



Ensuring Investment in Secure and Sustainable Energy:
Benefits of Multilateral Action
28 May 2009

Bilateral Investment Treaties & International Energy Investments



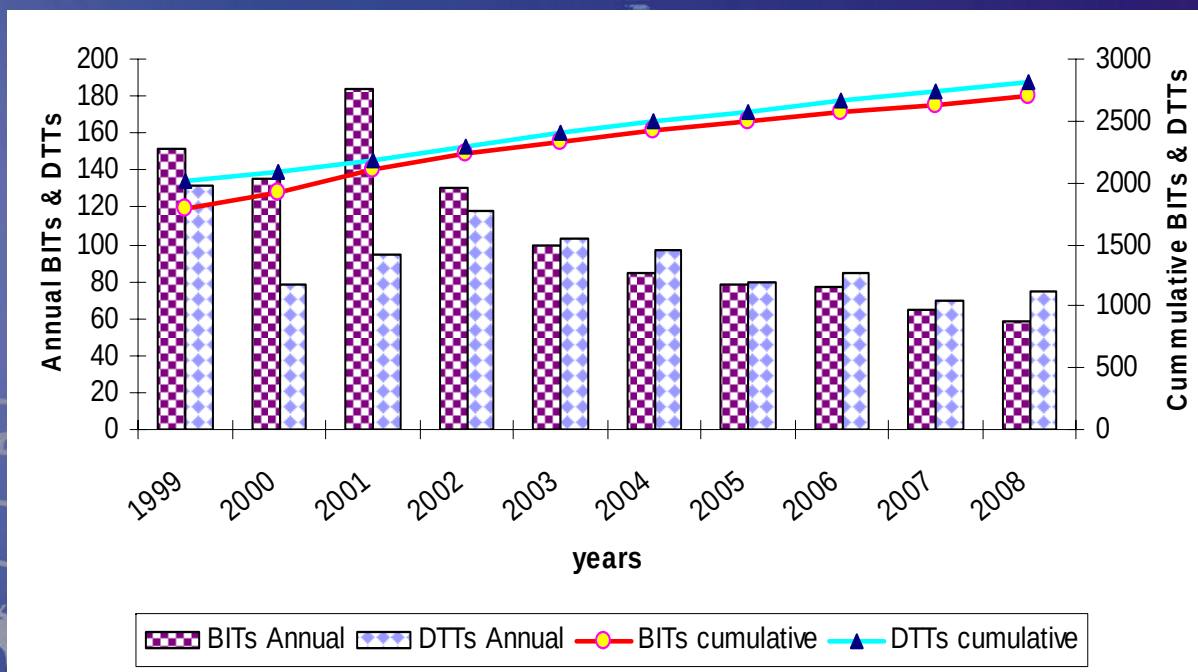
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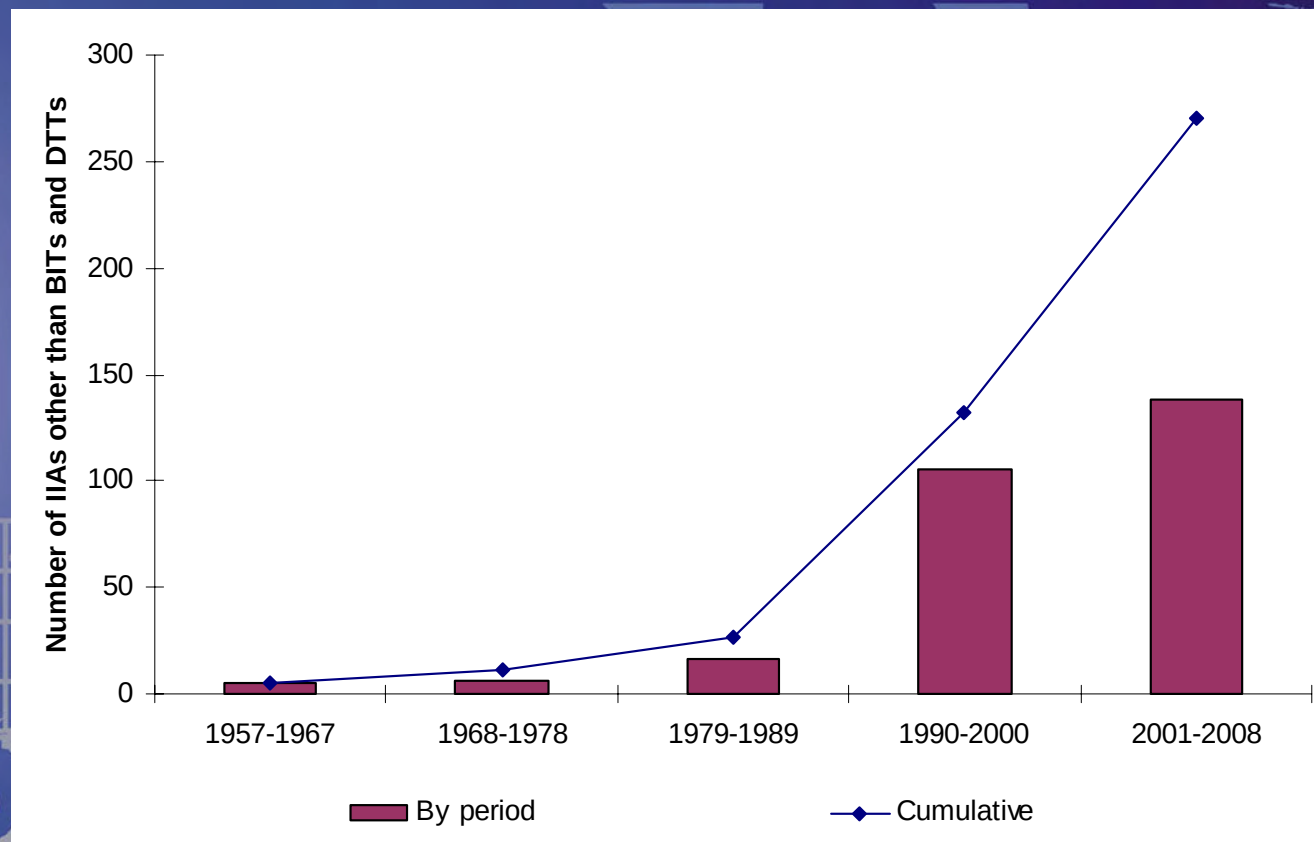
Outline

- Complexities of the int. investment regime
- FDI in energy: trends & estimates
- Energy investments & FDI policies
 - some characteristics
- Energy-specific aspects in BITs
- Increase of energy-related investor-State disputes
- Crisis & implications for int. investment rules
- Conclusions

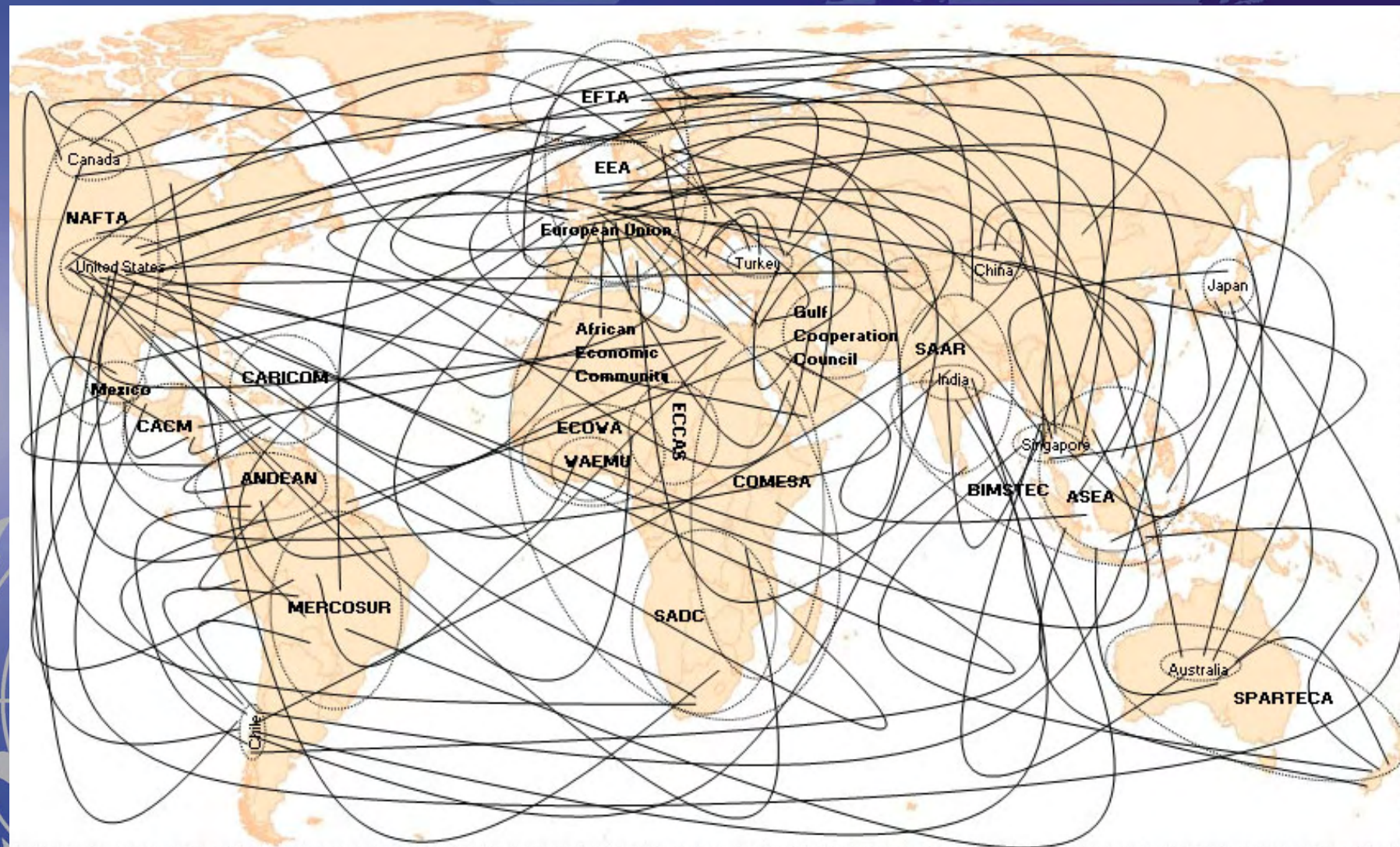
Number of BITs & DTTs, concluded annual & cumulative, 1999- 2008



Other Investment Agreements (IIAs)



The Spaghetti Bowl of IIAs



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FDI in Energy: Trends, Estimates & Needs

- **Extractive industries:** global FDI stock estimated:
 - \$755 billions (2005)
- **Mining, quarrying & petroleum:** inward FDI flows:
 - \$ 134 004 million (2004 - 2006), out of which:
 - \$ 102 226 for developed countries
 - \$ 26 819 for developing economies
 - \$ 4 959 for transition economies
- **Primary sector:** 1990 – 2005: 4 fold increase in FDI
- **Source countries:** developed countries most important, but recently also some developing & transition economies
- Considerable investment **needs** remain

Energy Investments & Policies: Some Characteristics

- **Regulatory** perspective:
 - particular sensitivities
 - energy sector more prone to **State involvement**
- **Company** perspective:
 - long term investments, particularly risky
- **Challenge** for policy makers: balance between:
 - predictability, stability & transparency
 - flexibilities

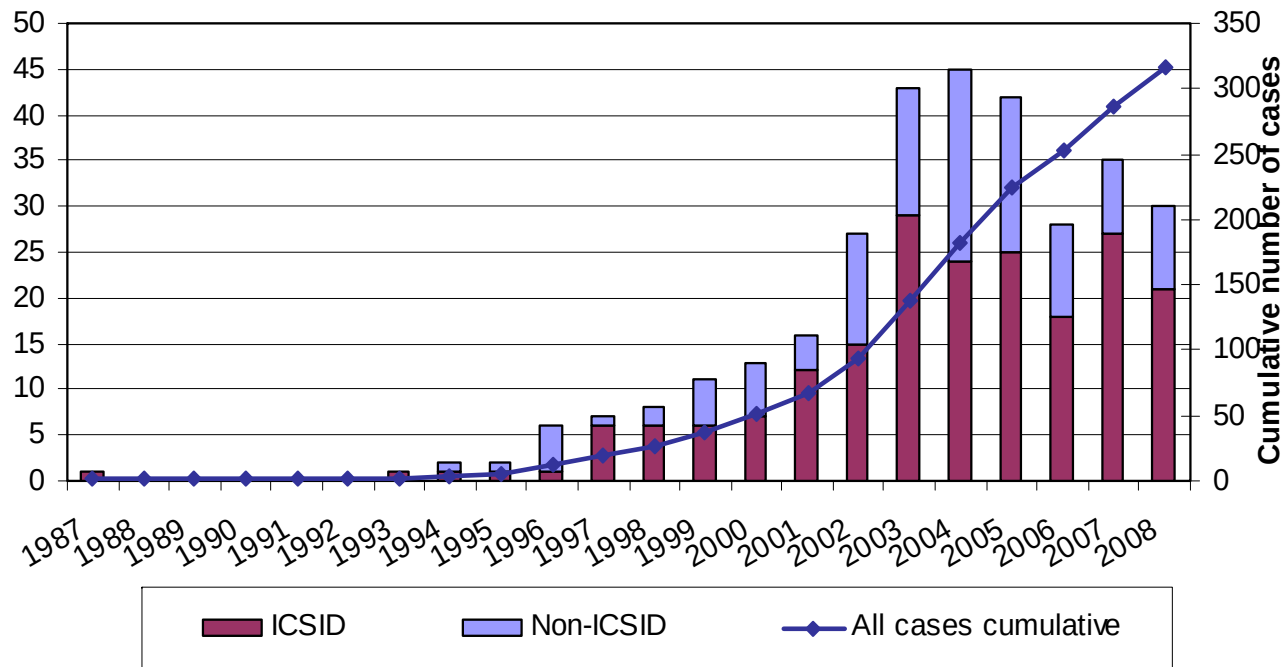
Energy-specific Aspects in BITs

- **Bilateral Investment Agreements**
 - generally cover **all sectors** of economic activity
 - key characteristics
- **Accounting for sector sensitivities through:
energy specific reservations**
 - e.g., in BITs granting pre-establishment rights
 - e.g., land use, ownership restrictions, reciprocity
 - exceptions**
 - general, natural resources, public services, national security

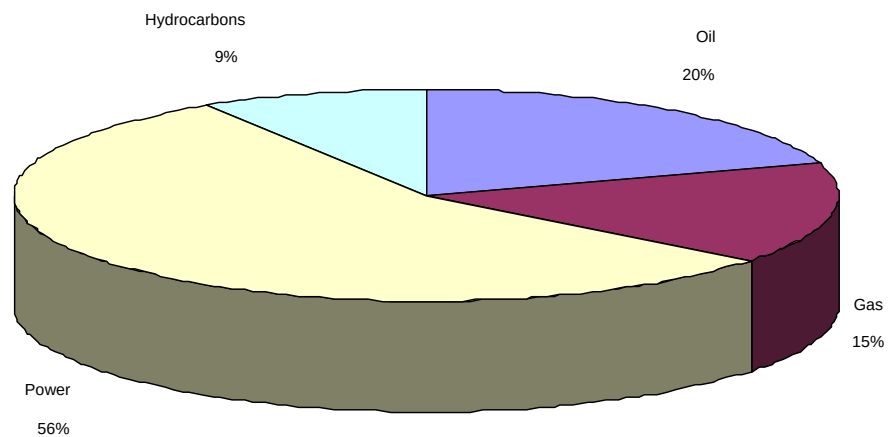
Increase of Investor-State Disputes in Energy-related FDI

- Treaty based investor-State disputes:
 - 318 known (by 2008)
 - > 80 disputes (> 29%) related to energy
- Industry distribution:
- Legal instruments used:
 - BITs (by far the majority), followed by: NAFTA, Energy Charter Treaty, CAFTA

Increased Investor-State Dispute Settlement



Sectoral Distribution of Disputes 1996-2008

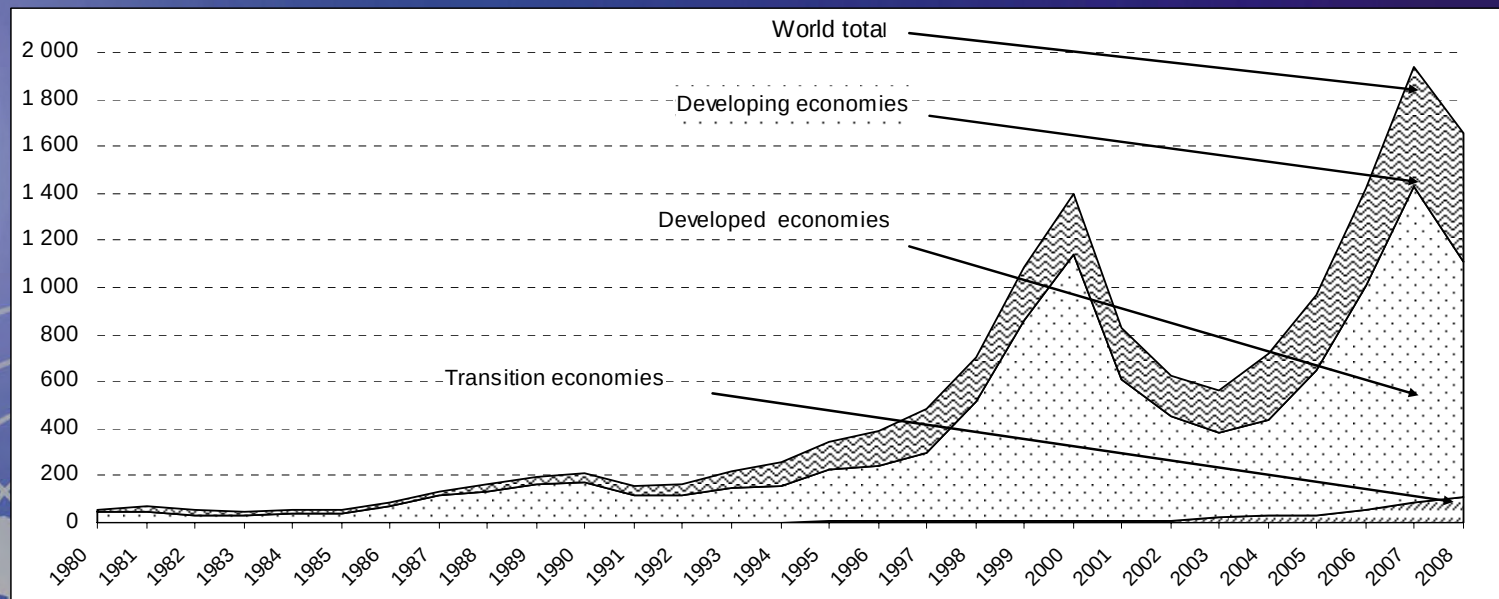


Global Economic & Financial Crisis

- Increasingly manifests its **impact** on
 - FDI flows
- Practically **all sectors affected**:
- Questions about impact & policy responses
 - **Adequate FDI policies** (incl. at int. level)
 - can offer significant contribution to realizing the development benefits of FDI, also in energy
 - particularly needed in current crisis

Record FDI Flows (2007) Decline (2008 & 2009)

The year 2008 marked the end of a growth cycle in FDI flows. 15% drop in 2008



FDI inflows, global & by group of economies, 1980-2008

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Conclusions

- Well informed **policy choices**
 - particularly needed
- Need for **coordinated response actions**
- **UNCTAD**
 - providing a forum for inter-governmental consensus building
 - can help improve international cooperation & coordination



Thank you for your attention!



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