Instrumental Liberalization: China's New Practice in Bilateral Investment Treaties in the 2000's

by

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Abstract

The spread of Bilateral Investment Treaties in the past decades, as a popular way to promote and protect foreign direct investment between countries, is no doubt a vivid example that displays the triumph of globalization and the diffusion of liberalization. By the end of 2013, most countries of the world have participated and signed 2,857 such treaties (UNCTAD, 2013). China, among them, is definitely a latecomer and a distinct player. Until 1982, which is 23 years later than Germany's first treaty with Pakistan, China started its BIT program, and soon has become the world's second largest contract party. As of its particularity, from the very beginning, China became one of the few developing economies (BRICS states in particular) that were able to sign treaties favoring their own economic interests and sovereignty; soon after, China is also the first and the only country among them that chose to abolish such privileges and started its new, liberalized practice. Stemming from China's unique development trajectory, my research question asks: what has motivated Chinese government to make such unprecedented change? What was the rationale behind this behavior so distinct from other BRIC countries? The emerging causal narrative comes from Steve Vogel's theory of "asymmetric regulation" in competitive markets, with the analysis of the specific domestic political and economic constraints within China. This paper argues that China's new, liberalized practice in BITs is first a policy outcome to increase the international competitiveness of the national industry; more than that, it is also an instrumental liberalization effort made by the central government to strengthen the political control over the locals and to re-shape China's understanding of the international order, especially the South-South cooperation.

Preface

This thesis is original, unpublished, independent work by the author, Yingqiu Kuang.

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List of Abbreviations

BIT	Bilateral Investment Treaty
CICCPS	China International Chamber of Commerce for the Private Sectors
CCP	Chinese Communist Party
CDB	China Development Bank
Exim Bank	The Export-Import Bank of China
FDI	Foreign Direct Investment
FYP	Five Year Plan
GATS	General Agreements on Trade in Services
ICSID	International Center for Settlement of International Disputes
MOFCOM	The Ministry of Commerce
MFN	Most Favored Nation
NAFTA	North American Free Trade Agreement
NT	National Treatment
OFDI	Outward Foreign Direct Investment
PRC	People's Republic of China
POE	Private-Owned Enterprise
PTA	Preferential Trade Agreement
SOE	State-Owned Enterprise
SASAC	State-owned Assets Supervision and Administration Commission
TRIM	The Agreement on Trade-Related Investment Measures
TRIP	The Agreement on Trade-Related Aspects of Intellectual Property Rights
TVE	Town Village Enterprise
UNCTAD	United Nations Conference on Trade and Development

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Introduction

In September 2008, the government of Belgium and Luxemburg declared to bail out the Fortis Group that had suffered huge economic loss during the financial crisis. Shares of this bank was acquired by the government and then sold to a French company, BNP Paribas. Unlike previous nationalization movements in history, the greatest victim of this incident was no longer multinational corporations from the western world, but Ping An, China's second-largest insurance company and a pioneer in China's overseas investments. As the largest shareholder, Ping An lost $3.6 billion US dollars, the amount that was nearly ninety percent of its assets in Fortis (Bloomberg, 2012). Ping An protested strongly at a time when this nationalization took place; four years later, it chose to appeal to International Center for Settlement of Investment Disputes (ICSID) for compensation. This is the first PRC enterprise in history that used an international arbitration body. In the meantime, Chinese government also, for the first time, became the defendant of another international investment arbitration case, sued by a Malaysian company, Erkan Berhad (Toulson, 2011).

The new voices, both from Chinese government and enterprises, in international investment arbitrations came from two waves of liberalization. The first kind that has been under thorough review in both academia and media took place in China's overseas investment. The Chinese state has been liberalizing its investment policies since the economic opening, and the overall result is historic: China is now the largest FDI recipient of the world, as well as the third largest FDI exporting country. The other kind that was rarely mentioned in previous researches is the liberalized practice in China's BITs program. Since 1998, China has signed

56 new bilateral investment treaties, the template of which is so different from the past. Most notably, investors from both parties, according to the new standards, are allowed to go beyond the domestic legal procedures, and appeal to international arbitration organizations for the settlement of any state-investor dispute. Such great transitions have been recorded by many political scientists and law specialists the watershed in China's international investment regime (Berger, 2008; Price & Smart, 2013).

The study of China's new practice in BITs will provide us with an interesting opportunity to observe the transformation of this strong and authoritarian state on the global stage, as well as the impacts this rising power will generate on world investment governance. After all, Ping An's pioneering action in ICSID is not merely an smooth transition that marks the victory of liberalization in China: it heavily contrasts with the conventional Chinese perception of and approaches towards foreign direct investment regulation, so is contradictory to the realist view that states should always maximize their own interests. From the very beginning, China was one of the few developing economies (BRICS states in particular) that were able to sign the treaties that favoring their economic interests and prioritizing their sovereignty to control and regulate foreign investments. Fan and Zhang (2003) conclude the experiences of how developing counties can benefit from globalization from the case of China, the primary lesson among which is the step-by-step opening up that should fit the country's own level of development where domestic industries are protected from undue foreign competition. Chen (2006) also warns that Chinese government should be cautious adapting its BITs into the American standards by which the economic regulatory capacity of host states, especially developing countries, will be seriously challenged. Thus, there is no possibility that Chinese leaders will ignore the threats that the empowered foreign investments from the western world will one day serve as a democratization pressure; the new practice in Chinese BITs will marginalize the state regulation and has the potential to politically destabilize Party control.

Stemming from the observable particularity of China's behavior and the theoretical divergence, my research question asks: what motivated Chinese government to make such unprecedented change? What was the rationale behind this behavior so distinct from other BRIC countries? Answering these questions can, to some extent, illustrate the complex causal relationship between the domestic political economy of China and its international behaviors. It can also contribute to the existing theories on China and global governance.

Previous scholarly literatures have argued that, the varying acceptance of the liberal international investment rules in different countries depends on their political institution, investment interests, and bargaining power. Drawing critically from these theories, I find it counterintuitive that China, an authoritarian state, the world's largest developing economy, as well as the largest FDI recipient would make this change. What is more perplexing is that China is the first, and the only country that has embraced this liberalization among BRICS states, whereas Brazil, Russia, and India, the other three largest economies and FDI exporters in the developing world still choose to exclude themselves outside the gate. While Beijing is committed to integrating the international institution into legally binding BITs, Moscow, Brasilia, and New Delhi are still maintaining their conservative and mercantile FDI regulatory system.

Some China scholars such as Johnston (1996) and Pearson (2006) also consider imitation and learning as the main determinant of China's socialization of international institutions, for example, in the field of arms control and international trade governance. Though they have offered a fresh, constructivist view to account for the changes in China's international behaviors, the application of such framework in the BITs case is also problematic. The most direct reason is the fragmented nature of world investment governance that will be briefly discussed in the following chapters. So far, no unified, international rules for FDI have been able to be established. BIT templates and standards are also different across countries. This fragmentation will cause troubles in China's learning and adaptation: it will cause divergent practices in China's BITs program, rather than the convergent, liberal transition that we have observed in reality.

Building upon Steve Vogel's theory of "asymmetric regulation" (Vogel, 1998), combining the analysis of China's domestic political and economic constraints, I argue that the liberalization of China's BITs is at first a policy outcome aiming to increase the international competitiveness of the national industry, largely driven by the ideology of state-led capitalism; more than that, it is also an instrumental liberalization effort made by the central government to strengthen the political control over the local government and to re-shape China's understanding of the international order, especially the South-South cooperation. Thus, different from a victory of liberalization that should have witnessed less control from the government within China, this new practice in China's BITs program is never a deregulation that would be expected by classical liberalists; instead, it has causedwhat Vogel advocates “more rules”, trying to re-regulate China’s domestic political economy. One of the greatest problems of such re-regulation is the incompatibility of economic development and political control in the long run. Also, China’s new understanding of the international order, in the short-term, may be influential not only to China’s own political economy, but also to the world’s political relations and economic development.

This paper first introduces the general development of world’s investments, outlining the fragmented nature of world’s FDI governance interlinked in bilateral, regional and multilateral levels. Then it moves on discussing existing theories, and their application to China, trying to define the dependent variable – the peculiarity of China’s BITs transitions. I demonstrate that whilst these theories have showed their values in explaining the behaviors in most countries, they have been unable to fully account for China’s peculiar policy responses.

In the ensuing section, this paper represents the main argument, i.e., China’s new practice in its BITs program is an instrumental liberalization strategy trying to increase the international competitiveness of the national industry while, at the same time, re-regulating the political relationship between the central and the local government, as well as China’s strategy in South-South cooperation. First, I establish the theoretical framework based on Steve Vogel’s work and the illustration of the primary interests conflicts behind China’s liberalization in BITs. The following empirical section shows how the interactions between the central and the local government, between the state and the firms, and between China and other countries, most notably developing states, have produced such policies. The final section concludes with some policy implications.

World FDI Governance

FDI is generally defined as an investment made by multinational corporations to acquire lasting or long-term interest in enterprises operating outside of the economy of the investor, in order to gain a measure of management control (International Monetary Fund, 1993). Since the end of the Second World War, it has become an important driver of globalization and has grown quickly over the last decade. In 2013, FDI, as forecasted by United Nations Conference on Trade and Development (UNCTAD), is going to remain close to the 2012 level, with an upper range of $1.45 trillion. However, flows are expected to reach levels of $1.6 trillion in 2014 and $1.8 trillion in 2015 (UNCTAD, 2013). Developed countries have historically been the primary driver of FDI – the lion's share of FDI involves developed countries either from the investor side or as recipients of FDI. In 2007, 84.8 percent (around $1,692 billion) of total worldwide FDI emanated from developed economies, and 68 percent ($1,248 billion) of the world total flowed into developed economies in the end (Jensen, Biglaiser, Li, Malesky, Pinto, and Staats, 2012). This advantage was later challenged by the rise of emerging economies, however. As an economic activity, FDI is driven by multiple factors: its seek for large, potential markets, raw resources, cheap transportation costs, as well as plentiful cheap labor force has led to its flows; the recent globalization, as well as the formation of multilateral/bilateral relations has also created a more promising investment climate (UNCTAD, 2003; Buthe and Milner, 2008).

However, the role of FDI in promoting the world economy and social development has always been controversial. Its strong proponents, on the one hand, argue that the development of FDI could benefit both the exporters and recipients (Trakman and Ranieri, 2013). By brining foreign capitals, it will lower the cost of goods and services; also, it will provide employment, training and knowledge transfer for locals, which can be seen as an aid to development in some low-income countries (Collins, 2013). On the other hand, the populist concern over FDI is that it could only benefit the countries that have owned the advantages (developed countries normally), at the cost of the development of developing states. The "race to the bottom" level will generate the path dependence problem in developing host states that have suffered an overall loss of sovereignty and lowered social standards. It will prevent the development of local industry and the associated rise of an entrepreneurial class, crowd out local firms, and limit their capacity to improve capabilities, particularly in situations where there are insufficient basic skills to adopt technological learning (Collins, 2013). Moreover, FDI will inflict undue harm on the local environment and local workers, which will make the local economy more problematic.

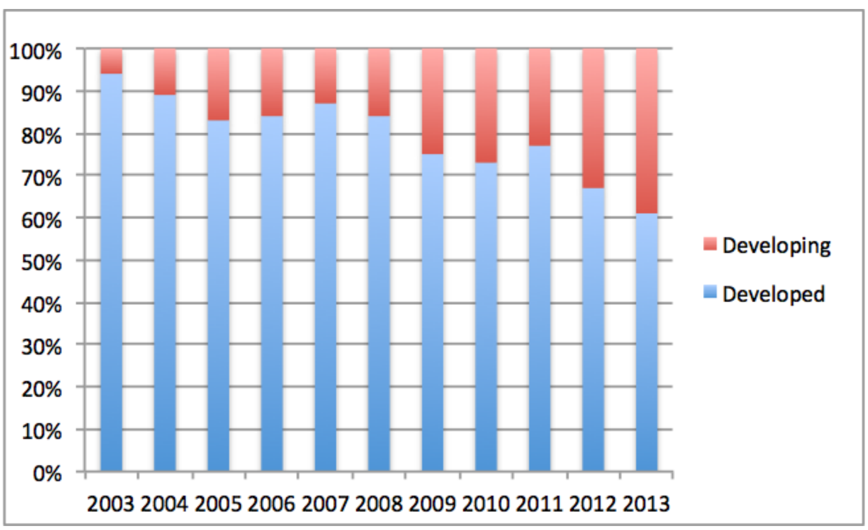

Figure 1 World FDI Outflow: 2003-2013

The rise of developing countries in world FDI exports, at a time when the financial crisis was traumatizing developed economies in 2008, has had significant consequence not just for the recovery of the world economy, but also their international relations, and global, political influences. In 2012, developing economies, for the first time ever, absorbed more FDI than developed countries, accounting for 52 percent of global FDI flows (UNCTAD, 2013). Meanwhile, nearly one-third of global FDI outflows came from developing economies, reading $426 billion dollars. In addition, the international dynamics of their FDI exports are heavily dependent on BRIC states, the largest four developing economies of the world. The FDI outflows from them (including South Africa in this data) grew tremendously fast from $7 billion in 2000 to $145 billion in 2010, accounting for 10 percent of FDI outflows from the entire developing world (Collins, 2013). Thus, greater attention needs to be paid to BRIC states and their international investment practices. Whether, as some predict, they will socialize the international investment institutions will have huge impacts on the world investment regulation and management.

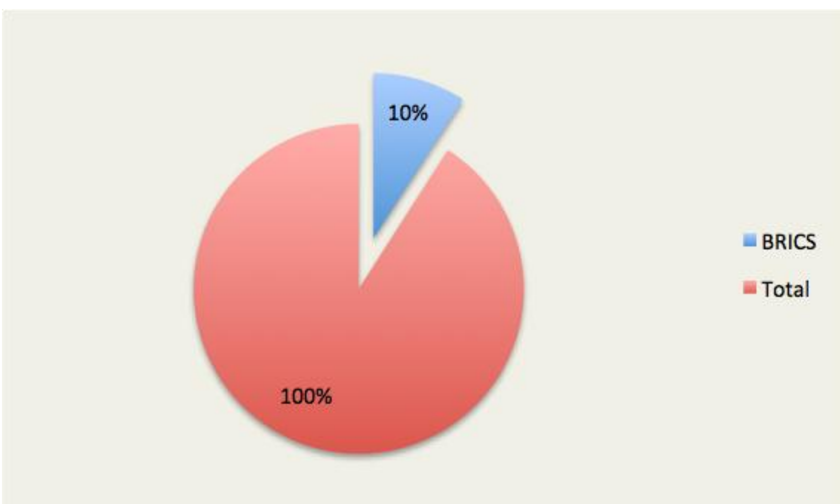

Figure 2 FDI Outflow from Developing Countries

World economic governance has, in the past several decades, been committed to establishing a systematic regulatory framework both for international trade and investment, and has organized multiple organizations at bilateral, regional, and multilateral level, including actors from nation states to non-governmental organizations. Though they have seen a proud victory establishing World Trade Organization (WTO), there is no single, multilateral organization that deals comprehensively with all aspects of FDI governance. The very first Havana Charter proposed in 1948 never came into force, due to the refusal of the US Congress to ratify this agreement (Berger, 2008); The Organization for Economic Cooperation and Development (OECD) also supported the same kind of multilateral framework for FDI governance, but the negotiation of a proposed Multilateral Agreement of Investment (MAI) also failed in the late 1990s (Tieleman, 2000). The latest defeated attempt was the negotiations in the Doha Development Round in WTO in 2003, due to the fierce opposition from developing countries and critical NGOs. As a consequence, roughly 5,500 international investment treaties (IIAs) have been established in this world, which suggests that the world FDI governance has been framed as a fragmented, complex, and multi-layered system, each layer of which suffers huge criticism and skepticism.

World Trade Organization

World Trade Organization (WTO), as recognized by most countries in the world, is the primary multilateral organization that governs the trade development among states. However, the benefits of most WTO agreements are not merely restricted to trade: they also have consequence for international investments. The General Agreement on Trade in Services (GATS) includes the Most Favored Nation agreement (MFN) that applies to the supply of trade in services through “commercial presence”, which is in essence an investment activity. It also provides certain investments in services with the special National Treatment (NT) principle. The Agreement on Trade Related Investment Measures (TRIM) is another multilateral agreement about FDI, one that basically prevents any WTO members from conducting measures that restrict foreign investors. Furthermore, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIP) also introduces the minimum standard of protection of investments related to intellectual property rights. Indeed, these multilateral agreements under WTO have become important contributors to world FDI governance at the international level; however, they are constrained to regulate the trade-related investments.

International Center for Settlement of Investment Disputes (ICSID)

Another aspect of multilateral FDI regulatory framework is International Center for Settlement of Investment Disputes (ICSID), the most popular international arbitration body that deals with the disputes between states and investors. As an organization under the World Bank, ICSID provides a neutral, consensual platform for disputes settlement, with their arbitration decisions final and legally binding to all parties (World Bank, 2011). Whilst ICSID has become, so far, a widely used investment arbitration organization, as ratified by 144 member states, it still faces challenges and criticism. The lack of information transparency, channels for complaints, and decision consistency, as well as the absence of constraints towards non-member states (Trakman and Ranieri, 2013) has become its major weak points being strongly condemned. However, the greatest challenge lies in the hostile attitudes by developing countries. In 2009, Ecuador announced to withdraw from ICSID; President Rafael Correa criticized that ICSID signified colonialism, slavery with respect to transnationals, Washington Consensus and the World Bank (Diaz, 2009).

Regional: Preferential Trade Agreements (PTAs)

Parallel to the multilateral agreements on FDI is a plenty of Preferential Trade Agreements (PTAs) at the regional level. The liberalization movement of the 1990s spurred great production, growth, and prosperity of such regional agreements, despite the achievements that multilateral liberalization has appeared to be firmly established. Among 170 PTAs that had come into force by 2008, the north-south PTA, often signed between developing and developed states, is the majority and has experienced the fast growth (Manger, 2009). They not only cover the regulations of trade, but also include rules over the flows of the factors capitals and labor. Now, PTAs have become the most important regional institution governing FDI, especially North American Free Trade Agreement (NAFTA), whose provisions on high levels of substantive and procedural investment protection as well as liberalization commitments, has made itself the most prominent and most comprehensive regional agreement governing investment flows (Berger, 2008).

International Relations Scholars argue that it is the decline of the United States that has caused PTA’s growth, especially at a time when the United States is no longer capable of keeping the multilateral trade regime open and fair (Manger, 2009; Mansfield and Milner, 1999). Cooperation problem (Simonelli, 2007), according to neoliberalists, is another reason responsible for PTA’s prosperity, because as the number of countries involved into the negotiations grows, especially at the multilateral level, the negotiations are likely to become more difficult. PTAs, as a result, have become an alternative approach took by the government to pursue trade and investment liberalization. Similarly, MNC’s interests to invest overseas also have consequence for the development of PTAs: its discrimination effect has enabled the members to raise the barriers for competitors from non-member states. This effect has soon led to the domino phenomenon in regional trade and investment: excluded countries are either busy forming their own PTAs or joining the existing kinds, in order to maintain their own trade interests (Manger, 2009). As the amount of PTAs grows fast, whether such regional regulatory agreements will promote or inhibit the international trade and investment has provoked many discussions (Dee and Gali, 2005; Tobin and Busch, 2010; Baccini and Dur, 2010).

Bilateral Investment Treaties (BITs)

Vandevelde (2000) defines bilateral investment treaties (BITs) as agreements "to protect investment by investors of one state in the territory of another state by articulating substantive rules governing the host states' treatment and by establishing dispute resolution mechanisms applicable to alleged violations of those rules". The overall development of world's BITs in recent years has been remarkable: by now, there has been 2,857 BITs, including most of the countries in the world. The growth rate of BITs of the first two decades in the 1960s and the 1970s was moderate; western European countries dominated in this period, in order to form a friendly investment environment with poor, developing countries (Berger, 2008). The fast growth and prosperity soon took place in the 1980s and the 1990s. The competing for foreign capitals among developing states such as in Latin America, and East Asia has also led to a continuous increase in BIT numbers. As a legal document negotiated between two parties, BIT provides foreign investors with a series of protection measures such as the absolute and relative standards of treatment, protection against expropriation, protection on transfer of funds, compensation for losses caused by war and civil strife, as well as dispute settlement procedures. BIT is now the world's most popular format for FDI governance.

Despite its importance, there is also an issue of incompatibility of the BIT templates used by different countries. The Admission model is widely accepted in European countries and the developing world, and it provides protection for investment only after the admission of the foreign investment according to the host countries' domestic laws and regulations. The Pre-establishment model (Berger, 2011), on the other hand, becomes popular in the United States, Canada, and Japan. As such, the screening power of the host states is restricted, which weakens their economic sovereignty to govern FDI. Scholars who have concerns over this template argue that capital-importing/developing countries are structurally disadvantaged, because these treaties "undermine the ability of host government to effectively regulate foreign direct investment to support economic development" (Berger, 2008).

Dependent Variable: China's Peculiar Evolution of Its BITs in the 2000's

Foreign Direct Investment has been framed in the language of development and modernization for a long time and at the top level of the Chinese government. Earlier in the year of 1978, Deng Xiaoping, recognized the importance of FDI toward China at a time when he was meeting with a German journalist delegation, arguing it to be the "starting point of China's modernization and economic development" (Deng, 1978). Later this year, the Third Plenum of the eleventh Party Congress ratified Deng's proposal to "take full advantage of world advanced technologies and facilities", and thus became the first official document emphasizing FDI's significance on China's economic opening and reform. In 1992, Deng, during his famous "South Tour", was quoted as saying, "we could learn technology and management from foreign investors, as well as getting information and expanding the market" (Deng, 1992), once again noting FDI as an important contributor to the establishment of Chinese socialist economy. Hence, China, in the past thirty years, has gradually become the preeminent recipient of inward FDI among developing countries. The amount of FDI flows to this country continued to rise even during and after the recent global financial and economic crises (Davis, 2012). In 2012, China surpassed the United States and became the largest FDI importer of the world (Xinhua, 2012).

Recognition of Chinese outward foreign direct investment as an economic policy within China began in the 1990s, under the leadership of former President Jiang Zemin. In 1994, Jiang himself, in his report to the Fourteenth Party Congress, argued thatChina should actively expand the overseas market, promote the diversification of the external trade, and develop export-oriented economy (Jiang, 1994). This issue then has risen into prominence in the period of the Hu-Wen administration and the most recent Xi-Li government, during which a plenty of policies were implemented, in order to promote Chinese overseas investments. In 2003, the amount of Chinese OFDI was merely $2.8 billion dollars; however in 2010, this amount reached at $68 billion, which was a three-time growth in the past ten years (Collins, 2013). Developing countries, most notably China's Asian neighbors and Latin American states, are the primary destinations of Chinese investments, attracting over 70 percent of China's FDI outflows (Berger, 2011). Africa has also become a new, important destination, due to its plentiful natural resources. In addition, Europe has replaced North America, and become the third largest importing area of Chinese overseas investments. Most Chinese OFDI are concentrated on manufacturing, resource, information technology, as well as software industry (Berger, 2011). From these cases, it is clear that the Chinese state has been trying to transform from a pure FDI recipient into a leading source of outward foreign capitals.

In examining how to promote the outward foreign direct investment, we may frame this issue as a combined policy effort. There are always the typical domestic political and economic incentives, motivating domestic firms to go abroad; there are also complicated countries' international behaviors, aiming to create favorable investment environment for their own companies. Obviously, within China, the government has achieved much progress in both aspects. China's peculiar evolution of its BITs program, in this process, belongs to the latter policy effort.

“Going Global” Strategy

Former Premier Zhu Rongji who initiated the “going global” policy in his report to the National People’s Congress in 2002 made the elevation of Chinese overseas investments into a national focus. This urgent prioritization can also be read in many official documents: the “going global” strategy has featured continuously in the tenth, eleventh, and twelfth Five Year Plans that announced the Politburo’s medium-term targets, as well as the annual Chinese Premier’s Government Work Reports. More specifically, the tenth FYP (2001) announced that overseas investments by Chinese enterprises would be one of the four key thrusts to enable the Chinese economy to “adjust itself to the globalization trend”. The twelfth FYP (2011)clarified the government’s obligation to “guide enterprises with different kinds of ownership to investment overseas and co-operate in an orderly manner”. Government behavior has also been explicitly articulated in the 2011 Government Work Report by former Premier Wen Jiabao that “they will… improve relevant support policies, simplify examination and approval procedures, and provide assistance for qualified enterprises and individuals to invest overseas” (Wen, 2011).

A list of policy incentives has also reflected the political will of the central government in overseas investment. The China Development Bank (CDB) and The Export-Import Bank of China (Exim Bank), as well as other major state banks have begun providing Chinese enterprises in the priority list with financial support, in the form of below-market rate loans, direct capital contribution, and subsidies associated with the official aid programs (Davis, 2013). Special funds, as established by Ministry of Commerce (MOFCOM) and other government agencies, have also helped to build Chinese OFDI projects. In addition, the central government has offered non-financial incentives, providing all Chinese enterprises operating in the host countries with double taxation treaties with China continue to enjoy exemption from income tax (OECD, 2008).In 2011, the Chinese state raised the ceiling on government investment projects in natural resources and other sectors, respectively to $300 million and $100 million dollars (OECD, 2008); the approval authority has also been delegated to the provincial level – a decentralized and liberalized approach that aims to lighten the administrative burden on domestic enterprises.

The progressive action the state has taken in the international arena also gives an insight into the political will of Chinese leadership in promoting overseas investments. Early in 1991, China was a member state of ICSID; their emphasis on WTO as a necessary step for China's globalization has made them go through 15 years of hard negotiations, and finally acceded into this international organization in 2001. At regional and bilateral level, where negotiations are bit easier, China has been a major contracting party signing bilateral investment treaties. China's BIT program started in 1982 with Sweden; as of 2012, China has signed 131 BITs, 102 of which have been in force. The first Chinese regional agreement is the Asia-Pacific Trade Agreement formed in 2001. However, till 2007, Chinese leaders started to consider PTAs as an important component of China's economic strategy. In the following years, China has signed 11 PTAs, is currently negotiating another five with the Gulf Cooperation Council, Australia, Iceland, Norway, and South African Customs (Berger, 2013).

As well as the large number of regional and bilateral investment agreements, China's "go global" strategy is also self-evident in the content of these treaties, which has seen a new, liberal transformation, from the previous conservative, mercantile model to a more western standard. For example, China's BIT program, as analyzed by Berger (2008), has experienced three different periods. The first period, starting from 1949 till 1981, showed China's hostile attitudes towards foreign investor, with which China's sovereignty and territorial integrity would be seriously harmed. Between 1982 and 1998, the Chinese government gradually opened the economy, and changed their attitudes. The BIT practice at the second stage adopted a conservative policy that was generally representative for capital-importing/developing countries. They supported a cautious protection of FDI, while at the same time, containing serious reservations in strong substantive as well as procedural protection of foreign investments. The most recent, but decisive shift toward high level of FDI protection took place in 1998. What is more interesting is, as Berger (2008) argues, that this 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. Indeed, among 56 newly established bilateral investment partnerships, 44 contracting parties are developing states concentrated on Africa and Latin America. This section explicitly explains the two primary aspects where China's practice in BITs has evolved to embracing liberalized international investment rules: National Treatment (NT) and disputes settlement between states and investors.

National Treatment

National Treatment, along with Most Favored Nation Treatment that Berger (2008) considers as the most important components of BITs, as well as the major criterion to understand the “China model”, provides investors with substantive and procedural protections. Literally, this principle defines that a host country should extend to foreign investments that are at least as favorable as the treatment that it accords to national investors in like circumstances (OECD, 2008). In this world, the application of this principle has incurred many conflicts, especially between industrialized and developing nations. Strengthening the enforcement of National Treatment, without any doubt, has ensured a degree of competitive equality between national and foreign investors; however, on the other hand, it has also posed serious threats on the economic sovereignty of developing countries, as well as on their domestic infant industries.

The Chinese government, from the very beginning, has agreed to provide Most Favored Nation treatment – this clause was included in Chinese BITs throughout the 1980s and the 1990s; however, it still had concerns granting foreign investors with national treatment. Most of Chinese BITs concluded before 1998 did not include provisions on national treatment, aiming to protect infant industries, particularly State-Owned Enterprises (SOEs) from foreign competitors. The agreements with some developed countries such as UK (1986). Japan (1988) and Slovenia (1993) at the time made an exception, and reflected China’s practice of national treatment in the first generation; however, it suffered a lot of limitations. For instance, the article 3(1) of Sino-UK BIT and the article 3(3) of Sino-Japanese BIT state that “for the purpose of national treatment, it shall not be deemed ‘treatment less favorable’ for either contracting party to accord discriminatory treatment, in accordance with its applicable laws and regulations, to nationals and companies of the other contracting party, in case it is really necessary for the reason of public order, national security or sound development of national economy". These qualifications enabled Chinese authority to discriminate against foreign investments, in favor of domestic industries, thus limiting the effective protection of foreign investments.

The provision of national treatment, however in China's new practice in the 2000's, has become very salient within China. According to the Sino-Netherland BIT signed in 2001, the very first agreement that includes the new definition of national treatment provision, the Chinese state shall not only accord to investments and activities associated with such investments by the investors of the other contracting party treatment no less favorable than that accorded to investments and activities by its own investors or investors of any third state, but also, as stated in the protocol, endeavor to progressively remove the nonconforming measures. Therefore, whilst China still maintains its own laws and regulations on foreign investors, its commitment not to increasing discriminatory treatment toward foreign investors, as well as their promises to gradually removing such measures has moved Chinese BITs more close to the western, liberal standards. In the meantime, with the multiplying effects of most-favored nations provision, China has been able to enjoy higher level of investment protections from most developing countries with which China still includes qualified national treatment in their BITs.

Perhaps the biggest statement of the transition of the national treatment provision, moreover, is embodied in the BIT negotiations between China and the United States, these two regional powers with huge political and economic influence. Perhaps as the most important BIT of its kind in the world, work on the negotiations started in 2008, though having been through 11 rounds of talk, both parties are still unable to make any consensus. Aimed at achieving a strong, comprehensive agreement, the US government proposed three principles: China needs to first provide for high levels of substantive investment protection, second include a comprehensive investment dispute settlement clause, and third, more importantly, note that the United States is pursuing a pre-establishment approach that features substantive provisions granting market access for foreign investors (Cai, 2013). The Chinese government, as described above, has moved much closer to the American expectations, most notably in the first and the second principle. However, adopting the pre-establishment model is clearly estimated as a far-reaching shift that is unlikely to happen in China now, a country that has stuck to the admission model with exceptions allowing for a grandfathering of national industries for a long time. Many Chinese scholars opposed strongly the Americanized version of Sino-US BIT, arguing that by adopting the pre-establishment model, a policy that prevents host countries from imposing certain performance requirements as a condition before the establishment of an investment, China's economic sovereignty will be seriously weakened (Chen, 1989; Chen, 2006). Nevertheless, in December 2013, Beijing agreed to resume the negotiation that has entered the impasse, based on the pre-establishment model as the United States expected. Any result that is going to achieve, I argue, will become a landmark in the evolution of China's BIT program.

International Disputes Resolution

As well as the changes in the national treatment provision, China, in the past decade, has also pioneered in liberalizing the mechanism of investor-state disputes settlement, resorting to ICSID and The United Nations Commission on International Trade Law (UNITRAL) to arbitrate the disputes happened between states and investors. The Chinese state, since its BIT with Barbados in 1998, has granted foreign investors the rights to appeal to international arbitration bodies. Both parties, in the first six months, could choose to settle their disputes amicably; otherwise, they are allowed to submit the dispute for resolution by international arbitration under ICSID and UNCITRAL rules. The transfer of such arbitration authorities, from domestic laws to an international tribunal, from local remedies to transnational arbitrations, has made the Chinese governmentabandon the intentions to protect sovereign rights in regulation of foreign investments, demonstrating an emphasis on protecting Chinese OFDI as a part of the liberalization of China's BIT policies.

	US	EU	China 1980's-1990's	China 2000's	Brazil	India	Russia
National Treatment	✔	✖	✖	✔	✖	✖	✖
ICSID	✔	✔	✖	✔	✖	✖	✖

Table 1 A Comparison among Countries in the Provision of National Treatment and ICSID

Scholars first emphasize the importance of political institutions in the acceptance of liberalized international investment institutions by countries, a classical liberal political theory that democratic states will generally support the liberal trade and investment in the world economy. The magnitude of this theory is apparent: democratic countries in Western

Europe and the United States are the leaders in establishing multilateral economic and investment cooperation, which is designed to protect their investment in other countries. Ginsburg (2006) shows developing countries who have signed BITs tend to be richer, larger and more democratic. At the same time, it is these international investment rules that have generated more liberalized policy responses from non-democratic countries, as they realized that accepting them could work as a signal that policy regarding foreign investment in these countries would be stable.

Feasibility of this institutional factor in BRIC states is another issue: most BRIC states have concerns over the multilateral framework for FDI governance, as well as the regional and bilateral agreements. Though they are members and active participants of WTO, Brazil, Russia and India, countries have experimented with democracy are still not members of ICSID convention, refusing to use ICSID rules for international arbitration, let alone ratifying non-qualified national treatment provision. The state-investor disputes settlement mechanism, conducted in these countries was similar to China's approach in the 1980s. They will normally require negotiations to deal with disputes first; foreign investors could choose to go to the international court, only before the final decision is made. This condition is problematic, given the reputations of these countries' legal systems. Choosing ICISD as the international arbitration body, as stated in Brazilian and Indian BITs, is also allowable when both contracting parties have both joined ICSID (Collins, 2013). This provision is also ironic, as none of them has ratified the ICSID rules. In addition, Brazilian courts have recently suspended international arbitration procedures on the grounds that a government-owned company could not be subject to international arbitration. Similarly, though the international arbitration act (1993) in Russia has specified UNCITRAL rules as the recognized international organization for disputes settlement, Rubin (2012) argues that the enforcement of arbitral decision in Russian courts has always been problematic for foreign investors, although this situation is thought to be improving. In the meantime, the application of this theoretical framework in the Chinese case is also problematic: an authoritarian state has made huge progress in liberalizing its BIT policies. Chinese leadership who wants to develop the socialist market economy has been proactively integrating China into the global market since the 1980s, a phenomenon that was never observed by western countries. China's acceptance of liberalized international investment institutions has not lead to the political democratization as projected by political scientists, but the consolidation of the Chinese Communist Party's regime, regardless of how much political transformation they have caused in many countries in Eastern Europe and Africa.

Scholars then gives a comprehensive framework in examining how and why BRICs states, as well as other developing countries, might have different responses toward international investment institutions. Most of the world's BITs are singed between industrialized and developing nations, namely, between capital-exporting and capital-importing countries. This nature has made both the treaty contexts and their liberalization degree subjective: developed countries, the ones who own more coercive power, could dominate the negotiations to achieve what they need (Allee, and Peinhardt, 2010). The usefulness of this power concept lies in its insight into why large developing countries could influence their BIT negotiations, thus preventing the spread of the liberalization (Ginsburg, 2006; Guzman, 1998; Simmons, 2013; Allee and Peinhardt, 2010). Their advantages in natural resources reserves, such as oil and demands, where by host state governments are able to ignore the international institutions through the inelastic demands for these treasures, has well explained why BRICs states, the largest four developing economies of the world, are so distinct from the rest of the developing world. This theory has also been testified by a plenty of quantitative researches. Most notably, Elkin, Guzman, and Simmons (2008) contend that the international competition for capitals – mostly among developing countries, has forced these states to give up their resistance against international investment rules, and thus has promoted the prosperity of BITs in the world.

The liberalization of China's BITs stands in antithesis to the aforementioned power-based theory that has well illustrated the policy responses in the other three BRIC states. In the first twenty years of China's economic opening, the grand domestic market, cheap labor force, as well as plentiful natural resources within China has made the Chinese state maintain their own regulatory standards on foreign investments, and has become one of the only few development economies that is capable of signing non-liberalized BITs (Berger, 2008). Chinese international law specialist, Chen An (1989), among others, have voiced concerns over China's liberalization in overseas investment – including the accession into ICSID, and the unlimited access into international arbitration for state-investor disputes settlement. However, these obstacles have been voluntarily removed since 1998, despite the fact that China has become the largest FDI recipient and has strengthened its negotiation power. The liberalization in Chinese BITs came along with China's accession into WTO; and the implication of the Sino-US bilateral agreement, according to Cai (2013), is no less important than joining the WTO. By contrast, Collins (2013) suggests that the other three countries have no intentions dropping off their investment policies that could discriminate against foreign investments. Their governments are still maintaining their screening power over foreign investors, resisting against national treatment provisions and international arbitrations. In 2009, Russia declared to withdraw from ECT, Russia's most important regional agreement that proposed to establish a legal framework, especially in energy sector, to provide investment protections for both sides. In this comparative analysis, the theory of negotiation power seems unable to explain China's voluntary transition to its BITs practice.

Scholars have also extensively issued the concept of interest in examining the liberalization outcomes both in the traditional domain of trade and in new investment issues, as well as broadening its geographical scope outside of the previous developed economies, such as European Union and the United States, to application in emerging economies. This basic framework looks at the process in which countries with increasing investment interests, especially the ones whose investments are associated with negative governance outcomes like civil war and corruption are more likely to resort to liberal, comprehensive multilateral and regional agreements for investment protection. Chinese enterprises, when faced with a threat to their operations as Berg (2008) notes, have tried to appeal the central government for a higher level of protection. In order to protect the ever-growing Chinese overseas investment, the Chinese state must abandon their hostile approach toward the liberal international investment institutions; the proactive transition in their BITs with developing countries, the major destination of Chinese investment, has played a legitimating role in escalating the liberal transition in China's practice in BITs.

Despite the fast growth of Chinese overseas investment interests, I argue that it is still too early for China to embrace the international investment institutions. IFDI/OFDI ratio is an indicator that refers to what Dunning has called a "country's net international direct investment position", and exemplifies the importance of OFDI in its economy. It is also associated with the Investment Development Path, a theory that is used by Dunning (1981) to describe "the stages of development of an economy from a mere importer of FDI, to an exporter and eventually to a net exporter". So far, BRICs states are still the largest FDI recipients among all the other developing countries; OFDI is still subordinate in relation to IFDI in their economies. It is thus reasonable for Brazil, Russia and India to maintain the conservative investment approach that is characteristic of any-given FDI importing country.

	China	Brazil	India	Russia
Political Institution (Democracy)	✖	✔	✔	✖
Negotiation Power	Strong	Strong	Strong	Strong
Economic Interest	Strong	Strong	Strong	Strong
Socialization of International Institutions	Divergent			

Table 2 A Comparison among BRIC countries in theories

It is clear, from the existing theoretical frameworks and comparative analyses, that the Chinese state was proactively seeking for a new strategy in its BITs program in the past ten years; this new, liberal practice is not only distinct from its BRICS states counterparts, but also out of the explanatory capabilities of the existing theories. By granting foreign enterprises with non-qualified national treatment and unlimited access to the international disputes mechanism, China's behavior, as an authoritarian regime and the largest developing economy, stands, in heavy contrast to the theory of political institutions and negotiation power that have illustrated the policies implemented in other BRIC states, as well as other developing countries. In terms of the fast growth of Chinese overseas investment, the increasing investment interests, in logic, is also not the primary determinant of China's liberalization in its investment decisions. Liberalized clauses, such as in the aspects of national treatment and investment disputes settlement, on the one hand, will certainly provide Chinese OFDI with more protection; However, on the other hand, as a country like China whose FDI inflow is more than the FDI outflow, the liberalized policy response will make the Chinese government unable to protect domestic firms from foreign competitors. This is disruptive to the nature of China's socialist economy. This advanced, proactive transition in China's BITs practice is revealing of the importance of liberalization; however, it also presents a puzzle in the application of these theories in China. Why and how could such liberalization take place in China? Answering this question demands for a new theoretical framework.

Independent Variable: Asymmetric Regulation and Instrumental Liberalization

China's new practice in providing foreign investors with non-qualified national treatment and unlimited access to international arbitration organizations, which will, in fact, loosen their government control and economic regulation at home, resonates with the second wave of liberalization that took place in some advanced economies in the 1980s. The multiple policy outcomes, developed by those governments in this liberalization movement have inspired a plenty of scholars both to conduct intensive empirical analyses ranging from the United States' reforms on banking, agriculture, telecommunication and energy, to Japan's economic reconstruction, as well as to revisit the classical theories of states and markets (see, for example: Derthick and Quirk, 1985; Vogel, 2006; Vogel, 1998; Jacobs and Teles, 2007). Whilst Derthick and Quirk's work, following Hayek's instrumental liberalism, describes United States' reforms as a phenomenon of deregulation in which the dead hand of government regulation was removed from those heavily regulated sector of the economy, Vogel (1998), Landy, Levin, and Shapiro (2007) adopt Polanyi's theory, arguing that such reforms do not deregulate; they redeploy regulation. The basic framework of their theories investigates the policy responses of those governments, when faced with the demand for economic competitiveness and economic perform improvement. To do this, they contend that the simple removal of the government from the economy is not the usual phenomenon; government, in fact, needs to add regulations, a complete "market sign" as they define, to impose restraints on incumbents and give advantages to potential competitors.

Vogel (1998) proposes the idea of "asymmetric regulation" in the process of liberalization, the concept that best accounts for Japan's economic reform in the 1980s, and has then been extensively used by Jacobs and Teles (2007) to illustrate pension privatization in Britain. According to Vogel, the role of government in promoting liberalization and economic competitiveness is very important: Vogel favors pro-competitive regulation and planning, strengthened by institutions and institution building (Landy, Levin and Shapiro, 2007). In the meantime, Vogel also takes into account the salience of domestic political and economic constraints as an obstacle to the policy effectiveness and reform success (for him, the meager social insurance system in Japan). Landy and Levin (2006) also conclude that failure to produce more competitive markets is due to complex mixtures of cognitive and political constraints (Landy, Levin and Shapiro, 2007).

Vogel's theory thus gives us a new and interesting framework in examining why and how Chinese government would like to start its new practice in BITs. The usefulness of the concept of asymmetric regulation first lies in its insight into the economic incentives that have motivated the government to reform. Economic competitiveness and the related international influence have been standing at the center of Chinese FYPs; the demand for the performance improvements of Chinese OFDI, which is directly related to China's revision of BITs, has recently become a national focus. Meanwhile, his emphasis on the use of government to promote market competition is also compatible with the ideology of state-led capitalism, the concept that has well accounted for China's economic reform. Furthermore, the recognition of domestic political and economic constraints as a threat against policy outcomes also makes our research more meaningful: what are the distinct political and economic constraints within the authoritarian China? Does China's new BITs practice work well with those constraints?

There has been a plenty of researches advanced at the existing theoretical frameworks whose focus on the domestic political and economic factors when examining China's international practice. They also helped to understand why these theories sometimes are unable to explain the uniqueness of China distinct from other countries, let alone the significant varieties among China's different regions that the theories fail to include. Zweig (2002) and Breslin (2013), for example, criticize the limitation of the previous theories, in their neglect of the unique experience China has had in its economic globalization: why was there a sequence of economic globalization in different Chinese regions? How the domestic political economic and political factors, predominantly the Central-local relationship, as well as the state-business relations, are associated with China's behavior in international political economy? The attention to the domestic political economy has also provided a reflection to China's performance in international organizations. Moreover, any change within China as a fluctuating variable has also had consequence for how the international behaviors are going to be corrected, as well as the prospects for the future international relations. Allen and Pearson, for instance, find that the changing understanding of the world trade and the international order by Chinese leadership has led to new policies and stances, thus entailing China's transition from a breaker to a rule-taker of the international institutions.

Two primary conflicts fuel the liberalization in China' BITs. The first kind is domestic: the conflict between public and private ownership is an economic, as well as political and ideological question that has spanned decades since the establishment of the CCP's regime. Large-scale State-owned Enterprises (SOEs) have always been dominant: as a source of power it consolidates the Chinese economy, as well as the socialist nature of its political institution. Private sectors, starting from the 1980s, have also served functional purposes in stimulating the development of the Chinese economy, and have been considered an indispensable, beneficial complement necessary for the public sector of the economy on which the Party depends. The liberalization of China's BITs, in the past ten years, has conflated the economic interests of SOEs, as it became an effective tool protecting their business operations overseas. China has now made Chinese OFDI integral to its Five Year Plans, having pledged to get $150 billion of OFDI by 2015 (Han, 2012). This liberalization has also generated negative ripple effects, however. Accepting the westernized national treatment principle requires more privileges to be granted to foreign capitals investing in China, and have consequence for greater competitions against the domestic private sector than is currently the case, given the fact that it has shrunk in absolute size since 2009 (Lee, 2013). Moreover, the access to international arbitration body as a way to settle with state-investor disputes may also weaken China's economic sovereignty that lies at the root of Chinese socialist economy.

Another interest conflict underlying China's bold move is in the international arena: the liberalization of China's BITs program, as well as other regional agreements, will be hugely influential in China's diplomatic relations, most notably the South-South Cooperation. The liberalized international investment policies, along with the "going global" strategy, has formed a phenomenon of what Moyo marked the "winners take all" (Moyo, 2012), forming a vested interest with political and profit incentives to push for the presence of Chinese SOEs in the developing areas, from Southeast Asia to Latin America and Africa. A preeminent example is China Telecom, one of the largest SOEs providing telecommunication service within China. China Telecom is currently responsible for providing over 70 percent of telecommunication constructions in some African countries such as The Democratic Republic of Congo, Ethiopia, Tanzania and Nigeria (Wang, 2013). However, such liberalized policy responses for the interests of Chinese investments overseas have compelled the prioritization of Chinese enterprises in these developing states, which is politically harmful to their governments' capabilities of economic control and regulation, as well as tearing up the South-South Cooperation in which China is considering itself a strong ally with developing countries. Countries from the developing world are now facing a more miserable situation: they have been forced to sign the liberalized BITs with western developed countries, the agreements that include provisions on national treatment, most favored nations, and ICSID arbitration; they may have to accept the monopoly of Chinese enterprises that may cause more social displacement and severe environmental harms.

Thus, though the Chinese state has embedded the international investment institutions in both their BITs program and other investment treaties, domestic political and economic constraints against this policy are huge and influential, which may, as Vogel argues, affect the effectiveness of this practice; even worse, it may become a potential threat to the legitimacy of the CCP regime. Developing from Vogel's theoretical framework, I argue that there are three primacy aspects that have shaped China's current approach. Firstly, the overemphasis on national champions by the Party leaders plays as the economic motivation of this new practice, as it provide Chinese OFDI with a higher level of protection. Secondly, the fragmented and decentralized nature of the political system is the constraint has strengthened efforts towards liberalization in two dimensions. Whilst the competition from the local government for more shares of the overseas market, as well as more revenues from the local flagships created the political pressure on the Central government, the Central, in the meantime, will be able to strengthen their political and economic control by replacing weak legal governance – an excuse used by the local officials to offer foreign investors supra national treatment, with unified international investment rules. China's new practice in BITs, in this historical context, becomes the "redeployed regulation" aiming to overcome the constraints. Finally, the changing ideologies of South-South Cooperation have contributed to China's emphasis on economic benefits, often to the neglect of, and collision with, wide diplomatic issues in the long run. The next empirical section will discuss all the three aspects in detail.

Empirical Analyses

Economic Motivation: the Overemphasis on National Industry

Often characterized as the "East Asian model", state-led capitalism often means that the role of government in economic development and social progress becomes stronger, with their delicate efforts and intervention to bring about industrialization and entrepreneurship (Fritz and Menocal, 2006). State-direct firms in these countries, such as Japan and South Korea, are important in boosting their economies and create economic miracles; they are also able to prevent deeper reforms towards westernized free economy and political democratization (Beeson, 2009). This has implications for how China should open their economy. Whilst Chinese leaders determined to abandon the socialist heritage in the 1980s, state-led developmental strategies mean that they were able to resist and evade reforms towards SOEs, hindering the same projected democratization of the political system as they did effectively in former Communist countries in Eastern Europe.

Gallagher (2005) illustrates the practice of state-led capitalism in China, which left the responsibilities primarily to SOEs and foreign capitals, for much of the economic recovery. Large-scale SOEs, at the central level, have been transformed into "national champions", as a reformulation the ideological debate away from private versus public. Moreover, most of them are concentrated on economically salient and political sensitive industries, fulfilling the obligations to elevate their technological skills, as well as competing with foreign enterprises. Concerns for social unemployment and economic competitiveness have also made officials understandably take full advantage of non-state economies, especially foreign-invested sectors. Thus, foreign investors, during this period, were largely used in order to consolidate the socialist nature of the CCP regime. As a consequence, protectionism of national champions and massive imports of foreign investors have been endemic in China.

In addition to the macro-economic strategy of state-led capitalism which showed its rising emphasis on SOEs and foreign capitals, micro-level politics implemented unfairly between public and private, according to Huang (2005), also rendered the prioritization of these two forms of business. Locally, small and medium failing states firms were privatized, and allowed to their own businesses, so were the other domestic private companies, like Town Village Enterprises (TVEs). However, policy discriminations in finding markets, taxes and fees, and state bank credit loans have forced them to rely on foreign capitals to buy their assets, generating perverse impacts on their own development.

The liberalization in BITs, I argue, is a continuation of what Gallagher notes the strategy of national champions under the state-led developmentalism, and has been responsible for stimulating Chinese OFDI that the government emphasized in the last decade. Even with central-set targets for strategic industries, which have featured in the policies around mid-1980s to the mid-1990s, most of the targets for SOE restructuring are aimed to increase their competitiveness within the domestic market against the foreign competitors. Until 1998, the "going global" strategy that aims to encourage the national champions to go abroad started to rise, which was reinforced in the Hu-Wen Administration. Zhu Rongji, in the 10th Five Year Plan, initiated the "going global" project; Former National People's Congress Chairman, Wu Bangguo, to respond Zhu's proposal, clarified the importance of equipping national champions with international competitiveness. He stated that, "in our world today, economic competition between nations is in fact between each nation' 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… 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. (Wu, 2011)" Later in 2001, at a time when addressed at the opening ceremony of the 2001 Investment and Trade Fair, Wu (2001) also stated that "the outbound investment strategy will be integrated with the continuous effort to promote foreign capital inflow", serving one of the must-be solutions for China's economy in the trends of economic globalization. The goals of the Chinese government, in the following years, pointed by Bai Rongchun, former director general of Industrial Planning Department, was to encourage big state-owned businesses to become international competitive corporations…through public offerings, mergers and acquisitions, restructuring and co-operation. The "going global" strategy, when intertwined with BITs liberalization, aims to transform these national champions from domestic giants into global giants. It is clear that, this new national champion strategy at the second stage has become a national economic priority within China: it has elaborated in the 10th, 11th and 12th Five Year Plan. Especially in the 12th Five Year Plan, as illustrated by Olson (2012), it is said to support "the consolidation of the (strategic) industries' position in the international market", through identifying and promoting national champions, so that "Chinese enterprises' international influence will be greatly enhanced and be better able to cope with international competition and market risks". Most recently, national champions and their overseas expansion have become a key thruster to achieve Chinese Dream – a new ideology that came into being in the 18th Party Congress and the speeches addressed by the new President Xi Jinping.

The inequalities in micro-level economic policies, as a continuation of Huang’s arguments, have also contributed to the prioritization of these national champions in Chinese OFDI, as well as the national economy. Many of large and successful private enterprises have seen their rising importance as an economic thruster in the eyes of Chinese leadership – the establishment of China International Chamber of Commerce for the Private Sectors (CICCPS), with the guidance from the Chinese Ministry of Commerce, and the National Development and Reform Commissions is an excellent example that the Central government aims to promote overseas investment by Chinese POEs. However, such positive prospects are often highly conditional on the policies in real practice. Most of the preferences in taxes and land, as well as the state bank low-credit loan programs, are in favor of companies in their preferential list, a group of enterprises predominantly with public ownership. SOEs in which cadres have direct stakes are often easier to get approval from provincial Assets Supervision and Administration Commission (SASAC), the newly formed state agency supervising Chinese companies’ business behavior overseas, whereas domestic private players may have to wait for a long time. Thus, these economic mechanisms, in fact, have constrained the development of the domestic private sector in China, helping to guarantee the prime status of the national champions in Chinese economy.

The importance of apparent emphasis on national champions by Chinese leadership has three dimensions. Firstly, it helps to generate national pride. The miserable past that Chinese people experienced in the past centuryis highlighted by the government as an outcome of western colonialism and imperialist expansion China now is still the workshop for the world, rather than the workshop of the world, due the fact that it lacks of the enterprises that are internationally competitive as Nolan notes (Nolan, 2013). Successful stories by Chinese companies in the world market are desperately in need to showcase China's modernization and power. Thus, when Haier was expanding to the United States, Lenovo acquiring IBM, and CNOOC buying Nixon, most people in China, according to the state media and social investigations, were proud of being Chinese, and satisfactory of the Party in power. On the other hand, the recent setbacks of the national champions in overseas bidding and acquisition have also helped to instigate Chinese nationalism to be against the unequal international economic order. CNOOC's failed bidding over UNOCAL is an excellent case. Despite some critique against the opacity between the state and the companies, as well as the lack of acquisition experiences in Chinese national champions, public anger against the US protectionism and discrimination far overwhelmed in Chinese media (Chinaero, 2012). This soaring nationalism and patriotism mean salient to Chinese Communist Party, particularly in the era of globalization. Many of the socialist ideologies, such as Maoism and class struggles, have been abandoned since the economic opening – exemplified in the collapse of the Cultural Revolution, however, the Party has been unable to win over people's loyalty as high as they did in the 1950s, whether by means of economic development, or the formation of new ideologies. Social inequalities, increasing unemployment, and environmental concerns have generated more and more skeptics of the Party's control; the fragmented nature of the authoritarian regime and political corruptions could only make situations worse off. Thus, the achievements of the national champions entail union and loyalty, helping the Party to maintain their legitimacy.

The overemphasis on the national champions in Chinese OFDI, moreover, is closely associated with China's energy security, especially at a time when China has transformed from an energy exporter into an importer, and has surpassed the United States to become the largest oil importer of the world (EIA, 2014). Securitization of energy in China has become a political priority within the Central government, where former President Hu Jintao proposed the concept of "New Energy Security" at the G8 summit in 2006. The new concept emphasized the beneficial cooperation between countries, diversification of energy supply, and multilateral cooperation to ensure the energy security. In the meantime, the Chinese state also established the State Energy Leading Group, led by former Premier Wen Jia Bao, whose primary tasks include research on China's energy strategy, key energy development and saving policies, energy security, and external cooperation (Liu, 2006). Major Chinese national champions in the energy sector have made progressive acquisitions and mergers abroad, such as CNPC in Sudan (oil), SINOPEC in Indonesia (oil), CNOOC in Canada (oil), CHINALCO in Peru (mining), and CPI in Southeast Asia (hydropower). Their importance towards China's energy security has been recognized by the Party leaders, such as Zhou yongkang, the former president of CNPC and then promoted as the former director of the Central Political and Legislative Committee. He stated, "Overseas exploration and development is a better way for China to achieve a stable oil supply because oil price fluctuations make oil imports a high risk" (Downs, 2009). The liberalization in Chinese BITs program that aims to protect their overseas assets has helped to achieve the targets of ensuring China's energy security.

Finally, though there has been a plenty of debates in academia over whether Chinese national champions are efficient and whether their overseas investments are sustainable, the Chinese state's policies for economic strategy have been overwhelmingly concentrated on these enterprises, the most salient economic actor at least in the following ten years. Part of the reason we observe lies in the inevitable transition that happened in Chinese economy: the increasing price in labor force, as well as the financial crisis will reduce the amount of foreign capitals investing in China; Chinese national champions should be responsible for generating trade and investment, in order to maintain and improve employment and the living standards. Though the rhetoric of social inequality between public and private and the shrunken size of the domestic private sectors have become the primary focus in the most recent Third Plenum, at heart of Reform 2.0 (Lee, 2013), the official document released in the 18th Party Congress, is still the reinforcement of the importance of the state-owned sector in global economy.

To summarize, the overemphasis on the national champions is a rhetoric and policy continuation of the discussions made by Gallagher and Huang who consider the formation of the national champions as an outcome of both the macro developmental strategy and micro economic policies. Given the significance of the national champions in Chinese OFDI and their interconnectedness with patriotism, energy security and economic sustainability, liberalization in China's BITs is a rational, economically and politically motivated policy outcome to China's political and economic goals. Furthermore, the implementation of such liberalized approach has also conveniently reduced the criticism from western countries that often oppose China's protectionism and mercantilism. Unfortunately, voices of the domestic private sectors are less heard by the Central government, their interests overshadowed by national security and political stability.

Instrumental Liberalization: Fragmented Authoritarianism and the Party Control

While the "national champions" tradition has rendered the liberalization in China's BITs relatively reasonable, another reason behind this liberalization phenomenon is an institutional push from the decentralized political system, characterized by what Lieberthal and Oksenberg (1988) call the "fragmented authoritarianism" that has led to numerous political and economic problems. Whilst many scholars have emphasized on one side of this theory – the complicated policy outcome caused by the interest conflicts between the Central and the locals, there is the other aspect that parochial political and economic demands may also become national policies. One of the most notable, and explicit illustration of this hypothesis is the discussion led by Zweig (2002). In his research, economic inequalities, which became quite serious between the coastal area and inland provinces, and between special economic zones and non-special cities within the same province, opened up the path towards China's economic opening. Discriminated provincial and local officials strongly lobbied the Central government to release their control over the local economies; it is this domino effect that has caused China's economic transition, a phenomenon that used to shock the entire world.

The interaction of political fragmentation and the prioritization of parochial interests by provincial-level governments have also had consequence for the national investment policies, both in the "going global" strategy and in the socialization of international investment institutions. Provinces in middle and inland China, such as Anhui, Chongqing, and Yunnan, have seen their efforts in promoting their provincial champions that are the largest contributors to government revenues and employment, as well as the resource supply, by allocating financial support and providing management training (Xinhua, 2014; MOFCOM, 2014). Part of the reasons we observe in their progressive overseas investment policies is that it may mitigate the local debts, and diversify the source of financial incomes. Their ever-growing eagerness to investment benefits and concerns for high risks suggest that national investment policies, both in promotion and protection, are unable to deal with the local demands. The influence of this local pressure is far-reaching: the Chinese state has not only expanded the coverage of the "going global" policy from national champions to local flagships; it has also adopted the westernized investment treaties to ensure the protection of the transnational corporations.

For many China scholars, fragmented authoritarianism is a reflection of the weak governance in China – strong, parochial interests are in in conflicts with the Central government, which has weakened the effectiveness of the national policies. Whilst Chinese Communist Party managed to maintain their legitimacy through economic opening and reform, whether they will be able to deal with future challenges is still dubious. The question for the Party leadership behind such doubts is how to strengthen their political control. Local experimental projects, such as the establishment of Special Economic Zone, suggest what Heilmann (2008) notes a distinct policy-making process within China, allowing the local government to experiment with new policies whose political influence is still uncertain. This is a dynamic political system established by the Party, effective to deal with any uncertain challenges, as well correcting their own faults, as Heilmann notes. Thus, it also has become an effective tool for the Party to consolidate their political regime. International institution, on the other hand, is also a popular approach in theory. International institutions serve as substitutes for domestic institutions, especially in countries, like China, with weak institutional environment. The socialization of the liberalized international investment rules by the Chinese state, and the interaction with the domestic laws it entails, therefore, is not for democratization of China's political system, but to strengthen law enforcement and political control, which is beneficial to the CCP's legitimacy.

In the arena of Chinese investment regime, the Chinese state has established a systematic legislative institution governing the investment operations of foreign enterprises in China. Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures (1980), Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures (1988), and Law of the People's Republic of China on Foreign-Capital Enterprises (1990) are the three primary rules at the central level, complemented by more than one hundred of local regulations. However, given China's weak legal system and law enforcement, as well as the fragmented nature of its political system, the tension and conflict between foreign companies and domestic private sectors, at the local level, has become problematic. Though foreign investment is a recognized financial income to the Chinese government, granted with many policy preferences and autonomy to conduct businesses within China, they are still subject to the marcoscopial economic adjustment and regulation that is essential to the Central government. Catalogue of Industries for Guiding Foreign Investment, an official document that elaborates the different industrial policies towards foreign companies in a variety of sectors, has empowered the Central government to supervise both the economic behavior of these foreign capitals, and the economic policies implemented by local officials. Nevertheless, many state media and private entrepreneurs note that foreign enterprises have been enjoying the privileges far more than they deserve: their economic importance toward local economies, especially to remote, backward regions of China, has gained themselves the "supra national treatment" that is far more liberal than the expectation of the Party leaders. As a consequence, they are heavily detrimental to the survival and the development of domestic private businesses. Many local governments have a poor record in representing the interests of their local, private companies who has been a minority in front of SOEs. Jia (2007) and other scholars (Li, 2004; Ye, 2006) document several cases of conflict between foreign and private enterprises, such as the case of Dongsheng versus Bayer Pharmaceutical, and the miserable fiasco of these private firms to drop out the domestic market. Even in some cases, where the domestic private sectors managed to survive by selling their equity to foreign competitors, private entrepreneurs felt desperately disappointed by the unfairness of the economic policies. The disappearance of private entrepreneurship, an importance spirit that has created the economic miracle in the 1980s and the 1990s as Jia (2006) notes, will have consequence for the future economic development of China. Socially, foreign enterprises have led to huge social and environmental problems. Labor disputes between Chinese workers and foreign employers have witnessed an unprecedented surge in the past decade; a large number of organized social demonstrations against foreign investors have also become one of the concerns of the CCP government. Many experts have expressed concerns over their possible negative impacts on the sustainability both in Chinese economy and in the communist regime.

Given the range of criticism surrounding foreign investment and China's poor governance, and the concerns for political legitimacy embedded in the Party leaders, the acceptance of international investment institutions is a reasonable strategic response. The rationale behind this policy is in many senses. The provision of national treatment is a path toward equality between foreign and domestic actors. Whilst this provision in theory will prioritize foreign investors and increase competitions against domestic entrepreneurs, its actual influence in China has helped the Central government form a unified, transparent, and practicable regulation over imported foreign capitals, a brand new, simple standard so distinct from previous legislative system of complexity. Foreign enterprises, as a kind of corporate ownerships, are no longer special to Chinese economy. They are required to follow the same policies and regulations with Chinese domestic firms, most notably, the domestic private sectors. Local government, according to this new rule, is left little space to provide foreign investors with supra national treatment, which has made the local policies much closer to the expectation of the Central. Depending on international arbitration body to settle with investor-state disputes is also a substitute for the weak local court in China. In April, 2010, the State Council released the No.9 document – Several Opinion of the State Council on Further Doing a Good Job in the Utilization of Foreign Investment, marking the final end of the dominance of foreign investment, as well as their supra national treatment. Eight months later, the Chinese state unified the tax policy both in foreign and domestic enterprises. It's clear that, the international investment institutions have enabled the Central government to strengthen their control over the local and foreign investment, which means a lot in this fragmented authoritarian regime.

To conclude, the importance of fragmented authoritarianism as an institutional push for liberalizing China's BITs is in two interrelated aspects, deriving respectively from two different understanding of this theory. One aspect is the emphasis on the decentralized and "cellular" socio-economic structure, which is associated with the understanding that local political appeals may have consequence for the formation of national policies. The aim both to promote the overseas investment from provincial-level champions and to mitigate the high risks, shared by local officials, have not only deepened the "going global" policy, but also pressured the Central government to provide more protection, through the liberalized investment agreements. The other aspect, by contrast, lies in the question of how to strengthen the political control in fragmented authoritarianism. International institutions, more accurately international investment institutions in this political context, serve the functional purpose in replacing the domestic legal system that used to generate supra national treatment towards foreign investor, and make the local economy out of the Central's control. Therefore, accepting liberalized investment policies entails a "win-win" policy outcome that meet the demands from both sides – the compatibility of prioritizing parochial interests and strengthening the economic control.

Instrumental Liberalization: South-South Cooperation

The previous sections deal with the impact of China's internal conflict – private versus public – in shaping the effectiveness and salience of its liberalized policy outcome in BITs; however, the other dilemma beneath China's acceptance of international investment rules took place in the international arena, where it is highly influential to China's international relations. Beyond its aforementioned functional purposes exemplified in domestic political economy, this liberalization has also featured China's adherence to a liberal conception of foreign direct investments, however, as apposed ideologically to the concept of South –South Cooperation. This has generated China's commitment to expanding their overseas investments mostly in the developing world, which is often in neglect of, and collision with, the local interests of its previous allies.

The concept of South-South Cooperation has been inextricably tied to China's diplomatic relations, since the 1960s. The importance of South-South Cooperation, declared by Mao in 1974, at a time when he was meeting former President of Zambia, Kauna, was that "developing countries were the main force against imperialism, colonialism, and hegemony", especially in the unequal international political order where the third world was suppressed by western colonialism and imperialism. China would always support South-South Cooperation and be a strong ally with developing countries, as "China could never be able to liberalize itself before we could liberalize the world" (Hu and Liu, 2013). The Chinese state, in the meantime, also allocated over $4 billion US dollars to aid these countries; this was an incredibly huge amount of money considering the catastrophe and underdevelopment China suffered in the 1960s. One of the most prominent examples among these aids was the railway construction between Tanzania and Zambia. Compared to its economic importance, what was far more important, according to former Premier Zhou Enlai, was its political and military significance that the "cooperation among developing countries would finally lead to independence and the liberalization of our world". However, this political alliance has been challenged by China's economic opening and reform.

Contrast to the previous South-South Cooperation framework, what features in the policies that connect China and other developing countries today, is the explicit economic and investment concerns. Understandably, given China's recent overseas investment movements, the availability and applicability of the liberalized investment policies is a matter central to the security of these national champions operating abroad, and to the new round of China's economic booming in the following years. However, given the severity of political institutions and economic situations in these regions, particularly in Africa, China's establishment of such liberalized investment treaties, proactively with developing countries has generated negative social and economic impacts (Ding, Akoorie, Michele, and Pavloric, 2009). With these treaties, challenges for the leaders of the developing world have become much more severe: small-scale, local industries may have to confront the competition from Chinese enterprises, and may fell unable to maintain their market; the over-dependence of the state on Chinese investment for political and economic survival, as a consequence, may be even more detrimental. For their people, the massive amount of Chinese investment and aids has enabled their politicians to resist and evade the democratization reform pressured from western countries and international organizations, and thus strengthening their dictatorship. Moreover, like western MNEs, Chinese enterprises have also caused social displacement and environmental harms in these regions, which may be even worse than their western counterparts. Therefore, whilst many developing countries, especially in Africa, speak highly of Chinese investment as a rising economic actor in their economies, many foreign media note that these countries have also seen escalating anti-China demonstrations organized by their people. For them, China is no longer their ally; rather, Chinese firms, similar to western companies, are exploiters of their natural resources, as well as the domestic market. Experts have recognized this attitudinal transition as a potential threat to China's international relations, but I argue that, given the changing concepts of South-South Cooperation by Chinese leaders, signing liberalized treaties with the developing world is also politically logical and reasonable.

Firstly, the emphasis on national independence and political struggles against imperialism and colonialism is no longer compatible with the contemporary world. After the end of Cold War, many colonies have seen the victory of their independence. The aim to establish the new international order may be still very important; however, it will never be an entire break from the current international political and economic system as they did in the 1970s. Whilst there are still discriminations and barriers imposed upon developing countries – the responsibilities of developing states to participate into this system, therefore, is to remove all these obstacles, Chinese leaders consider it necessary to integrate the developing world with the international economy. This concept is also identical with their perceptions of China's economic opening and reform. Moreover, this emphasis on the world economy has also extended to China's extensive economic cooperation with those former allies. Since the 1980s, the "Four Basic Principle" has promised a peaceful and friendly policy environment between China and other developing states, aiming to achieve the mutual economic and social development. This has meant a slow, but dominant transition that happened in the China's understanding of South-South Cooperation: economic cooperation has become a primary focus.

Secondly, China's emphasis on equality and reciprocity is also evident in their new concept of South-South Cooperation. Since the 1980s, Chinese leadership, both in rhetoric and in political action, have been trying to form an equal and beneficial economic relationship with developing countries, despite the fact that China has become the leading side in this relationship, along with their massive trade and investment expansions to the developing world. In the most recent official visits to Africa, Chinese leaders – both President Xi and Premier Li, pointed out that China would be behaving as a responsible power in its relationship with African countries, trying to improve their economies, as well as the social standards, through Chinese overseas investments and official aids. Signing liberalized investment treaties, given the recent rise of China, also helps to ensure that equal cooperation and mutual benefits are still the prime principles, as they are designed to protect the investment interests from both parties (Guo, 2014).

In sum, China's understanding of South-South Cooperation has experienced great transitions in history, which has transformed China's policies towards developing countries from previous support for political independence, into the emphasis on economic cooperation and integration with the world market. China's liberalization in their bilateral investment treaties with these developing states has thus strengthened economic communications, as well as its adherence to equality and reciprocity.

Conclusion

This paper first discusses the evolution of Chinese investment policies to argue that China has implemented new practice in China's BITs, and draws from the existing theories to define the dependent variable -- why China's policy response is no particular. Countries' acceptance of the liberalized international institutions is dependent on political institution, interest, and power: either countries that are with investment interests (Western European states and the United States, for example) or states lack of negotiation power (most medium and small developing countries) would likely to accept the liberalization. Despite their useful insights into the development patterns of the other three BRIC states, these theories also expose some of the difficulties in application to the Chinese case. Whilst the ever-growing Chinese OFDI (interest) has led to the increasing demand for a high level of investment protection, the Chinese state, an authoritarian regime (institution), the largest developing economy and FDI recipient of the world (power) shouldn't have liberalized their investment regime much earlier than the other three counterparts. The gaps between the theoretical frameworks and China's practice need further theoretical explanation.

By examining Steve Vogel's asymmetric regulation and the domestic political economical constraints within China, three aspects of motivations appear highly influential. Firstly, the "going global" policy that has become the priority in Chinese economic strategy is a continuation of China's obsession with the national champions – both in macro strategy and in micro-level policies. Moreover, these national champions have been closely associated with nationalism, national security, as well as economic development, all of which have consequence for the legitimacy of the CCP regime. Hence, there is a strong coherence between the liberalization in BITs and the tradition of state-led capitalism within China, as these rules can promote progressive goals overseas expansion and protection of these national champions, which will increase China's economic competitiveness and international influence. Secondly, political fragmentation as the primary constraint also has salient implications for this liberalization. Local officials who try to maximize the investment interests of their very own provincial champions have made this liberalization central to their political demand; while the international investment institutions, at the same time, has also served as an instrumental liberalization tool, in replacement of the domestic legal system, by which the Central government has become more capable to strengthen their economic control. Hence, the liberal policy responses to international investment rules entail a win-win strategy: it has met the political expectations from both sides. Finally, China's changing perception of South-South Cooperation also affects its diplomatic relations with developing countries, leading to the establishment of the liberalized BITs with the former allies.

China's current approach, in which international investment institutions serve the functional purpose to promote Chinese overseas investments, as well as strengthening the Party control, is a huge progress in China's socialization of international institutions, right after its accession into WTO. However, further questions and puzzles open up as to whether such approach is effective and sustainable in the long-term. Though national champions are gaining importance as the primary contributor to Chinese economy, how to increase their competitiveness and efficiency is still a question that Chinese leadership feels difficult to resolve. Over 80 percent of Chinese MNEs, particularly in the resource extraction sector, are now suffering failure in overseas investment; the unsustainable development of Chinese overseas investment will become one of the greatest challenges for the CCP government as Sauvant (2013) notes. In addition, whilst the Chinese state has effectively taken full advantage of the liberal international investment policies to promote the national champions and protect them from the painful political reform, they are still unable to resolve the puzzle of what Gallagher (2002) points out the incompatibility between liberal international institutions and the state-led capitalism. Moreover, growing protests over Chinese MNEs in developing countries – most recently, Vietnamese discontent over Chinese companies in Hatinh grows increasingly violent – shows China urgently needs to adjust its understanding of South-South Cooperation from the sole reliance on economic cooperation to a more complicated framework that includes social, political, and cultural issues. Whether or not the Chinese state is capable of dealing with all the problems? How to deal with them? Any possible policy responses generated by the new leadership will lead to a huge transition in China's international behavior.

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