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SOUTH-SOUTH INVESTMENT AGREEMENTS PROLIFERATING

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SOUTH-SOUTH INVESTMENT AGREEMENTS PROLIFERATING

Agreements on investments between developing countries have increased substantially both in number and geographical coverage over the past decade, according to UNCTAD data released today. This wave of South-South international investment agreements (IIAs) includes 653 bilateral investment agreements (BITs), 312 double taxation treaties (DTTs) and 49 preferential trade and investment agreements (PTIAs) between developing countries.

The developing countries involved in this flurry of activity appear to be using the agreements as tools for attracting investment flows with one another. The extent to which South-South investment agreements address specific development issues varies. Nonetheless, they all represent one aspect of cooperation within the developing world aimed at achieving development goals and covering a wide range of activities and areas, such as trade and labour.

Plethora of new agreements includes BITs between developing countries with strong FDI outflows…

The first BIT between two developing countries was signed in 1964. By 1990, their number had reached 44, and it has more than quadrupled since then, rising to 653 by July 2004, or 28% of the 2,300 BITs worldwide *(figure 1).* Of these, half have been ratified and thus entered into force.

In total, 113 developing countries have entered into BITs with another developing country. China, Egypt and Malaysia have each signed more than 40 such agreements, and have also signed more agreements with other developing countries than with developed countries. Asia – followed by Latin America – account for 68% of South-South BITs, constituting the largest part of the South-South BITs network.

This phenomenon is occurring as developing countries are increasingly becoming home countries of FDI flows and as their companies start to figure more prominently amongst the world's major transnational corporations. In fact, the outward FDI stock of developing countries has grown considerably since 1990, with a particular leap since 1995 *(figure 2).* In addition, since the late 1990s FDI flows from and into developing countries appear to be growing faster than those from developed to developing countries *(see UNCTAD/PRESS/PR/2004/017/Corr.1 of 20 October 2004).* Countries with the largest and fastest-growing FDI outflows are those with the highest number of BITs (e.g. China, Malaysia and the Republic of Korea).

The share of total outward FDI stock in developing economies that is protected by a BIT was an estimated 27% in 2000, according to UNCTAD data. Looking specifically at South-South FDI stock, roughly 20% was covered by South-South BITs in force as of 2003, based on data for nine developing economies that report outward FDI stock by destination (Hong Kong, China; India; Kazakhstan; Malaysia; Pakistan; Singapore; South Africa; Thailand; and Tunisia). These nine economies represent about 58% of the total $858 million in 2003 outward FDI stock from developing countries.

The 20% figure increases to 40% if one counts all BITs, including signed BITs that are not yet in force.

… accompanied by an increasing number of South-South DTTs

A similar, though less pronounced, trend emerges for South-South DTTs. Since the first-ever such South-South treaty was signed in 1956 between India and Sierra Leone, the number has grown slowly, reaching 96 by 1990. During the 1990s, 172 new DTTs were signed between 73 developing countries. The growth rate continued until this year, by which time 312 DTTs had been undertaken between 94 developing countries. Today, 14% of all double taxation treaties are between developing countries.

South-South DTTs are concluded by countries in all geographical regions, but mainly in South-East Asia and to a lesser extent in Latin America and Africa. India, China and Malaysia accounted for the largest number of such treaties, followed closely by other Asian countries, while Tunisia stands out among the African and Arab countries.

… and by South-South preferential trade and investment agreements, especially in Latin America and Asia

Another important indicator for the rise in South-South cooperation on investment is the increase in PTIAs. (Preferential trade and investment agreements – other than BITs and DTTs – refer to bilateral or regional agreements encompassing at least three provisions with a direct bearing on investment, e.g. definition, establishment, treatment, transfer of funds, or expropriation.) Since the first South-South PTIA was signed in 1970 (by seven Arab countries), the number grew rather slowly in the decade that followed. By 2004, however, the total number of PTIAs among developing countries had risen to 49, and 31% of all current PTIAs have been concluded between or among developing countries *(figure 3).*

There are marked regional variations within the group of PTIAs. Latin America and Asia are the most active regions, with 25 and 14 PTIAs, respectively. African PTIAs are modest compared to the initiatives in Latin America and Asia. This regional distribution corresponds largely to the pattern of South-South outward FDI flows.

South-South IIAs: different natures

While few specifically South-South features are discernible within the universe of South-South IIAs, they nonetheless tend to address more prominently the development concerns of the parties involved than IIAs in general:

- As a rule, South–South BITs deal mainly, and exclusively, with investment protection and promotion (i.e. they do not grant free access and establishment, unlike the western hemisphere BITs); they refrain from explicitly prohibiting performance requirements; and they limit transparency requirements to the stage after the adoption of laws and regulations.

- South-South PTIAs differ from BITs in terms of the depth and breadth of the investment issues covered. Some such South-South treaties are rather modest in content because they establish frameworks for promoting FDI and mandates for future cooperation, rather than focusing on far-reaching liberalization and

> protection. Other agreements are substantive in nature, and this includes development-related provisions on the establishment of an institutional framework, the granting of flexibility through provisions for special and differential treatment, the provision of technical assistance and capacity-building and the promotion of home country measures.

While South-South BITs do not explicitly mention development aspects in their preambles, some 81% of the PTIAs reviewed by UNCTAD refer in one way or another to the development objective set forth in the preamble. Institutional set-ups that can allow for agreements to evolve in light of the (developmental and other) experiences that arose out of their application can be found in 67% of South-South PTIAs. Some 62% of these same PTIAs contain provisions dealing with technical assistance, either as a general provision or with regard to certain subject areas.

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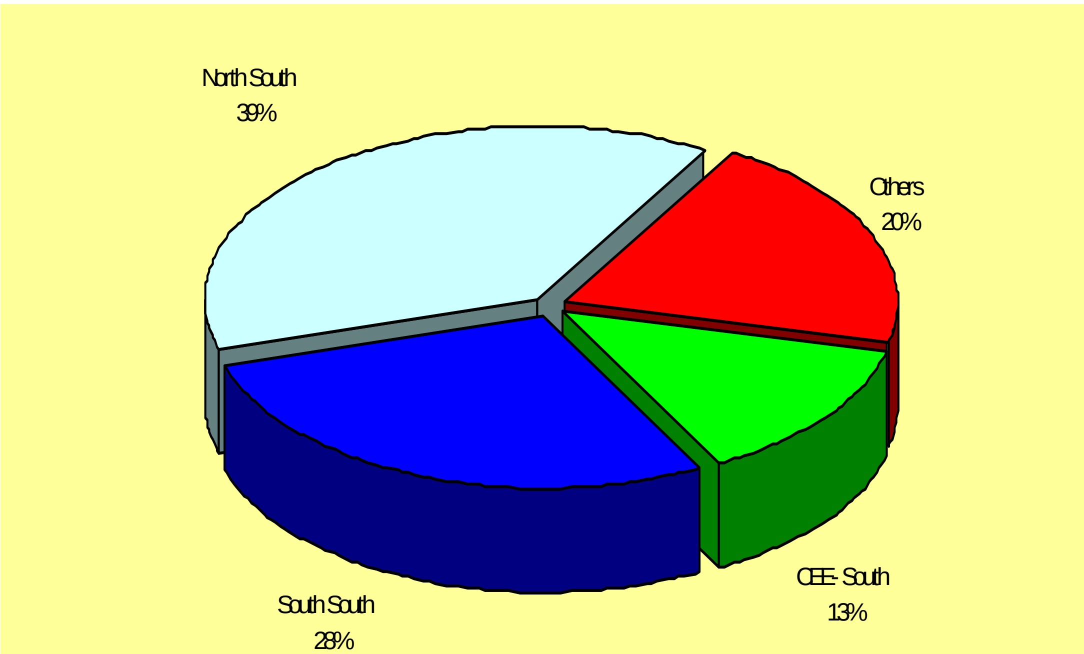
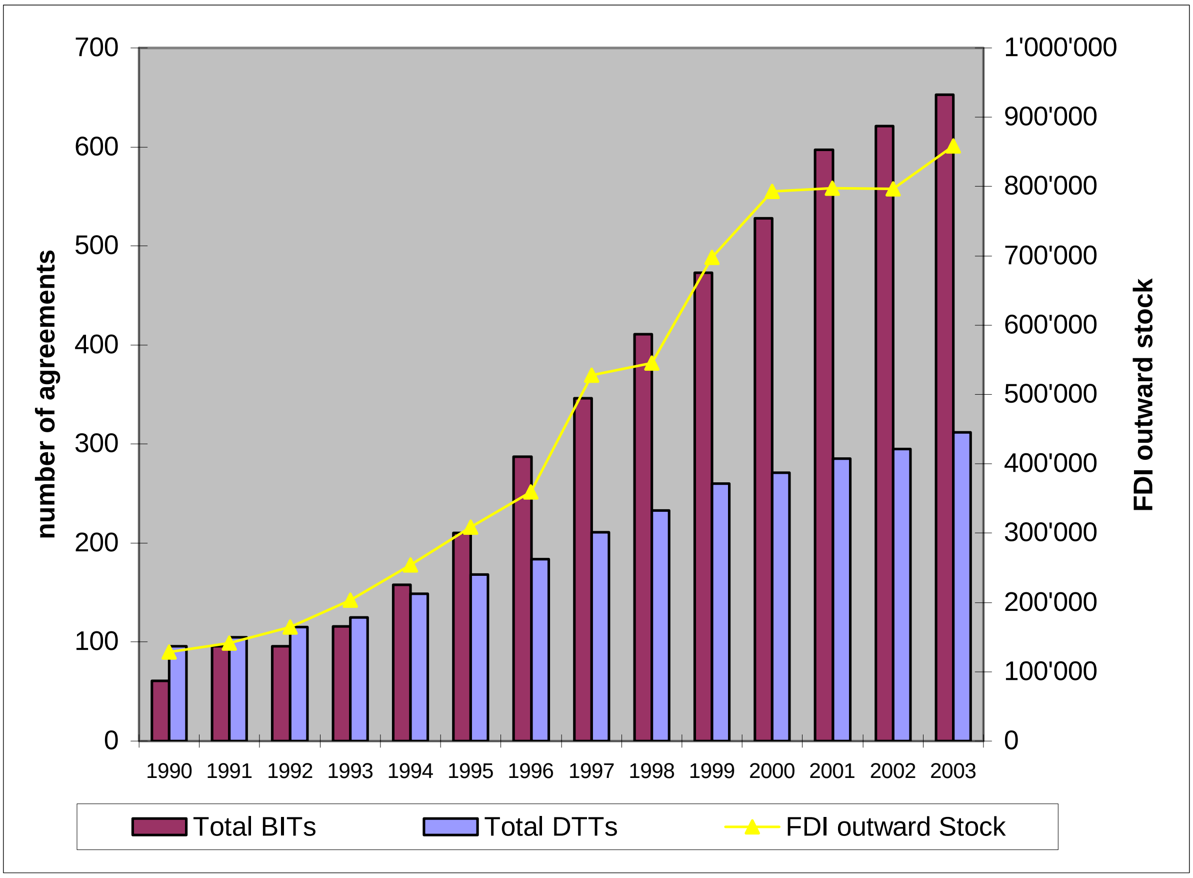
FIGURES

Figure 1. Geographical distribution of BITs as of July 2004



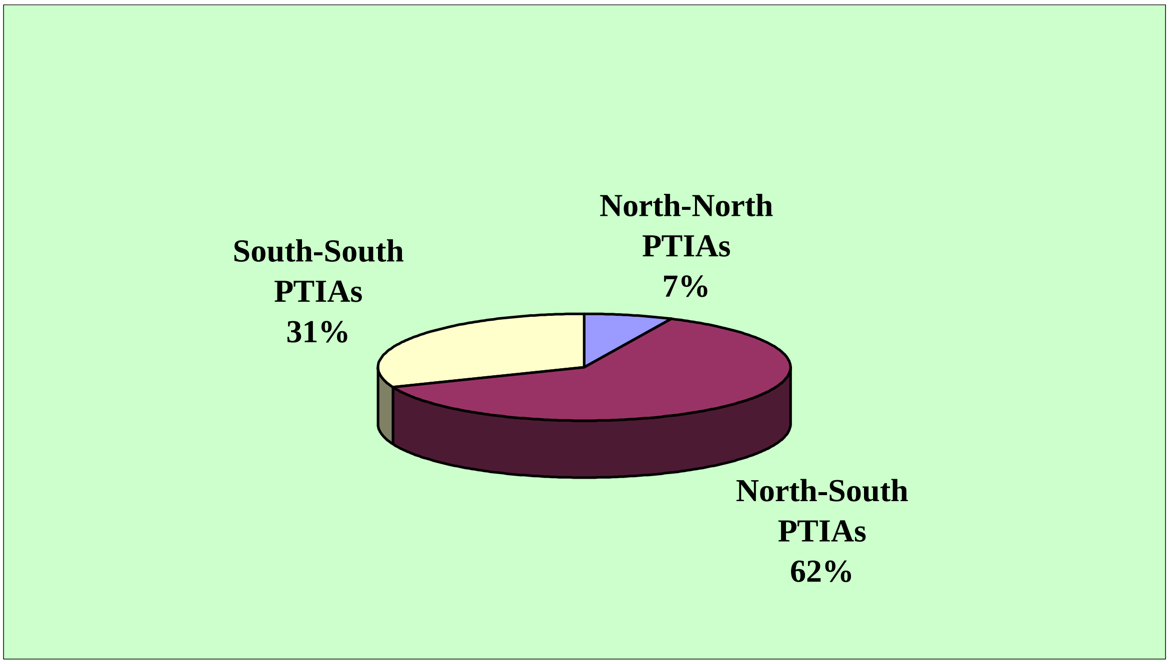
Source*:* ***UNCTAD (see www.unctad.org/iia).***

Figure 2. Cumulative FDI outward stock of developing countries and cumulative South-South BITs and DTTs, 1990- 2004



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

Figure 3. Distribution of PTIAs as of July 2004 (excluding BITs and DTTs)



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