<table>
<thead>
<tr>
<th>Empirically testing whether BITs “work”:</th>
<th>Jason Webb Yackee</th>
</tr>
</thead>
<tbody>
<tr>
<td>problems &amp; promises</td>
<td>UW-Madison</td>
</tr>
</tbody>
</table>
What’s the purpose of BITs?

- Promote FDI
  - Through “protection”?
    - Credible commitment and/or costly signaling
  - Through liberalization?
- To “depoliticize” disputes?
- To right “wrongs”?
Standard empirical strategy

- Count BITs
  - 1, 2, 3...
  - Weighted?
  - Signed? In force?

- Count FDI (usually inflows)

- Look for a correlation (next slide)

- Note: methodological problems with panel data
  - E.g. endogeneity: do BITs cause FDI or vice versa?
  - Confounding factors: FDI liberalization
Cumulative BITs & FDI Inflows
Cumulative BITs & FDI inflows
A brief review of existing studies: all over the map

- UNCTAD (1998) (weak + effect)
- Neumayer & Spess (2005) (large + effect)
- Yackee (2008) (no effect)
- Aisbett (2009) (no effect)
- Kerner (2009) (large + effect: $600 million!)
Problems with measuring FDI

- Reporting methodology inconsistent across countries, years, and sources;
  - [See graph next slide]
  - Round-tripping; trans-shipping; reinvested earnings

- Depending on definition, ignores “portfolio” investment
  - China’s SWF investments in UK’s Thames Water, BP

- Bilateral data not widely available

- Sectoral data virtually non-existent
Chinese FDI Inflows

The graph shows the trend of Chinese FDI inflows from 1980 to 2010, with data from UNCTAD and WB. The line with dots represents China BITs Signed Cumulative.
Problems with measuring BITs

- What is a “BIT”?  
  - FTAs/PTAs?  
  - ECT?  
  - ECHR?  
  - A proxy for “political risk”?  

- The problem of treaty shopping

- Alternatives to BITs  
  - Domestic laws  
  - Investment contracts

- Differences in BIT content: strong vs. weak treaties (graphs to follow)  
  - The problem of MFN
Counting “strong” BITs
German & French BITs

- UNCTAD- Germany
- UNCTAD-France
- Comprehensive PC: Germany
- Comprehensive PC: France


Values range from 0 to 125
A conceptual problem: the declining utility of BITs?

<table>
<thead>
<tr>
<th>Country</th>
<th>Political Risk Rating with No BITs</th>
<th>With Some BITs</th>
<th>With Universal BITs</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>8*</td>
<td>8</td>
<td>10*</td>
</tr>
<tr>
<td>B</td>
<td>5</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>C</td>
<td>5</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>D</td>
<td>7</td>
<td>9*</td>
<td>9</td>
</tr>
<tr>
<td>E</td>
<td>2</td>
<td>4</td>
<td>4</td>
</tr>
</tbody>
</table>
Alternative empirical strategies

- BITs & PRI Rates?
- BITs & Political Risk Indicators? [graph next slide]
- Focusing on *state* behavior?
  - Do IPAs advertise BITs?
"Political risk" & BITs
Surveys as an alternative?

- Who to survey?
  - Who is “the” investor?
  - Who makes decisions in the corporation?
  - How does law enter into corporate decision-making?

- How to get a good response rate?

- Problems of question design
  - “Do you like BITs”? 
  - “Would you like your home state to give you a BIT?”
A small survey of GCs
“Conversations” as an alternative

- Katharina Pistor (2003) (panel discussion)
  - “law plays a minor role in the decision to enter a market.”

  - “[m]ost interviewees who expressed an opinion on the matter suggested that investors do not investigate the [host state] legal system because they do not think it is important to the success of their investment.”

- Me: PRI providers
Concluding thoughts

- Much work to be done!
- Think outside the regression box