Never Let Me Go:
Exit Clauses in International Agreements

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Abstract

Growing literature examines when states exit international institutions and why. International agreements, however, differ in how easy it is for signatory states to withdraw from them. Why do some states sign treaties that are difficult to terminate, while others prefer treaties that are easy to withdraw from? We investigate this question in the context of international investment agreements, exploiting variation in the flexibility of their exit clauses. We argue that the strictness of exit clauses depends on the extent of domestic-level uncertainty and the severity of the international-level commitment problem. Capital exporting countries face a dilemma: they have to balance between constraining capital importers and maintaining flexibility for themselves. This dilemma is particularly strong for democracies where uncertainty for preferred policy is higher. They resolve the dilemma by adjusting their demands for treaty-strictness based on the commitment problem of their partner states, demanding exit clauses that require longer commitment period when dealing with autocratic importers. To test our argument, we construct an original dataset of termination features in over 2,500 international investment treaties, conduct elite interviews with treaty negotiators, and find supporting evidence for our theory. This study contributes to the understanding of durability in international institutions, as well as negotiations over economic agreements.

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1 Introduction

In recent years, the world has seen a rising backlash against international institutions leading to member states' withdrawals from various institutions. International institutions, however, 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. Withdrawing from 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 conduct 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 withdraw within the first three years of its start date, with at least 12-months notice period. The US government later clarified that it would abide by the 4-year exit process, while adhering to its commitment under the Agreement during the process. Thus, the US withdrawal took effect only on November 4, 2020, one day after the 2020 US Presidential election. As President-elect Joe Biden vowed to rejoin the Paris Agreement on his first day in office, the US was out from the Paris Agreement only for 107 days. The exit clauses in the Paris Agreement essentially muted the real impact of US withdrawal on the Agreement.

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.[2] Despite the extensive literature that has explored the rationales behind substantive flexibility[3] and informality of international institutions,[4] we lack understanding of how long states intend to keep agreed-on terms in place. 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 by forming the primary international regime governing the relations between foreign investors and host governments provide an excellent context in which to study exit clauses. Capital exporting countries (home country) use BITs to protect their firms from unfair treatments and expropriation by capital importing governments (host country). Although capital importing states used to sign BITs enthusiastically to attract foreign direct investment, many of them have learned the costs of BITs when foreign investors use BITs to claim compensation from the host government, sometimes amounting to billions of US dollars.[5] Amidst the backlash against international investment dispute

[1] We use 'exit', 'termination', and 'withdraw' interchangeably throughout the paper.

[2] The distinction between the flexibility regarding the termination or redesign of an institution, and the flexibility within an existing institutional framework, have also been called transformative and adaptive flexibility respectively (Koremenos, Lipson, and Snidal 2001; Blake 2013).

[3] Rosendorff 2005; L. Helfer 2006; Koremenos 2016.

[4] Vabulas and Snidal 2013; Roger 2020; Roger and Rowan 2022.

[5] Poulsen and Aisbett 2013.

settlement (ISDS), termination of BITs has become increasingly common.[6] 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. Despite the political nature of exit decisions, states can only terminate BITs according to their exit clauses, making them highly policy-relevant.

We theorize that states' preferences over exit flexibility depend on two factors: domestic needs for policy flexibility and international needs for overcoming cooperation problems. We argue that capital exporters, who wield greater influence over the terms of BITs during negotiations, face a dilemma: on the one hand, they want to constrain capital importers by tightly tying importers' hands with regards to treatment of foreign investors.[7] On the other hand, because the terms of BITs apply equally to both signatory states, exporters need to judge how much flexibility, regulatory autonomy, and easy exit options they want to keep for *themselves*. Capital exporters might anticipate the possibility of themselves becoming capital importers in the future, especially as their partners economically develop.[8] They are also aware of the potential future changes in their domestic political environment that might shift with regards to demands for regulation, for example, to protect the environment and public health. Australia's policy to introduce plain cigarette packaging[9], and Germany's decision to phase out nuclear energy[10] are examples of regulation that have resulted in costly investment disputes. Therefore, capital exporters, especially democracies, aim to strike a balance between constraining importers and preserving exit flexibility for themselves.

We argue that democratic capital exporters resolve this dilemma by adjusting their behavior depending on the severity of the commitment problem of the capital importing partner. We suggest that capital importers' regime type in general - and property rights protections in particular - can explain how severe commitment problem the importer is experiencing. With complementary domestic institutions which tie a government's hands, democratic importers present a less severe commitment problem than autocratic importers.[11] Thus, if the importer is an autocratic regime, democratic exporters prioritize constraining them by demanding strict exit clauses, locking-in the importer for a longer period. Conversely, if the capital importer is a democracy, democratic exporters emphasize preserving flexibility for themselves by agreeing to relatively flexible exit clauses with a shorter commitment period. In contrast, autocratic capital exporters do not face a similar dilemma because they do not experience the same level of domestic uncertainty or likelihood of regulatory needs in the future. In addition, autocratic governments do not prioritize strong private investor protections via BITs, as they are generally opposed to legalization.[12]

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

[6] Waibel 2010; Peinhardt and Wellhausen 2016; Alschner 2022; Haftel and Thompson 2018; Thompson, Broude, and Haftel 2019; Huikuri 2023.

[7] Salacuse 1990; Fearon 1997.

[8] Governments preferences regarding BIT contents tend to change as their importer-exporter status shifts (Haftel, S. Y. Kim, and Bassan-Nygate 2021).

[9] Moehlecke 2020.

[10] Putter 2021.

[11] Jensen 2008; Rosendorff and Shin 2015; Moon 2015.

[12] Link and Haftel 2021.

BITs[13], we identify important variation in exit clauses. While some BITs can be terminated *anytime*, others allow for exit only *after an initial commitment period*, ranging from five years to multiple decades. Further, some treaties with the strictest termination provisions allow unilateral termination only during a *pre-specified termination window*, which, if missed, leads to an automatic renewal of the agreement.[14] Figure 1 shows the distribution of each exit clause category of signed BITs between 1959-2018. Taking into account the different exit categories, 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.

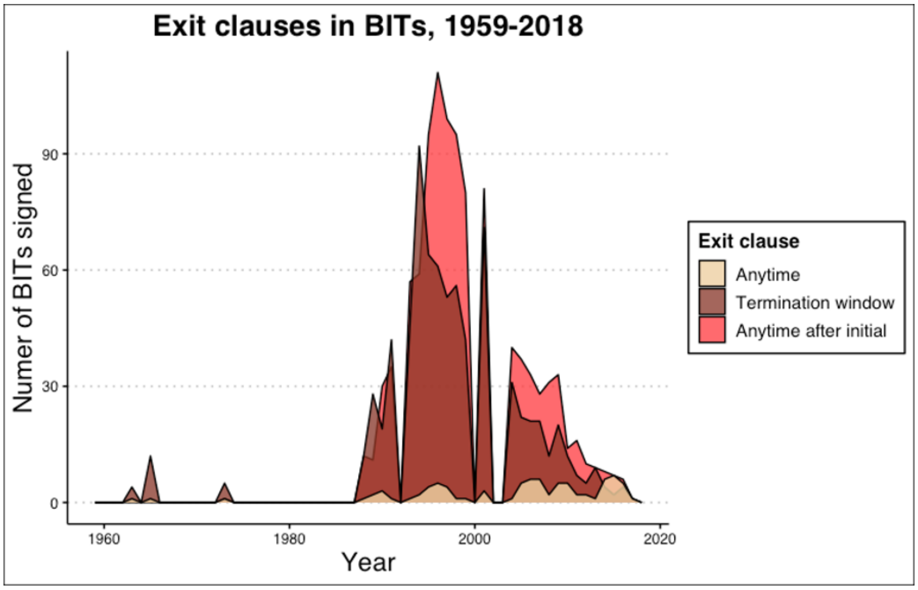

Figure 1: Variation in the flexibility of exit clauses in BITs, 1959-2018

Our empirical analysis lends consistent and robust evidence in support of our theoretical predictions. After accounting for factors suggested by the existing literature, including the substantive flexibility of the treaty, time-trend, country-specific factors, and selection bias in the treaty sample, we find that the lower the level of democracy in the capital importing state is, the longer the effective commitment period in the BITs. The effect is, however, not detectable for cases where the capital exporter is an autocracy. More direct measures for democratic accountability of the capital exporter and the level of property rights protections of the capital importer support our mechanism: the exporters' needs to account for domestic changes on the one hand, and the importers' credible commitments problems on the other, jointly determine termination flexibility in investment agreements. We further complement our statistical findings with evidence from elite interviews we conducted with BIT negotiators.[15]

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. The literature on BITs

[13]We thank Nemo Krueger and So Jeong Noh for excellent research assistance.
[14]This unique termination feature is also known as the tacit renewal clause.
[15]For information on interviews, see appendix.

has focused on dynamics at the international level, mostly between the global North and South. We bring in the domestic-level dynamics to explain preferences for BIT negotiations at the international-level.

Second, we engage with the rich literature on rational design of international institutions generally.[16] A consensus in past scholarship is that flexibility in an agreement makes cooperation more sustainable by providing room to reflect changing environments and uncertainty about the future.[17] Our findings add nuance to the well-established idea by showing that states' preferences over the price worth paying to resolve international cooperation problems differ. Although largely taken as a given in the wider literature, not all states prioritize international cooperation problems over domestic concerns to the same extent. We show that states' preferences over the design of international agreements are partly influenced by their domestic institutions. Termination flexibility is an outcome determined jointly by concerns regarding a partner state's commitments as well as their own priorities for flexibility.

Finally, we contribute to the growing literature on exits from international institutions. Recent study finds that democratic countries are more prone to withdraw from intergovernmental organizations.[18] Our findings that democracies face stronger pressures to demand easier exit clauses extend the literature by showing that democracies are, in fact, considering their termination possibilities from the onset of an agreement negotiation. In other words, democracies are more likely to sign agreements with flexible exit clauses, and they are more likely to withdraw from them than their autocratic counterparts. Amidst backlash against global governance in Western democracies,[19] and autocratization of international organizations,[20] we contribute to the discussion on the likely future trajectory of liberal international cooperation.

2 Exit flexibility in international agreements

The study of international agreements has investigated extensively why they vary in the extent to which they impose policy constraints on state sovereignty. For example, with regards to investment agreements, leaders with longer time horizons sign BITs with less binding provisions to preserve flexibility in case of future changes in economic and political circumstances.[21] States are also willing to accept more binding BIT conditions during worse economic conditions to facilitate inward FDI,[22] and prefer stricter investor-state dispute settlement (ISDS) provisions when they have powerful domestic interest groups preferring strong investment protections.[23] If more substantive flexibility is included in the agreement instead, governments have more room to maneuver within the bounds of the agreement without fundamentally changing it, for example by relying on pre-designed escape

[16] Koremenos, Lipson, and Snidal 2001.
[17] Rosendorff and Milner 2001; Koremenos 2016.
[18] Borzyskowski and Vabulas 2019.
[19] Walter 2021.
[20] Maria J. Debre 2022; Cottiero and Haggard 2023; Qian, Vreeland, and Zhao 2023.
[21] Blake 2013.
[22] Simmons 2014.
[23] Allee and Peinhardt 2014.

clauses.[24]

In contrast to substantive flexibility, exit flexibility of an agreement determines how easy it is to completely 'exit' from treaty-based cooperation.[25] While variation in substantive flexibility indicates how easily a state can divert from the rules of the agreement, flexibility in exit clauses reveals how long a state is stuck in the treaty. In other words, signatory states are locked in to the agreed-upon rules, regardless of the overall flexibility of the agreement, if the agreement has hard-to-escape termination clauses. Preferences for exit flexibility, thus, should not necessarily reflect states' preferences for substantive flexibility. Rather, it should be a function of how certain a state is about its preferences in the level of substantive flexibility. Even when a state finds the general level of flexibility in a treaty optimal at t, it still demands easy exit clauses if it is unsure about its preferred flexibility at $t+1$.

In addition to being theoretically distinct, exit flexibility is policy-relevant, not necessarily because BITs with easy termination clauses get terminated more often, but because illegal exits are costly and exit clauses affect the timing of exits once the exit decisions are made. Attempts of unlawful exit may invoke public backlash because the mass public, in general, does not approve breaking international law.[26] Not adhering to international agreements can also make the government appear unreliable in future interactions. Furthermore, when an agreement is not exited according to its provisions, the exit does not become legally effective. For example, if BITs are not terminated according to the relevant exit clauses, the risk of legalized investment disputes remains.[27] For example, in September 2012, South Africa announced that it would not renew its BIT with Belgium-Luxembourg which was set to expire in March 2013. The pre-designed treaty duration determined when South Africa could effectively exit the treaty, irrespective of when the political decision to withdraw from the BIT was made.

Although recent high-profile events, such as Brexit and the US withdrawal from UNESCO and Paris Agreement, have prompted scholarly attention to exits from international institutions, scholarly attention on *exit clauses* has been limited. In many studies, exit clauses are viewed as an insurance against future uncertainty, whereby governments want to secure the possibility to abandon the agreement in the future legally.[28] For instance, Koremenos and Nau (2010) argue that treaties that address an underlying "commitment problem" are more likely to have longer waiting periods than treaties that do not have such a goal because an early withdrawal by one state reduces the payoffs to the remaining states in the agreement. While valuable, the insurance perspectives provide limited explanations on why the same government would want different exit flexibility with different

[24] Rosendorff and Milner 2001.

[25] Although exit from an agreement can constitute a stage in a longer negotiation process (Verdier 2021), termination of an agreement generates costs distinct from simply relying on an in-built escape clauses, designed to allow temporary deviation from the cooperative agreement (Rosendorff and Milner 2001).

[26] Dill and Schubiger 2021; Morse and Pratt 2022.

[27] To prevent the cost of illegal exits, NGOs and international organizations have held workshops and published reports on the best practices to prepare states for carrying out BIT termination lawfully. UNCTAD and International Institute for Sustainable Development (IISD), an independent think tank, holds entire workshops and publishes reports for governments on how to terminate BIT properly. See, for example, at https://www.iisd.org/system/files/publications/terminating-treaty-best-practices-en.pdf.

[28] L. R. Helfer 2005; Koremenos and Nau 2010; Koremenos 2016.

partners within the same issue area. The existing explanations, thus, should be complemented with an understanding of how governments balance the needs to resolve international commitment problems with their other concerns, namely their domestic political environment. Recently, empirical research has started taking exit clauses into account in the study of IO survival[29], demonstrating their importance for understanding life cycles of international institutions.

To extend the functionalist perspective, we adopt insights from literature on rational institutional design and exit from IOs. This literature suggests a few factors that could help us explain varying preferences for flexibility in exit clauses. First, domestic political environments, especially regime type, have been established as a critical factor that shapes a state's preferences for concluding and exiting international agreements. Democracies are more cooperative commercially.[30] At the same time, depth and flexibility of cooperation go hand in hand.[31] Thus, while democracies want more cooperative agreements, they might also have stronger preferences for easy exit clauses. Moreover, democracies are more likely to exit from intergovernmental organizations than non-democracies.[32] Thus, although there is little direct investigation into the role of regime type in exit clauses, regime type is a potentially important explanatory factor because democratic governments are more likely to care about the flexibility in treaty termination than autocratic governments.

Another key driver of institutional design that literature has identified is the disparity in power among signatory states. While all states join an institution expecting some kinds of benefits, not all of them have equal power to determine the institution's rules.[33] In the case of BITs, patterns in BIT strictness are attributed to the power politics that gives the advanced partner more leverage during negotiationsAllee and Peinhardt 2014. Indeed, a large body of scholarship on the origins of the BIT regime agrees that it was major capital exporting states in Europe and later the USA that pushed for strong investor protection in the form of BITs. In contrast, capital importing countries had to accept BITs as they were competing for foreign capital: by agreeing to international treaties that supplemented their domestic institutions for securing foreign investors' property rights, they could make themselves more attractive as investment destinations.[34] Whether a government anticipates being a capital exporter or importer is therefore likely an important factor shaping state's preferences also over BITs' exit clauses. In the following section, we elaborate our theoretical framework that focuses on the regime type and capital importer-exporter roles of states.

[29] Maria Josepha Debre and Dijkstra 2021; Dassler, Heinkelmann-Wild, and Huysmans 2022.
[30] Mansfield, Milner, and Rosendorff 2002.
[31] Rosendorff 2005; Baccini, Dür, and Elsig 2015.
[32] Borzyskowski and Vabulas 2019.
[33] Gruber 2000; Koremenos, Lipson, and Snidal 2001.
[34] Salacuse 1990; Salacuse and Sullivan 2005; Elkins, Guzman, and Simmons 2006; Allee and Peinhardt 2010; Allee and Peinhardt 2014; Tobin and Rose-Ackerman 2011.

3 The political economy of states' preferences in exit flexibility

3.1 The benefits and the costs of BIT termination

To understand states' preferences over BIT termination flexibility, it is necessary to first examine the benefits and costs associated with exiting a BIT. We argue that BIT termination can generate both international and domestic benefits and costs (Table 1), which in turn influence governments' preferences over the design of termination clauses. At the international level, the biggest benefit of a BIT termination is to eliminate the threats of ISDS from any new investors from a treaty partner state. By exiting the cooperative agreement, the terminating state aims to eliminate its exposure to costly ISDS, which has been found to be the primary concern for governments terminating and renegotiating their investment treaties.[35]

However, terminating BITs results in international costs which include financial, reputational, and diplomatic costs.[36] Termination sends hostile signals to international investors, who regularly rely on cues to gain information about the investment environment in host countries.[37] If signing BITs signals investor-friendliness, BIT terminations can signal hostility and create uncertainty over a government's intentions towards investors. Recent empirical findings confirm that investors react to BIT terminations by reducing and rerouting FDI into the country.[38] Furthermore, a termination of an international agreement attracts global attention, amplifying the negative signals beyond the market and generating potential diplomatic consequences. Fundamentally, termination can be interpreted as a signal of unreliability and a defection from international cooperation, hindering ratification of other international agreements in the future[39], which can explain why exit from the controversial regime continues to be a rare occurrence.

From the domestic political economy perspective, on the other hand, terminating BITs can entail benefits in the form of electoral gains from newly increased state regulatory space (SRS),[40] allowing the government to better react to the domestic demands. Investors have increasingly brought claims against democratic governments when their investments have been negatively affected by the governments' efforts to regulate for the benefit of the society. Examples of such "indirect expropriation" claims have resulted from government policies aiming to facilitate the green energy transition, reduction of coal-based energy sources, and phase out nuclear energy.[41] Terminating a BIT

[35] Haftel and Thompson 2018; Huikuri 2023. The legal questions surrounding continuing liability for governments under BITs following unilateral termination are subject to continued debate (Harrison 2012). Regardless, limiting the risk of ISDS has been the main motivator for states when exiting their investment agreements, increasingly also under the Energy Charter Treaty (Cima 2021).

[36] Note that when states want to get rid of their BITs, unilateral termination is not the only option. Governments could attempt renegotiating or mutually terminating the BIT in agreement with the partner state, an approach adopted by EU-member states. In fact, unilateral termination of a BIT is politically much more costly than reliance on such cooperative adjustment of the agreement.

[37] Brooks, Cunha, and Mosley 2015; Shim 2022.

[38] Hartmann and Spruk 2022.

[39] Schmidt 2023.

[40] Broude, Haftel, and Thompson 2017.

[41] Pelc 2017.

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

lifts constraints on such regulatory activities. Governments can leverage their increased regulatory space and extended sovereignty to please their selectorates.[42] 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 campaigning and the initiation of BIT withdrawal process won him a super-majority in parliament.[43]

There are also domestic costs relating to BIT termination. Any domestic interest groups who used to benefit from the BITs may turn against the government following terminations: MNCs in particular lose rights and protections they enjoyed when their home government was part of the regime, and hence are expected to generally be pro-BITs.[44] In addition, domestic audiences can have varying preferences when their government decides to exit from international cooperation, which likely influence governmental decision-making at the international level.[45]

The kinds of costs and benefits generated from BIT termination depend on whether the state imports or exports capital in relation to its treaty partner state, as well as its regime type. Because only capital importers face ISDS threats to begin with, BIT termination results in such international benefits only when the state hosts foreign investment. On the contrary, if a signatory state expects to be the main capital exporter in the future, eliminating ISDS can be more costly than it is beneficial: investors and MNCs lose their treaty protections for new investments after BIT termination (domestic cost). For democracies, the democratic costs and benefits are more pressing, while the international-level considerations are likely to be of more interest for autocrats, which we elaborate below. In sum, states' capital importer-exporter dynamics and regime types are necessary to fully understand their preferences for BIT termination clauses.

3.2 BIT termination and the capital exporter's dilemma

Studies on the terms of BITs agree that capital exporters' preferences dominate BIT design.[46] Because of competition for capital among importers and MNCs being mobile, capital exporters

[42] Mesquita et al. 2005.
[43] Calvert 2018.
[44] High-income, democratic governments tend to be sensitive to business interests, and mention it as the main reason for why the reform of the BIT regime has been slow. Interview A.
[45] Mo 1994; Jurado, León, and Walter 2022.
[46] In practice, most countries both export and import at least some capital vis-a-vis their BIT partners. However, in most BITs, it is clear which state is exporting more than importing. In the literature, "exporters" refers to the relative exporters. See for example S. Kim 2023.

yield greater leverage over importers in shaping the terms of BITs.[47] [48] Therefore, understanding the capital exporters' preferences over exit flexibility in BITs is vital for understanding the treaty designs.

We argue that capital exporters face a dilemma when designing BITs: they want stringent BITs to constrain capital importers, but they also desire BITs that do not "bite" themselves. The dilemma arises from two sources of uncertainty about the future: 1.) the potential changes in exporter-importer roles vis-à-vis the partner state, and 2.) domestic political uncertainty. Because of such uncertainties, capital exporters may want to keep their exit options open, even though the benefits of BIT termination (e.g., removing ISDS threats) might not be relevant at the time of signing the BIT.

First, exporters recognize the possibility that their exporter-importer status might reverse in the future. For example, emerging market economies and other high-income developing countries such as Brazil, South Africa, and South Korea that previously had strong host country interests have increasingly started sending FDI as a result of their economic development.[49] States' preferences regarding contents of their investment agreements tend to change when they shift from a net capital importer status to a net capital exporter status, as they start prioritizing stronger investor protections over maintaining regulatory space.[50] Likewise, previously mainly capital exporting governments in Europe have also become targets of more ISDS disputes from foreign investors, highlighting the need to update their former BIT templates: the Netherlands, once promoting strict BITs protecting investor rights, has now updated its negotiation template to allow more regulation of foreign investments.[51] As a representative from a developed economy told us, "we are now at the turning point where countries realize they could be importers in the future. Even the US in relations with Canada! [...] The line between importers and exporters is blurring and getting more complicated."[52]

Secondly, capital exporters face uncertainty about their future domestic political environment. In particular, uncertainty regarding the core constituents and support bases the governments must satisfy to stay in office in the future is fluid. In democracies, an executive's support bases may vary from election to election. Given that BITs typically last for several decades, democratic parties might well dissolve and form alliances over the BIT duration. On the other hand, autocratic leaders tend to have longer time-horizons because of more rigid in support bases. In a military dictatorship,

[47] Salacuse 1990; Salacuse and Sullivan 2005; Elkins, Guzman, and Simmons 2006; Allee and Peinhardt 2010; Allee and Peinhardt 2014; Tobin and Rose-Ackerman 2011.

[48] 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 compared to their richer counterparts, but no empirical evidence exists on whether resource rich importers can shape the treaty terms in their favor. Some strong capital importers, such as China, are more likely to form state-investor contracts with specific firms instead of BITs, potentially because it is politically undesirable to negotiate BITs with powerful capital exporting governments (Echeverría 2023).

[49] Indeed, eight out of the top twenty capital exporting countries in 2017 were developing and transition economies. These are China, Hong Kong, Russia, South Korea, Singapore, Thailand, the United Arab Emirates, and Taiwan.UNCTAD 2018.

[50] Haftel, S. Y. Kim, and Bassan-Nygate 2021.

[51] Paulsson 2020.

[52] Interview A

for example, the executives do and will have to serve military interests to survive in the future. Studies, indeed, find that leaders prefer less binding BITs when they have longer time horizon and therefore face larger uncertainty about future changes.[53] Thus, even though signing a BIT satisfies some interest groups at the moment of signing, it is important for governments to keep the capacity to terminate the agreement in case it has to satisfy different groups in the future.

Because of these two types of uncertainty, exporters need to balance between promoting investor protections and mitigating impact from uncertainties. Because the level of domestic uncertainty is greater in democracies than autocracies, democratic exporters are particularly cautious about striking this balance in their BITs.

Democratic exporters

Democratic exporters resolve the exporter's dilemma differently depending on their capital importing partner: when partners present severe commitment problems, democratic exporters prioritize constraining importers over preserving policy flexibility for themselves, while they are willing to agree with flexible exit clauses when partners experience less severe commitment problems.

The severity of a commitment problem of the capital importer can, in the first instance, be explained by its regime type. The scholarship on democratic credibility has long wrestled with the tension generated by democratic institutions on international cooperation. Democracies must remain responsive to public opinion and the dynamics of electoral competition, which raises questions about the credibility of democracies' international commitments.[54] However, democracies also possess domestic institutions such as competitive elections, independent judiciaries, and larger number of veto players that generate policy stability, making their international commitments more credible.[55] We posit that although the characteristics of democracies create room for policy changes, the various stability- and property rights-boosting institutions make democracies fundamentally more credible in their commitments to guaranteeing foreign investors property rights.

Executives in autocracies are often viewed as riskier with regards to direct expropriation, as well as other arbitrary or discriminate acts against investors.[56] Of the ISDS claims filed between 1993 and 2017, autocracies are twice more likely to be sued for direct expropriation (19%) than democracies (10%).[57] After all, instances such as the nationalization of the Suez Canal by Nasser in 1959 and the sugar interests by Cuba in the 1960s motivated the establishment of early BITs,[58] highlighting their role in securing investor protections especially against autocratic regimes. In fact, this is precisely why non-democratic and non-transparent states value BITs the most: they want to import credibility through BITs as their domestic environment does not present them with complementary institutions.[59] Therefore, autocratic importers have a fundamentally more severe commitment problem than their democratic counterparts: while democracies are more likely to

[53] Blake 2013.
[54] Gartzke and Gleditsch 2004; Downes and Sechser 2012.
[55] Gaubatz 1996; Mansfield, Milner, and Rosendorff 2002; Lipson 2003; Fang and Owen 2011.
[56] Y. K. Kim 2017.
[57] Pelc 2017.
[58] Elkins, Guzman, and Simmons 2006.
[59] Rosendorff and Shin 2015; Arias, Hollyer, and Rosendorff 2018.

Table 2: Theoretical expectations based on exporter dilemma and importer commitment problem

		Commitment problem	
		High (Autocratic importers)	**Low** (Democratic importers)
Exporter's dilemma	**Severe** (Democratic exporters)	Hard exit clause	Easy exit clause
	Mild (Autocratic exporters)	*No discrimination*	

regulate, autocracies are more likely to directly expropriate.

From the perspective of the democratic exporter experiencing the dilemma, then, we would expect it to prioritize stricter termination flexibility in BITs to address autocratic credibility problems over maintaining flexibility. Capital exporters recognize 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."[60] This extends also to negotiations over exit clauses. As a policy expert states, "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".[61] In the absence of the most dire commitment problems manifested by autocratic importers, democratic exporters can be less strict, allowing for more flexible exit clauses with democratic BIT partners.

H1: Democratic exporters demand stricter termination flexibility in BITs with more autocratic importers.

Autocratic exporters

Because autocratic exporting governments suffer from a milder exporter's dilemma than democracies, their preferences with regards to exit clause design in BITs will also differ. First, they concern themselves less with the ability to regulate in the face of domestic public demands, while concerning themselves more with uncertainty about their future importer-exporter status. Although many democratic exporters have grown cautious about the trends to foster sustainable investment to meet climate change mitigation goals, autocratic exporters are notably less concerned about such matters: instead, they prioritize the importance to address uncertainties relating to their likelihood to increasingly export capital.[62] Such a development implies increasingly powerful business interest groups and MNCs to mature in autocracies. Because autocrats tend to not like private actors to have independent powers domestically or internationally, and because BITs enable investors to act in

[60] Interview A
[61] Interview C
[62] Interview D

ISDS independently, promoting such rights is not desirable for autocratic exporting governments.[63] Therefore, autocrats who envision to be capital exporters in the future are sceptical about providing independent powers to their private businesses.

Second, because autocratic governments are more shielded from domestic pressures to regulate, they can also make attractive partners for some investors. Autocracies tend to have less executive constraints, which enables them to strike deals flexibly with specific foreign investors, rather than rely on BITs to provide rights for all foreign investors from partner countries. For example, the United Arab Emirates and Saudi Arabia meet with prospective foreign investors individually for preliminary negotiations, and sometimes concludes state-investor contracts, which have also been prioritized by China in the past.[64] As a long-time consultant for autocratic governments in Middle East stated, "the process of solving an issue takes five minutes, if the government wants to", emphasizing the little practical use for BITs to resolve disputes with investors in the region.[65] Although nondemocratic high-income countries might want to sign BITs to signal alignment with global standards, if issues arise, foreign investors prefer to talk directly to the governments rather than initiate legal battles centered on BITs. Indeed, autocracies have been found to be more sceptical of legalistic international agreements more generally,[66] and they are less likely to rely on BIT provisions, preferring contracts and specific deals with individual investors or recipient governments instead. This way, autocracies can shield themselves from future uncertainty by facilitating relations between its businesses and foreign governments without delegating this to the investment treaty regime.

Finally, autocratic exporters do not necessarily view democratic importers to be more credible than nondemocratic importers due to conflicting policy priorities and different preferences in the ways to resolve conflicts. For example, nondemocratic high-income countries tend to disagree agree with European countries' emphasis on intellectual property regulations and green policies. They also prefer to resolve issues through state-state channels rather than through legalized agreements.[67] More credible democratic institutions for property rights protection in an importing country may therefore not be any more attractive for an autocratic exporter than another autocratic regime, more open to informal settlement of disputes. Therefore, because of the milder exporter's dilemma for autocracies, their reluctance to promote independent international legal powers to private actors, and governments' ability to flexibly settle disputes with and on behalf of companies, we would not expect them to discriminate between importing partner states to the same extent as democracies with regards to the design of exit clauses.

H2: Autocratic exporters do not discriminate between capital importing partners when negotiating termination flexibility in BITs.

Table 2 summarizes our theoretical expectations over the exit clauses as a function of severity of the capital exporter's dilemma and the commitment problem of the capital importer. We would expect

[63] Interview B
[64] Bourne 2013.
[65] Interview B
[66] Link and Haftel 2021.
[67] Interviews B and D

the dyadic logic to apply to BITs where the capital exporter is a democracy, whereas BITs with an autocratic exporter are not expected to differ systematically based on the regime type of their capital importing partner state.

4 Empirical strategy

To test our theoretical claims, 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.[68] 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.

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 identify three types of exit clauses. First, treaties that can be terminated *anytime* have the highest termination flexibility, as they can be exited unilaterally without time restrictions. For example, the Angola-South Africa (2005) BIT states clearly that "[e]ither party may, at any time, give notice of its intention to terminate this Agreement." (Art. 12.3)[69] The most flexible termination clause is not common in the BIT regime. Out of 2,519 BITs, we find that only 78 BITs (3%) allow state withdrawal anytime.

The second termination flexibility category includes exit clauses that can be terminated *any time after* some specified initial term. An example of such a clause is included in the Gabon-Turkey BIT (2012): "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).[70] This category of termination flexibility therefore locks-in the treaty for a set initial term, after which unilateral exit is allowed flexibly. This category is the most common

[68] The UNCTAD IIA Mapping Project website can be accessed 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.

[69] 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.

[70] Occasionally, the right to terminate any time after the lapse of the initial period is not explicitly mentioned, but otherwise implied with wording such as "after which" or "thereafter" after an initial period is specified. See for example Mauritius-UAE BIT (2015): Art. 16.3.

exit clause in BIT regime: out of 2,519 BITs, 1,235 treaties (49%) allow exits anytime after initial term.

Finally, the strictest category of exit clauses includes a set initial term, as well as an automatic renewal of the treaty for a new time-period, unless one of the parties terminates the agreement within a limited *termination window*. This feature is also known as the tacit renewal clause, which has become notorious for governments seeking reform of their investment agreements: if the termination window is missed, the governments are obliged to follow its terms until a new termination window rolls around. For example, if a reformist government under the BLEU-Oman BIT (2008) were to miss the 12-month termination window, it would be automatically committed for another 20 years under the treaty.[71] We find that termination windows are a common feature (see Figure 1). Out of 2,519 BITs, 884 BITs (35%) contain termination windows. This suggests that some governments value such continuity in treaty protections for their investors and are willing to limit the possibilities of walking away from them.

Besides the different sets of exit clauses, additional treaty features determine how long signatory governments are locked into the BIT: *initial term, notice period*, and *sunset clause*. Initial term captures the specified period for which the BIT is in force from ratification, while notice period defines the period from when notification is sent from one government to the other via diplomatic channels about their intention to terminate the treaty, to the termination actually taking effect (commonly 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 include notoriously long sunset clauses, leaving many governments stuck with their treaty commitments for decades after already having exited the agreement. Therefore, we calculate the *Effective commitment period* taking into account the type of exit clause, and the relevant additional clauses.[72] Table 3 summarizes the formula used to calculate the effective commitment period. Figure 2 shows the histogram of effective commitment period, suggesting that BITs indeed contain varying commitment periods ranging from 0.5 to 51 years.

4.2 Explanatory variables

In testing our dyadic hypotheses 1 and 2, the variable of our primary interest is the interaction term between capital importer's regime type and exporter's regime type. We identify a capital importer and an exporter of the two signatory states for each BIT based on GDP of each state in the year the treaty is signed.[73] We assume that the state with a larger GDP is the capital exporter in the dyad.[74]

To code regime type, we define a democracy as having a value of 6 or higher on the combined

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

[72] Not all clauses are relevant for calculating effective commitment period in every BIT. For example, for BITs that have the *anytime* exit clause, the initial term is irrelevant for effective commitment period.

[73] *World Development Indicators* 2020.

[74] We also run our analysis with the alternative ordering rule, which relies on exports/imports data. We assume a state with a larger net capital exports is the capital exporter. This rule renders a smaller dataset with 2,248 dyads due to the limited coverage in export/import data. Still, the results remain largely consistent.

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
Anytime after initial	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

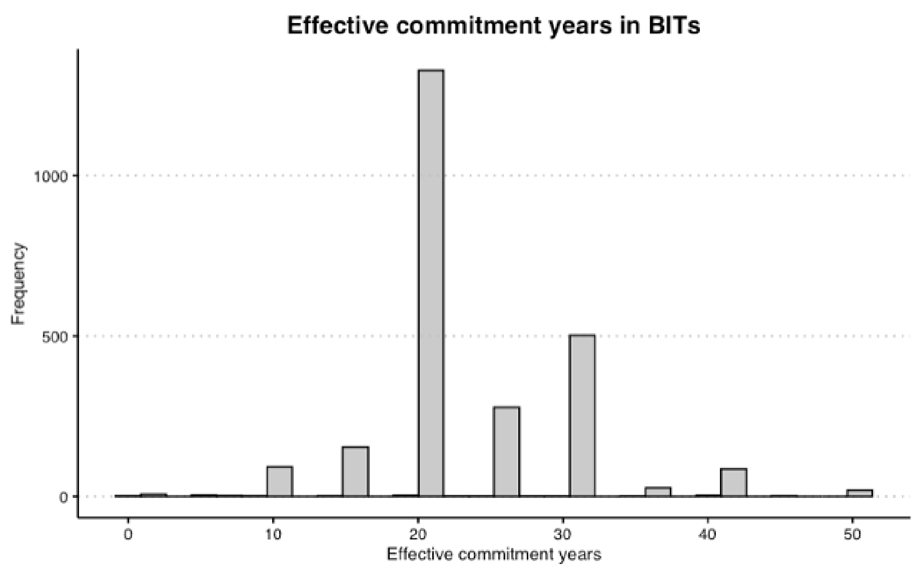

Figure 2: Effective commitment period in BITs

Freedom House and Polity 2 variable with imputed missing values from the Quality of Government dataset, which ranges from 0-10, where 10 is the most democratic.[75] As a robustness check, we also conduct the analysis using a measure from Polity2 only. Excluding observations with missing values, we get regime type measures for both parties in 2,235 BITs in the year they were signed. Figure 3 shows the number of BITs in our dataset classified by their regime type and capital exporter/importer identity. Out of 2,235 BITs, 241 treaties are between autocrats (11%), while 285 treaties are between autocratic exporters and democratic importers (13%). 766 treaties are between democracies (34%), and the remaining 943 treaties (42%) are between democratic exporters and autocratic importers. Consistent with the existing understanding that BITs enhance credibility of autocrat importers, the dyads between democratic exporter and autocratic importer form the largest proportion of the total BITs. In addition, note that autocratic dyads consist only 11% of the total BITs, being consistent with the common knowledge that autocracies rely on legalization much less than democracies.

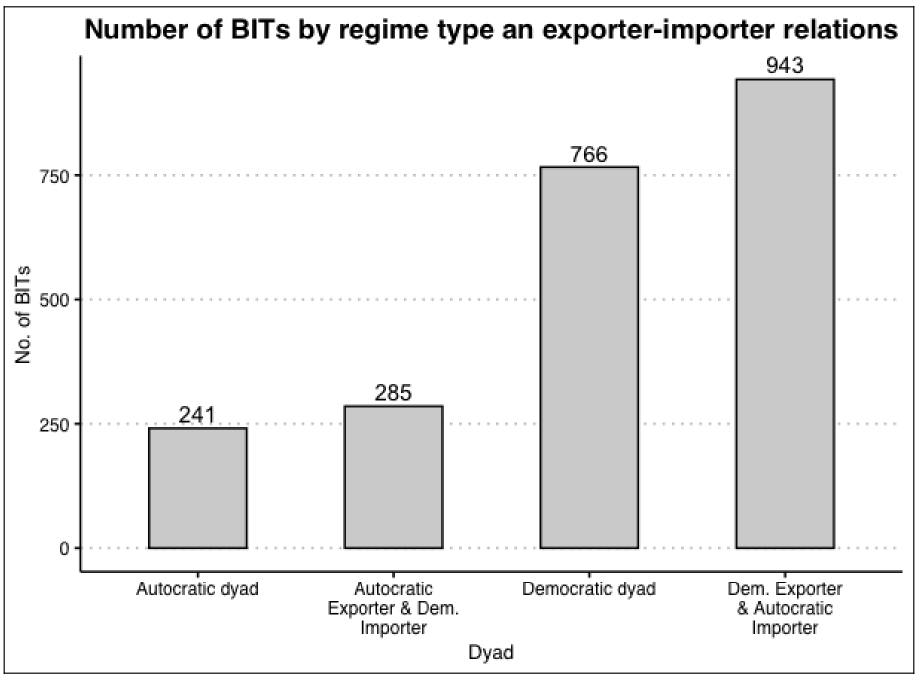

Figure 3: Number of BITs by regime type and exporter-importer relations

4.2.1 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, other key features in investment treaties will likely influence how much flexibility to exit the signatories want to maintain. We control for the *Year of signature*, because governments have learned a lot about the BITs and the associated risks since the early days

[75] Theorell et al. 2020

of the regime.[76] Overtime, governments have not only learned from experience with investment arbitration, but also through lively policy discussion in international fora, such as those hosted by UNCTAD. 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 different types of exceptions: if a treaty is allowing deviation from some of the treaty's obligations under special circumstances, signatory states might be more willing to accept binding agreements. We therefore include binary control variables for whether the treaty includes *Security exception*, *Health/Environmental exception*, *Other exception*, or a *Prudential carveout*, which allow more regulation by the host government under special circumstances.

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 regime type has on the flexibility of exit clauses in investment treaties, 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 stricter termination clauses, we also control for *FDI inflows (% of GDP)*, and *Trade volume (% of GDP)* controls for the party's trade dependence. Similarly, because exchange rate fixity can be endogenous to regime type,[77] while it also could affect the state's preferences for FDI inflows and BIT flexibility, we control for *exchange rate stability*.[78]

Research on BIT reform has found that states become more reserved towards their investment treaties and become more likely to renegotiate them towards higher state regulatory space after becoming a respondent state in investment disputes. Therefore, the parties' *Cumulative ISDS experience* as a respondent state in ISDS may influence how strict the termination clauses in their BITs are, which we control for with data from the UNCTAD.[79] Other political factors are also likely to affect both whether partner states themselves prefer higher or lower termination flexibility, but also what kinds of provisions their partner states demand of them. Using data from the PRS Group's International Country Risk Guide (ICRG) control for both partners the *Law and Order* and *Government stability* in the year the treaty was signed, because potential host countries to investment with stable and reliable investment climate pose less risk and therefore might be more likely to achieve higher termination flexibility in BITs as well. In addition, we also control for *Bureaucratic quality* in both signatory states, which might influence their ability to effectively negotiate the kinds of treaty features they want, as well as ability of investors to navigate domestic investment laws and licensing in host countries, therefore shaping home state demands for treaty contents. Finally, we control for

[76]Initially, many governments were not fully aware of the nature these agreements: many were taken by surprise when the first investment disputes with investors emerged, and became more wary of signing new agreements after they faced ISDS cases (Poulsen and Aisbett 2013).

[77]Bernhard and Leblang 1999; Bearce and Hallerberg 2011; Steinberg and Malhotra 2014.

[78]Data on exchange rate stability is provided by the Trilemma Indexes (Aizenman, Menzie D. Chinn, and Ito 2010; Aizenman, Menzie David Chinn, and Ito 2013).

[79]*UNCTAD Investment Dispute Settlement Navigator* 2020.

Political constraints using a measure of veto players[80] to take into account the potential of domestic opponents shaping both the level of democracy and preferences for BIT termination flexibility.

4.3 Selection into the treaty sample

Note that we only observe BITs that are signed. Our estimation could be biased if certain country dyads do not sign BITs due to their incompatible preferences for termination clauses. To address this concern, we need to control for the propensity to sign a BIT for each country-dyad in the first place in our estimation.[81] 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 dyads-years. Second, we include the the propensity to sign a BIT for each dyad in our main estimation as a control. In the Heckman model, we use the following *interaction term* as our instrument 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 logic of the instrument is that the richer the capital exporter, the more attractive it is as a BIT partner due to more potential investors, while it is more likely to push for signing BITs to protect its property rights abroad. At the same time, capital importer experiences increasing competitive pressures by observing neighboring countries sign new BITs. We theorize that the two factors have positive synergies that result in a higher probability of signing a BIT between the two. Importantly, we believe that the interaction term plausibly predicts selection into the sample, but does not influence the outcome other than through having the dyad sign 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.[82] To construct the instrument, we follow Bodea and Ye 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.

[80] Heinsz 2017.

[81] 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 Tobin and Rose-Ackerman 2011; Blake 2013; Rosendorff and Shin 2015; Bodea and Ye 2020.

[82] 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.

4.4 Model specification

We employ a cross-sectional dyadic dataset where the unit of observation is the investment treaty between the two signatory partners. The dyads are ordered based on theorized capital exporting status such that Party 1 is always the party with larger GDP in the year of treaty signature. We employ the following OLS regression model:

$$\begin{aligned} Y_{ijt} = \beta_0 + \beta_1(Regime\,type\,of\,exporter_{ijt}) + \ \beta_2(Regime\,type\,of\,importer_{ijt}) + \\ \beta_3(Regime\,type\,of\,exporter_{ijt}\ X\ Regime\,type\,of\,importer_{ijt}) + \\ Treaty\,featrues_{ijt} + X_{it} + Z_{jt} + S_{ijt} + \varepsilon_{ijt}, \end{aligned} \tag{1}$$

where Y is the *effective commitment period* of the treaty between state i and state j signed in year t. The primary explanatory variable for hypothesis 1 is the interaction term between exporter's and importer's regime type; and thus, our interest of coefficient will be β_3. Treaty features is a set of treaty-specific controls; 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.

5 Results

Table 4 presents the results from the OLS analyses. Model (1) shows the first stage results. 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 37.88, well above 10, a commonly used threshold to detect weak instrument.[83]

Models (2) and (3) test the main hypotheses, while taking into account the selection bias into the sample. Each model uses different measures of regime types to ensure that the results are not conditional on measurements. Model (2) uses a combined Freedom House and Polity2 index with imputed missing values, while model (3) uses the simple Polity 2 measure. Across both models, the interaction term between exporter's (party 1) and importer's (party 2) regime type is statistically significant in line with our predictions – while democratic exporters tend to prefer longer commitment period, this tendency gets weaker the more democratic their importing partner is.

For easier interpretation of the results, Figure 4 shows the marginal effect of one standard deviation increase in importer's democracy index on effective commitment period across different levels of exporter's democracy based on results from model (2). It supports both H1 and H2. First, for democratic exporters (those with score higher than 6), the more democratic they are, the lower the effective commitment period with more democratic importing partners. This is consistent with our argument that democratic exporters are willing to preserve regulatory space for themselves only when their partner importer is a democracy. Second, Figure 4 also supports H2 that autocratic exporters (those on x-axis below 6) do not differentiate between democratic and autocratic importers because they face less domestic uncertainty and can resolve any disputes outside the ISDS system if necessary.

[83]Staiger and Stock 1997.

As a robustness check, we further split our sample into democratic exporters and autocratic exporters and rerun the analysis, separately. As expected, we find strong negative associations between an importer's democracy index and BIT's commitment periods for democratic exporters, but we do not find such association for non-democratic exporters.[84]

Controls mostly show expected results. More ISDS experiences for both capital exporters and importers result in less strict BITs with shorter commitment years. Higher levels of law and order for both capital exporters and importers, and stronger bureaucratic capacity for capital exporters are associated with longer commitment period. We conjecture that this is because stronger law and order as well as 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. As expected, capital exporters' societal characteristics have, in general, greater explanatory power over commitment period than capital importer's. For example, higher exchange rate stability in capital exporters leads to shorter commitment period for BITs, which could reflect the state's less needs for credible commitment device given the stable FX market.

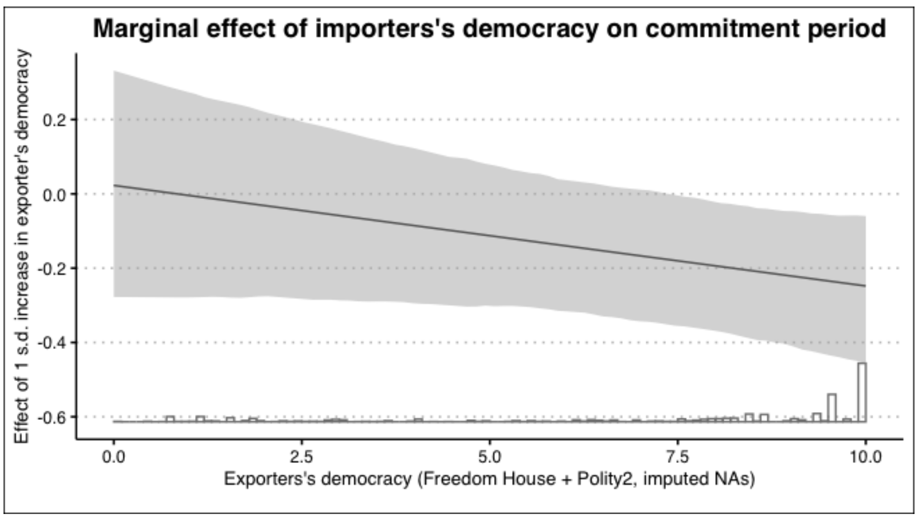

Figure 4: Marginal effect of importer's democracy on effective commitment period

6 Empirical extensions

In this section, we perform additional statistical analyses to increase confidence in our results and gain further insights on termination clauses. First, if a democratic exporter wants to maintain exit flexibility in BITs for itself in case of a need for future policy changes, why would it trust the commitment of its democratic importing partner? Democracy is indeed characterized by different features that generate opposing investor perceptions about their credibility.[85] To isolate the relevant mechanisms of exporter dilemma and importers commitment problem, we investigate more direct

[84] See Figure A2 in the Appendix.
[85] See for example Li, Owen, and Mitchell 2018.

Table 4: State regime type and BIT effective commitment period

	1st stage DV: BIT signed	2nd stage DV: Effective commitment period	
	(1)	(2)	(3)
Democracy (party 1)	-0.0229***	0.298*	0.0119
	(0.00800)	(0.173)	(0.0630)
Democracy (party 2)	-0.0125	0.154	-0.0161
	(0.00901)	(0.174)	(0.0531)
Democracy (party 1) X Democracy (party 2)	-0.00111	-0.0420**	-0.0115**
	(0.00102)	(0.0194)	(0.00448)
FDI inflow (% GDP) (party 1)	-0.00180	-0.00395	-0.00152
	(0.00144)	(0.0273)	(0.0278)
FDI inflow (% GDP) (party 2)	-0.000437	-0.00833	-0.00545
	(0.000966)	(0.0219)	(0.0223)
Trade (% GDP) (party1)	-0.00140***	-0.00132	-0.00159
	(0.000259)	(0.00728)	(0.00701)
Trade (% GDP) (party 2)	-0.00124***	0.00308	0.00266
	(0.000254)	(0.00665)	(0.00654)
Cum. ISDS respondent (party 1)	-0.00729***	-0.231***	-0.237***
	(0.00269)	(0.0771)	(0.0780)
Cum. ISDS respondent (party 2)	-0.0179***	-0.233**	-0.234*
	(0.00486)	(0.119)	(0.122)
Law and order (party 1)	0.123***	0.896*	0.865*
	(0.0110)	(0.487)	(0.476)
Law and order (party 2)	0.0885***	0.508	0.469
	(0.00986)	(0.363)	(0.363)
Bureaucratic quality (party 1)	-0.00838	1.355***	1.456***
	(0.0157)	(0.322)	(0.314)
Bureaucratic quality (party 2)	-0.0104	0.0768	0.0594
	(0.0125)	(0.257)	(0.257)
Government stability (party 1)	0.0122*	0.246*	0.234*
	(0.00660)	(0.132)	(0.135)
Government stability (party 2)	0.0343***	-0.101	-0.0888
	(0.00619)	(0.179)	(0.182)
Political constraint (party 1)	0.282***	-1.370	-0.609
	(0.0726)	(1.549)	(1.474)
Political constraint (party 2)	0.276***	1.618	1.569
	(0.0670)	(1.521)	(1.431)
Exchange rate stability (party 1)	0.00142	-1.037***	-1.092***
	(0.0205)	(0.380)	(0.394)
Exchange rate stability (party 2)	-0.0253	0.423	0.449
	(0.0199)	(0.384)	(0.420)
GDP (party 1) X Avg. signed BIT in neighbors (party 2)	0.0000500***		
	(0.00000812)		
Year of signature		0.0672	0.0655
		(0.0422)	(0.0429)
Automatic renewal clause		0.00202***	0.00206***
		(0.000521)	(0.000535)
Security exception clause		0.695	0.630
		(0.666)	(0.674)
Public health exception clause		-1.409	-1.360
		(0.934)	(0.954)
Other exception clause		2.298***	2.341***
		(0.810)	(0.822)
Prudential exception clause		-5.503***	-5.409***
		(1.150)	(1.191)
Termination window		0.471	0.409
		(0.514)	(0.528)
Selection bias		0.291	0.0167
		(3.762)	(3.771)
N	175695	1287	1251

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

features capturing each. While responsiveness to domestic electorates can create regulatory pressures, institutions protecting property rights can be a source of stability. From the perspective of a democratic capital exporter, when the capital importer has stronger property rights protections, the exporter can prioritize maintaining policy space and exit flexibility for itself. Such preferences of the exporter are all the more pressing the more democratically accountable it is.

To test the suggested mechanism, we examine whether the precise dimensions of regime types are associated with effective commitment period. Instead of democracy index for capital exporters, thus, we use *democratic accountability index* from the *International Country Risk Guide (ICRG)* 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.[86] Likewise, we replace democracy index for capital importers with an *index of private property rights (PR protection)* drawn from the *Varieties of Democracy Project (VDEM)*. Higher values of the index indicate higher levels of property rights protection. VDEM 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.[87][88]

Table 5 shows the results. For brevity, we only present the results for the coefficients of the main explanatory variables, although the model includes all the controls from the main analyses and takes into account potential selection bias. As expected, we find that that the interaction term between a capital exporter's *democratic accountability* and a capital importer's *private property rights* is strongly associated with their BIT's effective commitment period. Based on the results, Figure 5 shows the marginal effect of importers' private property rights (PR) protection on effective commitment period across exporter's democratic accountability. The results suggest that democratically accountable exporters tend to demand longer BITs when importers have weak private property rights protection; however, the tendency gets weaker as importers have stronger private property rights protection.

Next, our argument implies that termination flexibility is a complement, rather than a substitute, to substantive flexibility of BITs. Rather than isolating concerns about termination flexibility, our framework implies that, due to capital exporter's dilemma, democratic exporters would prefer *substantively* stricter BITs for less credible importers just like they prefer stricter termination clauses for less credible importers. To check the implied complementary relations, we borrow a measure of BITs' substantive flexibility – State Regulatory Space (SRS) – constructed by Thompson, Broude, and Haftel 2019. They define SRS as the "ability of governments to freely legislate and implement regulations in given public policy domains."[89] An SRS of 0 indicates less policy space, while SRS of 1 indicates more policy space. Figure 6 shows a scatter-plot of SRS and effective commitment period

[86] For detailed explanation, see https://www.prsgroup.com.

[87] For detailed explanation, see https://www.v-dem.net/en/.

[88] In Model (3), we do not include *Law and Order* due to multicollinearity issues associated with our key explanatory variables, *Democratic accountability* and *Property rights protection*.

[89] Thompson, Broude, and Haftel 2019, p. 861.

Table 5: Results for democratic accountability and PR protection

DV: effective commitment period	
Democratic accountability (party 1)	1.531***
	(0.518)
PR protection (party 2)	3.486
	(3.520)
Democratic accountability (party 1) X PR protection (party 2)	-1.353**
	(0.672)
Controls	YES
Selection bias	YES
N	1318

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

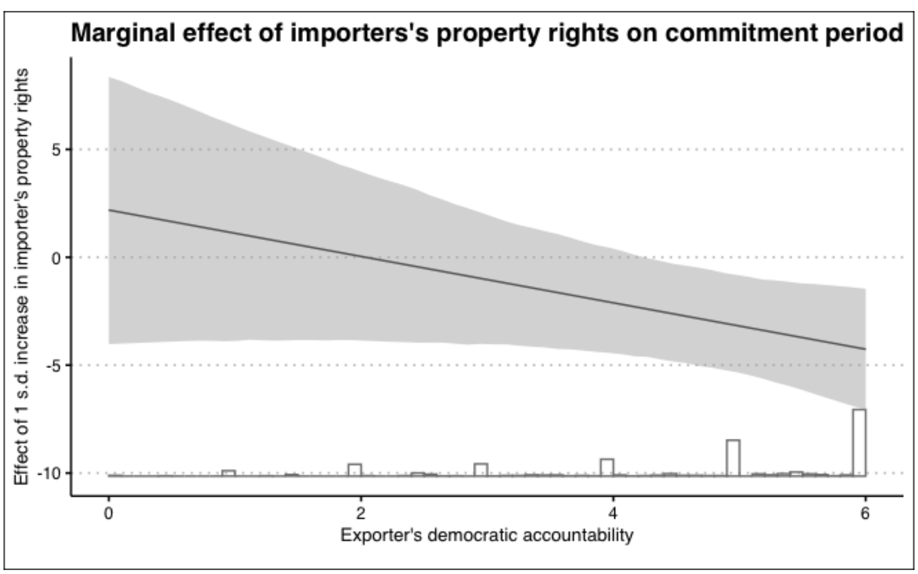

Figure 5: Marginal effect of importer's PR protection on effective commitment period

and confirms that BITs with higher SRS are more likely to include shorter commitment period. We also replicate our main analysis replacing the dependent variable with SRS. The results, although less robust, are largely the same: democratic capital exporters are willing to sign on substantively more flexible BITs when they face more credible importers.[90] The relatively weak statistical results for substantive flexibility also indicate that factors other than the capital exporter's dilemma may play important roles for substantive flexibility, unlike termination flexibility.

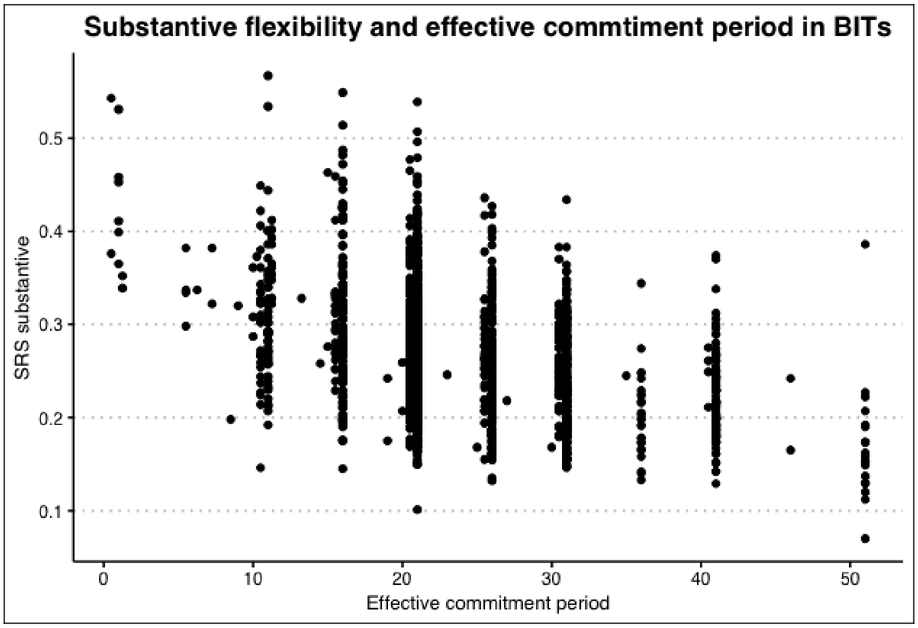

Figure 6: Relationship between substantive flexibility and termination flexibility

7 Conclusion

In this paper, we have presented the first theoretical and empirical study investigating what influences termination flexibility in terms of commitment period in BITs. We collect data on termination clauses in BITs and measure the effective commitment period for 2,536 BITs. We theorize and show evidence that the length of treaty commitments depends on the extent of domestic-level uncertainty and the severity of the international-level commitment problem. Democratic capital exporters face a dilemma between constraining importers and preserving flexibility, and they navigate the dilemma by adjusting their demands based on the commitment problem of their partner states: they demand exit clauses that require longer commitment period when dealing with autocratic importers, while allowing more flexibility with democratic importers. Non-democratic exporters, however, face milder levels of the dilemma, if any, and do not differentiate their behavior depending on importer's institutions.

This study advances our understanding on international institutions in several ways. First, we contribute to the extensive literature on BITs by highlighting the role of domestic politics and exit

[90] See Appendix Table A3 for the full results.

clauses - an under-explored dimension – with an original dataset. The BIT literature traditionally focuses on international-level commitment problems such as the dynamics between global North and South. We bring in domestic politics and suggest that capital exporters experience a dilemma between constraining importers and maintaining flexibility for themselves. In addition, while termination features of BITs such as long sunset clauses have become notorious and highly policy relevant upon the recent wave of BIT terminations, few studies have empirically investigated the variations in BIT termination clauses. This study provides the first theoretical framework on states' preferences for BIT commitment period. The new dataset on BITs' effective commitment periods should be helpful resources for future studies that explore the dynamics of BIT negotiation as well as termination.

Second, we speak to the rich literature on rational design of international institutions. A consensus in the literature is that flexibility in an agreement makes cooperation more sustainable. Our findings add nuance to the well-established idea by showing that states' preferences for flexibility differ based on the credibility of their partner states. When the partner state is perceived to be institutionally weak, states prioritize constraining the partner over securing flexibility. Specifically, we theorize a capital exporter's dilemma, a novel concept, and show how different political institutions make the dilemma vary across regime types. Combining the dilemma to the international-level commitment problems, we demonstrate that domestic needs for policy flexibility and international needs for constraints on importers jointly shape a state's preferences for a treaty's flexibility.

More broadly, this study engages with the growing literature on exits from international institutions. One recent finding in the literature is that democracies are more prone to withdraw from international organizations.[91] Our findings that democracies face stronger exporter's dilemma extend the existing finding and suggest that democracies should be more attentive to termination clauses than autocracies, and their preferences depend on the credibility of partner states. This is likely to be the case beyond the BIT regime, including trade and environmental treaties where there is a substantial uncertainty regarding preferences in the future. In the issues that involve less uncertainty about political preferences, however, we should not see similar differences between democracies and autocracies. For example, for security alliances, where public preferences are less likely to fluctuate over time, democracies should not be more or less likely to be attentive to termination clauses than autocracies.

Finally, this study generates implications on the likely future trajectory of the international investment treaty regime. Given that the distinction between exporters and importers becomes less clear over time, our findings imply that the capital exporter's dilemma becomes more intense, and thus, states should increasingly prefer BITs with shorter commitment periods. However, easy termination clauses such as short sunset clauses leads to weaker investor protection, which undermines the initial purpose of the regime to provide credible commitments. In addition, we find that non-democratic countries, who are becoming increasingly active as capital exporters and negotiators of global economic governance, do not differentiate importers based on institutions. Instead, they prefer state-state dispute settlement and diplomacy, suggesting that investment governance might undergo (re-)politicization. The initial purpose of BITs, especially ISDS clauses, was to depoliticize

[91] Borzyskowski and Vabulas 2019.

foreign investment by allowing firms to directly sue host governments and avoid diplomatic feuds. However, as more autocratic states develop economically and become important capital exporters, they will increasingly channel disputes to the inter-state relations rather than legalized ones, opening room for politicization.

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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
Anytime after	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
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
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
Law and order (Party 1)	2,149	4.78	1.13	1.17	6.00
Law and order (Party 2)	1,693	3.86	1.21	0.00	6.00
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, imputed NAs)	2,236	7.68	3.06	0.00	10.00
Democracy (Party 2) (FH+Polity2, imputed NAs)	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
Political constraints (Party 1)	2,272	0.40	0.20	0.00	0.73
Political constraints (Party 2)	2,224	0.27	0.22	0.00	0.73
Exchange rate stability (Party 1)	2,208	0.48	0.50	0	1
Exchange rate stability (Party 2)	2,085	0.53	0.50	0	1

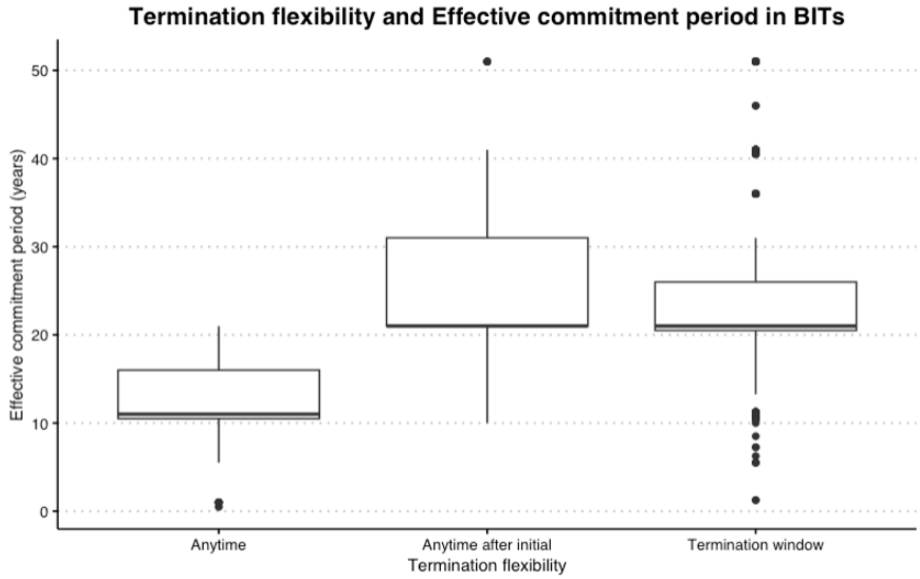

Figure A1: Effective commitment period in BITs

A First stage regression

We employ probit regression models on BIT signing to calculate the propensity to sign a BIt for a country-dyad in a given year. The results are in Table A3. Model (1) uses imputed democracy index from Polity 2 and Freedom house for our democracy index, whereas model (2) uses polity2 score. Model (3) uses exporter's democratic accountability and importer's private property right protection measures. Regardless of our measurement choice of democracy and institutions, the proposed instrument variable (GDP of capital exporter X capital importer's neighbouring countries' new BITs) performs well. The instrument variable achieve high statistical significance with F-statistics well above 10. The controls mostly show the expected results: Countries rely more on trade and with more ISDS experiences are less likely to sign a new BIT probably because they need BITs less and they have learned the cost of BITs. Governments with stronger law and order, greater stability with larger political constraints are also more likely to sign new BITs given that they are perceived to be credible partners that can commit to BITs.

Table A2: First-stage Probit estimation

DV: Signing a BIT	(1)	(2)	(3)
Democracy index (party 1)	-0.0238***	-0.00995***	
	(0.00830)	(0.00265)	
Democracy index (party 2)	-0.0104	-0.00630**	
	(0.00935)	(0.00264)	
Democracy index (party 1) X Democracy index (party 2)	-0.00113	-0.000111	
	(0.00106)	(0.000244)	
Democratic accountability (party 1)			0.0124
			(0.0257)
Private property right protection (party 2)			0.547***
			(0.158)
Democratic accountability (party 1) X Private property right protection (party 2)			-0.0582*
			(0.0328)
FDI inflow (% of GDP, party 1)	-0.00161	-0.00153	-0.00217
	(0.00142)	(0.00151)	(0.00145)
FDI inflow (% of GDP, party 2)	-0.000617	-0.000949	-0.000808
	(0.000995)	(0.00103)	(0.000974)
Trade (% of GDP, party 1)	-0.00143***	-0.00129***	-0.00105***
	(0.000264)	(0.000267)	(0.000247)
Trade (% of GDP, party 2)	-0.00135***	-0.00125***	-0.00147***
	(0.000260)	(0.000259)	(0.000255)
Cum. ISDS experience (party 1)	-0.00686**	-0.00698**	-0.0107***
	(0.00270)	(0.00272)	(0.00259)
Cum. ISDS experience (party 2)	-0.0184***	-0.0200***	-0.0252***
	(0.00493)	(0.00502)	(0.00510)
Law and order (party 1)	0.124***	0.118***	
	(0.0112)	(0.0114)	
Law and order (party 2)	0.0871***	0.0861***	
	(0.00998)	(0.0101)	
Bureaucratic quality (party 1)	-0.00840	-0.0185	0.0839***
	(0.0159)	(0.0156)	(0.0131)
Bureaucratic quality (party 2)	-0.00583	-0.00543	0.0462***
	(0.0126)	(0.0128)	(0.0112)
Government stability (party 1)	0.0122*	0.0137**	0.0227***
	(0.00670)	(0.00682)	(0.00643)
Government stability (party 2)	0.0356***	0.0354***	0.0525***
	(0.00630)	(0.00643)	(0.00593)
Political constraint (party 1)	0.291***	0.206***	0.172***
	(0.0732)	(0.0755)	(0.0652)
Political constraint (party 2)	0.283***	0.235***	-0.00378
	(0.0677)	(0.0697)	(0.0534)
Exchange rate stability (party 1)	0.00463	-0.00284	0.0401**
	(0.0208)	(0.0213)	(0.0200)
Exchange rate stability (party 2)	-0.0240	-0.0460**	-0.0371*
	(0.0202)	(0.0206)	(0.0199)
GDP (party 1) X Avg # of BITs in neighboring countries (party 2)	**0.0000504*** **	**0.0000509*** **	**0.0000595*** **
	(0.000008)	(0.000008)	(0.000008)
F-statistics	37.80	38.00	54.51
N	172170	165463	176548

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

B Sub-sample analysis

As another test to H1 and H3, we split the sample into BITs with democratic exporters and BITs with non-democratic exporters, and replicate our main analysis. Figure A2 A2 shows the marginal effects of importer's democracy index on BIT commitment period separately for BITs that have non-democratic exporters and democratic exporters. Consistent with our predictions, importer's regime type does not have much impact on BIT commitment period when a capital exporter is a non-democracy. However, capital importer's democracy index is strongly associated with shorter commitment period when a capital exporter is a democracy.

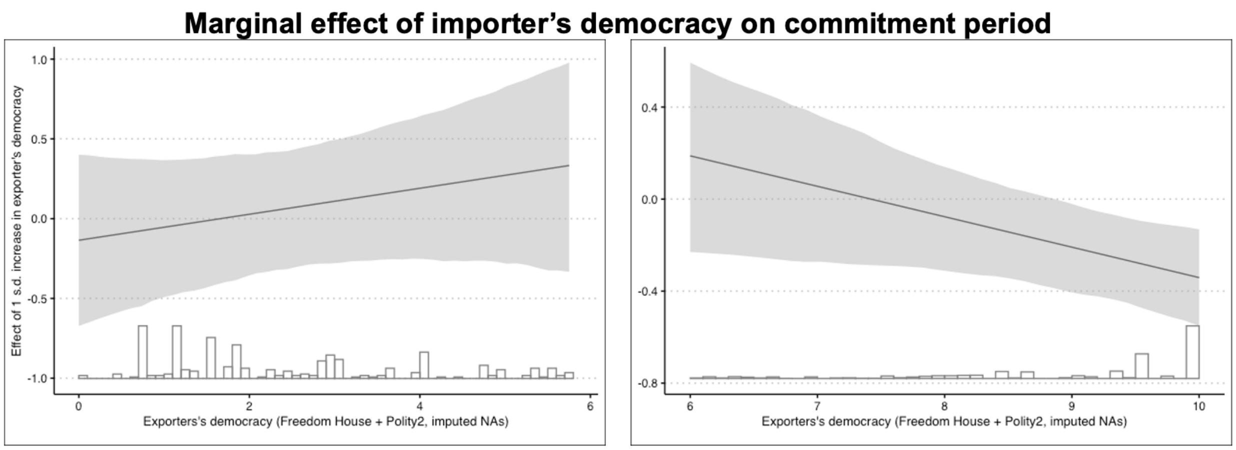

Figure A2: Non-democratic and democratic exporters

C Substantive Flexibility

We replicate our main analysis (Table 2 in the main text) by replacing the dependent variable with a measure of substantive flexibility. Table A4 shows the results. Model (1) uses combined measure of democracy from Freedom House and Polity2, while Model (2) uses Polity2 index only. The coefficients of the interaction term between exporter's (party 1) democracy measure and importer's (party 2) democracy measure do not achieve the traditional statistical significance but come close (p=0.103 in Model 1, p=0.12 in Model 2). The results are much stronger when we directly measure capital exporter's democratic accountability and importer's private property rights protection (Model 3). Altogether, the results suggest that although our argument centered on exporter's dilemma and importer's commitment problems help explain variations in substantive flexibility, just like they do for termination flexibility, other factors may play more important roles in shaping BITs' substantive flexibility.

Table A3: BIT substantive flexibility

	(1)	(2)	(3)
Democracy (party 1)	-0.00386***	-0.00132***	
	(0.00140)	(0.000478)	
Democracy (party 2)	-0.000865	0.0000445	
	(0.00152)	(0.000429)	
Democracy (party 1) X Democracy (party 2)	0.000279	0.0000628	
	(0.000171)	(0.0000404)	
Democratic accountability (party 1)			-0.0141***
			(0.00476)
Property rights protection (party 2)			-0.0361
			(0.0297)
Democratic accountability (party 1) X Property rights protection (party 2)			0.0118**
			(0.00599)
Year of signature	0.000748**	0.000768**	0.000847**
	(0.000349)	(0.000355)	(0.000353)
FDI dependence (party 1)	0.000225	0.000277	0.000239
	(0.000234)	(0.000241)	(0.000237)
FDI dependence (party 2)	-0.0000771	-0.0000310	-0.0000336
	(0.000188)	(0.000197)	(0.000190)
Trade dependence (party 1)	0.0000215	0.0000164	-0.00000308
	(0.0000401)	(0.0000411)	(0.0000402)
Trade dependence (party 2)	-0.0000543	-0.0000672	-0.0000779*
	(0.0000406)	(0.0000432)	(0.0000404)
Cum. ISDS experience (party 1)	0.00581***	0.00616***	0.00624***
	(0.000576)	(0.000590)	(0.000582)
Cum. ISDS experience (party 2)	0.00334***	0.00319***	0.00316***
	(0.000844)	(0.000853)	(0.000852)
Law and Order (party 1)	-0.00704***	-0.00739***	
	(0.00180)	(0.00185)	
Law and Order (party 2)	-0.00468***	-0.00430***	
	(0.00153)	(0.00157)	
Bureaucratic quality (party 1)	0.00197	0.00147	-0.00138
	(0.00280)	(0.00272)	(0.00245)
Bureaucratic quality (party 2)	0.000630	0.00186	-0.000680
	(0.00217)	(0.00217)	(0.00198)
Government stability (party 1)	-0.00369***	-0.00413***	-0.00338***
	(0.00112)	(0.00114)	(0.00111)
Government stability (party 2)	-0.00446***	-0.00427***	-0.00538***
	(0.00113)	(0.00116)	(0.00109)
Political constraint (party 1)	-0.00191	-0.00263	-0.00522
	(0.0119)	(0.0122)	(0.0104)
Political constraint (party 2)	-0.00298	-0.00333	-0.00446
	(0.0104)	(0.0107)	(0.00861)
Exchange rate stability (party 1)	-0.00161	-0.00138	-0.00258
	(0.00334)	(0.00346)	(0.00329)
Exchange rate stability (party 2)	-0.00375	-0.00438	-0.00453
	(0.00321)	(0.00330)	(0.00323)
N	1326	1273	1357

Table A4: 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

D Interviews

We conducted interviews with policymakers and private actors who had rich experiences in working on BIT negotiations.[92] 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 A4. Fortunately, our interviewees, albeit small in number, do cover key variations in our explanatory variables (regime type and economic size), which allows us to get insights for our mechanism.

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