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SOUTH-SOUTH COOPERATION IN INTERNATIONAL INVESTMENT ARRANGEMENTS

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CHAPTER 1

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I. TRENDS OVER TIME AND ACROSS GEOGRAPHICAL REGIONS

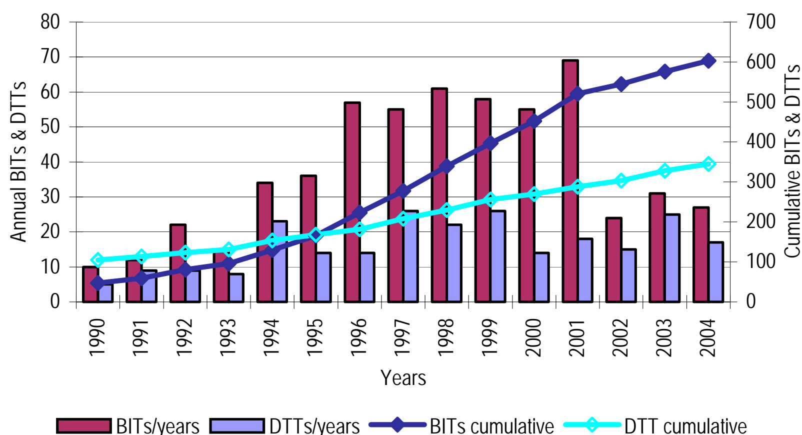
The wave of South-South cooperation in investment can be observed – albeit with variations – in terms of the different types of IIAs, ranging from BITs and DTTs to PTIAs (in this volume PTIAs that contain a commitment to facilitate investment flows through liberalization, protection and/or promotion of foreign investment are counted as investment agreements (see definition of PTIAs in section C)). It can also be discerned across different geographical regions, especially Asia and Latin America and, in part, Africa.

A. Bilateral investment treaties

BITs have traditionally been signed mainly between developed and developing countries. This corresponds with their main objectives of promoting and protecting foreign investment, and with the roles of home and host countries initially being clearly separated between developed (home) and developing (host) countries.[1] However, recently, the number of BITs between developing countries has grown. The first South-South BIT was signed in 1964.[2] The number of such agreements reached 47 by 1990 (figure 1). The 1990s saw a pronounced increase in the conclusion of BITs. The growth rate, however, slowed down since then. The number of South-South BITs reached 451 in 2000 and 603 by the end of 2004. However, about half of the total South-South BITs universe have not yet been ratified (box 1).[3]

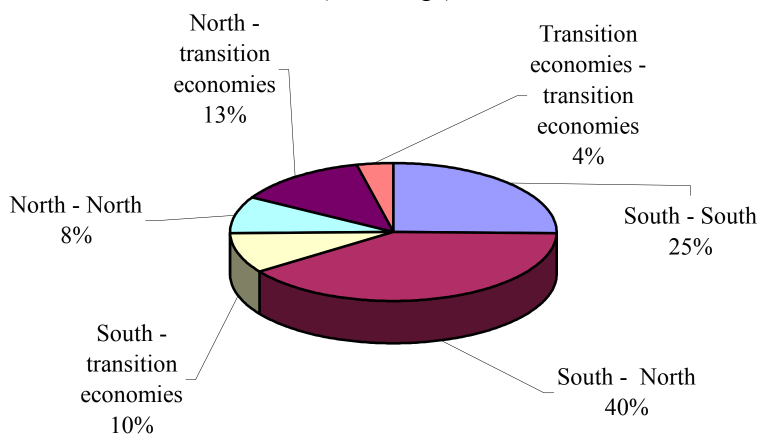
To date, South-South BITs account for 25% of the BIT universe, involving 104 developing countries (figure 2). Another 40% of the BIT universe is made up of BITs between developed and developing countries, with BITs involving developing countries and transition economies accounting for an additional 10%, and the remainder consisting of North-North, North-transition economies and intra-transition economies BITs.[4]

Figure 1. Number of South-South BITs and DTTs concluded, cumulative and year to year, 1990-2004
(Number)



Source: UNCTAD (www.unctad.org/iia).

Figure 2. Geographical distribution of BITs, end 2004
(Percentage)



Source: UNCTAD (www.unctad.org/iia).

Box 1. BITs signed and in force and their effect on FDI flows

The number of BITs between developing countries that are not ratified account for over 50 % of the total South-South BITs universe.

The signing of a BIT has the effect of signaling that a country wishes to provide a stable, transparent and predictable investment environment in which investments can thrive – an effect independent of whether the BIT is actually in force. In other words, signing is signaling – enforcing is another matter. However, the longer the BIT remains not ratified, the weaker that signal becomes.

Nonetheless, treaties signed by the executive authority of a State, but not ratified, have some legal effect. According to article 18 of the Vienna Convention on the Law of Treaties (*Obligation not to defeat the object and purpose of a treaty prior to its entry into force*), there is an obligation to adhere to commitments contained in signed treaties, regardless of whether they have been ratified, unless there is a valid reason not to do so:

"A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) It has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or (b) It has expressed its consent to be bound by the treaty pending the entry into force of the treaty and provided that such entry into force is not unduly delayed" (Vienna Convention on the Law of Treaties, 1969).

Furthermore, it can be assumed that, in most cases, States that have signed treaties intend to ratify them, and would otherwise make some statement to the contrary. However, much depends on the amount of time between signature and ratification, as a treaty that remains un-ratified for an extended period of time may well send the opposite signal.

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Box 1 (concluded)

Moreover, it is unlikely that an investor would be able to invoke the direct dispute resolution provisions of a BIT that has not been ratified, even under the broadest interpretation of Article 18 of the Vienna Convention. It would be difficult to justify such a significant derogation from State sovereignty, absent ratification, or the inclusion of a specific provision mandating "provisional application" of the treaty, including its dispute resolution provisions, subject to the constitution, laws or regulations of the signatory State, as is the case in Article 45 of the Energy Charter Treaty.

These considerations need to be taken into account when examining the impact of BITs on investment flows.

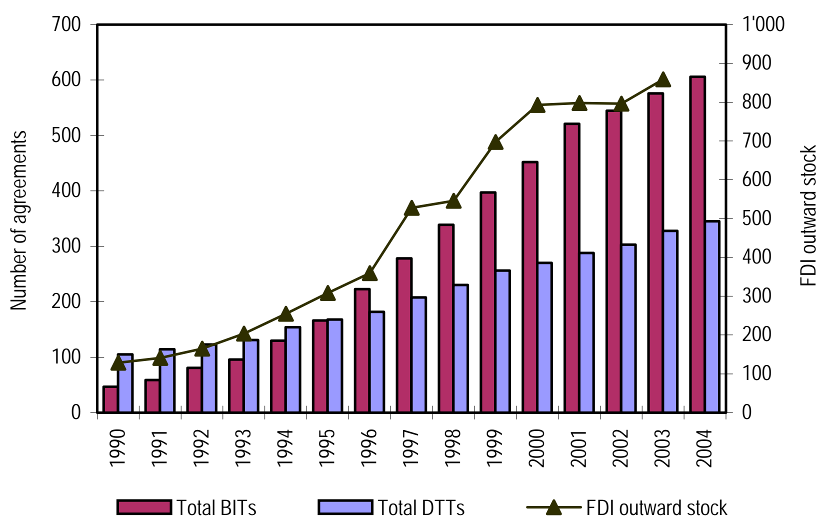
In part, this trend of an increasing number of South-South BITs corresponds to a general trend of growing South-South FDI flows. In fact, the years 1994-2001 saw the greatest number of BITs concluded between developing countries (an average of 63 BITs per year), at a time of substantial FDI outflows from developing countries (figures 1 and 3).

While many developing countries conclude South-South BITs, the extent of engagement varies across countries. The top ten countries have each between 63 and 26 BITs with other developing countries (table 1), while a great number (66) of developing countries have signed between 1 and 10 South-South BITs (table 2). At the same time, China, Egypt, the Republic of Korea, and Malaysia each have signed more than 40 South-South BITs. In fact, each of these four countries has signed more agreements with other developing countries than with developed countries. Others, however (e.g. Mexico, Costa Rica), have signed most of their BITs with developed countries.[5] Some 45 other developing countries (mainly smaller countries) have not entered into any BIT with any other developing country, while a few have signed

such treaties with developing countries only (see figure 4 for a density mapping of South-South BITs; see annex table 1 for the BITs network among developing countries).[6]

Figure 3. Cumulative outward FDI stock of developing economies and cumulative South-South BITs and DTTs, 1990- 2004 [a/]

(Number and billions of dollars)



Source: UNCTAD (www.unctad.org/fdstatistics and www.unctad.org/iia).

[a] FDI outward stock data as of end 2003.

A broad look at geographical patterns suggests that those regions accounting for most FDI outflows are also those with the highest number of South-South BITs. Asia, home to the largest and fastest growing outward investors, accounts for the majority of economies that are most active in South-South BIT cooperation (China, the Republic of Korea, Malaysia, Indonesia), followed by Latin America (Cuba, Argentina, Chile) (table 1).

Table 1. Top 10 developing economies in terms of South-South BITs, end 2004

Economy	Total	With developing economies
China	112	63
Egypt	90	48
Korea (Republic of)	78	47
Malaysia	66	42
Cuba	57	34
Indonesia	58	33
Argentina	58	29
Chile	51	28
Turkey	71	28
Morocco	46	26

Source: UNCTAD (www.unctad.org/iia).

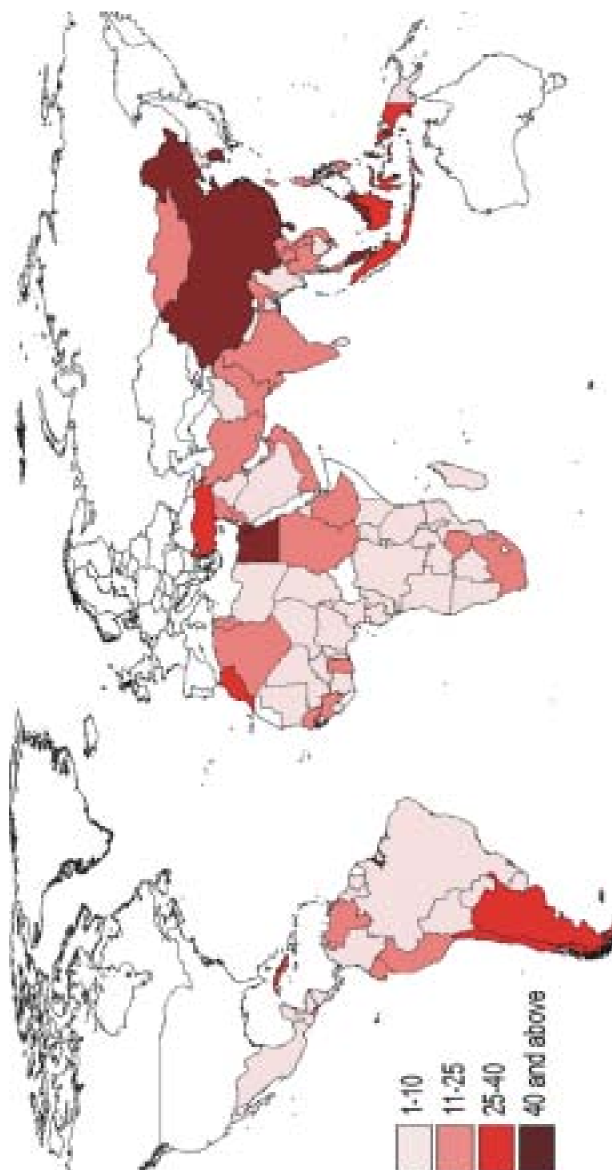
The situation at the country level is less clear: some countries that are active in signing BITs tend to be important outward investors (table 3, box 2). Countries like Malaysia and the Republic of Korea, with established track records of outward FDI, are among those with the highest number of South-South BITs (in the case of the Republic of Korea, 47 out of 78 BITs, and in the case of Malaysia 42 out of 66 BITs). By contrast, Hong Kong (China), by far the largest outward investor in general and in developing economies in particular, has signed only one BIT, with the Republic of Korea. Singapore, another country with large FDI outflows, has signed only 12 BITs with developing countries. China, another major outward investor, has 63 South-South out of 112 BITs, while India, a minor outward investor, has 24 South-South out of 56 (UNCTAD 2004a, p. 19). In Africa, Egypt, the country most active in signing BITs (with 48 South-South out of 90 BITs) does not rank among the ten developing economies dominating outward FDI in 2003 (UNCTAD 2004a, p. 21), while South Africa, by far the most important African outward investor, has 16 of its 33 BITs with developing countries. In Latin America, Chile – among

Table 2. Number of BITs signed between developing economies, end 2004

Number of BITs with other developing economies	Number of economies	Name of economy
40 and above	4	China, Egypt, Korea (Republic of), Malaysia
26-39	7	Argentina, Chile, Cuba, Indonesia, Mauritius, Morocco, Turkey
11-25	31	Algeria, Bahrain, Ecuador, El Salvador, Ethiopia, Ghana, Guinea, India, Iran (Islamic Republic of), Jordan, Kuwait, Lao People's Democratic Republic, Lebanon, Mongolia, Oman, Pakistan, Peru, Philippines, Senegal, Singapore, South Africa, Sudan, Syrian Arab Republic, Taiwan Province of China, Thailand, Tunisia, United Arab Emirates, Venezuela, Viet Nam, Yemen, Zimbabwe
1-10	66	Afghanistan, Angola, Bangladesh, Barbados, Belize, Benin, Bolivia, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Chad, Colombia, Comoros, Congo (Democratic Republic of the Congo), Congo (Republic of), Costa Rica, Côte d'Ivoire, Djibouti, Dominican Republic, Equatorial Guinea, Eritrea, Gabon, Guatemala, Guyana, Haiti, Honduras, Hong Kong (China), Iraq, Jamaica, Kenya, Korea (Democratic People's Republic of), Libyan Arab Jamahiriya, Madagascar, Malawi, Mali, Mauritania, Mexico, Mozambique, Myanmar, Namibia, Nepal, Nicaragua, Niger, Nigeria, Palestine Authority, Panama, Papua New Guinea, Paraguay, Qatar, Rwanda, Saudi Arabia, Sierra Leone, Sri Lanka, Suriname, Swaziland, Tanzania (United Republic of), Togo, Trinidad and Tobago, Uganda, Uruguay, Zambia

Source: UNCTAD (www.unctad.org/iia).

Figure 4. Density mapping of BITs among developing economies, end 2004
(Number)



Source: UNCTAD (www.unctad.org/iia).

the prime Latin American home countries – counts 28 South-South agreements out of its 51 BITs signed.

Interestingly, the average number of ratified BITs among leading developing economies in terms of outward FDI is much higher than that for total South-South BITs. Hong Kong (China) for example, has ratified 100% of its BITs, the Republic of Korea 89%, Singapore 80%, and China 75%, while Malaysia has ratified 62% of its BITs. This suggests that countries with higher outward FDI stock have stronger incentives in making their BITs operational.

Box 2. The growth of South-South FDI flows

In the 1990s, many developing countries emerged as significant sources of foreign investment to other developing countries. Due to the lack of data at the desired level of disaggregation, indirect data (Aykut and Ratha 2004) suggest that by the end of the decade, more than one-third of the FDI in developing countries may have originated from other developing countries. According to these estimates, South-South FDI flows appear to have grown faster than FDI from high-income countries to developing countries (North-South FDI) in the late 1990s, and to have remained relatively more resilient in the post-Asian-crisis period as well.

The rise in South-South FDI flows has been motivated by similar push and pull factors, and similar structural, cyclical and policy factors, as the surge in North-South FDI flows. Some of the push factors include increased competition or limited growth opportunities in domestic markets (e.g. South African retailing companies in Africa), efficiency-seeking (e.g. Malaysian manufacturing companies in Indonesia and Viet Nam) and procurement of raw materials (e.g. China's investments in iron ore and steel mills in Peru, and in oil in Angola and the Sudan). In addition to low labour costs and market-access opportunities, the most important pull factors for South-South FDI flows appear to be geographic proximity.

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Box 2 (concluded)

South-South FDI also benefits from fiscal and other incentives provided by developing-country governments. For example, China is promoting outward FDI by offering loans on preferential terms, tax rebates and investment insurance (UNCTAD 2001b). The Government of Malaysia also encourages South-South FDI flows through special deals signed with countries such as India, the Philippines, Viet Nam, and the United Republic of Tanzania.

Regional trade arrangements also contribute to the growth in South-South FDI. Since the late 1990s, rising wealth in some emerging market economies has increased the supply of capital; and capital-account liberalization in developing countries has enabled their companies to invest in other developing countries.

The growing importance of South-South FDI indicates that developing countries are more financially integrated with one another than was previously believed. Thus, a typical developing country has access to more sources of investment than before. This is particularly important for small economies, as firms from the South, because of their comparative advantages, tend to invest in countries with similar or lower levels of development than their home countries.

Source: UNCTAD 2004a, chapter II.

The signatories of South-South BITs include both geographically close and distant countries, i.e. BITs can be within a region or interregional. Most of the South-South BITs, particularly the early ones, were concluded between geographically close countries (e.g. the case of the Islamic Republic of Iran) to promote investment between neighbouring countries. Others have been concluded between countries in different geographical regions (e.g. Bolivia signing a BIT with China and the Republic of Korea, Thailand signing agreements

with Argentina and Peru). Note, however, that BITs across different geographical regions have been signed mostly by those developing countries that – in general – tend to have been actively involved in outward investment. Argentina, Chile, China, Egypt, and the Republic of Korea are examples (annex table 1).

Table 3. Top 10 developing economies in terms of outward FDI stock, 2003

Economy	Outward FDI stock	
	Total	In developing economies
Hong Kong (China)	336.1	288.2
Singapore	91.0	35.2
Taiwan Province of China	65.2	…
Brazil	54.6	44.0
China	37.0	…
Korea (Republic of)	34.5	…
Malaysia	29.7	14.9
Virgin Islands	26.8	…
South Africa	24.2	19.4
Argentina	21.3	...
All developing countries	858	…

Source: UNCTAD (www.unctad.org/fdstatistics).

Again, this picture corresponds – at least in part – to the growth and trend of FDI flows. Overall, the fact that most BITs have been concluded with countries that belong by and large to the same region highlights how regionalism interfaces with bilateral investment relations (pointing to geographic proximity as important additional pull factors for FDI).

Despite the rapid growth and large number of BITs, a significant proportion of outward FDI stock in developing countries, which originates from other developing countries, is not covered by

BITs. If data for 12 developing economies that report outward FDI stock by destination[7] (representing roughly 62 % of the total 2003 outward FDI stock of $858 billion from developing countries) can be used as an indicator, the share of South-South FDI stock falling under the protective wings of South-South BITs in force was roughly 14% in 2003. (This figure increases to roughly 40 % if one counts all BITs, i.e. including BITs that are only signed.) This suggests that there is still room for South-South cooperation in international investment agreements.

B. Double taxation treaties

A similar, but less pronounced, trend of increasing South-South investment cooperation can be observed with respect to DTTs. DTTs are frequently entered to promote and facilitate investment, although their focus is on taxation issues (box 3).

The first South-South DTT having been concluded in 1948 (by Argentina and Peru), such DTTs proliferated during the second half of the 1990s (figure 1).[8] During the 1990s, 165 new DTTs were signed between 73 developing countries, bringing the total number of treaties to 256 by the end of 1999. Growth persisted until 2004, with the number of South-South DTTs reaching 345 treaties between 90 countries. Today, 12% of DTTs are between developing countries (figure 5). At the same time, 40% of DTTs are North-South agreements, and 5% involve developing countries and economies in transition, with the remainder consisting of North-North, North-transition economies and intra-transition economies DTTs.

Similar to the situation in the case of BITs, South-South DTTs are concluded throughout all geographical regions, but mainly in South-East Asia and to a lesser extent in Latin America and Africa. India, China and Malaysia (with 30, 27 and 26 DTTs, respectively), have been particularly active, closely followed by other Asian countries (table 4 and annex table 2). Tunisia has been the most prominent signatory of

South-South DTTs among African and Arab countries. Similar to the situation in the case of BITs, most countries have signed between 1 and 10 DTTs (67 countries, table 5). In general, countries with a low number of DTTs concluded them with neighbouring countries and countries within the region, while countries active in signing South-South DTTs did so both within and beyond the region (see figure 6 for a density mapping of South-South DTTs).

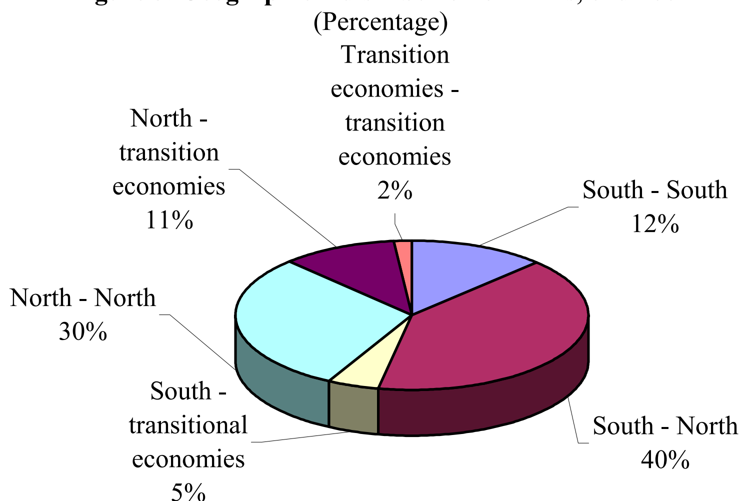
Box 3. Double taxation treaties

The aim of treaties for the avoidance of double taxation is to avoid the same income from being taxed by two or more States. Such double taxation occurs, for example, when a company resident in a country is taxed on its worldwide income, including income derived from an affiliate in another country on which that country has already levied a tax. A distinction can be made between juridical double taxation and economic double taxation. Juridical double taxation occurs when one and the same person is taxed on the same income by two or more States. Economic double taxation occurs when two separate persons are each taxed on the same income by two or more States.

Treaties aimed at the avoidance of double taxation are mostly of a bilateral nature. As of the end of 2004, the number of bilateral treaties for the avoidance of double taxation had exceeded 2,370. Such treaties, which are often based on model conventions developed by the OECD and the United Nations, provide for the allocation of exclusive or shared taxing rights to the contracting parties and for commonly agreed definitions. In addition, they often also contain a non-discrimination clause (national rather than MFN treatment), provisions designed to avoid tax evasion and procedures for arbitration and resolution of conflicts.[a/]

Source: UNCTAD.
[a] For further discussion, see UNCTAD 2000b.

Figure 5. Geographical distribution of DTTs, end 2004
(Percentage)



Source: UNCTAD (www.unctad.org/iia).

Table 4. Top 10 developing economies in terms of DTTs, end 2004

Economy	Number of DTTs	Developing economy
India	30	Bangladesh, Brazil, China, Egypt, Indonesia, Jordan, Kenya, Korea (Republic of), Libyan Arab Jamahiriya, Malaysia, Mauritius, Mongolia, Morocco, Nepal, Oman, Philippines, Qatar, Saudi Arabia, Sierra Leone, Singapore, Sri Lanka, Syrian Arab Republic, Tanzania (United Republic of), Thailand, Trinidad and Tobago, Turkey, Uganda, United Arab Emirates, Viet Nam, Zambia
China	27	Argentina, Bahrain, Bangladesh, Barbados, Brazil, Egypt, Hong Kong (China), India, Islamic Republic of Iran, Jamaica, Korea (Republic of), Kuwait, Lao People's Democratic Republic, Malaysia, Mauritius, Mongolia, Oman, Pakistan, Papua New Guinea, Philippines, Seychelles, Singapore, South Africa, Thailand, Turkey, United Arab Emirates, Viet Nam

Table 4 (continued)

Economy	Number of DTTs	Developing economy
Malaysia	26	Argentina, Bangladesh, Chile, China, Egypt, Fiji, India, Indonesia, Iran (Islamic Republic of), Jordan, Korea (Republic of), Kuwait, Lebanon, Mauritius, Mongolia, Myanmar, Namibia, Papua New Guinea, Philippines, Singapore, Sri Lanka, Sudan, Thailand, Turkey, Viet Nam, Zimbabwe
Korea (Republic of)	24	Bangladesh, Brazil, China, Egypt, Fiji, India, Indonesia, Jordan, Lao People's Democratic Republic, Malaysia, Mexico, Mongolia, Morocco, Pakistan, Philippines, Singapore, South Africa, Sri Lanka, Sudan, Thailand, Tunisia, Turkey, United Arab Emirates, Viet Nam
Thailand	24	Bahrain, Bangladesh, China, India, Indonesia, Korea (Republic of), Kuwait, Lao People's Democratic Republic, Malaysia, Myanmar, Mauritius, Nepal, Oman, Pakistan, Philippines, Saudi Arabia, Seychelles, Singapore, South Africa, Sri Lanka, Taiwan Province of China, Turkey, United Arab Emirates, Viet Nam
Mauritius	22	Barbados, Botswana, China, India, Indonesia, Kuwait, Lesotho, Madagascar, Malaysia, Mozambique, Namibia, Nepal, Oman, Pakistan, Senegal, Singapore, South Africa, Sri Lanka, Swaziland, Thailand, Uganda, Zimbabwe
Singapore	22	Bahrain, Bangladesh, China, Hong Kong (China), India, Indonesia, Korea (Republic of), Malaysia, Mauritius, Mexico, Mongolia, Myanmar, Oman, Pakistan, Papua New Guinea, Philippines, Saudi Arabia, Sri Lanka, Taiwan Province of China, Thailand, United Arab Emirates, Viet Nam
Pakistan	20	Bangladesh, China, Indonesia, Islamic Republic of Iran, Jordan, Korea (Republic of), Lebanon, Libyan Arab Jamahiriya, Mauritius, Nigeria, Oman, Philippines, Qatar, Singapore, Sri Lanka, Syrian Arab Republic, Thailand, Tunisia, Turkey, United Arab Emirates

Table 4 (concluded)

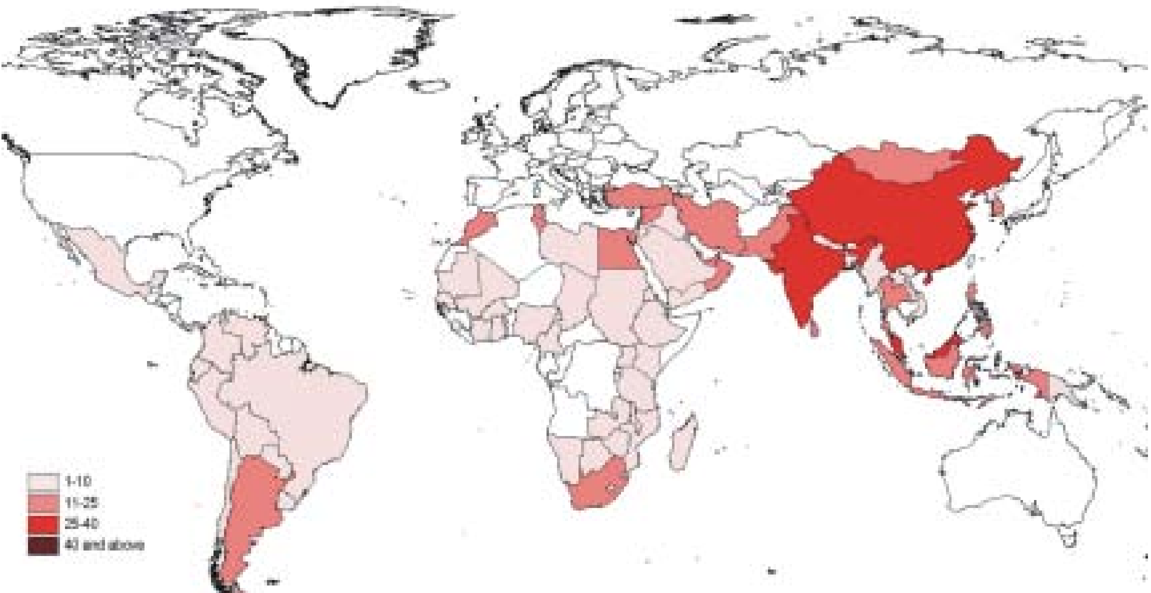
Economy	Number of DTTs	Developing economy
South Africa	20	Botswana, China, Ethiopia, Ghana, Korea (Republic of), Kuwait, Lesotho, Malawi, Mauritius, Namibia, Oman, Seychelles, Swaziland, Taiwan Province of China, Tanzania (United Republic of), Thailand, Tunisia, Uganda, Zambia, Zimbabwe
Tunisia	20	Algeria, Burkina Faso, Cameroon, Côte d'Ivoire, Egypt, Ethiopia, Indonesia, Korea (Republic of), Lebanon, Morocco, Oman, Pakistan, Saudi Arabia, Senegal, South Africa, Sudan, Syrian Arab Republic, Togo, Turkey, Yemen

Source: UNCTAD (www.unctad.org/iia).

In terms of similarities between the trends relating to BITs and DTTs, broadly, the years experiencing a relatively high increase in DTTs (i.e. the 1990s) were also those with a relatively high increase in BITs. Interestingly, however, before 1994, the cumulative number of South-South DTTs was higher than the respective number of South-South BITs. Since then, the situation is reversed, with South-South BITs dominating over South-South DTTs (figure 1). Compared to BITs, the share of outward FDI in developing countries originating from other developing countries that is covered by signed DTTs is much higher: an estimated 59% in 2003. This, again, shows the potential for further South-South cooperation with respect to DTTs against the backdrop of a fast growth of outward FDI flows among developing countries.

Figure 6. Density mapping of DTTs among developing economies, end 2004

(Number)



Source: UNCTAD (www.unctad.org/iia).

Table 5. Number of DTTs signed between developing economies, end 2004

Number of DTTs with other developing economies	Number of economies	Name of economy
30 and above	1	India
20-29	9	China, Korea (Republic of), Malaysia, Mauritius, Pakistan, Singapore, South Africa, Thailand, Tunisia
11-19	13	Algeria, Argentina, Egypt, Indonesia, Lebanon, Mongolia, Oman, Philippines, Qatar, Sri Lanka, Syrian Arab Republic, Turkey, United Arab Emirates
1-10	67	Afghanistan, Aruba, Bahrain, Bangladesh, Barbados, Bolivia, Botswana, Brazil, Burkina Faso, Cameroon, Chad, Chile, Colombia, Cote d'Ivoire, Cuba, Dominica, Ecuador, Eritrea, Ethiopia, Fiji, Gambia, Ghana, Hong Kong (China), Islamic Republic of Iran, Iraq, Jamaica, Jordan, Kenya, Korea (Democratic People's Republic of), Kuwait, Lao People's Democratic Republic, Lesotho, Libyan Arab Jamahiriya, Macau, Madagascar, Malawi, Mali, Mauritania, Mexico, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands Antilles, Nigeria, Panama, Papua New Guinea, Paraguay, Peru, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Sudan, Swaziland, Taiwan Province of China, Tanzania (United Republic of), Togo, Trinidad and Tobago, Uganda, Uruguay, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe

***Source*: UNCTAD (www.unctad.org/iia).**

C. Preferential trade and investment agreements

The trend towards increasing South-South cooperation in investment is also prominent in the case of preferential trade and

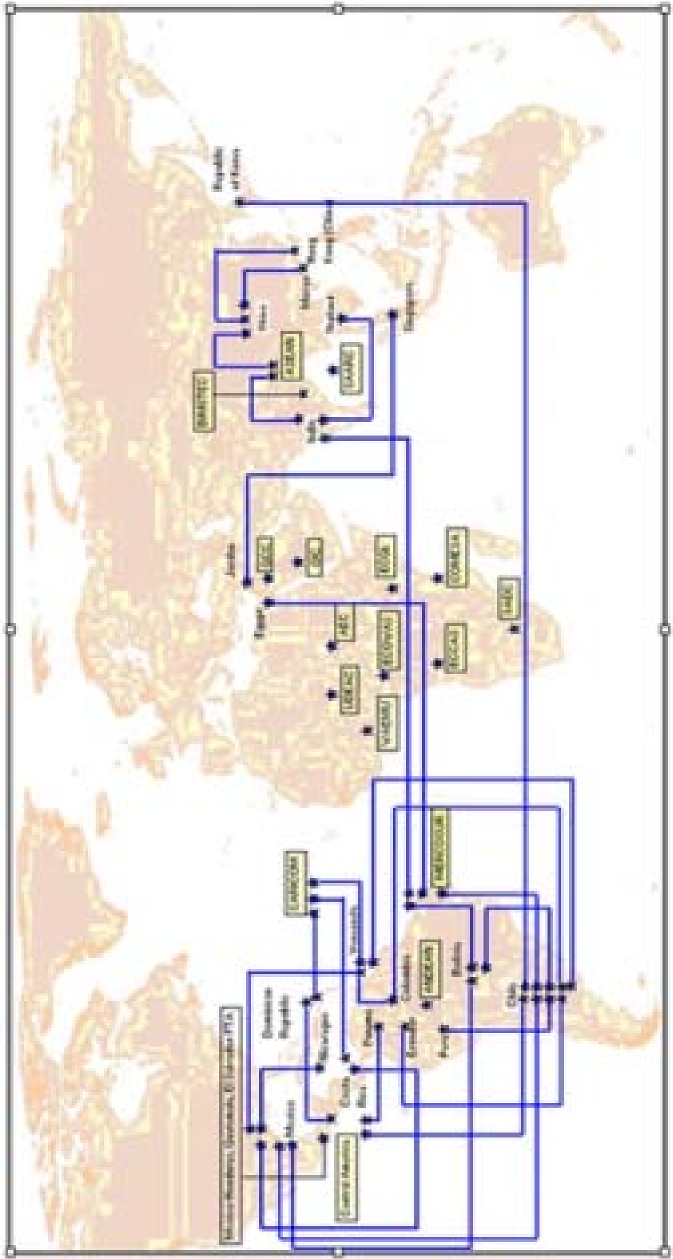
investment agreements (PTIAs). These encompass a variety of international agreements aiming at facilitating trade and investment – other than BITs and DTTs – that contain a commitment to liberalize, protect and/or promote investment. PTIAs can have various names, including "free trade agreement", "regional trade agreement", "economic partnership agreement", "new-age partnership agreement", "economic complementation agreement", "agreement for establishing a free trade area" or "closer economic partnership arrangement". More importantly, they differ – as discussed further below – in the extent and manner that they contain such commitments, with only 7 agreements covering investment only.[9]

While the first South-South PTIA was signed in 1957 (between members of the League of Arab States), the following decades saw only a rather slow growth of such agreements. By 1999, however, 34 agreements had been signed between developing countries, and by 2004 they reached a total of 73. This suggests a boost in South-South cooperation in the investment context over the past one and a half decades. Forty-seven of these agreements are in force. In addition, a number of other South-South PTIAs are under negotiation (see annex table 3 for a list of PTIAs).

Similar to BITs and DTTs, South–South PTIAs exist throughout all developing regions of the world (figure 7), but they are not uniformly spread across the globe. Most South–South PTIAs can be found in Latin America, with 39 out of the total 73 PTIAs signed among developing countries. Likewise, Asia is an active region in South-South PTIA rule making, accounting for 14 agreements, followed by Africa with 12 agreements. However, the number of South–South PTIAs in the Arab world is lower, accounting for only eight (Middle East) South-South PTIAs having been signed.

South-South economic cooperation initiatives have – time wise – preceded the boost of BITs in Africa. The resulting agreements contain limited substantial investment provisions (e.g. the 1972 Central African Customs and Economic Union, or the 1982 Economic

Figure 7. South-South bilateral and regional PTIAs containing FDI provisions, end 2004[a]



Source: UNCTAD (www.unctad.org/iia).

[a] Excluding BITs and DTTs.

Note: Figure does not show all South-South PTIAs due to space constrains.

AEC: African Economic Community, comprising all 51 members of the Organization of African Unity.
ANDEAN Community: Colombia, Ecuador, Peru and Venezuela.
ASEAN: Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam.
BIMSTEC: Bangladesh, Bhutan, India, Myanmar, Nepal, Sri Lanka and Thailand.
CARICOM: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago.
COMESA: Angola, Botswana, Comoros, Djibouti, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Seychelles, Somalia, Swaziland, Tanzania (United Republic of), Uganda, Zambia, and Zimbabwe.
ECCAS: Angola, Burundi, Cameroon, Central African Republic, Chad, Congo, Democratic Republic of Congo, Equatorial Guinea, Gabon, Rwanda, Sao Tomé and Principe.
ECGL: Burundi, Congo (Democratic Republic of), Rwanda.
ECOWAS: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.
G3: Colombia, Mexico and Venezuela.
GCC: Bahrain, Kuwait, Qatar, Oman, Saudi Arabia, and the United Arab Emirates
MERCOSUR: Argentina, Brazil, Paraguay and Uruguay.
Central America: Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua.
SAARC: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka.
SADC: Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania (United Republic of), Zambia and Zimbabwe.
OIC: The Agreement on Promotion, Protection and Guarantee of Investments among Members of the Organization of the Islamic Conference (1981).
UDEAC: Cameroon, Central African Republic, Chad, Congo, Equatorial Guinea, Gabon.
WAEMU: Benin, Burkina Faso, Cote d'Ivoire, Guinea Bissau, Mali, Niger, Senegal, Togo.

Community of the Great Lakes). Other African PTIAs contain even fewer investment-related provisions.[10] In contrast, initiatives for economic cooperation in Latin America[11] and Asia[12] are of a more recent nature. This regional distribution of agreements corresponds in part to the pattern of Southern outward FDI flows, with Latin America and Asia being ahead of Africa and the Middle East.[13]

The range of investment provisions addressed in PTIAs varies considerably. Out of all South-South PTIAs, more than 39% contain a comprehensive set of specific provisions related to investment, including the 7 agreements dealing exclusively with investment, as opposed to 61% that do not contain elaborate investment provisions, including those that contain a framework for future investment liberalization. COMESA and ECOWAS are investment-related agreements that set out the guiding principles for a more comprehensive investment agreement (e.g. the draft COMESA Common Investment Area (CCIA)). Moreover, BIMSTEC has inscribed the objective of protecting and promoting investment but not elaborated provisions on investment.[14] This is also the case of the ASEAN-China Framework Agreement, which includes elements of the establishment of an ASEAN-China Free Trade area within 10 years covering trade in goods, services and investment. Thus, while there is a notable movement to conclude regional agreements, these initiatives do not necessarily deal with investment. Hence, several South-South PTIAs are rather modest in their investment content, leaving the specific measures and commitments to the future. However, they still are an expression of a broader spirit of South-South cooperation in the area of investment.

South-South PTIAs also differ with respect to the number of signatories. Some 21 concluded South-South PTIAs are of a bilateral nature, as in the case of FTAs in Latin America (e.g. Chile and Ecuador, Chile and Venezuela, Chile and Colombia, Mexico and Bolivia, Mexico and Costa Rica, Mexico and Nicaragua) and Asia (e.g. the Singapore-Jordan Free Trade Agreement[15]), as well as other

Economic Cooperation or Partnership Arrangements (e.g. the 2003 India-Thailand Framework Agreement for Establishing a FTA).

Another 40 PTIAs between developing countries are of a "regional" nature. ASEAN with the AIA and the 1987 ASEAN Agreement for the Promotion and Protection of Investments (amended by the 1996 Protocol), MERCOSUR with its – albeit not ratified – investment components, the Caribbean Common Market (CARICOM) with the 2001 Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy, or the 2004 Framework Agreement on the BIMSTEC Free Trade Area serve as examples. Others, like the 1985 South Asian Association for Regional Cooperation (SAARC) Agreement on the promotion and protection of investment, are currently under negotiation or, in case of COMESA, about to be negotiated.

Twelve South-South PTIAs exhibit the additional feature of so-called "regional plus one agreements", an expression for regional groupings concluding agreements (with investment components) with additional individual countries. Such "regional plus one agreements" occur both within one and between different geographical regions. ASEAN for example concluded framework agreements with India (2003) and China (2002), and is currently consulting with the Republic of Korea. Similarly, MERCOSUR concluded additional agreements with Chile (1996) and Bolivia (1995).[16] Other examples in Latin America are the agreements signed by CARICOM with the Dominican Republic (1998) and with Costa Rica (2004). While this approach appears to be relatively common in Asia and Latin America, to date, there is no such agreement signed or under negotiation in Africa.

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Summing up, the past decade saw a substantial effort in South-South cooperation in the investment area, with the respective initiatives covering different geographical regions and comprising different

partners. So far, most South-South investment agreements have been concluded within geographical regions. There is a notable movement to conclude regional agreements, but these initiatives do not necessarily concentrate entirely on investment. Rather, a number of the most recent IIAs form part of broader agreements covering in particular trade in goods, services and, in differing degrees of detail, competition. The increase in South-South IIAs is happening in parallel to an upsurge in South-South FDI flows. In spite of the rapid growth of South-South IIAs, there is still a large proportion of FDI stock in developing countries that is not covered by IIAs, indicating a potential for further South-South cooperation. This also raises the question how South-South IIAs – as one specific form of South-South cooperation – can further contribute to increasing FDI flows between countries and maximizing benefits from them.

[1] For example, in the 1960s, 71 out of 72 BITs were concluded with a developed country as one of the parties (UNCTAD 1998, p. 16).

[2] Protocol between the Government of the State of Kuwait and the Republic of Iraq on the Promotion of the Movement of Capital and Investments between the two countries. See www.unctad.org/iia.

[3] For a discussion of this issue, see UNCTAD, forthcoming a.

[4] For the purposes of this volume, "transition economies" consist of Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Romania, the Russian Federation, Serbia and Montenegro, Tajikistan, The Former Yugoslav Republic of Macedonia, Turkmenistan, Ukraine and Uzbekistan.

[5] In the case of Mexico, 4 out of 17 BITs are with developing countries. In the case of Costa Rica, 9 out of 19 BITs are with developing countries.

[6] Myanmar and Suriname (4 in the case of Myanmar and 2 in the case of Suriname).

[7] Brazil; China; Hong Kong, China; Colombia; India; Korea, Republic of; Malaysia; Pakistan; Singapore; South Africa; Thailand; and Tunisia.

[8] Note that, during the 1990s alone, 925 new DTTs were signed between countries and territories in the world. This represents an increase of 77.5%

just in one decade. The picture is quite similar for DTTs between developing countries.

[9] Agreements that only cover investment include: the Framework Agreement on the ASEAN Investment Area (as amended by the 2001 Protocol); MERCOSUR, Protocol of Colonia for the Promotion and Reciprocal Protection of Investments; The ASEAN Agreement for the Promotion and Protection of Investments, amended by 1996 Protocol; Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organization of the Islamic Conference; Convention Establishing the Inter-Arab Investment Guarantee Corporation; MERCOSUR, Protocol of Buenos Aires on the Promotion and Protection of Investments coming from Non-MERCOSUR State Parties; The Investment Code of the Economic Community of the Great Lakes Countries.

[10] See UNCTAD forthcoming b for a comprehensive discussion.

[11] E.g. the 1994 Colonia Protocol for the Promotion and Reciprocal Protection of Investments within MERCOSUR, the 1991 Decision 291 Regime for the Common Treatment of Foreign Capital and Trademarks, Patents, Licensing Agreements and Royalties of the Andean Community, or the 1994 so-called Group of Three (G 3) (i.e. the Treaty on Free Trade between Colombia, Venezuela and Mexico).

[12] E.g. the 1998 ASEAN Framework Agreement on the ASEAN Investment Area (AIA) (as amended in 2001) and the 2003 People's Republic of China-Hong Kong Closer Economic Partnership Agreement.

[13] Note that many countries in the Middle East are currently negotiating with developed countries. Jordan, Bahrain and Egypt are cases in point.

[14] BIMSTEC was created in Bangkok on 6 June 1997, with the name BIST-EC. Its full name now is "Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation", or BIMSTEC, with the membership of Bangladesh, Bhutan, India, Myanmar, Nepal, Sri Lanka and Thailand. See (http://www.bimstec.org/).

[15] See (http://app.fta.gov.sg/asp/fta/ourfta.asp).

[16] Note that MERCOSUR has negotiated an Economic Complementation Agreement with Mexico and a Preferential Trade Agreement with India, neither of which, however, addresses investment issues.