

International Investment Arbitration Proceedings and Public Health: Tobacco Control Dispute as an Example

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Abstract

There has been a rising trend in the numbers of international investment agreements and investor-state arbitrations initiated by foreign investors recently. Given the host state would always be the disputing party as well as broader public policy and measure would be involved, treaty-based investment arbitration is generally deemed as having important public interest dimension. In spite of this, most arbitration rules used in the investment arbitrations are originally modelled on or mainly applied to the private-private international commercial arbitration. Thus, whether and to what extent the investment arbitration rules would reflect the need of public interest might be a point worthy of consideration. In the public health realm, the tobacco company Philip Morris's recourse to investor-state arbitration to challenge the tobacco control measures adopted by some countries has attracted wide attention. It seems that the future investment tribunal would possibly assume an increasing role in influencing the later development of different treaty systems between the protection of tobacco investment and tobacco control. In order to look at how investment arbitration proceedings would influence public health policy, taking tobacco control dispute as an example, this paper will discuss certain procedural aspects of investment arbitration which are of public interest relevance, such as transparency and third parties' participation, legal uncertainty of an arbitral

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award, the suspension of an unlawful measure and the enforcement of arbitral award.

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