



# Does Business Really Care About What Model To Follow?

- Investors' views and their implications for the economies of host countries

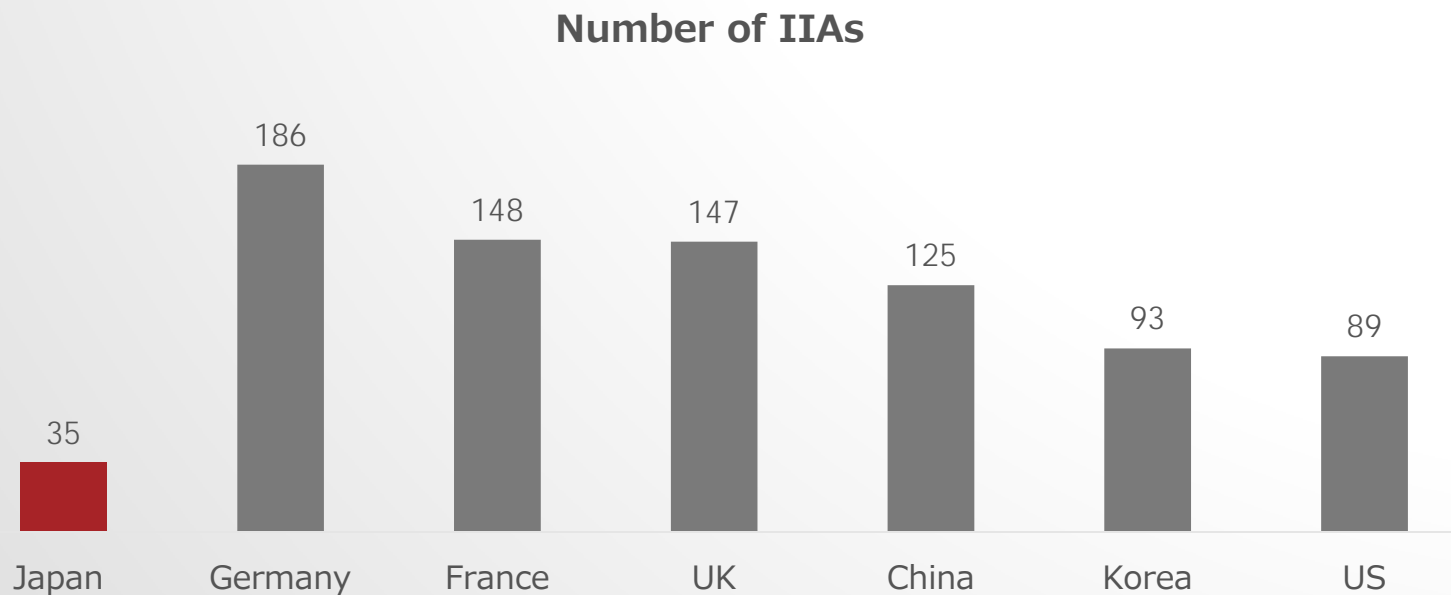
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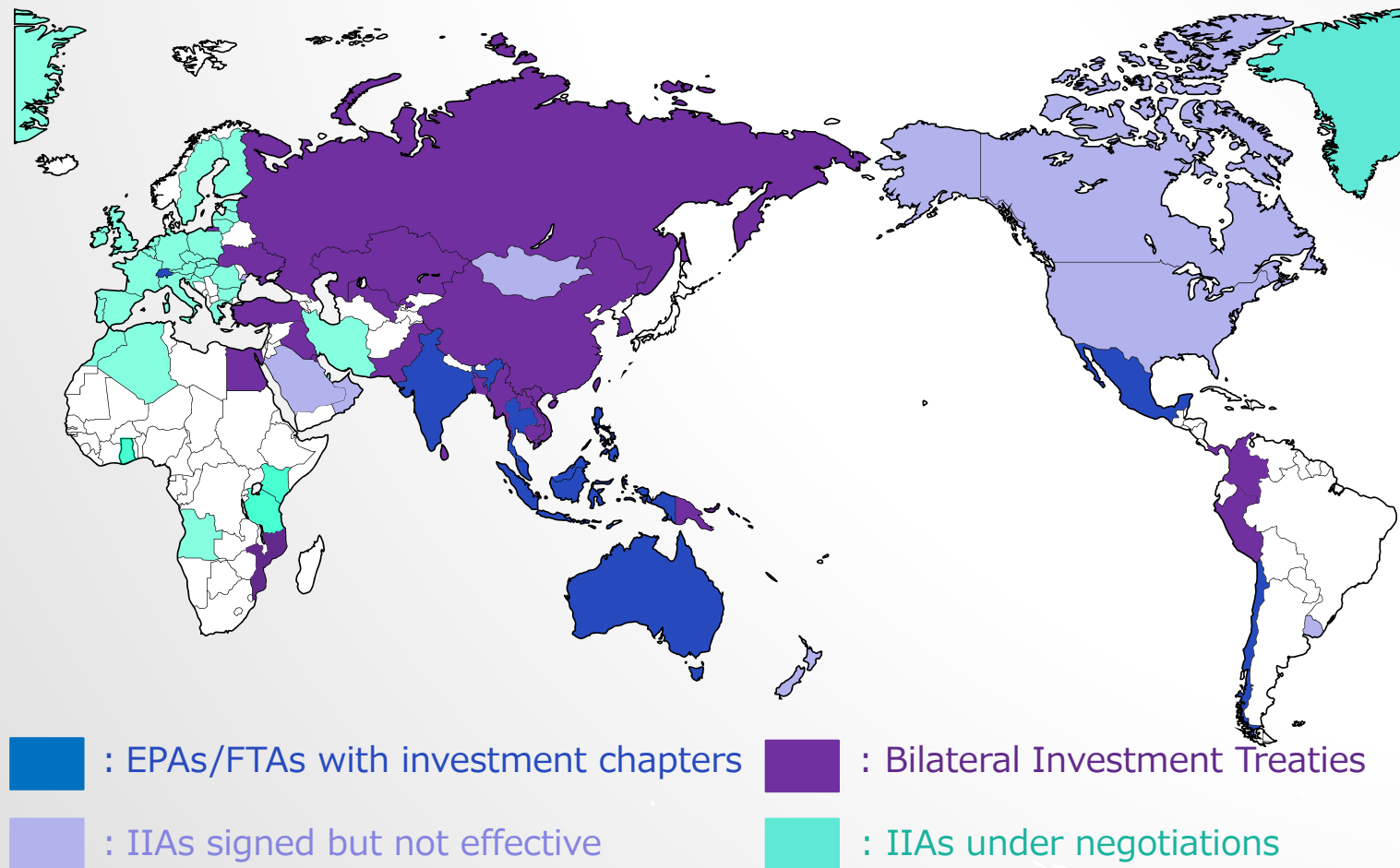
# 1. BACKGROUND OF INTERNATIONAL INVESTMENT AGREEMENTS (IIAs)

- Increased significance of outward direct investment
- Japan is far left behind other countries in terms of the number of IIAs
  - IIAs: BITs and FTAs/EPAs which include investment chapters
  - 35 in operation plus 20 agreements which are signed or under negotiations



Source : UNCTAD(except Japan)

## 2. AREAS COVERED BY AGREEMENTS (JAPAN)



Source : Ministry of Foreign Affairs and Ministry of Economy, Trade and Industry, Japan

### 3. PROPOSAL BY KEIDANREN (DECEMBER 15, 2015) "CALLING FOR ACCELERATED CONCLUSION OF INVESTMENT AGREEMENTS"

#### (1) Early Conclusion and Entry into Force of IIAs (BITs and EPAs/FTAs)

- [Bilateral Investment Agreements] Angola (suspended after agreed in principle), Algeria, Qatar, United Arab Emirates, Kenya, Ghana, Morocco, Tanzania, Israel (agreed in principle), Iran (signed in February 2016), Saudi Arabia (signed in April 2013) and Oman (signed in June 2015)
- [EPAs/FTAs That Include Investment Chapters] Bahrain (postponed), GCC, Japan-China-Korea FTA, RCEP (Regional Comprehensive Economic Partnership), Japan-EU EPA, TPP Agreement (signed in February 2016), and Japan-Turkey EPA

#### (2) Launch of New Negotiations

- Brazil, South Africa, Senegal, Cuba, Nigeria, Bolivia, Ecuador, Argentina, and Panama

#### (3) Revision or New Negotiations of Existing Agreements

- Egypt (Investment Protection Agreement, 1977), Sri Lanka (Investment Protection Agreement, 1982), Hong Kong (Investment Protection Agreement, 1997), Pakistan (Investment Protection Agreement, 1998), Bangladesh (Investment Protection Agreement, 1999), Russia (Investment Protection Agreement, 1998), the Philippines (EPA, 2006), Thailand (EPA, 2007), India (EPA, 2011), and Iraq (Investment Protection Agreement, 2012)

## 4 . CONCERNS OVER RECENT TRENDS

### ① LIMITING THE SCOPE OF PROTECTED INVESTMENT

(Source: UNCTAD World Investment Report 2015)

- An policy option to limit the scope of protected foreign investment
  - No/limiting Fair and Equitable Treatment, umbrella clause, ISDS
- An explanation about the reasons for increased unease about IIAs
  - ... IIAs are binding and legally enforceable...
  - ... the financial crisis of 2008, awareness of sustainable development, regulatory space for foreign investment...

← Should "Right to Regulate" (in pursuance of public policy goals) be a "carte blanche" for governments to justify no protection, arbitrary treatment, or discrimination against foreign investors?

## 4. CONCERNS OVER RECENT TRENDS

### ② DECREASE OF CONVENIENCE OF ISDS

#### New Models: Permanent Court of Arbitration, Appeal Tribunal

- EU-Canada, EU- Vietnam, TTIP (proposed), Japan-EU(proposed)

← Concern : Reduction of convenience for investors and negative impact on business promotion

- Prolonged procedures with increased time and cost
- Questions about impartiality and qualification of Judges
- Difficulty to protect corporate secrets
- Loser Pays: increased costs, decreased protection for investors with less money
- Increased complexity of investment arbitration mechanisms

## 4. CONCERNS OVER RECENT TRENDS

### ③ ADDITIONAL OBLIGATIONS OF INVESTORS

#### Corporate Social Responsibility(CSR) in IIAs

- TPP (Art 9.16)
- India model BIT

#### New proposal (UNCTAD, World Investment Report 2015)

- An option is to require tribunals to consider an investor's compliance with CSR standards, endorsed by the parties, when deciding an ISDS case.

#### ←Concern :

- While foreign investors are required to comply with the laws and regulations of the host country, it is not necessary to include provisions of CSR in IIAs.
- It may rather cause foreign businesses to shrink from investments in the territories of that country.

⇒ IIAs should limit the scope of duties to those imposed on the governments.

## 5. FUTURE MODELS

### —REFLECTIONS ON THE CRITICISM AGAINST IIAS AND ISDS

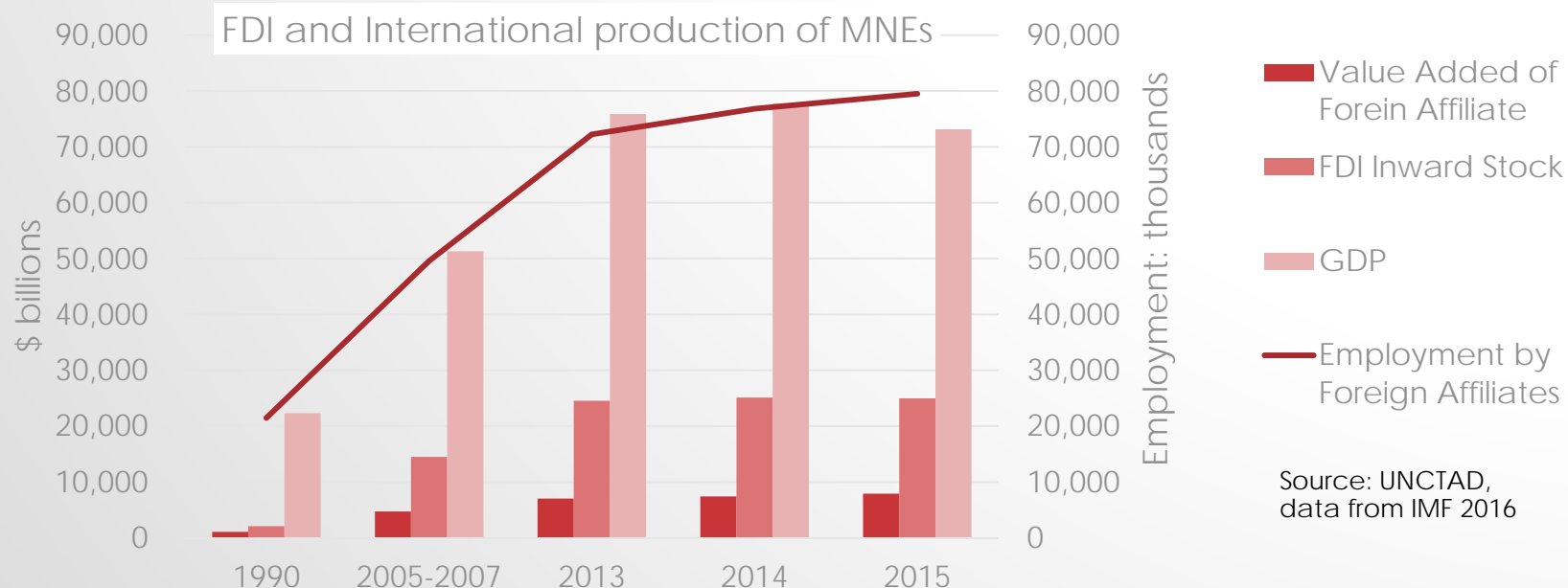
- Does ISDS unduly infringe states' right to regulate?
- Do host countries incur inadequate losses from ISDS and its awards?
- Are international investment rules are unfairly in favor of foreign investors?



## 6 . IMPLICATIONS FOR THE ECONOMIES OF HOST COUNTRIES

### — RATIONALES FOR PROVIDING PROTECTIONS AND ARBITRATION FOR FOREIGN INVESTORS

- International Investments are extremely important to growth and employment in the world economy including host countries.
- International investments in the world economy is increasing rapidly.



## 【NOTE】 KEIDANREN PROPOSALS (DECEMBER 15,2015) AND JAPANESE GOVERNMENT ACTION PLAN

| Keidanren Proposals                                                                                                                                                                                                                                                                                                                                                                                         | Government Action Plan                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>○ Countries to negotiate IIAs (BITs/EPAs)               <ol style="list-style-type: none"> <li>1. Early conclusion and entry into force of IIAs under negotiations</li> <li>2. Launch of new negotiations</li> <li>3. Revision or new negotiations of existing agreements</li> </ol> </li> </ul>                                                                     | <p>100 countries/regions to be covered by 2020</p> <p>-considering investment records and prospects, demands of Japanese businesses, foreign policy and situation of the candidate countries</p>                                                                                                                                                                                                                    |
| <ul style="list-style-type: none"> <li>○ Contents should be included in IIAs               <ul style="list-style-type: none"> <li>• Investment protection</li> <li>• Investment liberalization</li> <li>• ISDS</li> <li>• Investment facilitation, freedom of transfers, liquidation and withdrawal</li> <li>• Umbrella clause</li> <li>• Framework for public-private consultations</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>○ Perusing high level protection/ liberalization               <ul style="list-style-type: none"> <li>- speedy and flexible negotiations</li> </ul> </li> <li>○ Creation of investment environment conducive to new business activities               <ul style="list-style-type: none"> <li>- consider to include clauses on services and e-commerce</li> </ul> </li> </ul> |
| <ul style="list-style-type: none"> <li>○ Matters to Note               <ul style="list-style-type: none"> <li>• Securing appropriate scope of protection</li> <li>• Importance of ISDS</li> <li>• No need to include CSR provisions</li> </ul> </li> </ul>                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <ul style="list-style-type: none"> <li>○ Creation of International Investment Rules               <ul style="list-style-type: none"> <li>• Lead the creation of rules for protection, liberalization and facilitation of international investments for 21st century</li> </ul> </li> </ul>                                                                                                                  | <ul style="list-style-type: none"> <li>○ Multilateral Discussions               <ul style="list-style-type: none"> <li>• Actively contribute to the discussions in the international fora towards the creation of favorable foreign investment environment</li> </ul> </li> </ul>                                                                                                                                   |

Please visit the link below for original Keidanren Proposals;  
<http://www.keidanren.or.jp/en/policy/2015/119.html>

## 7. DISCUSSIONS ON THE DEVELOPMENT OF INTERNATIONAL INVESTMENT RULES

