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China and the global governance of foreign direct investment: the emerging liberal bilateral investment treaty approach

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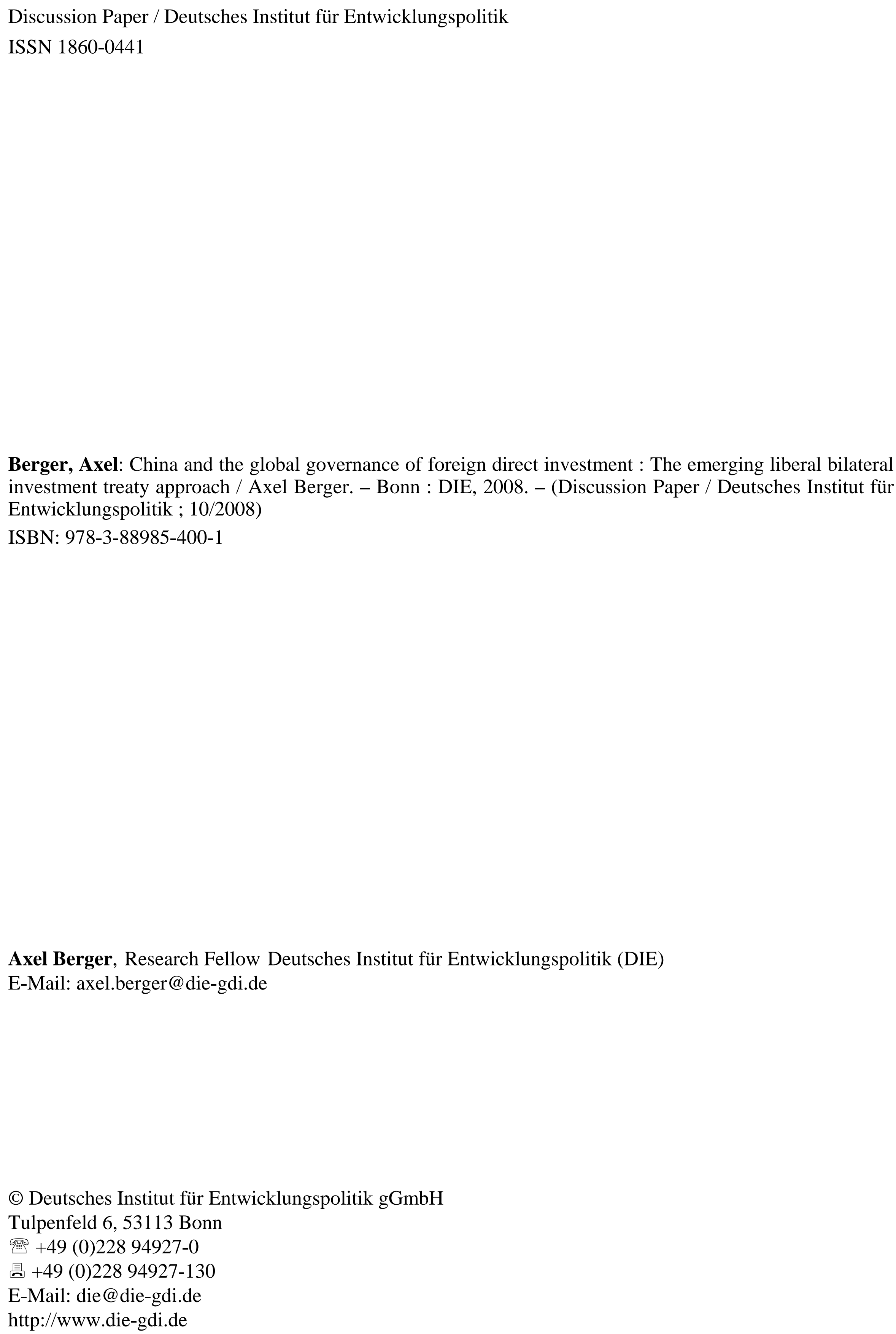
China and the global governance of foreign direct investment

The emerging liberal bilateral investment treaty approach

Axel Berger

Bonn 2008



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Foreword

This study is the output of the research project "China and Global Governance of Foreign Direct Investment". The project has been part of the Managing Global Governance programme, an initiative of Germany's Ministry for Economic Co-operation and Development (BMZ), implemented jointly by the German Development Institute (DIE) and Capacity Building International Germany (InWEnt). The author would like to express his gratitude to DIE's academic and administrative staff and especially to Thomas Fues and Dirk Messner for their most generous support and constant willingness to give critical feedback. Furthermore, the author would like to thank Katharina Berger, Tillmann Braun, Tatjana Chahoud, Doris Fischer, Julia Kubny, Peter Nunnenkamp and André von Walter for helpful comments on earlier drafts. They, however, bear no responsibility for the study's argumentation.

Axel Berger June 2008

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Abbreviations

BIT	Bilateral investment treaty
CCM	OECD Code of Liberalization of Capital Movements
DIIME	OECD Declaration on International Investment and Multinational Enterprises
FDI	Foreign direct investment
GATS	General Agreement on Trade in Services
ICSID	International Centre for Settlement of Investment Disputes
IFDI	Inward foreign direct investment
IIA	International investment agreement
M&A	Mergers and acquisitions
MNE	Multinational enterprise
MOFCOM	Ministry of Commerce
MOFERT	Ministry of Foreign Economic Relations and Trade
NAFTA	North American Free Trade Agreement
NDRC	National Development and Reform Commission
NGO	Non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
OFDI	Outward foreign direct investment
TRIMs	Agreement on Trade-Related Investment Measures
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organization

Abstract

The economic and political rise of China has led to considerable controversy regarding potential repercussions for the current global governance architecture. At least two opposing scenarios are conceivable: China's adaptation to the rules and norms system shaped by developed countries or the pursuit of a distinctive policy approach, a possibility that involves the danger of clashing regulatory policies.

A recent and increasingly dynamic trend giving substance to the phenomenon of China's rising importance is the growth of outward foreign direct investments (OFDI) by Chinese enterprises. Against this background, the present paper investigates the evolution and change of Chinese international investment policy-making, with a particular focus on bilateral investment treaties (BITs) as the most important legal instrument for the governance of global foreign direct investment (FDI) flows.

China has been a committed signatory of BITs since the early 1980s (120 treaties up to 2007). It is thus the second most active contracting party to BITs worldwide, surpassed only by Germany. The traditional Chinese BIT approach, however, has only cautiously supported the legal protection of FDI. As a mere capital-importer, China concluded BITs that contained serious reservations and safeguards intended to preserve policy spaces for the regulation of incoming investments. Starting at the end of the 1990s the Chinese government initiated a decisive policy shift towards a liberal BIT approach characterized by high levels of substantive and procedural investment protection.

Upon examining a representative sample of Sino-foreign BITs, this study concludes that the policy shift was a pro-active decision of the Chinese government intended to introduce liberal treaty provisions first and foremost with developing countries which are the main destination of Chinese OFDI. A further explanation for this development may be found in the great importance attached to the promotion of OFDI through the "Going Global" strategy announced by the Chinese government at the end of the 1990s. In sum, this paper concludes that China has adopted a complementary rather than a competitive approach in the field of global FDI governance. China has fully agreed to standards of the current international liberal regime for FDI protection and has become an important global player in this context. This policy shift will yield consequences for China itself by levelling the playing field for international investors. Furthermore, developing countries that have concluded BITs with China will face a further reduction of their legal and regulatory autonomy, which is already limited by treaties with developed countries. China's BIT policy, therefore, contradicts the widespread rhetoric of a mutual beneficial South-South cooperation. Lastly, the emerging complementarity of investment policies between China and developed countries at the bilateral level gives rise to the possibility of enhanced cooperation between both at higher levels, for instance as part of the Heiligendamm Process between G8 countries and emerging countries.

"Our nation's position in the international economic order will be to a large extent determined by the position of our nation's large enterprises and groups"[1]

1 Introduction

Commentators on the rise of China (e.g. Humphrey / Messner 2006a and 2006b; Gu / Humphrey / Messner 2007; Phillips 2008) agree that its dynamic economic and political rise will have a significant impact on global governance processes and institutions still predominantly shaped by developed countries' policies. There is a growing understanding that China, along with other large emerging countries like India, Brazil and South Africa, will reshape the current quasi-unilateral world order, thus giving rise to a new multipolar power constellation (Humphrey / Messner 2006a).

However, it still remains unanswered *how* China will influence patterns and institutions of global governance and what kind of policies it will pursue towards developed and developing countries. In this context G. John Ikenberry asked in a recently published article whether "*China [will] overthrow the existing order or become a part of it*" (Ikenberry 2008). In the context of global economic governance this question points to an open debate on the issue of whether China will adapt to the system of rules and norms that forms part of the post-war Western economic order or whether it will pursue its own distinctive set of policies, a trend that might lead to a state of "turbulent multilateralism" with the inherent threat of clashing regulatory policies (Humphrey / Messner 2006a). Any answer to such a set of questions will influence the nature of evolving economic and political relations between China and developed countries and in particular between China and other developing countries, often understood as a mutual-beneficial South-South cooperation.

A recent and increasingly dynamic trend giving substance to the phenomenon of China's rising economic importance is the growth of outward foreign direct investments (OFDI)[2] by Chinese enterprises. Up to now, China was mainly recognized as a capital-importing economy. While still receiving large amounts of FDI, China, among other developing countries, has recently also been perceived as an important source for FDI (e.g. Sauvant 2005; UNCTAD 2006; Aykut / Goldstein 2006; Broadman 2007; Pamlin / Baijin 2007; UNCTAD / UNDP 2007). Spectacular mergers and acquisitions (M&A) like the 2003 takeover by TCL of the French television manufacturer Thomson, the Lenovo purchase of IBM's personal computer branch in 2004, or the highly publicised, yet aborted, takeover

1 Wu Banguo, Chinese State Council, August 1998, quoted in Nolan / Zhang (2002, 2).

2 The Organisation for Economic Cooperation and Development (OECD) defines FDI as follows: „*Foreign direct investment reflects the objective of obtaining a lasting interest by a resident entity in one economy ('direct investor') in an entity resident in an economy other than that of the investor ('direct investment enterprise')*" (OECD 1996, 7). It is possible to measure FDI according to flows and stocks, i.e. the aggregate of previous flows. With regard to a certain economy it is possible to look at the direction of flows and stocks. OFDI, then, refers to flows or stocks of FDI carried out by home country business actors in other host economies. Inward FDI are flows and stocks of direct investments that are carried out by foreign business actors in the respective economy.

of the American oil company Unocal by the state-owned Chinese China National Offshore Oil Corporation (CNOOC) make clear that large Chinese enterprises have arrived at the world stage of global business.

Against the background of growing Chinese OFDI flows, the main goal of this paper is to look at the evolution and change of Chinese international investment policy-making towards developed and developing countries. A particular focus will be laid on bilateral investment treaties (BITs), the most important legal instrument for China in protecting both inward and outward FDI. Some recent studies by scholars of international investment law have observed and discussed a dramatic change in China's BIT policy (Kong 2003; Cai 2006 and 2007; Chen 2006 and 2007; Schill 2007). This paper will contribute to this ongoing academic discourse among experts of international law and the debate among scholars of global economic governance outlined above. It argues that China has gradually introduced a liberal international investment policy approach[3] since the late 1990s. Most notably, this drastic policy shift was at first pro-actively launched towards developing countries. Developed countries only subsequently requested a renegotiation of their older BITs with China and adaptation of them to the higher standard of investment protection – a direct consequence of China's strategic shift in BIT policy towards developing countries.

As substantiation for this argument, this paper resorts to a comprehensive content analysis of legal texts of Chinese BITs. The full text of these treaties was obtained from the "Investment Instruments Online" database made available by the United Nations Conference on Trade and Development (UNCTAD).[4] The database includes 66 of the 120 BITs signed by China until June 2007, of which only the 57 English texts were analysed (see Appendix B). The contents of these treaties were evaluated according to eight main provisions: admission of investment, absolute standards of treatment, relative standards of treatment, expropriation and compensation, repatriation of capital and profits, compensation for losses due to war and civil strife, settlement of investor-state disputes and prohibition of performance requirements. The contents of BITs follow a homogenous structure. Differences are found only in the particular wording of single provisions.

In order to analyse the effectiveness of Chinese BITs the present paper resorts to a methodology applied previously by Sen (2006). Accordingly, with regard to substantive and procedural investment protection, each provision's effectiveness will be valued either as high, medium or low. This grading was made possible by a comparison of the wordings of legal BIT texts at different stages of the evolution of Chinese international investment policy-making. It shows that similar phrases were used for provisions in certain periods. A detailed explanation of each provision's grading can be found in Appendix A. This approach allows for comparison of the vertical (i.e. chronological) progression of each provision and will eventually display a gradual policy shift that has taken place in Chinese BIT practice towards more effective investment protection (see Table 3). However, it does not allow for the measurement of the effectiveness of each BIT on the horizontal axis demonstrating the different impact of each provision with regard to the level of legal pro-

3 The notion *liberal* refers to high levels of current substantive and procedural investment protection applied in mainstream developed country BITs. Normally, those liberal BITs include provisions on most-favoured nation treatment, national treatment of foreign investors and unrestricted investor-state dispute settlement mechanisms.

4 See URL: http://www.unctadxi.org/templates/DocSearch_779.aspx (accessed: 25 Jan. 2008).

tection available to foreign investors. This approach furthermore demands a certain simplification of legal reality in international investment law making in order to be able to derive comparable findings. Therefore, this analysis covers only the legal texts of Chinese BITs and abstracts from single case law judgements.[5]

Following an introduction to the global economic governance architecture of FDI in section 2, with a discussion of the importance of BITs in the protection and promotion of foreign investments, this paper will examine China's position as a rising source country for OFDI in section 3. The subsequent section 4 on the domestic regulatory framework for OFDI looks at Chinese government support of its large multinational enterprises' (MNEs) investments in strategic sectors and regions through the "Going Global" strategy. The evolution of the Chinese BIT policy from the early 1980s onwards will then be analysed in section 5, which includes the content analysis' results and supports the argument of a strategic and pro-active shift in Chinese international investment policy making towards a liberal approach. Section 6 will sum up latest findings presented in this article.

2 The global economic governance of foreign direct investment

Extending the definition proposed by Schirm (2004, 3), global economic governance describes a rule-based management of the world economy which takes place on a bilateral, regional and multilateral level. With regard to the actors of global economic governance, nation states, international organisations as well as non-state actors like private companies and non-governmental organisations (NGOs) play a prominent role.

The global economic governance of FDI stands in the shadow of the world trade system. In contrast to the latter, no single and multilateral organization deals comprehensively with all aspects of FDI governance. Multilateral negotiations failed thrice: The Havana Charter proposed in 1948 never went into force, mainly due to the refusal of the US Congress to ratify the agreement. Intended mainly to establish an International Trade Organization, the Charter also covered multilateral rules on investment. Most prominently, negotiations of a proposed Multilateral Agreement of Investment (MAI) failed in the late 1990s within the Organisation for Economic Cooperation and Development (OECD). Investment negotiations in the Doha Development Round in the World Trade Organization (WTO) suffered defeat in 2003, too, due to fierce resistance from developing countries and critical NGOs.[6] In the absence of a multilateral investment agreement, global FDI flows are protected by a complex, multilayered and multifaceted patchwork of roughly 5,500 international investment agreements (IIAs) on a bilateral, regional, plurilateral and multilateral level (UNCTAD 2007a, 16–17).

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5 The repercussions of this simplification are expected to be rather small due to the very limited use of international arbitration by Chinese investors.

6 Zattler (1999) gives an overview of the failed negotiations of a Multilateral Agreement for Investment (MAI) within the OECD and analyses the potential economic effects of such an agreement. With regard to the negotiations of the so called Singapore Issues within the WTO negotiations, Ferrarini (2003) summarizes the arguments for and against multilateral rules for FDI.

In their sum, these agreements constitute the global economic governance architecture for FDI (Table 1). On the multilateral level, investment-related rules are mainly incorporated into single WTO agreements such as the General Agreement on Trade in Services (GATS), the Agreement on Trade-Related Investment Measures (TRIMs) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). WTO agreements, however, only partially govern FDI flows. The GATS deals most directly with investment issues which are addressed in the regulations on commercial presence of foreign investors and the ruling on the temporary entry of managerial personnel (Houde / Yannaca-Small 2004, 6). Furthermore, the TRIMs agreement bans certain trade restricting investment measures, and the TRIPS agreement introduces minimum standards for the international protection of intellectual property rights. Among member countries of the OECD the whole spectrum of international investment relations is governed in the Code of Liberalization of Capital Movements (CCM) and the Declaration on International Investment and Multinational Enterprises (DIIME). The most prominent and most comprehensive regional agreement governing investment flows is the North American Free Trade Agreement (NAFTA). It provides high levels of substantive and procedural investment protection as well as liberalization commitments that go beyond the majority of BITs which are regarded by scholars of international economic law as the main legal instrument for FDI protection within the global economic governance architecture for FDI (Dolzer / Stevens 1995; UNCTAD 1998, 2007b).

Apart from standards for foreign investments embedded in the governance structure of MNE-led global value chains, international rules for FDI are mainly put forward by state actors, as the above listing of international agreements indicates. However, "*once in force, the role played by non-state actors in the regime's enforcement mechanisms can be of greater significance than the role played by states*" (Schneidermann 2004, 68). IIAs notably grant foreign investors direct legal personality under international law (Peterson 2005, 8). Without being obliged to submit a claim to domestic courts, foreign investors may sue host countries directly before an international tribunal and thus limit their national legal sovereignty. Against the background of international investment agreement (IIA) texts drafted in an open and often vaguely manner, private actors play a significant, though indirect, role in setting rules for foreign investments through the interpretation in international arbitration.

BITs are defined by Vandevelde (2000, 469–70) as agreements that "*protect investments by investors of one state in the territory of another state by articulating substantive rules governing the host state's treatment of the investment and by establishing dispute resolution mechanisms applicable to alleged violations of those rules*". By concluding BITs, contracting parties aim at fostering economic cooperation amongst each other by stimulating favourable conditions for investments made by enterprises of one party in the territory of the other. The underlying logic of these agreements therefore proclaims that an introduction of minimum standards of protection will result in increasing investment flows and hence spur economic development processes in host as well as home countries.

Table 1: Elements of the global economic governance architecture for FDI

Level	Agreement	Legally binding	Coverage	Pre-establishment commitments	Absolute standard of treatment[a]	Relative standard of treatment MFN[b]	Relative standard of treatment NT[c]	Expropriation and compen-saion	Transfer of Funds	Dispute Settlement
Multilateral	GATS	X	Services	X	-	X	(X)	-	-	X
	TRIMs	X	Trade-related	-	X	X	-	-	-	X
	TRIPS	X	Related to intellectual poperty	-	X	X	X	-	-	X
Plurilateral	OECD CCM	X	All capital movements	X	X	X	-	-	X	-
	OECD DIIME	-	All investments	X	X	X	X	-	-	-
Regional	NAFTA	X	All investments	X	X	X	X	X	X	X
Bilateral	BIT (US model)	X	All investments		X	X	X	X	X	X
	BIT (European model)	X	All investments	-	X	X	(X)	X	X	X

Source: Own presentation based partly on Houde / Yannaca-Small (2004, Annex 3).

a Fair and equitable treatment
b Most-favoured nation treatment
c National treatment

A short review of the economic literature on the actual effectiveness of BITs, however, leads to an inconclusive picture. On the one side, authors like Hallward-Driemeier (2003) find little support for the argument that BITs increase FDI inflows. Instead, she argues, they can bite, reducing available policy spaces and exposing policy makers to liabilities caused by legal claims by foreign investors. Tobin / Rose-Ackermann (2005) argue that BITs encourage FDI only to a limited extent. Banga (2003) and Neumayer / Spess (2005) on the other hand find empirical evidence that a higher number of BITs raises FDI inflows. Apart from results of economic models it is safe to maintain that BITs entail economic and political gains as well as costs. They may promote FDI inflows and thus help to speed up development processes in the home as well as in the host economy. Another important rationale behind the conclusion of international economic agreements like BITs is the improvement of political relations. The increased diffusion of BITs can also lead to economic costs for host developing countries. Strong protection clauses and comprehensive investor-state dispute resolution provisions in modern BITs may result in a loss of national autonomy and reduced policy spaces to pursue independent national development strategies. The rapid diffusion of BITs also increases the complexity of policymaking in developing countries. Negotiating and administering BITs requires capacities that they may find hard to provide.

As legal instruments, BITs started to spread in the late 1950s with a first treaty being signed between Germany and Pakistan in 1959. During the 1960s and 1970s BITs were customarily signed between highly developed European countries and poorer developing countries in order to counter an increasingly hostile international investment environment (Vandevelde 1998, 386). The growth rate of BITs remained moderate until the mid-1980s, with roughly 20 treaties being signed each year. This changed at the end of the 1980s and during the 1990s, with more than 100 treaties being signed annually. This sharp increase had two main reasons: firstly, the decision of the United States at the beginning of the 1980s to adopt BITs as foreign investment protection devices resulted in a reversal of developing countries' previous hostility towards FDI (protection) in the 1980s (Vandevelde 1998); and secondly, the growing competition among developing countries to capture a share of global FDI flows (Elkins / Guzmán / Simmons 2006). BITs today are part of the policy package introduced by most developing countries to promote inward FDI.[7]

International law literature reflects the fact that BIT contents today show a considerable uniformity with regard to general provisions such as the absolute and relative standards of treatment, protection against expropriation, transfer of funds, compensation for losses caused by war and civil strife as well as dispute settlement procedures. This consistency has its roots in the fact that BITs are normally negotiated on the basis of two main model treaties: First, a European *admission model* that has found use by developed countries and developing countries, such as China, alike. The European model provides protection for investments only after admission of the foreign investment according to the host countries' domestic laws and regulations.[8] Second, a North American *pre-establishment model* is in use, applied mainly by the US from the 1980s onwards, by Canada from the mid

7 Apart from BITs, developing countries substantially removed national regulations against FDI during the last two decades (UNCTAD 2007a, 14–16).

8 The South-South BIT approach which is close to the European approach typically puts more emphasis on exceptions and so called *folk-in-the-road-clauses* (UNCTAD 2004, 224).

1990s onwards, and by Japan from the beginning of this century. This category of BIT goes well beyond the admission model's post-establishment protection of investments. It entails pre-establishment protection clauses that restrict screening powers of host states and therewith has been observed to lead to a liberalization of host countries' regulatory systems. In contrast to the European model, which accepts the right of host governments to regulate the entry of FDI, the North American model restricts the sovereignty of the host country in regulating FDI prior to the establishment of a FDI project (Gugler / Tomsik 2007; UNCTAD 2007b, 141). Apart from the fact that BITs normally address the same range of issues, they are increasingly becoming "*more sophisticated in content, clarifying in greater detail the meaning of certain standard clauses and procedural rules relating to dispute settlement*" (UNCTAD 2006, 26). The general protection level for foreign investments has grown over time. This leads critics of international investment rule-making to argue that capital-importing (developing) countries are structurally disadvantaged by these treaties which "undermine the ability of host governments to effectively regulate foreign direct investment (FDI) to support economic development" (Oxfam 2007, 22).

From a theoretical viewpoint, the main economic rationale behind BITs is to provide host countries with a commitment device in order to signal to international investors that their funds will not be expropriated once an investment has been carried out. In other words, BITs are used by capital-importing countries to reassure foreign investors that national rules on the liberalization and protection of FDI are credible. The expectations by MNEs concerning the nature of the FDI regulatory regime are central to the theory of foreign investment protection. According to game theory models, foreign investing enterprises face *holdup risks* that potentially reduce FDI inflows since foreign investments normally involve sunken capital that cannot be removed in the short run without considerable losses for MNEs (Markusen 2001, 289). Once an investment has been undertaken, the host country government may reverse laws and regulations that were in place at the moment the investment was negotiated in order to expropriate ex post rents from the MNE. Foreseeing such a reversal of the initial regulatory framework for investments, risk-averse MNEs shy at undertaking investments which leave both parties worse off. Host countries may therefore install a commitment mechanism and bind themselves not to expropriate ex post in order to attract more FDI (Markusen 2001, 289), thus locking in national reforms through BITs, reassuring foreign investors, and promoting FDI inflows.

BITs are concluded mainly between capital-exporting and capital-importing countries with differing expectations with regard to their purpose and benefits.[9] Capital-exporting countries negotiate BITs pro-actively in order to protect their national enterprises' foreign investments. For capital-importing countries, BITs serve as a means to attract FDI inasmuch as they commit themselves to respect the property and contractual rights of foreign investors. The actual protection level provided by these treaties is strongly linked to the outcome of the negotiation process between the contracting parties and, hence, the distribution of relative (economic) power between host and home countries. Traditionally, foreign investment flows originated predominantly in developed countries on a North-North and a North-South basis, with developing countries being in the weaker bargaining position as

9 There are almost no BITs between capital-exporting (developed) countries. Instead, North-North investment relations are governed by other international instruments (UNCTAD 2005a, 24).

host economies to FDI. Consequently, the latter tried to balance the impact of BITs in order to regulate incoming FDI and preserve national policy spaces.

These established patterns in international investment lawmaking have recently been challenged by shifting patterns of global investment flows. As will be shown in the subsequent section for the case of China, large developing countries are evolving as foreign investors in their own right. Their OFDI flows are mostly directed towards other developing countries on a South-South direction. This salient trend underlines anew the observation that rising developing countries are finding themselves in a new and complex situation which will challenge their traditionally cautious international investment policy approach. As capital-importers they will still have an interest in preserving safeguards in their BITs in order to support domestic development processes. As newly evolving capital-exporters, on the other hand, these countries will have to (re-)negotiate liberal BITs with other developing countries in order to protect the foreign investments of their own national enterprises. Developing countries with growing OFDI flows, therefore, will have to find a balanced international investment policy approach that will tend to be more liberal the stronger OFDI grows in relation to inward foreign direct investment (IFDI).

3 Growing overseas foreign direct investments from China

FDI originating in developing countries is not a new phenomenon. In fact, developing country enterprises already started investing abroad in the 1970s. Only in the early 1990s, however, did OFDI from developing countries increase substantially. OFDI flows amounted to US$ 3 billion in 1980, grew modestly to US$ 13 billion until 1990, rose to US$ 147 billion in 2000 and peaked at US$ 174 billion in 2006. Aggregated OFDI stocks from developing countries grew from US$ 145 billion by 1990, to US$ 858 billion in 2000 and added up to US$ 1600 billion in 2006, constituting nearly 13 per cent of total world stocks compared to 8 per cent in 1990 (UNCTAD 2006, 105–108; UNCTAD 2007a, 299–306).

Research on Chinese OFDI is still at its starting point. Since Chinese OFDI is a relatively new empirical phenomenon, several statistical problems call for caution with regard to their interpretation (Schüller / Turner 2005, 3). There are reasons to expect both underestimation as well as overestimation of actual Chinese OFDI. Chinese official data from the Ministry of Commerce (MOFCOM) traditionally reflects investments with official approval, which is required for initial investments only. However, actual OFDI flows are often carried out through private channels as well and thus remain uncounted in the official data available (Frost 2004, 5). Moreover, Aykut and Ratha (2004, 160–162) have pointed out that official statistics do not always include financing and reinvesting investments. Additionally, they tend to reflect mainly large investments to the neglect of smaller ones (Aykut / Goldstein 2006, 10). The empirical study by Wong and Chan (2003, 277) supports this view, estimating that unauthorised capital outflows between 1997 and 1999 accounted for US$ 53 billion. Round-tripping of Chinese OFDI, on the other hand, may lead to an overestimation of actual investment flows bearing in mind that it “refers to the domestic capital that has fled the home country and then flows back in the form of foreign direct investment” (Xiao 2004, 15). Thus, it leads to an inflation of OFDI statistics. Xiao (2004, 12) identifies two broad types of round-tripping FDI: First, it is used as a means of

escaping regulation and taking advantage of preferential treatment for foreign investments.[10] Second, it is used for value-added purposes in order to get better financial services by a listing in advanced stock markets. In the case of China, Hong Kong clearly plays an important role due to its close economic ties to mainland China, as expressed in the volume of bilateral investment flows. According to the already cited study by Xiao, Chinas round-tripping FDI is likely to amount to 40 per cent or be within the range of 30 to 50 per cent of reported flows. Another factor leading to an overassessment of Chinese statistics are OFDI to offshore financial centres like the Cayman Islands and British Virgin Islands which account for more than 52 per cent of outflows in 2005.

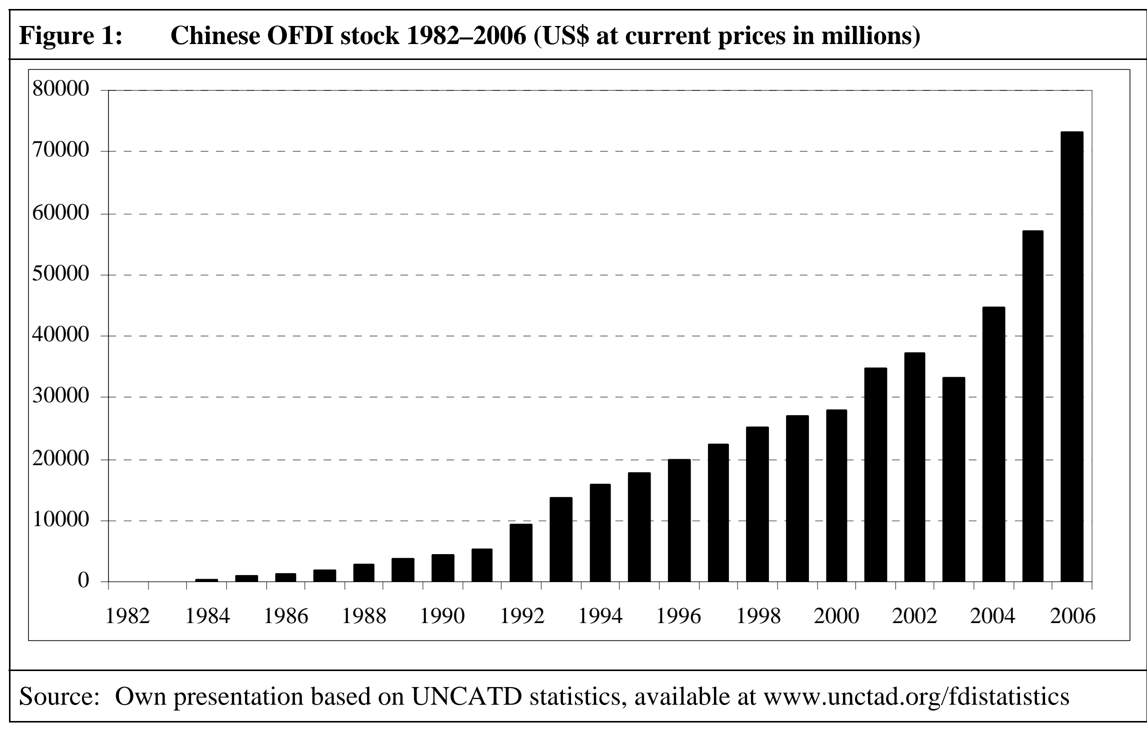
In order to give an overview of aggregated flows and stocks of Chinese OFDI and the Chinese OFDI/IFDI ratio on a regional basis, the analysis of Chinese OFDI in this section mainly employs data from UNCTAD. UNCTAD uses MOFCOM data, which was reported on an approval basis up to 2003 and reflects actual flows on a balance of payment basis from 2003 onwards. Due to the fact that UNCATD statistics do not provide data which is comprehensive enough for an illustration of the geographical distribution of Chinese OFDI,[11] MOFCOM data from the annually published China Commerce Yearbook was used instead. Both sources include non-trading FDI only and exclude data covering the financial sector.

Taking into account the inaccuracy and limited availability of data, it is nevertheless clear that China has become an important source country for OFDI. UNCTAD (2007a, 299–306) data suggests that China is currently the 7th largest foreign investor among developing countries in terms of stocks. Figure 1 indicates that accumulated OFDI stocks were marginal during the first half of the 1980s, but have since grown strongly and reached US$ 73 billion in 2006. The illustration of OFDI flows in Figure 2 supports this view. In order to avoid the usual strong volatility of OFDI flows on an annual basis, Figure 2 also entails a graph that shows OFDI flows on a three year average. OFDI flows grew particularly strongly in the first half of the 1990s, slowed down until 2000, and increased thereafter again. Especially noteworthy is the sharp increase of OFDI flows in 2005 (US$ 12 billion) and 2006 (US$ 16 billion). This listing of aggregated figures and the driving forces on the political and business level mentioned below give reason to presume that Chinese OFDI will grow more strongly in the years to come.

10 The proposed unified tax reform that was discussed in December 2006 would result in a harmonization of tax levels for domestic and foreign firms and might lead to a decline of the first type of round-tripping.

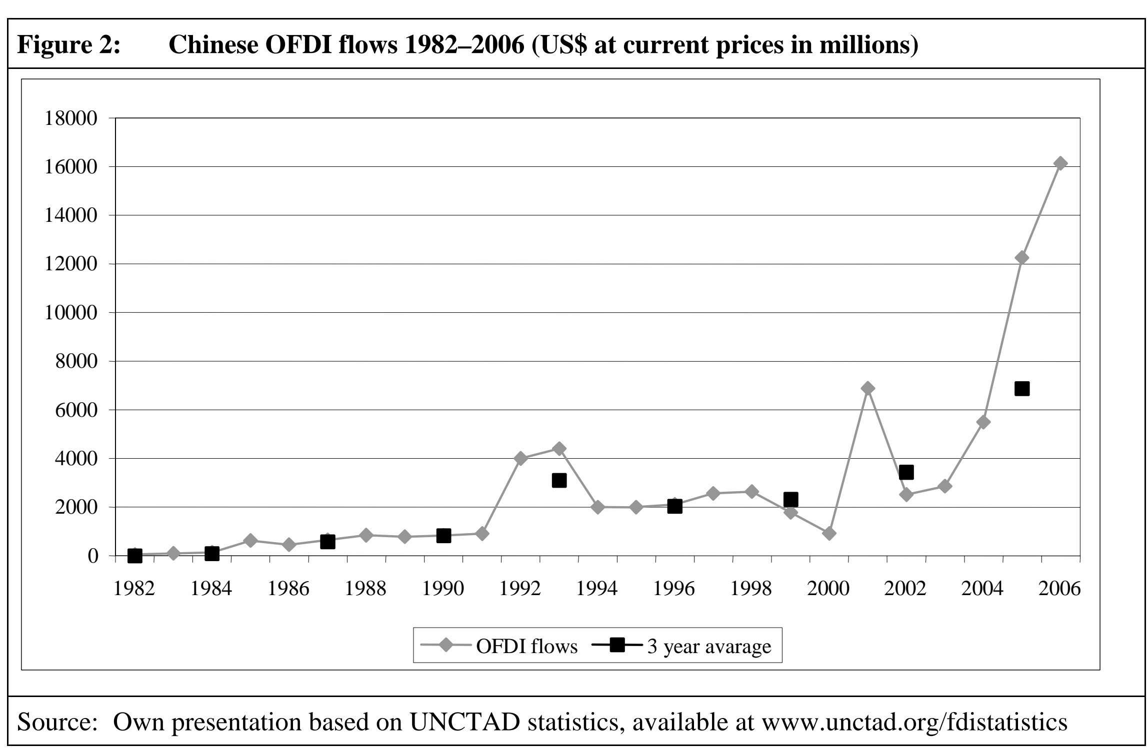
11 UNCTAD data provides no figures on flows for the years 1996–1998 and stocks between 1996–2001.

Figure 1: Chinese OFDI stock 1982–2006 (US$ at current prices in millions)



Source: Own presentation based on UNCATD statistics, available at www.unctad.org/fdistatistics

Figure 2: Chinese OFDI flows 1982–2006 (US$ at current prices in millions)



Source: Own presentation based on UNCTAD statistics, available at www.unctad.org/fdistatistics

The geographical distribution of Chinese OFDI flows has undergone a major shift since the beginning of the 1990s. Table 2 reveals that Chinese OFDI shifted from developed countries to developing countries in Asia and Latin America. With regard to developed countries alone, Chinese OFDI flows shifted from North America, which attracted nearly 50 per cent of all Chinese OFDI in the 1980s, to Europe which is currently the third most important host region and accounts for 15,2 per cent. With respect to developing countries, Asia and Latin America are attracting more than 70 per cent of all Chinese outflows. Equally noteworthy is the strong boost of Chinese OFDI in the 1990s towards the African continent, which was home to 24 per cent of all Chinese investments during 1997 and 2001. Between 2003 and 2005 Africa attracted US$ 882 million, ranking fourth even before North America. With regard to single countries, Table 3 shows that Hong Kong is the most important destination of Chinese OFDI. The Cayman Islands and the British Virgin Islands are ranked second and third, suggesting that large amounts of Chinese OFDI are going to offshore financial centres and flowing back to mainland China as round-tripping FDI or taking another direction towards third countries. The actual amount of such redirected OFDI, however, is hard to deduce from official statistics.[12] With regard to their sectoral distribution, Chinese OFDI are mainly conducted in the manufacturing, resource-seeking and the IT and software sectors.[13]

Apart from the strong growth of foreign investments by Chinese enterprises in absolute terms, OFDI is still subordinate in relation to IFDI into the Chinese economy. The growing importance of OFDI will therefore be exemplified here by a relative indicator, i.e. the OFDI/IFDI ratio. This ratio refers to what Dunning (1981, 30) has called a "*country's net international direct investment position*" which describes "the sum of the direct investment by its own enterprises outside its national boundaries minus the direct investment of foreign owned enterprises within its boundaries." The net international direct investment position is part of the Investment Development Path approach which describes the stages of development of an economy from a mere importer of FDI, to an exporter and eventually to a net exporter (Dunning 1981; on the approach see also Dunning 1986; Dunning / Narula 1996). Dunning's concept of the net international direct investment position will be modified, taking into account the fact that China is still enjoying rising inflows of FDI. Since inflows are growing stronger than outflows in absolute terms, China's net international direct investment position is growing negatively. This seems to indicate that China's role as a home country of global FDI is declining. Changing investment patterns are therefore better illustrated by using a relative measurement that is more appropriate to underline the growing importance of OFDI. For this reason the OFDI/IFDI ratio, i.e. the percentage of OFDI to IFDI, is employed in this analysis.

12 UNCTAD data show that Hong Kong, the Virgin Islands and the British Virgin Islands are ranked first, second and eighth as sources of inflows of FDI in 2005.

13 MOFCOM data for the year 2005 shows the following sectoral distribution of Chinese OFDI: manufacturing (30 %), resource-seeking (29.8 %), IT and software (27.3 %), business services (5.4 %), retail (3.4 %), communication (2.2 %) and others (5.4 %), cited in Lunding (2006, 2).

Table 2: China's OFDI flows[a] in the non-trade sector by region (in millions of US dollars and per cent)

	1979–1991		1992–1996		1997–2001		2003–2005[b]	
Ranking	**Region**	**Value (%)**	**Region**	**Value (%)**	**Region**	**Value (%)**	**Region**	**Value (%)**
1	North America	656 (47.3)	Asia	267 (35.6)	Asia	889 (38.9)	Asia	4879 (38.4)
2	Oceania	326 (23.5)	Latin America	148 (19.7)	Africa	552 (24.1)	Latin America	4112 (32.3)
3	Asia	218 (15.7)	Africa	122 (16.3)	Latin America	360 (15.7)	Europe	1935 (15.2)
4	Europe	82 (5.9)	Oceania	71 (9.5)	North America	228 (10.0)	Africa	882 (6.9)
5	Latin America	62 (4.5)	North America	67 (8.9)	Europe	188 (8.2)	North America	552 (4.3)
6	Africa	43 (3.1)	Europe	15 (2.0)	Oceania	70 (3.1)	Oceania	353 (2.8)
Total		**1386 (100)**		**750 (100)**		**2287 (100)**		**12713 (100)**

Source: MOFCOM, various years, Almanac of China's Foreign Economic Relations and Trade.

a OFDI are on an approved basis.

b Data for 2002 are not available at that time.

Table 3: China's OFDI flows[a] in the non-trade sector by country (in millions of US dollars and per cent)

	1979–1991		1992–1996		1997–2001		2003–2005[b]	
Ranking	**Country**	**Value (%)**	**Country**	**Value (%)**	**Country**	**Value (%)**	**Country**	**Value (%)**
1	Canada	360 (25.9)	Peru	120 (16.0)	Hong Kong	261 (11.4)	Hong Kong	2682 (17.9)
2	Australia	313 (22.6)	Hong Kong	113 (15.1)	USA	207 (9.1)	Cayman Islands	1692 (13.3)
3	USA	295 (21.3)	USA	57 (7.6)	Thailand	127 (5.5)	British Virgin Islands	1435 (11.3)
4	Hong Kong	99 (7.1)	Russia	47 (6.3)	Mexico	126 (5.5)	Korea	813 (6.4)
5	Russia	49 (3.5)	New Zealand	41 (5.5)	Zambia	124 (5.4)	Bermuda	771 (6.1)
6	Thailand	38 (2.7)	South Africa	38 (5.1)	Cambodia	101 (4.4)	Russia	769 (6.0)
7	Chile	21 (1.5)	Macao	28 (3.7)	Brazil	81 (3.5)	USA	469 (3.7)
8	Macao	16 (1.1)	Thailand	28 (3.7)	Peru	79 (3.4)	Denmark	462 (3.6)
9	Brazil	11 (0.8)	Cambodia	19 (2.5)	South Africa	73 (3.2)	Mongolia	323 (2.5)
10	Malaysia	10 (0.7)	Indonesia	18 (2.4)	Viet Nam	56 (2.4)	Australia	302 (2.4)

Source: MOFCOM, various years, Almanac of China's Foreign Economic Relations and Trade.

a OFDI are on an approved basis.

b Data for 2002 are not available at that time.

The available data shows that outflows from China grew more rapidly than inflows during the last few years, demonstrating that China's overall importance as a capital-exporting economy is evolving. This argument is supported by China's total OFDI/IFDI ratio which has been growing strongly – although from a low basis – since 2002 (Table 4).[14] In 2005 China's overall outflows accounted for 17 per cent of inflows only. Such limited OFDI in relation to IFDI in itself would not indicate a strong incentive for the Chinese government to change its cautious international investment policy approach in favour of a liberal approach to help protect outgoing FDI. The geographical breakdown of the Chinese OFDI/IFDI ratio helps to differentiate the picture in order to develop an understanding of liberal Chinese international investment policy-making. Accordingly, Table 4 shows that the OFDI/IFDI ratio towards developing countries is almost double the overall ratio and roughly six times higher than the ratio towards developed countries. This presentation of the relative distribution of reciprocal FDI flows suggests that China's interest in strong legal investment protection through BITs would be especially pronounced towards developing countries. The subsequent section 4 substantiates this assumption by analysing the Chinese strategic approach of OFDI promotion.

Several reasons suggest that Chinese OFDI will grow strongly in the future and will have an increasing influence on Chinese international investment policy making. The underlying rationale of expanding Chinese OFDI can be generally distinguished into two sets of strategic interests of the Chinese government. Although it has been argued that commercial interests have now become the main driving force behind Chinese OFDI (e.g. Cai 1999, 867), they cannot be considered without taking into account the continuing persistent interest and influence of the Chinese government.[15] With regard to business interests, growing OFDI by Chinese enterprises is a response to push factors on the domestic level and pull factors on the global economy level. Chinese enterprises face a growing competitive pressure on the domestic market especially after the WTO accession in 2001 and the need to relocate mature industries to lower wage economies (UNCTAD 2004, 25, 27). Pull factors are of growing importance, with Chinese MNEs taking advantage of the opportunities of the emerging global business environment. In contrast to the traditional perspective that attributes the internationalization of Western multinationals to a previous accumulation of competitive advantages (asset exploiting), recent business literature suggests that MNEs from emerging economies tend to internationalize in order to build up competitive advantages (asset augmentation) (e.g. Mathews 2002, 2006). As recent large M&As emphasize, this applies especially to Chinese enterprises.[16] They invest abroad in order to acquire scarce advanced technologies, brand names, distribution networks and managerial know-how (Lunding 2006, 4), and as Wang (2002, 202) argues, Chinese enterprises use OFDI frequently as a means to gain access to developed country markets that are often protected by trade barriers of regional blocs.

14 The increase of the OFDI/IFDI ratio from 2002 to 2003 may be due to a change in the methodology of OFDI data of UNCTAD from an "approval" (until 2002) to an "actual" basis (from 2003 onwards).

15 Wang (2002, 203–205) refers to this interconnectedness with the notion of OFDI „*motivations with Chinese characteristics*".

16 See Lunding (2006, 2) for a list of major mergers and acquisitions by Chinese enterprises.

Table 4: China's OFDI[a]/IFDI[b] ratio by region

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Total	0,084	0,018	0,003	0,002	0,003	-	-	-	0,015	0,014	0,015	0,019	0,053	0,091	0,169
Developed Countries	0,281	0,045	0,007	0,002	0,003	-	-	-	0,007	0,005	0,005	0,016	0,015	0,023	0,048
Europe	0,009	0,033	0,005	0,002	0,001	-	-	-	0,000	0,000	0,001	0,001	0,028	0,017	0,036
North America	0,940	0,030	0,008	0,003	0,006	-	-	-	0,018	0,011	0,012	0,025	0,012	0,027	0,075
Other	0,010	0,060	0,006	0,001	0,001	-	-	-	0,001	0,003	0,003	0,016	0,008	0,025	0,042
Developing Countries	0,006	0,009	0,003	0,002	0,003	-	-	-	0,013	0,009	0,014	0,017	0,073	0,121	0,273
Africa	0,000	2,447	0,378	1,944	0,862	-	-	-	0,216	0,299	-	-	-	-	-
Latin America*	1,035	0,543	0,169	0,005	0,014	-	-	-	0,054	0,009	0,006	0,002	0,156	0,201	0,589
Asia and Oceania	0,004	0,006	0,002	0,001	0,002	-	-	-	0,006	0,006	0,015	0,020	0,052	0,091	0,144
South-East Europe	21,802	2,532	0,168	0,080	0,004	-	-	-	1,062	1,311	-	-	-	-	-

Source: Own presentation based on UNCATD statistics, available at www.unctad.org/fdistatistics.

a OFDI flows data are on an "approval" basis until 2002 and an "actual" data from 2003 onwards. OFDI data between 1996 and 1998 is not available.

b IFDI data are on an "actual" basis. IFDI data for Africa and Latin America and the Caribbean is not available from 2001 onwards.

* And the Caribbean

In addition to these factors, Chinese multinationals rely on strong political support and incentives to invest abroad in strategic regions and sectors, especially in developing countries. Since the gradual liberalization process that began in the late 1970s the Chinese government has pursued an industrial policy that strongly supports its MNEs. Especially noteworthy in this context is the "Going Global" strategy aimed at the promotion of OFDI as a strategic policy tool. This will be described in more detail in the subsequent section. The most frequently cited reason of the Chinese government for supporting OFDI by Chinese (state-owned) enterprises is the growing dependency of the Chinese economy on a stable and increasing supply of energy and raw materials (e. g. Lunding 2006, 3–4). Another important driving force behind Chinese OFDI is found in the pressure created by escalating foreign currency reserves that amounted to US$ 1,531 billion in 2007 and are expected to grow to US$ 1,911 billion in 2008 and US$ 2,411 billion in 2008 (IMF 2008). These reserves are still predominantly held in US dollars and hence face high devaluation risks with increasing pressure to adjust the Chinese Renminbi against the US dollar. According to UNCTAD (2006, 55) the increasing amount of "China dollars" will make the promotion of Chinese OFDI imperative for a Chinese government in search of alternative uses for them. UNCTAD thus predicts a strong rise of Chinese OFDI, recalling that the rapid accumulation of foreign currencies in Japan in the 1980s led to a strong increase in Japanese OFDI. In this context China established a sovereign wealth fund (China Investment Company) in 2007 with US$ 200 billion of available investment capital (Jiang 2007).

4 The domestic regulatory framework for overseas foreign direct investment

Starting in 1978, the transformation of the Chinese economy from a centrally planned to a market-oriented one has led to a continuing deregulation of the Chinese OFDI regime and an increase of OFDI promotion activities. The gradual liberalization process of the regulatory regime for Chinese OFDI can be described using the four stage model presented by Wong and Chan (2003, 279–81): During the first stage (1979–85), Chinese authorities followed a restrictive policy towards overseas investments. State-owned as well as provincial and municipal enterprises under the guidance of the Ministry of Foreign Economic Relations and Trade MOFERT, the predecessor of MOFCOM) and the Commission for Foreign Economic Relations and Trade were the only actors allowed to undertake OFDI projects. Consequently, OFDI projects were small in number and size. The second phase (1986–91) brought first, cautious, liberalization steps that led to increasing OFDI flows. A directive by MOFERT expanded the scope of enterprises eligible for OFDI: both state-owned and private enterprises were allowed to apply for permission to establish subsidiaries under the condition that they provided sufficient capital, technical and operational know-how as well as a suitable foreign partner. The third stage (1992–97) saw further increasing OFDI flows. The Chinese government adapted its OFDI policy approach and initiated promotion activities such as seminars and workshops for Chinese enterprises on how to invest abroad. Due to an erosion of state-owned assets in the course of OFDI expansion, the Chinese government, however, introduced various regulations for stricter and more rigorous screening and monitoring processes. The fourth stage (since 1998) was characterized by the announcement and the subsequent implementation of the "Going Global" strategy. As Cai (2006, 626) states, the "Going Global" strategy marked the transition of the Chinese OFDI policy from *regulation* to *encouragement* of foreign investments. It was first announced in 1998 and was later embedded in the Tenth Five-Year Plan for National Economy and Social Development in 2001. It mainly refers to the foreign investment activities by Chinese enterprises and resulted in the emergence of an independent OFDI policy in China (Cai 2006, 627).[17]

The announcement of the "Going Global" strategy is widely acknowledged to have been a vital part of the opening process of the Chinese economy that reached a new stage with the accession of China to the WTO in 2001. The accelerated exposure of Chinese enterprises to the world market prompted the Chinese government to reconsider its traditionally strong influence and direct control over the business sector (Schüller / Turner 2005, 9). This strategy may also be considered as part of a Chinese industrial policy approach accompanying the Chinese "peaceful rise" foreign policy, a continuation of the international "peace and development" strategy formulated by Deng Xiaoping in the early 1980s. The stated purpose of this policy is to restore the century-long position of China as an influential international actor that peaked, according to Maddison (2004), in 1800 with China contributing 33 per cent to the global GDP (Garver 2005). In sharp contrast to Mao Zedong's confrontational foreign policy approach, Chinese leadership since Deng has emphasized the importance of China's integration into the world economy in order to support the domestic development process. The build-up of a number of global champions able to

17 The "Going Global" strategy refers also to overseas construction contracting and international service provision (UNCTAD 2006, 210).

compete on the global market has since been an explicit industrial policy goal reconfirmed by a "Going Global" strategy that states:

> *"In our world today economic competition between nations is in fact between each nation's large enterprises and enterprise groups. A nation's economic might is concentrated and manifested in the economic power and international competitiveness of its large enterprises and groups."*[18]

Apart from strengthening its national competitiveness through a number of Chinese enterprises, the current government gives priority to resource exploration projects that promote the export of domestic technologies, overseas research and development, and M&As which enhance the international competitiveness of Chinese enterprises and accelerate their foreign market presence (UNCTAD 2006, 210).

In this context the Chinese government's approval process for OFDI has been streamlined and decentralized in order to promote foreign investments by Chinese enterprises. The State Council has assigned most of its regulatory authority to MOFCOM and the local government level. It retains its authority as a final arbiter, but only with regard to investments that would have significant macroeconomic or foreign policy implications (Iyengar 2004). According to the 2004 "Decision of the State Council on Reforming the Investment System" the authority of approval rests with the central government for resource extraction projects whose investment volume exceeds US$ 30 million and for non-resource projects with an investment volume of more than US$ 10 million (UNCTAD 2007a, 54). For projects involving a lesser volume, the approval processes of provincial governments are to be applied; these are less comprehensive and complicated than the process applied by MOFCOM at the state level (Pamlin / Baijin 2007, 19). The role and influence of the Chinese government remain strong in guiding OFDI according to certain target regions and sectors (UNCTAD 2007a, 55), using the approval process to influence Chinese OFDI (Wang 2002, 194–6), and due to the corporate governance structure of state-owned enterprises.

The Chinese government has also introduced several incentives to promote Chinese OFDI in specific areas (UNCTAD 2007a, 54–6). Chinese enterprises are, for example, exempted from corporate income tax for five years after the beginning of an overseas operation. This income tax exemption continues to apply to Chinese enterprises operating in countries that have concluded double taxation treaties with China. In addition to central government tax incentives, some local governments also grant preferential treatment for foreign investing enterprises. Chinese enterprises are also entitled to apply for loans from commercial banks. Export credits are given to all Chinese enterprises exporting production equipment, technology know-how, parts and components, as well as raw and processed materials to their foreign affiliates. In October 2004 the National Development and Reform Commission (NDRC) and the Export-Import Bank of China (EIBC) jointly decided to provide credit support to special overseas investment projects. A Specific Credit Fund has been set up to support key overseas investment projects. In September 2005 NDRC and the Chinese Development Bank declared their provision of financial support for certain key investment projects encouraged by the Chinese government. The State Administration of Foreign Exchange (SAFE) decided in August 2005 to simplify administrative formalities

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18 Wu Banguo, Chinese State Council, August 1998, quoted in Nolan / Zhang (2002, 2).

for financial guarantees given by Chinese banks for overseas investing enterprises (Cai 2006, 629–30). In this context Iyengrar (2004) found that state-owned enterprises generally enjoy preferential treatment in the OFDI regulatory regime owing to the generous support of state-owned banks. China is still a country that exercises foreign exchange control but has relaxed existing restrictions in last years. A decision by SAFE in 2005 extended a pilot program allowing foreign investing enterprises to purchase foreign exchange up to US$ 3 billion without permission in the entire country and increased the threshold to US$ 5 billion (Cai 2006, 630). Furthermore, under certain conditions the Chinese government gives exports and imports of overseas investing enterprises and their affiliates preferential treatment. NDRC and the China Export and Credit Insurance Company (SINOSURE) established a preferential insurance rate for key overseas investment projects and simplified underwriting formalities (Cai 2006, 630).

5 China's bilateral investment treaty practise

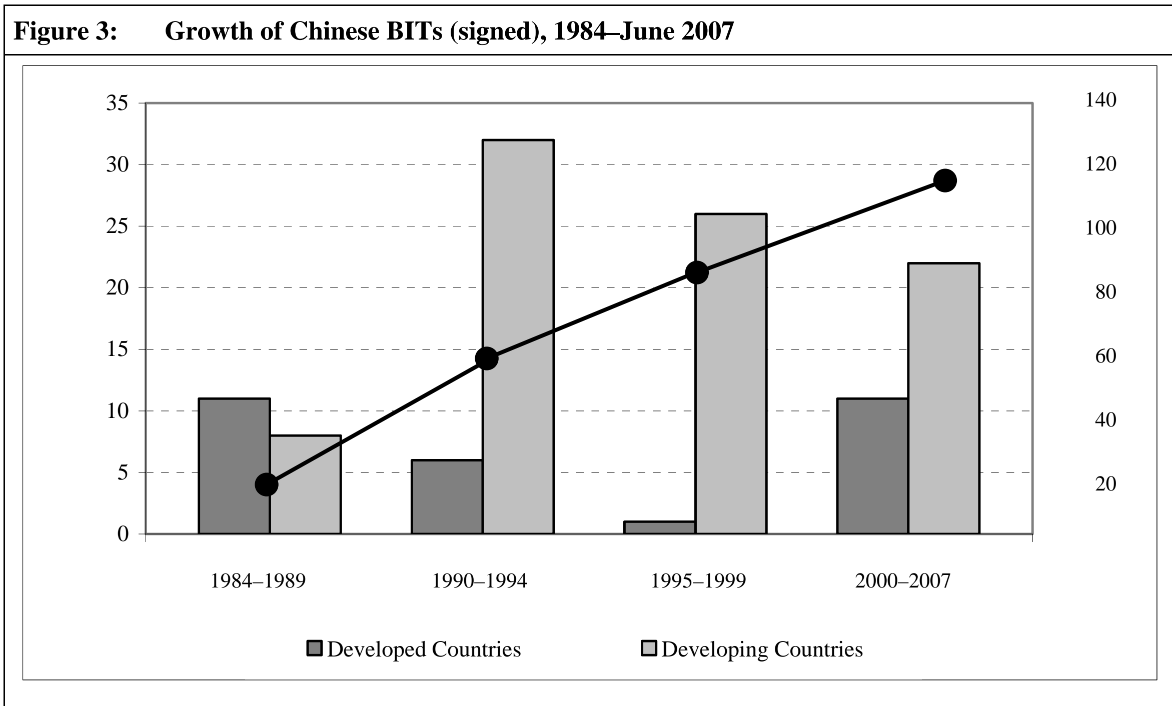
In addition to the aforementioned OFDI promotion measures which the Chinese government has introduced on the domestic level, China has also been very active in signing BITs. It negotiated its first BIT with Sweden in 1982 and since then had signed 120 treaties by June 2007, making China the second largest contracting party to BITs worldwide.[19] BITs are the most important legal instrument that China uses in order to protect IFDI and OFDI simultaneously. The growing number of BITs and the policy of gradual development from a restrictive to a liberal approach reflect both China's history as a capital-importing country and its recent growth rates in capital exports, mainly towards developing countries. The Chinese government is signing BITs with developed countries to promote IFDI and with developing countries in order to protect its growing OFDI. Figure 3 reveals a rapid increase in the number of Chinese BITs and a growing acceptance of international investment agreements as legal instruments for the protection of foreign direct investment since China's opening towards the world economy at the end of the 1970s. By June 2007, China had signed a total of 28 BITs with developed and another 92 BITs with developing countries.[20] Whereas China signed 11 BITs with developed countries in the second half of the 1980s and 8 with developing countries, this pattern has changed significantly since the early 1990s due to the growing importance of OFDI flows. Since then, China has signed far more BITs with developing than with developed countries. The growth in the number of Chinese BITs with developed countries since 2000 can be ascribed to the fact that these treaties are lately being renegotiated to replace BITs concluded in the 1980s. BITs generally contain a provision stating their termination after a certain period of time, usually 5 to 10 years, in order to keep investors at the status quo of international investment lawmaking (UNCTAD 2007b, 20).[21] Thus, devel-

19 Germany has signed 136 BITs until June 2007.

20 The differentiation of countries used in this paper has been adopted from the methodology used by UNCTAD in its current World Investment Report (UNCTAD 2007a). Accordingly, the term "developed countries" refers to North American countries, member states of the European Union, West-European countries and other developed countries like Israel, Australia, New Zealand and Japan. All other countries are pooled together under the term "developing countries". This simple classification is appropriate with regard to Sino-foreign BITs because developed countries are generally accountable for the majority of FDI flows worldwide and especially to China.

21 Chinese BITs usually provide that the treaty shall remain in force unless either contracting party expresses its will to terminate the agreement.

Figure 3: Growth of Chinese BITs (signed), 1984–June 2007



Source: Own presentation based on UNCATD IIA database, available athttp://www.unctad.org/Templates/Page.asp?intItemID=2344&lang=1.

Note: This figure shows the most recent BITs for the respective contracting partners. If there is a renegotiated BIT the figure does not entail the older BIT.

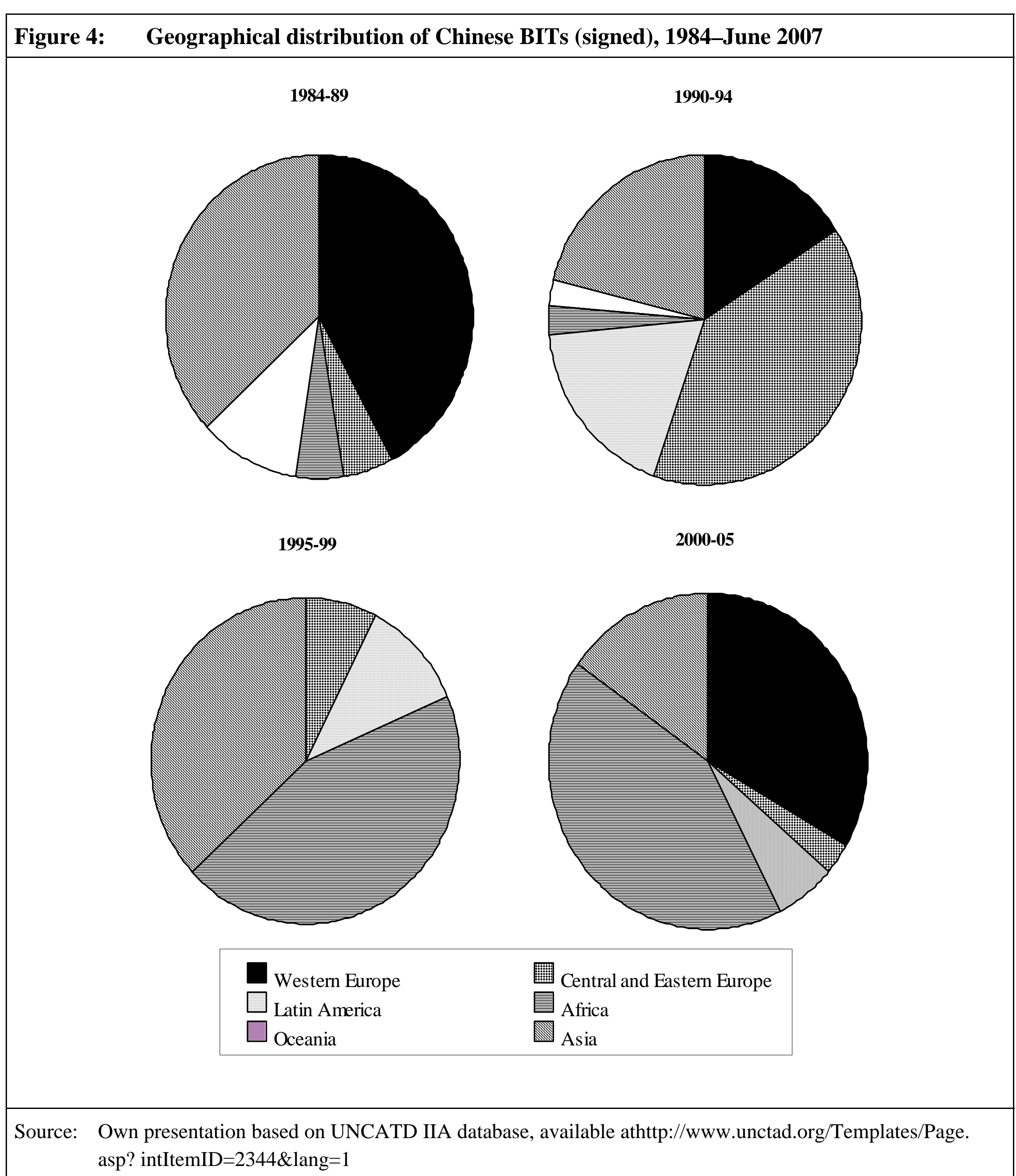
oped countries in recent years have increasingly demanded renegotiation of outdated treaties in order to adapt to new legal realities shaped by the conclusion of liberal Chinese BITs with developed countries. Figure 4 shows that the geographical distribution of Chinese BITs has changed significantly from the mid 1980s onwards. Between 1984 and 1989 roughly 40 per cent of the BITs signed were concluded with Asian and West European countries respectively. The first half of the 1990s then saw a growing importance of Latin American countries as contracting parties of Chinese BITs and the end of the Cold War with its demise of the Eastern Block led to a flood of new agreements with Central and Eastern European countries. In the second half of the 1990s China did not sign a single BIT with a Western European country. Instead, Africa became the most important Chinese partner region.

This trend has continued since 2000 and can generally be ascribed to the growing importance of Africa as a host region of Chinese resource extracting OFDI. China has signed no treaty with the US or Canada so far. The cautious Chinese attitude towards BITs including pre-establishment protection clauses leading to a liberalization of the domestic regulatory system for IFDI is regarded as a main reason behind this refusal. Current negotiations with Canada had initially been expected to be concluded by the end of 2007.[22] Although the US has expressed its wish to negotiate a BIT with China, there has been no progress on this issue so far.

Apart from the growth of the number of Chinese BITs, a content analysis of these agreements reveals a sharp policy change at the end of the 1990s towards a liberal approach,

22 Boscariol / Orlando (2006): Canada signs Bilateral Investment Treaty with Peru, India and China are next, available at: http://www.bilaterals.org/article.php3?id_article=6585.

Figure 4: Geographical distribution of Chinese BITs (signed), 1984–June 2007



Source: Own presentation based on UNCATD IIA database, available athttp://www.unctad.org/Templates/Page. asp? intItemID=2344&lang=1

with stronger investment protection expected to have a significant impact on the legal protection of FDI. Chinese BIT policy so far can be divided into three stages: During the first stage (1949–1981) China displayed a hostile approach towards foreign investors in accordance with the broader movement of the developing countries' attempt to establish a New International Economic Order. China's foreign policy then was shaped by the Five Principles of Peaceful Co-existence, incorporating "mutual respect for each other's sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence" (Kong 2003: 109). Applied to the area of investment protection, the Five Principles led to a policy that accentuated the sovereign right to control the entry of FDI, regulate foreign investors and nationalize foreign property without the obligation to compensation. Consequently, China signed no BIT until the first one with Sweden in 1982 (Kong 2003: 109). With the gradual opening up of

the Chinese economy after 1979, a second stage of Chinese BIT practice (1982-1998) set in, characterized by changing attitudes towards international investment policy-making and support for a cautious legal protection of FDI. The number of BITs grew substantially to a total of 80 by mid-1998. However, Chinese BIT practice until the late 1990s remained marked by a reluctance to imply strong investment protection. Table 5 on pages 24 and 25 shows the development of Chinese BITs provisions from the 1980s onwards. Until 1998 China signed BITs that contained serious reservations towards strong substantive as well as procedural protection of foreign investments, an investment policy approach generally representative for capital-importing countries. The overall effectiveness of FDI protection through Chinese BITs is to be rated as low. With regard to relative standards of treatment of foreign investors, China was reluctant to grant national treatment. Some BITs with developed countries included provisions on national treatment, however containing far-reaching qualifications limiting the effective protection of foreign investments. Apart from these treaties most BITs with developed and developing countries merely guaranteed most-favoured-nation treatment. China only warily granted foreign investors the right to international arbitration as a means to settle disputes over breaches of BIT-provisions. Earlier BITs at times had not even contained investor-state dispute resolution provisions. BITs including investor-state dispute resolution provisions before China signed the convention of the International Centre for Settlement of Investment Disputes (ICSID) on February 9 1990 limited them to disputes concerning the amount of compensation due in case of expropriation and nationalization. Other restrictions of international arbitration concerned provisions for first exhausting the potential of local remedies, the consent of both parties for dispute submission to an international tribunal, and the application of the host country's laws. These safeguards were meant to preserve sovereign rights in regulation of foreign investments (Chen 2006, 900).

The third stage, which began in 1998, has been marked by a gradual yet decisive shift towards stronger substantive and procedural protection of FDI. The first milestone to mark this stage was a BIT signed July 1998 between China and Barbados. Compared to BITs of the second stage, this agreement was the first to offer foreign investors unrestricted access to international arbitration under the rules of the ICSID or the United Nations Commission on International Trade Law (UNCITRAL). The only remaining restriction, namely the requirement to exhaust the new Administrative Review Procedure that is supposed to determine the proper and legal conduct of administrative agencies under Chinese law, does not involve court proceedings and has therefore a very limited restrictive capacity (Schill 2007, 17). The adoption of unrestricted access to international arbitration for foreign investors was notably first introduced in a number of new BITs with developing countries (Schill 2007, 18). It shows China behaving like a capital-exporting country, trying to increase the legal protection of its own foreign investments. The Chinese BIT with Botswana, signed in June 2000, includes a comprehensive investor-state dispute resolution mechanism and stronger provisions for compensation for losses due to war and civil strife. In addition to the regular most-favoured-nation clause this BIT grants foreign investors the same treatment as domestic investors in the case of war and civil strife. Apart from the treaty signed in 1988 with Australia, the first BIT to include up-to-date absolute standards of treatment of foreign investors was the Chinese BIT with Brunei signed in November 2000. It covered the general principles of fair and equitable treatment, full protection and security, and non-discrimination, without qualifying these provisions as older agreements had done before. The first Chinese BIT to grant foreign investors national treatment was concluded with Japan in 1988. National treatment provisions in the Sino-Japanese BIT are qualified by the requirement to refrain from national treatment for reasons of public order,

national security and sound development of the national economy. These qualifications allows for the opportunity to uphold discriminations against the operation of foreign investors (Schill 2007, 20). The award of unrestricted national treatment was introduced on a permanent basis in a BIT with the Netherlands in 2001. The provisions of the Sino-Dutch BIT were also adopted in Chinese BITs with Germany in 2003 and with Finland in 2004. With the exception of the BIT with Bosnia Herzegovina, China does not adopt an unrestricted national treatment clause in its BITs with developing countries. They generally entail national treatment provisions containing the qualification that national treatment is to be accorded to foreign investment without prejudice to domestic laws and regulations and thus grant less protection for FDI. The Chinese state-of-the-art investment protection is found in the 2004 treaty with Finland. In addition to strong absolute and relative standards of treatment, extensive provision of compensation for losses due to war and civil strive as well as comprehensive investor-state dispute resolution mechanisms, it also encloses an explicit ban of local content and export performance requirements.

The vertical (i.e. chronological) analysis of individual standard provisions of Chinese BITs in Table 3 reveals a gradual policy change towards stronger and more comprehensive investment protection in Chinese BITs. Renegotiated BITs with developed countries entail all standard provisions that are common to modern BIT practice worldwide. This shows that China has agreed to international standards of the legal protection of FDI and thus to the current liberal global governance regime for FDI.[23] This development in Chinese international investment policy occurs simultaneously with the global trend towards stronger and more comprehensive investment protection promoted by capital-exporting developed countries. However, the fact that China has introduced numerous innovations in BITs with developing countries first hints at a pro-active policy shift (Schill 2007, 17–18). This argument is supported by the fact that China since the early 1990s has continued to sign far more BITs on a South-South than on a North-South basis. This trend in Chinese international investment law making is consistent with the findings of Section 3, which showed that China's OFDI/IFDI ratio is favours developing countries over developed countries. Although China’s overall OFDI/IFDI ratio is still low due to high FDI inflows originating in developed countries, the Chinese government has currently begun negotiating BITs with developing countries from the position of a capital-exporter and insists on stronger protection of its own investments. An explanation for this development may be found in the high importance attached to OFDI in the “Going Global” strategy (Chen 2007, 782). It is no coincidence that the change in Chinese BIT policy overlapped in time with the announcement of this strategy. Discussions within the Chinese government reveal that growing OFDI flows have led to a strategic perception shift and to greater support for

23 This liberal BIT approach, however, has been discussed controversially among Chinese academics. Chen (2006 and 2007) calls for a break in the conclusion of liberal BITs with developed countries due to the fact that their provisions are not consistent with the principle of equality and mutual benefit as cited in the preamble of Chinese BITs. Instead, referring to Marxist and New International Economic Order reasoning, he argues that China should be aware of the fact that it is still in the position of a net capital-importing country in comparison to developed countries, and should refrain from accepting strong investor-state dispute resolution mechanisms. This, however, does mean that China should not conclude liberal BITs with developing countries in order to protect Chinese OFDI.

protection of Chinese investments abroad.[24] The Chinese government's evolving liberal BIT approach forms a contribution to the promotion and protection of OFDI by Chinese enterprises.

24 Anonymous interview with an expert of Chinese OFDI policy making.

Table 5: Effectiveness of Chinese BITs since 1984 with regard to investment protection and liberalization

Category[a]	Partner country	Date of signature	Admission of investment	Absolute standard of treatment	Relative standard of treatment	Expropria-tion and compen-sation	Transfer of funds	Compensa-tion for losses due to war	Settlement of investor-state disputes	Performance requirements
A	Finland	2004-11-15	2	3	3	2	2	3	3	3
A	Germany	2003-12-01	2	3	3	2	2	3	3	2
B	Djibouti	2003-08-18	2	3	2	2	2	3	3	2
B	Guyana	2003-03-27	2	3	2	2	2	3	3	2
B	Côte d'Ivoire	2002-09-02	2	3	2	2	2	3	3	2
B	Trinidad	2002-07-22	2	3	2	2	2	3	3	2
B	Bosnia	2002-06-02	2	3	3	2	3	3	3	2
A	Netherlands	2001-11-26	2	3	3	2	2	3	3	2
B	Jordan	2001-11-15	2	3	2	2	2	3	3	2
B	Brunei	2000-11-07	2	3	1	2	2	3	3	2
B	Iran	2000-07-22	2	2	2	2	2	3	2	2
B	Botswana	2000-06-12	2	2	2	2	2	3	3	2
B	Bahrain	1999-06-17	2	2	1	2	2	2	1	2
B	Qatar	1999-04-09	2	2	1	2	2	2	1	2
B	Barbados	1998-07-20	2	2	1	2	2	2	3	2
B	Ethiopia	1998-05-11	2	2	1	2	2	2	1	2
B	Cambodia	1996-07-19	2	2	1	2	2	2	1	1
B	Lebanon	1996-06-13	2	2	1	2	3	2	1	2
B	Cuba	1995-04-24	2	2	1	2	2	2	1	2
B	Indonesia	1994-11-18	2	2	1	2	2	2	1	2
B	Jamaica	1994-10-26	2	2	1	2	2	2	1	2
B	Romania	1994-07-12	2	2	1	2	2	2	2	2
B	Peru	1994-06-09	2	2	1	2	2	2	1	2
B	Egypt	1994-04-21	2	2	1	2	2	2	1	1
A	Iceland	1994-03-31	2	2	2	2	2	2	1	2
B	Chile	1994-03-23	2	2	1	2	2	2	1	2
B	Uruguay	1993-12-02	2	2	1	2	2	2	1	2

A	Lithuania	1993-11-08	2	2	1	2	2	2	1	2
A	Slovenia	1993-09-13	2	2	2	2	2	2	1	2
A	Estonia	1993-09-02	2	2	1	2	2	2	1	2
B	Croatia	1993-06-07	2	2	1	2	2	2	1	2
B	Georgia	1993-06-03	2	2	1	2	2	2	1	2
B	Albania	1993-02-13	2	2	1	2	2	2	1	2
B	Laos	1993-01-31	2	2	1	2	2	2	1	2
B	Vietnam	1992-12-02	2	2	1	2	2	2	1	2
B	Argentina	1992-11-05	2	2	1	2	2	2	1	2
B	Philippines	1992-07-20	2	2	1	2	2	2	2	2
A	Greece	1992-06-25	2	2	1	2	2	2	2	2
B	Bolivia	1992-05-08	2	2	1	2	2	2	1	2
B	Mongolia	1991-08-25	2	2	1	2	2	2	1	2
A	Hungary	1991-05-29	2	2	1	2	2	2	1	2
B	Turkey	1990-11-13	2	1	1	2	2	2	1	1
B	Ghana	1989-10-12	2	2	1	2	2	2	1	2
B	Bulgaria	1989-06-27	2	2	1	2	2	2	1	2
B	Pakistan	1989-02-12	2	2	1	2	2	2	1	2
A	New Zealand	1988-11-22	2	2	1	2	2	2	1	2
A	Japan	1988-08-27	2	2	3	2	2	2	1	2
A	Australia	1988-07-11	2	1	1	2	2	2	2	2
A	Poland	1988-06-07	2	2	1	2	2	2	1	1
A	UK	1986-05-15	2	2	2	2	1	2	2	1
B	Sri Lanka	1986-03-13	2	2	1	2	2	2	1	2
B	Kuwait	1985-11-23	2	1	1	2	2	2	1	2
B	Singapore	1985-11-21	2	2	1	2	2	2	1	2
A	Austria	1985-09-12	2	2	1	2	2	2	1	2
A	Denmark	1985-04-29	2	2	1	2	2	2	1	1
B	Thailand	1985-03-12	2	1	1	2	2	2	1	1
A	Norway	1984-11-21	2	1	1	2	3	2	1	1

Source: Author

[a] Category: A = Chinese BITs with developed countries; B = Chinese BITs with developing countries

High = 3	Medium = 2	Low = 1

6 Conclusion

China has pro-actively undertaken a decisive policy shift towards the conclusion of liberal BITs with developing countries since the end of the 1990s. The (re-)negotiation of older BITs demanded by developed countries is regarded as a mere consequence of this change. China moved away from its traditionally cautious approach towards international investment policymaking that was characterized by several exceptions and safeguards against strong substantive and procedural investment protection. Today it concludes rules comparable to those of global BIT practice set by developed countries.

Although outflows of FDI have increased strongly relative to inflows during the last years, the change in Chinese BIT policy-making is counterintuitive given the fact that China is still a net capital-importing country and will remain so in the near future due to strong FDI inflows from developed countries. In order to explain a liberal international investment approach against the backdrop of an overall net capital-importing position, the present paper has analysed the patterns of the OFDI/IFDI ratio – i.e. the importance of outflows relative to inflows of FDI – on a regional basis. In this respect the paper finds that China's OFDI/IFDI ratio towards developing countries is roughly six times higher than that towards developed countries. This breakdown of investment patterns helps to explain the gradual development of China's BIT policy towards a liberal approach that is representative for capital-exporting countries even before China has actually become a net capital-exporting country.

Examining a representative sample of Chinese BITs, this study revealed that the policy change was a pro-active decision of the Chinese government that coincided with its strategic decision to promote outward investments through its "Going Gobal" strategy at the end of the 1990s. In addition to OFDI promotion measures at the domestic level China also introduced a liberal BIT policy approach that incorporates, among other things, comprehensive dispute resolution mechanisms, strong provisions for compensation for losses in the case of war and civil strife and far-reaching absolute and relative standards of treatment of foreign investors. On balance, Chinese BITs with developed countries provide for slightly higher levels of investment protection than Chinese BITs with developing countries. The latter generally do not entail comprehensive national treatment clauses.

With respect to Ikenberry's initially cited question on the nature of China's international policies, the present study finds that the Chinese government has adopted a complementary rather than a competitive approach in the field of global FDI governance. In the words of Ikenberry, China is not overthrowing the existing order of FDI governance but has rather become part of it. Of course, it is still too early to predict how Chinese companies will make use of this liberal regulatory framework through international arbitration which is essential for putting BIT provision in concrete terms. However, the alignment of Chinese and Western BIT policies with regard to codified norms and rules of FDI protection will have profound consequences for developed and developing countries and, of course, for China itself.

Although China has been a strong proponent of international investment policy-making with regard to the number of signed BITs, it still pursued a largely passive approach aimed at attracting FDI inflows from developed countries throughout the 1980s and 1990s. The adoption of liberal investment policies designed to protect Chinese foreign investments

has been a necessary precondition for the characterization of China as a significant global player of global FDI governance. Due to the reciprocal nature of BIT provisions this policy shift, first of all, will have consequences for China itself through the levelling of the playing field for international investors. It will lead to an increased exposure of domestic enterprises to the competition of MNEs. Foreign investors from countries that concluded BITs with China from 1998 onwards[25] will be treated much like domestic investors and will thus be given the right to take legal action against breaches of the treaty before independent international arbitration bodies. This new policy is bound to contribute to the opening up of the Chinese economy and its accession to the WTO and will integrate China further into the world economy.

Secondly, due to the reciprocal nature of BITs, the playing field for regulatory FDI regimes will be also levelled in developed and developing countries. This points to a new development in China's international economic policy that traditionally embraces the notion of respect for the principle of sovereignty. Demanding far-reaching protection for growing Chinese foreign investments and an unrestricted right to use international arbitration may limit the ability of respective partner countries to regulate foreign investments in accordance with national policy goals. Developing countries in particular are facing a reduction of their policy space, already limited by BITs with developed countries. The study's qualitative content analysis thus, reveals that China's BIT policy contradict the widespread rhetoric, often based only on the number of agreements, of a mutually beneficial South-South cooperation amongst developing countries. In essence, China's BIT approach is similar to the approach of OECD countries which has been criticized by developing countries and NGOs for overemphasizing foreign investors' rights.

Thirdly, the emerging congruence of China's and developed countries' investment policies at the bilateral level gives rise to the possibility of enhanced cooperation between both on the international level. Although conflicting perspectives on contents of multilateral investment rules continue to exist between large developing countries and developed countries (as well as amongst developed countries, too), innovative policy dialogues like the Heiligendamm Process between established G8 countries and emerging countries may be a first starting point for the development of common rules and norms aimed at preventing the likelihood of a turbulent multilateralism in the field of global FDI governance.

25 Even foreign investors from countries that concluded older and hence more restrictive BITs with China can benefit from the more comprehensive national treatment clause in the newer BITs. All Chinese BITs include a most-favoured-nation provision aimed at treating all foreign investors equally. All investors will thus benefit from the comprehensive national treatment provision in the new Chinese BITs (Schill 2007, 25).

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Appendix

Appendix A: Definition and grading of criteria provisions (used in Table 3)

Admission of investment: With regard to the admission of FDI, two basic models are currently in use worldwide. While the *admission model* makes the admission and establishment subject to the domestic laws of the host country, the other model grants foreign investors a *right of establishment*. Analysing the effectiveness of Chinese BITs, the first model's usefulness was rated only "medium" since it protects investments that are in accordance with the regulations of the host country. The usefulness of the second model was valued as "high" due to the fact that it goes beyond the first model, liberalizing the host country's IFDI regime and enhancing the market access of international investors.

Absolute standard of treatment: Absolute standards are non-contingent and establish a standard of treatment of an investment without referring to the manner in which other investments are treated. Absolute standards of treatment require *fair and equitable treatment*, *full protection and security* and *non-discrimination* of foreign investors. Chinese BITs granting only fair and equitable treatment were valued as "low". BITs including additional full protection and security or non-discrimination provisions were valued as "medium". BITs containing all three provisions but limiting their validity by qualifying them were also valued "medium". Chinese BITs that refer to all three provisions without qualifications were valued as "high".

Relative standard of treatment: Relative standards define the treatment of investments referring to the treatment of other investments. National treatment and most-favoured-nation treatments contain the most important relative standard provisions. National treatment refers to provisions granting foreign investors treatment no less favourable than the treatment granted to investments of domestic investors. Most-favoured-nation treatment provisions assure investors of one contracting party that they shall not be treated less favourable by the other contracting party investors of third countries. Chinese BITs including most-favoured-nation treatment were valued "low". BITs containing additional national treatment provisions but qualifying them (e.g. national treatment subject to national law) were valued as "medium". Chinese BITs including both relative standards were valued as "high".

Expropriation and Compensation: Most Chinese BITs state four conditions justifying lawful expropriation, namely public purpose, due process of law, non-discrimination and payment of compensation. A great number of Chinese BITs state that compensation shall be equivalent to the value of an investment immediately before its expropriation or its threatened expropriation has become publicly known. Provisions in Chinese BITs treating expropriation and compensation are fairly uniform. A slight change that justifies a grading is found in the *due process* concept that is to be respected by a contracting party when undertaking an expropriation. BITs generally refer to the principle of legality, either by requiring that expropriation procedures comply with domestic legislation or by granting the foreign investor with the right of an independent review of an expropriation which is expected to be fairer. Chinese BITs were valued "medium" if they granted the first and "high" if they contained the latter requirement.

Transfer of Funds: Transfer provisions are particularly important to foreign investors seeking to guarantee the proper operation of their investments. Regulation of capital flows is usually of interest for developing countries. BIT texts generally state that transfers are to

be made without delay in a freely convertible currency and at a specified rate of exchange. Furthermore, BITs typically require the transfer of funds to be conducted according to domestic laws and regulations. Some BITs grant the right to transfer fund out of the host country only; they were valued “low”. Other BITs explicitly or implicitly allow inbound and outbound transfers of funds; they were valued “medium”. A third group of BITs additionally require that transfers be conducted in accordance to most-favoured-national treatment instead just in accordance with national laws and regulations of the host country; they were valued “high”.

War and civil disturbance: BITs usually include provisions concerning the situation that foreign investments are damaged as a result of war or civil strife. Standard protection granted by BITs in case of damages caused by war of civil strife varies. Significantly few BITs do not address the issue at all; they were valued “low”. A second group of BITs grants most-favoured-nation treatment stating that the host country does not have to pay compensation to foreign investors, even if the country does provide compensation to its own nationals; they were valued “medium”. A third group of BITs also provides national treatment in addition to most-favoured-nation treatment; they were valued “high”.

Settlement of investor-state disputes: Investor-state dispute settlement provisions are common features of recent BITs. They increase the level of certainty for foreign investors regarding the host country’s business environment. Allowing foreign investors to directly defend their rights without having to depend on diplomatic protection of their home countries. Most BITs allow for international investment arbitration, often using ICSID (and/or UNCITRAL) rules. Chinese BITs excluding investor-state dispute resolutions or the possibility of using international investment arbitration only for limited purposes like expropriation and nationalization were valued “low”. Chinese BITs accepting a broader coverage of international arbitration but including serious restrictions on the scope and procedure of ICSID arbitration, e.g., the exhaustion of local remedies or the consent of both parties and/or application of the host country laws, were valued “medium”. Chinese BITs containing dispute settlement procedures which allow foreign investors to take any dispute directly to international arbitration following a mandatory six-month waiting period were valued “high”. In some cases, the BIT text requires that all resources of China’s new Administrative Review Procedures be exhausted. Schill (2007) states that this administrative review mechanism has the aim of determining whether the conduct of the administrative agencies was legal and appropriate under Chinese law. It does not involve court proceedings and is therefore a weaker regulation than the provision for exhausting local remedies. The corresponding dispute settlement procedures were, nevertheless, given a "high" value.

Performance requirements: Performance requirements are conditions imposed by the host country on foreign investors; they are aimed at influencing the location and character of investments as well as the distribution of costs and benefits between the host country and foreign investors. Chinese BITs without any direct or indirect provision on performance requirements were valued “low”. BITs that include provisions concerning the application of other rules (such as the WTO Agreement on TRIMs) were valued “medium”. Those Chinese BITs explicitly referring to the restriction of performance requirements were valued “high”.

Appendix B: Chinese bilateral investment treaties, 1982 – June 1 2007

No.	Partner country	Date of Signature	Availability
1	France	30.05.1984	Not available in English
2	**Norway**	**21.11.1984**	**Available**
3	**Singapore**	**21.11.1985**	**Available**
4	**Thailand**	**12.03.1985**	**Available**
5	**Kuwait**	**23.11.1985**	**Available**
6	**Austria**	**12.09.1985**	**Available**
7	**Denmark**	**29.04.1985**	**Available**
8	Italy	28.01.1985	Not available in English
9	**Sri Lanka**	**13.03.1986**	**Available**
10	Switzerland	12.11.1986	Not available in English
11	**United Kingdom**	**15.05.1986**	**Available**
12	**Japan**	**27.08.1988**	**Available**
13	**New Zealand**	**22.11.1988**	**Available**
14	Malaysia	21.11.1988	Not available
15	**Poland**	**07.06.1988**	**Available**
16	**Australia**	**11.071988**	**Available**
17	**Ghana**	**12.10.1989**	**Available**
18	**Bulgaria**	**27.06.1989**	**Available**
19	**Pakistan**	**12.02.1989**	**Available**
20	Russian Federation	21.07.1990	Not available
21	**Turkey**	**13.11.1990**	**Available**
22	**Mongolia**	**25.08.1991**	**Available**
23	Papua New Guinea	12.04.1991	Not available
24	**Hungary**	**29.05.1991**	**Available**
25	Armenia	04.07.1992	Not available

26	Kazakhstan	10.08.1992	Not available
27	Kyrgyzstan	14.05.1992	Not available
28	Moldova, Republic	06.11.1992	Not available
29	Turkmenistan	21.11.1992	Not available
30	Ukraine	31.10.1992	Not available
31	Uzbekistan	13.03.1992	Not available
32	Korea, Republic of	30.09.1992	Not available
33	**Argentina**	**05.11.1992**	**Available**
34	**Bolivia**	**08.05.1992**	**Available**
35	**Philippines**	**20.07.1992**	**Available**
36	**Vietnam**	**02.12.1992**	**Available**
37	**Greece**	**25.06.1992**	**Available**
38	**Albania**	**13.02.1993**	**Available**
39	Belarus	11.01.1993	Not available
40	**Croatia**	**07.06.1993**	**Available**
41	**Georgia**	**03.06.1993**	**Available**
42	Tajikistan	09.03.1993	Not available
43	**Uruguay**	**02.12.1993**	**Available**
44	**Lao People's Democratic Republic**	**31.01.1993**	**Available**
45	United Arab Emirates	01.07.1993	Not available
46	**Estonia**	**02.09.1993**	**Available**
47	**Lithuania**	**08.11.1993**	**Available**
48	**Slovenia**	**13.09.1993**	**Available**
49	**Egypt**	**21.04.1994**	**Available**
50	Azerbaijan	08.03.1994	Not available
51	**Romania**	**12.07.1994**	**Available**

No.	Partner country	Date of Signature	Availability
52	**Chile**	**23.03.1994**	**Available**
53	Ecuador	21.03.1994	Not available in English
54	**Jamaica**	**26.10.1994**	**Available**
55	**Peru**	**09.06.1994**	**Available**
56	**Indonesia**	**18.11.1994**	**Available**
57	**Iceland**	**31.03.1994**	**Available**
58	Morocco	27.03.1995	Not available in English
59	Serbia and Montenegro	18.12.1995	Not available
60	**Cuba**	**24.04.1995**	**Available**
61	Israel	10.04.1995	Not available
62	Oman	18.03.1995	Not available
63	Algeria	17.10.1996	Not available
64	Mauritius	04.05.1996	Not available
65	Zambia	21.06.1996	Not available
66	Zimbabwe	21.05.1996	Not available
67	Bangladesh	12.09.1996	Not available
68	**Cambodia**	**19.07.1996**	**Available**
69	**Lebanon**	**13.06.1996**	**Available**
70	Saudi Arabia	29.02.1996	Not available
71	Syrian Arab Republic	09.12.1996	Not available
72	Cameroon	10.05.1997	Not available in English
73	Congo, Democratic Republic of	18.12.1997	Not available
74	Gabon	09.05.1997	Not available
75	South Africa	30.12.1997	Not available
76	Sudan	30.05.1997	Not available
77	Macedonia,	09.06.1997	Not available

78	Yemen	16.02.1998	Not available
79	Cape Verde	21.04.1998	Not available
80	**Ethiopia**	**11.05.1998**	**Available**
81	**Barbados**	**20.07.1998**	**Available**
82	Belize	16.01.1999	Not available
83	**Bahrain**	**17.06.1999**	**Available**
84	**Qatar**	**09.04.1999**	**Available**
85	**Botswana**	**12.06.2000**	**Available**
86	Congo	20.03.2000	Not available
87	**Brunei Darussalam**	**17.11.2000**	**Available**
88	**Iran, Islamic Republic of**	**22.07.2000**	**Available**
89	Kenya	16.07.2001	Not available
90	Mozambique	10.07.2001	Not available
91	Nigeria	27.08.2001	Not available
92	Sierra Leone	16.05.2001	Not available
93	Myanmar	12.12.2001	Not available
94	**Jordan**	**15.11.2001**	**Available**
95	Cyprus	17.01.2001	Not available
96	**Netherlands**	**26.11.2001**	**Available**
97	**Côte d'Ivoire**	**23.09.2002**	**Available**
98	**Bosnia and Herzigovina**	**26.06.2002**	**Available**
99	**Trinidad and Tobago**	**22.07.2002**	**Available**
100	**Djibouti**	**18.08.2003**	**Available**
101	**Guyana**	**27.03.2003**	**Available**
102	**Germany**	**01.12.2003**	**Available**
103	Benin	18.02.2004	Not available
104	Tunisia	21.06.2004	Not available
105	Uganda	27.05.2004	Not available

No.	Partner country	Date of Signature	Availability
106	**Finland**	**15.11.2004**	**Available**
107	Latvia	15.04.2004	Not available
108	Sweden	27.09.2004	Not available
109	Equatorial Guinea	20.10.2005	Not available
110	Guinea	18.11.2005	Not available
111	Madagascar	21.11.2005	Not available in English
112	Korea, Democratic People's Republic of	22.03.2005	Not available
113	Belgium and Luxembourg	06.06.2005	Not available
114	Czech Republic	08.12 2005	Not available
115	Portugal	09.12.2005	Not available in English
116	Slovakia	07.12.2005	Not available
117	Spain	14.11.2005	Not available in English
118	Namibia	17.11.2005	Not available
119	Vanuatu	07.04.2006	Not available
120	India	21.11.2006	Not available

Source: UNCTAD Investment Instruments Online database

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