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**Recent developments in international  
investment agreements  
(2007–June 2008)**

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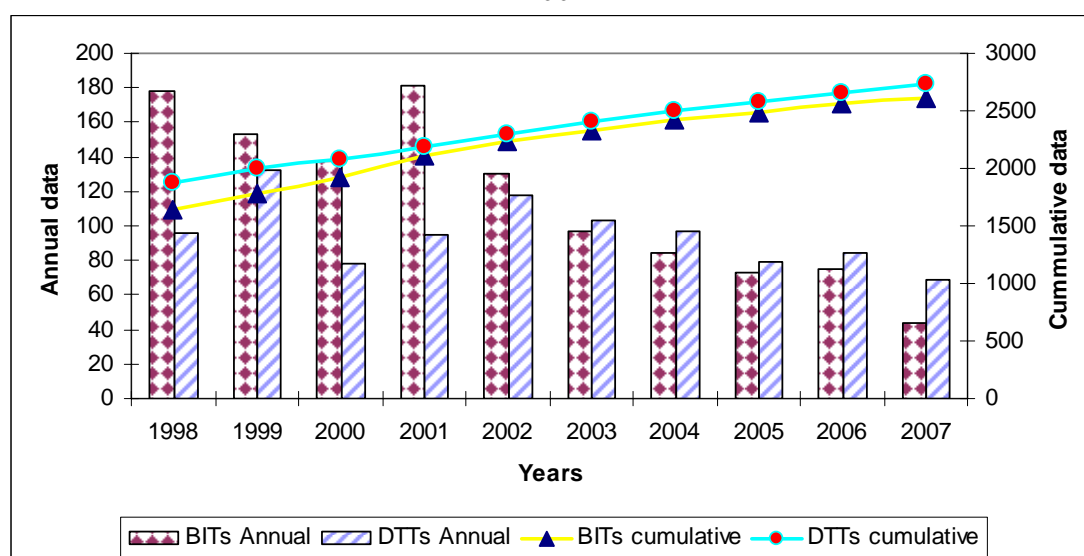
## Recent developments in international investment agreements (2007–June 2008)

The number of international investment agreements (IIAs) continued to grow in 2007, but at a slower rate compared to the previous years, with the slowdown mostly attributed to a decline in new bilateral investment treaties (BITs). During the period, a marked variation in the number of concluded IIAs was observed among regions.

### I. Bilateral investment treaties

In 2007, 44 new BITs were signed, bringing their total number to 2,608 at the end of the year (figure 1).<sup>1</sup> With the conclusion of a new BIT between Montenegro and the Netherlands, the number of countries parties to such agreements has now reached 179.

**Figure 1. Number of BITs and DTTs concluded, annual and cumulative 1998–2007**



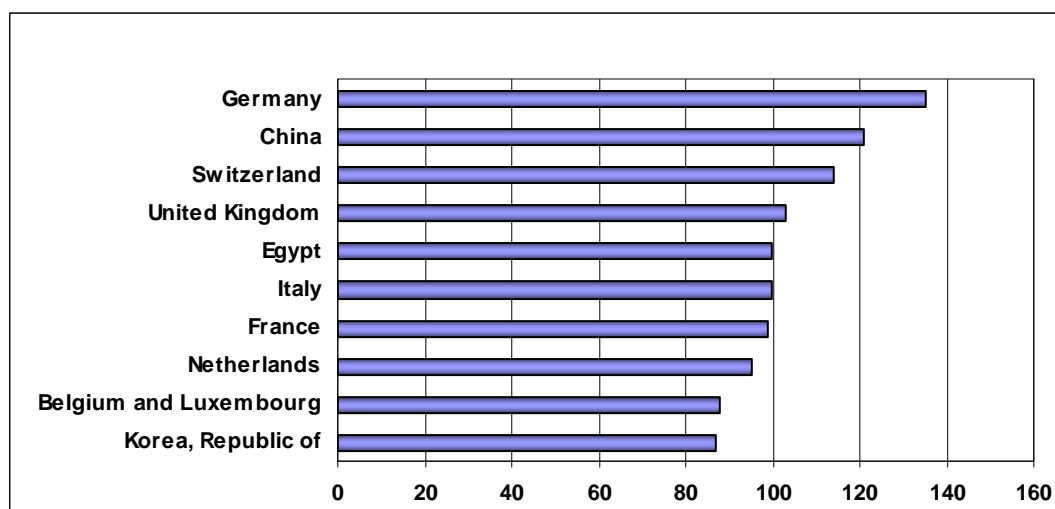
Source: UNCTAD ([www.unctad.org/iia](http://www.unctad.org/iia)).

<sup>1</sup> The figure of 44 BITs includes several renegotiated agreements.

A substantial regional variation in concluding BITs could be observed in 2007. With the signing of 29 new BITs, *Asian countries* remained the most active. This confirms a sustained high level of commitment from policymakers in this region for closer economic integration and investment protection. China, Oman and Qatar concluded the largest number of new agreements, with five BITs each in 2007. Asia and Oceania are now party to 41 per cent of all BITs.

*Developed countries* were involved in 25 of the new BITs. The Netherlands (5), Finland, Germany and Spain (3 each) together accounted for the majority of the new BITs. At the end of 2007, developed countries were party to 60 per cent of all BITs. Despite an already large number of BITs, Germany (135), Switzerland (114), France (99), the Netherlands (95) and Belgium–Luxembourg (88) continued to sign new agreements in 2007 (figure 2).<sup>2</sup>

**Figure 2. Top 10 signatories of BITs by end 2007**



Source: UNCTAD ([www.unctad.org/iia](http://www.unctad.org/iia)).

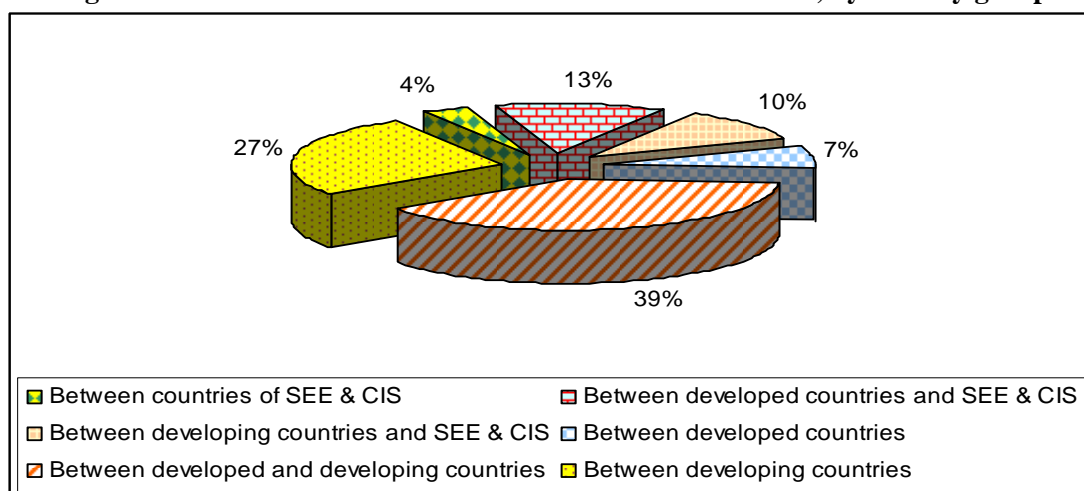
In 2007, countries in *South-East Europe* and the *Commonwealth of Independent States* signed 11 new BITs. Azerbaijan and the Russian Federation headed the group with two new BITs each. With a total of 581 BITs concluded by the end of 2007, countries in this region took part in 22 per cent of all BITs.

<sup>2</sup> The figures include the 2007 agreements.

Countries in *Africa* concluded 11 new BITs, and were party to 27 per cent of all BITs at the end of 2007. *Latin America and the Caribbean* remained the least active region with the signing of only four new BITs in 2007. Countries in this region were party to only 19 per cent of all BITs by end of 2007. In this regard, it is noteworthy that, with effect from November 2008, Bolivia will withdraw from the International Centre for Settlement of Investment Disputes (ICSID).<sup>3</sup> In December 2007, Ecuador announced that its consent to ICSID arbitration was no longer available for any disputes arising from mining and oil contracts. The Bolivarian Republic of Venezuela has made public similar concerns.<sup>4</sup>

The trend for enhanced *South–South economic cooperation* continued in 2007. Of the 44 new BITs signed in 2007, 13 were between developing countries, which represented more than 26 per cent of the total number of BITs (figure 3). China alone accounted for a large share of those South–South agreements. In 2007, it concluded four new BITs with other developing countries (Costa Rica, Cuba, Republic of Korea and Seychelles). About 60 per cent of the Chinese BITs concluded from 2002 to 2007 were with other developing countries, mainly in Africa.<sup>5</sup>

**Figure 3. Total number of BITs concluded at the end of 2007, by country group**



Source: UNCTAD ([www.unctad.org/ia](http://www.unctad.org/ia)).

<sup>3</sup> Article 71 of the ICSID Convention states that denunciation shall take effect six months after the receipt by the World Bank of a notice to withdraw. Such notice was delivered on 1 May 2008.

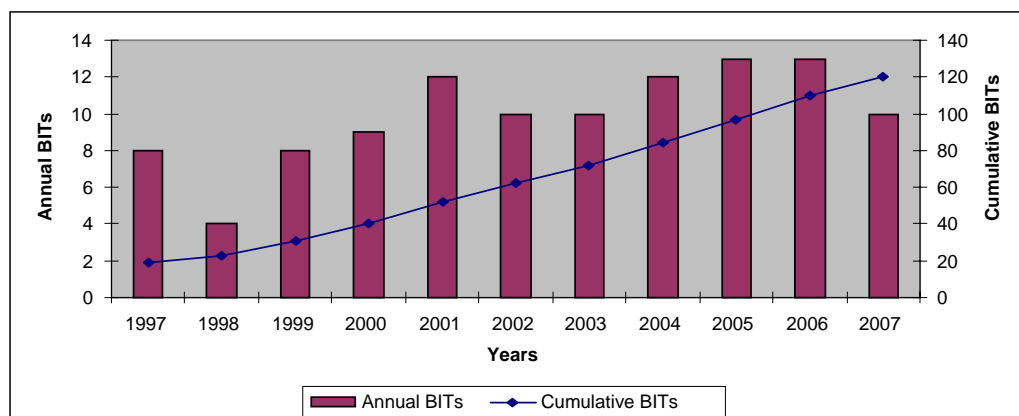
<sup>4</sup> See also IIA Monitor 1/2008 on “Latest Developments in Investor–State Dispute Settlement”.

<sup>5</sup> Nine of the 16 BITs China signed from 2003 to 2007 were concluded with African countries: Benin, Djibouti, Equatorial Guinea, Guinea, Madagascar, Namibia, Seychelles, Tunisia and Uganda.

In 2007, 10 of the 44 new BITs (23 per cent) replaced earlier treaties. This brought the total number of renegotiated BITs to 121 at the end of 2007. Compared to the total number of existing BITs (2,608), the share of renegotiated agreements is still very small – less than 5 percent. To date, Germany has renegotiated the largest number of BITs (16), followed by China (15), Morocco (12) and Egypt (11). This number is expected to rise further since a growing number of BITs are nearing expiry of their initial period of validity, and more countries are revising their model BITs to reflect new concerns related to environmental and social issues, including the host country’s right to regulate.<sup>6</sup>

Environmental considerations feature, for example, in BIT negotiations between Canada and China.<sup>7</sup> Furthermore, a growing number of recent agreements tend to ensure a better balance between the rights of foreign investors on the one hand, and respect for legitimate public concerns on the other.

**Figure 4. Renegotiated BITs, 1997–2007**



Source: UNCTAD.

<sup>6</sup> Norway, for example, is finalizing a new model BIT that includes, inter alia, the promotion of transparency in economic cooperation between the parties, and emphasizes the protection of health, safety, the environment and international labour rights. It also stresses the importance of corporate social responsibility and reaffirms the parties’ commitment to democracy, the rule of law, human rights and fundamental freedoms.

<sup>7</sup> Canada–China: Initial Environmental Assessment (EA) of the Canada-China Foreign Investment Promotion and Protection Agreement, International Affairs and trade Canada. Available at: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/fipa-apie/canchina-canchine1.aspx?lang=en>.

### *BITs during the first half of 2008*

A preliminary survey during the first half of 2008 indicates that 11 new BITs were concluded during this period. Most of these BITs involved *Asian* countries, confirming their lead position in 2007 in concluding investment agreements. *South-East Asian* countries as a subregion were particularly active. India and Japan signed three and two BITs, respectively, with least developed countries in Asia. Furthermore, the conclusion of a BIT between Myanmar and Thailand confirms the trend of more intraregional integration among South-East Asian countries in the framework of South–South economic cooperation.

*European* countries signed three BITs in the first half of 2008, while *African* countries were party to two new BITs. A notable development in this regard was the conclusion of a BIT between the United States and Rwanda. The agreement stands as the first such treaty of the United States in sub-Saharan Africa in nearly a decade. It is expected to bring more capital to Rwanda’s growing economy.

An obvious absentee in concluding BITs during the period is *Latin America*. This could be a further sign of a declining interest of Latin American countries in concluding BITs, as Latin America was already the least active region in 2007 (see above). However, of late, some countries in the region have started retreating from commitments made earlier. For example, Ecuador has denounced nine<sup>8</sup> of its 25 BITs, and has launched renegotiations with the remaining 16 countries.<sup>9</sup> Ecuador pointed out that the size of foreign investment already made and the chances of generating future investment with the partner countries will determine whether it will continue with the agreement in place. In a similar move, the Bolivarian Republic of Venezuela denounced its BITs with the Netherlands in April 2008.<sup>10</sup> The treaty is expected to terminate on 1 November 2008.

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<sup>8</sup> Ecuador has denounced its BITs with Cuba, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, Romania and Uruguay.

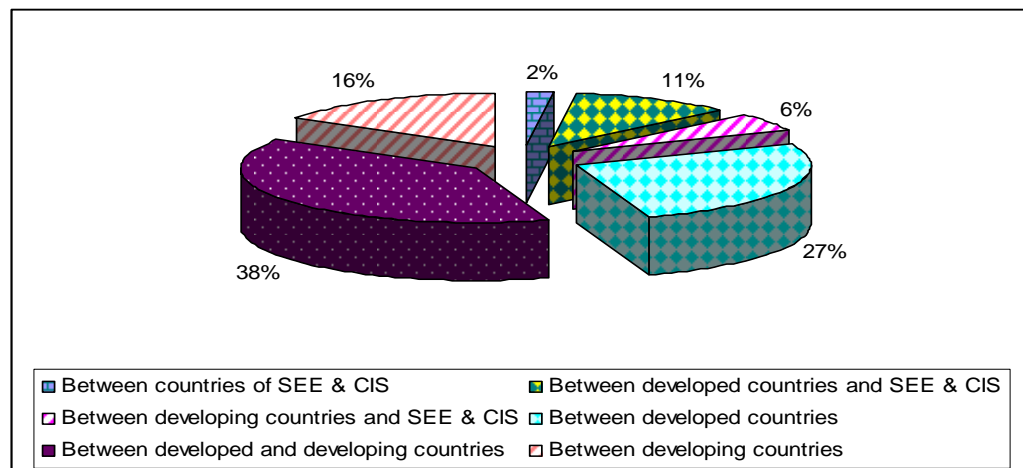
<sup>9</sup> Treaties signed with Argentina, Bolivia, Canada, Chile, China, Finland, France, Germany, Italy, Netherlands, Peru, Spain, Switzerland, the United Kingdom, the United States and the Bolivarian Republic of Venezuela are subject to this review.

<sup>10</sup> The BIT between the Netherlands and the Bolivarian Republic of Venezuela was signed on 21 October 1991 and entered into force on 1 November 1993 for an initial period of 15 years.

## II. Double taxation treaties (DTTs)

In 2007, 69 new double taxation treaties (DTTs) were concluded, bringing the total to 2,730 (figure 1). As in the previous years, *developed countries* were the most active group in concluding DTTs. They are parties to 51 new treaties, and 14 of the new DTTs were between developed countries only. Belgium–Luxembourg was most active with 7 new DTTs, followed by the United Kingdom and the United States (5 each). *Developing countries* are party to 36 of the new DTTs. Saudi Arabia, with five new DTTs, leads this group. Eight of the treaties signed in 2007 were among developing countries only. DTTs between developed and developing countries still account for the largest share (38 per cent) of all the agreements (figure 5).

**Figure 5. Total number of DTTs concluded at the end of 2007, by country group**



Source: UNCTAD ([www.unctad.org/ia](http://www.unctad.org/ia)).

### *DTTs during the first half of 2008*

During this period, 29 new DTTs were signed among countries at different stages of economic development. Mexico and the Netherlands were most active, concluding three DTTs each. *Developed countries* were involved in 26 of the new DTTs, with four concluded among themselves. The number of DTTs continued to rise at a higher rate than BITs in the first half of 2008.

As a reflection of the growing amount of foreign direct investment (FDI) in their economies, *developing countries* continued entering into DTTs among themselves. Three DTTs were signed among developing countries and were party to

16 of the total number of DTTs concluded during this period. A substantial participation of *South East Europe and the Commonwealth of Independent States* in the DTT network can be observed. They are party to nine DTTs signed in the first half of 2008.

### **III. IIAs other than BITs and DTTs**

In 2007, 12 new IIAs other than BITs and DTTs were concluded, bringing the total of such agreements to 254 (figure 6).<sup>11</sup> Most of the treaty-making activity in 2007 involved *Asian countries*. Japan was particularly active with the conclusion of economic partnership agreements (EPAs) with Brunei Darussalam, Chile, Indonesia and Thailand. The Republic of Korea concluded an important free trade agreement (FTA) with the United States and an agreement on free trade in services with the Association of South-East Asian Nations (ASEAN) which covers FDI through commercial presence.

Outside Asia, the *European Free Trade Association (EFTA)* signed an FTA with Egypt that includes detailed provisions on investment promotion, as well as a fair and equitable treatment clause. In *Africa*, member States of the Common Market for Eastern and Southern Africa (COMESA) signed an agreement to form the COMESA Common Investment Area by 1 January 2010. In *Latin America*, Uruguay concluded a trade and investment framework agreement with the United States to establish an institutional framework to monitor trade and investment relations between the two countries, while Costa Rica and Panama concluded a comprehensive FTA with substantive investment protection provisions. At least 70 new IIAs other than BITs and DTTs were under negotiation at the end of 2007, involving 108 countries.

Most of the IIAs other than BITs and DTTs concluded in 2007 establish binding obligations on the contracting parties concerning the admission and protection of foreign investment, in addition to a framework on investment promotion and

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<sup>11</sup> These agreements include, for example, closer economic partnership agreements, regional economic integration agreements or framework agreements on economic cooperation.



cooperation. The scope of the protection commitments in the new FTAs is comparable to that found in BITs, including with regard to investor–State dispute settlement.

*International investment agreements other than BITs and DTTs during the first half of 2008*

During the first half of 2008, five new IIAs other than BITs and DTTs were concluded, bringing the total number of such treaties to 259. Canada was most active with the conclusion of three new FTAs. In January 2008, Canada and the EFTA States concluded an FTA that includes general investment provisions recognizing the importance of creating favourable conditions for expanding investment and agreeing to review issues related to investment in a joint committee. In May 2008, the FTA between Canada and Peru was signed with substantive investment protection provisions. In addition, FTA negotiations with Colombia were concluded in June 2008.

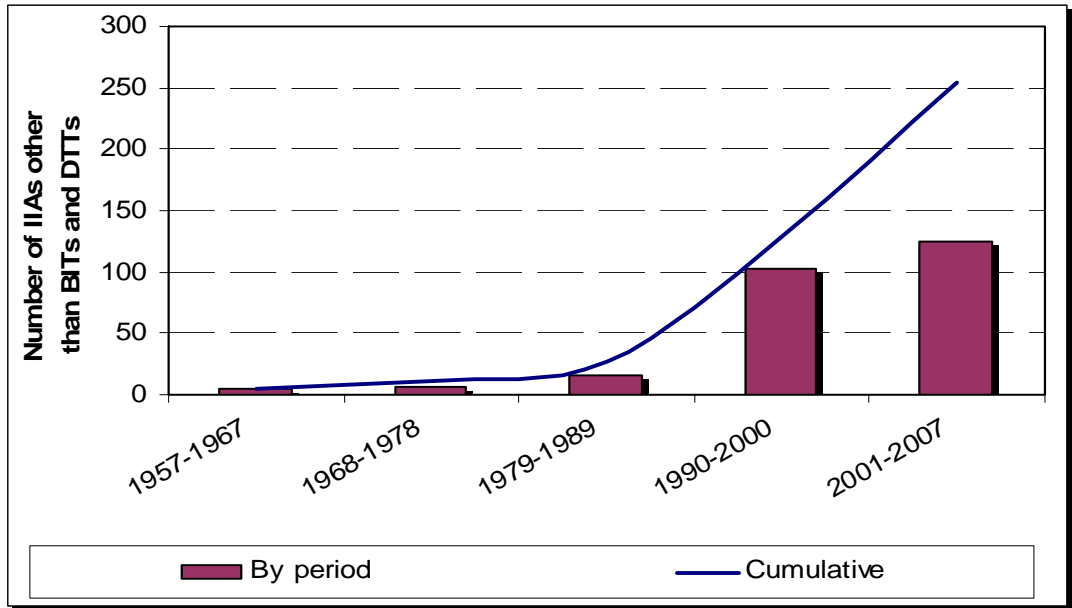
The ASEAN member States and Japan concluded a comprehensive (EPA) covering trade in goods, trade in services and investment. The interaction and possible overlap between the new ASEAN–Japan EPA and previous EPAs between Japan and individual ASEAN member States should be noted.<sup>12</sup> China concluded an important FTA with New Zealand in April 2008. It includes a chapter on investment protection, and brought an end to a negotiation process that spanned 15 rounds over three years.<sup>13</sup> An overview of all IIAs other than BITs and DTTs concluded in 2007 and the first half of 2008 is given in the annex.

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<sup>12</sup> These agreements are those concluded with Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand.

<sup>13</sup> See (<http://chinafta.govt.nz/1-The-agreement/2-Text-of-the-agreement/index.php>).

**Figure 6. Number of IIAs other than BITs and DTTs concluded, cumulative and per period, end 2007**



Source: UNCTAD.

**Annex. IIAs other than BITs and DTTs concluded between 2007 and June 2008**

Preferential Trade and Investment Agreements	Scope of investment provisions	Year
Trade and Investment Framework Agreement between the United States and Uruguay	Framework	2007
Free Trade Agreement between EFTA and Egypt	Investment promotion	2007
Agreement between Chile and Japan for a Strategic Economic Partnership	Substantive protection	2007
Free Trade Agreement between the Republic of Korea and the United States	Substantive protection	2007
Agreement between Japan and Thailand for a Strategic Economic Partnership	Substantive protection	2007
Trade and Investment Framework Agreement between Liberia and the United States	Framework	2007
Investment Agreement for the COMESA Common Investment Area	Substantive protection	2007
Economic Partnership Agreement between Brunei Darussalam and Japan	Substantive protection	2007
Free Trade Agreement between Costa Rica and Panama	Substantive protection	2007
Economic Partnership Agreement between Indonesia and Japan	Substantive protection	2007
Free Trade Agreement between ASEAN and the Republic of Korea (services)	Commercial presence	2007
Trade and Investment Framework Agreement between the United States and Viet Nam	Framework	2007
Free Trade Agreement between Canada and Colombia	Substantive protection	2008
Free Trade Agreement between EFTA and Canada	Framework	2008
Free Trade Agreement between Canada and Peru	Substantive protection	2008
Free Trade Agreement between China and New Zealand	Substantive protection	2008
Free Trade Agreement between ASEAN and Japan	Substantive protection	2008

*Source:* UNCTAD.

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