Termination of Bilateral Investment Treaties Has Not Negatively Affected Countries' Foreign Direct Investment Inflows

Public Citizen Research Brief | April 2018

Proponents of the controversial investor-state dispute settlement (ISDS) regime convinced governments to sign bilateral investment treaties (BITs) that included ISDS terms with the promise that such investor protections were necessary to encourage inward foreign direct investment (FDI). But the empirical evidence does not support this claim.

This paper provides an analysis of official government statistics on foreign investment in five countries that have terminated BITs[1] – Ecuador, Bolivia, South Africa, Indonesia and India – that reveals that investment flows from former BIT partner countries were more likely to increase rather than decrease after BIT termination. This paper does not explore whether inclusion of ISDS in Free Trade Agreements (FTAs) that combine ISDS-enforced investor protections with preferential market access for goods produced in outsourced facilities leads to increased FDI in lower-wage FTA partners.

Numerous studies have examined whether countries have seen an increase in FDI as a result of signing investment pacts with ISDS provisions. A 2014 analysis by the United Nations Conference on Trade and Development (UNCTAD) covering 146 economies over 27 years found no evidence that BITs foster increased bilateral FDI.[2] A survey of the 200 largest U.S. corporations corroborated these results, finding that leading U.S. firms were relatively unfamiliar with bilateral investment treaties and considered such treaties to be relatively unimportant in their foreign investment decisions.[3] Previous studies found no correlation or only a weak correlation between the presence of BITs and FDI inflows, and one study that did find a correlation was questioned on methodological grounds.[4]

While countries with ISDS-enforced BITs have not seen significant FDI increases, countries without such pacts have not lacked for foreign investment. Brazil, for example, has consistently rebuffed international investment agreements with ISDS provisions,[5] yet remains in the world's top 10 destinations for FDI. Brazil is the leading destination for FDI in Latin America, where most other countries have signed numerous BITs with ISDS terms.[6]

As investor-state challenges against legitimate public interest policymaking have increased at a rapid rate since 2000, some governments have determined that existing BITs with ISDS clauses are not in their national interest and have terminated those treaties. But other countries with similar concerns have not acted because of apprehensions that foreign investors will leave the country or not seek to invest in the country in the first instance if BITs are terminated.

Summary of Findings

Countries began to cancel ISDS-enforced BITs mainly after 2012, so a clear picture of trends over time is just now becoming available. This analysis of official government statistics on foreign investment in five countries terminating BITs – Ecuador, Bolivia, South Africa, Indonesia and India – reveals that investment flows from former BIT-partner countries were more likely to *increase* rather than decrease after termination. In the 32 cases of BIT termination for which official FDI statistics are available, more than half of the time (18) the country experienced *larger investment inflows* from the former BIT-partner country after termination as compared to prior to termination. Specifically, we compare bilateral FDI stock/flows in the five years prior to termination to the five years after termination.[7] In only 14 instances did investment inflows decrease over this time span. We used a five-year time span in order to take into account any changes in FDI flows that could have occurred after official notice but before formal termination. Averaging over several years also controls against findings that reflect year-to-year volatility of FDI flows rather than trends relating to the existence of BITs. Our overall finding is the same whether one calculates averages over a shorter time span such as three years or compares one year before termination to one year after. The overall finding is driven by data from four of the countries – Ecuador, Bolivia, South Africa and Indonesia – which undertook reforms earlier than India, for which trend data are not yet available.

While the findings do not suggest terminating BITs directly boosts investment inflows, they do point to an extremely weak or non-existent relationship between BITs and the magnitude of investment inflows. A wide range of factors drives investment flows, and the presence of a BIT is clearly not a determining factor in most cases. Notably, sovereign debt ratings, seen as one driver of FDI inflows, improved for four of the countries – Ecuador, Bolivia, Indonesia and India – *after* they began terminating BITs.

Countries have received more investment after terminating bilateral investment treaties from former treaty partners in over half the cases of termination.

We found the following trends with respect to the countries included in this analysis:[8]

- **Ecuador** began to terminate BITs in 2008. From 2008 to today, overall FDI stock into Ecuador increased by 38 percent, from $13 billion to $17 billion. After Ecuador terminated its BIT with Uruguay in 2008, FDI from the country increased 420 percent, from an annual average of $6.3 million before termination to $32.6 million after termination.

- **Bolivia** began terminating BITs in 2009, and since then the country's overall FDI stock grew 61 percent, from $7.3 billion to $11.8 billion today. Bolivia terminated its BIT with Spain in July 2012, but FDI inflows from Spain more than doubled, from an annual average of $163 million before termination to an annual average of $457 million after termination.

- **South Africa** decided in 2010 to terminate 20 BITs. FDI stock increased 10 percent since that time, from 1.8 trillion rand to 2.0 trillion rand. After South Africa terminated its BIT with Germany in August 2014, FDI stock from Germany in South Africa increased from an annual average of 93 billion rand before termination to 95 billion rand after termination.

- **Indonesia** gave notice in 2014 that it would terminate its 67 BITs, and its overall FDI stock increased by 5 percent, from $228 billion in 2014 to $240 billion in 2016. Indonesia terminated its BIT with the Netherlands in June 2015, and saw investment inflows from the country increase from an average annual $715 million net outflow before termination to a $1.7 billion net inflow after termination.

- **India** gave notice in early 2016 that it would terminate 58 BITs, and early indications are that the country has continued to experience robust and growing investment inflows. India terminated its BIT with the Netherlands in December 2016. FDI from the Netherlands increased from an annual average of $3.4 billion before termination to $3.8 billion after termination.

Detailed Findings by Country

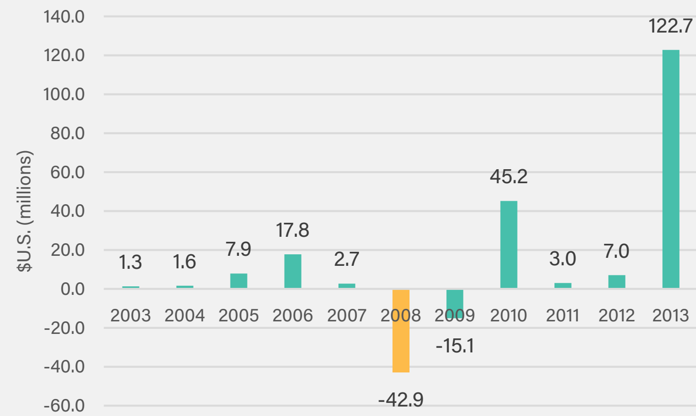
Ecuador

Upon adoption of a new constitution in 2008,[9] Ecuador ended BITs with 10 countries between 2008 and 2010 (Table 1) and in 2009 formally withdrew from the International Centre for Settlement of Investment Disputes (ICSID), one of the main bodies under which ISDS cases are litigated. From 2008 to today, Ecuador's overall FDI stock increased by 38 percent, from $13 billion to $17 billion,[10] and Ecuador's credit ratings improved.[11] FDI increased in two of the four cases of BIT termination for which data are available. For example, after Ecuador terminated a BIT with Uruguay in January 2008, foreign investment from the country increased 420 percent, from an annual average of $6.3 million in the five years prior to termination to $32.6 million in the five years after termination (Figure 1).[12] In mid-2017, Ecuador ended its 16 remaining BITs following the recommendations of a comprehensive audit of Ecuador's investment regime.[13]

Figure 1: Net FDI Flows From Uruguay to Ecuador

Start of Series of Terminations: 2008

BIT Termination: 2008



Source: Central Bank of Ecuador

Note: Net FDI flows in $U.S. million adjusted for inflation (in constant 2017 dollars).

Table 1: Ecuador: Net FDI Flows From Terminated Treaty Partners, Before and After Treaty Termination

Partner	Date of Termination (DD/MM/YYYY)	Average Annual Value in Years Prior ($U.S. Million)	Average Annual Value in Years After ($U.S. Million)	Change in Inflows	Latest Value (2017)
		Where Data Are Available			
Cuba	18/01/2008				
Dominican Republic	18/01/2008	0.4	0.2	↓	1.78
El Salvador	18/01/2008				
Guatemala	18/01/2008				
Honduras	18/01/2008				
Nicaragua	18/01/2008				
Paraguay	18/01/2008				
Romania	18/01/2008	0.0	0.4	↑	0.05
Uruguay	18/01/2008	6.3	32.6	↑	60.86
Finland	09/12/2010	23.9	-15.1	↓	-0.89
Peru	19/11/2017				
Argentina	18/05/2018				

Source: Central Bank of Ecuador and UNCTAD Investment Policy Hub for the list of terminated BITs.
Note: Net FDI flows in $U.S. million adjusted for inflation (in constant 2017 dollars). Average values before and after termination includes as many years of data as are available up to five years. Only two out of the most recent terminations have been reported to UNCTAD.

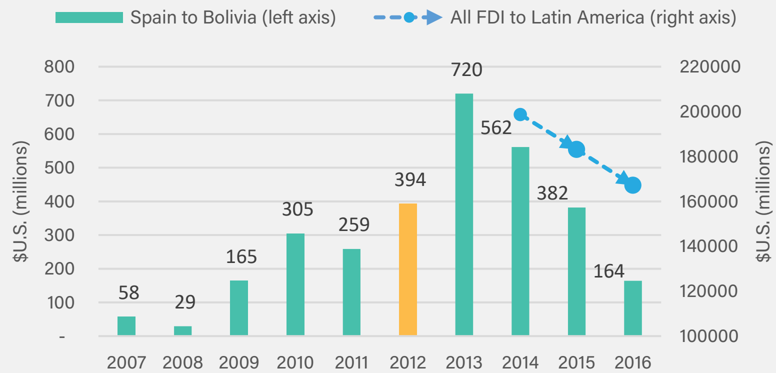
Bolivia

Bolivia was one of the first countries to take steps to terminate investment agreements and withdraw from international arbitration agreements. The country has also experienced a significant growth in FDI over the relevant years. Bolivia began terminating agreements in 2009, and since then the country's overall FDI stock grew 61 percent, from $7.3 billion to $11.8 billion today.[14] Previously, in 2007, Bolivia withdrew from ICSID. FDI stock in Bolivia was unharmed, increasing 14 percent from 2007 to the first BIT terminations in 2009, from which point it continued to grow. Bolivia's credit ratings improved after 2009.[15] FDI flows from six out of 11 partner countries increased after termination (Table 2). Unlike South Africa, Bolivia reports only bilateral inflows, so in most cases where FDI inflows decreased, bilateral stock (or the total accumulation of inflows) is still likely to have increased.[16] Bolivia terminated its BIT with Spain in July 2012, but Spain has remained one of the top three investors in Bolivia ever since, despite a more recent decline in inflows from 2014 to 2016 coinciding with a drop in FDI received by all Latin American countries.[17]

Figure 2: FDI Flows From Spain to Bolivia

Start of Series of Terminations: 2009

BIT Termination: 2012



Source: Central Bank of Bolivia and U.N. Economic Commission on Latin America and the Caribbean

Note: FDI inflows in $U.S. millions adjusted for inflation (in constant 2017 dollars). The decline in FDI flows from 2013 to 2016 coincided with a decline in FDI to Latin America overall.

According to the Central Bank of Bolivia, investment from Spain increased from an annual average of $163 million before termination to $457 million after termination (Figure 2).[18]

Table 2: Bolivia: Inward FDI Flows From Terminated Treaty Partners, Before and After Treaty Termination

Partner	Date of Termination (DD/MM/YYYY)	Average Annual Value in Years Prior ($US million)	Average Annual Value in Years After ($US million)	Change in Inflows	Latest Value (2016)
		Where Data Are Available			
Argentina	13/05/2014	26.3	37	⇧	6.2
Austria	01/07/2013	0.2	3	⇧	8.2
Luxembourg	10/01/2014	23.7	8	⬇	9.6
Belgium	10/01/2014	1.3	1	⬇	-
Denmark	13/05/2014	0.2	4	⇧	4.1
France	06/05/2013	61.2	204	⇧	212.0
Germany	13/05/2013	0.5	9	⇧	5.1
Netherlands	01/11/2009	26.8	12	⬇	-13.4
Spain	09/07/2012	163.2	457	⇧	164.5
Sweden	04/07/2013	221.1	28	⬇	-13 .0
United States	10/06/2012	216.5	99	⬇	103.4

Source: Central Bank of Bolivia and UNCTAD Investment Policy Hub for the list of terminated BITs

Notes: FDI inflows in $U.S. million adjusted for inflation (in constant 2017 dollars). Average values before and after termination include as many years of data as are available up to five years. Belgium and Luxembourg (as the Belgium-Luxembourg Economic Union) are party to the same BIT.

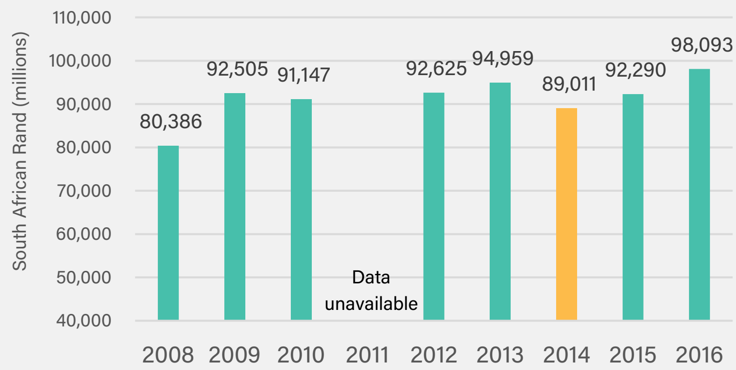
South Africa

After South Africa conducted a three-year reassessment of its ISDS-enforced investment treaties. Finding no correlation to increased FDI flows but growing liabilities from ISDS challenges, in 2010 it decided to cancel all existing BITs.19 This included BITs with 20 countries.[20] Total FDI stock remained stable from 2013 when the first terminations went into effect to 2016 at 2 trillion rand, according to the South African Reserve Bank.[21] A fall-off in FDI also did not occur between notice of intent to terminate BITs in 2010 and actual termination. Nine BITs have been terminated thus far (Table 3). FDI stock has measurably increased from five terminated treaty partners, and data are unavailable for one terminated treaty partner, Denmark. South Africa terminated its BIT with one of its biggest investment partners, Germany, in August 2014. According to data on bilateral FDI stock from the South African Reserve Bank, Germany's FDI stock in South Africa increased from an annual average of 93 billion to 95 billion rand in the years prior to termination compared to the years after termination (Figure 3).[22] There was no drop-off in investment from Germany from the time of South Africa's initial notice in 2010 until 2014 when the BIT was formally terminated; FDI stock from Germany increased from 91 billion to 94 billion rand during this period. The overall trend is even more impressive since it occurred in the context of deteriorating economic conditions, with economic growth rates in South Africa falling from 2.5 percent in 2013 to 0.3 percent in 2016.[23]

Figure 3: FDI Stock From Germany in South Africa

Notice of Intent to Terminate: 2010

BIT Termination: 2014



Source: South African Reserve Bank
Note: FDI inward stock in millions of South African rand adjusted for inflation (in constant 2017 rand). Only FDI stock (not flows) available.

Table 3: South Africa: Inward FDI Stock From Terminated Treaty Partners, Before and After Treaty Termination

Partner	Date of Termination (DD/MM/YYYY)	Average Annual Value in Years Prior (Rand in Millions)	Average Annual Value in Years After (Rand in Millions)	Change in Stock	Latest Value (2016)
		Where Data Are Available			
Austria	11/10/2014	7,242	13,261	↑	12,208
Luxembourg	13/03/2013	20,335	56,792	↑	57,432
Belgium	13/03/2013	6,198	8,770	↑	6,797
Denmark	30/08/2014	--	--	--	
France	30/08/2014	16,770	16,097	↓	13,775
Germany	30/08/2014	92,809	95,192	↑	98,093
Netherlands	30/04/2014	273,410	543,122	↑	420,581
Spain	22/12/2013	13,505	13,061	↓	12,790
Switzerland	30/08/2014	40,815	23,288	↓	22,413
United Kingdom	30/08/2014	828,798	783,940	↓	757,018

Source: South African Reserve Bank for FDI values and UNCTAD Investment Policy Hub for the list of terminated BITs
Note: FDI inward stock in millions of South African rand adjusted for inflation (constant 2017 rand). Only FDI stock (not flows) available. Average values before and after termination includes as many years of data as are available up to five years. Values for Denmark are not available. Belgium and Luxembourg (as the Belgium-Luxembourg Economic Union) are party to the same BIT.

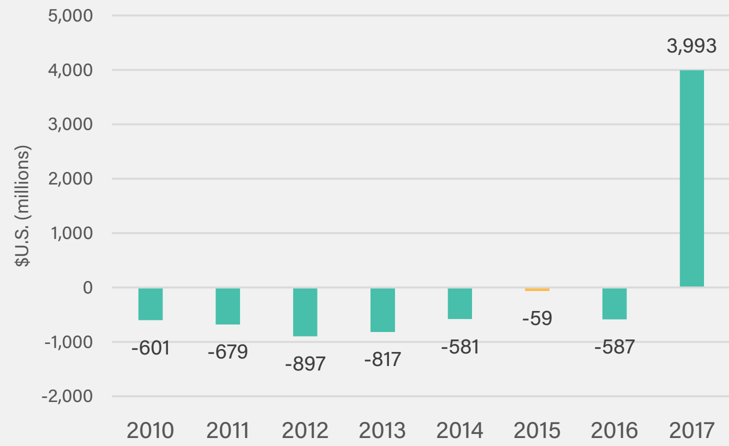
Indonesia

Termination of BITs has not had a detrimental impact on Indonesia's ability to attract foreign investment. In 2014, Indonesia announced plans to terminate all 67 of its bilateral investment treaties.[24] Overall, FDI stock in Indonesia grew from $228 billion in 2014 to $240 billion in 2016.[25] Canceling its BITs also did not negatively affect credit ratings.[26] BITs with 23 countries have been terminated thus far (Table 4). Isolating the subset of terminated BITs for which FDI data are available and investors do not have recourse to ISDS through other agreements,[27] FDI flows increased for four out of the seven partners with cancelled BITs.[28] For instance, Indonesia terminated its BIT with the Netherlands in June 2015. Data from the Central Bank of Indonesia show investment from the Netherlands increased after the BIT was terminated from an average annual $715 million net outflow to a $1.7 billion net inflow after termination (Figure 4).[29]

Figure 4: Net FDI Flows From Netherlands to Indonesia

Notice of Intent to Terminate: 2014

BIT Termination: 2015



Source: Central Bank of Indonesia

Note: FDI inflows in $U.S. millions (in constant 2017 dollars).

Table 4: Indonesia: Net FDI Flows From Terminated Treaty Partners, Before and After Treaty Termination

Partner	Date of Termination (DD/MM/YYYY)	Average Annual Value in Years Prior ($US Million)	Average Annual Value in Years After ($US Million)	Change in Inflows	Latest Value (2017)
		Where Data Are Available			
Argentina	19/10/2016	0.1	0.5	↑	0.5
Belgium	16/06/2002				
Bulgaria	25/01/2015				
Cambodia	07/01/2016				
China	31/03/2015				
Egypt	30/11/2014				
France	28/04/2015	98.4	-79.8	↓	-51.5
Germany	01/06/2017				
Hungary	12/02/2016				
India	07/04/2016	12.0	42.2	↑	42.2
Italy	23/06/2015	14.8	11.9	↓	12.9
Lao PDR	13/10/2015				
Malaysia	20/06/2015				
Netherlands	30/06/2015	-715.2	1,703.3	↑	3993.4
Norway	30/09/2004				
Pakistan	02/12/2016				
Romania	07/01/2016				
Singapore	20/06/2016				
Slovakia	28/02/2015				
Spain	18/12/2016	1.1	106.1	↑	106.1
Switzerland	08/04/2016				
Turkey	07/01/2016	15.4	0.4	↓	0.4
Vietnam	07/01/2016				

Source: Central Bank of Indonesia and UNCTAD Investment Policy Hub for the list of terminated BITs

Note: Net FDI flows in $U.S. million (in constant 2017 dollars). Average values before and after termination include as many years of data as are available up to five years.

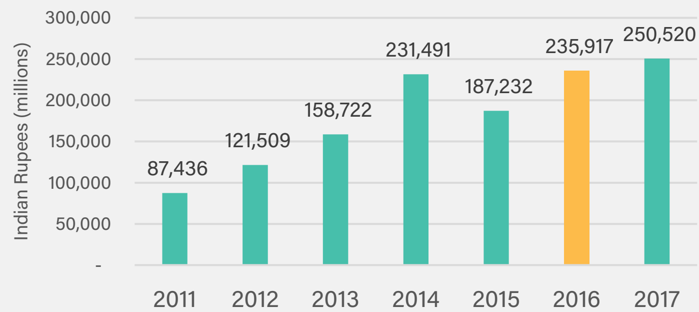
India

India gave diplomatic notice to 58 governments in early 2016 that it would terminate its BITs,[30] yet has not seen a negative impact on investment inflows. After giving notice of termination, overall investment inflows into India increased seven percent, from 304 billion rupees ($44 billion) in 2016 to an estimated 326 billion rupees ($50 billion) in 2017, according to the Indian Ministry of Commerce and Industry.[31] Over the time period from April 2015 to November 2017, Moody's raised India's credit rating.[32] The one terminated BIT for which there are detailed data was with the Netherlands, one of India's top sources of FDI (Table 5). After India terminated its BIT with the Netherlands, in December 2016, foreign investment from the Netherlands increased from roughly 157 billion rupees ($3.4 billion) in the years prior to termination to 250 billion rupees ($3.8 billion) in 2017 (Figure 5).[33]

Figure 5: FDI Flows From Netherlands to India

Notice of Intent to Terminate: 2016

BIT Termination: 2016



Source: Indian Ministry of Commerce and Industry; Note: FDI inflows in millions of Indian rupees adjusted for inflation (in constant 2017 rupees). Data measured according to the Indian fiscal year from April of listed year to March of the following year (e.g. 2015 data spans April 2015 to March 2016). The 2017 figure is an estimate created by doubling the value from the first half of FY 2017 (April 2017 to September 2017).

Table 5: India: Inward FDI Flows From Terminated Treaty Partners, Before and After Treaty Termination

Partner	Date of Termination (DD/MM/YYYY)	Average Annual Value in Years Prior (Rupees in Millions)	Average Annual Value in Years After (Rupees in Millions)	Change in Inflows	Latest Value (2017)
		Where Data Are Available			
Argentina	30/08/2013				
Australia	23/03/2017				
Austria	24/03/2017				
Bahrain	04/12/2017				
China	31/07/2017				
Croatia	25/04/2017				
Czech Republic	25/04/2017				
Denmark	13/05/2017				
Egypt	29/03/2016				
Germany	03/06/2017				
Hungary	29/03/2017				
Indonesia	07/04/2016				
Italy	23/03/2017				
Malaysia	23/03/2017				
Netherlands	01/12/2016	157,278	250,520	↑	250,520
Oman	22/03/2017				
Russian Federation	27/04/2017				
Slovakia	28/04/2017				
Spain	23/09/2016				
Switzerland	06/04/2017				
Trinidad and Tobago	06/09/2017				
Turkey	17/10/2017				

Source: India Ministry of Commerce and Industry and UNCTAD Investment Policy Hub for the list of terminated BITs.
Note: FDI inflows in millions of Indian rupees adjusted for inflation (in constant 2017 rupees). Average values before and after termination include as many years of data as are available up to five years. Data measured according to Indian fiscal year from April to March (e.g., 2015 data spans April 2015 to March 2016). The 2017 figure is estimated by doubling the value from the first half of FY2017 (April 2017 to September 2017).

Endnotes

[1] Brazil is another country that has taken action to modify its investment regime by announcing a new template for its investment agreements in 2013 (Cooperation and Investment Facilitation Agreement), but since it has not terminated agreements in the same manner as the five countries reviewed, it is not included.
[2] "Do Bilateral Investment Treaties Attract FDI Flows to Developing Economies?" in United Nations Conference on Trade and Development, "Trade and Development Report, 2014," United Nations, 2014, at 159. Available at: http://unctad.org/en/PublicationsLibrary/tdr2014_en.pdf.
[3] In this survey of general counsel in the top 200 U.S.-based corporations, the author asked: "How important is the presence or absence of a BIT to your company's typical decision to invest in a foreign country?" Of the 75 respondents, the median response was "2" (not very important) on a one to five scale. The author also asked: "To your knowledge, has your company ever declined to invest (or to consider investing) in a particular foreign project specifically because of the absence of a BIT?" Only four of 75 (5 percent) said their company had declined an investment opportunity for this reason. *See* Jason Webb Yackee, "Do Bilateral Investment Treaties Promote Foreign Direct Investment? Some Hints from Alternative Evidence," *Virginia Journal of International Law*, 51:2, 2011. Available at: http://www.vjil.org/assets/pdfs/vol51/issue2/Yackee.pdf.
[4] A 2005 study claimed to provide the "first rigorous quantitative evidence that a higher number of BITs raises the FDI that flows to a developing country," Eric Neumayer and Laura Spess, "Do Bilateral Investment Treaties Increase Foreign Direct Investment to Developing Countries?" *World Development*, 3:1, May 1, 2005. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=616242. A later study showed that the findings in that 2005 study were "almost certainly due to misspecification and insufficient attention paid to the endogeneity of BIT participation." It found that the observed correlation between BITs and FDI was largely due to reverse causality (i.e., increases in FDI leading to an increase in the number of BITs) and third factors that caused an increase in both BITs and FDI (e.g., elections), not due to BITs causing an increase in FDI. Emma Aisbett, "Bilateral Investment Treaties and Foreign Direct Investment: Correlation versus Causation," CUDARE Working Paper No. 1032, March 14, 2007, at 34. Available at: http://mpra.ub.uni-muenchen.de/2255/. Another study that found a minimal correlation between BITs and FDI was Mary Hallward-Driemeier, "Do Bilateral Investment Treaties Attract Foreign Investment? Only a Bit…and They Could Bite," World Bank Policy Research Working Paper 3121, Aug. 2003. Available at: http://documents.worldbank.org/curated/en/113541468761706209/pdf/multi0page.pdf. For additional context, *see* Public Citizen, "Myths and Omissions: Unpacking Obama Administration Defenses of Investor-State Corporate Privileges," Public Citizen report, Oct. 2014, at 3-4. Available at: https://www.citizen.org/sites/default/files/isds-and-tafta.pdf.
[5] While Brazil has signed various BITs, none have been ratified or entered into force. United Nations Conference on Trade and Development, "Full List of Bilateral Investment Agreements Concluded: Brazil," UNCTAD Factsheet, June 1, 2013. Available at: http://unctad.org/Sections/dite_pcbb/docs/bits_brazil.pdf.
[6] Brazil has ranked in the top 10 worldwide in FDI inflows between 2010 and 2016. UNCTADStat, "Foreign Direct Investment: Inward and Outward Flows, Annual, 1970-2016," United Nations Conference on Trade and Development, accessed Feb. 2, 2018. Available at: http://unctadstat.unctad.org/TableViewer/tableView.aspx.
[7] If five years have not yet transpired after termination of a specific BIT or five years of pre-termination FDI data are not made available by the relevant government, we average over as many years of annual data as are available up to five years.
[8] Collecting and analyzing bilateral FDI statistics is complicated by the lack of a common framework among countries for reporting FDI statistics. Countries report in local currency or U.S. dollars, using different time periods (fiscal or calendar year), in terms of stocks or flows, and usually with varying delays in reporting. Often only data from sizable investment partners are provided by national authorities. Data remain in the currency in which they were reported. For Indonesia, data from national authorities are reported in U.S. dollars. For Bolivia and Ecuador, raw data from national authorities are reported in U.S. dollars. For South Africa, raw data from national authorities were reported in local currency. India reports values in both local currency and U.S. dollars. All data were adjusted for inflation using GDP deflators from International Monetary Fund "Gross Domestic Product, Deflator," World Economic Outlook, Oct. 2017. Available at: https://www.imf.org/external/pubs/ft/weo/2017/02/weodata/index.aspx.
[9] Ecuador's new constitution prohibited the government from entering into treaties that would give up "sovereign jurisdiction to international arbitration entities." Republic of Ecuador, Constitution of 2008, Title VIII (International Relations), Chapter 2 (International Treaties and Instruments), Article 422. Available at: http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html.
[10] "Foreign Direct Investment: Inward and Outward Flows, Annual, 1970-2016," United Nations Conference on Trade and Development, accessed Jan. 26, 2018. Available at: http://unctadstat.unctad.org/TableViewer/tableView.aspx.
[11] Ecuador's S&P rating improved from CCC- in November 2008 to B+ in August 2014, Moody's improved from Caa1 November 2008 to B3 in December 2014, and Fitch improved from CCC in November 2008 to B in August 2016. Trading Economics, "Ecuador - Credit Rating," no publishing date, accessed Apr. 11, 2018. Available at: https://tradingeconomics.com/ecuador/rating.
[12] Banco Central del Ecuador, "Inversión Extranjera Directa por País de Origen," 2017, accessed April 11, 2018. Available at: http://www.bce.fin.ec/index.php/component/k2/item/298-inversi%C3%B3n-extranjera-directa.
[13] International Institute for Sustainable Development, "Ecuador Denounces Its Remaining 16 BITs and Publishes CAITISA Audit Report," *Investment Treaty News*, June 12, 2017. Available at: www.iisd.org/itn/2017/06/12/ecuador-denounces-its-remaining-16-bits-and-publishes-caitisa-audit-report/.
[14] UNCTADStat, "Foreign Direct Investment: Inward and Outward Flows and Stock, Annual, 1970-2016," U.N. Conference on Trade and Development. Available at: http://unctadstat.unctad.org/. The latest available data is from 2016.
[15] All three ratings agencies upgraded Bolivia after 2009. Moody's rating of Bolivia improved from B2 in September 2009 to B1 in December 2010 to Ba3 in June 2012. Fitch upgraded Bolivia from B- in July 2007 before termination to B in September 2009 to B+ in October 2010 and then to BB- in October 2012. Bolivia's S&P rating improved from B+ in May 2011 to BB- in May 2012 to BB in May 2014. Trading Economics, "Bolivia - Credit Rating," no publish date, accessed Jan. 29, 2018. Available at: https://tradingeconomics.com/bolivia/rating. *See*, for an overview of the three credit rating scales, Fidelity Investments, "Bond Ratings," accessed Jan. 29, 2018. Available at: https://www.fidelity.com/learning-center/investment-products/fixed-income-bonds/bond-ratings. *See*, on the relationship between investment flows and credit ratings, Peilin Cai, Quan Gan and Suk-Joong Kim, "Do Sovereign Credit Ratings Matter for Foreign Direct Investments?," *Social Science Research Network*, Working Paper, July 2017. Available at: https://ssrn.com/abstract=2997573.

[16] Flows, while volatile from year to year, are particularly telling because they represent the total amount of new funds that investors are deciding to bring into the country, without subtracting depreciation of existing capital investments.
[17] U.N. Economic Commission for Latin America and the Caribbean (ECLAC), "Foreign Direct Investment in Latin America and the Caribbean, Table I.4 FDI Inflows by Recipient Country and By Subregion, 2005-2016," Report, Aug. 10, 2017 at 35. Available at: https://repositorio.cepal.org/bitstream/handle/11362/42024/4/S1700815_en.pdf.
[18] Banco Central de Bolivia, "Inversión Extranjera Directa Bruta Recibida por País de Origen," published June 2017, accessed Jan. 26, 2018. Available at: https://www.bcb.gob.bo/webdocs/publicacionesbcb/2017/12/15/Boletin_sector_externo_junio_2017.pdf.
[19] Quoting Xavier Carim, Deputy Director General of the South African Department of Trade and Industry, at the WTO Public Forum in Geneva, Sept. 25, 2012, on the rationale for South Africa's decision: "The spike in international investment arbitrations that followed the financial crisis in 2001 laid bare that bilateral investment agreements can pose profound and serious risks to government policy… Our own experience demonstrated that that there was no clear relationship between signing BITs and seeing increased inflows of FDI… The review identified a range of concerns associated with expansive interpretations on the provisions usually found in BITs: definitions of investment and of investor, national treatment, fair and equitable treatment, most favoured nation clause, expropriation, compensation, transfer of funds etc. The review also identified difficulties with respect to international arbitration... This, in our view, opens the door for narrow commercial interests to subject matters of vital national interest to unpredictable international arbitration outcomes and is a direct challenge to constitutional and democratic policy-making…" Public Citizen, "Selected Statements and Actions Against Investor-State Dispute Settlement (ISDS)," Public Citizen Fact Sheet, March 9, 2018. Available at: https://www.citizen.org/sites/default/files/selected_statements_and_actions_against_isds_0.pdf. *See* also Xavier Carim, "Lessons from South Africa's BITs Review," Columbia FDI Perspectives No. 109, Nov. 25, 2013. Available at: http://ccsi.columbia.edu/files/2013/10/No_109_-_Carim_-_FINAL.pdf.
[20] Investment Policy Hub, "International Investment Agreements Navigator," U.N. Conference on Trade and Development (UNCTAD), undated, accessed Jan. 26, 2018. Available at: http://investmentpolicyhub.unctad.org/. BITs with Zimbabwe (signed in 2009) and Senegal (signed in 1998) apparently went into force at the end of 2010 alongside or shortly after the decision to cancel BITs. They had been signed prior to the decision.
[21] South African Reserve Bank, "Quarterly Bulletin," multiple publishing dates, accessed Jan. 26, 2018. Available at: https://www.resbank.co.za/Publications/QuarterlyBulletins/Pages/Quarterly-Bulletin.aspx. We use figures from the final quarter each year under the headings: "International Economic Relations" – "Foreign Liabilities of South Africa by country" in millions of Rand – "Total Direct Investment".
[22] South African Reserve Bank, "Quarterly Bulletin," multiple publishing dates, accessed Jan. 26, 2018. Available at: https://www.resbank.co.za/Publications/QuarterlyBulletins/Pages/Quarterly-Bulletin.aspx. We use figures from the final quarter each year under the headings: "International Economic Relations" – "Foreign Liabilities of South Africa by country" in millions of Rand – "Total Direct Investment".
[23] Statistics South Africa, "Gross Domestic Product: Third Quarter 2017," published Dec. 5, 2017, accessed Jan. 26, 2018. Available at: http://www.statssa.gov.za/publications/P0441/P04413rdQuarter2017.pdf.
[24] Ben Bland and Shawn Donnan, "Indonesia to Terminate More Than 60 Bilateral Investment Treaties," *Financial Times*, March 26, 2014. Available at: https://www.ft.com/content/3755c1b2-b4e2-11e3-af92-00144feabdc0.
[25] UNCTADStat, "Foreign Direct Investment: Inward and Outward Flows and Stock, Annual, 1970-2016," U.N. Conference on Trade and Development. Available at: http://unctadstat.unctad.org/. The latest available data are from 2016.
[26] Indonesia's Fitch rating improved from BBB- in December 2011 to BBB in December 2017, S&P improved from BB+ in May 2013 to BBB- in May 2017, and Moody's improved from Ba1 in January 2011 to Baa3 in February 2017. Trading Economics, "Indonesia - Credit Rating," no publishing date, accessed Jan. 29, 2018. Available at: https://tradingeconomics.com/indonesia/rating.
[27] The other pacts with ISDS enforcement include the Association of Southeast Asian Nations (ASEAN) Comprehensive Investment Agreement and the ASEAN investment agreement with China.
[28] Invest in ASEAN, "ACIA-ASEAN Comprehensive Investment Agreement," accessed April 12, 2018. Available at: http://investasean.asean.org/index.php/page/view/acia-reservation-list. UNCTAD, "ASEAN-China Investment Agreement," Investment Policy Hub, accessed April 12, 2018. Available at: http://investmentpolicyhub.unctad.org/IIA/country/97/treaty/3272. ASEAN has also signed an investment agreement with India, but it has not entered into force. UNCTAD, Investment Policy Hub, "Agreement on Investment under the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India." Available at: http://investmentpolicyhub.unctad.org/IIA/country/97/treaty/3503.
[29] Central Bank of Indonesia, "V. 33 Direct Investment Flows in Indonesia by Country of Origin," Indonesian Financial Statistics – External Sector, undated, accessed March 13, 2008. Available at: https://www.bi.go.id/en/statistik/seki/terkini/eksternal/Contents/Default.aspx.
[30] Amiti Sen, "India's Bilateral Investment Pacts Under Cloud," *The Hindu BusinessLine*, Jan. 15, 2018. Available at: http://www.thehindubusinessline.com/economy/indias-bilateral-investment-pacts-under-cloud/article9625580.ece.
[31] Department of Industrial Policy & Promotion, "FDI Statistics," India Ministry of Commerce and Industry website, multiple publishing dates, accessed Jan. 26, 2018. Available at: http://dipp.nic.in/publications/fdi-statistics. Only top-10 investors are provided on these FDI fact sheets, and Netherlands is the only country whose BIT has been terminated who is also a top-10 investor. Data from April 2015 to March 2016: http://dipp.nic.in/sites/default/files/FDI_FactSheet_JanuaryFebruaryMarch2016.pdf. Data from April 2016 to March 2017: http://dipp.nic.in/sites/default/files/FDI_FactSheet_January_March2017.pdf. Data from April to September 2017 (latest available): http://dipp.nic.in/sites/default/files/FDI_FactSheet_Updated_September2017.pdf. Data from April to September 2017 were doubled to calculate an estimated projection for 2017.
[32] Moody's rating of India improved over this time span, from Baa3 in April 2015 to Baa2 in November 2017. Other rating agency reports were not accessible. Trading Economics, "India - Credit Rating," no publish date, accessed Jan. 29, 2018. Available at: https://tradingeconomics.com/india/rating.
[33] Data on FDI are reported by India in both U.S. dollars and Indian rupees. These were separately adjusted for inflation using GDP deflators for the United States and India, respectively. This accounts for the discrepancy between the dollar value of rupee-denominated FDI using today's exchange rates versus the values provided here.