

Empirically testing

whether BITs “work”:

problems &

promises

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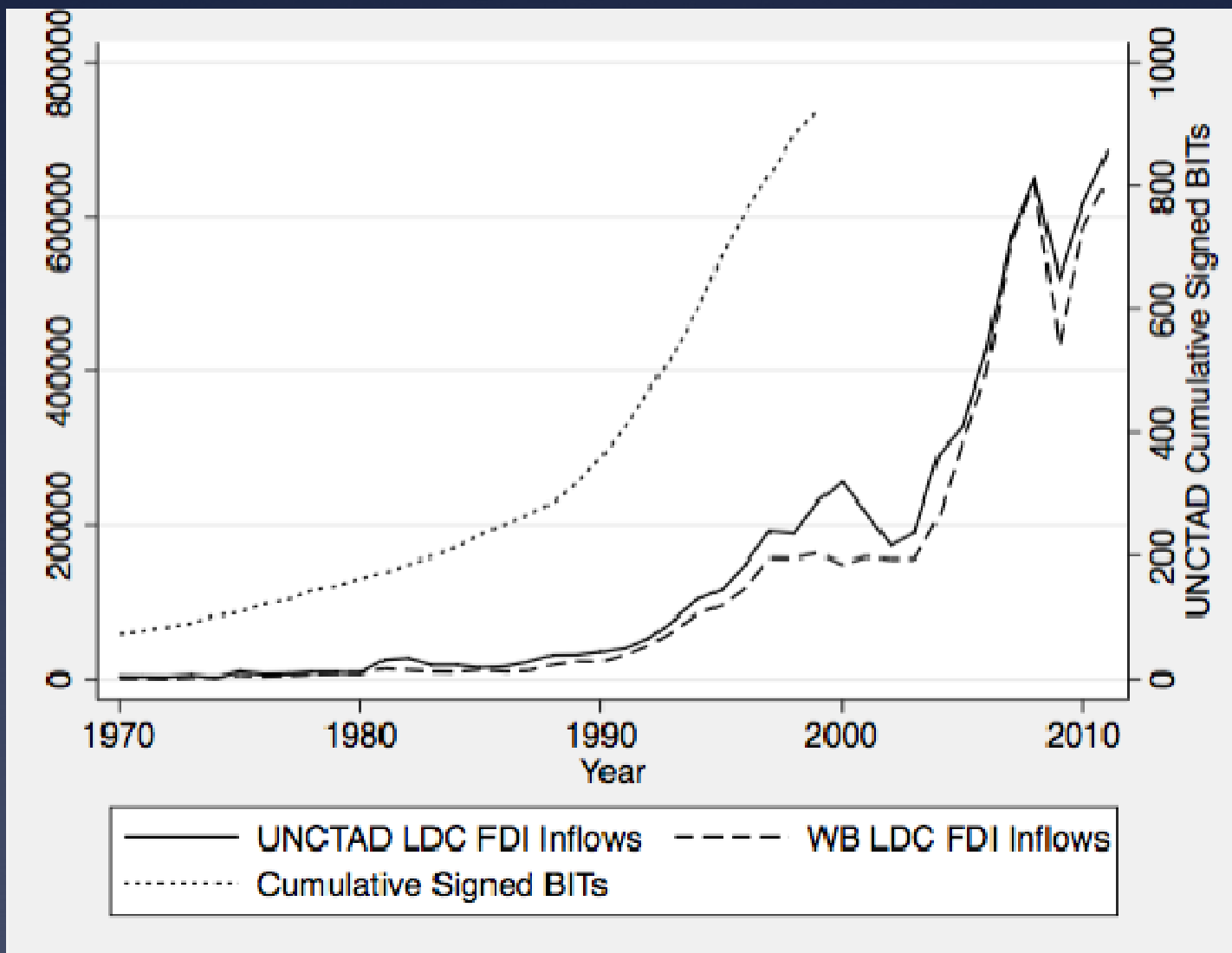
# What's the purpose of BITs?

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

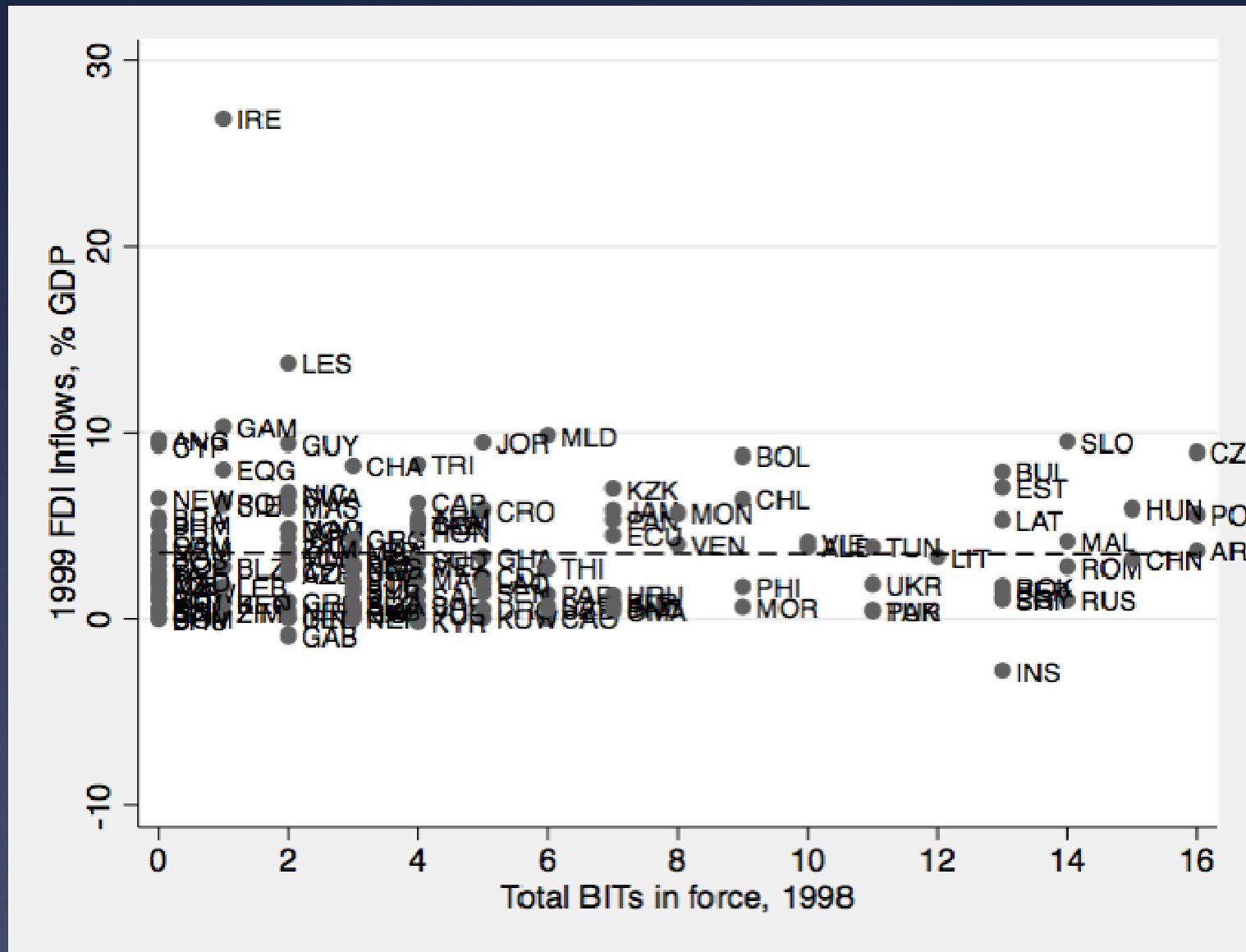
# Standard empirical strategy

- \* 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



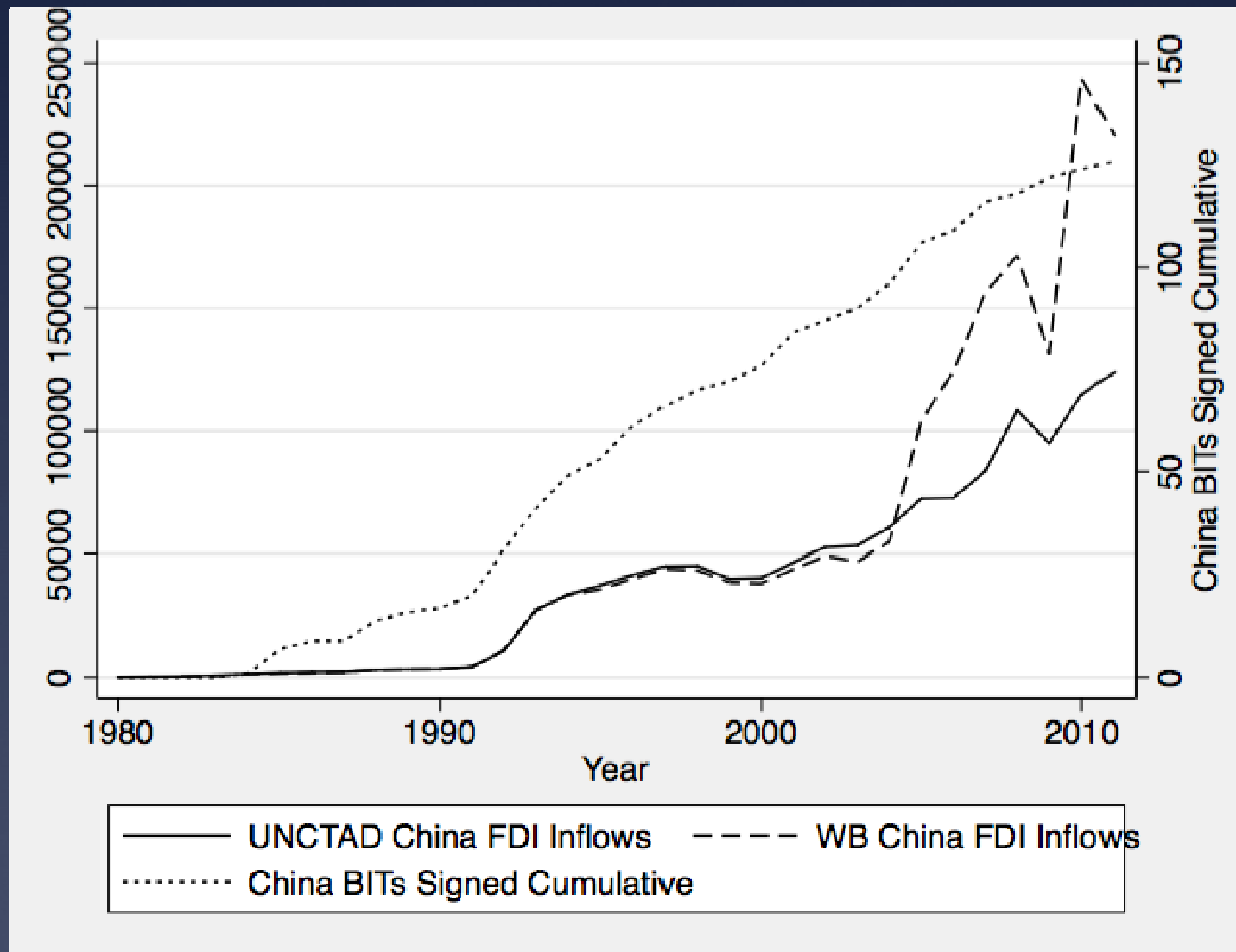
# A brief review of existing studies: all over the map

- \* UNCTAD (1998) (weak + effect)
- \* Neumayer & Spess (2005) (large + effect)
- \* Salacuse & Sullivan (2005) (+ effect US, none OECD)
- \* Hallward & Dreimer (2003) ( - 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

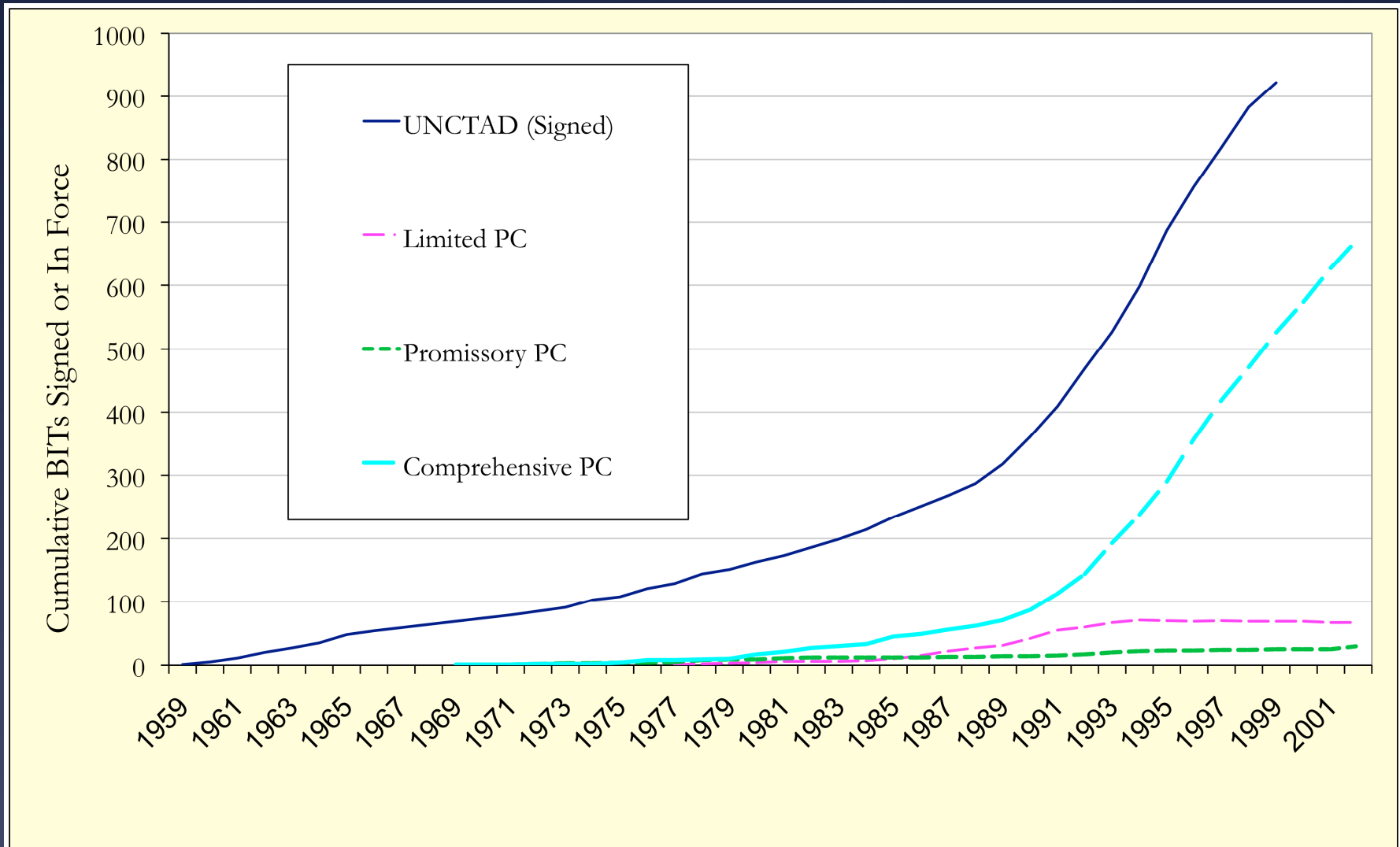




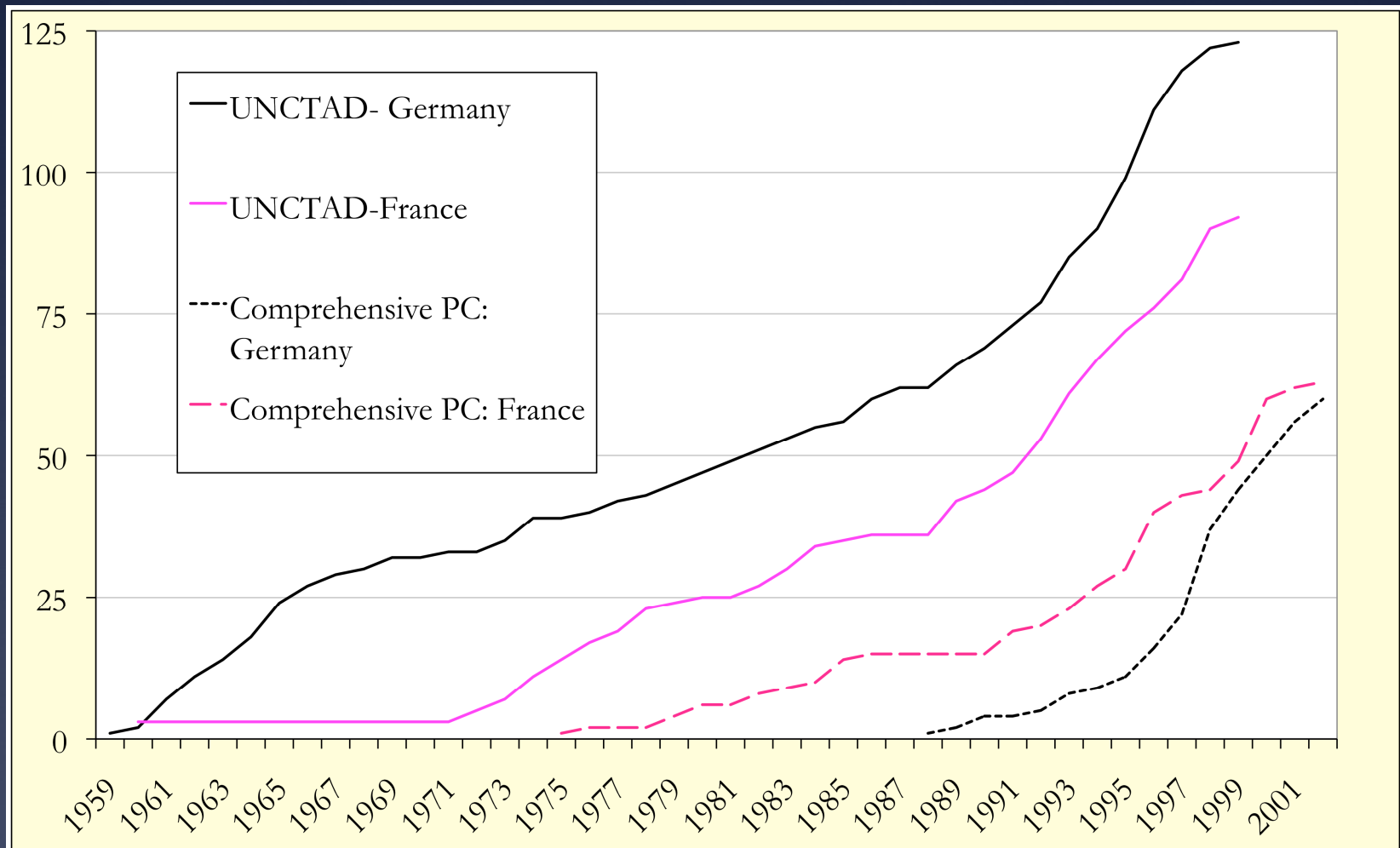
# Problems with measuring BITs

- \* 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



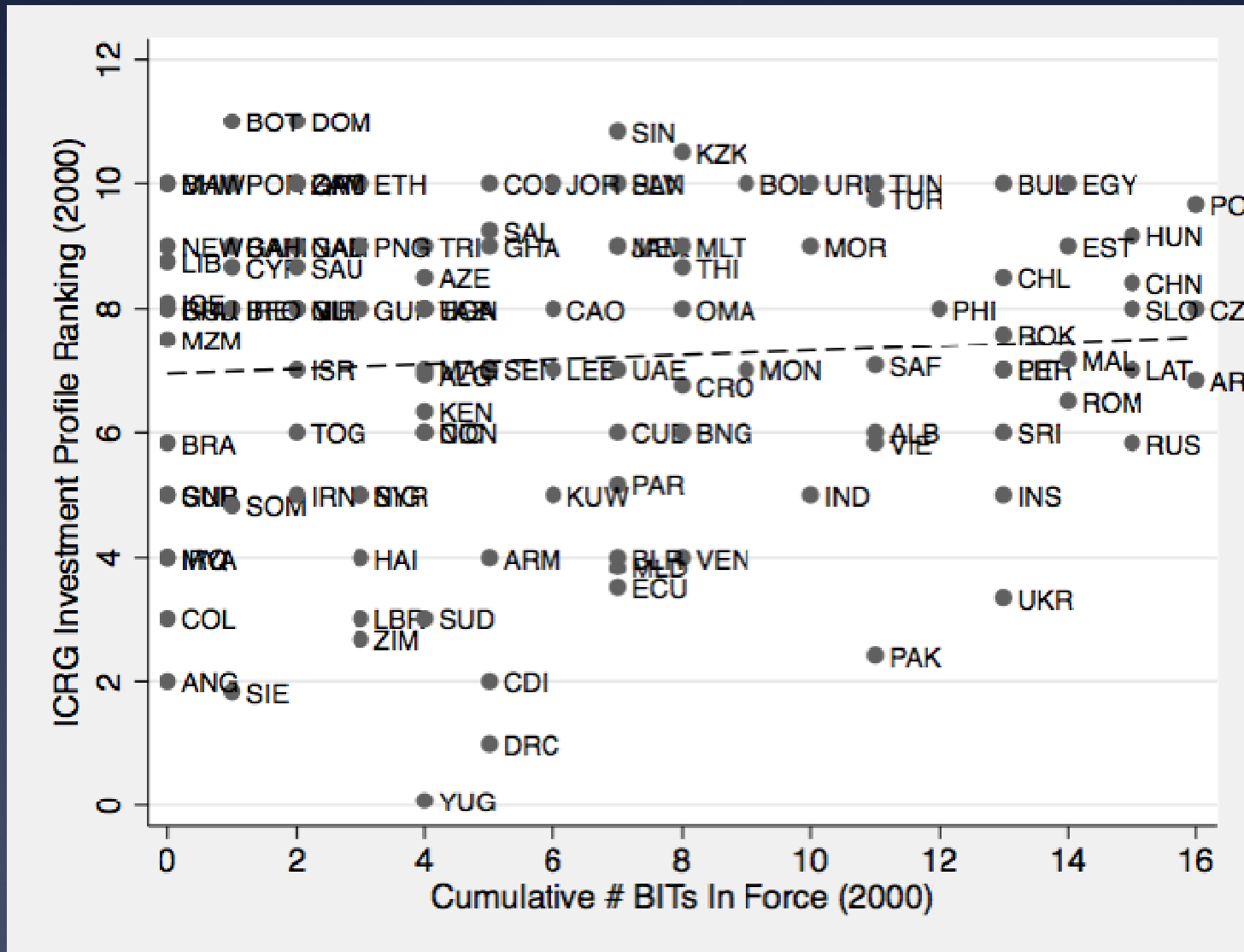
# A conceptual problem: the declining utility of BITs?

Country	Political Risk Rating with No BITs	With Some BITs	With Universal BITs
A	8*	8	10*
B	5	7	7
C	5	5	7
D	7	9*	9
E	2	4	4

# Alternative empirical strategies

- \* BITs & PRI Rates?
- \* BITs & Political Risk Indicators? [graph next slide]
- \* Focusing on \*state\* behavior?
  - \* Do IPAs advertise BITs?

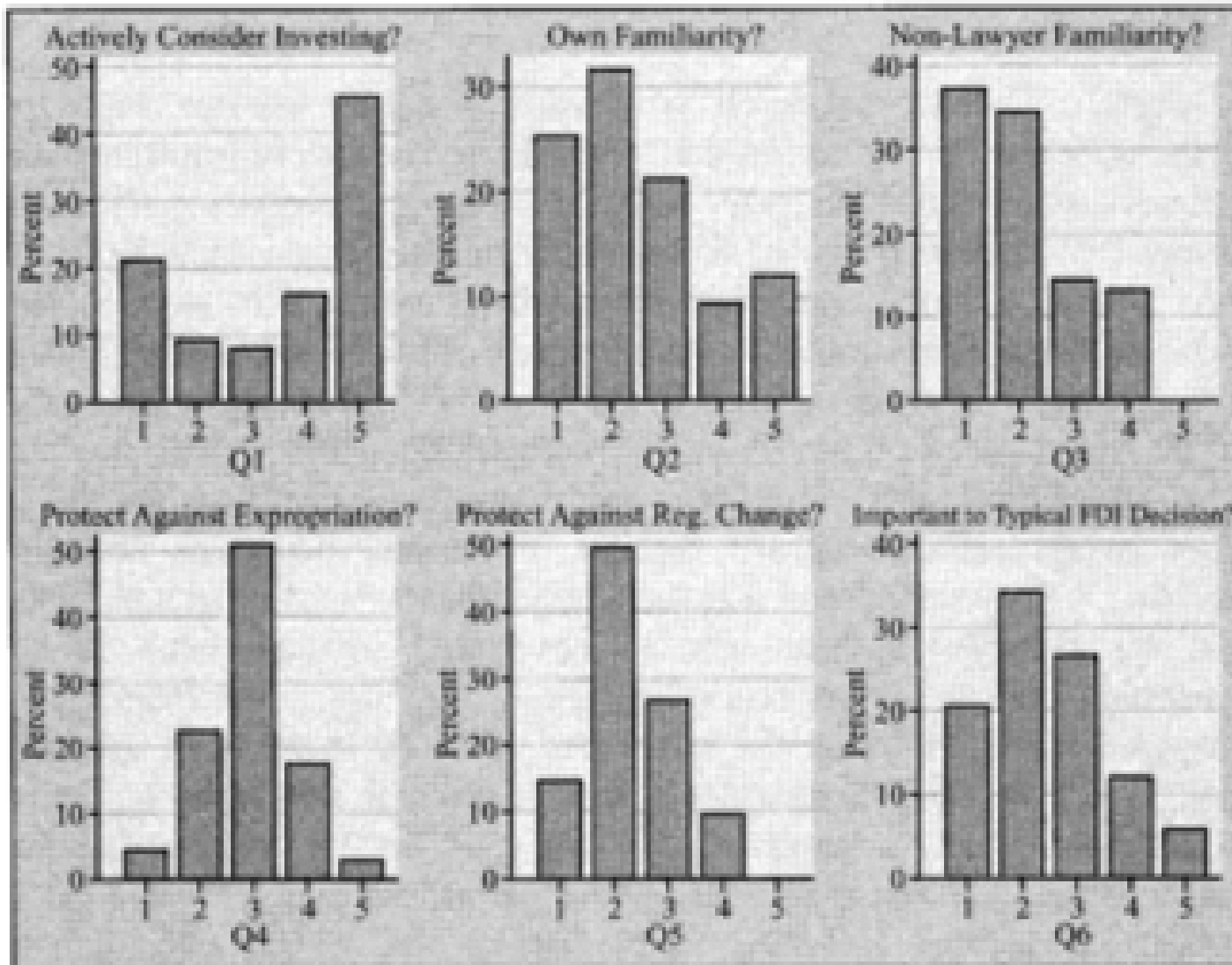
# “Political risk” & BITs



# 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.”
- \* Amanda Perry (2001) (investors in Sri Lanka)
  - \* “[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