

# **BILATERAL INVESTMENT TREATIES BETWEEN ECOWAS AND EUROPEAN UNION COUNTRIES: LESSONS FOR THE ECONOMIC PARTNERSHIP AGREEMENT**

by

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## **Abstract**

*West African countries are currently engaged in trade and investment negotiations with the European Union (EU) to make their economic cooperation of over three decades reciprocal within the context of Economic Partnership Agreements (EPA). During the Lome Conventions which previously characterized ACP-EU relations, one of the instruments of economic relations is bilateral investment treaties (BITs) that West African countries individually signed to access cutting-edge technologies alongside unilateral liberalisation of investment regimes and the preferential trade and investment agreements (PTIAs) in the context of the Lome. The impact of BITs on FDI flows is not clear in the literature, hence, this paper investigates the extent to which BITs and RTIAs triggered investment flows between West African countries and the European Union countries with a view to motivating the investment component of the EPA given that investment as one of the Singapore issues was removed from WTO's Doha Round. It is found that BITs attracted EU investments to West African countries while the Lome Conventions did not, suggesting that West African countries need to scrutinise more closely the EU EPA-related investment agreements and negotiate development-oriented outcomes accordingly.*

Key words: Bilateral investment treaties, foreign direct investment, Lome conventions, panel estimation, Economic partnership agreement

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# **BILATERAL INVESTMENT TREATIES BETWEEN ECOWAS AND EUROPEAN UNION COUNTRIES: LESSONS FOR THE ECONOMIC PARTNERSHIP AGREEMENT**

## **1. Introduction**

West African countries are currently engaged in trade and investment negotiations with the European Union (EU) to make their economic cooperation of over three decades reciprocal within the context of an Economic Partnership Agreements (EPA). During the Lome Conventions which previously characterized ACP-EU relations, bilateral investment treaties (BITs) constituted one of the instruments of economic relations that West African countries individually signed to access cutting-edge technologies alongside unilaterally liberalizing their investment regimes as well as participating in the preferential trade and investment components (PTIA) of the Lome Conventions. West African countries were among their developing country cohorts that have largely cultivated, and competed for, foreign direct investment inflows to bridge their domestic saving-investment gap and therefore augment the available funds to finance own development process through bilateral investment agreements. Togo became the first West African country to sign a BIT in May 1961 followed by Liberia in December of the same year. Ever since, all West African countries have signed BITs with different frenzy particularly since the early 1990s. Globally, the 1990s constituted a period when BITs also gained popularity and momentum among developing countries culminating in a phenomenal rise of the total number of BITs to 2,573 at the end of 2006, with an average annual increase of approximately 75 BITs during 2004-2006 (UNCTAD, 2006).

Developing countries' increased participation in BITs manifests in their share, approximately 82%, of the 73 new agreements in 2006 while renegotiation of existing treaties with developed countries continued unabated. Recent trend in BIT ratification similarly shows increasing relations between developing countries, with Asian countries continuing their conspicuous lead. In the first half of 2007, UNCTAD estimated that out of the 15 new BITs in 2007, 12 Asian countries were involved, featuring India signing up to 4 with African and Latin American countries.

West African countries like their counterparts in other regions have followed a three-track approach to cultivating foreign direct investment (FDI). Thus, apart from using BITs, they have

as the second track engaged in preferential trade agreements that embodied investment protocols particularly from the Lome Conventions through to the Cotonou Partnership Agreement (CPA) which constitutes the transitional agreement to the reciprocal Economic Partnership Agreement (EPA). Unilateral liberalization undertaken at individual country levels which produced investment law reforms in these countries constituted the third track. The trend in global preferential trade and investment agreement has also indicated an increase and a rapid proliferation to 241 in 2006 with Asian countries showing similar inclination to ratify PTIAs as in BITs.

Moving from an investment-bias environment of the 1960s, the domestic investment framework of West African countries witnessed substantial policy reform from the mid – 1980s, aimed at allowing foreign participation in many sectors of their economies through investment promotion, and later, investment protection. Many of the investment codes and related legislations in the liberalized regime offer investment protection and national treatment of foreign investment as well as arbitration in case of a dispute between host country and investor. Along with the various incentives to foreign investors to invest in host countries are requirements in the domestic investment regulations that spell out measures to ensure foreign investment effectiveness, such as operational permits and performance requirements. Most early BITs were signed between African and Western European countries (Tobin et al 2003) as a response to the weakness of customary international law under which foreign investment is subject exclusively to the territorial sovereignty of the host country (UNCTAD 1998).

The impact of BITs and PTIAs on FDI flows remains controversial in the literature. Recent studies buttress this inconclusive evidence. Neumayer and Spess (2005), Salacuse and Sullivan (2004) are examples of studies which found positive impacts while Hallward-Driemeier (2003), Tobin and Rose-Ackerman (2003) found no such evidence particularly in the presence of very high risks, particularly predicting a negative or no impact of BIT on FDI. However, a class of studies has also suggested that preferential trade and investment agreements impact positively on FDI flows [for example, Blomstrom and Kokko (1998); Gastanaga et al (1998); Globerman and Shapiro (1999); Asiedu (2002)].

Though the number of PTIAs relative to BITs is small, at less than 10% of all agreements, this paper investigates whether and the extent to which both BITs and PTIA triggered investment flows between West African and the European Union countries with a view to

motivating the investment component of the EPA given that investment as one of the Singapore issues was removed from WTO's Doha Round due to concerns about the substantial implementation costs a multilateral investment agreement would impose on developing countries. Notwithstanding the controversial impact of BITs and PTIAs on FDI flows in the literature, it is expected that BITs signed with EU countries attracted investment more than from other non-EU countries, while PTIAs should similarly increase FDI to West African countries. This becomes really very necessary as West African countries need to understand the various components of the EPA-related investment agreement and negotiate development-oriented outcomes accordingly.

Deploying panel estimation techniques to data on FDI and market size, market potential and other economic and social variables as well as accounting for BIT and PTIA, econometric assessment indicates that BITs have strong impact on FDI flows and stock in West African countries, and this impact is greater for FDI stock than flows. On the contrary, the Lome Conventions did not have significant impact on both FDI stock and flows.

In section 2, the paper describes as a background to the empirical work the structure, magnitude and policy climate over time of foreign direct investment in West Africa. This description covers the three-track approach namely the BITs, PTIAs and the unilateral foreign direct investment policies. In the next section, we discussed the recent debates around the impact of BITs on foreign direct investment with a view to contextualising such impact in West African countries. Section 4 develops the empirical part of the paper, detailing the adopted estimated model and technique, the variables definition, and the relationship between them. Section 5 discusses the estimation results. The paper is summarized and concluded in section 6.

## **2. International Investment Agreements between West Africa and EU Countries** *Bilateral Investment Treaties*

Bilateral and regional investment agreements are important instruments for driving free and appreciable flow of foreign investment among countries and regions. Investment treaties contain a universe of regulatory structures meant to stipulate terms of relationships between host countries and the investors concerned in conformity with specific international standard norms. The minimum standard often expressed and expected in International Investment Laws

states that a host country should ensure “fair and equitable treatment”, together with other relevant standards, as part of protection due to foreign investment by host countries.

Bilateral investment treaties (BITs) are the historical product of Treaties of Friendship, Commerce and Navigation ("FCN treaties") which form part of the wide range of provisions on bilateral economic, cultural and political cooperation constitute, to date, the most important instrument for protecting foreign investment (UNCTAD, 2000). ECOWAS countries plus Mauritania entered into about 59 BITs with 14 countries of the EU between 1960 and 2000, with twenty three existing before 1980 (Oyejide et al 2005). Germany, United Kingdom and France are the main EU partners with which ECOWAS countries have most of their BITs relationship over the last three decades (Table 1).

The bilateral investment treaties that West African and European Union countries have entered into cover the main areas of definition of investment, scope of application, investment promotion, and investment protection as well as dispute settlement procedures. The investment promotion and protection of the treaties oblige contracting parties to encourage and create favourable environment for their nationals or companies to invest capital in each other's territory depending on existing laws in their countries, to, at all times, provide fair and equitable treatment including non-discriminatory full protection and security for each other's investment. Under the principles of most-favoured-nation (mfn) and national treatment principles, parties are to ensure that investment or returns of nationals or companies are not treated in 'less favourable' manner than investment of a third country. Where special incentives to stimulate the creation of local industries are to be granted, these should not affect the investment of the other party to the agreement. In other words, exemption to national treatment should not cause harm to the investment of the investors of the parties to the agreement.

The provisions on expropriation (though prohibited) and losses arising from unforeseen events such as wars require parties to pay 'compensations, restitution, indemnification or other

**Table 1:  
BITs Involving West Africa and EU Countries (1959-2000)**

| EU Country         | West African Countries<br>Pre-1980  |  | WA Countries<br>1980-2000   |  |
|--------------------|---|--|---|--|
| EU Partner         | West African Partner  | Effective date   | WA Partner  | Effective date                               |
| Austria            |   |  | Cape Verde  | 1993   |
| Belgium/Luxembourg |   |  | Mauritania<br>Liberia<br>Cote d'Ivoire                                | 1983<br>1985<br>1999                         |
| Bulgaria           |   |  | Ghana   | 1989   |
| Denmark            |   |  | Ghana   | 1995   |
| France             | Senegal   | 1974   | Liberia<br>Nigeria<br>Ghana   | 1982<br>1991<br>1999                         |
| Germany            | Senegal<br>Liberia<br>Cote d'Ivoire<br>Guinea<br>Niger<br>Togo<br>Sierra Leone                                | 1966<br>1967<br>1968<br>1965<br>1966<br>1964<br>1966                         | Ghana<br>Benin<br>Burkina Faso<br>Cape Verde<br>Mauritania<br>Mali    | 1998<br>1985<br>1996<br>1993<br>1986<br>1980 |
| Italy              | Cote d'Ivoire<br>Guinea   | 1969<br>1964   | Ghana<br>Cape Verde   | 1998<br>1997                                 |
| Netherlands        | Cote d'Ivoire   | 1966   | Senegal<br>Ghana<br>Cape Verde<br>Nigeria                             | 1981<br>1991<br>1992<br>1994                 |
| Portugal           |   |  | Cape Verde<br>Guinea Bissau   | 1991<br>1996                                 |
| Romania            |   |  | Ghana<br>Mauritania<br>Senegal  | 1989<br>1989<br>1984                         |
| Sweden             | Senegal<br>Cote d'Ivoire  | 1966<br>1968   |   |  |
| Switzerland        | Senegal<br>Liberia<br>Cote d'Ivoire<br>Guinea<br>Niger<br>Togo<br>Mauritania<br>Benin<br>Burkina Faso<br>Mali | 1964<br>1967<br>1962<br>1963<br>1962<br>1966<br>1978<br>1973<br>1969<br>1978 | Ghana<br>Cape Verde<br>Gambia   | 1993<br>1992<br>1994                         |
| Turkey             |   |  | Nigeria   | 1996   |
| United Kingdom     |   |  | Senegal<br>Ghana<br>Cote d'Ivoire<br>Nigeria<br>Benin<br>Sierra Leone | 1984<br>1991<br>1997<br>1990<br>1987<br>1981 |

Source: Oyejide et al (2005)

settlements', employing the national treatment and mfn principles. The treaties contain provisions for settlement of disputes arising from the interpretation of the treaties which shall first be settled by recourse to diplomacy after which, when resolution fails at the former level, it should be referred to an arbitral or conciliation tribunal of the International Centre for the Settlement of Investment Disputes (ICSID). The treaties also discourage the use of diplomatic channels to resolve disputes once they have been referred to the ICSID, apart from exceptional cases.

From Table 2, the country-level analyses of the effect of BITs on flow of investment into the ECOWAS community show that impact of BITs on flow of FDI is ambiguous between 1980 and 2001. Mali signed a bilateral agreement on investment with Germany in 1980. Inflow of FDI a year after exhibited a negative trend while the value of FDI in Mali experienced explosive but unstable growth from 1983, suggesting considerable lag in FDI response to BIT. Senegal and Sierra Leone also went into different BITs with The Kingdom of Netherlands and United Kingdom respectively while Senegal signed two other BITs with the United Kingdom and Romania in 1984. FDI in all of those periods moved from positive to a disappointing trend thereafter.

The BIT between the Republic of Benin and Germany in 1985 and United Kingdom in 1987 yielded a substantial positive impact observable from few years after the agreements became operational. Ghana is perhaps the most prolific partner in signing BITs among the ECOWAS States with eight BITs between 1989 and 1999. The impact on Ghanaian economy was positive but not commensurate with the frequency of initiation and signing of BITs. The intensity and pattern of FDI inflow did not change significantly following four BITs signed by Nigeria with United Kingdom in 1990, France in 1991, Netherlands in 1994 and Turkey in 1996. Cape Verde, Cote d'Ivoire and Gambia also witnessed mixed results, combining both positive and negative trend.

### *Lome Conventions*

The Lome Conventions remain one of the most comprehensive regional approaches to development cooperation between the EU and ACP States. The Agreements in principle gave considerable priority to industrial cooperation, especially the later versions. The last two

versions emphasized financing and promotion of investment and private sector development in general. Provisions in the Lome conventions ranged from industrial cooperation and creation of Centre for Industrial Development (CDI) in Lome I to support to investment in Lome IV. Table 3 summarizes the relevant provisions for investment and issues associated under the Lome.

The conventions contain various Articles which give specific guidelines and rules relevant to directing industrial cooperation and development, with the later versions targeting investment flows between the two blocs involved in the agreement. Each of the Conventions were specific in terms of focus with Lome I addressing industrial cooperation by the creation of a Centre, Centre for Development of Industry, CDI, for that purpose. Lome II directed more attention to industrial development among the constituent countries of the blocs involved in the cooperation. Under Lome III, industrial development is covered in Articles 60-74 along with investment promotion, which came under special focus. Issue of protection of investment also featured under special consideration in Articles 240-267 of the third series of Lome. The later attracted further treatment in Article 260-262 of Lome IV. Greater concern for investment was expressed in Lome IV, with the Convention devoting Articles 258 to 272 to different aspect of investment, including investment protection, financing of investment (Articles 263 to 266), and support to investment (Articles 267 – 272).

**Table 3:  
Relevant Provisions for Investment and Industrial Development in Lome Conventions**

| Subject                 | Lome I – 1975  | Lome II – 1979 | Lome III – 1984  | Lome IV – 1990 and 1995 |
|-------------------------|----------------|----------------|------------------|-------------------------|
| Industrial cooperation  | Articles 26-39 |                |                  |                         |
| Creation of CDI         | Articles 36    |                |                  |                         |
| Industrial development  |                | Articles 65-82 |                  |                         |
| Investment promotion    |                |                | Articles 60-74   |                         |
| Investment protection   |                |                | Articles 240-247 | Articles 260-262        |
| Financing of Investment |                |                |                  | Articles 263- 266       |
| Support for Investment  |                |                |                  | Articles 267- 272       |

Sources: Bheenick, 1997; and Solignac-Lecomte, 2003.

Specifically, Lome III contained investment promotion and protection clauses, articulated in Articles 60-74, which persuade parties to implement measures to encourage participation of private sector investors in accordance with appropriate domestic laws and regulations, and those which guarantee fair and equitable treatment to the investors.

**Table 2:**  
**Foreign direct investment, net inflows (current US\$ millions)**

| Country       | 1980   | 1981   | 1982   | 1983  | 1984    | 1985    | 1986   | 1987  | 1988  | 1989     | 1990    |
|---------------|--------|--------|--------|-------|---------|---------|--------|-------|-------|----------|---------|
| Benin         | 4.3    | 2.1    | 0      | 0     | 0       | ☀ -0.1  | 1.1    | ☀ 0.1 | 0     | 62.1     | 62.4    |
| Burkina Faso  | 0      | 2.4    | 1.9    | 2     | 1.7     | -1.4    | 3.1    | 1.3   | 3.7   | 5.7      | 0       |
| Cape Verde    | ..     | 0      | 0      | 0     | 0       | 0       | 0      | 2.8   | 0.6   | 0.2      | 0.3     |
| Cote d'Ivoire | 94.7   | 32.8   | 47.5   | 37.5  | 21.7    | 29.2    | 70.7   | 87.5  | 51.7  | 18.5     | 48.1    |
| Gambia        | 0      | 2.3    | 0      | 0     | 0       | 0       | 0      | 1.5   | 1.2   | 14.8     | 0       |
| Ghana         | 15.6   | 16.3   | 16.3   | 2.4   | 2       | 5.6     | 4.3    | 4.7   | 5     | ☀☀ 15    | 14.8    |
| Guinea        | 0.6    | -1.3   | -0.4   | 0.4   | 0.7     | 1.1     | 8.4    | 12.9  | 15.7  | 12.3     | 17.9    |
| Guinea-Bissau | 0      | 0      | 0      | 0     | 2.3     | 1.4     | 0.8    | 0.1   | 0.7   | 0.5      | 2       |
| Liberia       | 0      | 0      | ☀ 34.8 | 49.1  | 36.2    | ☀ -16.2 | -16.5  | 38.5  | 0     | 0        | 0       |
| Mali          | ☀ 2.4  | 3.7    | 1.5    | 3.1   | 10.1    | 2.9     | -8.4   | -6    | 7.1   | 6.4      | 5.7     |
| Mauritania    | 27.1   | 12.4   | 15     | ☀ 1.4 | 8.5     | 7       | ☀ 4.5  | 1.7   | 1.9   | ☀ 3.5    | 6.7     |
| Niger         | 49.1   | -6.1   | 28.2   | 1.2   | 1.4     | -9.4    | 17.6   | 14.8  | 6.9   | 0.8      | 40.8    |
| Nigeria       | -738.9 | 542.3  | 430.6  | 364.4 | 189.2   | 485.6   | 193.2  | 610.6 | 378.7 | 1,884.30 | ☀ 587.9 |
| Senegal       | 14.5   | ☀ 34.4 | 28.1   | -34.7 | ☀☀ 29.1 | -15.8   | -8.4   | -4    | 14.9  | 26.8     | 56.9    |
| Sierra Leone  | -18.7  | ☀ 7.5  | 4.7    | 1.7   | 5.9     | -31     | -140.3 | 39.4  | -23.1 | 22.4     | 32.4    |
| Togo          | 42.7   | 10.2   | 16.1   | 1.4   | -9.9    | 16.3    | 6.1    | 7.2   | 13    | 9.2      | 18.2    |

☀ 1 BIT signed ☀☀ 2 BITs signed. Source: Oyejide et al, 2005

☀  
one  
BIT  
signed  
☀☀  
two

**Table 2 cont'd:**  
**Foreign direct investment, net inflows (current US\$ million)**

| Country       | 1991    | 1992   | 1993     | 1994     | 1995     | 1996     | 1997     | 1998     | 1999     | 2000  | 2001     |
|---------------|---------|--------|----------|----------|----------|----------|----------|----------|----------|-------|----------|
| Benin         | 120.8   | 77.6   | 1.4      | 13.6     | 7.4      | 28.6     | 26       | 34.7     | 39.3     | 64.3  | 131.2    |
| Burkina Faso  | 0.6     | 3.1    | 3.2      | 18.4     | 9.8      | ☀16.9    | 12.5     | 9.7      | 13.1     | 23.2  | 25.5     |
| Cape Verde    | ☀ 1.7   | ☀ 0.5  | ☀☀ 3.6   | 2.1      | 26.2     | 28.5     | ☀ 11.6   | 8.8      | 53.3     | 21.1  | 0.7      |
| Cote d'Ivoire | 16.3    | -230.8 | 87.9     | 78       | 211.5    | 269.2    | ☀ 415.3  | 379.9    | ☀ 323.7  | 234.7 | 245.7    |
| Gambia        | 10.2    | 6.2    | 11.1     | ☀ 9.8    | 7.8      | 10.8     | 12       | 23.7     | 49.5     | 43.5  | 35.5     |
| Ghana         | ☀☀ 20   | 22.5   | ☀ 125    | 233      | ☀ 106.5  | 120      | 82.6     | ☀ 55.7   | ☀ 62.6   | 110.3 | 89.3     |
| Guinea        | 38.8    | 19.7   | 2.7      | 0.2      | 0.8      | 23.8     | 17.3     | 17.8     | 63.4     | 9.9   | 1.6      |
| Guinea-Bissau | 2.1     | 5.8    | 3.3      | 0.4      | 0        | ☀1       | 11.5     | 4.4      | 8.6      | 22.9  | 30.1     |
| Liberia       | 0       | 0      | 0        | 0        | 0        | -132     | 15       | 16       | 10       | 11.5  | 12.5     |
| Mali          | 1.2     | -21.9  | 4.1      | 17.4     | 111.4    | 84.1     | 39.4     | 35.8     | 51.3     | 106.4 | 102.8    |
| Mauritania    | 2.3     | 7.5    | 16.1     | 2.1      | 7        | 4.2      | 0.9      | 0.1      | 0.9      | 9.2   | 30       |
| Niger         | 15.2    | 56.4   | -34.4    | -11.3    | 7.2      | 20       | 24.6     | 9        | 0.3      | 19.3  | 13.3     |
| Nigeria       | ☀ 712.4 | 896.6  | 1,345.40 | ☀1,959.2 | 1,079.30 | ☀1,593.0 | 1,539.40 | 1,051.30 | 1,004.80 | 930.4 | 1,104.40 |
| Senegal       | -7.6    | 21.4   | -0.8     | 66.9     | 31.7     | 8.4      | 176.4    | 70.8     | 156.6    | 88    | 125.5    |
| Sierra Leone  | 7.5     | -5.6   | -7.5     | -2.9     | -1.7     | 19       | 9.6      | -9.8     | 6.2      | 4.9   | 4        |
| Togo          | 6.5     | 0      | -11.9    | 15.4     | 26.2     | 17.3     | 21       | 30.2     | 42.6     | 41.9  | 66.9     |

☀ 1 BIT signed ☀☀ 2 BITs signed

Source: Oyejide et al, 2005

The Convention also implored members to create and maintain a predictable and secure investment climate and to improve same while the parties should promote effective cooperation to increase the flow of capital, management skills, technology and other forms of know-how. Both parties were to embark on measures that would facilitate a greater and more stable flow of resources from EU private sector to the ACP countries through contributing to the removal of obstacles which impede the ACP States' access to international capital markets; and those that would encourage the development of financial institutions to mobilise resources. Other steps required to promote investment include improving the business environment by fostering a legal, administrative and incentive framework conducive to the emergence and development of dynamic private sector enterprises as well as strengthening capacity of national institutions in ACP countries to provide range of services that increases participation in business activity.

Also stipulated in Lome III were measures required to promote private investments flows. These include organizing discussions between interested ACP countries and potential EC investors on the legal and financial framework, investment guarantee and insurance, that the former have to offer; encouragement of the flow of information on investment opportunities, through meetings, periodic information provision, and establishment of focal points; provision of assistance to small and medium-sized enterprises in ACP States in form of equity and loans; and taking steps to reduce host-country risk. Lome IV extended the provisions of its immediate predecessor by the inclusion of protection and financing of, as well as support for, investment.

The CPA contains four Articles on investment. Articles 75 and 76 cover Investment Promotion, Articles 77 concerns Investment Guarantees, and Articles 78 relates to Investment Protection. Since the CPA is a transitional agreement between the end of the Lome Conventions and the coming into force of the envisaged EPAs, its provisions are not radically different from what was contained in Lome III and IV with regards to investment promotion, protection, financing and support.

Foreign investment inflow to ECOWAS member states plus Mauritania recorded significant but inconsistent growth since the initiation of Lome Conventions, especially the third and the fourth versions which were specific in terms of its provisions on investment (Table 4). The average annual flows of FDI massively grew from \$301

million in 1980-83 to \$1978 million in 1996-2000. Specifically, with the initiation and signing of Lome III investment atmosphere witnessed more than 100% increase to US\$739.7 million annually, and increased again to about US\$1978.7 at the end of Lome IVb. The average West African country received as much as \$1.5 billion over two decades, translating to about \$76 million annually, representing about 30% of annual GDP of an average West African country.

**Table 4: Lome Conventions and Foreign Direct Inflow to West Africa (current US\$million)**

| <i>Lome Period</i>   | <i>Average FDI Inflow</i> |
|----------------------|---------------------------|
| Lome I&II: 1980-1983 | 301.7                     |
| Lome III:1984-1990   | 739.7                     |
| Lome IVa:1991-1995   | 1477.9                    |
| Lome IVb: 1996-2000  | 1978.7                    |

WDI 2007, CD\_ROM

### **3. Review of Previous Studies**

From the host country's point of view, foreign direct investment in adequate quantities helps to raise the level of available finance to spur economic growth and achieve long-term development particularly when efforts directed at closing domestic saving-investment gap have not yielded desired results. The budget constraints, debt crisis and the decreasing aid of the early 1980s were also binding constraints (Neumayer and Spess, 2005) that may have led to the conscious increased cultivation of FDI by developing countries. In addition to the growth-enhancing and economy-transformation characteristics of FDI which result from the provision of additional investment resources is the general claim that FDI motivates technological development that in turn becomes quite useful for innovation of the economy's productive base, and leads to a competitive export sector concentrated on inputs and intermediate goods and services. Despite the negative effects of FDI that have been noted in the literature, in terms of appreciating the exchange rate particularly in host economies with low absorptive capacities, many

developing countries have consciously made policies, guidelines and regulations at the national level to encourage FDI inflows with the belief that effective FDI can facilitate easy access of the host country to foreign funds, markets, technology and skills, protect local entrepreneurs, and mitigate transfer pricing and sudden reverse flows during political crisis. Other negative effects of FDI include shifting domestic competition and indigenous entrepreneurship abroad, increasing income inequality, lowering public revenues, and a continuing reliance on local resource endowments rather than modernization of the productive sector of the economy, as well as the ability of foreign investor to sue host government on such issue as exchange rate devaluation and new environmental regulations. At the political level, FDI is recognized as a potent means to eradicate poverty in developing countries (Monterrey Consensus, 2002). These policies, guidelines and regulations also provide incentives and guarantees directed at making the country more attractive to foreign investors.

Foreign direct investment is also facilitated through the use of preferential trade and investment agreements (PTIAs) signed between individual or groups of countries to create free trade and investment areas such as the North American Free Trade Area (NAFTA), and the Lome Conventions that characterised the ACP-UE relations for over three decades before the Cotonou Partnership Agreement of 2000. Preferential Trade and Investment Agreement (PTIAs) set investment rules to govern cross-border investment in the free trade region and usually consist of rules on treatment and protection of FDI, thus contributing to the “investment climate” whose predictability helps investors to plan, and is preferred when domestic policies are enshrined or locked into regional treaties (Velde and Fahnbulleh 2003). While earlier PTIAs emphasise promotion and protection, new regional investment agreements are evolving towards the setting of common standards for reducing barriers to domestic and foreign investment to boost growth, facilitate the formalization of informal sectors and help reduce poverty through improvement in the quality of regulatory, tax, and legal systems affecting both domestic and foreign investors which are monitored via the extent to which the regulatory system simplifies and expedites requirements for starting a business, paying taxes, obtaining licenses, registering property, dealing with border controls, and accessing credit and infrastructure services. This will reduce the cost of starting a business, quicken licensing procedure, abolish

multiple taxation, hasten customs clearance and grant creditor rights. Globerman and Shapiro (1999) found that Canada-US Free Trade Agreement (CUFTA) and North American Free Trade Agreement (NAFTA) increased FDI flows while Blostrom and Kokko (1997) found that lowering interregional tariffs leads to increased FDI and market expansion.

However, perhaps due to the susceptibility of reversal in whole or in part that characterise national-level investment regulations, and according to Busse et al (2008), the inability of short-term policy making to deal with some long-term determinants of FDI such as host country's market size and development, resource endowment, geographical and cultural proximity to major source countries, developing countries have increasingly signed bilateral investment treaties as an additional measure to commit to stronger obligations to not only allow entry of FDI into their territories but also to protect and allow repatriation of profits and compensate expropriation. BITs have also emerged as a result of the mostly cooperative nature and slow speed of implementation of PTIAs. BITs the principal aim of which is to outline host country's obligations to home country investors provide clear, enforceable rules to protect foreign investment and reduce the risk faced by investors; and hence, promote FDI through guarantees of high standard of treatment, legal protection of investment under international law, and access to international dispute (Tobin et al 2003).

The standards of treatment that BITs provide for foreign investors that are concerned with most-favoured-nation treatment - whatever incentives provided to one foreign investor must also be provided to other foreign investors and; national treatment - both national and foreign investors will be treated equally (Dolzer and Steven 1995). The treaties usually also contain guarantees of compensation for investment expropriation by host country and provisions regarding dispute settlement. Two main goals of BITs have been identified namely, to send a signal to domestic investors regarding the protection of current and prospective investments and to send a signal to all investors irrespective of whether home countries have actually signed a BIT with a particular country if it signed with another source country (Bhattacharya, 2007). This signalling function of BIT has been dealt with in modelling the performance of BITs.

There is a sense in which certain authors have interrogated the haste by developing countries to sign BITs since the 1990s particularly considering their refusal to engage in multilateral investment negotiations and the rejection of the ‘Hull rule’ of “prompt, adequate and effective” compensation in the case of expropriation of private property located in their countries (Neumayer and Spess, 2005)<sup>1</sup>; moreover that the BITs that these countries signed contained far-reaching provisions that superseded the stipulation of the Hull rule. Increased competition among the developing countries contesting for foreign direct investment has given rise to this inconsistent behaviour where each developing country signs BITs to provide credible and binding commitments to foreign investors.

The theoretical expectation regarding the relationship between BIT ratification and the flow of foreign direct investment (FDI) into the host economy is that the former positively influences the latter. Evolving from the need to strengthen and enforce host economy property rights, BITs are used to establish special favourable conditions for FDI that do not apply to all investment, and as palliatives for weak domestic property rights. BITs therefore constitute special deals with investors that do not have to be extended to the domestic economy as a whole (Tobin et al, 2003). Most empirical analysis of the impact of BITs on FDI adopts empirical models based on the general determinants of FDI from the literature, augmenting with the BIT variable. Some of the studies had to deal with variable definition and measurements. FDI which is the dependent variable has been variously defined and measured; as inflows to a particular country as a percentage of world FDI inflows or FDI inflow as a percentage of GDP (Tobin et al 2003); or absolute real FDI inflows or ratio of FDI inflow to the sum of developing countries FDI inflows to capture the relative attractiveness of developing countries as host and explicitly allows for competition among them (Neumayer and Spess, 2005)<sup>2</sup>; log of bilateral FDI stocks and flows (Aisbett, 2007); and log of FDI inflows (Banga, 2003) to remove skewness in the FDI data. Hallward-Driemeier used bilateral FDI defined as FDI flows to a host

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<sup>1</sup> Emerged from the US-Mexico dispute over government of Mexico’s expropriation of US properties in the 1930s when the US Secretary of State Cordell Hull noted that no government is entitled to expropriate private property, for whatever purpose, without provision for prompt, adequate, and effective payment therefore’. Developing countries favoured UN General Assembly Resolution 1803 of ‘appropriate compensation.

<sup>2</sup> Busse et al (1998) also preferred this FDI attraction and competition measure but in a different form as the share of FDI of a host country in total FDI flows from the source country under consideration to all developing countries included in the sample.

country from a source country in a particular year (i.e.  $FDI_{ijt}$ ), which was adopted by Busse et al (2008) and referred to as dyadic approach.

The explanatory variables used are those for augmenting the standard FDI pull factors of host countries which include market size proxied by log of GDP or log of GDP per capita or population, real gdp growth to account for future economic development potential. However, the inclusion of market size and growth also raises reverse causality issue where higher FDI also leads to greater growth and a larger market. This is dealt with by including the lags of log of GDP and GDP per capita or using their lag values as instrumental variables. Black market premium or inflation is included in some models to reflect distortions of the financial system, openness to account for the effect of trade, and labour skill to control for the labour productivity similarities between host and source countries. Models which distinguish between economic and social-political factors include natural resource endowment, political risk (e.g. ICRG political risk index), continent dummy, health and literacy rates, host country wage rates, and government consumption. The level of openness and the social factors were excluded in some cases due to gaps in data as well as high correlation with market size measures. BIT is measured either as cumulative number of BITs signed or ratified by a particular country. While some studies made a distinction between BITs between developed and developing countries and between developing countries, others differentiate between old BITs (that is, prior to 1980) and new BITs. Some authors include controls for preferential trade and investment agreements.

As with most economic relationships whose empirical validation is still in its infancy, the effect of BITs on FDI remains controversial. Hallward-Driemeier (2003) constitutes the first study that indicated any form of relationship between the two, albeit a negative one followed by other such studies as Tobin and Rose-Ackerman (2003) and Gallagher et al (2006). The former of the last two studies found that higher number of BITs induces lower FDI inflows to host countries due to high levels of risks. Positive effects have been found (Egger et al 2004; Salacuse et al 2005; Neumayer and Spess 2005; Banga 2003; and Tobin and Rose-Ackerman 2003).

While Egger et al (ibid.) found this positive effect on FDI stocks in developing and OECD countries, Salacuse et al (ibid.) emphasised the response of US investments to US

BITs in 31 countries and lastly Neumayer and Spess (ibid.) made the point that BITs also serve as a signal to other source countries because BITs are significant in attracting FDI from all countries to the host countries instead of only the signatories. Tobin and Rose-Ackerman uses FDI flows as a percentage of world flows and measured BITs either as BITs signed with high income countries, with high and low income countries or cumulative total of BITs, with all three measures indicating a positive relationship with FDI flows at low levels of risk. Their study in particular ran two primary specifications for foreign direct investment to low and middle income countries with FDI inflows as a percentage of world FDI as the dependent variable. A matrix of determinants of FDI that change over time, including BITs as well as matrix of country-specific determinants of FDI that do not change over time are the independent variables of the first equation. The second model accounts for changes within country across time and the endogeneity problem by instrumentation through lagging the growth and market size variables. The equations were estimated with a fixed and random effects using generalized least squares with the application of the Hausman specification test which showed that the fixed effects model is more efficient than the random effects model. Banga (2003) provided empirical evidence on the impact of selective government policies and bilateral and regional investment agreements on FDI inflows into 15 developing South, East and South East Asia for 1980-81 to 1999-2000 period using panel data analysis and random effect model and found that BITs particularly with developed countries have a stronger and more significant impact on FDI inflows to developing countries while regional investment agreements, such as APEC and ASEAN, have mixed impact on FDI inflows.

#### **4. Research Design**

This paper's point of departure in estimating the impact of BITs and PTIAs on FDI is, like other studies reviewed, to model FDI as the aggregate FDI determinant-type rather than the gravity-type specification. The aggregate FDI determinant model is suitable in this case to account for the large zeros that are characteristics of the gravity-type model that uses bilateral FDI data. Hence, our specification follows in part Blonigen and Davies (2004) and Sokchea (2006) which indicate that aggregate FDI is a function of economic

and social variables, augmented with the BIT and PTIA as well as the political risk variables:

$$FDI_{it} = f(X_{it}, Y_{it}, Polcon_{it}, BIT_{it}, LOME_{it}) \text{ ----- (1)}$$

Where  $FDI_{it}$  is total foreign direct investment inflow to the West African host country,  $X_{it}$  is a vector of host economic variables such as real GDP (RGDP), GDP growth ( $GDPGR$ ), GDP per capita ( $GDPPC$ ), real exchange rate ( $RER$ ), inflation ( $INF$ ), degree of openness ( $OPEN$ );  $Y_{it}$  is a vector of social variables made up of communication infrastructure ( $TELEPH$ ) and real interest rate ( $RINT$ ).  $POLCON_{it}$ ,  $BIT_{it}$ , and  $LOME_{it}$  are the political constraints, bilateral investment treaty, and preferential trade and investment agreement variables respectively. The subscript  $i$  and  $t$  represent country  $i$  and time period  $t$  respectively. The paper estimates a panel specification that combines both country fixed effects and period fixed effects to eliminate omitted variables bias that may arise from unobserved variables that are constant over time as well as those that are constant across countries. This specification is:

$$FDI_{it} = \beta_1 X_{it} + \beta_2 Y_{it} + \alpha_i + \lambda_t + \beta_3 BIT_{it} + \beta_4 LOME_{it} + \mu_{it} \text{ ----- (2)}$$

In view of the fact that there is no consensus regarding the factors that determine FDI inflows to developing countries, we refrain from explicit statement of the equations variables but rely nonetheless on the literature guided by available data of FDI and potential determinants in West African countries to reasonably model the impact of BITs and PTIAs on FDI in West Africa. FDI is measured as aggregate real FDI inflow into the host economy in a particular year. However, we also adopt FDI stock as alternative measure to test whether this variable is more important for West African countries than flows particularly with the indication of negative FDI (disinvestment) in some countries. Alternative definition and measure to account for competition and the desire of one country to attract more FDI than the others is not adopted since the countries of focus have been part of the Africa, Caribbean and Pacific (ACP) States before the first BIT was signed which could have ruled out fierce competition for foreign investment. Market size

and market potential are proxied by log of real GDP, or log of GDP per capita and growth of real GDP respectively to test the hypothesis that a fast growing economy attracts more FDI. The lag of market size and market potential variable are included during estimation to account for the reverse causality that is expected from higher investment to growth. The inflation rate is employed in the model to account for macroeconomic instability instead of parallel market premia; a high inflation rate is expected to discourage both domestic and foreign investment. We include a resource abundance variable measured as the ratio of land area to the labour force to control for the fact that FDI to developing countries is through natural resource investment. Since countries with a low level of political risk will attract more investment, a political risk variable measured by Henisz's (2000) political constraint index (*POLCON*) is included rather than the ICRG political risk index which is not publicly available. Similarly, the Chinn-Ito index of capital account openness (*KAOPEN*) is used to capture the degree of unilateral foreign investment regulatory reforms done to attract FDI from all sources (Busse et al, 2008), which also feature important provisions on profit repatriation and other funds transfers as well as expropriation characteristic of BITs. This index available for over 160 countries is updated and contains data for 1970 -2005. Besides the *POLCON* and capital account openness (*KAOPEN*) variables that were obtained from authors' websites, other regressors were taken from the World Development Indicators 2007 CD\_ROM. The BIT variable is measured as the cumulative number of bilateral investment treaty signed by each West African country and taken from the UNCTAD World Investment Directory which features FDI data from 1980 to 2005, thus defining the scope of data coverage of the paper. One period lag of BIT is specified to account for possible endogeneity problem. Ideally, the endogeneity problem associated with the BIT variable should be resolved through an instrumental variable estimation but the difficulty involved in obtaining instruments that will not be correlated with the error term makes it necessary to use one period lag of BIT (see for example Busse et al, 2008). All variables except the indexes and rates were expressed in natural logarithms. We did not conduct random effect, panel estimation because most of the other pertinent studies indicated the superiority of the fixed effect model (for example, Sokcea, 2006, Tobin and Rose-Ackerman, 2003) and given that our data sources are similar, only the fixed effect model

is estimated in this paper. The theoretical expectation regarding the relationship which the market size variables, GDP difference, Openness, BIT and PTIA have with FDI is positive while for inflation, it is negative. The Henisz index concentrates on the political discretion of the executive branch and higher discretion should render more commitment to foreign investors less likely. The Henisz index of political constraint has a range from zero (total political discretion) to one (no political discretion) implying a positive association between *POLCON* and FDI flows. The expected link between *KAPOPEN* and FDI is also positive. Our sample is made up of 16 West African countries that are negotiating EPA with the European Union. This is in contrast to the large sample of countries (83) adopted by Busse et al (2008) but closer to the 28 countries used by Hallward-Driemeier (2003). In this case, we focus on all West African countries which is the population rather than a sample. The Busse et al (2008) sample is larger partly also because of the bilateral FDI data used. The aggregate FDI inflows and stock of these countries are used in the analysis.

## 5. Discussion of Results

Two variants of the dependent variable definition were used in the panel regression. The first is log of real FDI stock and five equations were estimated (Table 5). The first is a base specification that regressed the dependent variable on a number of economic and social variables as well as the BIT and PTIA variables with the latter controlling for the Lome Conventions which are measured as a dummy variable. Equation 1 was estimated without country and period fixed effects and without correction for autocorrelation and contemporaneous correlation as well as period and cross-section heteroskedsticity. As indicated, the adjusted  $R^2$  is low, and the equation suffers from serial autocorrelation. Nonetheless, the BIT variable is significant and of the right sign along with the market size, inflation and the social factor proxy variable, all of which are rightly signed and significant. Estimated equation 2 was corrected for unobserved country-specific variables that determine FDI but are period-invariant. Many more variables became significant; the BIT variable remains significant at the 5% level and the variable that controls for the PTIA became significant at the 1% level with the right sign. Though the adjusted  $R^2$  improved, the equation still suffers greatly from autocorrelation. In the third estimation,

autocorrelation was addressed by including one-period lag of the dependent variable while estimating the equation to account for contemporaneous correlation as well as period and cross-section heteroskedsticity using cross-section weights to estimate the equation by the generalised least squares approach. As shown in the estimated equation 3, all variables are significantly different from zero and of the right sign except the real exchange rate variable. The adjusted coefficient of multiple determination greatly improved to 0.77 from 0.36 in the estimated equation 2. We control for political constraints and capital openness in estimated equation 4 by including the *POLCON* and *KAPOPEN* variables from Henizs (2000) and Chin-Ito (2005) index respectively. Both are significant but the latter is of the wrong sign. Interestingly, the inclusion of these variables did not change either the direction or magnitude of impact of BIT and PTIA on FDI in West African countries. Finally, in estimated equation 5, endogeneity or reverse causality between the market variables and FDI as well as between BIT and FDI were accounted for through the inclusion of one period lag of the market size and market potential and BIT variables. The variable measuring PTIA, i.e. *LOME*, lost its significance even though maintained its right sign while all the three new variables added to control for endogeneity are significant with two of them being of the wrong sign.

The approach discussed in the above paragraph was repeated for the natural log of FDI inflow to West African countries as dependent variable with the same set of regressors. In equation 1b on Table 6, the market size, real exchange rate, openness, social factor and BIT variables are significant with the right sign. Estimating the equation with country fixed effects in equation 2b, the market size and BIT variables lost their significance though this loss was gained by the inflation variable. Both equations exhibit the manifestation of violations of the standard panel estimation assumptions as can be observed from the low  $R^2$  values and the serial correlation statistic. To control for these defects, equation 3b was estimated with lagged dependent variable and cross section weights to correct for contemporaneous correlation as well as period and cross-section heteroskedsticity. It is interesting to note that the BIT variable again assumes its significance and theoretically expected sign of positive relationship with FDI. All other variables are significant and rightly signed except the inflation, real exchange rate and resource abundance variables. Only the resource abundance variable changed its sign

from the estimation in equation 2b. From the adjusted  $R^2$  of 0.98 and the serial correlation statistics of 1.94, the defects in equation 1b and 2b appear to have been removed in equation 3b. The political constraints and capital openness index were included in estimated equation 4b which shows that out of the two newly-introduced variables, only the *POLCON* variable is significant and of the right sign while capital openness variable is wrongly signed and statistically insignificant. Correcting for the possibility of reverse causality of the market size and BIT variables in equation 5b indicates that four variables are significant and rightly signed namely host country's market potential, openness to trade, telecommunication infrastructure, and BIT. Comparing equations 5 and 5b, which are the FDI stock and FDI inflow dependent variables, the impact of regressors in equation 5 is more discerning and stronger than when FDI inflow is used as dependent variable.

What is important though, is that the variable of interest in this paper is statistically significant in both equations that define FDI differently, albeit, less significant in the FDI flow equation (at 10% level) than in the FDI stock equation (at 1% level). The conclusion that can be drawn from the analysis is thus that BITs not only influenced the FDI inflow to West African countries during 1980-2005 period but the agreements also ensured that the FDI in these countries were not divested. However, the variable that controlled for preferential trade and investment agreement, *LOME*, between West African countries and European Union countries is not statistically significant though rightly signed in both the flow and stock equations, suggesting that the investment component of the Lome Conventions did not significantly influence FDI flows and continued investment in West African countries.

Table5: Impact of BITs and PTIA on Foreign Direct Investment Stock

|                           | 1                      | 2                      | 3                     | 4                       | 5                       |
|---------------------------|------------------------|------------------------|-----------------------|-------------------------|-------------------------|
| <b>Variable</b>           | Coefficient            | Coefficient            | Coefficient           |                         | Coefficient             |
| <b>C</b>                  | -2.3871<br>(-0.655)    | -43.422<br>(-2.527)*** | -10.12<br>(-3.41)***  | -9.5895<br>(-2.884)***  | -12.3090<br>(-3.333)*** |
| <b>LRGDP</b>              | 0.4481<br>(2.647)***   | 0.3373<br>(1.702)*     | 0.2255<br>(5.043)***  | 0.2441<br>(5.225)***    | 0.4634<br>(7.077)***    |
| <b>RGDPGR</b>             | 0.377<br>(0.825)       | 0.5454<br>(1.227)      | 0.253<br>(9.2345)***  | 0.2478<br>(9.476)***    | 0.1787<br>(4.248)***    |
| <b>INF</b>                | -0.0916<br>(-4.133)*** | -0.0565<br>(-2.263)**  | -0.026<br>(-11.34)*** | -0.0265<br>(-11.377)*** | -0.0182<br>(-5.905)***  |
| <b>LRER</b>               | 0.1464<br>(0.540)      | 0.5137<br>(1.318)      | 0.462<br>(7.696)***   | 0.4573<br>(7.659)***    | 0.3183<br>(4.277)***    |
| <b>LOPEN</b>              | 0.3857<br>(0.856)      | 0.3129<br>(0.578)      | 0.3452<br>(6.7531)*** | 0.3606<br>(6.600)***    | 0.4166<br>(6.326)***    |
| <b>LRESABUN</b>           | 0.0487<br>(0.124)      | 7.3509<br>(2.519)***   | 2.0226<br>(5.225)***  | 1.8994<br>(4.174)***    | 2.6172<br>(5.136)***    |
| <b>LTELEPH</b>            | 0.9437<br>(2.425)***   | 1.0777<br>(2.250)***   | 0.5348<br>(9.9852)*** | 0.5102<br>(10.464)***   | 0.3618<br>(5.973)***    |
| <b>LBITSIGN</b>           | 1.6569<br>(2.510)***   | 2.0581<br>(1.891)*     | 0.5367<br>(4.2022)*** | 0.5534<br>(4.540)***    | 1.3834<br>(4.895)***    |
| <b>LOME</b>               | 7.2756<br>(6.032)***   | 4.0981<br>(3.076)**    | 2.4413<br>(2.4586)*** | 2.7903<br>(2.488)***    | 0.6848<br>(0.450)       |
| <b>LRFDIINF(-1)</b>       |                        |                        | 0.3162<br>(7.8736)*** | 0.2831<br>(7.506)***    | 0.3266<br>(7.0591)***   |
| <b>POLCON</b>             |                        |                        |                       | 1.1316<br>(2.315)***    | 1.7679<br>(2.164)**     |
| <b>KAOPEN</b>             |                        |                        |                       | -0.1045<br>(-2.024)**   | -0.1475<br>(-2.142)**   |
| <b>LRGDP(-1)</b>          |                        |                        |                       |                         | -0.2528<br>(-4.211)***  |
| <b>RGDPGR(-1)</b>         |                        |                        |                       |                         | 0.4235<br>(10.340)***   |
| <b>LBITSIGN(-1)</b>       |                        |                        |                       |                         | -1.0751<br>(-4.666)***  |
| <b>Adjusted R-squared</b> | 0.2715                 | 0.368129               | 0.779779              | 0.784447                | 0.782651                |
| <b>Durbin-Watson stat</b> | 1.3968                 | 1.669446               | 1.904102              | 1.906336                | 1.870192                |
| <b>F-statistic</b>        | 18.182                 | 11.07415               | 57.51262              | 54.77982                | 48.89179                |

\*Significant and the 10% level; \*\* Significant and the 5% level;\*\*\* Significant and the 1% level

Table 6: Impact of BITs and PTIA on Foreign Direct Investment Inflow

|                           | 1b                  | 2b                   | 3b                   | 4b                  | 5b                   |
|---------------------------|---------------------|----------------------|----------------------|---------------------|----------------------|
| <b>Variable</b>           | Coefficient         | Coefficient          | Coefficient          | Coefficient         | Coefficient          |
| <b>C</b>                  | 0.749<br>(1.425)    | -0.677<br>( -0.275)  | 1.257<br>(2.136)***  | 0.991<br>(1.738)*   | 0.890<br>(1.600)     |
| <b>LRGDP</b>              | 0.062<br>(2.533)**  | 0.038<br>( 1.332 )   | 0.025<br>(3.058)***  | 0.021<br>(2.574)*** | 0.010<br>(0.880)     |
| <b>RGDPGR</b>             | -0.045<br>(-0.677)  | 0.008<br>(0.1334 )   | 0.050<br>(3.697)***  | 0.048<br>(3.693)*** | 0.040<br>(2.980)***  |
| <b>INF</b>                | -0.001<br>(-0.376)  | 0.007<br>( 1.9715)** | 0.003<br>(2.808)***  | 0.003<br>(2.858)*** | 0.000<br>(2.980)***  |
| <b>LRER</b>               | -0.072<br>(-1.844)* | 0.098<br>(1.7647)*   | 0.083<br>(5.815)***  | 0.066<br>(4.476)*** | 0.060<br>(4.400)***  |
| <b>LOPEN</b>              | 0.229<br>(3.529)**  | 0.221<br>(2.8505)*** | 0.186<br>(5.958)***  | 0.200<br>(6.578)*** | 0.190<br>( 6.060)*** |
| <b>LRESABUN</b>           | 0.018<br>(0.323)    | 0.314<br>( 0.751 )   | -0.047<br>(-0.473)   | -0.006<br>(-0.068)  | 0.000<br>( 0.030)    |
| <b>LTELEPH</b>            | 0.091<br>(1.619)*   | 0.133<br>( 1.9469)** | 0.077***<br>( 6.081) | 0.082<br>(6.604)*** | 0.080<br>(6.280)***  |
| <b>LBITSIGN</b>           | 0.179<br>(1.884)**  | 0.127<br>( 0.8174)   | 0.068<br>(1.741)*    | 0.074<br>(1.759)*   | 0.150<br>( 1.610)    |
| <b>LOME</b>               | 0.127<br>(0.729)    | -0.179<br>(-0.9385)  | 0.058<br>(1.012)     | 0.030<br>(0.578)    | 0.030<br>(0.530)     |
| <b>LRFDIINF(-1)</b>       |                     |                      | 0.202<br>( 9.452)    | 0.210<br>(9.702)*** | 0.210<br>(9.480)***  |
| <b>POLCON</b>             |                     |                      |                      | 1.418<br>(4.483)*** | 1.390<br>(4.390)***  |
| <b>KAOPEN</b>             |                     |                      |                      | -0.020<br>(-1.199)  | -0.020<br>(-1.260)   |
| <b>LRGDP(-1)</b>          |                     |                      |                      |                     | 0.010<br>(1.310)     |
| <b>RGDPGR(-1)</b>         |                     |                      |                      |                     | 0.050<br>( 3.890)*** |
| <b>LBITSIGN(-1)</b>       |                     |                      |                      |                     | -0.090<br>(-1.010)   |
| <b>Adjusted R-squared</b> | 0.102               | 0.234                | 0.979                | 0.987               | 0.980                |
| <b>Durbin-Watson stat</b> | 1.306               | 1.527                | 1.950                | 1.964               | 1.940                |
| <b>F-statistic</b>        | 6.260               | 6.275                | 725.730              | 1131.465            | 800.000              |

\*Significant and the 10% level; \*\* Significant and the 5% level;\*\*\* Significant and the 1% level

## **6. Summary and Conclusion**

West African countries have largely cultivated, and competed for, foreign direct investment inflows to bridge their domestic saving-investment gap and therefore augment the available funds to finance development process through bilateral investment agreements like their developing countries counterpart in other regions. Togo was the first West African country to sign a BIT in May 1961 followed by Liberia in December of the same year, which have been emulated by other West African countries particularly since the early 1990s. In particular also, West Africa is negotiating Economic Partnership Agreements (EPA) with the European Union (EU) to make their economic cooperation under Lome Conventions which previously characterized ACP-EU relations of over three decades reciprocal.

The domestic investment framework and environment in West African countries dramatically changed from an investment-bias environment of the 1960s to a relatively liberalised one from the mid – 1980s, aimed at allowing foreign participation in many sectors of their economies through investment promotion, and later, investment protection. The investment codes provided provisions for investment promotion and protection, national treatment of foreign investment as well as arbitration in case of a investor-host dispute.

In view of the fact that West Africa as a group need to learn from the implementation experience of its relationship with the EU to inform its current EU-West Africa EPA negotiations and potential outcome, this paper set out to empirically assess the impact of BITs signed individually by West African countries with their EU counterparts and the PTIAs jointly signed under the Lome conventions. The paper uses panel estimation technique on the data of FDI, market size, market potential and other economic and social variables as well as accounts for BIT and PTIA. The analysis commences from the use of simple OLS panel estimation technique through controlling for unobserved country-specific factors that are constant over time, endogeneity of FDI, market size and market potential, and BIT, to accounting for political constraints imposed by executive policy discretion and capital account openness, a variable that should influence FDI arising from all sources. The econometric assessment indicates that BITs have strong impact on FDI

flows and stock in West African countries, with this impact greater for FDI stock than flows. On the contrary, the Lome Conventions did not have significant impact on both FDI stock and flows, a contrary to what is suggested by the data description of Section 2.

The implication of our finding is that West Africa needs to understand the type of provisions in the BITs that constituent states signed and compare with the provisions of the Lome conventions with a view to discerning what is responsible for the superior response of FDI to BITs. Our sensitivity analysis may not have been sufficient since we did not test the impact of the signalling effect of BIT, the influence of the BITs that West African countries signed with non-EU countries such as the US and other developing countries such as Malaysia and China, as well as vertical FDI. All this could affect the results in one way or another. However, because of the way that the econometric assessment has been implemented to ensure that the estimates are relatively stable and un-bias, which manifests in the continued significance of the BIT variable in the regressions, we believe that the positive relationship established between BIT and FDI is significantly reliable.

**Appendix Table 1: Bilateral Investment Treaties involving West African Countries**

| Year          | 1980 | 1981   | 1982 | 1983   | 1984  | 1985    | 1986    | 1987    | 1988   | 1989    | 1990  | 1991    | 1992  | 1993    | 1994 | 1995    | 1996    | 1997    | 1998  | 1999    | 2000    | 2001    | 2002    | 2003    | 2004    | 2005    |         |
|---------------|------|--------|------|--------|-------|---------|---------|---------|--------|---------|-------|---------|-------|---------|------|---------|---------|---------|-------|---------|---------|---------|---------|---------|---------|---------|---------|
| Benin         | 2    | 2      | 2    | 2      | 2     | 2       | 2       | 3       | 3      | 3       | 3     | 3       | 3     | 3       | 3    | 3       | 3       | 3       | 3     | 3       | 3       | 3       | 3       | 3       | 3       | 3       |         |
| Burkina Faso  | 3    | 1      | 1    | 1      | 1     | 1       | 1       | 1       | 1      | 1       | 1     | 1       | 1     | 2       | 2    | 2       | 3       | 3       | 4     | 4       | 4       | 4       | 4       | 4       | 4       | 4       | 4       |
| Cape Verde    | 0    | 0      | 0    | 0      | 0     | 0       | 0       | 0       | 0      | 0       | 2     | 5       | 5     | 5       | 5    | 5       | 5       | 8       | 9     | 9       | 9       | 9       | 9       | 9       | 9       | 9       | 9       |
| Cote d'Ivoire | 5    | 5      | 5    | 5      | 5     | 5       | 5       | 5       | 5      | 5       | 5     | 5       | 5     | 5       | 5    | 7       | 7       | 7       | 7     | 8       | 8       | 8       | 8       | 8       | 8       | 8       | 8       |
| Gambia, The   | 0    | 0      | 0    | 0      | 0     | 0       | 0       | 0       | 0      | 0       | 0     | 0       | 0     | 1       | 1    | 1       | 1       | 1       | 1     | 1       | 1       | 1       | 1       | 1       | 1       | 1       | 1       |
| Ghana         | 0    | 0      | 0    | 0      | 0     | 0       | 0       | 0       | 0      | 5       | 5     | 6       | 7     | 7       | 7    | 8       | 9       | 10      | 13    | 15      | 15      | 15      | 15      | 15      | 15      | 15      | 15      |
| Guinea        | 3    | 3      | 3    | 3      | 3     | 3       | 3       | 3       | 3      | 3       | 4     | 4       | 4     | 4       | 4    | 4       | 6       | 6       | 7     | 7       | 7       | 7       | 7       | 7       | 7       | 7       | 7       |
| Guinea-Bissau | 0    | 0      | 0    | 0      | 0     | 0       | 0       | 0       | 0      | 0       | 0     | 1       | 1     | 1       | 1    | 1       | 1       | 1       | 1     | 1       | 1       | 1       | 1       | 1       | 1       | 1       | 1       |
| Liberia       | 3    | 3      | 3    | 3      | 3     | 4       | 4       | 4       | 4      | 4       | 4     | 4       | 4     | 4       | 4    | 4       | 4       | 4       | 4     | 4       | 4       | 4       | 4       | 4       | 4       | 4       | 4       |
| Mali          | 2    | 2      | 2    | 2      | 2     | 2       | 3       | 3       | 3      | 3       | 3     | 3       | 3     | 3       | 3    | 3       | 4       | 4       | 5     | 6       | 6       | 6       | 6       | 6       | 6       | 6       | 6       |
| Mauritania    | 1    | 1      | 2    | 3      | 3     | 3       | 4       | 4       | 5      | 5       | 5     | 5       | 5     | 5       | 5    | 5       | 5       | 5       | 5     | 5       | 5       | 5       | 5       | 5       | 5       | 5       | 5       |
| Niger         | 2    | 2      | 2    | 2      | 2     | 2       | 2       | 2       | 2      | 2       | 2     | 2       | 3     | 3       | 3    | 3       | 3       | 3       | 5     | 5       | 5       | 5       | 5       | 5       | 5       | 5       | 5       |
| Nigeria       | 0    | 0      | 0    | 0      | 0     | 0       | 0       | 0       | 0      | 0       | 2     | 2       | 3     | 3       | 4    | 4       | 5       | 6       | 7     | 7       | 7       | 7       | 7       | 7       | 7       | 7       | 7       |
| Senegal       | 7    | 7      | 7    | 8      | 10    | 10      | 10      | 10      | 10     | 10      | 10    | 10      | 10    | 11      | 11   | 11      | 11      | 12      | 15    | 16      | 16      | 16      | 16      | 16      | 16      | 16      | 16      |
| Sierra Leone  | 1    | 2      | 2    | 2      | 2     | 2       | 2       | 2       | 2      | 2       | 2     | 2       | 2     | 2       | 2    | 2       | 2       | 2       | 2     | 2       | 2       | 2       | 2       | 2       | 2       | 2       | 2       |
| Togo          | 3    | 3      | 3    | 3      | 3     | 3       | 3       | 4       | 4      | 4       | 4     | 4       | 4     | 4       | 4    | 4       | 4       | 4       | 4     | 4       | 4       | 4       | 4       | 4       | 4       | 4       | 4       |
| Total         | 32   | 31     | 32   | 34     | 36    | 37      | 39      | 41      | 42     | 47      | 52    | 57      | 60    | 63      | 64   | 67      | 73      | 79      | 92    | 97      | 97      | 97      | 97      | 97      | 97      | 97      | 97      |
| Trend         | 100  | 96.875 | 100  | 106.25 | 112.5 | 115.625 | 121.875 | 128.125 | 131.25 | 146.875 | 162.5 | 178.125 | 187.5 | 196.875 | 200  | 209.375 | 228.125 | 246.875 | 287.5 | 303.125 | 303.125 | 303.125 | 303.125 | 303.125 | 303.125 | 303.125 | 303.125 |

Source: Bilateral Investment Treaties, UNCTAD, 2007

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