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## China's international investment strategy: A contentious issue

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A new book on China's International Investment Strategy has just been published in the International Economic Law series of Oxford University Press. The book combines legal, economic and international relations perspectives, to provide a comprehensive analysis of the subject.

The new book has been edited by Professor Julien Chaisse of the City University of Hong Kong, School of Law. Professor Chaisse is a renowned specialist in International Economic Law, with particular expertise in the regulation and economics of foreign investment. He serves as an Advisory Board Member of the Asian Academy of International Law and he is also a member of the World Economic Forum's International Trade and Investment Council since 2016.

Foreign direct investment (FDI) plays a crucial role in growth strategies of many countries. On the one hand, FDI is a means of technology diffusion and hence any legal and economics frictions such as investment or trade disputes impact directly on the technology trajectory of a country. On the other hand, the challenges arising from the digital revolution and climate change will have strong repercussions on the location of industry, compelling governments in large and small countries alike to develop a strategic approach to trade and investment policies.

Today, China is a major actor in international investment law and policy, following an active global strategy for both outward and inward FDI. During the last two decades, China has pursued a gradual and deliberate path towards increasing both inward and outward FDI through reforms in domestic (investment) law, tax policy, bilateral investment treaties, bilateral and regional trade agreements, multi-lateral fora and, more recently, China also launched a new program, the "Belt and Road Initiative" (BRI). Concerning the latter, there are still strategic decisions to be made by the Chinese government, as Hobér (2019) points out: Membership of China in the Energy Charter Treaty (ECT) could facilitate the achievement of its energy objectives



within the BRI, as many of the Central Asian States along the route are members, actively using ECT arbitration in energy disputes.

The book is structured around the lucid and compelling thesis that China is deploying a triple-track (i.e. bilateral, regional and global) international investment strategy “propelled by the local reforms that are presently restructuring the regulatory framework for FDI.” (p.3) Understanding China’s international investment law and strategy across its domestic, bilateral, regional and global levels is part and parcel of an understanding of global processes -- even where China does not play a formal role. Take for example the Trans-Pacific Partnership (TPP), which for President Obama, “was a means to ensure that the United States—and not countries like China—is the one writing this century’s rules for the world’s economy.”

Part I of the book details the peculiarities of China’s approach to inward and outward FDI and addresses important local determinants of (the location of) FDI such as taxation or Free Trade zones.

The focus of Part II is on the bilateral level – inter alia concerning important negotiating parties like the US and the EU -- where lessons but also obstacles (partly rooted in the trade regime or the state-ownership of enterprises) towards more comprehensive agreements are critically examined.

China’s role in the Asia-Pacific region is examined in Part III, foremost the important regional trade and investment agreements in which China is a party. Whether the bilateral and the regional levels of investment policy constitute a step towards a multilateralization, or a substitute remains to be seen.

Further, as the book editor rightly states, China’s role on the global level has been given too little attention hitherto. China’s global impact in investment law and policy is manifested not only by its role in various FDI-related G20 initiatives but also by the already enormously influential BRI (Part IV).

With steadily rising numbers of arbitral disputes globally, the last part of the book (Part V) seeks to explain the relatively limited engagement of China with investor-state dispute settlement, both as a home and a host country – in spite of its large number of (trade and) investment treaties concluded, almost 150 at present. Among others, the apparent conflict between rapidly evolving types of international investment and the slow rate of transformation of its underlying institutional environment since the 1970s is highlighted.



Overall, by shedding light on these institutional, political and economic aspects of the emerging FDI strategy of China, the book tacitly reminds us not only of the various interlinkages between trade and investment but also of the huge differences and tensions between a multi-layered trading system and a fragmented investment system globally. While the legal and indeed economic rationales for these differences are not always apparent and sometimes lacking at all, they certainly emphasize the need for distinct strategies in dealing with different countries.

The current debate and concerns over national security issues concerning the participation of the Chinese company Huawei in the expansion of the 5G network in the US and UK (and elsewhere) and the threat by China about possible repercussions on Chinese investment in Europe (as e.g., in an interview with the BBC recently) are proof for the urgent need of a comprehensive and rigorous academic analysis in this field from complementary regulatory and policy angles — which is exactly what this book offers. While China's strategies may have developed, and negotiations in different fora may have progressed, since the writing of this book, many contentious issues raised in the various chapters of the book have hardly been addressed before, let alone been solved. This book is an essential reading for policymakers, academics, business and researchers to comprehend the growing complexity of China's international investment strategy and its implication for partners countries and the world economy.



## References

Chaisse, Julien, ed., 2019, China's International Investment Strategy: Bilateral, Regional, and Global Law and Policy, Oxford University Press, 2019.

Hobér, Kaj (2019) Arbitration of Energy Disputes Under the Energy Charter Treaty: Added Value for the Belt and Road Initiative, *Journal of World Investment and Trade*, 20, 285-312.

Hsieh, Pasha L. (2018) Against Populist Isolationism: New Asian Regionalism and Global South Powers in International Economic Law, *Cornell International Law Journal*, Vol. 51, No. 3, pp. 684-729. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3138294](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3138294).

## Endnotes

Established by the late Professor John H Jackson, and currently edited by Professors Andrew D Mitchell and Tania Voon (both: Melbourne Law School, The University of Melbourne) the series addresses a range of issues in international economic law, which includes international trade law, international investment law, and the global financial order, including the G20 and participation in the International Centre for Settlement of Investment Disputes (ICSID)

<https://www.cfr.org/backgrounder/what-trans-pacific-partnership-tpp>

In fact, it was reported recently that China seems to have taken a lead in pushing for the Regional Comprehensive Economic Partnership (RCEP) as China even proposes to exclude India, Australia and New Zealand in order for RCEP to be concluded this year.

(<https://www.thehindubusinessline.com/economy/china-proposes-asean3-mega-free-trade-agreement-sans-india-australia-and-nz/article27255349.ece>) For a rigorous analysis of China's role in the acceleration of RCEP, see Hsieh (2018).

E.g. <https://www.bbc.com/news/uk-46690627>

With a foreword by Zhao Hong, Member Appellate Body World Trade Organization Geneva and contributions by: Michael J Enright, Hui Yao Wang and Lu Miao, Na Li, Lu Wang, Jie (Jeanne) Huang, Manjiao Chi, Kyle Dylan Dickson-Smith, Hadas Peled and Marcia Don Harpaz, Flavia Marisi and Qian Wang, Xinquan Tu, Na Sun, and Zhen Dai, Matthew Levine, Won- Mog Choi, Heng Wang, Amokura Kawharu and Luke Nottage, Horia Ciurtin, Karl P Sauvart, Anna Joubin-Bret and Cristian Rodriguez Chiffelle, Sophie Meunier, Ka Zeng, Manzoor Ahmad, Susan Finder, Joel Slawotsky, Matthew Hodgson and Adam Bryan, Jane Willems, Claire Wilson, Sungjin Kang, Shu Shang (in the order of appearance in the book).