UPGRADING BILATERAL INVESTMENT TREATIES TO PROMOTE CHINA'S OUTBOUND FOREIGN DIRECT INVESTMENT

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Executive Summary

1. From a major recipient of foreign direct investment (FDI), China has become a main source of global FDI and a likely net investor in FDI by as early as 2014.

2. As both an investor and a recipient of FDI, China has shifted its policy focus from attracting FDI inflow to facilitating and protecting its outbound FDI.

3. Such a shift is reflected clearly in China's efforts to negotiate and to upgrade its bilateral investment treaties (BITs), in particular the government's decision to revive its BIT negotiations with the United States.

4. China is not new to BITs and has signed treaties with 130 countries and regions after its first agreement endorsed in 1982.

5. Sino-foreign BITs are typical of capital importing countries, even though some liberalisation has taken place since the late 1990s. The main issues include pre-entry national treatment and the related negative list approach.

6. In 2013, China accepted the two principles and restarted negotiation with the United States. Negotiating a high-standard BIT shows China's readiness to further reforms and participate in global rule-making on economic affairs.

7. It is also consistent with China's domestic reform agenda as reforms in the external sector could help generate new momentum for domestic reforms.

8. To start the shift with a China-US negotiation is a logical move. While the United States has become an important destination for Chinese outbound FDI, prospective investment from China has at times met with challenges in the United States. A China-US BIT will be useful to create a friendlier environment.

9. Considerable challenges remain for a successful conclusion of a high-standard China-US BIT. A gap exists not only in issues concerning market access, such as

pre-entry national treatment, most-favoured national treatment and performance requirement, but also in various new provisions and obligations covering state-owned enterprises, intellectual property rights, labour and environment.

10. Moreover, for the bilateral negotiation to proceed, the two countries also need to eliminate various domestic obstacles. On the US side, a BIT would need two-thirds in the Senate, which may be difficult. On the Chinese side, to agree on a list that involves the different interests represented by various ministries and localities may also be quite a hurdle to cross.