

China's International Investment Strategy Bilateral, Regional, and Global Law and Policy

Julien Chaisse (editor)

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China's international investment law and policy have been the subject of detailed study since the liberation endeavour of the late 1970s, which was a landmark change in the country's development path and integration into the global economy. The country's active participation in the global economy is mirrored by its evolving profile of cross border capital flows, with China both a prominent source of, and destination for, foreign investment. Indeed, China's rise as a global investor has made its approach to international investment an important issue on which a considerable amount of literature has already been published. The recent past has, nevertheless, seen several important events within China, as well as bilateral, regional and global events influencing China's approach towards international investment and adding new perspectives thereto.

This scenario necessarily calls for a consideration of whether China's international investment law and policy vary across these different perspectives. This task is the focus of this large volume edited by Julian Chaisse. The volume contains twenty-seven well-written chapters by several eminent academics and professionals, representing many parts of the world. It commences with the editor's introduction, which provides an overview of the arguments developed in each chapter and lays out the structure of the book. It consists of five distinct parts, each of which tackle different, but interrelated aspects of China's international investment law and policy. The first part lays the foundation for the discussion developed by the subsequent chapters by elaborating on China's inbound and outbound investments and the factors that influence them, such as taxation, national security, free trade zones and sustainable development.

Subsequent parts consider the bilateral, regional and global prongs of China's investment strategy followed by an exploration of China's role in the investor-State dispute settlement (ISDS) mechanism, elaborating on the investment treaty jurisprudence developed based on China's bilateral investment treaties (BITs). Indeed, the three prongs provided for in the book have made it easy to comprehend the different perspectives of China's international investment strategy, shedding light on the emergent geopolitical and geo-economic significance of cross border investments beyond their commercial value. The bilateral prong focuses on the gradual evolution of China's bilateral investment treaty-making practice, highlighting

the political economy of selected bilateral investment treaties that have been concluded; China's BITs with Israel and Canada that are still under negotiation; and BITs that China expects to conclude with the European Union and the United States.

The regional prong focuses both on small-scale economic integration already achieved by means of existing investment agreements such as the Korea-China-Japan trilateral agreement, and larger-scale economic integration expected to be achieved in the future through the Regional Comprehensive Economic Partnership (RCEP). The global prong elaborates upon China's phenomenal rise as a global power and an ambitious global investor that wishes to provide political leadership to a multilateral investment regime, while identifying the political challenges faced by Chinese investors and the political factors that drive Chinese investments along the Belt and Road initiative. Commentary on the geopolitical and geo-economic factors add to the topicality and criticality of the book, as such non-commercial motives have been perceived as one of the driving forces behind the proliferation of Chinese outward investments in recent years, particularly in respect of infrastructure investment projects.

In addition, each part of the book considers various issues pertaining to China's international investment strategy, ranging from extremely distinctive to largely common issues. Among the specific issues covered are Taiwan's BITs and their role in informal diplomacy and a focus on innovation in the context of the China-Israel BIT. More general issues include market access provision for foreign investments and the regulation of foreign investment by China's State-owned enterprises (SOEs). The contribution made by the chapters on unique issues is a vital extension of the existing literature. The chapters on commonplace issues make an equally important contribution to the current discourse on the effect of Chinese outward investments across the globe, covering almost all sectors, ranging from the acquisition of natural resources to advanced technology.

In light of such discussions, the content of the book in its entirety demonstrates the effect on the existing international system of China's rise as an ambitious global investor. For context, there is discussion of China's role in global investment governance arguing its current position as a "rule shaker" and further, identifying "selective adaptation" as a unique trait in China's investment treaty-making practice. China's flexibility is dissected when it comes to investment treaty negotiations and its receptiveness to demands by counterparts on issues such as sustainable development is acknowledged. Such discussions shed light on China's approach to international investment treaty making, whilst some of the chapters highlight and analyse approaches in recently-concluded investment treaties or treaties currently under negotiation.

Important issues such as the treatment of technology transfer and SOEs in the China-US BIT negotiations are tackled. It is suggested that China may be expected

to assert itself more strongly in investment treaty negotiations on issues that are distinct and important to the Chinese economy. It indeed reveals a novel, but promising aspect of China's investment treaty-making strategy obviously resulting from its emerging role as a world-leading capital exporter. Another current topic under the spotlight in the book is that of enhanced national screening mechanisms, notably those put in place by countries hosting Chinese investments, with divergent perspectives raised on the subject. These include the political dynamics that accompany such measures and the exceptional nature of outward investments from China driven by SOEs.

These discussions highlight the tension between China's outward and inward investment strategies, and the interplay between the different prongs. The chapters on the global prong, in particular, signpost the emergent restrictiveness towards foreign investment from China. Against this backdrop, the political leadership given by China to formulate global non-binding rules on international investment policymaking has been identified as an indication of China's readiness to be a "rule maker" in the realm of international investment. In particular, there is an appreciation for the G20 Guiding Principles for Global Investment Policymaking (devised with the help of the United Nations Conference on Trade and Development) as an important step towards "outlining the architecture of a comprehensive framework on international investment" in the future. The discussion on China's engagement in the ISDS mechanism elucidates the country's increased role in implementing hard law commitments on international investment through the conclusion of legally binding international investment agreements both at bilateral and plurilateral levels.

On the one hand, the discussions developed by each chapter of this volume highlight the constriction of the conventional architecture of international investment law in the wake of rapid and expansive outward investments by Chinese SOEs perhaps not only for profits but in pursuit of domestic policy priorities. On the other hand, they indicate the challenge China faces to raise its profile in global investment governance in a context where protectionism has gained momentum. By providing a comprehensive analysis of China's international investment law and policy, which currently stands between these two major challenges, the book expands the parameters of the conventional wisdom on China's investment strategy, thereby providing critical insights for future research.

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