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Growing outflows of technology-driven foreign direct investment from emerging economies and the implications for the international investment regime

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Abstract: Drawing on expert interviews and secondary sources, this paper examines the implications of increasing outflows of technology-driven foreign direct investment (FDI) from emerging economies for the international investment regime. We focus on this issue from two angles: i) the possible changes in the international investment regime that are being driven by industrialised host countries as a reaction to increasing incoming FDI from emerging economies; and ii) the possible shifts in emerging economies' policy stance on the international investment regime as a result of their growing role as home countries of FDI and the increasing clout of emerging multinationals. In relation to both angles we look at the specific implications for the international rules governing investment of growing outflows of FDI from emerging economies that are technology-driven. Our analysis of the existing evidence suggests that the growing flows of FDI and TFDI from emerging economies may be triggering changes in policy stances of both industrialized host countries and emerging home countries as regards international investment rules. This raises a number of interesting research questions to be further examined.

1 Introduction

Developing and emerging economies are increasingly important not only as recipients of foreign direct investment (FDI), but also as providers of outward FDI. Outflows of FDI from developing and transition economies corresponded to 29 per cent of global FDI outflows in 2010, reaching $388 billion in 2010 and increasing by 21 per cent over the 2009 levels (UNCTAD 2011). By 2010, the top-20 investors included six developing and transition economies (UNCTAD 2011). Investments originating in South, East and South-East Asia and Latin America accounted for most of the growth in outflows of foreign direct investment (OFDI) from emerging economies and the largest share of such investment, around 70 per cent, went to other developing economies (UNCTAD 2011). An important share of OFDI from emerging economies consists of technology-driven investments, involving both brownfield and greenfield projects, which were mostly directed towards developed countries (UNCTAD 2005a; 2005b).

As a result of these remarkable trends, a growing body of literature has been accumulated dealing with the increase of the outflows of FDI from emerging economies and the rise of multinationals from those countries. From a conceptual perspective the main directions of research include the application of the existing theories on multinationals (MNCs) and FDI to analyse the experiences from developing and emerging economies (e.g. Dunning 2006; Erdener and Shapiro 2005) or alternatively the development of conceptual frameworks that reflect the specific realities of emerging and developing countries (e.g. Matthews 2002; 2006). Existing empirical studies have focused on the

sources of competitive advantages of emerging multinational corporations (MNCs) (e.g. Hwang 2003; Goldstein 2005; Child and Rodriguez 2005), the drivers, motivations and strategies of internationalisation (e.g. UNCTAD 2006b; Deng 2004; Child and Rodriguez 2005), and the impacts in home countries (e.g. Mathews 2002; UNCTAD 2005a; Pangarkar 2003; Chen and Chang 2005).

This new configuration of technology-driven FDI flows involving MNCs from emerging economies may have fundamental consequences for the global political economy. Anecdotal evidence indicates that the increasing inflows of FDI from emerging countries may be leading to restrictive regulatory changes in advanced host economies and, in turn, to shifts in the international investment regime. There have been highly publicized cases of mergers and acquisitions (M&As) by MNCs from emerging economies being blocked by industrial host countries. Besides, discussions in the popular literature, the media and policy circles, notably in the US, have contributed to fuel concerns in advanced countries about the detrimental effects of such incoming investment for the host country. In this context, the wider consequences of growing FDI flows from emerging into industrialised economies for the global investment climate and the evolving set of rules governing investment at the global level emerges as an important question. Yet, there is a remarkable absence of thorough academic research on the topic. The question of whether and how the increasing outflows of FDI from emerging countries is impacting on the international investment regime has received only limited attention, whereas the possible implications of technology-driven OFDI from emerging economies have been largely ignored.

Drawing on expert interviews and secondary sources, in this paper, we examine the implications of increasing outflows of technology-driven FDI from emerging economies for the international investment regime with the objective of identifying relevant research questions. This paper tackles this question from two different angles: (i) the possible changes in the international investment regime that are being driven by industrialized host countries as a reaction to increasing incoming FDI from emerging economies; (ii) the possible changes in emerging economies' policy stance on the international investment regime as a result of their growing role as home countries of FDI and the increasing clout of emerging multinationals. In relation to both angles we look at the specific implications for the international rules governing investment flows of growing outflows of FDI from emerging economies that are technology-driven.

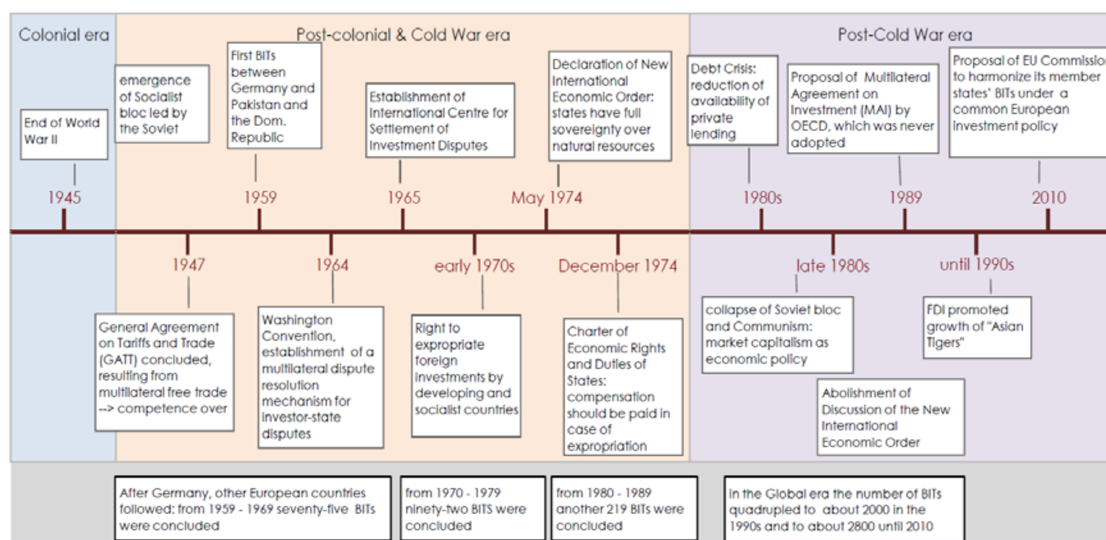
The remainder of this paper is organised as follows. Section 2 contains an overview of the evolving international regime for investment, covering the purpose of the international investment rules, its bilateral and multilateral dimensions and the overlaps with the international trade regime. In Section 3 we review the literature on FDI from emerg-

ing economies exploring the two broad themes identified above linking the rise of outflows of technology-driven FDI from emerging economies and the implications for the international investment regime. In Section 4, we conclude by providing some research questions that we draw from the literature reviewed and expert interviews.

2 The evolving international investment regime

The international investment regime consists of an intricate web of bilateral investment agreements and trade-related agreements with provisions relevant for investment. Until today, a multilateral investment agreement is only notable by its absence. This Section is organized as follows: Section 2.1 describes the purpose of international investment treaties. Section 2.2 investigates to what extent and how investment issues are governed by international law. Section 2.3 provides an overview of the history and nature of bilateral investment treaties. Section 2.4 introduces previous and current attempts to create a multilateral framework for investment. Section 2.5 deals with trade-related agreements, which contain provisions on foreign investment. For further orientation Figure 1 provides a timeline of the evolution of the international investment regime.

Figure 1: Timeline: The evolution of the international investment regime since 1945



Source: Own compilation

2.1 Purpose of investment agreements

Investment treaties provide standards for the treatment of foreign investment. They are commonly considered as a mechanism to solve the standard commitment problem faced by host country governments (Bubb and Rose-Ackerman 2007). In theory, the

problem is that host countries have a strong interest to attract foreign direct investment but once the investment is made the host state is considered to have a strong short-run incentive to renege on the initial terms of the investment by imposing high taxes or even expropriating or nationalizing the investment. Given this short term incentive, according to the ‘commitment problem' argument, host countries will not be able to attract foreign direct investment. Investment treaties, however, allow countries to commit themselves to the protection of foreign direct investment.

Additionally, and this has long been a bone of contention, investment agreements have the purpose of balancing the property rights and the profit-making capacity of MNCs and the right of states to regulate in the area of environment or labor. In the context of trade and investment liberalization, it is often forgotten that national laws and regulations that appear to constitute barriers to investment, sometimes do in fact serve a legitimate policy purpose, such as environmental protection, national security or health and safety. Investment treaties provide an opportunity to prevent or minimize conflict on such issues.

2.2 The effectiveness of international investment law

International law is based on treaties, customs, and general principles of law.[1] Generally, however, it is deemed insufficient to solve the above-mentioned commitment problem and to provide adequate protection to foreign investors (Dattu 2000: 278ff.; Vandevelde 2009: 5). The traditional formulation of international investment law is rooted in the French Declaration of the Rights of Man and of the Citizen from 1989, which defined property as an uninfringeable right but allowed expropriations for public purpose (Dattu 2000: 280). Some interpret international law so that a set of minimum standards – as laid out in the Hull Doctrine according to which prompt, adequate and effective compensation ought to be provided in the case of expropriation – need to be observed by host countries (Dattu 2000: 281). However, this point too is contested.

Many countries from Latin America, for instance, long followed the Calvo Doctrine, which suggests that foreign investors were only entitled to the same treatment that it awarded its domestic investors. This meant that if domestic investors could be expropriated, foreign investments could thus be expropriated too. Furthermore, foreign inves-

1 As suggested *by* Article 38(1) of the Statute of the International Court of Justice, June 26, 1945, 59 Stat. 1055, 1060, T.S. No. 993.

tors are only entitled to compensations to the extent, if at all, that domestic investors are entitled to these (Bubb and Rose-Ackerman 2007).

Another source of international law is the United Nations (UN). During the early 1970s, the developing and socialist countries, which were wary to surrender control over their means of production to MNCs, used their numerical majority in the UN General Assembly to establish recognition of the right to expropriate foreign investments through a series of resolutions, such as the Charter of Economic Rights and Duties of States. In 1974, the General Assembly adopted the Declaration of a New International Economic Order, which declared that states have "full permanent sovereignty" over their natural resources and other economic activities and "the right of nationalization or transfer of ownership to its nationals" (Bubb and Rose-Ackerman 2007; Vandevelde 2009: 12). Although resolutions of the General Assembly, unlike Security Council resolutions, do not have obligatory effect, the Declaration of a New International Economic Order had an indisputably strong influence on international investment law (Dattu 2000: 284).While recent developments suggest a gradual return to the Hull Doctrine (Dattu 2000: 285), international law still does not provide sufficient investment protection

2.3 The history and nature of bilateral investment treaties

As international law does not provide adequate protection to foreign investment from uncompensated expropriation, bilateral investment treaties have since the end of World War II become the standard response to the above-described commitment problem. Bilateral investment treaties form the backbone of the international investment regime. The first was concluded in 1959 between Germany and Pakistan. Other countries quickly followed. Existing treaties are quite similar in content, as elaborated in Box 1 below. They typically include a guarantee of effective compensation for expropriation and dispute arbitration through the International Centre for Settlement of Investment Disputes (ICSID), which is affiliated with the World Bank, and was founded in 1965 (Bubb and Rose-Ackerman 2007: 17-19; Vandevelde 2009). Furthermore, BITs are commonly signed between developed and developing countries. Almost no BITs have been signed among developed countries. Apparently, investors deem developed countries' legal systems strong and independent enough to protect them from arbitrary expropriations and therefore do not require BITs to reassure their investment decisions (Bubb and Rose-Ackerman 2007: 296).

Box 1: Typical content of a bilateral investment treaty

Bilateral investment treaties (BITs) are agreements between two countries to liberalize, promote, protect or regulate investments by companies in each other's territories based in either country. Investment agreements typically include the following chapters:

1. **Scope and definition of an investment**: This chapter typically defines the key terms of the agreement, identifies the assets to which the treaty applies and defines the degree of control and autonomy that is retained by the host country.
2. **National treatment**: This is commonly deemed to be the most important but also the most difficult chapter in investment agreements. This is meant to strike a balance between the rights of national and foreign investors by making sure that foreign investors are treated as favorably as national investors.
3. **Most-favored-nation treatment**: It typically stipulates that host countries treat investors from one foreign country no less favorably than investors from other foreign countries.
4. **Fair and equitable treatment:** It is meant to show that host countries are willing to accept foreign capital and take the interests of the investor into account in fairness and equity.
5. **Compensation:** This chapter covers tools that are necessary to protect investors in the event of expropriation or damage to the investment.
6. **Guarantees of free transfers of funds**: Host countries are obliged to allow the payment, conversion and repatriation of amounts relating to the given investment. This chapter makes sure that investors are able to transfer the funds generated by the investments out of the host country.

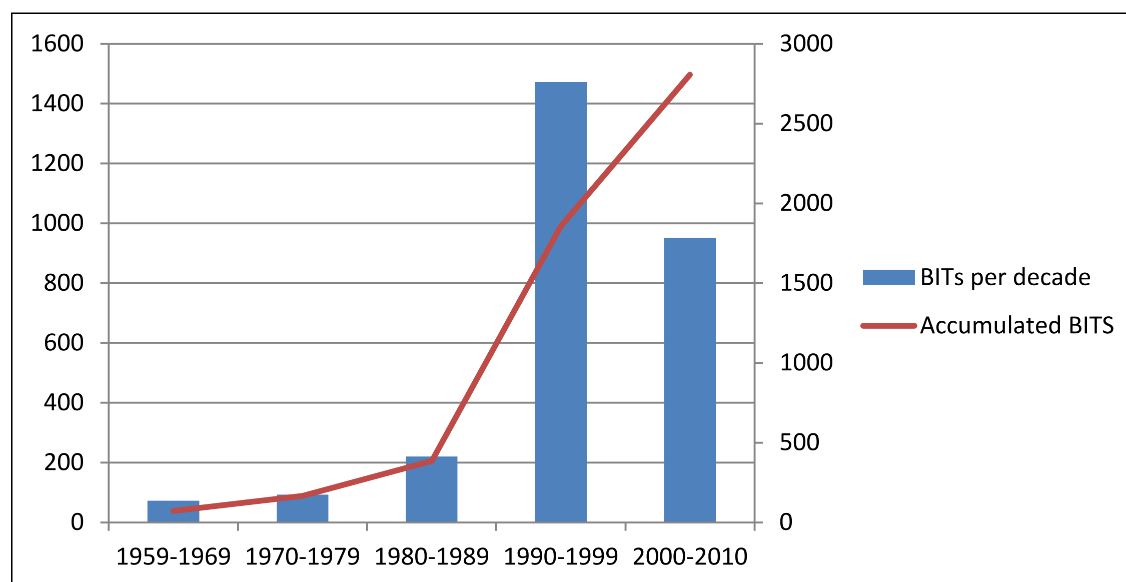
   Dispute settlement: It deals with the trigger of disputes, e.g. over the application of the international investment agreement (IIA), with the mechanisms to settle a dispute, such as negotiations, inter-state arbitration, etc. It defines the standards for dispute settlement and the scope of and compliance with dispute settlements.

Source: Muchlinski (2012), UNCTAD (2004)

With the collapse of communism, the number of BITs began to explode, as shown in Figure 2. Many developing countries abandoned their ideological hostility toward foreign investment and sought to follow the successful path of the so-called Asian tigers, which seem to have profited significantly from foreign direct investment (Low and Subramanian 1996: 389). BITs were no longer regarded as a covert form of neocolonialist intervention but as a means to benefit from technology flows and to achieve catch up. Therefore, many developing countries suddenly tried to out-compete each other by creating more favorable environments for foreign direct investment. The Calvo Doc-

trine, which many Latin American countries used to adhere to, was abandoned. By the end of the millennium most countries had already signed BITs. Therefore, the number of new BITs decreased again, as documented in Figure 2.

Figure 2: Number of bilateral investment agreements per decade (1959-2010)



Source: Own compilation based on UNCTAD (2011)

Despite their wide prevalence, the effectiveness of BITs in raising FDI is somewhat contested in the literature. While Büthe and Milner (2009) maintain that BITs have a positive impact on FDI, Hallward-Driemeier (2003) question the effectiveness of BITs. They suggest that BITs "may bite" in that they impose real constraints on the ability of developing country governments to flexibly pursue those policies that are compatible with their economic needs. However, Büthe and Milner (2009: 214) maintain that BITs are effective precisely because they "bite". They constitute an effective commitment device and therefore come at the price of a loss of flexibility. The increased levels of FDI that host governments are able to attract, however, should more than compensate this loss.

What seems plausible, however, is that, as the number of BITs increases, the marginal benefits that BITs may have can be expected to decline. This can be explained by the fact that once most, or all, developing countries have signed BITs, an additional BIT does not significantly increase the attractiveness of the signatory compared to other developing countries. At this point, only the absence of a BIT would have a significant – though negative – effect on the attractiveness of a given country to foreign investors.

2.4 Attempts to create a multilateral framework for investment

The first attempts to create a multilateral investment agreement date back to the end of the Second World War. Outside the communist bloc, the victorious allies had successfully established free trade and market liberalism as the new policy consensus in the Western world. While this new policy consensus soon materialized itself in the creation of the General Agreement on Tariffs and Trade (GATT) in 1947, agreement on an equivalent treaty framework for international investment could not be reached. Between 1945 and 1948, the international community tried to negotiate agreement on the Havana Charter, which would have created a general agreement for investment modeled after the example of GATT. However, the negotiations failed due to irreconcilable differences between the United States (US), on the one hand, which held that the Charter's provisions did not provide adequate protections to their investors, and developing countries, on the other hand, which perceived the provisions as to permissive to MNCs (Dattu 2000: 288).

Two historic circumstances made multilateral negotiations on investment issues particularly difficult. First, the period of decolonilization had led to the entry of a new group of countries into the international arena. The newly independent states that had emerged from the end of colonialism were fiercely protective of their newly gained independence and suspicious of foreign investment as a form of neocolonialism because it involved foreign control over the means of production (Vandevelde 2009: 11). Secondly, the rise of communism had provided the newly independent states with further arguments to reject such investments from multinational enterprises.

As a result, all post-war attempts to create a multilateral investment framework failed, with the exception of the 1964 Washington Convention, which established a multilateral dispute resolution mechanism for investor-state disputes. Eventually, it was recognized that an international investment regime was more intrusive on national sovereignty than a trade regime, thus making multilateral negotiations politically difficult and very unlikely to come to an agreement (Hoekman and Kostecki 2009; Vandevelde 2009: 7). As a result, the processes of multilateral trade and investment liberalization become uncoupled and began to follow down diverging paths, with the one chosen for investment turning out to be a lot more arduous than the path of trade liberalization.

In recognition of the difficulties to find a common ground with developing countries, which had become particularly apparent during the Uruguay Round of trade negotiations (discussed in the following section), developed countries started to focus on building a multilateral investment framework among like-minded countries (Civello 1999: 128 ff.; Dattu 2000: 276). In 1989, it was decided that the OECD would be used as plat-

form to develop a Multilateral Agreement on Investment (MAI). Unlike the GATT, OECD's membership was made up exclusively of developed countries. This approach was expected to facilitate negotiations and lead to a model agreement providing a benchmark for investment protection and liberalization (Dattu 2000: 276). The plan was to present the MAI to developing countries as a *fait accompli* after the negotiations had been completed and to open it to accession by non-OECD countries.

Ironically, however, the MAI negotiations eventually failed as well. Two reasons appear to have been critical. First, some OECD member states – in particular Canada and France – did not want to open all industries to foreign investment (Dattu 2000: 300). Afraid that their entertainment industries would be bought out by American investors, they fought for an exclusion of the cultural industries from the agreement. The demand of EU countries to be able to depart from the most-favored-nation clause and discriminate in favor of other EU countries drew the last nail into the coffin of MAI. This led Vandevelde to conclude:

> *It was ironic that the countries that have, perhaps, the greatest consensus among themselves concerning the provisions that should be included in a bilateral investment treaty were unable to agree on a multilateral version of the agreement. (Vandevelde 2009: 33)*

Vandevelde explains this paradoxical situation by the fact that most participants already provide a favourable environment for investment as part of their national policies; thus, having little to gain from the agreement. Therefore, the focus of the negotiations shifted toward the concessions that individual countries had to make. As a result, the MAI mostly came to be associated with concessions rather than gains. Moreover, the politicization of the negotiations through various nongovernmental organizations opposing economic globalization raised the political price of the agreement. At the same time, the business community failed to provide countervailing support for the MAI.

2.5 Trade-related agreements with investment provisions

In addition to BITs and international investment law, the international investment regime is also made up of a growing number of trade-related agreements with investment provisions, henceforth referred to as Economic Integration Investment Agreements (EIIAs). Most were born out of the frustration with the failure of multilateral negotiations and the wish of many countries to achieve deeper economic integration with their neighbours. The GATT accommodates this wish for closer regional integration through Article XXIV, providing a waiver from the most favoured nations rule (UNCTAD 2006a: 13).

EIIAs tend to vary in content and scope and are generally signed as bilateral, regional, interregional and plurilateral agreements (UNCTAD 2006a: 5). One of the most promi-

nent examples of such an agreement is provided by the European Union, then European Community, which was established in 1952 through the Treaty of Rome. While the European integration process was long focused on the removal of barriers to trade, it also provides for the free movement of capital. The relevant provisions were laid down in Article 56 of the Treaty of Maastricht (since the Lisbon Treaty, Article 63).

The European Union, however, is only one of many EIIAs, which were signed during the post-war era. Further examples of such EIIAs include the 1957 Agreement on Arab Economic Unity adopted by the League of Arab States, the 1964 Treaty Establishing the Customs and Economic Union of Central Africa (UDEAC or CEUCA), which later became the Monetary and Economic Union of Central Africa (CEMAC), and the 1965 Common Convention on Investments signed by the UDEAC's member states. Table 1 provides a more comprehensive list of the most important EIIAs.

Table 1: Selection of important trade-related agreements with investment provisions

Agreement	Year
Treaty Establishing the European Community	1957
Southern African Customs Union	1969
South Pacific Forum Cooperation Agreement	1980
European Free Trade Association (EFTA)-Turkey	1993
Common Market for Eastern and Southern Africa (COMESA)	1993
Commonwealth of Independent States Free Trade Agreement (CIS)	1994
The Southern Common Market (MERCOSUR)	1994
European Community (EC) - Russian Federation	1994
North American Free Trade Agreement (NAFTA)	1994
Chile - Canada	1996
European Community (EC) - South Africa	1999
United States - Jordan	2000
European Community (EC) - Mexico	2001
Economic Cooperation Organization Trade Agreement (ECO)	2003
Chile - Republic of Korea	2003
United States - Singapore	2003
European Community (EC) - Mediterranean Partners	1995-2004
South Asian Free Trade Area (SAARC)	2004
Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC)	2004
United States - Central American Free Trade Agreement (CAFTA)	2004

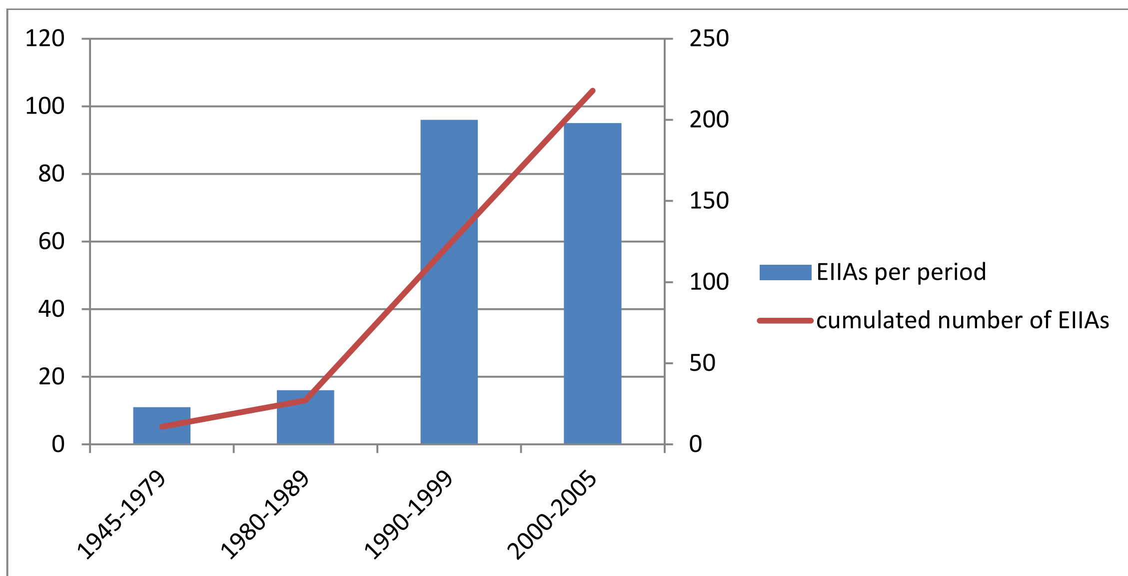
Source: UNCTAD (2006)

A common feature of these post-war EIIAs was that they were typically signed between countries of the same level of economic development and also usually among countries of the same region. In contrast to BITs, originally EIIAs were generally signed among developed and among developing states but not between developed and developing countries.

The coverage of investment issues in most of the agreements signed after the war, however, was limited and none of them went as far as the EU. They generally emphasized promotion of investments and granted various types of privileged market access to member countries' companies. Such privileges were, however, restricted to a limited number of sectors and subject to detailed approval procedures defined in the EIIAs. Furthermore, the implementation of the agreements into national law tended to be weak (UNCTAD 2006: 19).

With the end of the Cold War era, however, the number and scope of EIIAs suddenly increased. As shown in Figure 3, new EIIAs increased markedly in the 1990s. In contrast to the post-World War II era, countries also started signing EIIAs with countries that did not share their level of economic development. A prominent example is provided by the North American Free Trade Agreement, which was signed in 1992 between the emerging economy of Mexico and the two advanced capitalist economies of Canada and the United States. EIIAs were also no longer signed exclusively among countries situated in the same region. The EU, for instance, started to negotiate an increasing number of interregional EIIAs.

Figure 3: EIIA growth per decade (1945-2005)



Source: UNCTAD (2006a)

In addition to these quantitative changes, also the quality of EIIAs changed. The economic integration processes initiated in the various agreements were deepened substantially. Provisions aimed at the facilitation of investment became increasingly comprehensive in scope. This development could not only be observed for the EU but also for EIIAs such as the Economic Community Of West African States (ECOWAS) and the Agreement establishing the Southern Common Market (MERCOSUR) (UNCTAD 2006).

In addition to the ideological paradigm shift towards liberalization, which marked the breakdown of the Soviet Union, these changes were driven by a change in how trade was perceived. While investment was long viewed as a substitute for trade (Buckley and Casson 1976), the two increasingly came to be perceived as intertwined if not complementary to each other (Pfaffermayr 1996). FDI often turned out to reinforce rather than to crowd out trade. Therefore, it started to dawn on policy-makers that to liberalize trade, investment needed to be liberalized too (UNCTAD 2006: 20).

The changed perception of investment also had an impact on the Uruguay Round of Multilateral Trade negotiations which transformed the GATT and led to to the creation of the World Trade Organization (WTO) in 1995. Upon the initiative of the US, which had previously failed three times to put investment on the agenda, Trade-Related Investment Measures (TRIMs) were included in the Uruguay Round. TRIMs are regulatory measures, such as local content requirements mandating the use of domestically produced products, local equity requirements affecting ownership, foreign exchange restrictions, and export requirements, which may be used by host country governments to affect trade flows (Curtiss and Atkinson 1995; Graham and Krugman 1990). The remit for the negotiations on TRIMs, however, were not as broad as the US had hoped. Core investment issues such as the right of establishment and national treatment rules, as proposed by the US, were not included. For the sake of keeping the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) on the agenda, the US conceded these core investment issues to developing countries which sought to protect their national sovereignty in the area of investment (Low and Subramanian 1996). As a result, the outcome of the negotiations was rather disappointing to those that had hoped for a "GATT for investment" (Goldberg and Kindelberger 1970). It did not go beyond the existent GATT rules and merely reaffirmed that member states were not to apply trade-related investment restrictions that were inconsistent with GATT (Nieuwenhuys and Brus 2001). Civello brought this to a point: "The reason for the TRIMs Agreement's failure is simple: it does nothing new" (Civello 1999: 98). The TRIMs Agreement even articulates its own shortcomings. Article 9 requires a review of the Agreement within five years to "consider whether the Agreement should be complemented with provisions on investment policy." Needless to say, these provisions were never adopted. And by the start of the Doha Round, TRIMs had fallen off the agenda entirely.

3 Rising outflows of TFDI from emerging economies and the international regime for investment

One of the remarkable characteristics of the rise of the inflows of FDI from emerging countries is that it is to a great extent technology-driven and this may have important consequences for the development of the international investment regime. One of the main objectives of FDI from emerging countries is increasingly to access advanced technology assets (Wang 2002; Globerman and Shapiro 2009). In this context, the obvious question becomes: what are the specific implications of increasing technology-driven FDI from emerging countries to the evolving rules governing international investments? How do those implications differ between industrialized and emerging countries?

This section examines how the international investment regime is changing in response to the rising TFDI flows from emerging economies and how it might change in the future. The wider consequences of growing FDI flows from emerging into industrialised economies for the global investment climate and the evolving set of rules governing investment at the global level remains to a large extent an open question. First, we will look at the possible changes in the international investment regime that are and may be driven by industrialized host countries in reaction to increasing inflows of FDI and TFDI from emerging economies (Section 3.1). This is followed by an analysis of the implications of the growing role of emerging economies as home countries of FDI and TFDI and the growing clout of emerging multinationals themselves for the international investment regime (Section 3.2).

3.1 Changes in the international investment regime driven by host countries

One main strand of debate deals with the extent to which the increasing inflows of FDI from emerging countries may be leading to restrictive domestic and protectionist regulatory changes in host economies and, in turn, to changes in the international investment regime. Over recent decades prior to the 2000s, changes in existing national and international regulatory regimes for investment have pointed towards increasing liberalization in FDI restrictions. There had been significant moves to liberalize FDI restrictions in the 1980s and 1990s, and especially the 1990s, both in developed and developing countries (Golub 2003: 107; Globerman and Shapiro 2009: 164-5; Sauvant 2009). Since the 1980s, domestic entry requirements for MNEs have been liberalized and active incentives to attract MNEs established in different countries (Sauvant 2009: 3). In addition to the introduction of domestic measures favourable to investment, the implementation of international investment agreements, mostly bilateral investment agreements,

contain measures to protect international investment, such as the non-discriminatory protection of investment (Sauvant 2009: 3). Moreover, free trade agreements signed in the period also deal with investment issues and include clauses that contributed to the liberalization of investment (Sauvant 2009: 3).

However, over the 2000s two contradictory trends have been observed. On the one hand, an overall tendency towards liberalization of investment flows in industrialised countries remains (Sauvant 2009; Golub 2003; Interview 1; Interview 8). On the other hand, it has been argued, there has been an observed tendency towards FDI protectionism in different countries and sectors (EIU 2007; Schulz 2008; Sauvant 2009; Clifton and Díaz-Fuentes 2010a; 2010b). Several countries are considered to have made existing FDI regulations more restrictive or introduced novel constraints and procedures to screen FDI inflows (EIU 2007: 14; Interview 1; Interview 8). Table 2 summarises some recent investment policy changes in selected industrialised countries. While there were 90 regulatory changes unfavourable to FDI between 1991 and 2002, in the 2003-2005 period the number had increased to 101 (Sauvant 2007: 71). The share of national regulatory changes unfavourable to FDI both in developed and developing countries reached 21 per cent of all regulatory changes during the period 2005-2007, contrasting with a 6 per cent share during the period 1992-2002 (Sauvant 2009: 6). Besides, there have been some much publicised cases of M&As being blocked by industrial host economies making the headlines, but these are still seen as isolated cases (Interview 1; Interview 8).

According to the literature, several factors associated with the rise of inflows of FDI from emerging countries may be driving the above mentioned restrictive responses by developed countries. One factor is related to the modes of entry with a major share of inflows of FDI from emerging countries taking the form of brownfield investments. Brownfield investments are perceived as contributing less to host economies as greenfield investments as they do not automatically add to the existing production capacity (Sauvant 2008; Globerman and Shapiro 2009). Besides, M&As account for the largest share of FDI from emerging countries in developed countries. Another important issue is the ownership and control of potential investors, especially related to government ownership and/or control of acquiring companies (Globerman and Shapiro 2009; Interview 2; Interview 5; Interview 8). State-owned companies were responsible for one-third of the outflows of foreign direct investment from emerging economies in the period 2003-2010 and a major share of M&As (Economist 2012: 2). Developed countries are wary of state-owned enterprises and sovereign wealth funds (SWF) (Interview 8). This is partly because they may represent the interests of foreign governments in domestic decision-making (Globerman and Shapiro 2009; Golub 2003). In addition, for countries which do not have a strong tradition of state ownership of productive resources, such

as the US, this may be seen in extreme cases as the nationalization of an industry by a foreign government (Interview 2). The motivations of investors are also seen as a cause of concern in host economies. Contrasting with traditional inflows of FDI from industrialized home countries in which profit maximization is the main motive, incoming FDI from emerging economies, notably China and Russia may be driven by non-economic motives (Globerman and Shapiro 2009; Sauvant 2009; Wang 2002). While these characteristics of FDI from emerging economies appear to have driven the change toward more restrictive FDI policies, the extent to which there is a causal link between these two parallel developments still needs to be confirmed by further research.

Table 2: Recent changes in investment policies in selected industrialised countries

Countries	Recent changes in investment policies
Germany	Amendment to the Foreign Trade and Payments Act in 2009 introducing a screening mechanism to proposed cross-border M&As, with security implications
France	Decree in 2005 listing 11 strategic sectors in which investment projects should be reviewed. In 2008, introduction of a state investment fund to safeguard French companies in strategic sectors from takeovers by foreign investors
United States	Foreign Investment and National Security Act (FINSA) in 2007, regulating the activities of the Committee on Foreign Investment in the United States (CFIUS) in screening the security issues involved in cross-border M&As
Canada	Amendment of the Foreign Investment Law in 2009, including a national security review process
Australia	New regulation in 2008 creating a review mechanism for proposed FDI projects by sovereign investors
Japan	Amendment to Foreign Exchange and Foreign Trade Act in 2007 requiring prior notification of foreign acquisitions of 10 per cent or more of companies possessing sensitive technologies

Source: Information derived from Sauvant (2009) and expert interviews

What seems to be clear is that cross-borders M&As, state ownership or control of foreign investors from emerging economies, and their supposedly non-economic motivation raise a number of political and economic concerns in industrialised host economies. Political and economic concerns are intertwined and associated to what are broadly described as 'national interests', including the protection of strategic sectors and resources, and national champions (Sauvant 2009; Clifton and Díaz-Fuentes 2010a; 2010b; Interview 1; Interview 2; Interview 8). In relation to political concerns, the national security of the host country is prominently evoked, involving the protection of assets in defence-related sectors, critical technologies with relevance for defence, and critical infrastructure from foreign control (Sauvant 2009; Globerman and Shapiro 2009;

Golub, 2003; Antkiewicz and Whalley 2007; Graham and Krugman 1995). Inflows of FDI may also be perceived as a channel for political influence exerted by foreign investors (Golub 2003; Graham and Krugman 1995) and in extreme cases, investors as 'agents' of home governments (Globerman and Shapiro 2009: 174; Graham and Krugman 1995: 88, 98). Another preoccupation is related to the control of the supply of critical natural resources (Globerman and Shapiro 2009: 173; Interview 2; Interview 8). Inflows of FDI, especially in the form of M&As, may also stoke economic concerns in host countries. One issue that is identified especially in the case of FDI from China involves the subsidization of foreign investments by the Chinese government leading to unfair competition (Globerman and Shapiro 2009: 175; Antkiewicz and Whalley 2007). Another concern is the lack of transparency and non-compliance with international corporate governance standards for foreign investors (Globerman and Shapiro 2009: 175: Antkiewicz and Whalley 2007). Besides, broad questions about economic security in relation to inflows of FDI have also been raised (Rosen and Hanemann 2009; 2011).

These changes in developed countries might be a first indication of the effect of the rise of FDI from emerging countries. Whether and to what extent the adoption of more restrictive domestic regulations will impact on the existing and evolving international rules governing investment is still an open question. Will developed countries try to renegotiate the existing rules to increase control of FDI inflows from emerging markets? Some authors have argued that the emerging issues created by the growth of outflows of FDI from emerging countries have not been dealt with previously at the international level (Antkiewicz and Whalley 2007; Globerman and Shapiro 2009). In this respect, advanced economies are therefore unconstrained by the absence of overarching international rules and can freely adopt new measures to control these new investment flows (Globerman and Shapiro 2009).

However, other observers emphasise industrialised countries are still bound by the rules established under existing BITs and FTAs (van Aaken 2009). New domestic regulations introduced in response to the rising inflow of FDI from developing countries may come into conflict with the BITs and FTAs with investment chapters (Interview 1; Interview 8; Interview 9). Before the surge in investment flows from emerging countries into industrialised countries, BITs – normally signed between an industrialized and a developing country (see Section 2.2) – were perceived as hardly relevant by developed countries (Interview 1; Interview 8). The negotiations of BITs was delegated to the lowest echelons of government and their signing to high level delegations during routine state visits by head of states and little attention was given to their content and what was being signed to (Interview 1; Interview 8). This was to a great extent because of the asymmetric situation in which industrialised and developing countries assumed one-sided roles as home and host countries respectively. In that context, the BITs

signed were almost exclusively concerned with the protection of foreign investors, commonly from industrialised countries, and gaining access to developing countries' markets (Interview 1; Interview 5; Interview 6). There is a growing risk for European and other industrialised countries of being sued by investors from emerging economies under the terms of the BITs and FTAs they have signed, and great surprise when the first claims emerged (Interview 1; Interview 8). Under the existing BITs, for instance, many of the domestic environmental, labour and safety regulations put in place by European countries may be deemed as indirect expropriations. These regulations often have a tendency to reduce the profitability of foreign investors' investments and can thus be considered to violate the terms of the existing BITs. Further tension and potential for international arbitration is anticipated as European countries try to enforce new domestic regulations to control flows of investment and may be challenged by developing countries under the terms of the existing BITs and other agreements (Interview 1; Interview 8). But if, in light of their BITs and FTAs, industrialised countries are not totally unconstrained in enacting restrictive regulations controlling incoming FDI flows, to what extent and how are they trying to renegotiate the existing international investment agreements rules to address their concerns? An attempt in this direction could already be observed in relation to NAFTA where the US and Canada have adapted their BITs in response to successful claims by Mexican investors under the terms of NAFTA against their environmental and labour regulations. There are indications that countries like the US, Canada and Australia are rethinking their investment treaties, both BITs and investment clauses of FTAs, and in contrast with the emphasis on investor protection from previous agreements, they intend to adopt a more precise legal language to protect their legal environment ('policy space') and public interests (Interview 5). On April 20, 2012, the U.S. Department of State and the Office of the U.S. Trade Representative launched the 2012 US BIT Model upon which negotiations on new BITs with China, India, and Russia will be developed. However, until now little is known about the extent and content of these changes, and the effect of rising inflows of FDI from emerging economies, in Europe particularly (Interview 1; Interview 2; Interview 6; Interview 8) (See Box 2).

Box 2: What are the implications of the growing inflows of FDI and TFDI from emerging markets on European perspectives on international investment agreements?

According to observers, European policymakers were not and are still not aware of the implications of their existing IIAs in a changed context of less asymmetry, in which emerging economies are ever more relevant as capital exporting countries and European countries find themselves increasingly in a position of host to investment from emerging countries with whom they signed BITs. In policy circles there is a suggestion that the possibility that the EU will become more of a host for inward FDI should lead to a modification of investment protection provisions normally adopted by individual EU member states in any common EU model BIT. At the same time, it has been suggested that policymaking is dominated by an established elite of investment lawyers and technocrats whose mindset is still based on the perspective in which the EU acts as the home country of FDI negotiating access to host countries. In the absence of thorough and consolidated data on the extent and effects of new FDI flows from emerging economies in Europe, it is believed that policymaking at the European level can easily turn to 'knee-jerk' reactions to isolated M&A projects that capture the headlines with stories of 'cherry-picking' technology assets and may quickly change how policymakers approach investment issues towards a more restrictive approach.

As far as EU member states are concerned, investment rules to deal with any concerns about incoming FDI flows will have to be considered at three different levels, namely, the national, the supranational (at the EU level) and the international levels, while also keeping in check how rules set at the various levels interact. This is because with the enactment of the Lisbon Treaty on the Functioning of the European Union (TFEU), which now includes investment policy as an exclusive European policy, the competence to negotiate and sign investment treaties both bilaterally and multilaterally has been transferred from member states to the EU. But at the same time a complex web of BITs signed by member states are still in force.

The extension of EU competence on investment negotiations together with growing inflows of FDI and TFDI from emerging economies is creating a juncture in which member states and the EU organizations are being forced to think about investment treaties and what the emerging issues are. In July 2010, the European Commission made a formal proposal for a transition from member states' BITs to an EU model BIT under the umbrella of a common European investment policy, which caused a lot of controversy. The European Parliament even went further than the Commission and demanded a replacement of all BITs between the EU member states and third countries, which would have effectively ended around half of the worlds BITs. However, there are divergent positions between the European Council and member states on one side, and the European Commission and the European Parliament on the other, in relation to how a common EU model BIT should look like. The European Parliament has expressed concerns that a greater balance in the rights of investors and host countries would be desirable, and favours softening the protection of investors. There is also a discussion about a model BIT which deals more explicitly with the issue of national security and access to sensitive technologies. And consultations on a common EU-China BIT are also under way which may incorporate such concerns. But member states, among them the Netherlands, Germany and the UK, hold to a conservative position based on their existing BITs that are geared towards protecting their outward investment. To date, however, the European organisations could not find a consensus on this issue. According to Kleinheisterkamp (2011: 222), the prospect of terminating all EU member states' BITs are low but the Council might eventually accept a solution along the lines of the Commission's initial proposal.

In any case, however, a more cautious approach by European countries toward FDI liberalization can be expected to have a drastic impact on the international investment regime. Traditionally, European countries have been the main drivers of investment liberalization. It would completely change the dynamic of international – bilateral or multilateral – negotiations, if they now sought to limit investment liberalization bringing additional derogations and safety clauses onto the agenda. While this issue still needs to be investigated by future research, it is already clear that the outcome of the inter-institutional struggle over FDI policy can be expected to have a significant impact on Europe's bargaining position in bilateral or multilateral negotiations and its ability to respond to the growing inflows of FDI from emerging markets.

Source: Expert interviews

With respect to negotiations on investment rules at the multilateral level, there is a huge question mark about the possible effects on the short run of rising FDI flows from emerging economies. There is much scepticism if there is a demand by industrialised countries to deal with the emerging issues related to investment rules at the multilateral level (Interview 1; Interview 5; Interview 6). But an expectation among academic researchers that such a multilateral regime will be necessary to both promote and keep in check the surge of investment outflows of emerging countries, particularly China (Interview 7). Whereas it is believed that the EU organisations would favour a more multilateral approach to deal with investment regulations (Interview 7), the EU member states are seen as more realistic about the difficulties of negotiating at the multilateral level, especially about investment, bearing in mind the stalled multilateral negotiations on trade (Interview 5).

Focusing on the inflows of technology-specific FDI from emerging economies and their effects on the investment climate, several issues emerge. One key issue is related to the fears of 'hollowing-out' of R&D capabilities in industrialised host countries that may be associated to investment flows from emerging economies, and in turn, may lead to changes in investment regulations. The current treatment of this issue in the popular literature, the media and in policy circles is focused on concerns that incoming FDI oriented to the acquisition of technology assets will contribute to move away advanced technologies from industrial host countries to the home countries of foreign investors.[2] This hollowing-out may be partly explained because of the 'headquarters effect', i.e. the arguably tendency of multinationals to concentrate key R&D activities in their home countries in close proximity to their headquarters (Graham and Krugman 1995: 65). Another explanation is that such incoming FDI may be geared towards 'asset striping' or 'cherry-picking' technology assets, transferring them to home countries, and leaving the acquired companies as empty shells (Rosen and Hanemann 2009; Rosen and Hanemann 2011; EIU 2010; Graham and Krugman 1995). However, there is no empirical evidence about possible R&D 'hollowing out' effects in relation to incoming FDI from emerging economies (Interview 4), and anecdotal cases are mostly contradictory. Chinese investors, for instance, appear to be leaving their European acquisitions with abundant room to manage independently their local technological efforts (Interview 4). A few observed cases may seem to involve 'hollowing out', as for instance, the case of Benq, a Taiwanese company that acquired the mobile handset unit of Siemens and after transferring the key technologies from the acquired company to the home country filed for bankruptcy (Nölke 2011). But examples of 'deepening' R&D capabilities rather

2 This is to a great extent an old concern. In the 1980s and early 1990s, the growth of Japanese investments in the US was also expected to lead to hollowing out of US technological capabilities (Graham and Krugman 1995; Graham and Marchick 2006).

than hollowing out are also common. For example, the Chinese company Blue Star after acquiring the French producer of animal feeds, Adisseo, installed R&D facilities in France focusing on biotechnology applied to animal feed (Globerman and Shapiro 2009). Therefore, unresolved empirical questions remain: to what extent such hollowing out takes place in relation to incoming FDI from emerging countries when one of their motivations might be to access superior knowledge environments in industrialized advanced countries? And if this hollowing out of technological capabilities is taking place, how is it influencing or may influence the international investment regime?

Another important issue related to technology FDI with potential implications for the international investment regime from the perspective of host countries is the sensitivity of the technologies involved. The possibility of security-relevant, export-controlled technologies, including critical dual-use technologies, being transferred to the home countries of foreign investors has also led to increased constraining measures towards incoming FDI flows in advanced economies that may also reflect on the international investment regime. Many developed countries have introduced more stringent measures and review procedures for scrutinizing incoming investment flows that are related to defence-relevant technologies (Rosen and Hanemann 2009; Wu et al. 2011) and dual use technologies (Marchick and Slaughter 2008; Globerman and Shapiro 2009). The critical technologies came to be so broadly defined or, in contrast, left ambiguously imprecise to the point that in some countries, for instance, in the US, it is recommended that foreign investors report in advance and seek previous approval of any acquisitions of companies that possess cutting edge technologies, no matter how unrelated to defence they are (Globerman and Shapiro 2009; Eliot Kang 1997). The home country and ownership of foreign investors also plays an important role in the review of planned incoming FDI. FDI from China is particularly targeted for scrutiny because the possibility of the application of dual-use technologies, such as semi-conductors and telecommunication technologies, to strengthen Chinese military capabilities, or that these technologies are exported to unfriendly third countries, is seen as posing a security threat to host countries (Graham and Marchick 2006). As indicated above, the 2004 US model BIT already included a self-judging security clause (Interview 1). A self-judging security clause can be decisive in taking out the control from the arbitration tribunal and allowing discretion to the state not to apply a specific clause in the investment treaty on security grounds. It may create a big gap in the protection of the treaties (Interview 8).

Although, these issues discussed above have been entering the debates in policy circles, policy-oriented research, popular literature and the media, it has been not empirically investigated in detail. The existing analysis has been to a large extent restricted to a popular treatment of the issues. Indeed, the international business literature that is centrally concerned with the rise of multinationals and outflows of FDI, especially tech-

nology-driven FDI, from emerging economies has not given attention to the impact of this rise on the international investment regime and this issue remains to be investigated. Such a detailed research leading to the generation of solid data on those issues would be extremely relevant to inform policymaking on investment issues in Europe (Interview 6). Presently policymaking being underpinned by popular perspectives on the subject and leading to 'knee-jerk' reactions to individual FDI projects which have been at times detrimental to the overall investment climate in Europe.

3.2 Emerging economies as home countries, emerging multinationals and the international investment regime

This section deals with the possible effects of the outflows of FDI from emerging economies on their stance on towards the international investment regime. This section will specifically look at the transformation of many emerging economies from host to home countries as well as the growing influence of multinationals from emerging economies. The main questions dealt with in this section include: How are the political stance of emerging economies on the international investment rules changing as a reaction to the growing role and home countries of FDI. Will this create new impetus for pushing towards a multilateral investment regime? How and to what extent will the growing influence of emerging economies' multinationals influence the international investment regime?

It has been argued that similarly to the case of industrialised countries, developing countries did not really understand what they signing to when entering BITs (Poulsen 2011; Interview 1; Interview 5; Interview 8). In this respect, a question that has been posed is why developing countries, which have been traditionally mostly capital importing countries, entered BITs, since they put great emphasis on guaranteeing the rights of investors (Interview 1; Interview 5). The accumulated evidence indicates that BITs were seen merely as 'tokens of good will' (Poulsen 2011; Interview 1), in an effort by developing countries to attract FDI in the hope to boost domestic economies (Poulsen 2011; Interview 8). While attributing little importance to the treaties, developing countries, as they signed them, were incrementally implementing a *de jure* liberalisation agenda (Interview 8). Nevertheless, developing countries have opposed initiatives to establish a multilateral investment framework. The MAI contained liberalisation provisions whose consequences were easy to foresee for developing countries (Poulsen, 2011: 303), and what has since be perceived as a bias in investment treaties towards protecting the interests of foreign investors from industrialized countries. This was followed by more attention on the part of developing countries in the 2000s towards the

preservation of the 'policy space' of host countries to control MNEs operating in their territories (Interview 8).

However, as emerging and developing countries become more important as sources of outflows of FDI, a shift in their priorities and interests in relation to the international rules on investment may be under way that would be relevant to be further investigated. Several open questions remain: As developing and emerging countries become more relevant as home to outward flows and foreign investors, how are their interests changing in relation to the evolving international investment regime? What are the important issues for emerging countries as home countries? How will their new interests as home countries reflect on their agendas towards investment agreements both at bilateral and multilateral levels? There still is little evidence on the way in which, by becoming capital exporters, emerging economies' priorities regarding the rules governing investment are changing (Interview 5). What is clear, however, is that one is unlikely to find a homogeneous approach to investment rules due to their political and economical heterogeneity (Interview 2; Interview 4; Interview 5).

Nonetheless, it is possible to envisage an important trend in terms of changes in emerging economies' stances towards the international investment regime. Anecdotal observations indicate that emerging economies are starting to think specifically about the rights and protection of their domestic investors (Interview 1; Interview 2; Interview 5). In China, for instance, the protection of domestic investors already appears to play a prominent role. This is also reflected in the growing number of BITs between China and other developed and developing countries – only Switzerland has signed more BITs than China. China's new BITs put at strong emphasis on investor protection, including detailed investor-state dispute settlement provisions, which stand in stark contrast to early treaties that were weak in this respect (Interview 1; Interview 5; Interview 8). Overall, a shift from a restrictive approach – focusing on the control of inward FDI – to a liberal perspective centred on the promotion of both inflows and outflows of FDI and the protection of investors, could be observed in Chinese investment agreements (Berger 2008; Interview 5). A similar development could be observed in India which is adopting a liberal approach to BITs as well (Interview 5). Brazil is the odd one out, having never ratified investment treaties, but the protection of Brazilian investors abroad seems to be coming into the policy agenda and being raised in narrow policy circles (Interview 1).

A few authors have interpreted the increase in investor-states disputes involving emerging economies as an indication that the demands for a multilateral framework from developing and emerging countries are changing (Sauvant 2008; Sauvant 2011). At the same time, the increase in arbitrations may also be interpreted as evidence for the efficiency of the current regime. However, there has been virtually no empirical re-

search on this issue. Given rising FDI flows from emerging markets, it is expected that developing and emerging countries would not block an attempt to devise a multilateral investment treaty (Interview 6). Besides, there is a growing alignment in the interests of home and host, advanced and emerging countries in finding a more balanced approach between investor protection and policy space of host countries in investment treaties. But whether there is a demand and move in this direction remains subject to further investigation (Interview 1; Interview 2; Interview 5). While this issue still requires a more systematic investigation, it is clear that the raising concerns of emerging economies' about the rights and protection of their investors will have a significant impact on the international investment regime, including at the multilateral level. If they start to put more emphasis on the rights of their domestic investors abroad rather than their national sovereignty over incoming investments, a new momentum toward a further liberalization of the international investment regime may result.

In this context, it is also important that future research need to pay close attention to the role of emerging economies' multinationals themselves on the evolving international rules on investment. In the case of emerging countries, particularly China and Russia, where state capitalism has been a driving force underpinning the internationalization of both state-owned firms and private national champions, the motivations of investors and home countries are to a large extent intertwined. But beyond that, with the overall growing reach of emerging economies' multinationals, it is expected that the interests of both private and state-owned multinationals will not only contribute to economic growth and competiveness of home countries, but will also influence in important ways global rules on diverse policy spheres (Nölke 2011). Therefore, in this context, it would be relevant to further enquire empirically about their priorities and interests on issues related to investment regulations. In this respect there are important questions for further research: To what extent do Chinese, Indian and Brazilian MNCs think the international legal protection/international investment treaties matter? How important are international investment treaties as compared to other protection mechanisms such as political insurance? Do emerging MNCs' political insurance strategy differs from the ones of advanced countries' MNCs? What are the emerging MNCs' mitigation strategies with respect to political risks? There are indications that Brazilian MNCs through business associations are lobbying the government to negotiate investment protection for Brazilian investors (Interview 8). But generally, MNCs from emerging countries are still not a strong presence in lobby groups linked to the international negotiations on investment regulations. It is relevant to ask: why is it the case? The raising importance of such multinationals may also be reflected in the recent increase in international investment disputes between emerging economies' multinationals and developed countries (Sauvant 2008; Sauvant 2011).

From the perspective of home countries, the critical issue in relation to technology-driven FDI is that of the right of establishment and access to technologies. One of the main motivations of the new wave of outflows of foreign investment from emerging countries' investors is to use those investments as channels to upgrade their technological capabilities (Deng 2007; 2009). Beyond the objectives of single companies, some emerging countries' governments, especially China, pursue a deliberate policy to use outflows of investment as learning strategy (Wang 2002). This is part of a complementary strategy to the policies of attraction of foreign investment which have displayed a limited record in transferring technologies to host countries.

Unilateral actions by host countries to control TFDI and retaliatory measures by emerging home countries may harm the international investment climate. Against this backdrop, international rules to govern international investment flows and the frame domestic regulations may be the only way to avoid such detrimental developments (Graham and Krugman 1995: 173, 175). However, more research is still necessary to unveil the effects of such technology-driven FDI, also from the perspective of emerging host economies, on the international investment regime, and the general perception is that the specific implications of technology-driven FDI have still not emerged to prominence in policy and academic discussions (Interview 8).

4 Conclusions

This paper has provided an overview of the link between the rise of outflows of FDI from emerging economies and the evolving international regime for investment according to existing secondary sources and expert interviews. The rapid growth of BITs and EIIAs discussed in Section 2 raises questions about the significance that governments all over the world are attributing to the rules governing foreign investment at the international level. The lack of a multilateral agreement on investment, however, shows how complex it is to translate the growing concerns in regulating international investment flows into a multilateral framework. While scattered evidence suggests that the rise in FDI flows from emerging to developed countries may have a significant impact on countries position regarding the international investment regime, the precise effect still needs to be investigated in greater detail. We have shown that the rise of outflows of FDI from emerging economies are triggering changes in domestic investment regulations of industrialised host countries that may also affect their instances towards international investment agreements. We have also indicated that early signs of changing priorities from emerging countries in relation to international investment rules have been identified. The paper has also indicated that the changes in international FDI flows as a result of the rise of emerging economies might have a considerable and mul-

tifaceted impact on the international investment regime. Yet, the wider implications of the rise in outflows of FDI from emerging economies, particularly technology-driven flows, for the evolving set of international rules governing investment largely remains to be researched empirically. This paper provides a number of propositions that will have to be investigated by future research. It points out new policy issues and potential changes that have thus far not been discussed in the literature and that will have to be addressed by future research. In turn, this raises a number of interesting research questions to be further examined.

The overall research question should deal with the implications of FDI that is technology-driven on the international investment regime. What are the specific implications of increasing technology-driven FDI from emerging countries to the evolving rules governing international investments?

One aspect of this question is related to the possible changes in the international investment regime being driven by industrialised host countries in reaction to incoming flows of TFDI from emerging economies. To what extent and how are policy measures taken by industrialised host countries in reaction to incoming TFDI from emerging economies contributing to changes in the international investment regime? In this context, it is important to consider how the issues which seem to be important for industrialised host countries, such as the sensitivity of the technologies, perceived risks of hollowing out of R&D capabilities in host countries and the protection of intellectual property rights are being dealt with at the bilateral and multilateral levels and are contributing to reshape international investment rules.

Another aspect important to be assessed concerns the implications of the growing role of emerging economies as home countries of TFDI and the increasing importance of emerging multinationals on the international investment regime. To what extent are changes occurring in emerging economies' policy stance on the international investment regime as a result of their growing role as home countries of TFDI and the increasing clout of emerging multinationals? To what extent and how are the policy measures from emerging home countries and the actions of emerging multinationals contributing to changes in the international investment regime? Investigating more in depth how the new interests and priorities of emerging economies as home countries are reflecting on their agendas towards investment agreements both at bilateral and multilateral levels is an important direction of research. Also relevant to be empirically examined is whether and in which ways emerging economies' multinationals are trying to influence international rules of investment as they become more internationalised.

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