

Online Appendix to: **Investment Policy Reform as a Driver of Foreign Direct Investment: Evidence from China**

A. Table OA1

	Finland		France		Germany		Korea		Netherlands		Switzerland	
Year of entry into force *)	1986	2006	1985	2010	1985	2005	1992	2007	1987	2004	1987	2010
Reference to social investment aspects (e.g. human rights, labour, health, CSR)	No	No	No	No	No	No	No	No	No	Yes	No	No
Contains "in accordance with host State laws" requirement	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No	Yes	No
Includes requirement of substantial business activity	No	No	No	No	No	No	No	No	No	No	No	Yes
Defines ownership and control of legal entities	No	No	No	No	No	No	No	No	No	No	Yes	No
Excludes other subject matter	No	No	No	No	No	No	Yes	No	No	No	No	No
Disputes covered	Not stipulated	Carves out pre-existing disputes	Inconclusive	Carves out pre-existing disputes	Not stipulated	Carves out pre-existing disputes	Not stipulated	Carves out pre-existing disputes	Not stipulated	Not stipulated	Not stipulated	Carves out pre-existing disputes
Type of NT clause	None	Post-establishment	None	Post-establishment	None	Post-establishment	Post-establishment	Post-establishment	None	Post-establishment	None	Post-establishment

Reference to "like circumstances" (or similar)	Not applicable	No	Not applicable	No	Not applicable	No	No	Yes	Not applicable	No	Not applicable	No
Type of MFN clause	Post-establishment	Pre- and post-establishment	Post-establishment	Post-establishment	Post-establishment	Post-establishment	Post-establishment	Pre- and post-establishment	Post-establishment	Post-establishment	Post-establishment	Post-establishment
Taxation treaties	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Type of FET clause	None	FET unqualified	FET unqualified	FET qualified	FET unqualified	FET qualified	None	FET unqualified	FET unqualified	FET unqualified	FET unqualified	FET unqualified
By reference to international law	Not applicable	None	None	International law / principles of international law	None	None	Not applicable	None	None	None	None	None
By listing FET elements (exhaustive or indicative list)	Not applicable	No	No	No	No	No	Not applicable	No	No	No	No	No
FET modifiers	Not applicable	None	None	None	None	None	Not applicable	None	FET combined with NT or MFN	None	None	None
Full protection and security	No clause	No clause	Standard	Standard	Standard	Standard	Standard	Standard	Standard	Standard	no clause	Standard
Prohibition on unreasonable, arbitrary or discriminatory measures	No	Yes	No	No	No	Yes	No	Yes	No	Yes	Yes	Yes

Relative right to compensation (comparator)	Not applicable	MFN and NT	MFN only	MFN and NT	MFN only	MFN and NT	MFN only	MFN and NT	MFN only	MFN and NT	Not applicable	MFN and NT
Absolute right to compensation in certain circumstances	Not applicable	Yes	No	No	No	No	Yes	Yes	No	No	Not applicable	No
Balance-of-payments exception	No	Yes	No	Yes	No	No	No	Yes	No	No	Yes	No
Other specific exceptions (e.g. to protect creditors, etc.)	No	No	No	No	No	No	No	Yes	No	No	No	No
Includes prohibition of PRs	No explicit PR clause	No explicit PR clause	No explicit PR clause	No explicit PR clause	No explicit PR clause	No explicit PR clause	No explicit PR clause	Explicit PR clause	No explicit PR clause	No explicit PR clause	No explicit PR clause	No explicit PR clause
Umbrella clause	No	Yes	Inconclusive	Inconclusive	No	Yes	No	Yes	Yes	Yes	Yes	Yes
Entry and sojourn of personnel (subject to local laws)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
Directed at States (obligation to publish laws and regulations)	No	Yes	No	No	No	No	No	Yes	No	No	No	No
Right to regulate (any mentioning in the text of this or similar concepts, except preamble)	No	No	No	No	No	No	Yes	No	No	No	No	No
Reference to specific promotion activities in text of agreement (not preamble)	No	Yes	No	No	No	No	No	Yes	No	No	No	No
Exception included	No	Yes	No	No	Yes	No	Yes	No	No	No	No	No

Exception defined (exceptional circumstances described in more detail)	Not applicable	Yes	Not applicable	Not applicable	Yes	No	No	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Exception self-judging	Not applicable	No	Not applicable	Not applicable	No	No	No	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Other public policy exceptions (e.g. cultural heritage, public order, etc.)	No	Yes	No	Inconclusive	Yes	No	No	No	No	No	No	No
Scheduling and reservations (in treaty texts and annexes)	None	Negative-list reservations	None	Negative-list reservations	None	Negative-list reservations	None	None	None	None	None	Negative-list reservations
Alternatives to arbitration	None	None	Voluntary ADR (conciliation/mediation)	None	Yes	None	Voluntary ADR (conciliation / mediation)	None	None	None	None	None
Scope of claims: general approach (chapeau paragraph of ISDS clause)	Covers any dispute relating to investment	Covers any dispute relating to investment	Covers any dispute relating to investment	Covers any dispute relating to investment	Covers any dispute relating to investment	Covers any dispute relating to investment	Covers any dispute relating to investment	Covers treaty claims only	Lists specific bases of claim beyond treaty (e.g. contractual disputes)	Covers any dispute relating to investment	Covers treaty claims only	Other
Limitation of provisions subject to ISDS	Yes	No	Yes	No	No	No	Yes	No	Yes	No	No	No
Type of consent to arbitration	Provides express or implied consent	Provides express or implied consent	Provides express or implied consent	Provides express or implied consent	Requires case-by-case consent	Provides express or implied consent	Inconclusive	Provides express or implied consent	Provides express or implied consent	Provides express or implied consent	Requires case-by-case consent	Provides express or implied consent
ICSID	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	No	Yes

UNCITRAL	No	Yes	Yes	Yes	No	Yes	No	Yes	No	Yes	No	Yes
Other forums	Yes	No	No	No	No	No	No	Yes	Yes	No	No	No
Relationship between forums	No reference	Preserving right to arbitration after domestic court proceedings	Fork in the road	Fork in the road	No reference	No U turn (waiver clause)	no reference	"Fork in the road"	no reference	Preserving right to arbitration after domestic court proceedings	No reference	Preserving right to arbitration after domestic court proceedings
Limitation period for submission of claims	No	No	No	No	No	No	No	Yes	No	No	No	No
Affirms binding interpretation by contracting parties or their joint committee	No	Not applicable	No	No	Yes	No	No	No	No	No	No	No
Requires certain questions to be submitted to contracting parties (renvoi)	No	Not applicable	No	No	No	No	No	No	No	No	No	No
Regulates submissions by non-disputing State party	No	Not applicable	No	No	No	No	No	No	No	No	No	No
Requires documents to be made publicly available	No	Not applicable	No	No	No	No	No	No	No	No	No	No
Requires hearings to be open to the public	No	Not applicable	No	No	No	No	No	No	No	No	No	No

Regulates amicus curiae submissions by third (non-disputing) parties	No	Not applicable	No	No	No	No	No	No	No	No	No	No
Institutional framework (committee)	No	No	No	No	No	No	Yes	No	No	No	No	No
Technical cooperation/capacity building	No	No	No	No	No	No	Yes	No	No	No	No	No
Years of initial treaty term	15 years	20 years	10 years	10 years	10 years	10 years	5 years	10 years	10 years	15 years	10 years	10 years
Automatic renewal	Indefinite term	20 years	Indefinite term	Indefinite term	Indefinite term	Indefinite term	other fixed term	10 years	5 years	5 years	2 years	2 years
Includes modalities for amendment or renegotiation	No	No	No	No	No	No	No	Yes	No	No	No	No
"Survival"/"sunset" clause length	10 years	20 years	15 years	20 years	15 years	20 years	15 years	10 years	15 years	15 years	10 years	10 years

B. China's Domestic (Unilateral) Regulatory Regime towards FDI

China has come a long way from preferring inward-looking policies to being the epicenter of global commerce today. This section highlights developments in China's BIT regime. China adopted an 'Open door' policy in the late seventies allowing its active participation in the global market, aimed at bringing in FDI to accelerate economic development (Huan, 1986). These policies remained until 1997 to usher growth but were also combined with a focus on outbound investment in a bid to 'go global' (Bellabona and Spigarelli, 2007; Hughes, 2005). Encouraging foreign competition was essential to improve the competitiveness of Chinese firms- mainly state-owned enterprises (SOEs).

The 'Open door' policy along with new reforms of China was discussed during the Third Plenary Session of the 11th Central Committee of the Chinese Communist Party ('CCPCC') in 1978 under the leadership of Deng Xiaoping, who was widely credited as the "General Architect" (Lubman, 1997). These reforms were pursued to achieve economic growth and development through the inflow of foreign capital and technology while maintaining the Chinese government's commitment to socialism (Kobayashi et al., 1999; Hua, 2015). These reform policies resulted in an unprecedented GDP growth of 10% between 1980-2010, coupled with a decline in the poverty rate and an increase in average income. Foreign investment had catalyzed China's economic reforms.

Article 18 of the Chinese Constitution encourages and regulates foreign investment in the nation broadly. It permits the establishment of foreign investment and economic cooperation with local enterprises to the extent consistent with Chinese law. There are other legislations like the Sino-Foreign Equity Joint Venture Enterprise Law (EJV Law), adopted in July 1979, which marked the beginning of China's foreign investment law regime; the Sino-Foreign Cooperative Joint Venture Enterprise Law (CJV Law) and the Foreign-Capital Enterprise Law (FCE Law) and the Wholly Foreign-owned Enterprise Law (WFOE Law), which govern such foreign investments within the territory of China (Potter, 1995). Administrative regulations and regulatory documents governing FDI were issued by the State Council, which included the Provisions on Guiding Direction of Foreign Investment (Guiding Regulations).

Under the Guiding Regulations, projects are divided into four categories¹: encouraged, permitted, restrictive and prohibited.²

The FDI regime was further relaxed during the 1990s. During this period, Chinese commercial laws were developed including the formal practice of resolving commercial disputes between MNEs. China, during 1992-2005, had developed a dualist commercial legal system wherein one was exclusively for domestic firms while the other was for foreign investors. However, it was soon understood that this created an unfair treatment between foreign and domestic investors. Illustrations of this include the above quoted EJV Law, CJV Law and the WFOE Law, all created for Foreign Invested Enterprise (FIE), while the PRC Company Law was tailored for domestic firms (Leung and Chance, 1998). Under the dualist regime, Chinese nationals had comparative advantages/disadvantages in core commercial activities such as the establishment of an enterprise or the tax levied on investors.

From 2006, China focused on a market with ‘freedom of contract’ and ‘interest of the rule of law’ to boost FDI. To operationalize these principles, the 17th and 18th Party Congress (2007 and 2012) suggested policies on the lines of mutual benefit, integration and win-win cooperation with foreign businesses, and a reasonable and secure financial system (Miller, 2016). These reforms enabled China to adopt a more relaxed FDI regime, with a balance between the socialist government and the free market scenario (Gao, 2017). The State Council has also formulated the Implementation Regulations³ to facilitate the laws, Provision on the

¹ Guiding Regulations, Art 4, available at <http://english1.english.gov.cn/laws/2005-07/25/content_16873.htm> accessed 23 July 2017.

² Guiding Regulations, Art 3, which forms the basis of applicable policies for guiding the examination and approval of foreign invested projects and foreign invested enterprises.

³ Regulations for the Implementation of the Law on Sino-foreign Equity Joint Ventures promulgated 20 September 1983.

<<http://english.mofcom.gov.cn/article/lawsdata/chineselaw/200301/20030100064563.shtml>>, the Detailed Rules for The Implementation of the Law on Sino-Foreign Cooperative Joint Ventures, promulgated on September 1995.

<<http://english.mofcom.gov.cn/aarticle/lawsdata/chineselaw/200301/20030100062857.html>>, and the Rules for the Implementation of the Law of the People's Republic of China on Foreign-Capital Enterprises, promulgated 12 April 2001.

<<http://english.mofcom.gov.cn/article/policyrelease/Businessregulations/201303/20130300045769.shtml>> all accessed 23 July 2017.

Encouragement of Foreign Investment⁴ and Provisions on the Administration of Telecommunications Enterprises with Foreign Investment to encourage investment.⁵⁶

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⁴Provision of the PRC State Council on the Encouragement of Foreign Investment, promulgated 11 October 1986. <<http://english.mofcom.gov.cn/aarticle/lawsdata/chineselaw/200211/20021100053822.html>> accessed 23 July 2017.

⁵Provisions of the PRC State Council on the Administration of Telecommunications Enterprises with Foreign Investment promulgated 11 December 2001<http://www.fdi.gov.cn/1800000121_39_2273_0_7.html> accessed 23 July 2017.

⁶ The Chinese law on foreign investment is also complemented by the Five-Year Plans (FYPs) issued by the government.

D. China's Bilateral and Multilateral Regulatory Regime towards FDI

China also participates extensively in the international investment regime through multilateral investment-related legal instruments and BITs. Initially, China concluded BITs with selective developed countries, which provided capital export into China, unlike other nations, which entered into such commitments through the Friendship, Commerce and Navigation (FCN) treaties (Hodgson and Bryan, 2019). Investment promotion and protection agreements were brought in the 1970s to protect investors from certain abusive behavior of the host state.

Gradually, China's BIT policies became indifferent to whether the counter-signing State was capital importing or exporting. China's BIT framework was liberalized across the board, with a balance between the obligations and benefits stipulated in the BIT. This change began when China adopted its 'Open door' policy in 1978 (Chaisse and Olaoye, 2020; Berger, 2013). Further, China joined the WTO in 2001 and thus, was obligated to adhere to the WTO rules (like NT (national treatment), MFN (most favored nation), and FET (fair and equitable treatment) provisions) while conducting international trade. China also abandoned its hostile stance on national treatment of foreign investors (BIS, 2003). China has also pro-actively re-negotiated existing BITs to include investor-state dispute settlement provisions (Li and Bian, 2020).

E. References

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