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Investment liberalization and the Management of Negative List Shanghai Pilot FTZ and Asia opportunity

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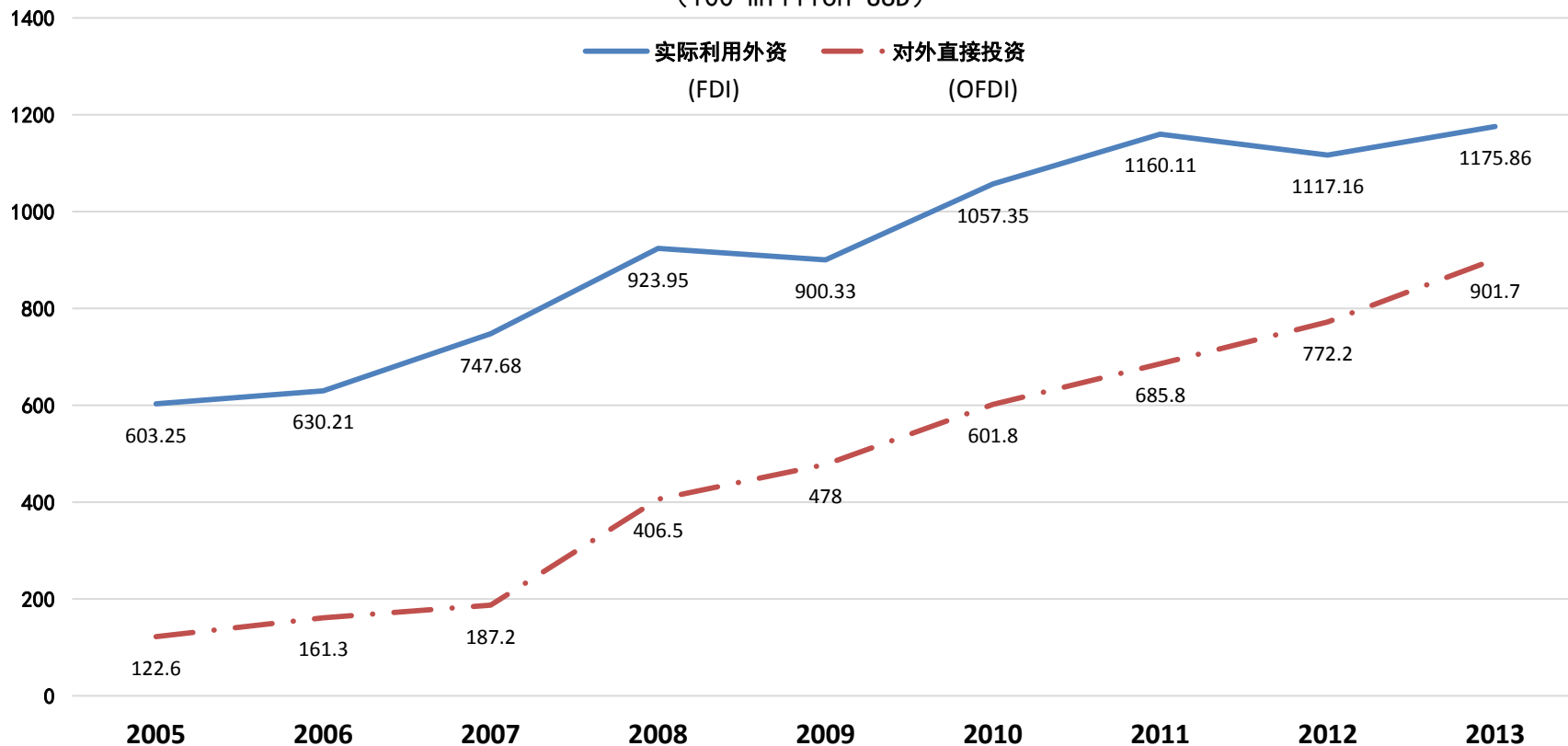
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Why Investment Liberalization

- ◆ Reform as a reaction to the change of Global Governance in trade & investment, such as new rules as dominated in TPP, TTIP, which include “pre-establishment treatment” rules and “negative list” models for managing market access for foreign investors. New rules also include environment, labor and competitive neutrality of SOEs, which are not addressed in traditional trade & investment treaties.
- ◆ China is now the second largest capital importing country and the third largest capital exporting country (see chart)
- ◆ The 3rd Plenary Session of 18th CPC Central Committee decided to comprehensively deepen the reform, and “accelerate negotiation and signing investment treaties with relevant countries and regions”.

2005-2013 China FDI & OFDI

2005-2013 China Non-financial FDI 和 OFDI
(100 million USD)



Source: MOFCOM, 2014

I. Overview of China's foreign investment policy:

Three Phases of China's Opening Policy

- **1979 – 1988**

Equity JV, Cooperative JV, wholly FIE laws and its implementing rules; laws related to foreign taxation, foreign exchange administration (SAFE) and labor law etc. (in taxation super-national-treatment)

BIT networking initiated

- **2001 - 2006**

Transitioning WTO law into domestic laws: ratification, transition according to relevant rules in TRIMs、GATS;

“Balance of Foreign Exchange,” “Export Performance” and “Domestication Requirement,” which are inconsistent with WTO law, are abolished.

Contract Law, individual/company income tax law, tax law and market admission regulation for FIEs are enacted, the foreign investment laws are systematically established.

- **2008 – new rule oriented**

In recent years, China rises both as capital receiving country but also as capital exporting country, China needs to ratify or amend its BITs with other countries; the on-going negation of TPP/TTIP also pushes China to reform its domestic legal framework for investment.

FTA with ASEAN since 2002 , now 18 FTAs/RTAs, 12 effective; 6 on negotiation

Incl. **RCEP (10 + 6)**, China- Australia, China-Korea FTA.

II. Investment Liberalization: pre-establishment & negative list model

1. Not specified in International Treaties

- no relevant clause related to pre-establishment and national treatment in intl' treaties so far signed by China (no GATT like rules)
- In GATS, only national treatment in those permitted sectors (post – establishment treatment), however not for admission
- no relevant Clause in TRIMS

2. Not specified in 131[↑] BITs, FTAs/RTAs, and CEPA

3. Fragmented international investment rules, difficult to have consent for multilateral mechanism

Will be adopted in China-US BIT, EU-China BIT

- **China-US BIT**

14 rounds (since 2011, **2014-1-15 text reading and negotiation**) ,
Shanghai Pilot FTZ, adopted the BIT Content: pre-establishment and
“negative list” model to manage foreign investment, aiming to establish
a safe, efficient, open and transparent foreign investment management
system in line with international standards

- **EU-China BIT**

3 rounds in 2014, (since 2012, EC was authorized by its member states to
launch BIT negotiation with China on 2014-01-21-23 first round took
place)

2014-3-31 Art. 11, Joint Statement: Deepening the EU-China
Comprehensive Strategic Partnership for mutual benefit

Key Clauses in BIT Negotiations

- Market Access: the scope and to what extent? How to ensure a fair competition among state-owned firms, private firms and FIEs.
 - ① Market Access / Negative List & pre-establishment
 - ② Financing (credit, loan)
 - ③ GPA
 - ④ Government Subsidy
- ISDR
- Fair Competition, Transparency of State-Owned firms and the potential investor-state arbitration

预览已结束，完整报告链接和二维码如下：

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