Zambia's Bilateral Investment Treaties Review and Evaluation

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Executive Summary

Zambia attracts foreign direct investments (FDI) from many countries that vary in terms of income levels and geographical location. In the last two decades, the country witnessed a rapid increase in bilateral investment treaty (BIT) activities triggered by massive economic liberalisation of the early 1990s. From a single ratified BIT with Germany prior to 1990, there are now 31 BITs locally called Investment Promotion and Protection Agreements (IPPAs) of which two (2) are ratified, eleven (11) are signed and eighteen (18) exist in draft form. However, BIT activities in Zambia have plummeted in line with a post 2010 global slowdown, a situation linked to rising uncertainty caused by a surge in the number of investment treaty-based cases at international tribunals. Foreign investors are suing host states over disputes ranging from direct expropriation to claims of adverse business regulation especially in the energy and extractives sectors.

This study reviews Zambia's BITs and evaluates their impact on the accumulation of FDI stocks using data collected from the Private Investment and Investor Perception Surveys conducted by Bank of Zambia, Central Statistical Office and Zambia Development Agency for the period 2007-2014 were data is publicly available. The findings show that BITs significantly matter for accumulation of FDI stocks in Zambia. The group of countries with a ratified BIT (Germany and Switzerland) maintain 1.6 times more FDI stocks than the corresponding group with only signed BITs controlling for income groups and geographical location and their interactions based on the World Bank classification. The groups of countries with a draft or without a BIT maintain FDI stocks that are less than four times lower than FDI stocks maintained by the group of ratified BITs countries. This evidence is robust to several potential confounders of the relationship between BITs and FDI stocks. Therefore, ratified BITs work for Zambia's FDI stocks, a result that challenges some pessimism against IPPAs in Zambia.

Nevertheless, a qualitative review of the Zambia's IPPA Model Text formulated in 2010 based on comparison with recent BITs reformers like India and South Africa suggest that IPPAs Zambia has negotiated, signed or ratified are predisposed to a wide range of risks with serious potential negative consequences that will drain the treasury if an investment claim is awarded against Zambia under the international arbitral tribunals. The two major sources of risks are the open list definition for qualifying investment assets under a claim in case of a dispute and obscurity of provisions that lead to arbitrary interpretation.

The report recommends that Zambia needs to revise all its IPPAs as they are based on pre-2010 approach which UNCTAD (2017) describes as "old treaties (BITs) that bite". There are several modalities in which this can be done. The underlying principle entails making the text clear so that arbitrary interpretations are avoided and reforming articles that embody controversial provisions. These are likely to clamp on Zambia's 'right to regulate' leading to public regulatory and policy chill or worse more regulatory instability, unpredictability and non-responsiveness. Such a process will demand capacity building for investment treaty drafting and adjudication.

1. Introduction

The purpose of this paper is to review and statistically evaluate Zambia's bilateral investment treaties (BITs) locally called Investment Promotion and Protection Agreements (IPPAs). BITs are defined as "*special agreements describing terms and conditions for admission and protection of foreign direct investments (FDI) from residents and companies of one country in the jurisdiction of another*" (UNCTAD, 2000). [1] These agreements secure a collection of clearly defined rights for foreign investors and empower foreign investors to indict host states to international arbitration. BITs started in the 1950s with Germany and Pakistan negotiating and signing the first known BIT on November 25, 1959. The strong opposition from Western Europe in using international customary law called 'Hull' rule to enforce host state responsibility for injuries suffered by Aliens created impetus for BITs. The notable hostility included the nationalisation of British oil assets by Iran in 1951; the expropriation of Liamco's concession by Libya in 1955; and the nationalisation of the Suez Canal by Egypt in 1956 (Elkins, Guzman and Simmons, 2006).

Zambia signed the first IPPA with Germany, a global pioneer of BITs, in 1966 and ratified it on August 25, 1972. Thereafter, the declaration of a state-controlled economy caused Zambia to halt negotiations for further IPPAs, a stance that later changed after the restoration of liberal economic policy in the early 1990s. Zambia signed the first post-liberalization IPPA with Switzerland in 1994 and ratified it a year later. Thereafter the country signed six IPPAs with eight European countries: the Belgium–Luxemburg agreement in 2000, France in 2002, Netherlands and Italy in 2003, Finland in 2005 and the United Kingdom–Northern Ireland agreement in 2009. None of these agreements is currently ratified. The complete update on the status of BITs is provided in Section 3.[2]

There is a widespread economic view on BITs, at least in theory, which views them beyond their legal enforcement role and mitigation of investment risk linked to foreign direct investment (FDI) in host states. Instead, this view emphasises the useful mechanism played by BITs in signalling a credible friendly foreign investment climate of the host states (see Lee, Chia-yi and Johnston, 2016). Generally, foreign investors deem the enforcement of laws among host states with scepticism. This mistrust generates the demand for foreign investor protection against adverse potential decisions that can be undertaken by host state such as nationalisation, expropriation and detrimental business regulations. The resolution of this mistrust is through ratification of BITs that binds host states to international arbitration under a common mechanism called the Investor State Dispute Settlement (ISDS). The ISDS is basically an internationally constituted investment court system where foreign investors predominantly sue host states for alleged breach of investment treaties. This mechanism is a discipline device to restrain host states from harvesting foreign investments once established in host states.[3]

Currently, the ISDS process is mainly modelled around the World Bank's International Centre for Settlement of Investment Disputes (ICSID) or United Nations Commission on International Trade Law (UNCITRAL). OECD (2012) estimates that the average cost of ISDS tribunal is US$8 million occasionally exceeding US$30 million. In a sample of nearly 40% of ISDS awards studied by Franck (2011a and 2011b), claimants cover on average US$900,000 of respondents' legal fees with tribunal and administrative costs averaging US$600,000.

BITs fall under the umbrella of International Investment Agreements (IIAs) that also include Double Taxation Treaties (DTTs), Treaties with Investment Provisions (TIPs) and Investment Related Instruments (IRIs) related to regional or plurilateral trade and investment agreements that are multi-national and hence beyond bilateral national arrangements. The scope of this study is limited to BITs that are specifically a source of controversy in relation to resolution of expropriation risk and securing national sovereignty when guaranteeing host state protection of FDI.

[1] FDI is considered as investments involving the establishment of a long lasting business presence accounting for not less than 10% equity in a host state by non–residents (see the IMF or OECD).

[2] There is a disparity on the status for the Zambia-France, Zambia-Italy and Zambia-Netherlands BITs. UNCTAD shows they are ratified as at 2014: http://investmentpolicyhub.unctad.org/IIA/CountryBits/232

[3] The appropriate description in economics is dynamic inconsistency or the hold-up problem. The popular remedy is rule-based policy making which binds government to commit *ab initio* to a predictable policy path and hence forgo any incentives that make deviation from commitment lucrative along the way.

2. Statement of the problem and motivation

Low income countries (LICs) fiercely compete for FDI, a factor that predisposes their international investment promotion regime to a glut of gracious FDI incentives. Over the past twenty five years, Zambia alone signed 11 IPPAs and a further 18 exist in draft formats (see Table 1). A desperate belief among LICs is that FDI narrows the wide gap between domestic savings and required national investments and introduces technology that helps host states to become competitive and break into global value chains. It is undeniable that BITs have transformed international investment law practice and still remain a fashionable tool to signal friendliness towards non-resident investors,

However, there is a growing concern;-BITs especially among developing economy host states are tipped in favour of foreign investors and conflict with benign policy and regulatory reforms seeking to promote sustainable development in these countries. UNCTAD (2017) admits that BITs formulated prior to 2010 bite and therefore, their principal provisions need to be renegotiated and redrafted. This follows heavy BITs scrutiny both at law and from economic evidence that casts doubt on their ability to accelerate FDI, catalyse economic growth and preserve national sovereignty of host states. From a legal perspective, a growing literature that checks the reality of the dispute settlement mechanism in BITs shows that dispute arbitration is lopsided in favour of foreigners, a factor responsible for rising litigations initiated against host states (see Miller and Hicks, 2015).

The serious matter here is the failure of the investor-state dispute settlement system (ISDS) to genuinely strike a balance between supporting public policy reforms seeking to foster sound health, safety and environmental protection and entertaining claims initiated by foreign investors that exploit unintended consequences of policy reforms. This trade-off has caused serious reputation challenges for ISDS and is blamed on the failure by the ISDS to sustain a depoliticised neutral system for resolution of investor-state disputes.

The consensus among countries is that BITs require reforms to make them relevant to socioeconomic development discourse in host states among LICs. UNCTAD notes that the question is not whether BITs reform is necessary or not. The correct question to ask is *what, how and the extent* required for BITs reforms. UNECA (2016) also reiterates that *one cannot provide a yes or no answer*, to the question on whether BITs bring the much-needed investment. Therefore, it is advisable that individual governments need to assess the costs and benefits of BITs in their respective countries and champion amicable reforms that can generate *win-win* scenarios. Indeed, many countries are assessing the nature, extent and significance of BITs in their countries thereby identifying reforms that are specific to their contexts as global convergence remains illusory. This paper is an evaluation of BITs from a quantitative perspective but also qualitatively reviews BITs Model Text by drawing useful comparisons with recent BITs reformers, in particular India and South Africa

3. The status of BITs in Zambia

Zambia initiated BITs much earlier than most countries in Southern Africa (see Appendix I). However, the country's progress on ratifying and enforcing BITs is extremely slow (Table 1). So far, only two BITs are currently ratified and in force. A substantial fraction of BITs continue to exist in draft form which is a source of great policy concern. This level of inertia is linked to missing evidence on the impact of BITs in the country, the need to renegotiate older BITs, and delays in executive approval to ratify signed BITs. The rapid global change in the BITs landscape has also caused uncertainty leading host states like Zambia to delay in ratifying BITs. Nonetheless, a review and update of Zambia's draft, signed and ratified BITs to streamline them to notable recent trends and make them locally responsive to the national development discourse will benefit the country and help to improve the policy and regulatory space.

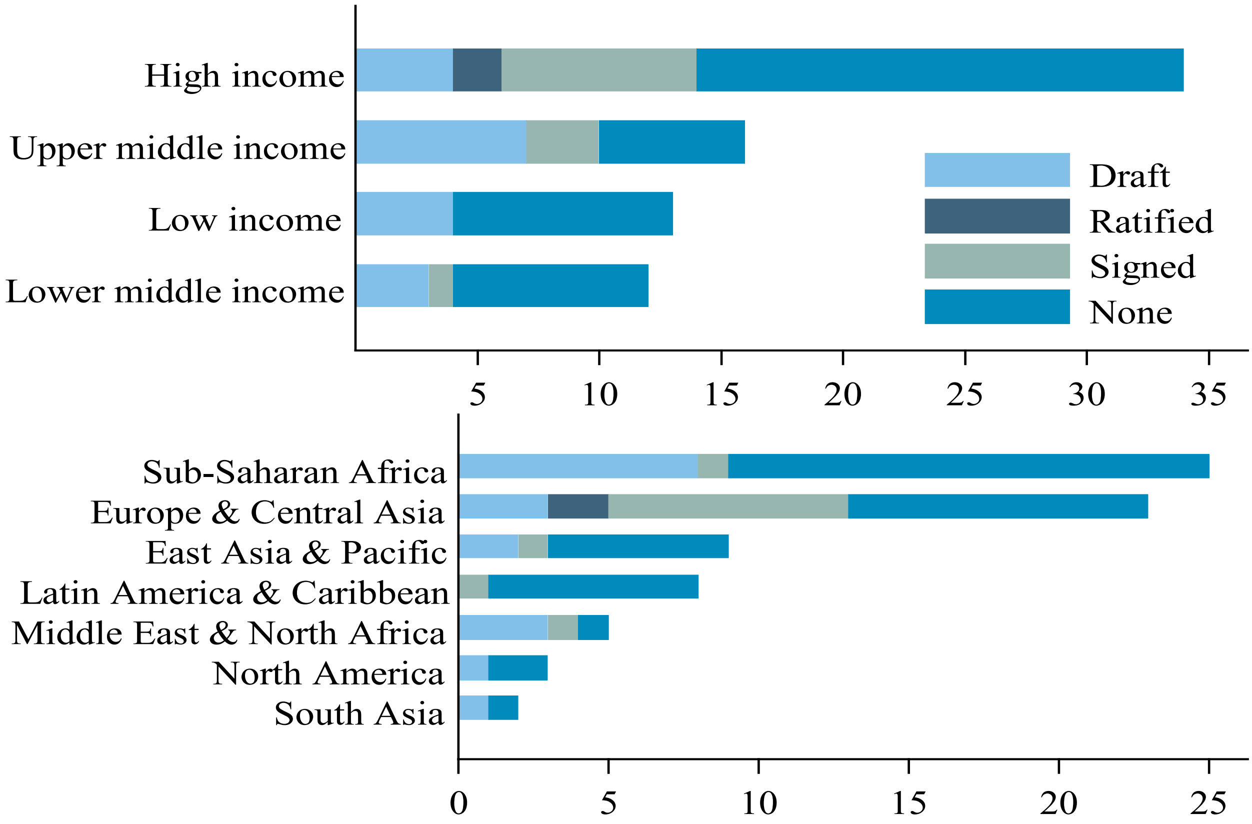
Table 1: Zambia BITs status

	COUNTRY / PARTNER	DATE SIGNED	DATE RATIFIED	STATUS
01	Germany	1966	1972	Ratified
02	Switzerland	1994	1995	Ratified
03	Belgo-Luxemburg	2001		Signed
04	China	1996		Signed
05	Croatia	2000		Signed
06	Cuba	2000		Signed
07	Egypt	2000		Signed
08	Finland	2005		Signed
09	France	2002		Signed
10	Italy	2003		Signed
11	Mauritius	2015		Signed
12	Netherlands	2003		Signed
13	United Kingdom and Northern Ireland	2009		Signed
14	Algeria			Draft
15	Angola			Draft
16	Botswana			Draft
17	Canada			Draft
18	Denmark			Draft
19	India			Draft
20	Kuwait			Draft
21	Malaysia			Draft
22	Mozambique			Draft
23	Namibia			Draft
24	Nigeria			Draft
25	North Korea			Draft
26	South Africa			Draft
27	Tanzania			Draft
28	Turkey			Draft
29	Ukraine			Draft
30	United Arabs Emirates			Draft
31	Zimbabwe			Draft

Source: MCTI Zambia

Zambia has initiated 31 BITs with 33 partner countries. The Belgo-Luxembourg BIT is signed jointly with Belgium and Luxembourg while the UK agreement also includes Northern Ireland. Zambia has signed more BITs with high income countries domiciled in Europe and Central Asia. Zambia's draft BITs are common for upper middle income countries mainly located within Africa and to a lesser extent the Middle East and East Asia. Zambia has not negotiated BITs with the Americas and Caribbean countries apart from the IPPA signed with Cuba and the draft IPPA initiated with Canada. Figure 1 shows that 43 countries maintain FDI stocks in Zambia even if Zambia does not have any BIT with them. The set of countries where Zambia is pursuing BIT activities but there is no official FDI (based on the sample survey described in Section 9) is tabulated in Annex II.

Figure 1: Number of IPPAs by Income and Region Groups[4]



[4] None category relates to countries that maintain FDI stocks with Zambia but do not have any BIT at or beyond the draft stage. This group is identified from the statistical data described in Section 9. Income and geographical location are based on World Bank classification.

4. A Conceptual model of the decision to sign BITs

It is useful to indicate that the investment decision concerning which country a foreign investor will locate FDI is fairly complex and depends on a broad range of factors such as a sound or positive policy and regulatory outlook or depth of business facilitation in a host state (see IMF, 2010). FDI location preference also crucially depends on the economic motives of foreign investors such as investing to seek a market opportunity in the host state, or invest to extract resources such as minerals or oil, or invest in a host state to take advantage of efficient production perhaps due to good quality and cheaper productivity labour for example. Therefore BITs are simply a single element among the vast determinants of FDI location preference shown in Figure 2. Nevertheless, BITs have a critical role which is unique. They are formulated to directly address cross-border investment risks linked to expropriation of foreign investments at much lower costs than many political insurance products available on the international market.

Figure 2: Determinants of FDI

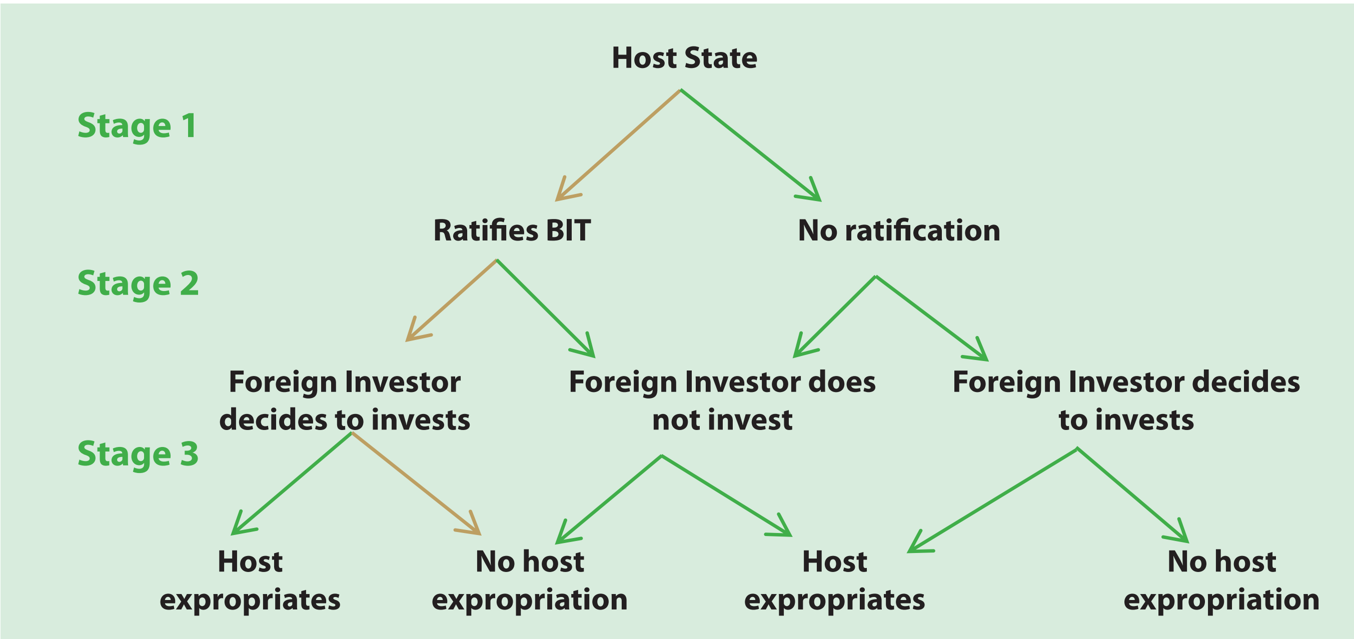
Host state determinants	FDI classified by motives of firms	Economic determinants in host states
1. Policy framework for FDI • Economic, political and social stability • Good governance • Policies on functioning and structure of markets(especially competition, M&A and simple, transparent reporting standards in line with international practise) • Protection of property rights (including intellectual property) • Industrial and regional policies; development of competitive clusters • Trade policy (tariffs and non-tariff barriers) and stable exchange rates • Tax policy • International Investment Agreements **2. Economic determinants** **3. Business facilitation** • Investment promotion • Investment incentives • Reduction of hassles costs (related to corruption and administrative efficiency) • Availability of one-stop shop services • Provision of social amenities • Provision of after-investment services	**Market-seeking**	• Market size and per capita income • Market growth • Access to regional and global markets • Country-specific consumer preferences • Structure of markets
	Resource/asset-seeking	• Raw materials • Low-cost unskilled labour • Skilled labour • Technological, innovative, and other created assets (for example, brand names), including as embodied in individuals, firms, and clusters • Physical infrastructure (ports, roads, power, telecommunications)
	Efficiency seeking	• Cost of resources and assets listed above, adjusted for labour productivity • Other input costs, such as transport and communication costs to/from and within host economy and other intermediate products • Membership of a regional integration agreement conducive to the establishment of regional corporate networks

Source: UNCTAD World Investment Reports various issues

A frequent question on BITs asks about factors which influence host states to initiate, draft, sign and ratify BITs. The critics of BITs strongly argue that the decision by foreign investors to locate FDI in a particular territory over another is far beyond BITs. From Figure 2, there is a theoretical half-truth to this statement. However, the role of BITs can never be assumed to be constant across all jurisdictions and overtime. This motivates an interesting practical issue that is certainly context and country specific. A useful tradition is to provide a simple illustrative conceptual framework that can naturally organise several logical aspects necessary to guide some empirical formulations. The conceptual foundation of a BIT among economists is in game theory. This study adapts a game proposed in Aisbett (2007) that imitates several real world characteristics observed in the interaction between foreign investors and host states.

The game is assumed to be played by two people over three stages. Figure 3 sketches the structure of the game. Without belabouring on the technical exposition, it is useful to note that each path represented by the collection of arrows over all the stages of the game has a potential reward. As an example, one particular path is shown in red colour. This path shows a possible scenario where a host state (player 1) ratifies a BIT and then a foreign investor (player 2) from a counterparty state to the treaty invests in stage 2 following the ratification of the BIT. In stage 3, the host state restrains to expropriate the assets of the foreign investor. The rewards to the host state for this particular sequence (a possible realization out of the many potential outcomes) can take various forms but for simplicity the immediate benefit accruing to the host state is tax revenue collected from the foreign investor. The investor also reaps the reward in form of the after tax (net) profits.

Figure 3: Decision tree for the participation in BITs by host states



However, if the host state decides to breach the BIT and expropriates the assets of the foreign investors in stage 3, the rewards change as well. The value of the new rewards now depend on the value of assets expropriated plus less tangible benefits such as national sovereignty which are uncertain.[5] Expropriation of FDI in the presence of a ratified BIT leads to arbitration claims which are slapped on the host state and hence damages are paid to the foreign investor. In the absence of a ratified BIT, expropriation does not cost the host state as no damage claims are filed against it.

The full analysis of this simple game provides substantial intuition on conditions that will influence host states to ratify BITs so as to stimulate foreign investments. Broadly, this simplified framework predicts the following generally intuitive ideas:[6]

[5] This part of a reward can be formulated as a statistical random variable that follows a particular unknown probability distribution but for simplicity it is assumed to follow a parametric uniform distribution.

[6] A full technical exposition of the game is avoided. The technically-minded can read Aisbett (2007) for the complete exposition of the game solution and its analytical predictions.

1. There are circumstances when foreign investors will invest in the absence of a BIT. At the country level, this is likely for countries where the expected host state rewards from expropriation are extremely low. This is likely to hold in cases where countries have accumulated a particular type of investment so that the value of new but similar investment is less valuable.

2. For countries like Zambia where the value of expropriating FDI is not insignificant, BITs or similar safeguards are paramount form the foreign investor perspective. This warrants a case for negotiating and ratification of BITs. In the technical details of this game, it illustrates that even when tax rates offered to foreign investors are competitively low among host states like Zambia, foreign investors are still likely to demand for a BIT or a similar safeguard. That is to say, low tax rates are insufficient to lure FDI in the absence of BITs for countries where gains from expropriations are significant.

3. For some countries, the rewards to expropriation are predicted to be very high so that even ratification of BITs is unlikely to persuade foreign investors. The cases where BITs are insufficient in the real world are rare and mainly restricted to fragile states.

5. BITs and FDI: A short literature review

5.1 Theoretical models

1. The foremost theoretical model in the literature is known as the 'obsolescing' bargain (Vernon, 1971).

   - *What does it do?* It models the interaction of foreign company and host government when foreign investments face political risk of nationalisation. The initial bargain favours the foreign investor based on gracious FDI incentives but accumulation of fixed assets by the foreign company in the host state gradually tilts bargaining power in favour of the host government. This leads to a common economic problem called the dynamic inconsistency or policy hold-up problem, a situation where choices overtime are inconsistent with the initial objective. Introduction of BITs introduces a commitment device in a similar way to how rules based monetary policy solves the time-inconsistency of monetary policy.

2. The obsolescing bargain has overtime generalized into the now ubiquitous political risk or general expropriation model.

   - There are several variations in the literature on how this model is developed which is mainly driven by what sort of aspect about BITs is analysed and the specific nature of the FDI. These models also extend to examine theoretically the attendant effects of BITs on economic growth and employment.
   - For this study, Aisbett (2007) two-person and three-period game that explains conditions for participation in a BIT described earlier and Vashchilko (2011) signalling game that highlights the importance of BIT expropriation stringency provided insights for statistical modelling and review of Zambia's BITs text.

5.2 Empirical Evidence

1. Empirical evidence on the impact of BITs on FDI is at best described as mixed and inconclusive.

   - Some studies find a strong positive effect, others a weak positive one and a few more find zero or even negative effect. This has pushed current efforts to focus on reappraising existing results.
   - Early studies find that up to 90% of FDI is due to BITs. This is puzzling even to radical BIT pundits. However, the consensus is that early studies fail to identify a valid causal effect of BITs on FDI (see UNCTAD, 2014).
   - Recent studies adjust for the potential 'chicken-egg' bi-direction link between BITs and FDI, selection bias in BITs ratification and bias due to omission of key variables that are difficult to measure or are prone to measurement errors.
   - In general, the cohort of recent studies find a modest impact of BITs on FDI usually below the 20% except Lejour and Salfi (2015) that estimate it at 35%, which in a single outlier.

2. Further observations indicate that BITs have stronger effects in cases where their content is more substantive.

   - Zeng and Lu (2016) confirm this result using novel methodologies that examines texts in BITs using logical processing similar to the way plagiarism is checked (see also Rima

Turk, 2015 on a similar subject but using a different method).

- Vashchilko (2011) also uses a quantitative index of BIT and finds that stringent expropriation provisions attract more FDI in countries perceived as high risk countries whereas a similar effect is absent in low risk countries.

- Stringency refers to BITs being more explicit when drafted and negotiated.

3. Other notable determinants include:

   - The quality of local institutions, level of financial sector development, infrastructure capacity, the type of contracting parties and many other FDI specific factors (see Lee and Johnston, 2015).

4. The biggest challenge for empirical studies is properly classified data to test the hypothesis.

   - Kerner and Lawrence (2012) show that part of the reason for mixed results is caused by dependence on balance of payments (BoP) data which is poorly suited for testing the hypothesis.

   - Capital flows captured in BoP fail to identify the form these flows take when inside a foreign affiliate. Hence not all capital flows are exposed to *expost* illiquidity inherent in plants, machinery and equipment. This makes BoP data a poor proxy of revealed political risk and affects identification of the effect of BITs (i.e. measurement error).

   - Controlling for this effect and inconsistent reporting standards especially on reinvested earnings, effect of offshore holding companies and local financing by foreign affiliates, BITs are found to have a positive effect on inward capital accumulation but albeit much more smaller.

5. Econometric studies show useful evidence on the impact of BITs on FDI but they have a key limitation as well; They fail to contextualise BITs within a broader framework used by host states to attract and benefit from FDI (UNCTAD, 2014).

6. BITs and FDI in Zambia: A quantitative evaluation

The quantitative evaluation of the impact of BITs on FDI presented in this section is split into three sub-sections: First the description of data, followed by the descriptive summary exploring the distribution of the data and then the econometrics of the relationship between BITs and FDI. Thereafter some a visual guide to the cherries, a depiction of the exceptional performance is presented.

6.1 Description of data

The source of statistical data on FDI used in this section is the Foreign Private Investment and Investor Perception Annual Reports jointly published by Bank of Zambia, Central Statistical Office and Zambia Development Agency. These public agencies collaborate every year to conduct a survey of foreign private capital and stocks based on a sample of firms with foreign assets and liabilities (FAL). Overtime the sample size has progressively expanded and for 2014 data, the survey covered 259 enterprises with FAL from 75 partner countries worldwide. The paper analyses data on FDI stocks between 2007 and 2014 available in the annual reports published from 2008 up to 2015. Data from these reports refers to the past one year period. During this period, only two IPPAs witnessed a change in status; the United Kingdom-Northern Ireland and Mauritius IPPAs were signed in 2009 and 2015 respectively. In general, this sequence in time implies that BITs are predetermined with respect to FDI stocks so that BITs are more likely to explain differences in FDI stocks unlike FDI stocks explaining BITs status. This is crucial and the appropriate terminology by economists is that BITs can be assumed to exogenously determine FDI stocks. That is to say, decisions regarding FDI flows during 2008-2014 took BIT status as a given constant. This is one way in which the chicken-egg or reverse causality bias is mitigated using the sequencing in time.

6.2 Descriptive summaries

Table 2 shows the distribution of average FDI stocks alongside the distribution of the median, maximum and minimum over the study period and by BIT status. There is an increase of average FDI stocks among the group of countries where Zambia maintains a signed or draft IPPA during the study reference period 2007-2014. Between Germany and Switzerland, countries with BITs in force, the pattern of average FDI stocks show a U-shaped pattern: it is high in the first three years 2007-2009 and then sharply drops before recovering in the 2014. This pattern is due to the FDI trend observed in mining as much FDI from Switzerland is heavily concentrated in mining. In fact, almost the entire FDI under the ratified group is from Swiss companies hence the similarity between the average and median FDI stocks. The group of countries that have FDI stocks in Zambia but have not cooperated to formulate a BIT with Zambia (none group), maintain the lowest average FDI stocks that is about sevenfold lower than the average FDI stocks maintained by the ratified group.

The distributions of the maximum and minimum provide a broad sense of variability in FDI stocks. There are exceptionally large and small values of FDI recorded in all categories of BITs status. The negative sign on the minimum is typical of FDI stocks calculated in line with IMF standards as stocks are typically viewed as the difference between FDI inflows and outflows. In general, the inspection of the maximum and minimum values indicates large FDI variability. The pooling of FDI stocks across enterprises of different size explains much of this variability. The draft BIT group dominates the distribution of the maximum value indicating that high value investors within this group are fewer.

Table 2: Descriptive statistics of FDI stocks in US$ Million by BIT Status

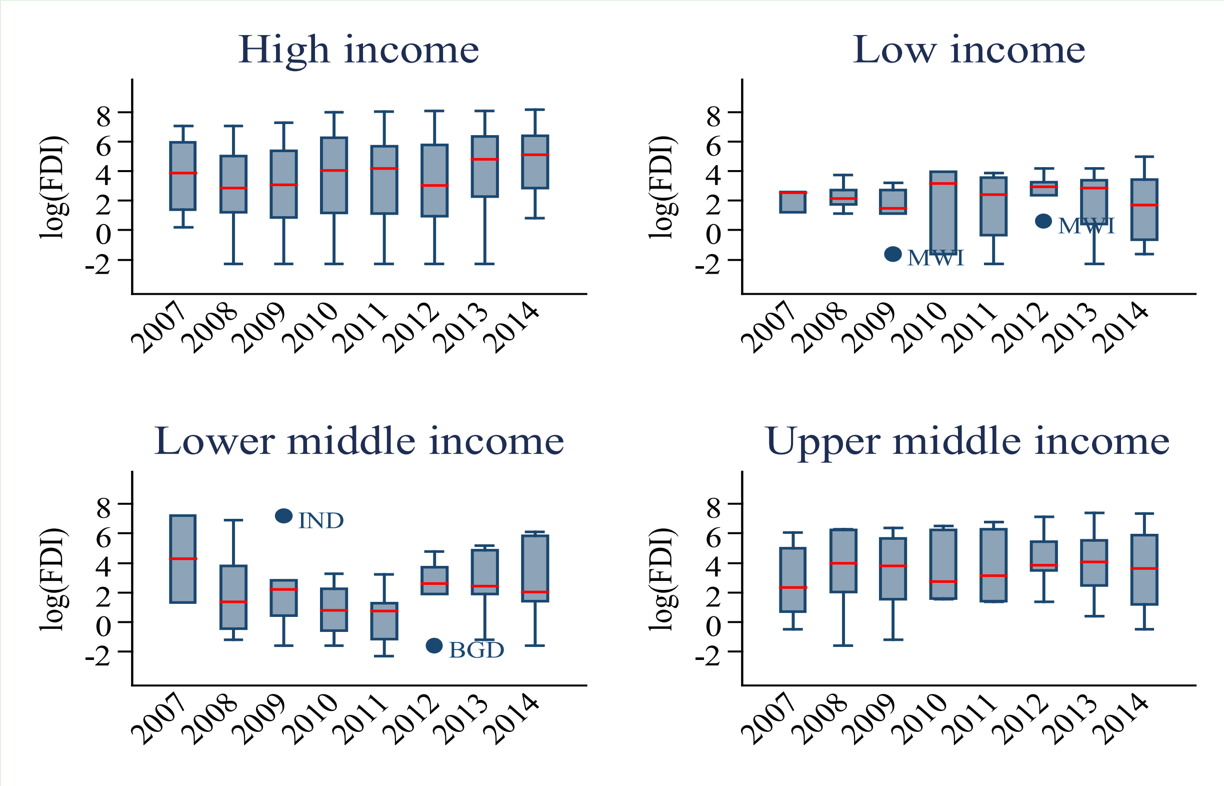
Average FDI Stocks					Median FDI Stocks				
Year	Draft	Ratified	Signed	None	Year	Draft	Ratified	Signed	None
2007	303.0	923.9	212.5	137.4	2007	13.5	923.9	186.7	5.6
2008	274.0	865.0	214.1	61.6	2008	20.6	865.0	151.0	7.3
2009	331.3	805.4	207.8	63.1	2009	25.6	805.4	97.2	5.4
2010	303.4	235.2	321.8	195.0	2010	38.9	235.2	59.1	3.0
2011	350.7	145.8	321.5	218.1	2011	37.0	145.8	64.3	3.1
2012	432.2	320.7	441.2	95.6	2012	57.7	320.7	68.4	5.5
2013	484.2	583.0	524.6	111.1	2013	92.1	583.0	71.4	6.8
2014	583.7	876.5	630.3	84.7	2014	73.0	876.5	87.7	4.5

Maximum FDI Stocks					Minimum FDI Stocks				
Year	Draft	Ratified	Signed	None	Year	Draft	Ratified	Signed	None
2007	1,338.3	923.9	426.6	1,166.0	2007	7.6	923.9	3.7	0.6
2008	1,154.2	865.0	588.7	920.2	2008	0.0	865.0	0.1	-2.7
2009	1,433.0	805.4	595.0	810.4	2009	0.3	805.4	0.1	-0.7
2010	1,583.1	470.4	1,371.2	2,928.9	2010	4.8	0.0	0.2	-17.8
2011	2,048.8	288.2	1,470.9	3,050.3	2011	4.0	3.4	0.1	-19.5
2012	3,197.4	621.1	2,352.0	1,231.7	2012	0.0	20.4	0.1	-6.9
2013	3,235.8	1,164.3	2,737.9	1,400.5	2013	0.0	1.7	0.1	-8.0
2014	3,571.8	1,746.2	3,223.4	625.8	2014	0.5	6.7	-43.3	-5.3

Zambia's signed and draft BITs are mostly with high income or upper middle income countries. Zambia also maintains FDI stocks with many high income countries without any IPPA at or beyond the draft stage. Figure 4 shows distribution of the same features included in Table 2 by way of box plots. The middle red line is the median and the upper tail end of each box element shows the maximum while the minimum is captured by the lower tail end of the box element. It is clear that high income group maintains superior volumes of FDI stocks followed by the upper middle income nations.

This result supports the approach pursued by Zambia where the country has more BITs engagements with countries where FDI stocks are also higher. In fact, there is still greater scope for Zambia to increase the number of IPPAs as there is a large fraction of high income countries that maintain significant FDI presence in Zambia but do not have any BIT activities with Zambia. This makes sense as long as FDI stocks maintained by these partner countries are not concentrated over very few enterprises.

Figure 4: FDI Stocks by Income Group in Zambia



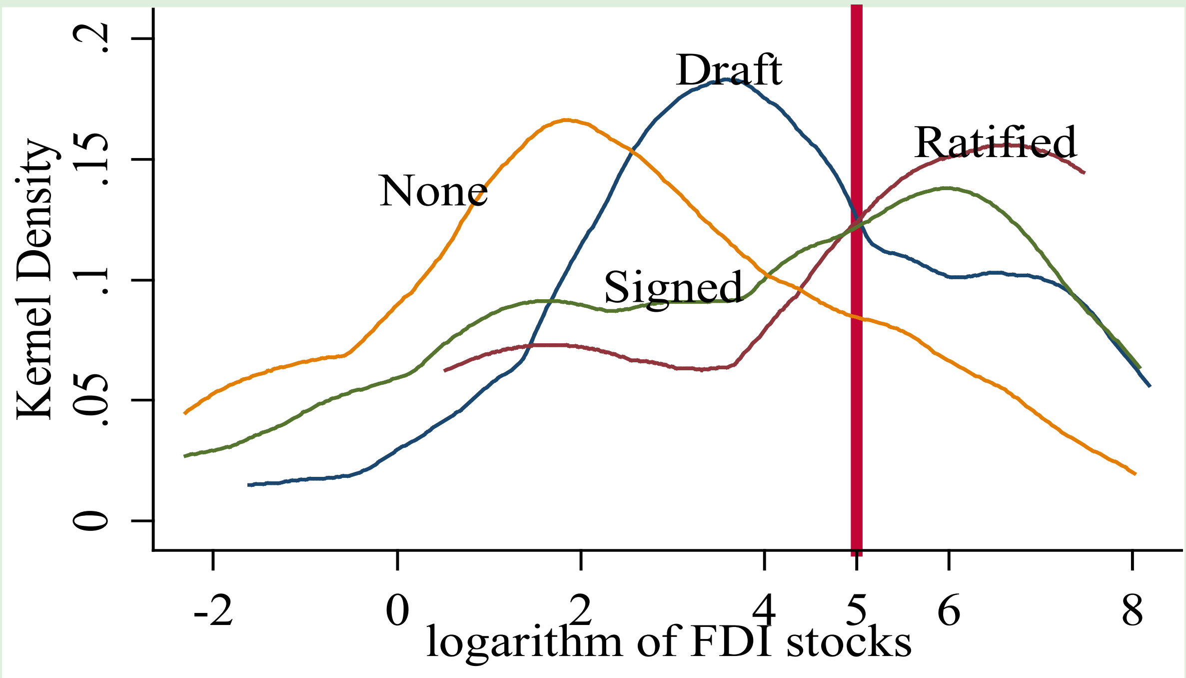
6.3 Modelling the BITs and FDI relationship in Zambia

This section adds more relevance to this paper by investigating the nature of the statistical relationship between BITs and FDI in Zambia. Figure 5 displays the cross sectional distribution of the logarithm of FDI stocks. The rescaling of FDI stocks is a naturally statistical measure that adds robustness to estimation in the presence of extremely large and small FDI stocks as demonstrated in Table 2 without sacrificing sample size and statistical power. The main result of Figure 5 is that higher FDI stocks-defined as FDI stocks in excess of log FDI stock equal to 5 are mostly maintained by countries that have a ratified IPPAs followed by the group with signed IPPAs.[7] The distributions of log FDI stocks for these two groups are peaked in the region that lies to the right of the red line. This contrasts the distributions for the draft and none BIT countries groups whose distributions are peaked on the left side of the red line and hence record an inferior mode.

Therefore using the mode of distribution as a ranking criterion, Figure 5 ranks the group of countries with ratified BITs first in terms of maintaining the largest volume of FDI stocks in Zambia. This is followed in second position by the group of countries with signed BITs and thereafter the draft BITs group of countries in third position and none BITs groups maintains the least FDI stocks in Zambia. This pattern implies a positive relationship (correlation wise) between the volume of FDI stocks maintained by partner countries and the stage of BIT status. The test of the equality of the distributions based on the quantiles test shows that the distributions are also not equal.[8]

[7] This threshold corresponds to: The peak of a distribution corresponds to the value of FDI stocks with the highest frequency known as the mode.
[8] See the xtiletest command developed by Baum (2015) based on Johnson et al. (Open Journal of Statistics, 2015)

Figure 5: Cross-section distribution of log FDI



The major weakness of Figure 5 is that it shows **a naïve** relationship that is mute on the effect BITs cause on FDI. In particular, it does not control for factors that potentially confound BITs status and FDI stocks which can lead to a spurious relationship. While data on FDI stocks used in this paper is for a period after BIT status witnessed a final change on their status, a good source of exogenous variation required to identify the causal impact of BITs on FDI, there is potential bias due to the failure to control for the trend in FDI prior to the last change in BIT status.[9]

The fact that Zambia did not randomly choose partner countries to draft, sign or ratify IPPAs but based the decision on careful criteria such as the volume and trends in FDI leads to an identification problem. This problem relates to the likely influence of the initial trend in FDI stocks on FDI stocks over the study period (2007-2014) through a lag in time. Therefore, selection bias needs to be corrected in order to genuinely disentangle the impact of BITs status on accumulation of FDI stocks and quantify the relative importance.

One common solution to deal with non-random assignment to treatment status utilises instrumental variables techniques. However, it is hard to find good instruments especially when the literature is vague. Therefore, the paper makes an assumption that the bias caused by the unobserved factor is constant for each FDI partner country during the period 2007 to 2014. Coupled with longitudinal data, that is a sequence of information on country and time pairs, the paper estimates fixed effects regressions of the following form:

$$\log{(FDI\ Stock)}_{cyrt} = BIT_{cyrt} + \gamma_y + \delta_r + \tau_t + \varepsilon_{cyrt}$$

where is a set of dichotomous variables reflecting the stage of BIT status (none, draft, signed or ratified); is a coefficient on income group specific effects; is a region specific effect; for time effects; and is the canonical residual. The subscripts indicate the country of FDI origin, income group and global regional group of the partner country, and time respectively. The income and global regional groups are based on the World Bank classification.

[9] The challenge is that the relevant attribute is unknown due to unavailability of FDI stocks data during this period. However it doesn't still make sense to look for FDI stocks by partner per year before 1968 or 1994 when Zambia signed the Germany and Swiss IPPAs. This require benign statistical techniques

Table 3 shows a series of regression results from eight different specifications. With the exception of models 6 and 7, the model specification and fit progressively improve with the ascending order of models. The first result is that countries which have never negotiated a BIT with Zambia at or beyond the draft stage unambiguously maintain lower FDI stocks which are more than two times lower than the size of FDI stocks maintained by the group of countries with a ratified BIT. In model 1 to model 4 the differences in FDI stocks maintained among the groups of countries with a draft or signed in from FDI stocks maintained by the group of countries with a ratified BITs are mute. This can be explained by the failure of ordinary least squares (OLS) pooled estimation to control for confounding due to unobserved variables and also the incomplete inclusion of key variables in the fixed effects (FE) models 3 and 4. Nonetheless, OLS estimates produce coefficients with more realistic qualitative signs than FE models 3 and 4.

The inclusion of both time and regional fixed effects improves the realism of the model which recovers a significant negative effect, implying the countries with signed BITs maintain lower FDI stocks relative to the stocks maintained by the ratified BIT group. The magnitude of the effects shows that FDI stocks maintained by countries in the signed BITs group are on average lower by about one-half. The sign on the coefficient for the group of countries with draft BITs is negative although it is not different from zero. Model 8 uncovers a large statistically significant negative effect of BITs on FDI stocks maintained by the group of countries after accounting for interaction between income and global regional grouping of the countries that maintain FDI stocks in Zambia. Although the negative coefficient of the draft BIT group is accentuated beyond the None BIT group, model 8 is a preferred specification as income levels of countries carry a geographical connotation. Countries in Europe and in general the northern hemisphere are more likely to have high income as they are more developed than countries in the southern hemisphere, particularly in Africa and South Asia. This justifies the need to account for the variations in FDI stock that arise from the multiplicative effect of geographical location and income. These influence FDI beyond the separate additive effect of geography or income.

Table 3: Regression Results for FDI Stocks

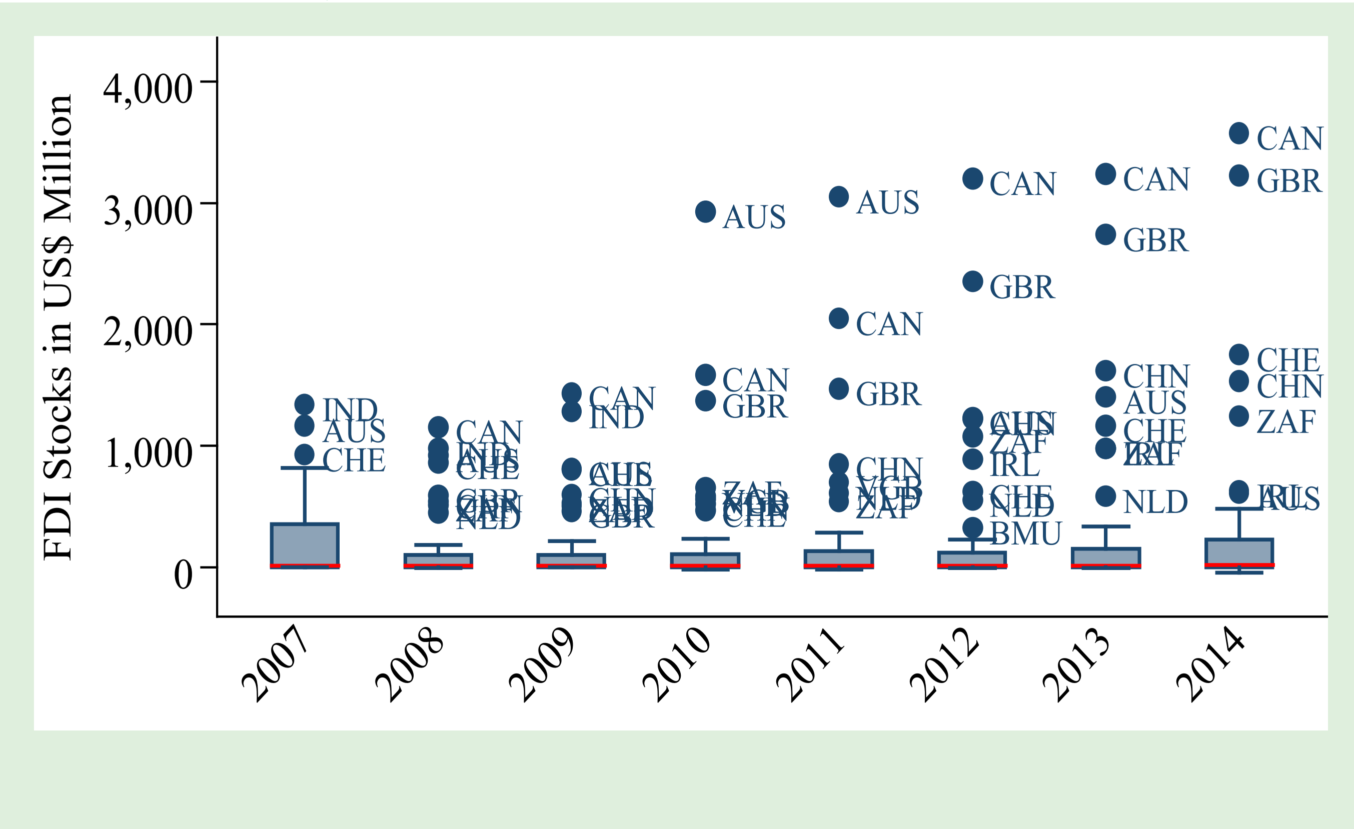
	OLS	OLS	FE	FE	FE	OLS	FE	FE[a]
VARIABLES	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Draft BIT group	-0.837	-0.811	0.0687	0.189	-1.069			-7.321***
	(0.796)	(0.801)	(0.821)	(0.793)	(1.279)			(0.106)
Signed BIT group	-1.270	-1.225	-1.032	-0.945	-1.269**			-1.648***
	(0.796)	(0.801)	(0.728)	(0.743)	(0.397)			(0.0105)
None BIT group	-2.609***	-2.607***	-2.059***	-2.004***	-2.930***			-4.775**
	(0.762)	(0.767)	(0.284)	(0.306)	(0.482)			(1.125)
						1.015	1.411	
Combined Signed and Ratified						(0.755)	(0.586)*	
Region Group Controls (Dummies)	NO	YES	NO	NO	YES	NO	YES	YES
Year Controls (Dummies)	NO	YES	NO	YES	YES	YES	YES	YES
Constant	4.977***	5.212***	4.438***	4.441***	6.052***	3.133***	3.065***	8.173***
	(0.736)	(0.863)	(0.138)	(0.124)	(0.589)	(0.512)	(0.500)	(0.217)
Observations	316	316	316	316	316	316	316	316
R-squared	0.102	0.114	0.116	0.135	0.233	0.037	0.026	0.337
Number of groups (income)			4	4	4		4	4

Notes: Cluster robust standard errors in parentheses: *** p<0.01, ** p<0.05, * p<0.1; Results are relative to the Ratified BITs group (Base category); [a]model contain interaction term between income and regional group

6.4 Cherries-a visual guide of exceptional performers

Figure 6 shows the distribution of FDI stocks by partner countries overtime presented to pre-empt individual country's relative FDI stocks maintained in Zambia. This cherry picking display pinpoints Australia, Canada, United Kingdom, Switzerland, China, South Africa and the Netherlands as partner countries that maintain large volumes of FDI stocks in Zambia. This observation is interesting in that Australia has never negotiated any BIT with Zambia. However, the result is a likely reflection of the substantial Greenfield investments from Australian mining companies that often negotiated concessions in the absence of BIT. This is also likely the case with Canada. Many large enterprises investing in natural resource extraction are less dependent on BITs (and more on the location of the natural resources they are interested) in their decision of where to locate their investment. The high levels of FDI stocks maintained by Britain have a colonial gradient. In general, the delay in the ratification of BITs and the concentration of FDI in the mining sector is a rationale for the use of a case-by-case approach.

Figure 6: FDI stocks by partner countries



7. A review of the BITs Framework for Zambia

The preceding sections confronted the empirical question of whether Zambia's BITs have a causal effect on FDI stocks maintained by foreign investors from counterparty states. The result is clear; FDI stocks measured in Zambia are significantly influenced by BITs status. This section now attempts to scrutinise the standard text drafted as a negotiation guide for Zambia's IPPAs known as the Zambia Model BIT formulated in 2010. Although the Model IPPA draft is dated 2010, the standard text it contains is an amalgamation of many standard standalone texts used in all the earlier drafts. The purpose of reviewing this text is to point out the general weaknesses or risk areas in view of the evidence from ISDS cases. Unlike the preceding sections that are based on a quantitative approach to evaluation, the review in the remaining part of the paper advances a qualitative approach.

The typical structure of IPPAs Zambia negotiates and signs is presented alongside the outlined model BIT recommended by UNCTAD in Table 4. Broadly, the structure Zambia uses does not significantly deviate from UNCTAD recommendation. However, Zambia's model IPPA is relatively lean. This observation also extends to Zambia's model BITs when compared to other countries. For instance, the 2012 US Model BIT draft is about 14,000 words (42 pages) while Zambia's Model BIT is about 4,700 words (16 pages) which is linked to differences in exhaustive coverage and hence clarity of provisions.[10] Nevertheless, Zambia's IPPAs draft text is fairly well-developed. It reads consistently with the SADC regional benchmark Model BIT except for discretionary parts of course.[11]

While Zambia has never been sued under an investment treaty breach by any company at the ISDS, this does not suggest Zambia's BITs are perfect. It neither implies that the potential adverse-impact of ISDS claims can be safely ignored as inconsequential for Zambia.[12] It is important for Zambia to take keen interest in the lessons and evidence produced under ISDS litigations in its quest to scale-up BITs content and possible ratification of pending BITs. The number of BITs in force, so far two, is extremely low and shows that Zambia is still an infant on BITs despite joining the race much earlier. As Zambia aspires to develop into a prosperous middle income country, FDI becomes a crucial component to plug the country into the relevant regional and global value chains that can generate massive value addition. Substantial evidence shows emerging economies are more likely to be sued under the ISDS as a result of ambitious policies that border on acceleration the pace of economic and social transformation.

[10] Differences in page formatting affect the page counts although in general both documents are compact and efficient in the utilization of page space.

[11] http://www.iisd.org/itn/wp-content/uploads/2012/10/sadc-model-bit-template-final.pdf [accessed 6/1/2017]

[12] Zambia has suffered from policy instability, unpredictability and non-responsive policies to its socioeconomic development due to the inflexibility of investment agreements with mining being a good example. As two-thirds of FDI flows into this sector, mining fiscal regime is dismal since 2008 with a study by Simpasa et (2013) estimating a revenue loss of 3.7% of GDP per annum due to policy reversals triggered by mining threats to sue government at the ISDS see also . see also a statement available on link: *http://www.parliament.gov.zm/sites/default/files/images/publication_docs/Ministerial%20Statement%20Dr.%20Musokotwane.pdf*

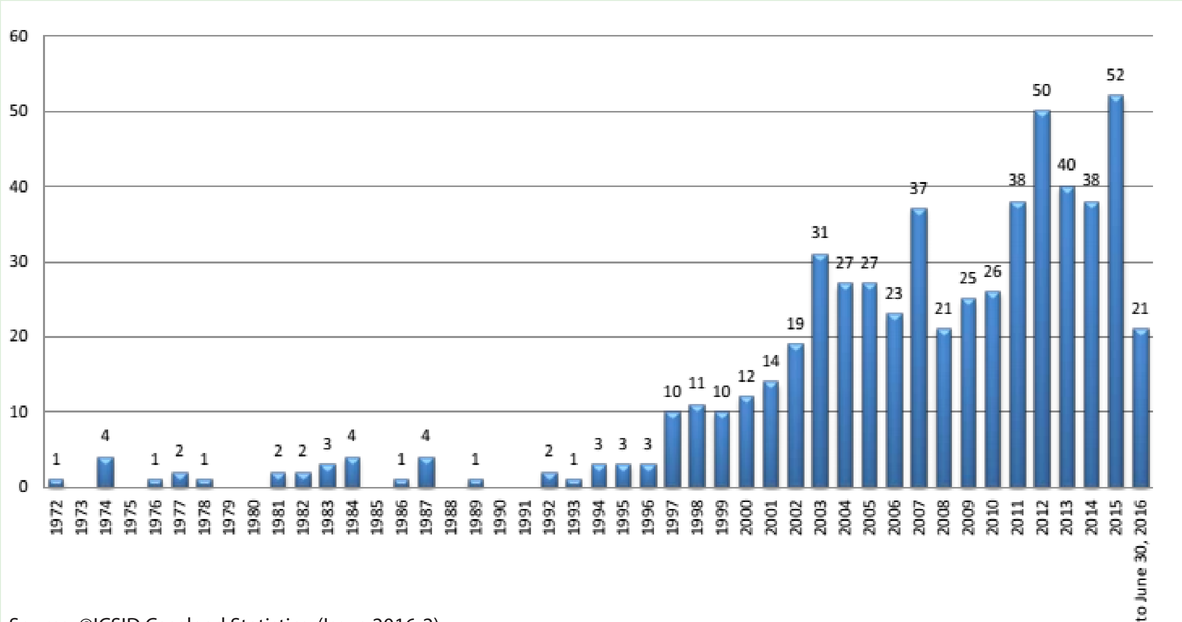
Table 4: Comparison of the Zambia Model IPPA to UNCTAD Model BIT

Basic structure of BITs (UNCTAD)	Zambia's model IPPA drafted in 2010
1. Scope of application 2. Conditions for the entry of foreign investment 3. General standards of treatment of foreign investments • Fair and equitable treatment in accordance with international law; • National treatment – foreign investors must not be treated less favourably than their domestic counterparts; • Most favoured nation (MFN) treatment – i.e. non-discrimination among investors of different foreign nationality; 4. Monetary transfers 5. Operational conditions of the investment 6. Protection against expropriation and dispossession • Guarantees of the free transfer and repatriation of capital and profits; 7. Compensation for losses • Guarantees of compensation based on international standards in case of expropriation of foreign property; 8. Investment dispute settlement • In case of an investment dispute, the right of the foreign investor to challenge the host state before an international arbitration tribunal.	Article 1. Definitions covering investment, investor, returns and territory Article 2. Promotion and admissions of investments Article 3. Protection of investments Article 4. Treatment of investments Article 5. Compensation of Losses Article 6. Expropriation Article 7. Transfer of payments related to investments Article 8. Subrogation Article 9. Settlement of disputes between the host state and investors Article 10. Settlement of disputes between states Article 11. Application of other rules Article 12. Scope of the agreement Article 13. Amendments Article 14. Entry into force Article 15. Duration and Termination

Zambia's BIT Model is formulated with text that is at the centre of controversy and responsible for a surge in cases initiated under ISDS. In particular it accommodates an expensive all-assets definition of qualifying investments so that under a dispute a foreign investor can sue for claims involving the total sum of their investment even if not all assets are known to carry expropriation risk. It also retains the Most Favoured Nation clause and the ISDS clauses that are at the centre of calls for reform as they are predatory and foreign investors exploit them heavily to take advantage of vulnerable host states. The grace period or duration before final termination is also notoriously long. Zambia accedes to both the World Bank's International Centre for the Settlement of Investment Disputes (ICSID) and United Nations Commission on International Trade Law (UNCITRAL) which are platforms for investor-state dispute settlement for most international investment treaties and in numerous investment laws and contracts.

In 2016, the number of treaty-based ISDS cases reached a global record high (see Figure 7). The cumulative total number of publicly known ISDS cases on 1 January 2016 reached 696 (Some cases at the ISDS are filed privately so that proceedings are confidential). A snapshot of 2016, which is the most recent year were data is available, shows a record 62 ISDS cases filed invoking bilateral investment treaties (BITs) (UNCTAD, 2016). In a third of all cases, disputes relate to the Energy Charter Treaty which is an international agreement establishing a multilateral framework for cross-border cooperation in the energy industry. State conduct including legislative reforms in the renewable energy sector, alleged direct expropriations of investments, discrimination, and revocation or denial of licences or permits remain the most frequently cause of disputes. Arbitral decisions hinge on key legal issues including scope of treaty coverage, conditions for initiating ISDS claims, interpretation of substantive treaty protection and calculation of compensation.

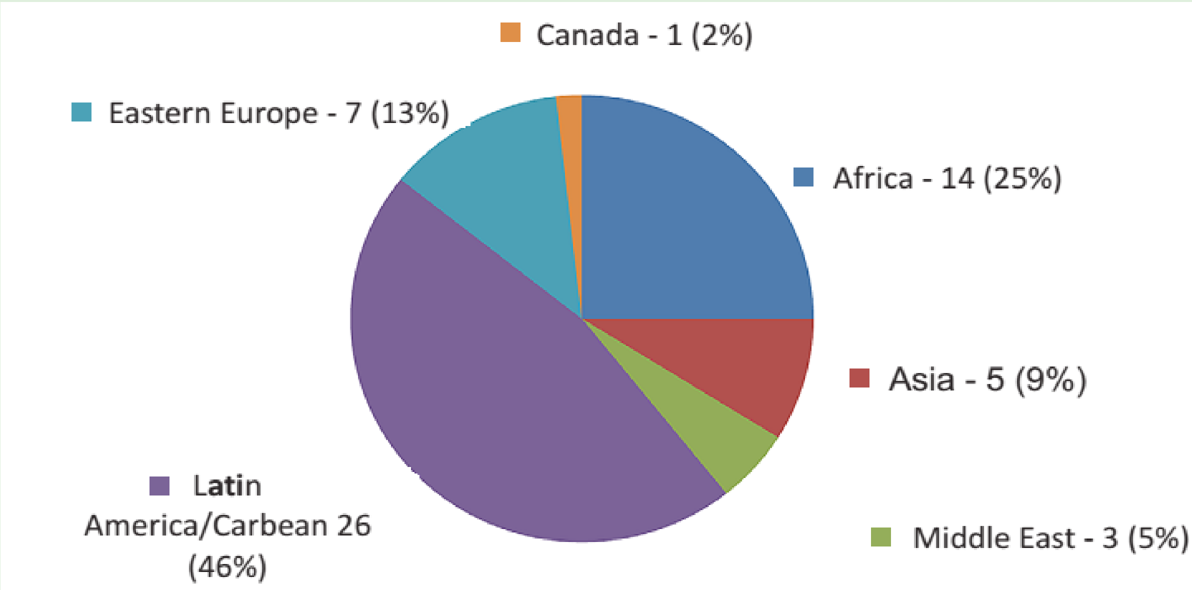
Figure 7: Treaty based ISDS Cases



Source: ©ICSID Caseload Statistics, (Issue 2016-2)

In view of the heavy concentration of the FDI portfolio in the mining sector, that mostly seeks extractive mineral resources, the cases in the extractives are striking with a substantial fraction originating from Africa. By 2016, 26% of all claim damages at the World Bank's ICSID involved disputes in oil, gas, or mining investments making it the most contested sector followed by electric power and other energy at 17% (ICSID, 2016). This contrasts the scenario in 2000 when ICSID only had three known cases on disputes in oil, mining, or gas (ANDERSON AND ROCHA, 2013). Figure 8 shows the regional distribution of 56 pending cases as at 4th March 2015 on mining, oil and gas.

Figure 8 ICSID pending cases on mining, oil and gas by region (4th March 2015)



8. What can Zambia learn: A tale of two reformers

This section draws lessons from the experience of India and South Africa that have reformed BITs along two totally different dimensions. India is confronting the status quo by seeking to renegotiate new BITs text while South Africa has annulled its BITs and replaced them by new legislation seeking a complete overhaul of foreign investment protection. These two cases are considered in detail below to draw insights for Zambia.

8.1 India

India is a celebrated recent innovator in drafting the model text for BITs. It has adopted strong stamina by substantially narrowing the scope of investments qualifying for protection under BITs. This is expected to reduce its exposure towards the risk of huge potential liability claims that foreign investors can initiate under the ISDS. India has also restructured BITs provision to build-in reasonable policy flexibility that balances protection between mutual interests of foreign investments and domestic state sovereignty: it has already notified its BIT partners that it will renegotiate BITs using the newly released drafted text which departs from the previous BIT and those of many developing countries in the following ways:

i. Adoption of investment definition based on the enterprise approach that is deemed least expensive unlike the widely adopted and most expensive open list asset approach which is used in Zambia. This is based on the seminal ruling involving Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco (ICSID Case No. ARB/00/4) under the Italy-Morocco (1990) BIT for a dispute over a contract to provide services and not to offer investment. The enterprise based definition guarantees that investment is defined to reflect *commitment of capital or other resources, duration certainty, the expectation of gain or profit, the participation in risks of the investment and a significant contribution to economic development* and not mere bids for tenders in the host states.[13]

ii. Improving the level of transparency and stakeholder consultations. The new BITs text explicitly compels the host State to disclose to interested persons intentions to amend or reform laws, regulations, procedures and administrative measures general affecting matters covered in the BIT and provide a reasonable opportunity for them to comment on such proposed measures prior to enactment. The text further states that *investment will not be protected if it has been created in violation of national or international principles of good faith; by way of corruption, fraud, or deceitful conduct; or if its creation itself constitutes a misuse of the system of international investment protection under the ICSID Convention*. In the new model BIT foreign investors claim related to tax measures are explicitly excluded.

iii. The Model BIT has also retained the most favoured nation clause (MFN) which demands treatment no less favourable than that afforded to domestic investors so as long as the investments are in like circumstances, or what is commonly called the national treatment standard.

iv. While the ISDS is retained as part of the dispute resolution mechanism, the BIT require that investors must pursue local remedies for a minimum period of at least five years before they may bring a claim, unless the investor can demonstrate that there are *no available domestic legal remedies capable of reasonably providing any relief in respect of the same measure or effective means of asserting claims and enforcing rights*

[13] In recent years, tribunals have distanced themselves from the requirement that an investment contribute to "*development*" not least because of the difficulty of making such a determination. At the same time, certain assets, including portfolio, intangible rights such as brand value and goodwill are explicitly excluded from the definition of investment although Zambia still retains them in its model text BIT.

8.2 South Africa

South Africa changed its approach to investment protection by entirely annulling all its BITs in 2015. This followed a comprehensive risk assessment of South Africa's BITs that recommended the need to codify typical BIT provisions into domestic law and renegotiate or refrain from any new BIT signing. In December 2015, South Africa enacted the Protection of Investment Act No.22 of 2015 that provides for the protection of investors and their investments and seeks to achieve a balance of rights and obligations that apply to all investors in a way that is consistent with its constitution which champions non-discrimination. The provisions in the new Act include the following:

i. Fair administrative treatment: government is compelled to ensure administrative, legislative and judicial processes do not operate in a manner that is arbitrary or that denies administrative and procedural justice to investors in respect of their investments as provided for in the Constitution and applicable legislation.

ii. Foreign investors and their investments must not be treated less favourably than South African investors in like circumstances.

iii. Legal protection: Investors have the right to property in terms of section 25 of the Constitution.

iv. Right to regulate: government or any organ of state may, in accordance with the Constitution and applicable legislation, take measures bordering on redressing historical, social and economic inequalities and injustices, achieving the progressive realisation of socio-economic rights, fostering economic development, industrialisation and beneficiation.

v. Dispute resolution: mediation appointed by agreement between the government and the foreign investor.

vi. Transitional arrangements: Existing investments that were made under bilateral investment treaties will continue to be protected for the period and terms stipulated in the treaties.

9. Conclusion, Recommendations and Next Steps

A summary of the principal findings in this paper is as follows:

1. Zambia has engaged in BITs (IPPAs) activities from mid-1960s. However, it only has ratified 2 out of 31 BITs, first with Germany in 1972 and also with Switzerland in 1994. The number of signed IPPAs is 11 and mostly these are signed with countries in Europe and between 1995 and early 2000s. The majority of BITs, 18 in total exists in draft form. There is a clear inertia in the Zambia's BITs portfolio that can be linked to global uncertainty due to the surge in cases brought under investment treaties compounded by domestic factors such as delays in executive approval to sign or ratify BITs.

2. The quantitative evaluation of statistical data using novel methods at the forefront of resolving biases induced by measurement errors in the data and potential confounding in the specification the BITs and FDI relationship indicate that BITs are a significant factor that influence the stocks of FDI in Zambia. FDI stocks among countries with a ratified BIT are 1.6 times higher than the corresponding stocks maintained by countries that have only a signed once income and geographical grouping are controlled for including their interactions. FDI stocks maintained by countries that have a draft or no BIT at all are more than four times lower when compared to the FDI stocks maintained by the group with a Ratified BIT. Therefore, it is clear that ratification of BITs is working for Zambia's FDI stocks.

3. Zambia has never suffered litigation under investment based treaty arbitration (ISDS). However, this does not mean BITs in Zambia are perfect. A critical qualitative review of Zambia's IPPA Model text formulated in 2010 shows that it contains clauses at the centre of the rising BITs controversy. In particular, the definition of investment assets is the very expensive open list that admits any class of assets to qualify for compensation claim under litigation. Zambia's BITs also retain the ISDS provision that is controversial as it specifies the entire settlement of disputes abroad thereby denying building capacity and key competencies of the local judiciary. The termination provision that allow existing investments to continue enjoying protection up to 15 years post termination notice in some cases is problematic.

The principal findings lead to the following key recommendation:

Zambia needs to revise all its IPPAs regardless of whether they are ratified, signed or exists in draft form as they are all based on pre-2010 approach UNCTAD (2017) described as "old treaties (BITs) that bite". Zambia's BITs further require safeguards to be put in place to secure the necessary policy space to enable them to achieve their development objectives to avoid potential loses. There are several ways in which this can be done but it all entails making the text read much clear so that arbitrary interpretations are avoided. This will require building capacity for investment treaty drafting. The approach of annulling IPPAs is too extreme and it is unlikely to present the best option for Zambia as BITs matter for FDI stocks.

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Annexures

Annex 1: Early bilateral investment treaties signed before 1967

Investing country	Host Country	Date Signed	Date Ratified
Germany	Dominican Republic	16-Dec-59	03-Jun-60
Germany	Pakistan	25-Nov-59	28-Nov-62
Germany	Malaysia	22-Dec-60	06-Jul-63
Germany	Liberia	12-Dec-61	22-Oct-67
Germany	Thailand	13-Dec-61	10-Apr-65
Germany	Togo	16-May-61	21-Dec-64
Germany	Greece	27-Mar-61	15-Jul-63
Germany	Morocco	31-Aug-61	21-Jan-68
Switzerland	Tunisia	02-Dec-61	19-Jan-64
Germany	Cameroon	29-Jun-62	21-Nov-63
Switzerland	Congo, Republic of	18-Oct-62	11-Jul-64
Germany	Guinea	19-Apr-62	13-Mar-65
Germany	Madagascar	21-Sep-62	21-Mar-66
Switzerland	Côte d'Ivoire	26-Jun-62	18-Nov-62
Switzerland	Guinea	26-Apr-62	29-Jul-63
Switzerland	Niger	28-Mar-62	17-Nov-62
Switzerland	Senegal	16-Aug-62	13-Aug-64
Germany	Turkey	20-Jun-62	16-Dec-65
Switzerland	Cameroon	28-Jan-63	06-Apr-64
Germany	Sudan	07-Feb-63	24-Jan-67
Switzerland	Liberia	23-Jul-63	22-Sep-64
Germany	Sri Lanka	08-Nov-63	07-Dec-66
Switzerland	Rwanda	15-Oct-63	15-Oct-63
Germany	Tunisia	20-Dec-63	06-Feb-66
Netherlands	Tunisia	23-May-63	19-Dec-64
Germany	Korea, Republic of	04-Feb-64	15-Jan-67
Germany	Niger	29-Oct-64	10-Jan-66
Italy	Guinea	20-Feb-64	20-Feb-64
Switzerland	Madagascar	17-Mar-64	31-Mar-66
Germany	Senegal	24-Jan-64	16-Jan-66
Switzerland	Togo	17-Jan-64	09-Aug-66
Belgium-Luxembourg	Tunisia	15-Jul-64	09-Mar-66
Netherlands	Cameroon	06-Jul-65	07-May-66
Germany	Congo, Republic of	13-Sep-65	14-Oct-67
Switzerland	Costa Rica	01-Sep-65	18-Aug-66
Sweden	Côte d'Ivoire	27-Aug-65	03-Nov-66
Germany	Central African Republic	23-Aug-65	21-Jan-68
Germany	Ecuador	28-Jun-65	30-Nov-66

Annex 1: Early bilateral investment treaties signed before 1967 (Continued)

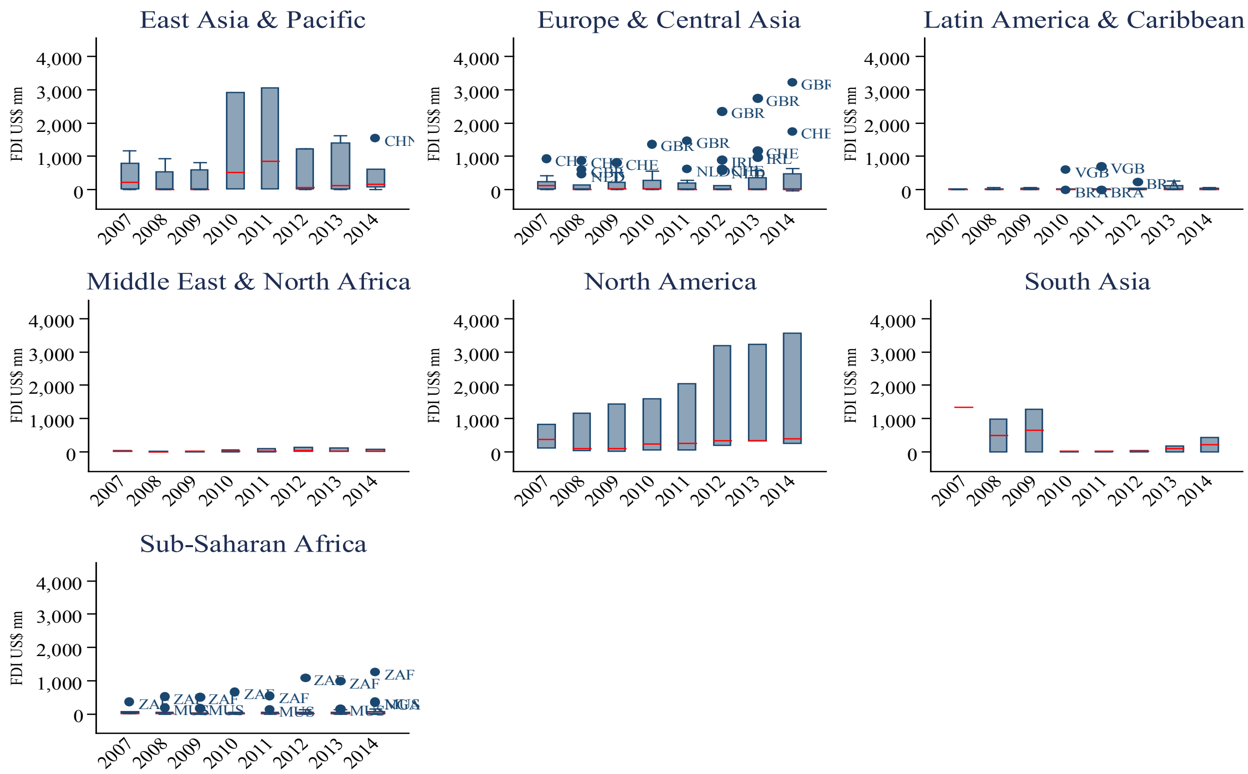
Investing country	Host Country	Date Signed	Date Ratified
Germany	Iran, Islamic Republic of	11-Nov-65	06-Apr-68
Germany	Sierra Leone	08-Apr-65	10-Dec-66
Denmark	Madagascar	10-Dec-65	26-Jul-67
Switzerland	Malta	20-Jan-65	23-Feb-65
Belgium-Luxembourg	Morocco	28-Apr-65	18-Oct-67
Netherlands	Côte d'Ivoire	26-Apr-65	08-Sep-66
Switzerland	Tanzania	03-May-65	16-Sep-65
Germany	Tanzania	30-Jan-65	12-Jul-68
Germany	Côte d'Ivoire	27-Oct-66	10-Jun-68
Denmark	Côte d'Ivoire	23-Nov-66	10-Jan-68
United States of America	Malta	16-Nov-66	26-Jan-67
Norway	Madagascar	13-May-66	28-Sep-67
Sweden	Madagascar	02-Apr-66	23-Jun-67
Switzerland	Benin	20-Apr-66	06-Oct-73
Germany	Uganda	29-Nov-66	19-Aug-68
Germany	Zambia	10-Dec-66	25-Aug-72

Constructed based on data from ICSID repository

Annex II:

Economy	Region	Income group	Date of signing	Status
Angola	Sub-Saharan Africa	Upper middle income		Draft
Cuba	Latin America & Caribbean	Upper middle income	2000	Signed
Denmark	Europe & Central Asia	High income		Draft
Algeria	Middle East & North Africa	Upper middle income		Draft
Croatia	Europe & Central Asia	High income	2000	Signed
Kuwait	Middle East & North Africa	High income		Draft
Korea, Dem. People's Rep.	East Asia & Pacific	Low income		Draft
Turkey	Europe & Central Asia	Upper middle income		Draft
Ukraine	Europe & Central Asia	Lower middle income		Draft

Annex III:


East Asia & Pacific
Europe & Central Asia
Latin America & Caribbean
Middle East & North Africa
North America
South Asia
Sub-Saharan Africa
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