ISSN 2706-6827 Vol. 4, Issue 12: 72-80, DOI: 10.25236/IJFS.2022.041213

Analyses of Sustainable Investment Framework of UNCTAD: From the Perspective of Two Asian Countries

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Abstract: *The international market is constantly changing under the rapid development of the economy, and the interest relationship between trade participants is intricate and complex. Under this mechanism, although profit as the investment goal is understandable, it is too single to meet the needs of recent advance. In addition to the financial indicators, social responsibility also needs to be paid attention to. On this basis, the concept of sustainable investment was put forward. Among which, the Investment Policy Framework for Sustainable Development (IPFSD) proposed by the United Nations Conference on Trade and Development (UNCTAD) has played a significant role in facilitating countries to formulate policies and laws to promote sustainable investment. Under the leadership of developed countries, traditional investment emphasizes the protection and preference of foreign capital and foreign investors. However, the sustainable investment framework challenges traditional concepts and policies of international investment. Some developing countries cannot digest the related policies and laws well to make them play a real positive role in the field of investment, which requires countries to clarify their attitudes and positions, adjust the international investment order and introduce policies, legal norms and other countermeasures in relevant areas.*

Keywords: *International Investment, Sustainable Development, IPFSD*

1. Introduction

Adam Smith, the father of modern economic theories, explained that the market is an invisible hand. The seemingly disordered market environment is determined by the relationship between supply and demand. The producers will take the demands of consumers into account and produce the products that consumers need most. Therefore, the goal of early enterprises is to maximize profits through sales. To some extent, profit maximization is a unilateral goal, serving shareholders only, adapting to the early market environment.

Although making profit is still the foundational part of the global market, since the beginning of the 21st century, the investment market of the world has changed dramatically, and the stakeholders of enterprises have become intricate, including not only shareholders and employees but the government, debtors and the public. Under this pattern, the goal of profit maximization is too single to meet the new environmental requirements. To be more specific, investors and potential investors, especially institutional investors with a large amount of capital, should pay attention not only to the traditional financial indicators such as operating capacity and shareholder value, but also to the non-financial situation, for instance, the status of social responsibility. In this sense, the concept of sustainable investment was put forward to facilitate the development of economy, combined with various sustainable management principles, for example, using value systems with available profits, social sense and environmental responsibilities.[1] According to internationally accepted definitions, any investment activity that considers environmental, social, and governance (ESG) factors can be called sustainable investment. As a positive economic driver, this kind of investment can not only help investors to comprehensively assess the qualifications and development potential of the invested companies, but also reduce various investment risks in the financial system that resulted from the one-sided pursuit of economic benefits.

On the one hand, sustainable development has been generally accepted by the public as both objective and principle of the development of the global community in the current era,[2] among which, sustainable investment is one of the most essential guidelines for ensuring that there is not only short-term economic return of investment, but also long-range and persistent investment effect, which is a kind of protection for the future living environment. On the other hand, it is evident that relevant regulations and policies made by authorities can effectively stabilize and promote sustainable investment as they always appear as the code of conduct that must be implemented. Noteworthy is that although many investment rules cannot directly promote sustainable development, their provisions may seriously restrict the realization of sustainable development goals. Consequently, many countries have enacted policies and international treaties related to sustainability so as to facilitate the development of sustainable investment. Meanwhile, United Nations Conference on Trade and Development (UNCTAD) also provided a document, naming the Investment Policy Framework for Sustainable Development (IPFSD), for helping governments to formulate policies and laws that promote sustainable investment.

2. Sustainable Investment Framework of UNCTAD

2.1 Background

With the development of globalization and liberalization, foreign direct investment (FDI) has become an essential motivation for the growth of economy nowadays.[3] In addition, international investment agreements (IIAs) are universally considered as the legal guarantees provided to investors, leading to the positive effects on the reputation of host countries.[4] Therefore, it is unsurprising that there is an increasing number of IIAs signed by differential countries as formulating IIAs is one of the most efficient methods for least-developed countries and developing countries to attract FDI from developed countries. In some cases, however, IIAs may also limit the actions of government to pursue social justice and equality or develop sustainable investment rather than significantly boost capital inflows as there are always protective investment provisions that may restrict the capabilities of countries for implementing policies related to the goals of sustainable development.[5] For instance, currently, the trend of bilateral investment treaties (BITs) is to pay more attention to foreign capital and strengthen the protection of for investors, such as forming the “right of establishment” model and the right of foreign investors to unilaterally initiate international arbitration. Such unbalanced international investment policies are facing severe challenges, even crisis of legitimacy or justification. In recent years, there have been more intense reactions from developing countries, taking Latin American countries as examples, changed their stand against IIAs in the late 1980s and signed a considerable number of BITs with other countries.

However, in view of the new situation that “liberalization” of IIAs weakens national economic sovereignty, some Latin American countries have to reconsider their positions on IIAs and even terminate or withdraw from some IIAs. Generally, history shows that the one-sided maintenance of exporting countries has been continuously expanded and strengthened by developed countries over a long period of time, instead of being corrected. More importantly, with the development of international investment activities, some developing countries, especially large developing countries, continue to lure foreign capital while gradually investing in developed countries, which has changed the one-way investment relationship between developed and developing countries to a certain extent. Changes in the status of international investment have also prompted developed countries to profoundly rethink their traditional international investment policies and relevant national positions. Under such an intricate context, IPFSD was formulated by UNCTAD so as to cater to the investment structure of “new generation”, including inclusive growth and sustainable development.

2.2 IPFSD

Excepting relevant backgrounds and prospects for the future development, the main body of IPFSD involves “Principles for Investment Policymaking”, “National Investment Guidance” and “Framework for International Investment Agreements: Options”, while the first one is the design criteria of the latter two. Overall, apart from public governance, corporate governance, international cooperation and many other suggestions for facilitating the international investment, the main innovations of IPFSD is to protect and control foreign capital simultaneously and balance the rights and responsibilities of both parties rather than lay particular stress on protecting foreign investors and foreign capital.

In the long-term protection of foreign investment, most IIAs only stipulate the protection of foreign capital without specific requirement for the responsibilities of foreign investors, leading to the absence of the adjustment for the misconduct of foreign capital. However, regarding to the integration of protecting and controlling foreign, it firstly implies a combination of the investment protection of the

ISSN 2706-6827 Vol. 4, Issue 12: 72-80, DOI: 10.25236/IJFS.2022.041213

host country and the liabilities of foreign investors so as to correct one-sided focus on the safeguard of foreign capital without imposing the requisite responsibilities on them. Secondly, domestic and international policies involving foreign investment should be considered as a whole, both need to coordinate development according to changes in the national situation.[6] Finally, at the legislation level, integration requires structural innovation in the international investment policies, especially involving regulations of both protection and restriction of foreign capital in IIAs and national legislation. Core Principle 1 of IPFSD emphasizes the notion of coherence, stipulating that policies related to foreign investors should be based on the overall development strategy. It means that all policies that have effect on foreign capital should be coordinated at the domestic and international levels. Additionally, "National Investment Guidance" stresses that policies concerned with foreign capital should be part of the national development strategy.[7] "Framework for International Investment Agreements: Options" clearly adds responsibilities and obligations to investors in Section 7 in its "post-establishment" part,[8] and the structure and content of it can also fully embody the concept of integration.

In terms of creating a balance of the rights and obligations between contracting parties, Core Principle 8 of IPFSD stipulates that investment policies should be formulated in accordance with the objectives of sustainable development and the purpose of minimizing the deleterious investment competition. "National Investment Guidance" primarily underlines sustainable development in three sides: first of all, investment policies should be incorporated into the national development; secondly, investment policies should be combined with sustainability; the third point is to create relevant and effective policies. Moreover, "Framework for International Investment Agreements: Options" translates Core Principles into options that are available to IIAs decision makers. Firstly, adjust the existing IIAs to protect the host country and restrict the state responsibility clause. Secondly, new and more powerful provisions should be added to balance rights and responsibilities of investors and enhance support for the host country. Also noteworthy is that the introduction of the "Special and Differential Treatment" (SDT) of GATT/WTO, which provides options for the contracting parties which are least developed. On the one hand, from the perspective of North-South issue, more attention should be paid to the sustainable development of developing countries and the least developed countries, which have great disparity in economy situation when compared with developed countries. On the other hand, focus should be put not only on formal equity but also on substantive equity. On the basis of recognizing the differential levels of economic development of the contracting parties, asymmetric distribution of responsibilities is adopted to achieve substantive equality.[9] This is the essence of the Core Principle 4, but also the practice of the fair and mutual benefit principle. Excepting the relevant regulations and rules mentioned above for facilitating the development of the host country so as to achieve the balance between contracting parties, there are also several principles that explain the concept of "balance" clearly and directly. For example, Core Principle 4 mainly talks about equal rights and obligations, stipulating that the overall development interests should be the foundation of investment policies. In addition, the regulations of rights in Core Principle 5 claim that countries with rights to set up admission and conditions of operation for foreign capital should minimize potential negative impact for the public interest. In addition, Core Principles 2 and 6 respectively stipulate the responsibilities of the host country, including the rule of law and openness to foreign investment. Meanwhile, Core Principle 7 stipulates the protection and treatment of investment, requiring that investment policies should provide non-discrimination rule, which should be followed strictly when handling issues related to established investors.

3. China

3.1 Attitudes and policies towards sustainable investment

China has suffered a series of severe damages in modern times, including civil unrest, wars and cultural revolution, leading to the national situation of seclusion, which is one of the greatest barriers for the international development. China is a big developing country with abundant resources and relatively cheap labor force, therefore China has been one of the biggest capital importers. However, in recent years, with the acceleration of China's opening-up program, especially since the implementation of the "Going Out" strategy, the scale of foreign investment in Chinese enterprises has expanded rapidly.

In the current era, the economic construction of China has made great achievements, combined with the rapid development of national comprehensive strength and the obvious acceleration of foreign investment. Compared with the past, BITs in this generation has gradually tended to require stringent specification for the protection of international investment, such as national treatment clauses, prohibition of performance requirements, most-favored-nation treatment (MFN) and the acceptance of using international arbitration to settle various investment disputes. The form and content of these provisions mean that Chinese BITs have begun to take notice of the equilibrium between the interests of foreign investors and the profits of host countries. For example, Article 5 of the new BIT between China and Germany, which was signed in 2003, particularizes the compensation for damages, national treatment and MFN treatment.[10] Meanwhile, Article 9 of this Agreement also requires that when a dispute arises, the two parties shall, as far as possible, settle it through friendly consultation. If the two parties cannot obtain a result within 6 months, another investor may submit the dispute to arbitration court for settlement.[11]

In addition, from the perspective of outward investment, China has established a number of provisions and legal measures for the management and safeguard of overseas investment in order to satisfy the needs of implementing the "Going Out" strategy although China is still on the beginning stage of capital export. For example, the National Development and Reform Commission (NDRC) issued an order related outward investment,[12] which simply outlines the need to facilitate healthy and sustainable development without specific regulations related to this aspect. On top of that, China has introduced various national policies for facilitating the sustainable investment, combined with rules of promoting the common development of different contracting parties. According to the statistics of the Ministry of Commerce, the foreign investment of China exceeded domestic investment in 2014, which made China officially become a capital exporter. As a result, transformation of foreign investment strategies is becoming increasingly important. Take "One Belt One Road" (OBOR) as an example, which is a typical embodiment of sustainable development in international investment law, and has become the intersection of international investment law and international environmental law. OBOR, the Silk Road Economic Belt and the Maritime Silk Road in 21st Century,[13] is an international initiative provided to the countries and regions concerned by China in 2013. It has become a part of long-term development strategy of China, and also an idea of international cooperation in Asia, Europe and Africa. This initiative links the active East Asian economies such as China and highly developed European economies through infrastructure construction, trade promotion and financial intermediation, so as to promote the economic development of the Eurasian and African regions and form a mutually beneficial and win-win situation. Generally, overseas investment is becoming increasingly crucial to China, which is not only to satisfy the internal needs of itself, but also to reflect the pursuit of sustainable investment as the purpose of the relevant policies is to both focus on their own interests as investors and the development of the host countries. China's investment policies want to achieve win-win situation by sharing technology and giving full play to their respective strengths, which is in line with the IPFSD principle of promoting the development of host countries rather than merely emphasizing the protection of foreign capital.

Finally, in terms of inward investment, one of the most significant constituent parts in the reconstruction of Chinese economy is that China was gradually opening to FDI after China's reforms and opening-up in 1980s.[14] China has introduced a number of measures and provisions for managing the inward foreign investment, among which, the Foreign Investment Law of the People's Republic of China is the most representative one for analyzing Chinese situation in this area as it is the newest legislation with regard to foreign investment law. In order to actively promote foreign investment, it clearly stipulates that the managerial system should involve national treatment plus negative list before admission.[15] As for investment protection, firstly, the protection of property rights of foreign-invested enterprises should be strengthened. The state does not impose collection on foreign investors, if the state impose collection on them according to the needs of public interests in particular circumstance, it shall proceed in accordance with legal procedures and give fair and reasonable compensation.[16] On top of that, the state provides protection to the intellectual property rights of foreign investors in light of law, encourages technical collaboration, which is on the basic of business rules and the principle of voluntariness.[17] The second point is to strengthen the constraint on the formulation of normative documents concerning foreign investment, which stipulates that the formulation of such documents by the government and its relevant departments shall conform to laws and regulations, shall not illegally impair the lawful rights and interests of foreign enterprises or increase their obligations, shall not illegally set up market access and exit conditions, shall not illegally interfere with or affect the normal production and operational activities of foreign investors.[18] Meanwhile, it also formulates the responsibilities of foreign investors such as commanding a correction or even imposing a fine on them if they infringe the relevant provisions,[19] and incorporating such enterprises into credit information system.[20] Generally, this new legislation shows the core spirit of IPFSD to a great extent as it formulates both protection and restriction for the management and operation of foreign investors.

In sum, the development of international investment in China is extremely fast and China has shown a strong tendency to support and promote the development of sustainable investment in its legislation and related policies. Nevertheless, China has developed relatively late in this field, which is resulted from its national conditions, therefore the overall legal system and policy making mechanism are still not mature and complete enough for China to achieve its goals, which makes its plans and policies become over idealized. Consequently, the investment laws and policies and the practical application of them are partly in accordance with the sustainable investment policies of UNCTAD, while it has to be admitted that China has a promising future according to the existing situations and attitudes it has.

3.2 Challenges and recommendations

As mentioned earlier, IPFSD contributes admirable innovations, mainly including sustainable development, balance and integration, which means that the international community has reached a consensus on these three requirements in most cases. However, although IPFSD provides a significant legal basis for the practice of international investment decision-making, it is, after all, only an expert guidance formulated under international organizations. Against this backdrop, UNCTAD is obviously more neutral and independent than other countries, and is more likely to give balanced consideration to the rights and obligations between capital importing and exporting countries.[21] However, in international forums and international practices, China's international law circles and authorities should make more efforts to facilitate countries to truly reach this consensus. China often passively accepts the rules of model BIT given by developed countries, leading to a passive state in the negotiation of BITs. By formulating its own model BIT, the Chinese government can strengthen its position in the negotiation as the model BIT directly involves the economic sovereignty of the country, the interests of investors and also the environmental protection of the country. Therefore, China should learn from the mature experience of the United States, Canada and other developed countries in building the model BIT, adapt to the transformation of China's dual identity and the trend of international investment liberalization, and launch the model BIT with its own characteristics,[22] which focus not only on attracting foreign investment but also on protecting overseas investment of Chinese investors. Specifically, under the new situation of adjusting or reconstructing the international investment order, it is necessary to carefully summarize its own experience of BIT practice over the past years, study relevant international practices and cases, follow the Core Principle of IPFSD and adopt the innovative elements, so as to formulate the sustainable development friendly model BIT, which can act as the fundamental criteria for negotiating with foreign countries or revising BITs.

Regarding to formulating policies for investment abroad, China has begun to pay attention to its responsibilities for overseas investment, and has formulated various policies and plans to promote responsible investment in the light of the traditional overseas investment system. IPFSD, however, emphasizes sustainable development, balance and integration, which means that China's relevant legal system is also facing new challenges, requiring timely adjustment, improvement and perfection. Facts show that Chinese overseas investment enterprises suffered heavy losses due to sudden political unrest of other countries such as the Libyan war in recent years.[23] Obviously, the new trend of the international policy and the severe objective reality require China to establish and improve the legal system of overseas investment, which needs new perspectives and norms including the concepts of sustainable development, balance and integration. At the same time, China should also attach importance to encouraging and supporting overseas investment enterprises to implement strict corporate social responsibility standards,[24] carry out responsible investments, and make positive contributions to the sustainable development of the host country, so as to achieve the goal of effectively preventing political risks and achieve a harmonious win-win situation with the host country. Also noteworthy is that the specific application of the relevant policies, there is no doubt that the starting point and purpose of the policies are sustainable and thoughtful, but the seemingly perfect regulations still have various problems in practice. Continue to focus on OBOR, some scholars claim that there may be some conflicts between this policy and private international law as it involves as much as 67 countries and unification of it requires consensus among all of these countries,[25] which is definitely an enormous challenge for China. Difficulties can also be found in immature dispute settlement mechanism for investment, for instance, the agreements concerned with facilitating mutual protection of investments between China and other countries, which came into force before 2000, only referred to the establishment of special arbitration tribunals. The agreements after 2009 began to mention diversified solutions, such as the use of jurisdiction courts and the International Center for Settlement of Investment Disputes (ICSID). Consequently, the key thing to realize here is that the establishment of policies is only the first step, and what is more, achieving the goals in practice. Certainly, the research and resolution of the related problems of policy application are too specific and complicated, so the method of concrete analysis to specific issues should be settled in order to resolve issues immediately and minimize the potential injury.

Last but not least, the foreign direct investment legal system in China in the past was separately based on the differential forms of enterprises, which means that the foreign investors were regulated by different legal norms and had not formed a unified foreign investment law. Due to the lack of a general law, this kind of regulation easily leads to the incompleteness and lag of legal content, which results in the opacity of the legal system and negative effects on the unity of the law system concerned with this field, thus damaging the enthusiasm of foreign investors for investing in China and also harming the authority of the law. However, the promulgation of the Foreign Investment Law provides a consolidated legal system to this area, which is a tremendous progress and a positive attitude of China. As this law will not come into force until 1 January 2020, the follow-up implementation of it still needs to be further studied.

4. Indonesia

4.1 Attitudes and policies related to sustainable investment

In the early 1990s, Indonesia was once considered as the leader of the economic development in Southeast Asia, and the economic growth of Indonesia had been continuously higher than the world average rate.[26] However, after the economic crisis in Asia, various problems broke out in an all-round way in Indonesia, including political, economic and social issues, leading to a sharp decline in foreign investment. After the bombing in Bali in 2002, the terrorist incidents had worsened in succession.

Compared with inward investment, Indonesia is relatively discreet about outward investment. The primary concern is that investing in other countries may lead to the damage to domestic industry and employment, combined with the worries of capital outflow and tax evasion.[27] As the largest economy in Southeast Asia, Indonesia had signed more than 60 BITs with differential countries such as Thailand, Germany, Netherlands and France. In 2014, however, Indonesia informed the Netherlands that it would not extend the BIT between them that expired at the end of June 2015. Indonesian Vice President Boudiorno said that the move was not aimed at one country, but a universal move. It means that the Indonesian government planned to stop all of these BITs in light of the terms that agreed by contracting parties rather than terminating all of the BITs unlawfully or unilaterally, so as to review the relevant provisions, replace them with new ones that are compatible with national development and make headway with the management of bilateral investment. Historically, before Indonesia became a stable democratic state and one of G20, almost all BITs between Indonesia and developed countries were already signed.[28] Under such context, most of the BITs focused on giving safeguard to foreign capital rather than protecting itself when investing in other countries, which means that Indonesia’s own economic inadequacy was also a crucial causation for creating the inequity of the responsibilities and rights between the host country and other foreign investors. For example, according to many of these BITs, when foreign investors believe that their rights have been violated, they can bypass Indonesian local courts and file a complaint on the management of the host country through international arbitration institutions. In this way, once the host country loses the lawsuit, it will have to abolish the relevant government regulations and pay huge compensation at the same time. Some claim that this is a valiant decision as there is obvious imbalance between the treatment of the host country and foreign capital and it is time to make changes, while others hold the belief that such an action will severely dislocate the existing economic order and result in serious damage in both domestic and foreign economy. Although vastly different voices raise in the society about this decision, from the perspective of long-term development, the abolition of BITs in Indonesia is mainly aimed at better protection for its own interests, which will also make the investment system of Indonesia get closer to IPFSD.

Against the special context, one of Indonesia’s policy priorities is to attract more FDI inflows to meet the needs of national investment, especially since FDI is regarded as a more durable and growth-friendly form of capital flow than portfolios and banks.[29] However, the provisions and measures related to foreign investment in Indonesia were very separate before, therefore, it is urgent for Indonesia to carry out fundamental methods to optimize the investment climate in order to cope with the enormous international and regional competitive pressures as FDI has become the major support of the investment needs in Indonesia. Finally, in 2007, Indonesia repealed the foreign investment law of 1967 and the domestic investment law of 1968, and promulgated a new investment law,[30] which combines the foreign investment law with the domestic investment law, making Indonesia reach a new level in this field. As for the regulations concerned with sustainable investment, the principle of this investment law clearly points out that sustainability should be considered seriously in all aspects,[31] claiming that the sustainable development of economy is one of the purposes of investment.[32] It is generally believed that the enactment of this new law enhances the treatment of foreign investment, increases convenience for investment, and also simplifies the procedures. For instance, it required that the government should treat domestic and foreign investors impartially and indiscriminately,[33] combined with various rights, benefits and facilitations.[34] In addition, restrictions on foreign investors can also be found, such as the obligation of complying with legal regulations and the responsibility of ensuring the legality of the source of capital,[35] which means that this new investment law stipulates both advantages and limitations for the foreign investors. Also noteworthy is that it involves international arbitration in dispute settlement,[36] leading to the clarity of dispute resolution mechanism and the protection of foreign investors.

Generally, Indonesia has realized the importance of sustainable investment and various progress has been carried out for keeping step with the world. Indonesia has shown great openness to foreign investment, while it has also established many entry restrictions for foreign investors, for example, foreign investors are not allowed or limited to invest in some certain areas. Nevertheless, historical legacy events and its complex domestic situations make the reconstruction become difficult, which means that the investment laws and policies in Indonesia just partly, or even to a small degree in particular circumstances, coincide with IPFSD of UNCTAD.

4.2 Challenges and recommendations

Firstly, while continuing to attract foreign investment, Indonesia should pay more attention to overseas investment as investment abroad can not only open new market and also provide more opportunities for Indonesia to further develop its domestic economy, but also give chances to Indonesia of showing itself on the international stage.

Secondly, there is no denying that high level of overseas investment needs a solid domestic economic foundation, therefore the FDI should be focused on continuously as it can be said that FDI is the most important economic source and support in Indonesia currently. BITs, acting as one of the most significant baits for attracting foreign investment, should be paid close attention to. However, when economic agreements are signed between developed countries and developing countries, it is basically the developed countries that formulate rules, while the developing countries, due to lack of experience and understanding of the international situation, can only be led by the developed countries and passively enforce the rules. Indonesia is a typical country with negative position in most of its BITs, therefore its BITs need re-examination and reconstruction. To be more specific, excepting eliminating the provisions that are unfair to Indonesia and terminating all inequitable practices by renegotiation, another indispensable consideration that should be taken into account seriously is that developing its own BIT template. Indonesia needs a model BIT that can be beneficial to its domestic interests and be in accordance with the international law at the same time.[37] Only in this way can Indonesia protect its sovereignty and interests while attracting foreign investment, and achieve the real development of its national economy rather than receiving discrimination and getting losses in international trade.

Finally, moving on to the new investment law in Indonesia, although great progress has been made when compared with the relevant provisions in the past, the same problem still exists, that is, the protection of foreign investors is superfluous to the restrictions to them. For instance, it is obvious that the safeguard and convenience that given to foreign investors are specific, while the responsibilities imposed on them are much more general. Indonesia wants to utilize these tempting provisions to attract more foreign capital so as to facilitate its domestic economy, but unbalanced provisions can neither really help the local economic development in practical application, nor can they be consistent with the sustainable development required by the international community.

In any case, Indonesia has realized the problems and begun to take action, but apart from the long-standing problems in the legal system and national policy, Indonesia also has various contradictions, including ethnic conflict, religious issues, serious corruption, over-dispersed geographical structure and many troubles in other aspects, which make this reform become difficult and long-term.

5. Conclusion

Nowadays, the world is undergoing a completely new adjustment, change and development. With the further development of globalization, the relationship between countries has never been as close as it is today. Moreover, the challenges facing mankind are becoming increasingly prominent nowadays. International investment, acting as one of the most effective mediums of the communication between differential countries, has made great contributions to the progress of the world economy. For a long period of time, under the leadership of developed countries, the traditional investment policy has unilaterally emphasized the protection and preference of foreign capital and foreign investors, which actually depends on the strength of the North and South countries.

After entering 21st century, international investment system has entered a new era. For one thing,

ISSN 2706-6827 Vol. 4, Issue 12: 72-80, DOI: 10.25236/IJFS.2022.041213

further expansion of the protection for investors and higher level of safeguard standards are given by developed countries, while arbitration tribunals are more likely to lay stress on protection of investors, ignoring the development of host countries, leading to the imbalance and inequality between host countries and foreign investors. With the further blurring of the boundaries between the traditional role of capital-exporting and capital-importing countries, an increasing number of developed countries become the respondent of the Investor-State Dispute Settlement (ISDS).[38] For another, immediate adjustments are not carried out on the relevant policies although there is an obvious economic growth in most regions of the world, which leads to the aggravation of unbalanced development. It has gradually turned into a consensus of the international community that investment policies should incorporate inclusive and sustainable development goals. Influenced by the factors mentioned above, how to give better protection to investment and facilitate correct investment liberalization, additionally, ensure the power of managing foreign capital belonging to host countries, and better achieve sustainable development not only in environment and other aspects but in international investment, has become the focal point of the future development of international investment.

Consequently, the main background of IPFSD is that the traditional international investment is facing serious challenges, and the investment status of the developing and developed countries has changed significantly, which has triggered the motivation and demand for adjusting the international investment order. Meanwhile, the formulation of IPFSD not only shows the latest development tendency of international investment, but also signifies that the international community has reached an initiatory consensus on international investment policy. Each country should attach importance to the main innovative factors of IPFSD, and establish corresponding positions and countermeasures.

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[34] Undang-Undang Republik Indonesia Nomor 25 Tahun 2007 Tentang Penanaman Modal [Law No 25 of 2007 Concerning Investments] (Indonesia) art 14, art 18.
[35] Undang-Undang Republik Indonesia Nomor 25 Tahun 2007 Tentang Penanaman Modal [Law No 25 of 2007 Concerning Investments] (Indonesia) art 15(e), art 16 (a).
[36] Undang-Undang Republik Indonesia Nomor 25 Tahun 2007 Tentang Penanaman Modal [Law No 25 of 2007 Concerning Investments] (Indonesia) art 32.
[37] Hamzah, 'Bilateral Investment Treaties (BITs) in Indonesia: A Paradigm Shift, Issues and Challenges' (2018) 21(1) Journal of Legal, Ethical and Regulatory Issues 1, 2.
[38] According to UNCTAD statistics, in 2014, 40% of ISDS cases were directed against developed countries. By the end of 2014, Canada was charged in 26 ISDS cases, ranking 6th in the world's most common respondents, and the United States acted as respondents in 15 ISDS cases, ranking 10th with Poland.