Never Let Me Go: Exit Clauses in International Investment Agreements

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Abstract

Growing literature examines when states exit international institutions. International agreements, however, differ in how easy it is for signatory states to withdraw from them. Why do states sign treaties that are difficult to terminate, while others prefer treaties easy to withdraw from? In the context of bilateral investment treaties (BITs), we argue that exit clauses depend on domestic uncertainty and international commitment issues. Capital-exporting countries aim to lock in importers to protect their firms abroad, but they also desire withdrawal flexibility to incorporate changing domestic politics. This trade-off is pressing for governments accountable for public demands. Democratically accountable governments adjust BIT duration based on partner states' credibility: they seek longer commitments with importers that have weak property rights protection and shorter ones with those having strong protection. Analyzing an original dataset of termination features in over 2,500 BITs, we find support for our argument. This study contributes to the understanding of durability in international institutions, as well as negotiations of economic agreements.

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1 Introduction

The world has seen a rising backlash against globalization leading member states to withdraw from various international institutions. However, institutions differ in how easy it is for signatory states to withdraw from them. For instance, the International Monetary Fund (IMF) specifies that any member can withdraw from the Fund anytime, while the Paris Agreement stipulates that no member state can withdraw during the first three years. Leaving the Energy Charter Treaty (ECT) is even stricter, as the ECT continues to apply to pre-existing investments for a period of 20 years after the withdrawal.

Exit clauses[1] are critical for understanding the durability of international institutions because states must exit according to their provisions to adhere to international law. For instance, although the former US president Donald Trump announced the US's withdrawal from the Paris Agreement on June 1, 2017, the Agreement did not allow any member state to leave within the first three years of its start date, with at least a 12-months notice period. The 4-year exit process meant that the US withdrawal took effect only on November 4, 2020, one day after the 2020 US Presidential election. As the President-elect Joe Biden rejoined the Paris Agreement on his first day in office, the US was out of the agreement only for 107 days. The exit clauses essentially prevented any real impact of US withdrawal.

Unique in their design, exit clauses differ from substantive flexibility of an agreement. While substantive agreement flexibility indicates flexibility under the terms of the agreement, flexibility in exit clauses reveals *how long* a state is stuck in the agreement – however flexible its terms. Despite the extensive literature that has explored the rationales behind agreement flexibility, we lack understanding of how long different states intend to keep agreed-on terms in place with different partners and why. Given the level of substantive flexibility in an agreement, when do states prefer longer commitments over shorter ones?

We investigate the question in the context of bilateral investment treaties (BITs), which

[1]We use 'exit', 'termination', and 'withdraw' interchangeably throughout the paper to indicate unilateral abandonment of an international agreement.

is the primary international regime governing the relations between foreign investors and host governments. Exit clauses are particularly relevant for BITs given that termination of BITs has become increasingly common.[2] [3] Although capital importing states used to sign BITs to attract foreign direct investment, many of them have learned their costs when foreign investors use BITs to claim compensation from the host government, sometimes amounting to billions of US dollars, and some of them have decided to terminate their BITs.[4] Although exit decisions are always political, states can only terminate BITs according to their exit clauses, making them highly policy-relevant.

We theorize that BITs' exit flexibility, and therefore BIT's effective duration, depends on both importers and exporters. Scholarship has long recognized the importance of addressing credible commitment problems through international agreements, especially in the BIT regime.[5] To protect multinational corporations (MNCs) abroad from unfair treatment, capital exporting countries negotiate BITs with capital importing countries. Instead of indiscriminately demanding long BITs, we argue that exporters want to preserve flexibility under certain conditions. Because the terms of BITs are reciprocal, exporters need to judge how much exit flexibility they want to keep for *themselves*. Capital exporters may anticipate political backfiring against foreign investors and BITs. Even when political discourse is not specific to BITs, capital exporters can still expect shifts in domestic demands from their public, such as increased demands for environmental and public health protection, which require rethinking their commitments under BITs. Therefore, democratically accountable capital exporters face a trade-off between constraining importers and preserving exit flexibility.

We argue that democratically accountable capital exporters navigate the trade-off by

[2]Alschner, 2022; Haftel and Thompson, 2018; Huikuri, 2023; Peinhardt and Wellhausen, 2016; Thompson et al., 2019; Waibel, 2010.

[3]Between 1995 and 2021, there have been 176 unilateral BIT terminations with India exiting 75 of their BITs, followed by Ecuador with 25 and Indonesia with 21 terminations.

[4]Poulsen and Aisbett, 2013.

[5]Büthe and Milner, 2009; Salacuse, 1990.

adjusting termination clauses based on its importing partner's credibility. Given that the primary goal of BITs is to protect MNCs abroad from unfair treatment, an importer's credibility depends on how strongly they protect private property rights (PR). When dealing with importers with weak PR protection, capital exporters prioritize protecting their MNCs and demand long-term BITs to lock in their importers. However, with importers that have complementary domestic institutions for PR protection, capital exporters prioritize preserving exit flexibility for themselves and sign short-term BITs. In sum, how much exporters need to incorporate the changing public demands and how severe credible commitment problems importers present jointly determine the BIT duration.

To test the theoretical priors, we provide a novel empirical contribution by constructing an original dataset of effective commitment periods of BITs. By manually coding 2,536 publicly available BITs,[6] we identify important variation in exit clauses. While some BITs can be terminated *anytime*, others allow exits only *after an initial commitment period*, ranging from five years to multiple decades. Further, some treaties with the strictest termination provisions allow exits only during a *pre-specified termination window*, which, if missed, leads to an automatic renewal of the agreement. Figure 1 shows the distribution of each exit clause category of BITs signed between 1959-2018. Taking into account the different exit clauses and other durability features, such as sunset clauses, we develop a new measure of *effective commitment period* for each BIT, which captures how many years a treaty will legally stay in force after ratification, even if a contracting state terminates the BIT the following day.

Our empirical analysis provides consistent and robust evidence supporting our theoretical predictions. After accounting for factors suggested by existing literature — such as the substantive flexibility of the treaty, time trends, country-specific factors, and selection bias in the treaty sample — we find that strong property right protection in importers leads to shorter-term BITs only when exporters are highly democratically accountable. Contrary

[6]We thank Nemo Krueger and So Jeong Noh for excellent research assistance.

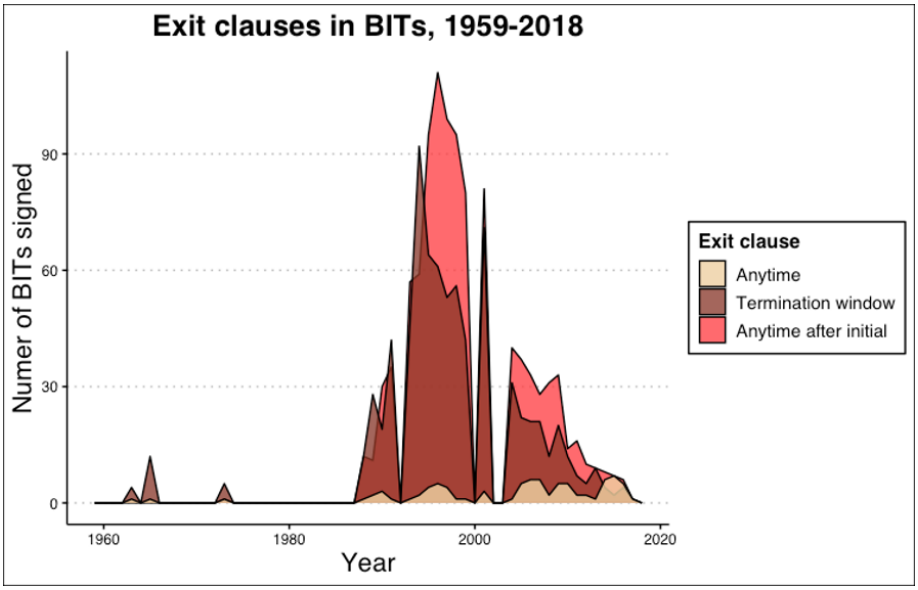

Figure 1: Variation in the flexibility of exit clauses in BITs, 1959-2018

to the common understanding that the flexibility of international agreements depends on the credibility of a weaker state alone (i.e., capital importers in BITs), our findings indicate that a stronger state's (capital exporter's) consideration for its own political uncertainty also matters. The exporter's need to account for domestic changes and the importer's credible commitment problem jointly determine the termination flexibility in investment agreements.

This study advances our understanding of international institutions in several ways. First, we contribute to the extensive literature on BITs by bringing domestic politics and exit clauses – an under-explored dimension – to scholarly attention with an original dataset. Although notorious sunset clauses are widely known in the literature[7], we provide the first comprehensive data on the effective duration on investment treaties. We also bring in the domestic-level dynamics in capital exporters to explain BITs, which goes beyond the existing considerations in the literature that primarily focus on the role of importer credibility in attracting FDI and the power dynamics between the global North and South. In doing so, we highlight the trade-off exporters face and enhance our understandings on why even

[7]Harrison, 2012.

capital exporters sometimes want short-term BITs.

Second, we contribute to the rich literature on rational design of international institutions.[8] A consensus in the literature is that flexibility makes cooperation more sustainable by providing room to reflect changing environments and uncertainties.[9] Our findings extend the idea by showing that states differ in how much flexibility they are willing to provide for sustaining cooperation. One's own domestic political environments as well as partner state's credibility jointly determine exit flexibility.

Finally, we contribute to the growing literature on exits from international institutions. While democracies are known to be more cooperative,[10] recent study finds that they are also more prone to withdraw from intergovernmental organizations.[11] Our findings show that democratic accountability makes governments consider the possibility of future domestic political changes, thereby making them prefer easy termination clauses and short commitments. Although flexible exit clauses neither make exits more likely nor lead to IO death,[12] this research shows that democracies are, in fact, likely to consider their termination possibilities from the onset of an agreement's negotiation. Amidst backlash against global governance in Western democracies[13] and autocratization of international organizations,[14] our findings contribute to the discussion on the likely future trajectory of liberal international cooperation.

2 Exit flexibility in international agreements

An extensive literature on international agreements has investigated why some impose more policy constraints on state sovereignty than others. States' needs for international cooper-

[8] Koremenos et al., 2001.
[9] Koremenos, 2005, 2016; Rosendorff and Milner, 2001.
[10] Mansfield et al., 2002.
[11] Von Borzyskowski and Vabulas, 2019.
[12] Debre and Dijkstra, 2021.
[13] Walter, 2021.
[14] Cottiero and Haggard, 2023; Debre, 2022; Qian et al., 2023.

ation and for room to reflect future uncertainty are found to be the driving factors behind substantive flexibility.[15] With regards to investment agreements, for instance, leaders with longer time horizons sign BITs with less binding provisions to preserve flexibility in case of future changes in economic and political circumstances.[16] States are also willing to accept more binding BIT conditions during worse economic conditions to facilitate inward FDI,[17] and prefer stricter investor-state dispute settlement (ISDS) provisions when they have powerful domestic interest groups preferring strong investment protections.[18]

Exit flexibility of an agreement determines how long a signatory state has to wait to completely 'exit' from treaty-based cooperation. Variation in substantive flexibility indicates how freely a state can act under the rules of the agreement. In contrast, exit clauses are "provisions that allow a state to nullify its membership in an agreement without violating the agreement's institutional framework."[19] Therefore, signatory states are bound to the agreed-upon rules, irrespective of the overall flexibility of the agreement, when the agreement includes termination clauses that make the treaty difficult to exit.

In addition to being theoretically distinct, exit flexibility is policy-relevant, not because agreements with easy termination clauses get terminated more often, but because illegal exits are costly. Unlawful exit may invoke public backlash because the mass public, in general, does not approve breaking international law.[20] Not adhering to international agreements undermines government's reliability for international cooperation and makes forming new cooperative agreements more difficult with the former treaty partners.[21] Furthermore, exit against the relevant provisions does not become legally effective. If BITs are not terminated according to the relevant exit clauses, the risk of legalized investment disputes remains.[22]

[15] Copelovitch and Putnam, 2014; Koremenos, 2005.
[16] Blake, 2013.
[17] Simmons, 2014.
[18] Allee and Peinhardt, 2014.
[19] Koremenos, 2016, p. 140.
[20] Dill and Schubiger, 2021; Morse and Pratt, 2022.
[21] Schmidt, 2023.
[22] NGOs even help states to carry out BIT termination lawfully. Bernasconi-Osterwalder et al., 2020.

If governments want to avoid the costs associated with illegal exits, they must follow the termination clauses specified in their agreements.

Although recent high-profile events, such as Brexit and the US withdrawal from UNESCO and the Paris Agreement, have prompted scholarly attention to exits from international institutions, less scholarly attention has been paid on *exit clauses*. Many studies take a functionalist approach and view exit clauses as an insurance against future uncertainty.[23] Pioneering work by Koremenos explains the different exit features based on the uncertainty associated with underlying cooperation problems.[24] Koremenos argues that compared to security or environment agreements, economic agreements (i.e., monetary, finance, trade, and investment agreements) present high-uncertainty because future shocks can cause the distribution of gains to vary substantially over time. Then, Koremenos shows that economic agreements are more likely to have finite duration than agreements in other issue areas because states do not want to bind themselves *infinitely* when uncertainty for future redistribution is high.

The functionalist view provides invaluable insights that a state's preferences for an agreement's duration depend on the level of certainty a state has regarding its preferences for the agreement over time. Even when a state finds an agreement desirable at t, it may still insist on short-term commitments (easy termination clauses) if it has high uncertainty of its preferences at $t+1$.

However, questions remain why we yet observe varying degrees of exit clauses in agreements that address the the same issue area and the same commitment problem. For instance, we note substantial variation in duration across different BITs. If the underlying cooperation problem is same for all BITs - i.e., host governments' credible commitment to respect MNCs property rights - then why do some BITs require longer commitment than others? Further puzzle emerges when the same capital importing state signs BITs that

[23]Dassler et al., 2022; Koremenos, 2005, 2016; Koremenos and Nau, 2010.
[24]Koremenos, 2005.

have different commitment period with different (exporting) partner states. The lingering empirical puzzles suggest that our understanding of states' preferences for an agreement's exit clauses is far from complete. This paper aims to refine the functionalist approach by specifying the types of uncertainty states consider when designing BIT exit clauses. We introduce the exporter's uncertainty about its own policy preferences and examine how this affects BIT duration based on the partner's commitment problems.

3 States' preferences in exit clauses

This section briefly illustrates the benefits and costs of BIT termination at both international and domestic levels. Understanding the domestic political benefits of BIT termination, in particular, helps us theorize why even capital exporters, who primarily benefit from BITs, would still seek some levels of exit flexibility.

3.1 The benefits and the costs of BIT termination

BIT termination generates both international and domestic benefits and costs (Table 1) which shape governments' preferences over exit clauses. At the international level, the foremost benefit of BIT termination is the elimination of threats posed by ISDS from investors of a partner state. Indeed, the fear of facing costly ISDS has been the primary concern prompting governments to terminate and renegotiating their BITs,[25] a trend also observed in state exits from the Energy Charter Treaty.[26]

However, terminating BITs also incurs international costs, including financial, reputational, and diplomatic consequences. Unilateral exit sends hostile signals to foreign investors, who regularly rely on cues to gain information about the investment environment in

[25]Haftel and Thompson, 2018; Huikuri, 2023
[26]Cima, 2021.

host countries.[27] While signing BITs typically signals investor-friendliness, BIT terminations may convey hostility and breed uncertainty regarding a government's intentions towards investors. Indeed, investors respond to BIT terminations by scaling back and rerouting FDI into the country.[28] Furthermore, terminating an international agreement attracts global attention, amplifying negative signals beyond the market. Exit can be construed as a signal of unreliability and a departure from international cooperation, hindering ratification of other international agreements in the future with the former partner states.[29] This cost can partially explain why exit from the controversial regime continues to be a rare occurrence.

From the domestic perspective, terminating BITs can yield substantial political benefits by enabling governments to better respond to domestic political demands. As BITs are designed to ensure host governments' commitments to equal treatment between MNCs and national corporations, they narrow the set of policies governments are able to adopt that affect the activities of MNCs. These *sovereignty costs* can hinder governments' attempts to maintain domestic political support and stay in power.[30] Government policies that aim at satisfying domestic political demands have invited various costly investors claims. Especially these "indirect expropriation" claims have arisen from policies aimed at facilitating the transition to green energy, reducing reliance on coal-based energy sources, and phasing out nuclear energy.[31] For example, Australia's policy to introduce plain cigarette packaging,[32] and Germany's decision to phase out nuclear energy[33] are examples of regulation that have resulted in costly investment disputes.[34] These disputes often amount to billions of dollars with lingering reputation costs that affect all their future conduct within the international legal regime.[35]

[27] Brooks et al., 2015; Shim, 2022.
[28] Hartmann and Spruk, 2022.
[29] Schmidt, 2023.
[30] Blake, 2013.
[31] Pelc, 2017.
[32] Moehlecke, 2020.
[33] Putter, 2021.
[34] Moehlecke et al., 2023.
[35] Simmons, 2000.

Table 1: Benefits and Costs of BIT Termination

	International	**Domestic**
Benefit of BIT termination	- Decreasing risk of ISDS	- Electoral gains from increased regulatory space
Cost of BIT termination	- Financial, reputational, and diplomatic cost	- Domestic beneficiaries of BITs turning against the government - Audience cost

Terminating BITs removes constraints on such regulatory activities and broadens the policy autonomy of the governments. Governments can leverage their increased regulatory space and extended sovereignty to appease their electorates.[36] For example, when Ecuador's President Rafael Correa ran an electoral campaign that was openly hostile to the protections the "Amazon-polluting" multinational corporations enjoyed, he promised to exit from all of Ecuador's BITs. His campaign stance and initiation of the BIT withdrawal process garnered him a super-majority in parliament.[37]

BIT termination can also entail domestic costs. Domestic interest groups that previously benefited from BITs would oppose the government's decision to terminate them. In particular, MNCs that would lose the rights and protections enjoyed under the BIT regime may demand the continuation of BITs.[38] Additionally, workers employed by MNCs and domestic firms that rely on MNCs could risk losing their jobs and revenues if these corporations choose to divest upon BIT termination. BIT terminations can also signal risky investment environment of the country in general, which could negatively impact *all* MNCs including ones that are not directly affected by the terminated BITs. Domestic firms and workers who rely on foreign investment for business and employment could sanction governments by, for example, withdrawing financial or electoral support.[39]

[36] Mesquita et al., 2005.

[37] Calvert, 2018.

[38] High-income, democratic governments tend to be sensitive to business interests, citing this as the main reason for the slow reform of the BIT regime. Interview A. For information on interviews, see appendix.

[39] Dai, 2005.

The above discussion makes it evident that BIT terminations can have significant domestic political implications. Although BIT terminations may hurt their MNCs and some domestic groups, they could bring greater electoral support by satisfying other, broader groups in the society through increased policy autonomy. This benefit will be particularly important for governments that need to incorporate domestic public demands to survive in office. The following section lays out why and when democratically accountable states seek exit flexibility, linking the discussion to partner states' credible commitment.

3.2 The capital exporter's trade-off

Between two signatory states of a BIT, understanding the capital exporters' preferences over exit flexibility is vital because they tend to dictate the BIT negotiations. Studies on the terms of BITs agree that capital exporters' preferences dominate BIT design.[40] In practice, countries both export and import at least some capital vis-a-vis their BIT partners. However, in a majority of BITs, it is clear which state is exporting more than importing. In the literature, "exporters" refers to the relative exporters. Because of competition for capital among importers and MNCs being mobile, capital exporters yield greater leverage over importers in shaping the terms of BITs.[41] [42]

Although primarily beneficiaries of BITs, capital exporters do not uniformly demand strict exit clauses that lock in both states for a long time period. Instead, we argue that they aim to preserve flexibility under certain conditions. Because the terms of BITs apply equally to both signatory states, capital exporters face a trade-off when designing exit clauses in

[40] Allee and Peinhardt, 2014; Kim, 2023.

[41] Allee and Peinhardt, 2010; Elkins et al., 2006; Salacuse, 1990; Salacuse and Sullivan, 2005; Tobin and Rose-Ackerman, 2011.

[42] There are, of course, some situations where capital importers can have more leverage in negotiations. For example, importers rich in natural resources might enjoy more leverage in BIT negotiations over other importers. However, there is little evidence that they would have successfully shaped BIT contents. Teo, 2021 finds that governments scarce in natural resources are more likely to sign BITs, but we are not aware of empirical evidence suggesting that resource rich countries can shape the treaty terms in their favor.

BITs: they want long-term commitments in BITs to constrain capital importers, but they also desire BITs that do not "bite" themselves.

The trade-off arises from an exporter's uncertainty about future domestic political demands. BITs affect broad sectors of the economy and last for decades, during which public preferences on foreign investments may change. For instance, Americans in the 2020s hold mostly negative views on Chinese multinational corporations operating in the US, supporting government sanctions against Chinese FDI, a phenomena not observed merely 15 years ago.[43] Likewise, environmental concerns have become increasingly salient in Europe such that public demands governments to shut down power plants and promote cleaner energy sources, which could negatively affect foreign MNCs working in traditional energy sectors. In Africa, public support for FDI declines over time when locals learn about negative consequences of MNCs such as exploitation of local land and resources and racial discrimination.[44]

BIT terminations can yield substantial domestic political benefits by allowing governments to be more responsive to such changing public demands. For instance, facing an economic crisis, there can be increasing pressures to restrict capital movements and profits of MNCs, such as in Argentina in the early-2000s.[45] Similarly, learning about negative consequences of FDI such as environmental degradation and loss of sovereignty can prompt public demands to sanction MNCs, and for example raise taxes on oil profits to compensate environmental damage caused by the industry, as happened in Ecuador.[46] When governments are constrained by BITs, they must either delay policy responses to public demands or make costly compensation for MNCs.[47] However, once they terminate BITs, governments have more autonomy to cater to public demands, which could translate into electoral gains.

[43]Zeng and Li, 2019.

[44]McCauley et al., 2022.

[45]Because of the strong BITs in place, the Latin American government faced numerous ISDS cases because of its crisis-mitigation measures.

[46]Calvert, 2018.

[47]Moehlecke, 2020; Putter, 2021.

Given these potential political benefits of BIT termination, governments want to preserve the ability to terminate BITs when necessary.

Note that not all governments care about changing public opinion. The needs to preserve exit flexibility to incorporate future political demands are substantive only when a government is democratically accountable. If a government does not have to cater to public preferences, it has little desire to preserve the room for potential future changes. If staying in power requires satisfying small interest groups, then a government has little needs to ensure BIT's exit flexibility because the interest groups' preferences are less capricious than the public's. In a military dictatorship, for example, the executives do and will have to serve military interests to survive in the future, and the preferences of the military are likely to be consistent and predictable than those of the mass public.

So far, we have claimed that we focus on capital exporters' preferences as they have greater negotiation leverage over their BIT partners and that exporters could expect changes in public opinion. But why would a capital exporter, a *home state* to MNCs, experience domestic political pressures to terminate BITs? After all, their investors operate abroad, and only capital importers can face ISDS cases. Note that in practice, most countries both import and export capital, and the public rarely considers whether their country is a relative capital importer or exporter in relation to a specific BIT partner. For example, although the U.K. is a relative capital exporter vis-à-vis Singapore, some Singaporean multinational corporations (i.e., Trafigura) operate in the U.K. Although in theory, the U.K. benefits more from the BIT with Singapore, a single possible ISDS case brought by a Singaporean company against the U.K. government could quickly shift the public opinion against the MNC and the BIT.

Moreover, the public is likely to react to the BIT regime generally, rather than discriminate between individual FDI projects. Therefore, when public sentiment turns against foreign investment or the BIT-regime, a government may benefit from indiscriminately terminating all BITs, regardless of its position as an exporter or importer. Such a complete

withdrawal from the regime can demonstrate resolve on behalf of the government. For instance, when Ecuadorians and their political leadership developed strong antipathy toward multinational corporations and ISDS practice, the Ecuadorian government sysematically terminated *all* of its BITs, including those where Ecuador was primarily an exporter as well as those where it was an importer. This strategy made a successful populist appeal by signalling that the government was responsive to public opinion.[48]

Therefore, facing the trade-off between constraining importers and maintaining exit flexibility for themselves, democratically accountable exporters need to choose which one to prioritize. Under what conditions do they prioritize one over the other? We argue that exporters adjust BITs' exit flexibility depending on the capital importer's credibility. Given the fundamental role of BITs in protecting MNCs, we suggest how strongly an importer protects private property rights determines their credibility.

When importers do not possess strong domestic institutions that help constrain the government from unfair treatment of MNCs, the risk of expropriation and regulatory exploitation of MNCs is high. In such cases, democratically accountable exporters cannot prioritize preserving flexibility. Instead, they face great needs to constrain the importers to protect their MNCs. Capital exporters understand that "it is problematic to ask [certain] features [in BITs] with some but not others", but "countries push for stricter clauses if they perceive partner as institutionally weak."[49] This applies to negotiations over exit clauses as well. As a policy expert shared with us, "signatory states think ahead and foresee the possibility of termination when they see signs of less confidence... because stronger termination clauses provide stronger protection for investors."[50] Conversely, when an importer is embedded in strong complementary domestic institutions that protect private property rights, the risk of unfair treatment on MNCs is low. In such cases, democratically accountable exporters can adopt a less strict approach, allowing for more flexible exit clauses.

[48]Calvert, 2018.
[49]Interview A.
[50]Interview C.

Table 2: Example BIT commitment duration in years, by public accountability of exporter and property rights protections of importer

	India (strong PR)	**UAE** (weak PR)
The Netherlands (high accountability)	25.5	30.5
China (low accountability)	26	26

In other words, an importer's strong property rights protection allows flexible exit clauses when exporters need flexibility for themselves.

Consider the Netherlands, a traditional capital exporter highly accountable to public demands. It has BITs with both India (1995) and the United Arab Emirates (U.A.E.) (2013). India has relatively stronger property rights protection (V-DEM's PR protection index=0.67) than the U.A.E. (V-DEM's PR protection index=0.38). In the Dutch-U.A.E. BIT, there's a 15-year initial period where exit is prohibited, while in the Dutch-India BIT, the initial term is 10 years. Accounting for notice periods and sunset clauses, this difference results in a total effective commitment period of 30.5 years with the U.A.E., compared to 25.5 years with India. The Netherlands is therefore giving a shorter-term BIT to a country with stronger PR protection (Table 2).

However, consider China, which is much less accountable to public opinion compared to the Netherlands. Like the Netherlands, China also has BITs with both India (2006) and the U.A.E. (1993). Instead of having a shorter commitment period with one over the other, both BITs have the same effective commitment length of 26 years. This example suggests that capital exporters without democratic accountability do not tailor exit clauses based on their partners' credibility because they do not need to incorporate the possibility of changing public opinion.

Such divergent preferences on exit clauses from capital exporters are likely to materialize

in their BITs. Because of competition for capital among importers and MNCs being mobile, capital exporters yield greater leverage over importers in shaping the terms of BITs.[51] Moreover, the demands on exit flexibility from exporters are often in line with the interests of importers. Importers without strong PR protecting institutions are likely to accept strict exit clauses to import credibility through BITs because they lack complementary domestic institutions. In fact, low property rights states value BITs the most precisely because they benefit from the signal of credibility.[52] In contrast, importers that do have strong PR protecting institutions have more leverage to negotiate greater exit flexibility in their BITs with exporters that also seek some flexibility. Taken together the interests of importers and exporters, we generate the following hypothesis:

H: BITs of importers with strong private property rights protection have shorter commitment periods when exporters are highly democratically accountable.

4 Empirical strategy

We build an original dataset on termination flexibility for 2,536 investment agreements for which the treaty text is publicly available at the United Nations Conference on Trade and Development (UNCTAD) IIA Mapping Project.[53] Summary statistics of included treaty features are presented in Table A1 in the appendix, along with the rest of the variables included in the models. Our unit of analysis is a BIT.

[51] Allee and Peinhardt, 2010, 2014; Elkins et al., 2006; Salacuse, 1990; Salacuse and Sullivan, 2005; Tobin and Rose-Ackerman, 2011; Vernon, 1971.

[52] Arias et al., 2018; Rosendorff and Shin, 2015.

[53] See the UNCTAD IIA Mapping Project at https://investmentpolicy.unctad.org/international-investment-agreements/iia-mapping. The collaborative UNCTAD project with universities includes readily available, pre-coded treaty contents. We conduct checks ourselves to ensure accuracy of the key coding decisions made.

4.1 Dependent variable: Effective commitment period

Together with the type of exit clause, various features determine the length of commitment to BITs, such as the initial term, notice period, and survival or "sunset" clause. To account for such features, we construct an original measure called *Effective commitment period*, which demonstrates how long a signatory state is effectively committing to a BIT when it ratifies it. Although peculiarities such as 30-year sunset clauses in BIT design are by now well-known in the literature, we are not aware of prior work that has constructed the effective commitment length to these agreements.

To construct the effective commitment period, we first classify exit clauses into three types. First, treaties with *anytime* termination clauses offer the highest flexibility, allowing unilateral exit without time restrictions. For example, the Angola-South Africa (2005) BIT states that "[e]ither party may, at any time, give notice of its intention to terminate this Agreement." (Art. 12.3)[54] This most flexible termination clause is rare in the BIT regime, with only 78 out of 2,519 BITs (3%) allowing state withdrawal anytime.

The second category of termination flexibility includes clauses where termination is permitted *after initial commitment*. For instance, the Gabon-Turkey BIT (2012) states: "Either Contracting Party may, by giving one year's prior written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten-year period or at any time thereafter." (Art. 14.2).[55] This category is the most common in the BIT regime, with 1,235 out of 2,519 BITs (49%) allowing exits anytime after the initial commitment.

Finally, the strictest category of exit clauses includes a predetermined initial term, along with an automatic renewal of the treaty unless terminated within a specified *termination window*. This feature, known as the tacit renewal clause, has become notorious among gov-

[54]Even if the termination right "at any time" is not explicitly mentioned but is otherwise implied, we include it into this highest category of termination flexibility. For example, the Mexico-UAE BIT (2016) does not specify a deadline for when a notice of termination should be provided. Therefore, this implies that the notice can indeed be sent at any time.

[55]Occasionally, the right to terminate any time after the lapse of the initial period is not explicitly mentioned, but otherwise implied. See for example Mauritius-UAE BIT (2015): Art. 16.3.

ernments seeking investment agreement reforms because if the termination window passes, governments are obligated to adhere to the treaty terms until the next termination window. For example, under the BLEU-Oman BIT (2008), missing the 12-month termination window would automatically commit the parties for another 20 years.[56] Termination windows are prevalent, with 884 out of 2,519 BITs (35%) containing them (see Figure 1), indicating that some governments prioritize continuity in treaty protections for their investors and are willing to limit their ability to terminate agreements.

In addition to different exit clauses, several treaty features determine how long signatory governments are locked into the BIT: *initial term, notice period*, and *sunset clause*. The initial term captures the specified period for which the BIT is in force from ratification, while notice period is the time from notifying termination until it takes effect (typically 6-12 months). Lastly, after unilateral exit from a BIT takes effect, the so-called sunset clause is triggered, which keeps the provisions of the BIT in force for all pre-existing investments for its duration. Many BITs have long sunset clauses, prolonging governments' commitments even after exiting. *Effective commitment period* is calculated considering the exit clause type and these additional clauses. Table 3 outlines the formula used. Figure 2 shows the histogram of effective commitment period, indicating that BITs' commitment periods vary from 0.5 to 51 years.

4.2 Explanatory variables

Our argument suggests that an importer's property rights protection is associated with a shorter commitment period only when an exporter is facing democratic accountability. We identify the capital importer and the exporter for each BIT based on GDP of each state in the year the treaty is signed,[57] assuming that the state with a larger GDP is the capital exporter in the dyad. We also deploy alternative ordering rules, where the state with larger

[56] BLEU-Oman BIT (2008): Art. 15.1

[57] "World Development Indicators", 2020.

Table 3: Category of exit clauses and effective commitment period

Category	**Details**	**Effective commitment period**
Anytime	A signatory state can withdraw from the BIT anytime.	Notice period + sunset clause
After initial commitment	A signatory state cannot withdraw from the treaty during the initial period, but can withdraw anytime afterwards.	Initial term + notice period + sunset clause
Termination window	A signatory state can withdraw from the BIT only within a pre-specified period, usually 6 months before the initial term expires, and if the window is missed, the treaty gets automatically renewed.	Initial term + notice period + sunset clause

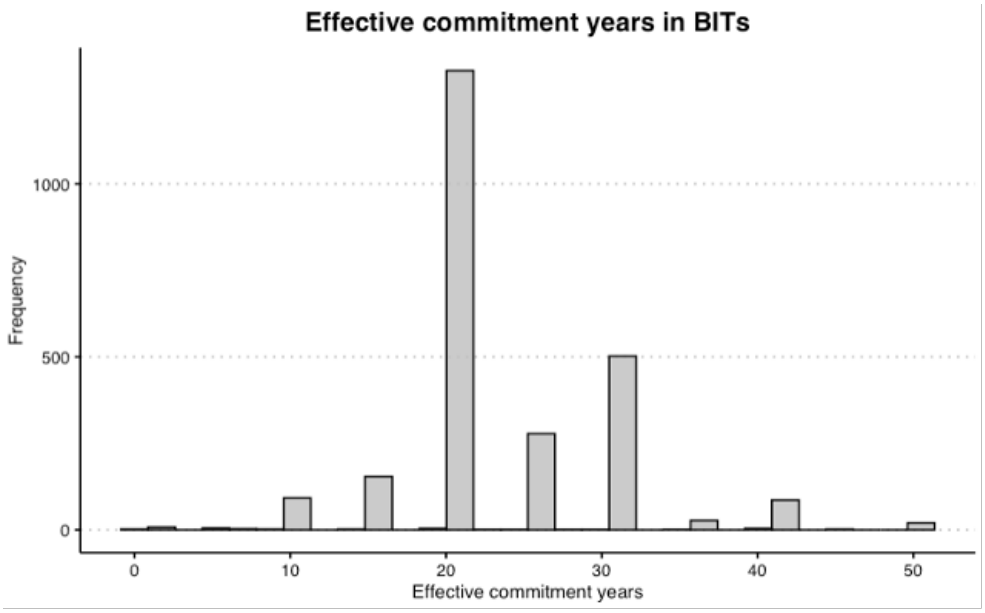

Figure 2: Effective commitment period in BITs

net FDI exports or GDP per capita is the capital exporter. These rules render smaller datasets due to the limited coverage. Yet, the results remain substantively consistent.

To test our conditional argument, we interact an exporter's *democratic accountability* with an importer's *Property rights protection*. We rely on *democratic accountability index* from the International Country Risk Guide constructed by the PRS Group for capital exporters. The index ranges from 0 to 6, with 6 indicating the most democratically accountable governance. The index is a weighted average of various indicators of accountability such as an independent judiciary, protection of personal liberties through legal guarantees, free and fair elections, and active presence of more than one political party.[58]

To measure the degree of property rights protection (PR protection) in capital importers, we employ *Index of PR protection* drawn from the Varieties of Democracy Project (V-DEM). The measure ranges for 0 to 1, where higher values of the index indicate higher levels of property rights protection. V-DEM collects opinions from both country-based and subject-based experts on to what extent private property rights (i.e., the right to acquire, possess, inherit, and sell private property) are constrained and use the expert opinion to generate one representative value of property rights protection per country-year observations.[59]

4.3 Control variables

We include various controls to address endogeneity concerns. First, different treaty features are likely to influence states' preferences over termination flexibility. In addition to the known use of model treaties in BIT negotiations[60], other key features in investment treaties will likely influence how much flexibility to exit the signatories want to maintain.[61] We control for the *Year of signature*, because governments have learned a lot about the BITs

[58]For detailed explanation, see https://www.prsgroup.com.
[59]For detailed explanation, see https://www.v-dem.net/en/.
[60]Berge and Stiansen, 2023.
[61]Baccini et al., 2015; Rosendorff, 2005.

and the associated risks since the early days of the regime.[62] Overtime, governments have not only learned from experience with investment arbitration, but also through lively policy discussion in international fora. In fact, newer BITs contain more flexible termination features (Figure 1).

To control for other features in the agreement, we include binary variables for whether an explicit *Unilateral termination* clause, *Amendment clause*, or *ISDS* and state-to-state dispute settlement *SSDS* clauses are included. We also control for whether the treaties include exceptions. If a treaty is allowing deviation under special circumstances, signatory states might be more willing to accept longer agreements. We therefore include binary variables for whether the treaty includes *Security exception*, *Health/Environmental exception*, *Other exception*, or a *Prudential carve-out*.

In addition, we control for a set of treaty partner- and year of signature-specific variables. In international economic negotiations, the economic and political attributes and conditions have been found to shape both governments preferences as well as negotiation outcomes. To isolate the effect of property rights protection and democratic accountability on BITs' duration, we therefore control for economic variables from *World Development Indicators*. Because governments with higher dependency on international capital flows might be more likely to agree on longer termination clauses, we control for *FDI inflows (% of GDP)* and *Trade volume (% of GDP)*.

Lastly, we consider political factors. As states become more reserved towards their investment treaties after becoming a respondent state in investment disputes,[63] we control for *cumulative ISDS experience* as a respondent state.[64] Because countries with stable political climate pose less risk and therefore might be more likely to achieve shorter BITs, we add both parties' *Government stability* in the year the treaty was signed, using data from the PRS Group's International Country Risk Guide (ICRG). In addition, we control for *Bu-*

[62] Poulsen and Aisbett, 2013.
[63] Poulsen and Aisbett, 2013.
[64] "UNCTAD Investment Dispute Settlement Navigator", 2020.

reaucratic quality in both signatory states from the ICRG dataset, which might influence states' ability to effectively negotiate the kinds of treaty features they want.

Our estimation could be biased if certain country dyads do not sign BITs due to their incompatible preferences for termination flexibility. To address this selection bias into our sample, we need to control for the propensity to sign a BIT for each country-dyad in the first place.[65] Following the popular strategy in the literature, we employ a Heckman Selection Model, which consists of two-steps. First, we estimate the likelihood of signing a BIT in a given year for each country-dyad with a panel dataset for all country dyad-years with an instrument variable. To do so, we construct a compound instrument variable: *GDP of exporter X The average number of new BITs signed by neighboring countries for importer in the year.* Second, we include the the propensity to sign a BIT for each dyad (*Selection bias*) generated in the first stage into our main estimation as a control.[66]

5 Model specification

We employ a cross-sectional dyadic dataset where the unit of observation is the investment treaty between the two signatory partners, where Party 1 is the exporter and Party 2 is the importer. To test our hypothesis that BITs of importers with strong PR protection have shorter BITs when exporters are democratically accountable, we employ the following OLS regression model:

$$\begin{aligned} Y_{ijt} = \beta_0 + \beta_1(Dem.accountability_{it}) + \ \beta_2(PRprotection_{jt}) + \\ \beta_3(Dem.accountability_{it}\ X\ PRprotection_{jt}) + \\ Treaty\ featrues_{ijt} + X_{it} + Z_{jt} + S_{ijt} + \varepsilon_{ijt}, \end{aligned} \tag{1}$$

[65] The selection bias in BITs is indeed well identified in the BIT literature. Heckman Selection Model is commonly used to resolve the issue of selection bias of only some BITs coming into existence, potentially with particular design preferences. See Blake, 2013; Bodea and Ye, 2020; Rosendorff and Shin, 2015; Tobin and Rose-Ackerman, 2011.

[66] For details on the construction of the two-step control function, see appendix.

where Y is the *effective commitment period* of the treaty between state i and state j signed in year t. State i refers to the exporter, and state j refers to importer for the BIT. *Treaty features* is a set of treaty-specific controls of the signed BIT; X_{it} and Z_{jt} are sets of country- and signature-year specific controls; S_{ijt} is the propensity to be included in the sample as derived from the first stage of the Heckman model, and ε_{ijt} is the error term. The primary variable of interest is the interaction term between exporter's democratic accountability measure and importer's PR protection. As we expect importer's strong PR protection to be aligned with shorter effective commitment period when exporter is democratically accountable, we expect β_3 to be negative and statistically significant.

6 Results

Table 4 provides supportive evidence that exporter's democratic accountability and importer's PR protection jointly determine the effective commitment periods of their BITs. Model (1) shows the first stage results that regress BIT signing on all possible country-dyad-years to help us account for selection bias into the BIT sample. Our instrument performs very well: the coefficient of the instrument achieves high statistical significance in explaining existing BITs ($p < .000$). The weak identification Kleigergen-Paap Wald F statistic is 11.54, which is above 10, a commonly used threshold to detect weak instrument.[67] We insert the propensity to sign a BIT generated in Model (1) into our main estimations, Models (2) and (3).

Models (2) and (3) show strong support for our argument. First, to examine independent effects of our key explanatory variables, model (2) includes all the variables except the interaction term between an exporter's democratic accountability and an importer's PR protection. Model (2) shows that although a democratically accountable exporter has a slight preference for longer BITs, an importer's PR protection alone is not associated with

[67] Staiger and Stock, 1997.

BIT duration. In other words, having strong PR protection does not necessarily render shorter BITs.

However, when importers with strong PR protection negotiate with democratically accountable exporters, a completely different picture emerges, as shown in Model (3). The interaction term between exporter's (P 1) democratic accountability and importer's (P 2) PR protection is statistically significant at 5% level in line with our predictions. For easier interpretation of the results, Figure 3 shows the marginal effect of one standard deviation increase in importer's PR protection on effective commitment period across different levels of exporter's democratic accountability. The results suggest that strong PR protection in importers are associated with shorter BITs only when exporters are democratically accountable. In other words, exporters are willing to sign shorter BITs when they are concerned about their own domestic policy preferences *and* when their partner importers present strong PR protection.

Together, model (3) in Table 4 and Figure 3 suggest strong conditional effects of importer's PR protection on BIT duration. Democratically accountable exporters push for longer BITs when their importing partner has low PR protection as shown in the positive and statistically significant coefficient of *Dem. Accountability (P1)* in Model (3). This is because they need to protect their MNCs. However, democratically accountable exporters are willing to sign shorter BITs when importers show strong PR protection because they want to preserve room for the uncertainty regarding their future policy preferences .

Controls mostly show expected results. More ISDS experiences for both capital exporters and importers result in shorter BITs, which is intuitive given that states learn about the costs of BITs through ISDS experiences as a respondent. Stronger bureaucratic capacity for capital exporters and importers are associated with longer commitment periods. We conjecture that this is because capable bureaucrats make BIT compliance easier such that they have less to fear from ISDS backfiring, and therefore they are willing to commit to longer period. BIT's substantive terms, such as automatic renewal clause and

Table 4: Democratic accountability, PR protection, and BIT duration

	(1)	(2)	(3)
	1st stage	2nd stage	
Dem. Accountability (P1)	0.0324	0.346*	1.559***
	(0.0231)	(0.186)	(0.514)
PR protection (P2)	0.557***	-1.892	6.117*
	(0.144)	(1.237)	(3.394)
Dem. Accountability (P1) X PR protection (P2)	-0.0736**		-1.680**
	(0.0301)		(0.663)
FDI inflow (% GDP) (P1)	-0.00244*	-0.0134	-0.0168
	(0.00147)	(0.0270)	(0.0269)
FDI inflow (% GDP) (P2)	-0.000812	-0.00545	-0.00706
	(0.000932)	(0.0220)	(0.0220)
Trade (%GDP) (P1)	-0.00111***	0.00369	0.00183
	(0.000233)	(0.00566)	(0.00570)
Trade (%GDP) (P2)	-0.00131***	0.00498	0.00302
	(0.000236)	(0.00597)	(0.00601)
Cum. ISDS respondent (P1)	-0.0139***	-0.262***	-0.268***
	(0.00246)	(0.0789)	(0.0788)
Cum. ISDS respondent (P2)	-0.0232***	-0.191	-0.220*
	(0.00460)	(0.117)	(0.118)
Bureaucratic quality (P1)	0.0893***	1.483***	1.600***
	(0.0123)	(0.403)	(0.405)
Bureaucratic quality (P2)	0.0440***	0.459*	0.459*
	(0.0104)	(0.239)	(0.239)
Government stability (P1)	0.0204***	0.215	0.245*
	(0.00606)	(0.130)	(0.131)
Government stability (P2)	0.0519***	-0.0548	0.0273
	(0.00557)	(0.179)	(0.181)
GDP (P1) X Avg. signed BIT in neighbors (P2)	0.0000162***		
	(0.00000477)		
Year of signature		0.0512	0.0445
		(0.0420)	(0.0420)
Automatic renewal clause		0.00229***	0.00227***
		(0.000514)	(0.000513)
Security exception clause		0.427	0.435
		(0.662)	(0.661)
Public health exception clause		-0.883	-0.781
		(0.910)	(0.909)
Other exception clause		2.153***	2.092***
		(0.794)	(0.793)
Prudential exception clause		-5.192***	-5.135***
		(1.151)	(1.149)
Termination window		0.647	0.664
		(0.508)	(0.507)
Selection bias		-0.158	1.120
		(2.755)	(2.795)
Constant	-3.366***	-86.45	-83.26
	(0.115)	(84.78)	(84.62)
N	194163	1318	1318

Standard errors in parentheses, * p <.1, ** p <.05, *** p<.01

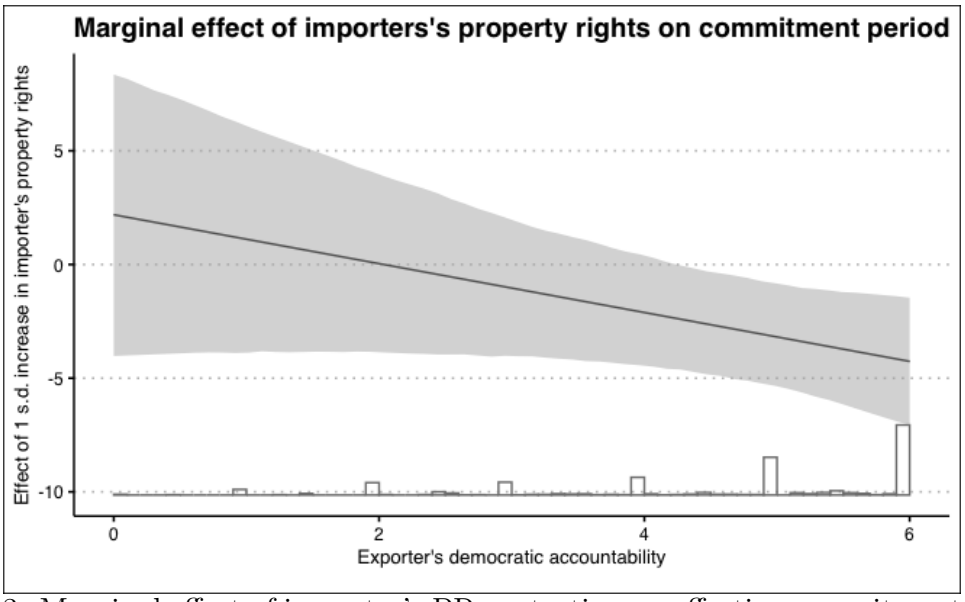

Figure 3: Marginal effect of importer's PR protection on effective commitment period

exception clauses, also affect BIT duration.

7 Robustness checks and empirical extensions

We perform additional statistical analyses to increase confidence in our results and gain further insights on termination clauses. First, we note that democratic accountability and PR protection are both strongly correlated with regime type. In order to test if the finding is driven by regime type rather than the specific aspects of democratic accountability and PR protection, we control for regime type by adding polity2 scores of both signatory states. The findings on democratic accountability and PR protection remain robust and statistically significant (p=*0.011*).

Second, we test an alternative mechanism that democratically accountable governments cannot push for long BITs when an importer is economically strong. In fact, strong PR protection may be correlated with economic development in a country. To account for this alternative idea, we control for an importer's GDP per capita. We also add GDP gap between exporter and importer to control for negotiation power dynamics. Even with these

controls, our main results remain strong and robust. We also interact GDP gap with an exporter's democratic accountability, and find that the interaction term does not achieve statistical significance at the traditional level. The evidence altogether squarely rejects the alternative mechanism.

Next, we employ different *types* of BITs exit clauses as an alternative measure of dependent variable. Instead of effective commitment period, we use different types of exit clauses that we describe earlier: *Anytime, After initial commitment, and Termination window* as shown in Table 3. Coding *Anytime* to be the most flexible one, *After initial commitment* as the second most flexible one, *Termination window* as the least flexible one, we run ordinal logit models with the same set of explanatory and control variables. Consistent with our expectations, BITs with democratically accountable exporter and strong PR protecting importer are associated with more flexible *types* of exit clauses at statistically significant level (p=*0.017*).

Finally, as an empirical exploration, we examine the relationship between BIT duration and its substantive flexibility. Our theory focuses on the uncertainty regarding policy preferences for *terminating* BITs in democratically accountable exporters. Although the idea may have indirect implications for BIT's substantive flexibility, we believe the link between democratically accountability and BIT's substantive flexibility to be less clear. For instance, in case public turns against BITs in the future, a government would find it a more effective response to terminate the BITs rather than to strive for substantive flexibility within the terms of the BITs. To explore the relationship between BIT duration and its substantive flexibility, we borrow a measure of BITs' substantive flexibility – state regulatory space (SRS) – constructed by Thompson et al., 2019. They define SRS as the "ability of governments to freely legislate and implement regulations in given public policy domains."[68] An SRS of 0 indicates less policy space, while SRS of 1 indicates more policy space. Figure 4 shows a scatter-plot of SRS and effective commitment period and shows that BITs

[68]Thompson et al., 2019, p. 861.

with higher SRS are more likely to include shorter commitment period. We also replicate our main analysis replacing the dependent variable with SRS but do not find significant results, suggesting that democratic accountability and PR protection are not the primary consideration for *substantive* flexibility of BITs.

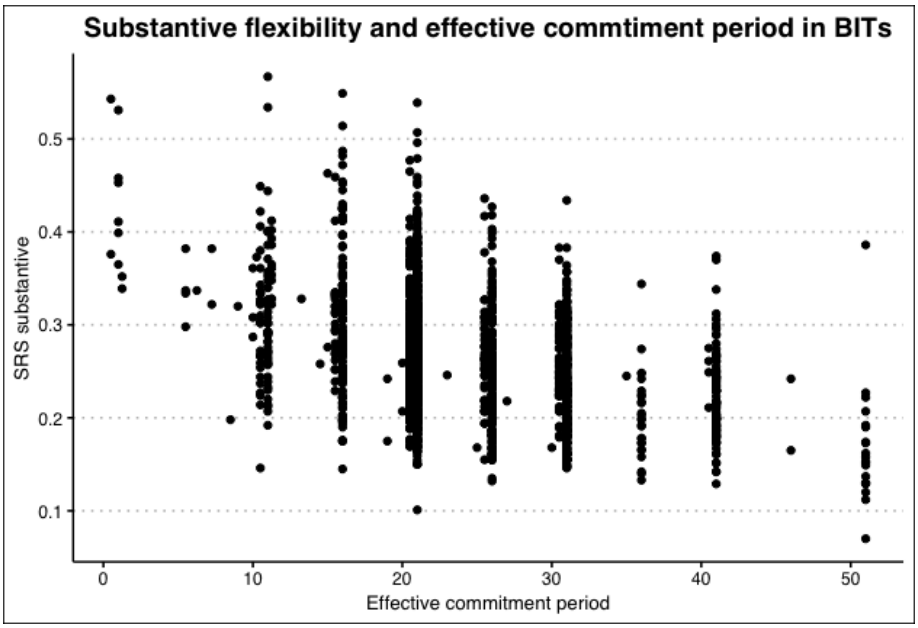

Figure 4: Relationship between substantive flexibility and termination flexibility

8 Conclusion

In this paper, we have presented the first theoretical and empirical study investigating what influences BITs' duration. We argue that due to the uncertainties about future domestic political preferences, capital exporters do not always demand long commitment periods. They face a trade-off between constraining importers and preserving flexibility, and the trade-off is more pressing for democratically accountable exporters. We further argue that these exporters navigate the trade-off by adjusting their demands based on the credibility of property rights protection (PR protection) of their partner states. They demand exit clauses that require longer commitment period when dealing with importers with weak PR

protection, while allowing shorter BITs for importers with strong PR protection. Coding effective commitment period for 2,536 BITs, we find supportive evidence that (1) democratically accountable exporters sign shorter commitment BITs when dealing with countries that have good protection of property rights.

This study advances our understanding of international institutions in several ways. First, it explores exit clauses – an under-explored dimension – to scholarly attention with an original dataset. The new dataset on BITs' effective commitment periods should be a helpful resource for future studies that explore the dynamics of BIT negotiation as well as termination. Additionally, we contribute to the discussion on the rational design of international institutions by showing that states' preferences for international agreement's duration differ based on the credibility of their partner state and their domestic political uncertainty. More broadly, our framework suggests that democratically accountable governments face stronger trade-off for international cooperation, and they thus should be more attentive to termination clauses than those with little democratic accountability.

Our findings generate implications for the future trajectory of the international investment treaty regime. As the controversy around BITs gets heightened, states should increasingly prefer BITs with shorter commitment periods. However, easy termination clauses such as short sunset clauses lead to weaker investor protection, undermining one of the initial purposes of the regime, and highlighting the importance of rethinking the purpose of global governance of foreign investments.

Finally, our argument is specific to BITs; however, the core ideas could travel beyond the BIT regime. The trade-off between constraining partner states and preserving policy flexibility may well be present in various international cooperation problems that involve substantial domestic political uncertainty as well as credible commitment problems. Future studies could examine trade and environmental treaties and investigate how states with greater leverage at the time of signing, especially democracies, adjust termination clauses based on partner states and their own domestic needs for flexibility. In the issues that

involve less uncertainty about domestic preferences, the trade-off may be less pressing. For example, for security alliances, where public preferences are less likely to fluctuate over time, democratically accountable governments may not be any more likely to be attentive to termination clauses than others.

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Appendix

Table A1: Summary Statistics

Statistic	N	Mean	St. Dev.	Min	Max
Termination flexibility	2,528	1.62	0.55	1	3
Anytime	2,528	0.03	0.18	0	1
After initial commitment	2,528	0.55	0.50	0	1
Termination window	2,528	0.42	0.49	0	1
Effective commitment (years)	2,523	23.78	6.84	0.50	51.00
Democratic accountability (Party 1)	2,149	4.66	1.51	0	6
PR protection (Party 2)	2,245	0.71	0.21	0.032	0.966
Year of signature	2,535	1,996.78	9.20	1,959	2,018
Initial term	2,536	37.60	159.65	1	999
Automatic renewal	2,505	627.04	479.64	1	999
Unilateral termination clause	2,535	0.99	0.11	0	1
Amendment	2,535	0.22	0.42	0	1
Sunset clause	2,516	12.21	4.29	0	20
Health/environment exception	2,536	0.08	0.27	0	1
Security exception	2,536	0.14	0.35	0	1
Other exception	2,536	0.08	0.27	0	1
Prudential carveout	2,536	0.03	0.17	0	1
ISDS clause	2,536	0.95	0.21	0	1
SSDS clause	2,536	1.00	0.06	0	1
FDI inflows of GDP (Party 1)	2,245	3.40	6.94	−7.32	120.59
FDI inflows of GDP (Party 2)	2,184	3.76	7.72	−37.15	249.11
Trade of GDP (Party1)	2,258	68.52	45.30	0.37	425.36
Trade of GDP (Party 2)	2,179	81.12	45.41	0.18	437.33
Cumulative ISDS experience (Party 1)	2,291	0.92	3.27	0	59
Cumulative ISDS experience (Party 2)	2,272	0.45	1.68	0	23
Government stability (Party 1)	2,149	8.21	1.78	3.17	12.00
Government stability (Party 2)	1,693	8.20	1.96	2.00	11.58
Democracy (Party 1) (FH+Polity2)	2,236	7.68	3.06	0.00	10.00
Democracy (Party 2) (FH+Polity2)	2,178	5.67	3.09	0.00	10.00
Democracy (Party1) Polity2	2,246	6.09	6.14	−10	10
Democracy (Party2) Polity2	2,083	2.05	6.79	−10	10
Bureaucratic quality (Party 1)	2,149	3.01	0.95	0.00	4.00
Bureaucratic quality (Party 2)	1,693	2.00	0.90	0.00	4.00

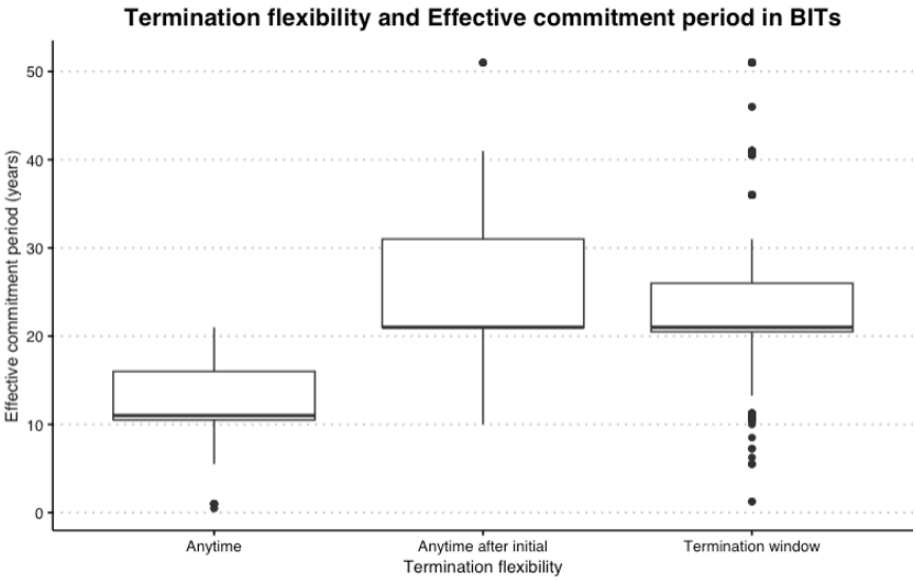

Figure A1: Effective commitment period in BITs

A Selection into sample

We execute a Heckman Selection Model model to control for the propensity for country-dyads to sign a BIT, which consists of two-steps. First, we estimate the likelihood of signing a BIT in a given year for each country-dyad with a panel dataset for all country dyads-years. Second, we include the the propensity to sign a BIT for each dyad in our main estimation as a control.

In the first stage model, we employ the following *interaction term* as our instrumental variable that affects selection into our sample but not our main outcome of interest, effective commitment years: GDP of capital exporter (home country) X average number of new BITs signed by neighboring countries for

a capital importer (host country) in a given year. The rationale behind this instrument is that wealthier capital exporters are more attractive as BIT partners due to large potential investors, while they also tend to advocate for BITs to protect their property rights abroad. At the same time, capital importers face increasing competitive pressures as neighboring countries sign new BITs. We theorize that the two factors have positive synergies, leading to a higher likelihood of signing a BIT between the two parties. Importantly, we believe that the interaction term plausibly predicts selection into the sample without influencing the outcome except through the signing of a BIT. For the exclusion restriction to be violated, the exporter's preference for termination clauses should vary by its GDP *and* the link between GDP and termination clauses should depend on a capital importer's neighboring countries' BITs, which is unlikely.

To calculate the tendency to sign a BIT between a country-dyad, we build a country-dyad panel dataset, which includes all country-dyads from 1959, when the first BIT was signed, to 2018.[69] To construct the instrument, we follow Bodea and Ye,

[69]To identify the hypothetical capital exporter and importer in the panel dataset for all dyad years, we identify the country with larger GDP on the year the first BIT between the countries is signed. For dyads that never sign a BIT, the potential capital exporter is the country with larger GDP in 1997, the median year of BIT signing globally. Dyad-years which cannot be ordered due to missing data are excluded from the dataset. In the panel data, 18.5% of dyads sign at least one BIT at some point between 1959-2018.

2020 and define neighboring countries using the Correlates of War coding for type 1 or 2 contiguity, which includes countries that share a land border or are separated by 12 miles of water or less. Finally, we interact the average number of new BITs for capital importer's neighbors with capital exporter's GDP, and include the inverse mills ratio of the predicted chances of signing a BIT in our main estimation as another control.

B Interviews

We conducted interviews with policymakers and private actors who had rich experiences in working on BIT negotiations.[70] To get the appropriate interviewee pool, we targeted the policymakers and private actors who were invited to speak at the 8th World Investment Forum in Abu Dhabi, United Arab Emirates. From the whole speaker list, we chose 28 potential interviewees based on their expertise and experience in working on BITs. Out of 28 potential interviewees, we managed to acquire contacts for 15 people. When we contacted via emails and LinkedIn messages, 7 out of 15 replied and agreed to talk to us for interviews. Unfortunately, 1 out of 7 agreed participants had to leave out for scheduling conflicts. As a result, we conducted 6 interviews in total as shown in Table A2. Fortunately, our interviewees, albeit small in number, do cover key variations in our explanatory variables, which allows us to get insights for our mechanism.

[70] We acquired an IRB exemption from New York University Abu Dhabi in 2023 to conduct the interviews.

Table A2: Interview information

#	Role	Date	Mode
A	Government official (democracy, high-income economy)	Nov 3, 2023	Online
B	Private consultant for MNCs and governments	Oct 19, 2023	In-person
C	International bureaucrat working on BITs	Oct 18, 2023	In-person
D	Government official (non-democracy, high-income economy)	Oct 19, 2023	In-person
E	Government official (democracy, low-income economy)	Oct 19, 2023	In-person
F	Government official (democracy, low-income economy)	Oct 18, 2023	In-person