of dispute settlement clause

⇒ **it is essential for the business community to send out a message to put a brake on these developments**

➔ **It is important to conclude bilateral or multilateral investment treaties (including investment chapter of economic partnership agreements) to form high-level investment rules of investment liberalization and protection**

II. Importance of Investment Treaties from Japan's Viewpoint

Return from international investment is the source of Japan's balance of payments surplus
(Trade balance in fiscal year of 2018 : +1.2 trillion yen, income balance : +20.8 trillion yen)

Japan aims for signature and entry into force of investment-related treaties with 100 countries or regions by 2020

Accomplishments: Investment arrangements with 76 countries or regions (As of July 2019)

- The entry into force of the CPTPP (Dec 2018)
- The Japan-EU EPA (Feb 2019)
- The Diet approval of the Japan-Argentina Investment Agreement (June 2019)

But

More work needs to be done

- The Japan-China-Korea Investment Agreement, the Japan-Russia Investment Agreement do not focus on liberalization of investment
- The contents of investment treaties with major Asian countries should be upgraded
- No investment arrangements with the US due to its withdrawal from the TPP
- Agreements with countries of high business interest to Japanese companies have not yet been reached (Brazil, South Africa etc.)

➔ **For further promotion of FDI by Japanese companies, investment treaties need to be improved in terms of both quality and quantity**

III. Issues to be Addressed in the Investment Treaties

While investment treaties are negotiated bilaterally, the outcome of the negotiations could affect negotiations with other countries
→ **Government should be mindful not to make easy compromises and aim for a high level of agreements**

1. **Covering a Wide Range of Investment Assets...**The scope of liberalization/protection of investment should be broad, covering portfolio investment as well as direct investment
2. **Securing National Treatment (NT)...**Granting of national treatment in both pre-investment stage (abolition of restrictions on foreign investment and entry) and post-investment stage (elimination of restrictions on sales, liquidation, withdrawal, etc.)
3. **Securing Most-Favored-Nations Treatment (MFN)...**Treatment no less favorable than that accorded to investors of a third country (MFN) should be ensured
4. **Prohibition of Performance Requirements...**Requirements to achieve a given level or percentage of local content, transfer a particular technology, adopt a given rate or amount of royalty under a license contract, etc. should be prohibited
5. **Freedom of Remittance...**The transfers of funds freely made without delay should be clearly stated
6. **Ensuring Fair and Equitable Treatment (FET)...**Protect investors from the disadvantages of unilateral changes in domestic laws of the host country
7. **Prohibition of Safeguards...**Safeguard measures that temporarily restrict the inflow of foreign capital and the activities of existing foreign capital should be prohibited

8. Dispute Settlement

- **Settling the dispute in a fair and equitable manner would be a last resort to ensure the effectiveness of the investment treaties**
- **Maintaining the investor-State mechanism (a system under which investors could directly bring the host country to arbitration) is important**
- **Should not accept movements to limit the dispute settlement mechanism to State-State (SSDS) nor attempts to deny the dispute settlement mechanism itself**

- ◆ Utilization of ISDS has increased significantly over the past 30 years
- ◆ Approximately 64% of ICSID are registered under investment treaties

New developments about dispute settlement

- ◆ UNCITRAL is working on the reform of the ISDS, where many Members are calling for a review of the ISDS from the viewpoint of securing national authority's "right to regulate"
- ◆ EU has introduced an Investment Court System (ICS) in which judges are appointed in advance and the Appellate Court is established in addition to the Investment Court

Points need to be ensured in investor-State mechanism

1. **Fairness, Neutrality and Impartiality**
The arbitrator should be selected by the State and investor
2. **Rapid Arbitration Procedures**
Revision, annulment of an award and appeal should be limited to exceptional situations
3. **Jurisdiction of the Tribunal**
The case should not be excluded from jurisdiction of the Tribunal simply because it relates to public policy
4. **Execution of Awards**
It is necessary to ensure the same level of enforceability as ICSID awards, including enforceability in third countries.

IV. Countries and Regions with which Investment Treaties should be Concluded

Investment Treaties which should be concluded

- ◆ **Asia :** RCEP, the Japan-China-Korea FTA, Thailand's entry into the CPTPP
- ◆ **America and Latin America :** The US's return to the TPP, the Japan-Mercosur EPA, Colombia's participation in the CPTPP, the Japan-Cuba Investment Agreement
- ◆ **Europe:** Japan-UK agreement after Brexit, revised Japan-Russia Investment Agreement
- ◆ **Middle East and Africa:** Japan-Turkey EPA, Japan-Israel EPA, Japan-South Africa EPA, other investment treaties currently negotiated

V. Transparency of Domestic Regulations and Improvement of Business Environment

- Even if restrictions on foreign investment are removed, arbitrary application of domestic laws and cumbersome administrative procedures could function as de facto barriers to investment, so improving business environment is indispensable
- "Sub-Committee on Business Environment" should be established and operated effectively