

CHAPTER 8: “ONE BELT, ONE ROAD” AND CHINESE INVESTMENT

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¶8-010 Introduction

Since the inception of the Open Door policy in 1978, foreign investment has been an integral part of China’s economic and development policy, initially to attract foreign capital and technology and subsequently to utilise China’s own capital and skills by making investments overseas. The implementation of China’s policy objectives has been supported domestically by a comprehensive system of regulation inside China covering both inbound and outbound investment and internationally by both multilateral and bilateral agreements for the facilitation and promotion of investment.

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The 2015 “Vision and Actions on Jointly Building Silk Road Belt and 21st Century Maritime Silk Road”¹ (Vision Document) does not focus on investment, but refers to it in the context of “unimpeded trade”, with mentions of investment and trade cooperation and facilitation and the removal of trade barriers. It is clear, however, that the development of trade, construction of shared infrastructure and engagement in “energy cooperation” and other forms of economic cooperation that will be required to effect and develop the “One Belt, One Road” (OBOR) initiative must necessarily involve the investment of very substantial amounts of capital and will offer significant investment opportunities to China’s multinational enterprises and projects for China’s extensive off-shore labour-contracting operations. This will call for significant amounts of finance, and the Vision Document accordingly refers to the establishment of the Asian Infrastructure Investment Bank and a Silk Road Fund and to the expansion of the investment function of the China–Eurasia Economic Cooperation Fund. In 2015, the State Council also established the Insurance Investment Fund of China, with a mandate to invest mainly in the OBOR strategy and other coordinated development and infrastructure projects.²

China’s autonomous cities and provinces have also shown enthusiasm for the encouragement and promotion of outbound investment along the OBOR. Beijing, Wuxi, Shandong, Henan, Anhui, Xiamen, Tianjin, Guangdong, Shanxi, Qinghai, Zhejiang and other cities and provinces have issued implementation plans to encourage outbound investment with specific reference to engagement in the OBOR initiative.³ For example, although in very general terms, Beijing’s Implementing Plan is directed at encouraging and facilitating the growth of Chinese outbound investment and labour contracting in the countries along the

1 Issued by the NDRC/MoFA/MOFCOM in March 2015.

2 *Reply to Proposals for the Establishment of the Insurance Investment Fund of China* (国务院关于中国保险投资基金设立方案的批复), promulgated on and effective since 29 June 2015.

3 See, for example, *Implementing Plan of Beijing Municipality for Further Promoting the Development of Outbound Investment Cooperation by Enterprises* (北京市关于进一步促进企业境外投资合作发展的实施方案), promulgated on and effective since 29 October 2015.

OBOR for the purpose of expanding Chinese international market share, obtaining access to advanced economies, developing emerging markets and so on.

The states along the OBOR are linked mainly by location. Although there are some historical and cultural synergies, they are on the whole a disparate group in terms of size, development, economic structure and government.⁴ China’s current investment relationships with these states are highly variable. A small number of countries are themselves investors in China, particularly Singapore, which was the second largest source of foreign direct investment (FDI) into China in 2015.⁵

China is a significant investor in the Asian countries of Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, India and Pakistan. It is also an increasingly large investor in Iran, Kazakhstan, Mongolia, Tajikistan, Egypt, Russia, Syria, Turkey and the United Arab Emirates.⁶ For example, total Chinese FDI stock in Russia at the end of 2014 was USD8.7 billion and in Kazakhstan was USD7.5 billion (the vast majority of it in energy), with new investment and cooperation transactions announced at the beginning of 2015.⁷ According to BBVA Research, in 2014, the main recipient states of Chinese outbound FDI along the OBOR (in descending order of investment amount) were Russia, Kazakhstan and Indonesia, followed by Myanmar, Pakistan, Iran, India, Thailand, Vietnam, the UAE, Saudi Arabia, Malaysia, Turkey, Uzbekistan, Iraq and Sri Lanka.⁸ The implementation of the Vision Document will

4 See HKTDC Research, Country Profiles.

5 Invest in China.

6 Statistics drawn from HKTDC Research, Country Profiles.

7 Ibid, Kazakhstan: Market Profile. According to the American Enterprise Institute, which bases its statistics on its compilation of information about all large Chinese transactions since 2005 and is thus not limited to FDI, total Chinese FDI at the end of 2015 in Russia was USD35.18 billion and in Kazakhstan was USD27.55 billion. This should be contrasted with the portfolio and FDI stocks held in a number of the major developed economies, including the United States (USD103.35 billion), Australia (USD83.89 billion) and Europe (USD163.84 billion), and in the primarily developing states in Sub-Saharan Africa (USD220 billion) and the Middle East and North Africa (USD115.49 billion).

8 BBVA Research.

require substantial outbound construction and development, and the immediate effect of the OBOR will be more Chinese investment in infrastructure and other projects in the states along the OBOR.⁹

The economies, history, governmental structures and judicial and legal infrastructure of the 64 states and territories along the OBOR (other than China) vary widely, as do the commensurate levels of financial, operational and political risk potentially involved in investment. As much of China's outbound investment is already made into developing and emerging economies,¹⁰ particularly in Africa, dealing with a high degree of risk is not a new phenomenon. This chapter focuses on how Chinese investment policy and strategies currently accommodate and protect investment relationships with the states along the OBOR and what changes are probable as investment increases.

¶8-020 Chinese Regulation of Investment and Investment Policy

At the domestic level in China, the initiation of the OBOR strategy coincides with a period of change in investment policies for both inbound and outbound investment. Since 1979, when the *PRC Sino-foreign Equity Joint Venture Law* was first promulgated,¹¹ making foreign investment possible for the first time, new inbound investors have been required to obtain government approval before establishment, a process regulated based on the size of the investment, industry sector, type of investment and the nature of the investment entity. Over the years, modification and relaxation of this basic framework has been effected by the introduction of new investment entities (primarily the cooperative

9 For example, see Zhang/Miller.

10 Due to the amount of capital that flows through Hong Kong and various Caribbean tax havens, the actual recipients of Chinese FDI can be difficult to determine. However, even after allowance is made for round-tripping, a substantial amount of Chinese investment is made into developing countries; see Garcia-Herrero/Xia/Casanova.

11 *PRC Sino-foreign Equity Joint Venture Enterprise Law* (中华人民共和国中外合资经营企业法), promulgated on and effective since 8 July 1979.

joint venture,¹² the wholly foreign-owned enterprise¹³ and the foreign-invested partnership),¹⁴ the widening of industries in which investments could be made through the *Foreign Investment Industry Catalogue*¹⁵ and changes to the level of government approval required for investments.¹⁶

In 2013, the government began the move to a “negative list” approach to both inbound and outbound investment (initially in the Shanghai Free Trade Zone),¹⁷ through the institution of a policy under which new investments are registered rather than approved unless they are of a type or made in an industry sector set out on the negative list. In 2015, a draft *Foreign Investment Law* was circulated.¹⁸ In late 2015, the State Council issued its *Opinion (Negative List Opinion) on Implementing the Market Access Negative List System*¹⁹ relating to foreign investment and to the operation of the Chinese market generally, which was followed by the *Decision on Revising the Law on Foreign-Invested Enterprises* and three other laws, to take effect on 1 October 2016.²⁰ This requires the introduction of a pre-entry negative system of market access across the entire economy (that is, a system where entry into the market is

12 *PRC Chinese-foreign Contractual Joint Ventures Law* (中华人民共和国中外合作经营企业法), promulgated on and effective since 13 April 1988.

13 *PRC Wholly Foreign-owned Enterprise Law* (中华人民共和国外资企业法), promulgated on and effective since 12 April 1986.

14 *Measures for the Administration of the Establishment of Partnership Enterprises in China by Foreign Enterprises or Individuals* (外国企业或者个人在中国境内设立合伙企业管理办法), promulgated on 25 November 2009 and effective since 1 March 2010.

15 The most recent edition of the Catalogue was issued on 10 March 2015 外商投资产业指导目录 (2015年修订).

16 Bath 2011.

17 *Overall Plan for the China (Shanghai) Pilot Free Trade Zone* (中国(上海)自由贸易试验区总体方案), promulgated on and effective since 18 September 2013.

18 *Notice on Soliciting Public Opinions on the Foreign Investment Law of the People's Republic of China (Draft for Comments)*, (商务部就《中华人民共和国外国投资法(草案征求意见稿)》公开征求意见), issued on 19 January 2015.

19 *Negative List Opinion* (国务院关于实行市场准入负面清单制度的意见), promulgated in October 2015 and effective since December 2015.

20 *Decision on Revising the Law of the People's Republic of China on Foreign-Invested Enterprises and Other Three Laws* (关于修改《中华人民共和国外国企业法》等四部法律的决定), issued on 3 September 2016.

permitted unless, pursuant to the relevant negative list, it is prohibited or a licensing or review process is required).

Reforms related to the regulation of outbound investment by Chinese companies to advance the "Go Global" policy are even more advanced. The framework for government regulation of outbound investment was fully institutionalised in 2004,²¹ when the Ministry of Commerce (MOFCOM) and the National Development and Reform Commission (NDRC) put in place revised regulations for the system of approving and registering overseas investment. Since that time, Chinese policy and regulation of outbound investment have become increasingly liberal, resulting in a significant modification and reduction of required approvals in 2013, with a further liberalisation of approval levels for major projects and simplification of the registration system in subsequent years.²² The government's commitment to liberalisation of the investment regime for both inbound and outbound investment, mainly for the purpose of supporting China's "Go Global" campaign (which supports and encourages Chinese outbound investment), is set out in the *Several Opinions on the Establishment of a New Economic System*.²³

21 *Decision of the State Council on Investment System Reform* (国务院关于投资体制改革的决定), promulgated on 16 July 2004 (repealed); *Provisions on Matters to be Verified and Approved concerning Outbound Investment and Establishment of Enterprises Outside China* (商务部关于境外投资开办企业核准事项的规定), promulgated on 1 October 2004 (repealed); *Interim Measures for the Administration of Verification and Approval of Overseas Investment Projects* (境外投资项目核准暂行管理办法), promulgated on 9 October 2004 (repealed).

22 For example, see *Notice on Implementing Paperless Management of the Record-filing of Outbound Investment and Simplifying the Procedures for Deregistering Outbound Investment* (商务部办公厅关于境外投资备案实行无纸化管理和简化境外投资注销手续的通知), promulgated on 18 May 2015; *Announcement on Soliciting Public Opinions on the Revisions to the Administrative Measures for the Verification, Approval and Record-filing of Outbound Investment Projects* (国家发展改革委外资司关于就修订《境外投资项目核准和备案管理办法》向社会公开征求意见的公告), issued by NDRC, Department of Foreign Capital and Overseas Investment on 13 April 2016.

23 *Several Opinions on the Establishment of an Open Economic System* (中共中央、国务院关于构建开放型经济新体制的若干意见) issued by Chinese Communist Party Central Committee and State Council on 5 May 2015. See also *Notice on Approving and Forwarding the Opinions on the Priority Tasks for Deepening the Reform of the Economic System in 2015* (国务院批转发展改革委关于2015年深化经济体制改革重点工作意见的通知), promulgated on and effective since 8 May 2015.

Despite the liberalisation of the outbound investment rules, approval requirements will still apply to major infrastructure projects undertaken in the states along the OBOR. Under the rules currently in force, verification and approval are required from the NDRC for all investments over USD1 billion and all outbound investments in sensitive countries or regions (essentially countries with which China does not have diplomatic relations or which are subject to sanctions or at war or subject to civil strife) and in sensitive industries. These include telecommunications operations, cross-border development, utilisation of water resources, large-scale land development, power transmission lines and grids and news media. Investments over USD2 billion must be submitted to the State Council.²⁴ In addition, in the case of an acquisition, a confirmation letter must be obtained from the NDRC before substantial work can be done. For state-owned enterprises, there is a plethora of regulations designed to decrease risk and to control and regulate the management and operation of overseas assets.²⁵

¶8-030 OBOR and Investment

Although many recent government documents dealing with investment do refer to OBOR, China's grand reforms in relation to the establishment of an open economy and the liberalisation of the investment regime are parts of an overall strategy to increase investment overall, including in developed countries (to which a substantial amount of Chinese investment has already been directed)²⁶ and is not dependent on the realisation of the OBOR vision. The *Negative List Opinion*, for example, does not refer to OBOR at all. Indeed, the move towards a negative-list market access approach to investment is clearly related to China's investment

24 *Administrative Measures for the Verification, Approval and Record-filing of Outbound Investment Project* (境外投资项目核准和备案管理办法), promulgated on 8 April 2014, effective since 8 May 2014, and amended on 27 December 2014.

25 See discussion in Bath 2015; see also *Notice on Regulating the Management of Expatriates in Overseas Contracted Projects* (商务部、外交部、国务院国有资产监督管理委员会关于规范对外承包工程外派人员管理的通知), promulgated on and effective since 21 October 2015.

26 Garcia-Herrero.

interactions with developed countries, particularly the United States, which is very insistent on market access in its BIT negotiations.²⁷

The government organisation, legal regimes and economies of the countries along the OBOR differ considerably in size and strength and present highly variable levels of political, economic, financial and operational risk for investors.²⁸ The question of adequate protection for Chinese investors – both legal and practical – is therefore highly relevant as China's investments under the OBOR vision increase.

The question of a legal response to OBOR was addressed (to some extent) by the Supreme People's Court (SPC) in the 2015 *Several Opinions on the Provision by the People's Courts of Judicial Services and Safeguards for the Construction of the "One Belt One Road" (SPC Opinions)*.²⁹ There is also substantial Chinese commentary on legal issues and the OBOR initiative focusing on the role of international law in the initiative, including treaty relationships and the promotion of a Chinese view of international law,³⁰ and the role of private international law in facilitating harmonisation and cooperation.³¹ In the *SPC Opinions*, the SPC sets out the need for increased capability in the courts in relation to the creation of a fair and impartial judicial environment for business investment (Article 4) and an increase in judicial assistance and cooperation (Articles 5 and 6). The *SPC Opinions* also look at the question of international law and legal protection and China's international treaty network. In Article 7, for example, the SPC urges the correct application of international treaties and customs by Chinese courts, the intensive study of bilateral and multilateral treaties to which China and the states along the OBOR are parties (including both investment treaties and free trade agreements (FTAs) encompassing investment), and interpretation pursuant to the principles of international law (Article 7). Judicial support should

27 See Gao.

28 See analysis of various states in the Economic Intelligence Unit.

29 最高人民法院 关于人民法院为“一带一路”建设提供 司法服务和保障的若干意见, promulgated on and effective since 16 June 2015.

30 李鸣.

31 杨冉.

be provided for, among other things, performance of obligations under investment treaties and FTAs (Article 8).

The *SPC Opinions* also include a strong focus on unilateral steps taken by the Chinese courts and judicial system to improve the efficiency and attractiveness of the Chinese judicial system in its treatment of foreign cases and litigants. Examples include exhortations for the courts to emphasise equality before the law and equal treatment of Chinese and foreign parties (Article 2), to strengthen criminal trials with an international element (Article 3), and to adjust and revise judicial policies, strictly limit the scope for finding contracts invalid and promote openness to foreign matters (Article 4). This suggests that one option for Chinese investors is to negotiate the choice of Chinese dispute resolution centres – both courts and arbitration centres – in addition to the use of Chinese law, particularly in countries with relatively weak legal systems.

¶8-040 China and International Investment Agreements

Since 1982, when it signed its first investment agreement with Sweden,³² China has committed itself to the negotiation and execution of bilateral investment treaties (BITs). It is now a party to 129 ratified BITs.³³ However, China’s approach to the content of these treaties has changed over time to reflect the opening up of the Chinese economy to foreign investment and, more recently, China’s own status as a source of significant outbound investment pursuant to the “Go Global” policy. China signed 97 BITs before 2001 and 49 BITs (a number of which replaced earlier agreements) in the period from 2001 to the present.³⁴ Of these, a significant number have never been ratified.

Over the last 15 years, China has also begun to engage in the negotiation of bilateral and regional FTAs.³⁵ These agreements often include chapters on

32 Signed and effective 29 March 1982; terminated and replaced since 27 August 2004.

33 UNCTAD, Investment Policy Hub. Note that this does not include separate agreements entered into by the Hong Kong or Macau Special Administrative Regions or Taiwan.

34 Ibid.

35 See China FTA Network for a list of agreements and information on the status of negotiations.

investment, which generally coexist with the existing BIT, if there is one.³⁶ The content and specificity of the investment chapters in China's FTAs are highly variable and reflect the emphasis of FTA negotiations, which are often focused on trade in goods and services.³⁷ In particular, the investment chapters may not be as comprehensive as the terms in BITs.³⁸

In addition to bilateral agreements, China is playing a leading role in the negotiation of the *Regional Comprehensive Economic Partnership* (RCEP), which will include all ten of the countries in the *Association of Southeast Asian Nations* (ASEAN) together with Japan, Korea, India, Australia and New Zealand and will also incorporate a chapter on investment.³⁹ The Chinese government sees this as a precursor to the introduction of the Free Trade Area of the Asia-Pacific, under the auspices of APEC.⁴⁰ More recently, in relation to countries located along the OBOR, an additional layer of commitments, binding and non-binding, that may affect investment is being created by loose and potentially non-binding agreements on cooperation between China and countries along the way.⁴¹ In addition, the OBOR vision and negotiation (led by the United States) of the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership are creating incentives for regional groupings of some sort across the states of Eurasia and central Europe.⁴² Thus, China has committed to a free trade area encompassing the countries of the Shanghai Cooperation Organization,⁴³ and Russia has proposed

36 See survey in Vaccaro-Incisa, p 109ff.

37 Ibid.

38 For example, see the Investment Chapter (Chapter 9) in the *Australia–China Free Trade Agreement*, the substantive terms of which supplement but are less comprehensive than the 1988 BIT.

39 See PRC Ministry of Foreign Affairs, *Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership*.

40 Chinese Communist Party Central Committee and State Council, *Several Opinions on the Establishment of an Open Economic System*, 中共中央、国务院关于构建开放型经济新体制的若干意见, issued on 5 May 2015.

41 See Annex.

42 Koenig.

43 Alexandrova. The members of the Shanghai Cooperation Organisation are Kazakhstan, Kyrgyzstan, China, Russia, Tajikistan and Uzbekistan, with new members India and Pakistan (INFO SCO).

a continental economic partnership between the members of the Eurasian Economic Union (Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia and Tajikistan) and the Shanghai Cooperation Organization.⁴⁴

The *Certain Opinions on Accelerating the Implementation of the Free Trade Area Strategy*⁴⁵ (Free Trade Area Strategy) issued by the State Council in late 2015 provide some clarification of China's overall strategy in relation to free trade areas and FTAs. The Free Trade Area Strategy contemplates the expansion of free trade areas worldwide, including along the OBOR, as a means of furthering China's trade and development goals, which are linked to the need for China to adapt to economic globalisation and to deepen domestic reform. The liberalisation of investment access (both inbound and outbound) is a significant part of this project. The Free Trade Area Strategy specifically refers to the negotiation of free trade areas "in the mode of pre-entry national treatment plus negative list." In addition, subject to safeguarding China's regulatory power as host country, the Free Trade Area Strategy calls for provisions creating better market access and protection for the "Go Global" operations of Chinese investors and improving bi-directional investment access for Chinese and free trade zone partners (Article 3 (9)). The Free Trade Area Strategy also emphasises the importance of improving the utilisation of the relevant FTAs (Articles 5 (21) and 6).

The *13th Five-year Plan*, which was approved on 16 March 2016, refers to both of these types of agreements.⁴⁶ Article 50 (4) calls for the signature of high-quality bilateral investment treaties with still more countries (as well as judicial assistance and tax treaties). Article 52 expresses China's support for autonomy and facilitation of international trade and investment and the international multilateral trading system (Article 52 (1)) in addition to the establishment of regional and bilateral free trade area networks, a concept that incorporates agreements with states along the OBOR, work on FTAs with Japan and Korea, Israel, Canada and other

44 Rambler News Service: Koenig.

45 *Several Opinions on Quickly Implementing the Free Trade Area Strategy*, 国务院关于加快实施自由贸易区战略的若干意见, promulgated on and effective since 6 December 2015 (Free Trade Area Strategy).

46 National People's Congress, adopted on 16 March 2016.

states, the FTAs with Australia and China and the negotiations for a BIT with the United States and European Union (Article 52 (2)).

¶8-050 OBOR and China's Investment Treaty Relationships

The Annex lists China's BITs with the 64 countries along the OBOR in addition to the number of BITs these countries have entered into. As noted previously, China has a large network of BITs and, therefore, currently has BITs with the majority of these states. China has not signed BITs with Timor-Leste, Bhutan, the Maldives, Nepal, Afghanistan, Iraq, Palestine, Croatia or Montenegro. The treaties with Brunei (2000) and Jordan (2001) are not in force, and the treaty with Indonesia has been terminated.⁴⁷

Gallagher and Chan, in their comprehensive study of China's BITs up to 2008,⁴⁸ divide China's BITs into three stages based on its three model BITs.⁴⁹ The first-stage treaties (generally entered into in the 1980s and early 1990s, before China's accession to the ICSID Convention)⁵⁰ were relatively limited in scope, reflecting China's status as a host country seeking to attract investment and its primarily state-owned economy. In particular, investor-state dispute resolution (through an ad hoc arbitration tribunal) was limited to the quantum of compensation to be paid on expropriation, and there was no provision for national treatment of investments. The second-stage treaties included a limited national treatment clause, an umbrella clause and a more comprehensive provision on expropriation.⁵¹ After ratifying the ICSID Convention in 1993,⁵² China gradually began to agree to limited ICSID arbitration.

47 All information drawn from UNCTAD, Investment Policy Hub, International Investment Agreements Navigator and China FTA Network.

48 Gallagher/Shan, pp 35–43.

49 彭何利/毛勇 divide the treaties into three stages: conservative (1970–1990), liberal (1990–2003) and balanced (2003–present).

50 *Convention on the Settlement of Investment Disputes between States and Nationals of Another State*.

51 Gallagher/Shan, p 37.

52 China's accession was subject to a reservation submitting only disputes relating to the quantum of expropriation to arbitration.

The majority of China’s OBOR treaties were entered into during the 1980s or 1990s, a period in which China actively pursued investment treaties with developing states. The first of these was a treaty with Thailand signed in 1985 (which is still in force).⁵³ In addition, a number of treaties signed in the 1990s were not ratified and did not come into effect until the 2000s, such as treaties with Yemen (signed in 1998 and effective from 2002) and the Congo (signed in 2000 and effective from 2015).

In the late 1990s, a period that corresponded with China’s negotiations to enter the World Trade Organization and the commencement of the “Go Global” outbound investment programme, China’s BITs (the third-stage treaties) began to include more comprehensive provisions on arbitration for investor–state investment disputes and wider (although still highly qualified) provisions on post-establishment national treatment, expropriation and transfers. OBOR treaties from this period include treaties with Bahrain, Iran, Jordan (not in force), Myanmar, Bosnia Herzegovina, India, Latvia, Tunisia, Russia and India.⁵⁴ This significant change in China’s approach in the early 21st century, particularly in relation to investor–state dispute settlement (ISDS), has been described as a deliberate move by China towards legalising investment treaties, thus offering a higher degree of enforcement protection to investors and particularly to Chinese investors.⁵⁵ This generation of BITs thus not only gives investors more rights in terms of national and most-favoured-nation treatment but also can potentially expand options for enforcement through ISDS.

China’s more recent agreements (described by Berger as the fourth stage of treaty making),⁵⁶ which include the FTAs containing investment chapters, are more difficult to categorise. Signed FTAs include agreements with Australia and Korea in 2015, Switzerland and Iceland in 2014 and Taiwan and Costa Rica in 2010. The content of these treaties reflects a more ad hoc approach taken by Chinese negotiators. Chinese treaties since 2008 have not shown the same degree of internal consistency

53 See Vaccaro-Incisa, p 104, on developing country treaties.

54 Gallagher/Chan, p 44.

55 See Tao.

56 Berger, p 845.

as earlier agreements – perhaps, to some extent, due to the need to engage in lengthy and complex negotiations in the case of agreements with developed countries. They also reflect changes in China's own approach to inbound investment, which, due to the reciprocal nature of the commitments in China's treaties, now potentially allow negotiators policy space to negotiate for more comprehensive reciprocal provisions in relation to market access and investment protection. China continues to negotiate BITs and has signed BITs with a range of developing countries since 2008, including with Mali, Malta, the Bahamas, Chad, Libya, Uzbekistan, Congo, Tanzania and Turkey (although only the BITs with Tanzania, Uzbekistan, Malta and Mali are in force). It has also negotiated a new treaty with Switzerland and a detailed BIT with Canada. It commenced negotiations with the United States in 2013⁵⁷ and with the European Union in 2014.⁵⁸

The recent BIT with Uzbekistan,⁵⁹ which replaced the 1992 BIT, includes provisions for post-establishment national treatment, pre-establishment most-favoured-nation treatment and ISDS before a range of arbitral tribunals, including the *International Centre for Settlement of Investment Disputes* (ICSID) in relation to investment disputes between an investor and the host state, and thus reflects the liberalising trend in Chinese BIT negotiations.

China's rapidly expanding network of FTAs increasingly includes provisions on investment. The ASEAN–China Investment Agreement (signed in 2009 and effective from 2010), which was drafted pursuant to the *Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between China and ASEAN*,⁶⁰ is a carefully crafted and balanced investment agreement. Other FTAs with OBOR countries that feature commitments related to investment include the China–Pakistan FTA, which was signed in 2006 and came into effect

57 See UNCTAD; Tiezzi.

58 European Union.

59 *Agreement between the Government of the People's Republic of China and the Government of the Republic of Uzbekistan on the Promotion and Protection of Investments* (2011, replacing treaty signed 1992).

60 China FTA Network.

in 2007;⁶¹ an FTA with Singapore (signed in 2008, entered into force in 2009), the investment chapter of which incorporates the *China–ASEAN Investment Agreement*;⁶² and a comprehensive strategic partnership with Saudi Arabia (signed in 2016 but not yet in force).

There are a number of new FTAs under consideration or negotiation, encompassing a number of the OBOR states. These include active negotiations on the RCEP and on-going negotiations for FTAs with the Maldives, Nepal (joint feasibility study only), Sri Lanka, Georgia and the Gulf Cooperation Council (including Kuwait and the United Arab Emirates, Oman, Qatar and Saudi Arabia). China is also considering FTAs with India, Moldova and Nepal.⁶³

China has recently been engaging in a number of less formal negotiations with states along the OBOR, including summits between heads of state to develop strategic partnerships, signing currency swap agreements and private financing agreements and signing and announcing various joint declarations on matters such as establishing strategic and cooperative partnerships that have some relationship with investment (Afghanistan, Armenia, Turkmenistan, Africa, Kazakhstan, Kyrgyzstan and so on). In particular, China recently signed 32 agreements with Russia, the most significant of which is a declaration related to the unification of the European Economic Union and Silk Road Economic Belt, thus unifying the two major initiatives in Central Europe of these two major powers.⁶⁴ It is not clear whether these are designed to supplement the current treaties or whether it is envisaged that more formal and legally binding agreements will subsequently be entered into.

¶8-060 Discussion

This range of different initiatives on China’s international policy front raises a number of questions in terms of China’s investment relations

61 *Free Trade Agreement between the Government of the Islamic Republic of Pakistan and the Government of the People’s Republic of China.*

62 *Free Trade Agreement between the Government of the People’s Republic of China and the Government of the Republic of Singapore.*

63 China FTA Network.

64 Gabúev.

with countries along the OBOR, particularly since the OBOR is described as a “vision” rather than a fully developed trade and investment strategy. There are several options open to China in terms of arrangements with the countries along the OBOR. First, current agreements could continue to exist side by side with new, less formal, commitments. Second, China might undertake a systematic process of renegotiating old BITs (either when they expire or as the opportunity arises) and replacing them with new BITs in an updated and more harmonised form,⁶⁵ presumably prioritising states with which it has a substantial investment relationship. Third, China may try to find alternative and/or additional ways of providing a degree of investment protection and certainty. An article in the *Financial Times*, for example, states that China is already, in several cases, engaged in the development of investment protocols for investment to deal with issues with the host country's legal and corporate structures in Central Asia.⁶⁶

This raises a number of other questions: the general question of China's approach to investment negotiations with developing countries, which includes most of the OBOR countries, given China's emphasis on “win-win cooperation” and the stress placed in the Free Trade Area Strategy on emerging economies; the willingness of countries along the OBOR to renegotiate or enter into agreements in view of the difficulties which a number of them are experiencing in relation to investor–state arbitrations; and the degree of investment protection Chinese investors can reasonably expect to obtain from BITs and other investment agreements.

¶8-061 Developing-country Interests and the States along the OBOR

The argument has been advanced, particularly in relation to China's agreements in the 1980s and 1990s, that China takes (or did take) a more liberal approach towards agreements in developing countries than in the agreements it was itself prepared to sign with developed countries. This was, it is argued, exemplified by the emphasis in the agreements on investment protection and promotion, China's acceptance of

⁶⁵ See 彭何利/毛勇, p 60.

⁶⁶ Hornby.