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FAIR AND EQUITABLE TREATMENT STANDARD IN TOBACCO CONTROL DISPUTES IN LIGHT OF PHILIP MORRIS SARL V URUGUAY CASE: IMPLICATIONS AND LESSONS TO TOBACCO REGULATION IN UZBEKISTAN

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Abstract. Modern international investment agreements (IIA) provide for fair and equitable treatment (FET). The FET is a crucial investment protection standard of IIAs that safeguards investors' interests and it has often, and mostly successfully, been invoked by investors. At present, FET is the most important standard in investor-State dispute settlement (ISDS) cases. Some investors have invoked this standard in tobacco control concerned cases as well. Tobacco control means a range of supply, demand and harm reduction strategies that aim to improve the health of a population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke. Philip Morris, a tobacco manufacturing multinational company, challenged the tobacco control regime twice in the last ten years, through investment arbitration against Australia and Uruguay. In Philip Morris v Australia, the arbitral tribunal denied its jurisdiction. On the other hand, Philip Morris SARL V Uruguay reached the merit phase, but the investor's claims were dismissed by the tribunal. Both attempts failed on the grounds of the protection by the host countries of public health. However, the claims by Philip Morris based on the FET standard may be worth further analysis, because a similar dispute may arise with regard to Uzbekistan.

Keywords: international investment agreements, fair and equitable treatment, investor-State dispute settlement, World Health Organization Framework Convention on Tobacco Control, legitimate expectations of the investor, bilateral investment treaty.

FILIP MORRIS SARLNING URUGVAYGA QARSHI KEYSI MISOLIDA ADOLATLI VA TENG HUQUQLI REJIM STANDARTINING TAMAKI NAZORATIGA OID INVESTITSIYAVIY NIZOLARDAGI O'RNI: O'ZBEKISTONDA TAMAKI SIYOSATINI TARTIBGA SOLISH YUZASIDAN SABOQLAR VA HUQUQIY OQIBATLAR

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Annotatsiya. Zamonaviy xalqaro investitsiyaviy bitimlarda (IIA) adolatli va teng huquqli rejim standarti (FET) ta'minlanadi. Adolatli va teng huquqli rejim standarti – bu investorlarning manfaatlarini himoya qiluvchi muhim standart bo'lib, ko'p hollarda investorlar tomonidan investitsiyaviy arbitrajlarda muvaffaqiyatli havola qilinadi. Hozirgi vaqtda adolatli va teng huquqli rejim standarti investor-davlat nizolarni hal qilishda (ISDS) eng muhim standart hisoblanadi. Ba'zi investorlar ushbu standartni tamaki nazorati holatlarida qo'llashgan. Tamaki nazorati deganda, tamaki iste'molini va tamaki tutuniga ta'sir qilishni to'xtatish yoki kamaytirish orqali aholi salomatligini yaxshilashga qaratilgan takliflar va uning zararini kamaytirish strategiyalari tushuniladi. Philip Morris SARL ko'p millatli tamaki kompaniyasi bo'lib, so'nggi o'n yil ichida Avstraliya va Urugvayga qarshi investitsiya arbitrajlarida tamaki nazorati rejimiga qarshi ikki marta e'tiroz bildirgan. Philip Morris SARL Avstraliyaga qarshi ishda ish yuzasidan arbitraj sudi o'zining yurisdiksiyasi mavjud emasligini ma'lum qilgan. Boshqa tomondan Philip Morris SARL Urugvayga qarshi ishi merit (asoslash) bosqichiga yetib borgan, ammo investorning da'vosi arbitraj sudi tomonidan

rad etilgan. Har ikkala urinish ham mezbon davlat tomonidan aholi salomatligini himoya qilgani uchun Philip Morris SARL muvaffaqiyatsizlikka uchragan. Biroq Philip Morris SARLning adolatli va teng huquqli rejim standarti haqidagi da'volari qo'shimcha tahlilga loyiq, chunki kelajakda O'zbekiston va boshqa davlatlarga nisbatan ham xuddi shunday investitsiyaviy nizo kelib chiqish ehtimoli mavjud.

Kalit so'zlar: xalqaro investitsiya shartnomalari, adolatli va teng huquqli rejim standarti, investor va davlat o'rtasidagi nizolarni hal qilish, Jahon sog'liqni saqlash tashkilotining Tamaki nazorati bo'yicha doiraviy konvensiyasi, investorning qonuniy umidlari, ikki tomonlama investitsiya shartnomasi.

СТАНДАРТ СПРАВЕДЛИВОГО И РАВНОПРАВНОГО РЕЖИМА В СПОРАХ ПО НАДЗОРУ ЗА ОБРАЩЕНИЕМ ТАБАКА НА ПРИМЕРЕ КЕЙСА PHILIP MORRIS SARL ПРОТИВ УРУГВАЯ: ПОСЛЕДСТВИЯ И УРОКИ ДЛЯ ТАБАЧНОГО РЕГУЛИРОВАНИЯ В УЗБЕКИСТАНЕ

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Аннотация. Современные международные инвестиционные соглашения предусматривают стандарт справедливого и равноправного режима – FET. Стандарт справедливого и равноправного режима – это важнейший стандарт защиты инвестиций, на который в большинстве случаев успешно ссылаются инвесторы при инвестиционных арбитражах. В настоящее время стандарт справедливого и равноправного режима является наиболее важным стандартом в делах по урегулированию споров между инвесторами и государством. Некоторые инвесторы применяли этот стандарт и в делах по надзору за обращением табака. Под данным надзором понимается стратегия по предложению и спросу на табак, а также снижению его вреда, которая направлена на улучшение здоровья населения за счет отказа или сокращения потребления табачных изделий и воздействия табачного дыма. Philip Morris SARL, транснациональная компания по производству табака, дважды оспаривала режим надзора за табаком за последние десять лет в рамках инвестиционного арбитража против Австралии и Уругвая. В деле Philip Morris SARL против Австралии арбитражный суд отказал в рассмотрении дела по причине отсутствия своей юрисдикции. С другой стороны, дело Philip Morris SARL против Уругвая дошло до стадии обоснования, но иск инвестора был отклонен в арбитражном суде. Обе попытки не увенчались успехом по причине защиты общественного здравоохранения принимающей страной. Однако претензии Philip Morris SARL на основании стандарта справедливого и равноправного режима, возможно, заслуживают дальнейшего анализа, поскольку аналогичный спор может возникнуть в отношении Узбекистана.

Ключевые слова: международные инвестиционные соглашения, стандарт справедливого и равноправного режима, урегулирование споров между инвестором и государством, Рамочная конвенция Всемирной организации здравоохранения по борьбе против табака, законные ожидания инвестора, двусторонний инвестиционный договор.

Introduction

Fair and equitable treatment (FET) is the main element in modern international investment agreements (IIA) and it has emerged as the most grounded and successful basis for investors in Investor-State arbitrations. FET is a crucial investment protection standard of IIAs which safeguards investors' legitimate expectations or arbitrary, discriminatory and abusive conduct of the host state against the investor. Among these core principles of FET, investor's legitimate expectations and arbitrary have been mostly relied upon and indicated as a key feature of the FET standards by arbitral tribunals. First,

the notion of legitimate expectations refers to the phenomenon of "change" [1]. Investments are not "one-commitment" transactions; they often involve long-term economic projects, such as foreign -owned manufacturing enterprises or business concessions. Within the long-term investment projects, there is a possibility that the conditions of the investment interaction will change, causing a negative effect on investment operations. Several factors can lie behind the changes; some are owing to compassing the economic goals of the host State, however, others may occur from specific or general measures, actions or inaction and conduct of the host state.

The latter changes take to cover the scope of investors' legitimate expectations; those changes might negatively impact investors' stability. The breach of legitimate expectation emerges in situations when a host state's certain measures cause adverse effects to an investment which may lead reduction of the economic value of an investment. Second, arbitrariness is intentional conduct of host State where its measures lead to infringement of investor's legitimate purposes without any precise explanation. In contrast to the principle of arbitrariness host states often counter claim public health, consumer rights and environmental protection in many arbitral awards today [2]. In other words, the ratio of host state's legitimate policies is very wide and not limited to the above-mentioned goals against arbitrariness.

Over the last quarter of a century, investors have often invoked the FET standard in ISDS cases. As a result, today, the FET standard is the most frequently applied standard in investment disputes. In a vast majority of 57 ISDS cases in 2013 [3] the FET standard was applied [4]. Yet, this standard cannot be considered to have been consistently interpreted by arbitral tribunals and some uncertainty remains. On the other hand, it is an effective standard for safeguarding the interests of foreign investors [5]. This chapter discusses the FET clause as a protection standard for investors, and its link with the stabilization clause.

Materials and methods

Today, more than 3,000 bilateral investment treaties (BIT) [6] have been concluded in the world and most of them contain the FET standard. The notion of FET appeared earlier than the initial international investment agreements which had been concluded for promoting and protecting the interests of states. The FET clause initially applied in international economic agreements such as the 1948 Havana Charter for International Trade Organization and the 1948 Economic Agreement of Bogota, as well as, the United States Friendship, Commerce and Navigation Treaties [7]. Since then, FET has become a crucial figure in the investment treaty-making process. However, there is no single definition of the FET standard. Furthermore, a study of arbitral case law suggests that there are several elements in FET that help to determine the meaning of this standard. They are as follows:

- (I) the requirement of stability, predictability, and consistency of the legal framework;
- (II) the principle of legality;
- (III) the protection of legitimate expectations of foreign investors;
- (IV) due process and denial of justice;
- (V) substantive due process and protection against discrimination and arbitrariness;
- (VI) transparency;
- (VII) the principle of reasonableness and proportionality [8].

At present, FET is the most important standard in investor-State investment dispute (ISID) cases [9]. Investors are also regularly invoking this standard in tobacco control concerned cases. For example, last ten years, Phillip Morris, a tobacco manufacturing multinational company challenged the tobacco control regime twice through investment arbitration against Australia and Uruguay. Even though, Phillip Morris v Australian tobacco case was refused in the jurisdiction phase, the Phillip Morris SARL v Uruguay case went through the merit phase but their potential claims were dismissed by the tribunal. Both attempts have failed due to the protection of public health. However, Phillip Morris filed those disputes under the breach of the FET standard and this feature gives the importance of researching tobacco cases relying on the FET standard.

Research results (Problem statement)

a) *Phillip Morris SARL v Uruguay*

On 8 July 2016, a panel of the International Centre for Settlement of Investment Disputes (ICSID) rejected the Phillip Morris SARL's tobacco claim against the Oriental Republic of Uruguay [10]. Phillip Morris challenged two major provisions in Ordinance 514 of Uruguayan law where firstly, they claimed tobacco plain packaging dedicate from 50 to 80 percent of its display areas to graphic and text warnings and secondly, limited regulation on selling tobacco brands in one variation of packaging. The Phillip Morris has also brought the claim under the FET standard where they contested the breach of legitimate expectations and arbitrariness. Their claims were rejected under this standard because the tribunal found that Uruguayan conduct did not constitute a breach of the FET standard.

Uruguay ratified the World Health Organization's Framework Convention on

Tobacco Control (WHO FCTC) on 9 September 2004. Before ratifying the WHO FCTC, Uruguay made several steps against the use of tobacco. For example, Uruguayan Parliament adopted Law 15,361 in 1982 which imposed a number of crucial restrictions on the sale and consumption of tobacco, including attachment of special warnings on tobacco packaging, prohibition on the sale of tobacco to minors and requiring quarterly publication of tar and nicotine levels of cigarette brands by tobacco companies. There are also two Decrees in 1996 and 1998 that constantly continued to set bans on smoking in offices, public buildings or other public establishments and promotion of tobacco involving product giveaways. After ratifying the WHO FCTC, those restrictions were not only preserved but also expanded respectively. For instance, in 2005 five Decrees were adopted in order to regulate tobacco control matters. Decrees 36/005 and 171/005 mandated the inclusion of warning texts on tobacco packaging covering 50% of the surfaces of the front and back of packages, required periodic rotation of warnings and inclusion of administratively-specified images and pictograms, and prohibited the use of terms such as “low tar” and “light” [11]. Limited smoking areas in restaurants and bars and advertisements on television (requiring “safe hours” for minors) were regulated by Decree 169/005 whereas Decree 170/005 prohibited advertising and promotion of tobacco products in connection with sports events. Decrees 214/005 and 268/005 declared that all public offices were “100% tobacco smoke-free environments” and that all enclosed public premises and work areas were subject to the same requirement. Decree 415/005 required that all pictograms on tobacco packaging be approved by the Ministry of Public Health, specified images for use on tobacco packaging and required health warnings on one side of tobacco packages. In 2007, Decree 202/007 specified three images and legends for use on the surfaces of tobacco packaging and Tax Law 18,083 significantly modified the previous tax regime and imposed a 22% value-added tax (VAT) on tobacco products. At last but not least, Uruguay’s Parliament adopted Law 18,256, which restated and extended many of the foregoing regulations. In response to these general and

specific measures introduced by Uruguay, Phillip Morris launched investment arbitration and claimed that those measures breached the FET standard according to Article 3(2) of Uruguay and Switzerland BIT. As Uruguay’s conduct was transparent, predictable and rational in relation to Phillip Morris, the tribunal found that there was not any ground for breaching the FET standards.

b) The Republic of Uzbekistan v Uzbekistan British American Tobacco

In a closed deal concluded in May 1994 and finalized in late 1995, Uzbekistan’s state-owned tobacco monopoly was privatized by British-American Tobacco (BAT). BAT established a joint-venture with the government, and its initial 51% shareholding increased with subsequent investments to reach 97% by 1998 [12]. The joint venture included the whole existing national tobacco industry, which is composed of the Tashkent tobacco factory (TTF) and 2 fermentation plants in Urgut and Samarkand cities. The state-owned monopoly was thus replaced with a private one and BAT became the largest investor in Uzbekistan to that date. As a matter of fact, it contributed an estimated one-third of all foreign direct investment received by Uzbekistan from 1992 till the end of 2000 [13].

In August 1994, as negotiations went on with BAT, the Ministry of Health issued a tobacco control decree, called Health Decree 30. The decree banned unfiltered cigarettes and those high in tar and nicotine, banned tobacco advertising and smoking in public places, required outlets to be licensed and introduced health warnings on the plain. In contrast, BAT was shocked at the released decree and described it as a “deal stopper” further making three assertions against the decree. First, BAT depicted the decree as jeopardizing foreign investment in Uzbekistan, while warning the Ministry of Health that it would lead to “the immediate demise of the domestic cigarette industry”. Second, BAT refuted the health effects of smoking as accurately described in the decree, suggesting an ongoing controversy in which “smoking has not been proven to actually reason for diseases”. Third, BAT illustrated the decree as “seriously interfering with commercial freedom” [14]. Furthermore, BAT proposed its amendments to the decree and offered to use a voluntary code which had already been

experienced in Russia. In fact, the voluntary code is the industry's responsible approach in dealing with governments to agree on advertising standards. However, it was actually developed collaboratively by tobacco companies and entailed only modest and ineffective restrictions.

c) Tobacco control law and the WHO FCTC

As of October 5, 2011, the law "On the restriction of distribution and consumption of alcohol and tobacco products" 8 was adopted by the Oliy Majlis, the legislative chamber of Uzbekistan. One of the main objectives of the law was to protect public health care by strengthening the tobacco control regime. After ratifying the WHO Framework Convention on Tobacco Control (WHO FCTC) in 2012, Uzbekistan had to set strong legal tools against tobacco abuse. Yet, at present, there are some of the provisions under domestic legislation still do not satisfy the requirement of the Tobacco Convention. For example, as a party to the WHO FCTC, Uzbekistan was obliged to implement a range of measures that make tobacco use less attractive to people. Following this, Uzbekistan had five years to establish comprehensive bans on tobacco advertising, promotion, and sponsorship. A huge drawback in domestic legislation corresponds to advertising, promotion, and sponsorship matters of tobacco use. Article 13 of the WHO FCTC demonstrates a comprehensive ban on advertising, promotion and sponsorship which would reduce the consumption of tobacco products under the Constitution and Constitutional principles of Party-State. This ban shall include:

(a) prohibition of all forms of tobacco advertising, promotion, and sponsorship that promote a tobacco product by any means that are false, misleading or deceptive, or likely to create an erroneous impression about its characteristics, health effects, hazards, or emissions;

(b) the requirement that health or other appropriate warnings or messages accompany all tobacco advertising and, as appropriate, promotion and sponsorship;

(c) restriction to the use of direct or indirect incentives that encourage the purchase of tobacco products by the public;

(d) requirement if it does not have a comprehensive ban, the disclosure to relevant governmental authorities of expenditures by the

tobacco industry on advertising, promotion and sponsorship not yet prohibited;

(e) comprehensive ban or, in the case of a Party that is not in a position to undertake a comprehensive ban due to its constitution or constitutional principles, restriction to tobacco advertising, promotion and sponsorship on radio, television, print media and, as appropriate, other media, such as the internet, within a period of five years.

However, none of these above-mentioned provisions have been implemented into national legislation yet. A comprehensive ban on advertising, promotion and sponsorship of tobacco use does not exist in the laws neither "On the restriction of distribution and consumption of alcohol and tobacco products" nor "On advertisement". The law was adopted in 2011, a year earlier than Uzbekistan became a member of the WHO FCTC; nevertheless, the law has not yet been amended precisely in order to meet the advertisement obligations of the WHO FCTC.

Implemented measures after ratifying the WHO FCTC by Uruguay	Implemented measures after ratifying the WHO FCTC by Uzbekistan
The Single Presentation Requirement was implemented through Ordinance 514 dated 18 August 2008 of the Uruguayan Ministry of Public Health. Article 3 of Ordinance 514 requires each cigarette brand to have a "single presentation" and prohibits different packaging or "variants" for cigarettes sold under a given brand.	Partially implemented
The 80/80 Regulation was implemented via the enactment of Presidential Decree No. 287/009 dated 15 June 2009. Decree 287 imposes an increase on the size of prescribed health warnings of the surface of the front and back of the cigarette packages from 50% to 80%, leaving only 20% of the cigarette pack for trademarks, logos and other information.	Partially implemented

d) Analyzing the current legislation in comparing with the requirements of the World Health Organization's Framework Convention on Tobacco Control

On October 5, 2011, the Oliy Majlis, the legislative chamber of Uzbekistan, adopted

the law “On the restriction of distribution and consumption of alcohol and tobacco products” [15]. One of the objectives of this law is to protect public health by strengthening the tobacco control regime. Then, in 2012, Uzbekistan ratified the WHO Framework Convention on Tobacco Control (WHO FCTC). Accordingly, Uzbekistan is obliged to comply with the WHO FCTC and set strong legal tools against tobacco abuse. However, at present, some provisions in domestic legislation still do not meet the requirements of the WHO FCTC.

For instance, Article 6 of the WHO FCTC [16] provides:

1. The Parties recognize that price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons.

2. Without prejudice to the sovereign right of the Parties to determine and establish their taxation policies, each Party should take account of its national health objectives concerning tobacco control and adopt or maintain, as appropriate, measures which may include:

a) implementing tax policies and, where appropriate, price policies, on tobacco products so as to contribute to the health objectives aimed at reducing tobacco consumption; and

b) prohibiting or restricting, as appropriate, sales to and/or importations by international travelers of tax and duty-free tobacco products.

Also, Article 9 of the WHO FCTC provides regulation of the contents of tobacco products:

The Conference of the Parties, in consultation with competent international bodies, shall propose guidelines for testing and measuring the contents and emissions of tobacco products, and for the regulation of these contents and emissions. Each Party shall, where approved by competent national authorities, adopt and implement effective legislative, executive and administrative or other measures for such testing and measuring, and for such regulation.

Yet, these provisions have not fully been implemented into national legislation. In the light of these Articles, the current legislation of Uzbekistan is far from satisfactory. For example, there is only indirect provisions in the law “On the restriction of distribution and consumption of alcohol and tobacco products” or in the Tax

Code of the Republic of Uzbekistan which are in compliance with the Articles of WHO FCTC. Therefore, Uzbekistan needs to amend its tobacco legislation in light of WHO FCTC provisions.

e) Fair and equitable treatment under Uzbekistan and Uzbekistan British American Tobacco case

Through the implementation of the WHO FCTC, Uzbekistan might infringe the FET of the UZBAT. *First*, since all provisions of the WHO FCTC are directed to encourage anti-smoking society, these types of societies struggle for minimizing the number of smokers; as a consequence, the sales of tobacco products are expected to decrease drastically. *Second*, decreased number of smokers may lead to the reduction of the economic value of the investment. *Third*, according to investment contract between UZBAT and the government of Uzbekistan which was signed in 1994, the stabilization clause was hypothetically given to the investor for a thirty-year period. It means that any action or inaction that has an adverse effect on investment may cause compensation with respect to Uzbekistan.

The UK and Uzbekistan bilateral investment treaty (BIT) was concluded in 1993 and Article 2.2 accords FET standard. Article 2.2 of the BIT provides as follows:

Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party [...] [17].

In this context, Uzbekistan should take an obligation to act consistently and transparently, honor the investor’s legitimate expectations, refrain from exercising coercion, act in good faith, and to refrain from acting arbitrarily, grossly unfairly, unjustly, idiosyncratically, discriminatorily, or without observing due process.

Significance of the paper

The significance of this research article could be referred in following reasons:

a) Fair and equitable treatment standards in tobacco control-related cases is a new phenomenon that needs to be studied more precisely than ever. In fact, the Phillip Morris SARL v Uruguay case proved the importance of this standard in tobacco control disputes. The case is a good example where fair and equitable treatment standard is contested and might be a “guideline” for Uzbekistan in order to regulate its tobacco regulations.

b) As the number of smokers is expanding in Uzbekistan, a solid tobacco control mechanism is required in order to preserve public health. In this way, this research proposes an effective tobacco control regime in achieving the oft-mentioned goal.

A brief summary of existing literature

Regarding existing literature on this matter, we can conventionally divide it into three large streams: (I) relating to protecting public health, (II) concerning tobacco control measures in terms of investment law and (III) regarding fair and equitable treatment standard

According to the first group, an article by Gilmore, Anna B., Jeff Collin, and Martin McKee on “British American Tobacco’s erosion of health legislation in Uzbekistan” [18] shed light on how BAT shaped the legislation of Uzbekistan while investing in tobacco sector. Another pragmatic article by the same co-authors “Transnational tobacco company influence on tax policy during the privatization of a state monopoly: British American Tobacco and Uzbekistan” [19] discusses how BAT influenced on tax policy system of Uzbekistan through its investment. “The invisible hand: how British American Tobacco precluded competition in Uzbekistan” [20] by the above-mentioned co-authors explore the facts of how BAT became a dominant monopoly in the tobacco field of Uzbekistan. Besides that, Shukurov, Shukhrat U., and Konstantin S. Krasovsky on “Impact of cigarette taxation policy on excise revenues and cigarette consumption in Uzbekistan” [21] reveals the significant issues of tobacco tax policy and discuss the rate of tobacco use in Uzbekistan.

Regarding the second group, potential article by Andrew Mitchell and Sebastian Wurzberger on Boxed in? Australia’s plain tobacco packaging

initiative and international investment law” [22] and “Time to quit? Assessing international investment claims against plain tobacco packaging in Australia” [23] by Tania Voon and Andrew Mitchell analyzes Australia v Phillip Morris tobacco plain packaging case from different angles of investment law. Also, books by Valentina Vadi on “Public health in international investment law and arbitration” [24] and “Public health and plain packaging of cigarettes: legal issues” [25] by Voon, Tania, Andrew D. Mitchell, and Jonathan Liberman, eds. discuss the role of public health in international investment law and some related cases to tobacco control mechanisms. Other co-authors such as Thow AM, McGrady B. on “Protecting policy space for public health nutrition in an era of international investment agreements” [26] study Australia and Uruguay v Phillip Morris case in the scope of public health care policy and its effects on international investment agreements.

In relation to the third group, Dolzer Rudolf in “Fair and equitable treatment: Key standard in Investment Treaties” [27] discusses basic characteristics of the standard from different angles. “Fair and equitable treatment in Arbitral Practice” [28] by Christoph Schreuer indicates the main peculiarities of the standard in arbitral awards. Dolzer Rudolf and Christoph Schreuer on “Principles of International Investment Law” [29] provide basic information about the standard. “The’ fair and equitable treatment standard’ standard and the circumstances of the host State” [30] by Nick Gallus researches the allocation of the standard with the conduct of host States. Finally, Ioana Tudor on “The fair and equitable standard in the International Law of Foreign Investment” [31] refers to the role of the standard in the scope of International Foreign Investment Law.

Conclusion

Unlike in the case of *Phillip Morris v Uruguay*, Uzbekistan concluded a special contract with the investor, Uzbekistan British American Tobacco, and guaranteed a stabilization clause. According to this contract, the guaranteed period of stabilization clause is thirty years from the date when contract came into force. This point may make Uzbekistan different from the *Phillip Morris v Uruguay* case. If the above stabilization clause is applied literally, Uzbekistan is unable to enact any law which results in an adverse effects on

UzBAT until 2024. However, in 2012, Uzbekistan ratified the WHO FCTC and started to implement its provisions. Measures that Uzbekistan takes may cause a real threat to UzBAT.

Any adverse conduct by Uzbekistan towards UzBAT considers as the breach of FET provision. On the other hand, the doctrine of the stabilization clause should not restrict the sovereign regulatory power of Uzbekistan when the context is about the protection of public health. Therefore, in order to protect

public health, Uzbekistan should set forth strict regulations in relation to UzBAT. In particular, Uzbekistan must raise tax rates and restrict the distribution of tobacco products. In the case of UzBAT's challenge on the FET clause with respect to Uzbekistan, the Uruguayan case proved advantage of public interest over tobacco companies in tobacco control disputes. As of the stabilization clause in *Uzbekistan v UzBAT*, Uzbekistan should compensate for the loss in favor of the tobacco company.

REFERENCES

1. United Nations Conference on Trade and Development, Fair and equitable treatment. New York, Geneva, UNCTAD, 2012, p. 63. Available at: http://unctad.org/en/Docs/unctaddiaeia2011d5_en.pdf/.
2. United Nations Conference on Trade and Development, Fair and equitable treatment. New York, Geneva, UNCTAD, 2012.
3. Recent Developments in Investor – State Dispute Settlement (ISDS), UNCTAD IIA, April 2014, issue 1, no. 1, p. 7. Available at: http://unctad.org/en/PublicationsLibrary/webdiaepcb2014d3_en.pdf/.
4. United Nations Conference on Trade and Development, Fair and equitable treatment. Geneva, UNCTAD, 2012. Available at: http://unctad.org/en/Docs/unctaddiaeia2011d5_en.pdf/.
5. Schill S. Fair and equitable treatment, the Rule of Law, and Comparative Public Law. International Investment Law and Comparative Public Law, ed. Stephan Schill. New York, Oxford University Press, 2010, p. 157.
6. International Investment Policy Hub. Available at: <http://investmentpolicyhub.unctad.org/IIA/>.
7. United Nations Conference on Trade and Development, Fair and equitable treatment. Geneva, UNCTAD, 2012. Available at: http://unctad.org/en/Docs/unctaddiaeia2011d5_en.pdf/.
8. Schill S. Fair and equitable treatment, the Rule of Law, and Comparative Public Law. International Investment Law and Comparative Public Law, ed. Stephan Schill. New York, Oxford University Press, 2010, p. 159.
9. Schreuer Ch. Fair and equitable treatment in Arbitral Practice. The Journal of World Investment and Trade 6, 2005, no. 3, p. 357.
10. Philip Morris SARL and Abal Hermanos S.A v Oriental Republic of Uruguay. ICSID Case No. ARB/10/07, Award, July 8, 2016. Available at: <http://www.italaw.com/sites/default/files/case-documents/italaw7417.pdf/>.
11. Philip Morris Brands SARL, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay, ICSID Case No. ARB/10/7. World Trade Review, 2017, no. 16 (3), pp. 551–555. DOI: 10.1017/S1474745617000179/.
12. Gilmore A, McKee M. Tobacco and transition: an overview of industry investments, impact and influence in the former Soviet Union. Tob Control, 2004, no. 13, pp. 136–142.
13. Gilmore A., Collin J., McKee M. The invisible hand: how BAT precluded competition in Uzbekistan. Tob Control, 2007, no. 16, pp. 239–247.
14. Gilmore A.B., Collin J., McKee M. British American Tobacco's erosion of health legislation in Uzbekistan. British Medical Journal, 2006.
15. On restriction of distribution and consumption of alcohol and tobacco products. The law. Available at: http://www.lex.uz/pages/getpage.aspx?lact_id=1880029/.
16. WHO Framework Convention on Tobacco Control, Article 6. Available at: <http://apps.who.int/iris/bitstream/10665/42811/1/9241591013.pdf?ua=1/>.
17. Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Uzbekistan for the Promotion and Protection of Investments, November 24, 1993. Available at: <http://www.italaw.com/sites/default/files/laws/italaw6251.pdf/>.

18. Gilmore A.B., Collin J., McKee M. Public health: British American Tobacco's erosion of health legislation in Uzbekistan. *BMJ, British Medical Journal*, 2006, no. 332.7537, p. 355.
19. Gilmore A., Collin J., Townsend J. Transnational tobacco company influence on tax policy during privatization of a state monopoly: British American Tobacco and Uzbekistan. *American Journal of Public Health*, 2007, no. 97.11, pp.2001–2009.
20. Gilmore A.B., Collin J., McKee M. The invisible hand: how British American Tobacco precluded competition in Uzbekistan. *Tobacco Control*, 2007, no. 16.4, pp. 239-247.
21. Shukurov Sh.U., Krasovsky K.S. Impact of cigarette taxation policy on excise revenues and cigarette consumption in Uzbekistan. *Tobacco Control and Public Health in Eastern Europe*, 2013, no. 3.1, pp. 5-16.
22. Mitchell A.D., Wurzberger S.M. Boxed in? Australia's plain tobacco packaging initiative and international investment law. *Arbitration International*, 2011, no. 27.
23. Voon T., Mitchell A. Time to quit? Assessing international investment claims against plain tobacco packaging in Australia. *Journal of International Economic Law*, 2011, vol. 14, no. 3, pp. 515-552.
24. Vadi V. Public health in international investment law and arbitration. Routledge, 2012.
25. Voon T., Mitchell A.D., Liberman J., eds. Public health and plain packaging of cigarettes: legal issues. Edward Elgar Publishing, 2012.
26. Thow A.M., McGrady B. Protecting policy space for public health nutrition in an era of international investment agreements. *Bulletin of the World Health Organization*, 2014, no. 92 (2), pp. 139-145. DOI: 10.2471/BLT.13.120543/.
27. Dolzer R. Fair and equitable treatment: Key standard in Investment Treaties. *The International Lawyer*, 2005, no. 39.
28. Schreuer Ch. Fair and equitable treatment in Arbitral Practice. *The Journal of World Investment and Trade* 6, 2005, no. 3.
29. Dolzer R., Schreuer Ch. *Principles of International Investment Law*. Oxford University Press, 2012.
30. Gallus N. *The 'fair and equitable treatment standard' standard and the circumstances of the host State*. Cambridge University Press, 2011.

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