Abstract

International investment is one of the most controversial issues which cause most attention in today's world. The importance of foreign investment for a country is self-evident, so many countries set up investment incentive policies to attract and regulate foreign investment, making it more consistent with national policies on economic and social development. However, the feasibility and legality of investment incentives have aroused widespread controversy both in the economics and legal academics. Considering opinions from all sides, as well as the actual effects in practice, there is one point of view has been unanimous recognized: the widespread existence of investment incentives is in conflict with the development trend of international investment legislation, and certain kinds of incentives do not meet the liberalization requirements of market access and national treatment and gave rise to the negative consequences of distorted investment. So that investment incentives had better be used as supplementary tools; and the fiscal and financial incentives should be gradually transformed into regulatory incentives which can improve the whole investment environment of host countries.

There have been no multilateral agreement specially addressing investment incentives until now. In present legal order, incentive measures are regulated indirectly by the soft law, BITs and international documents controlling performance requirements or other investment measures. The international community has expressed concern about this issue and some efforts had been made, such as the MAI draft negotiation. According to the discussions and researches on the regulating of international investment incentives of the WTO, the OECD, World Bank and some regional organizations such as the NAFTA and the APEC, it can be foreseen that certain transparent and fair international investment incentives can be survival, while the discriminatory and coercive policies affecting the free flow of investments will be phased out. There is no doubt that a binding multilateral investment agreement will emerge and gradually become increasingly stringent.

However, in increasingly fierce global competition for foreign capital, to totally abolish the investment incentives is unrealistic. More importantly, as domestic policies, incentives policies are within the scope of national sovereignty without interference by other countries. The commitments made in international treaties can be seen as the country's self-restraint on sovereignty. So that domestic policies can be made according to the host countries' development strategies. However, international investments usually have highly expectations and involve the most basic economic interests of all parties, and any change of the investment environment may lead to loss of expected returns of investors. As to the developing countries, since they have more urgent needs for foreign capital, reasonable legislation is even more important for them.

Key words:

International Investment Incentives; International Legal Order; Performance Requirements; Regulatory Incentives; National Measures