REGIONAL INTERNATIONAL ARBITRATION CONFERENCE

DAWN OF INTERNATIONAL ARBITRATION IN THE SOUTH PACIFIC

12 & 13 February 2018

Westin Denarau Island, Nadi, Fiji

FDI PROMOTION AND ARBITRATION

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13 Februray 2018

ADB

Kerevaka na Kalou ka doka na Tui

United Nations
UNCITRAL

If FDI were a country.....FDI would be a big one

GDP (billions of $)

1. United States 18,036
2. China 11,065
3. Japan 4,383
4. Germany 3,363
5. United Kingdom 2,861
6. France 2,419
7. India 2,419
8. Italy 1,821
9. Brazil 1,804
10. Canada 1,553
11. Korea 1,378
12. Russia 1,366
13. Australia 1,339
14. Spain 1,193

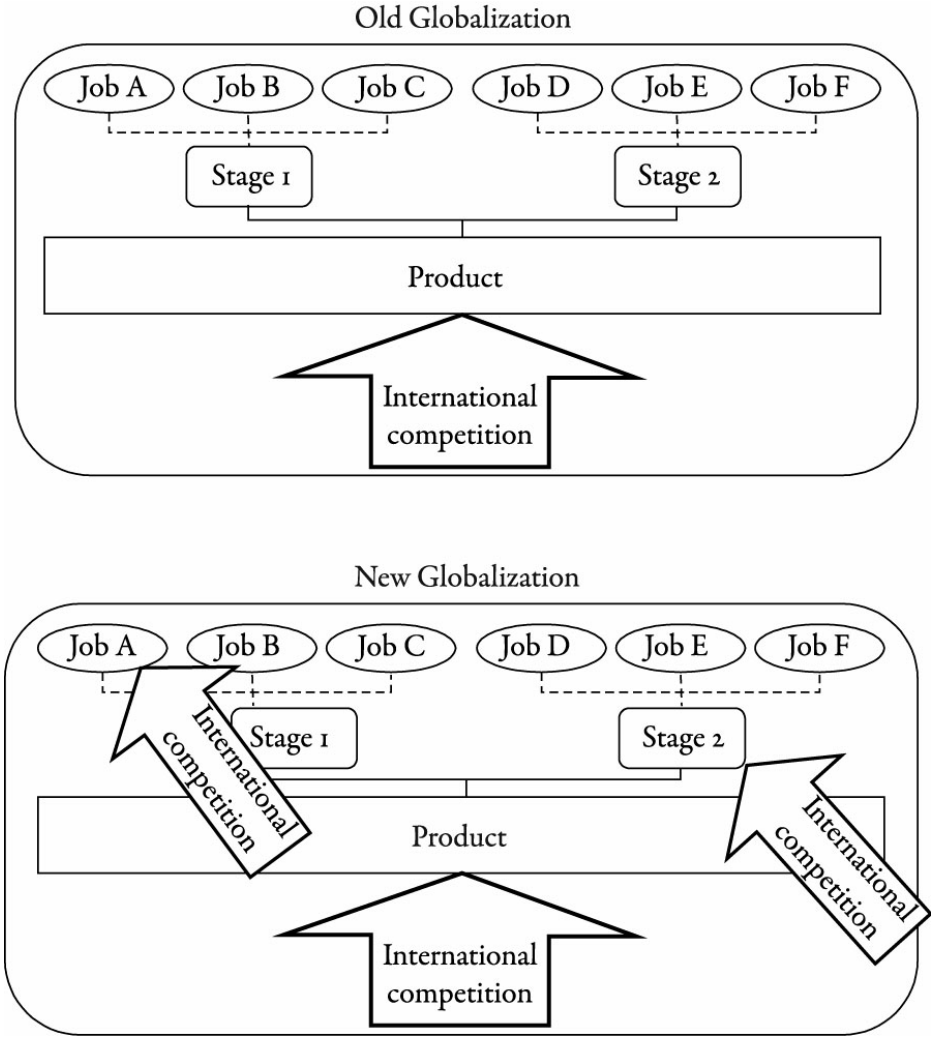
151. Fiji 4.86

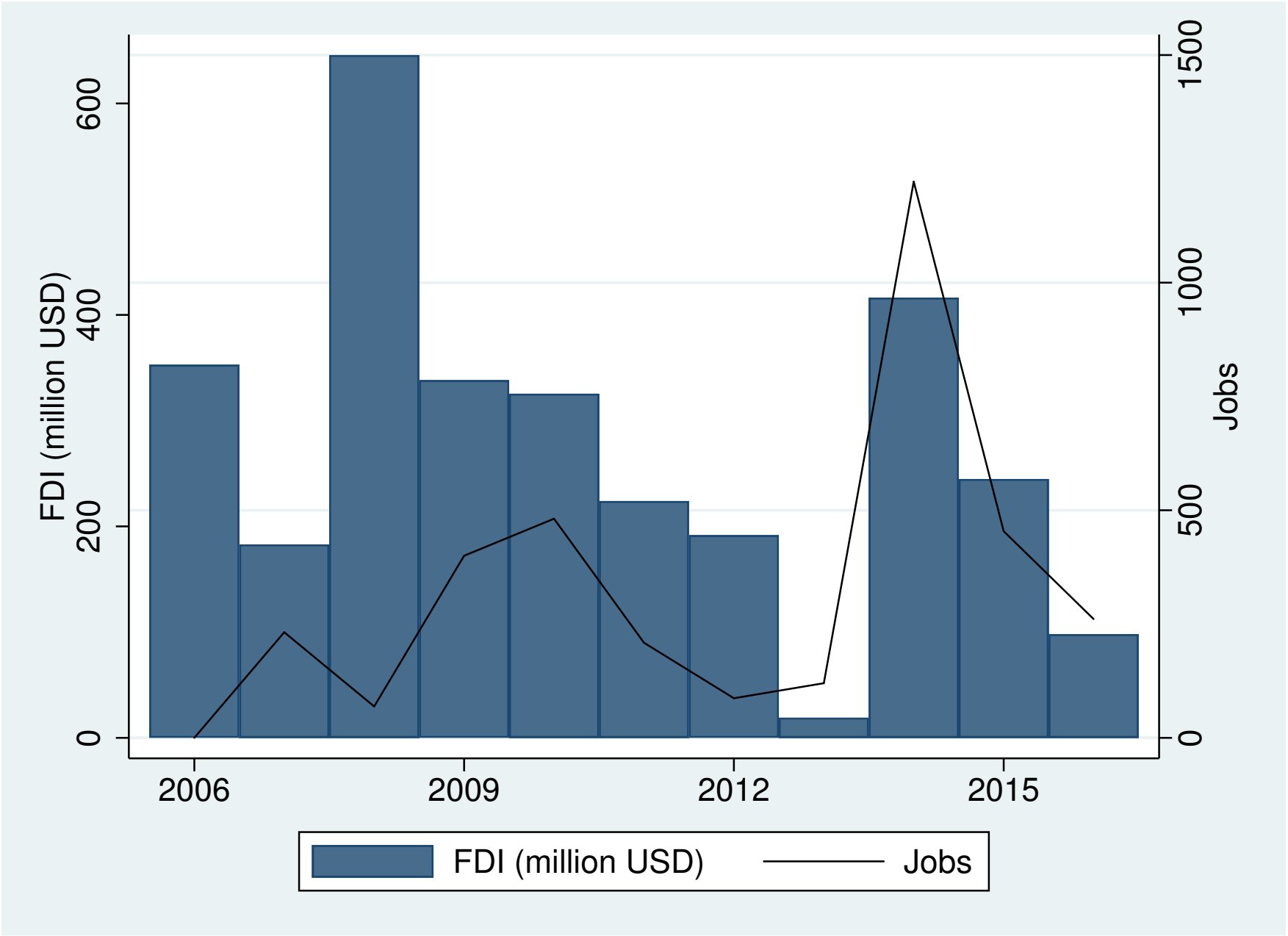
Outline

1. Motivation
   - Teaser
   - Objectives
2. FDI in South Pacific
   - How much
   - What
   - To whom
   - From whom
   - Why: Gravity Falls
   - To whom: Defying Gravity
3. FDI promotion
   - The Gravity Equation
   - Tips
4. FDI and International Commercial Arbitration
5. Conclusions

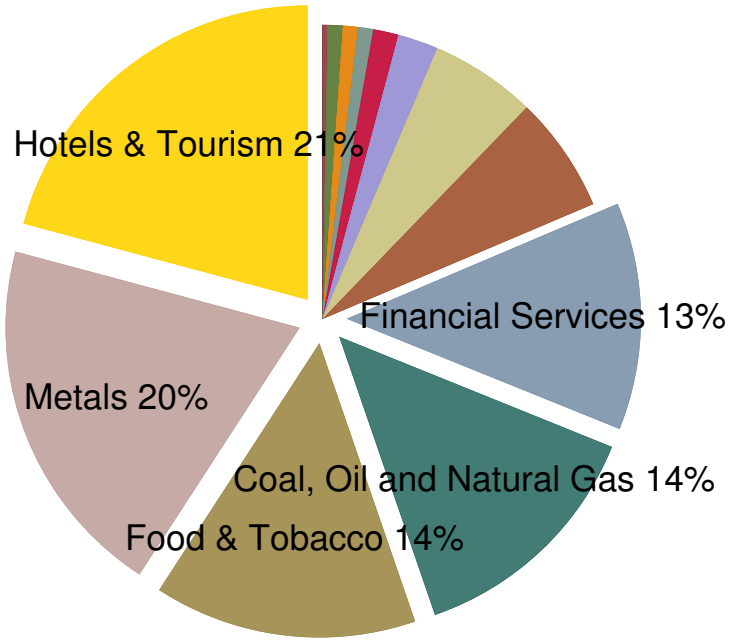
Unblundlings

Baldwin (2016)

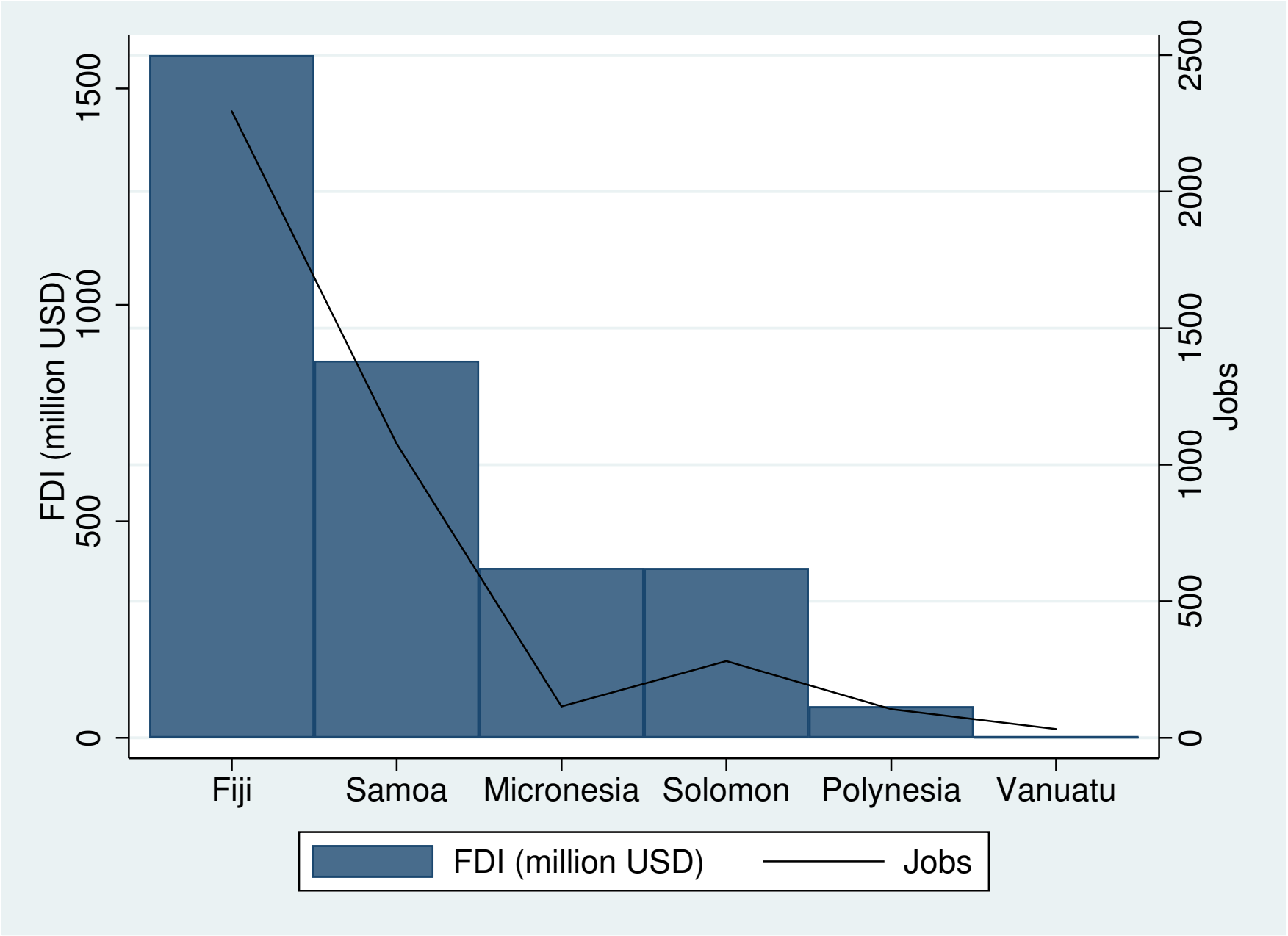


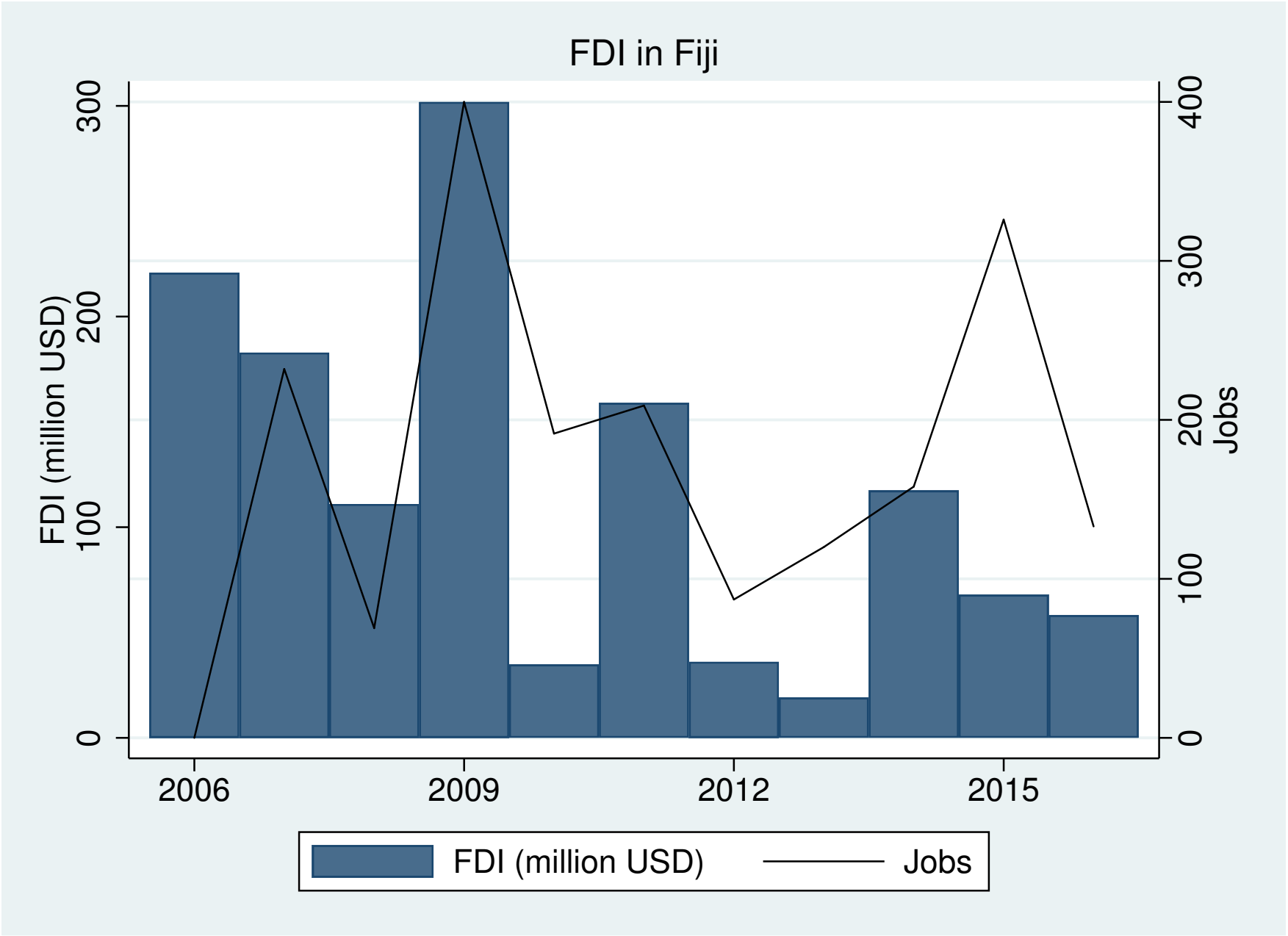

FDI (million USD)
0
200
400
600
Jobs
0
500
1000
1500
2006
2009
2012
2015
FDI (million USD)
Jobs

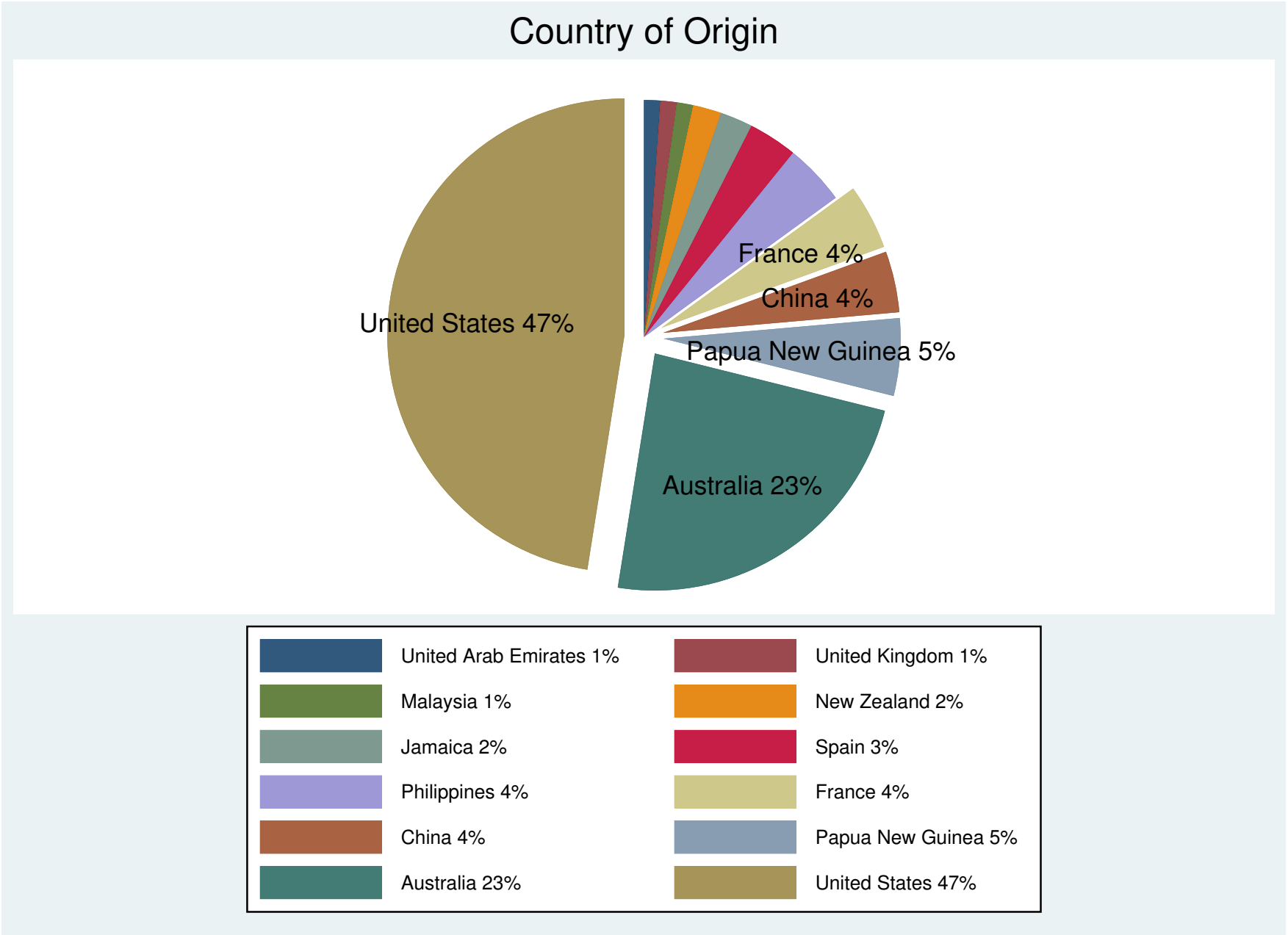
Sector

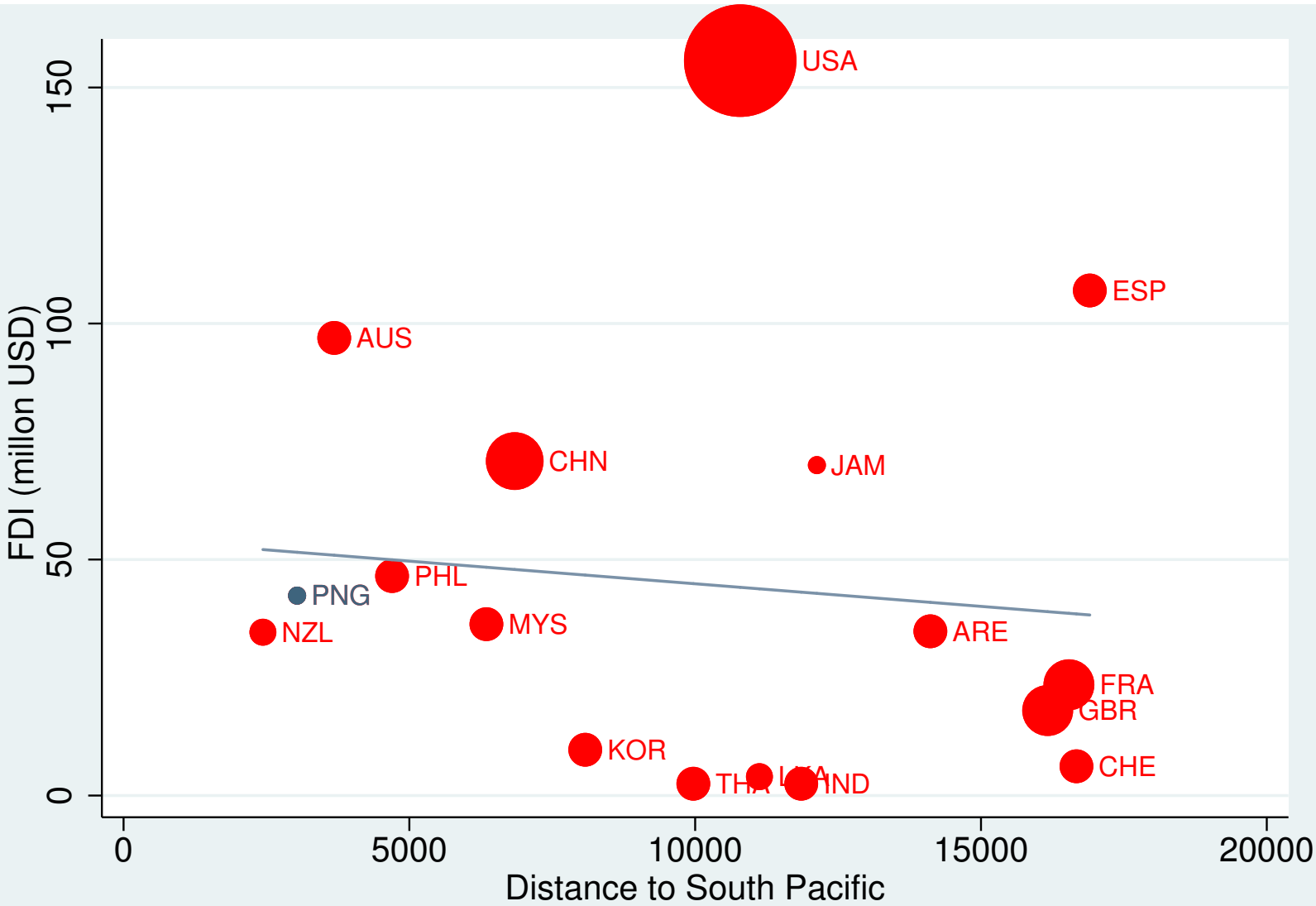


- Electronic Components 0%
- Non–Automotive Transport OEM 0%
- Pharmaceuticals 1%
- Textiles 1%
- Real Estate 1%
- Business Services 2%
- Software & IT services 2%
- Communications 6%
- Transportation 6%
- Financial Services 13%
- Coal, Oil and Natural Gas 14%
- Food & Tobacco 14%
- Metals 20%
- Hotels & Tourism 21%

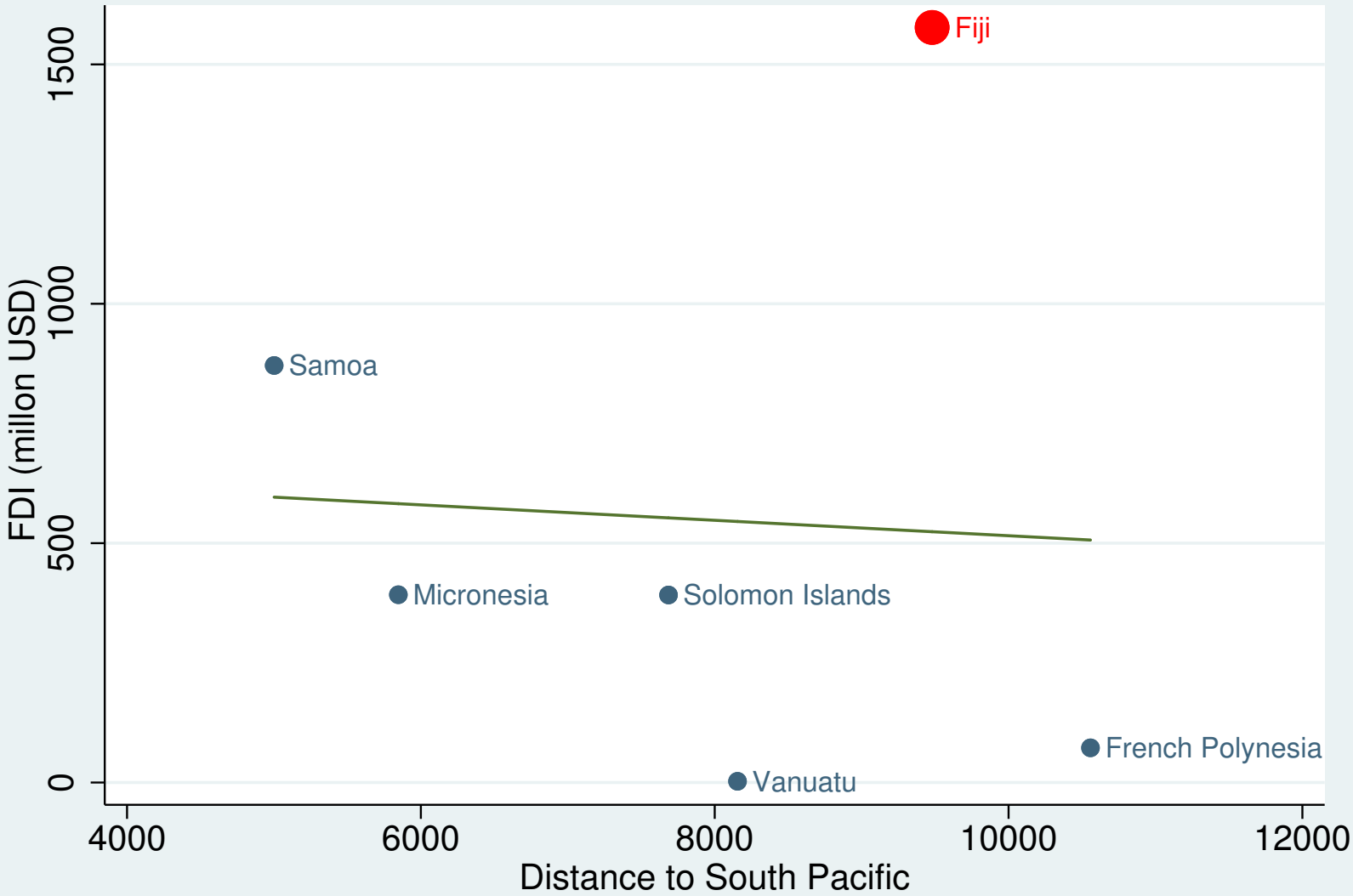

FDI (million USD)
0
500
1000
1500
Jobs
0
500
1000
1500
2000
2500
Fiji
Samoa
Micronesia
Solomon
Polynesia
Vanuatu
FDI (million USD)
Jobs


FDI in Fiji
FDI (million USD)
0
100
200
300
Jobs
0
100
200
300
400
2006
2009
2012
2015
FDI (million USD)
Jobs


Country of Origin
United States 47%
Australia 23%
Papua New Guinea 5%
China 4%
France 4%
United Arab Emirates 1%
Malaysia 1%
Jamaica 2%
Philippines 4%
China 4%
Australia 23%
United Kingdom 1%
New Zealand 2%
Spain 3%
France 4%
Papua New Guinea 5%
United States 47%



The size of the bubble represents GDP size. Countries in red ratified NY Convention



The size of the bubble represents GDP size. Countries in red ratified NY Convention

FDI Gravity

- The FDI gravity equation resembles the Newtonian gravitational equation:

$$FDI_{i \to j} = \underbrace{\frac{GDP_i GDP_j}{GDP_{world}}}_{\text{frictionless FDI}} \times \underbrace{\left(\frac{\text{Institutions}}{Distance_{i \to j}} \right)}_{\text{FDI frictions}}$$

- FDI is proportional to economic mass of countries
- FDI is inversely proportional to distance between countries
- FDI is enhanced with institutional quality like policies (e.g., International Arbitration)

FDI Frictions

- FDI friction are those that impede international FDI flows
- Types of trade & FDI frictions:
  - Natural: Geography & History & Culture & Language
  - Man-made or institutional: additional costs impeding trade if physical distances (or other natural costs) were absent
    - Mainly attributable to policy decisions.

Man-made (institutional) Frictions

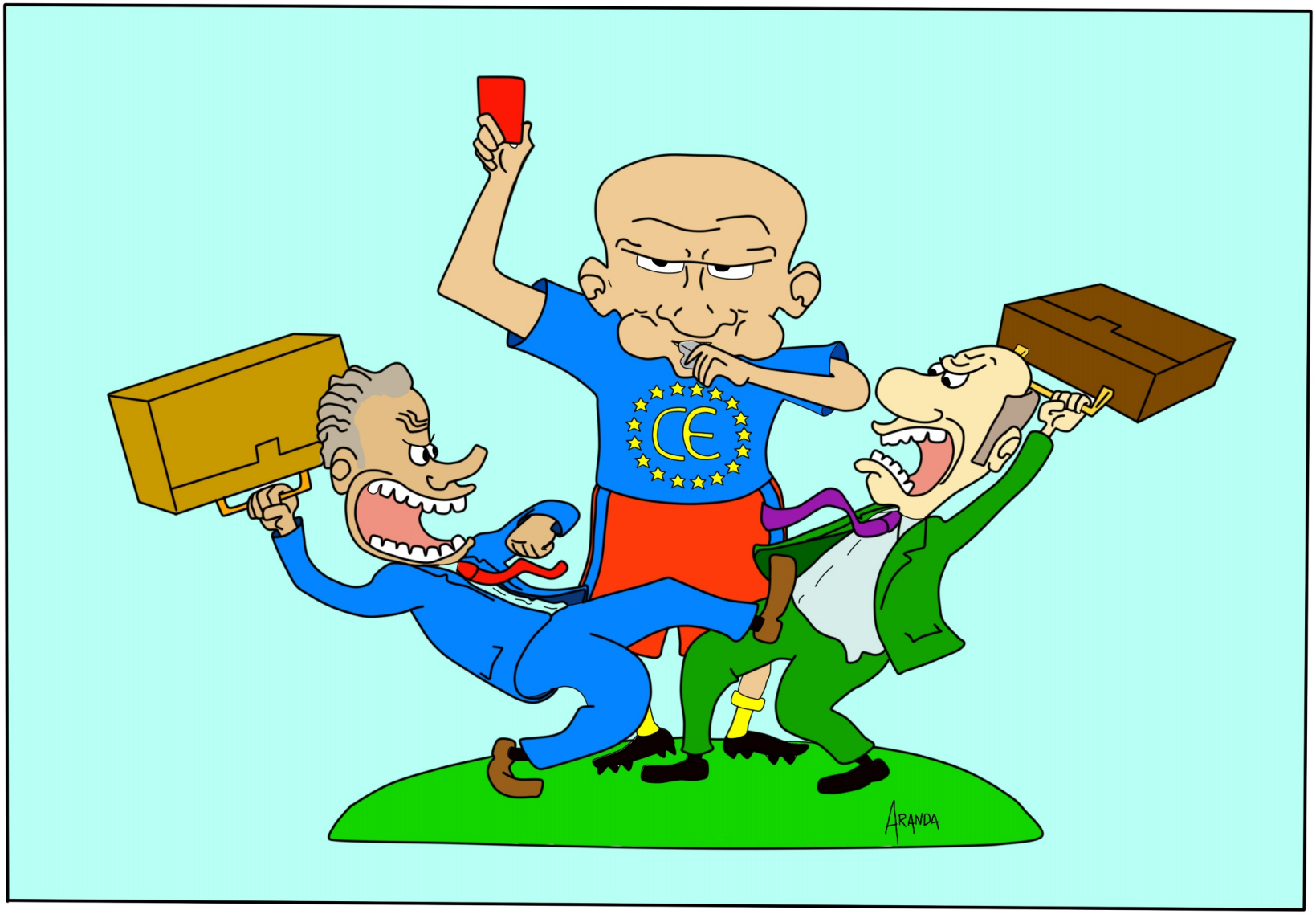
- Policy
  - Tax Policy (Desai et al., 2004)
  - Tariff-jumping FDI (Blonigen, 2002)
- Economic integration
  - Bilateral investment treaties (Falvey, Foster-McGregor 2018)
  - Currency (Gil, Llorca & Paniagua, 2018)
  - Social media (Paniagua et al., 2017)
- Institutional quality
  - Legal rights (Paniagua & Sapena, 2014)
  - Commercial arbitration (Myburgh & Paniagua, 2016)

FDI Promotion

Countries have four alternatives to escape the gravity pull and promote FDI

1. Get closer
   - Reduce transaction costs: Common language, colonial links
2. Grow bigger
   - Economic growth: Human capital, productivity
3. Be social
   1. What happens in Fiji stays online!
4. Be smarter!
   1. Economic integration
      - Bilateral investment agreements
   2. Legal framework
      1. Arbitration, business environment

What is International Commercial Arbitration?



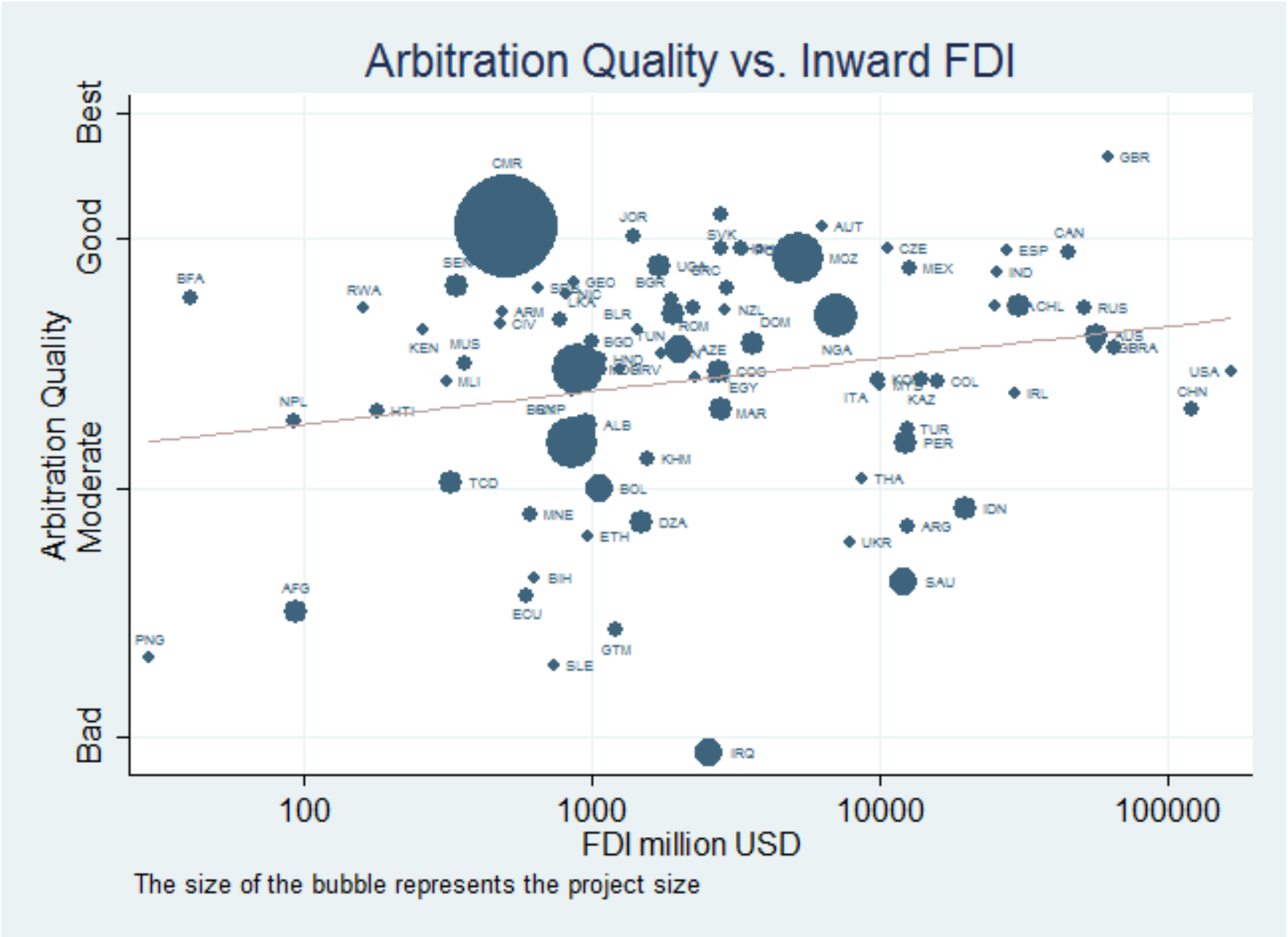
Model laws & arbitration & FDI

- FDI:
  - Myburgh, A., & Paniagua, J. (2016). Does International Commercial Arbitration Promote Foreign Direct Investment?. *The Journal of Law and Economics*, 59(3), 597-627.
  - Mocheva, N., Myburgh, A., & Paniagua, J. (2018). The impact of UNCITRAL on FDI. *Proceedings of the 50th Anniversary UNCITRAL Congress*
- Trade:
  - Berkowitz, D., Moenius, J., & Pistor, K. (2006). Trade, law, and product complexity. The Review of Economics and Statistics, 88(2), 363-373.
  - Gil-Pareja S., Llorca-Vivero, R. & Paniagua, J. (2018). Trade Law and Trade Flows. *Mimeo, University of Valencia*

International Commercial Arbitration & FDI

Myburgh & Paniagua (JLE, 2016)

1. Arbitration brings countries together and affects FDI;
   1. Intl. Commercial Arbitration reduces costs associated with domestic judicial systems;
2. Improvement in arbitration regimes has a larger effect on the size of FDI investments than new projects
   1. Estimates show that FDI flows are 77% higher when both countries ratify the NY arbitration convention
3. The effect of arbitration is greater in higher FDI levels (larger investments)
   1. FDI diversion for small and medium projects
   2. FDI creation for large projects


Arbitration Quality vs. Inward FDI
Arbitration Quality
Bad
Moderate
Good
Best
100
1000
10000
100000
FDI million USD
The size of the bubble represents the project size
CMR
GBR
JOR
AUT
CAN
CZE
ESP
MOZ
MEX
IND
BFA
RWA
GEO
BGR
CHL
RUS
ARM
CIV
BLR
NZL
DOM
KEN
MUS
BGD
TUN
NGA
AUS
BRA
MLI
EGY
USA
COL
NPL
HTI
ITA
KAZ
IRL
CHN
ALB
MAR
TUR
PER
KHM
THA
TCD
BOL
IDN
MNE
DZA
ARG
ETH
UKR
BIH
SAU
AFG
ECU
PNG
GTM
SLE
IRQ

Take-aways

Gravity Falls

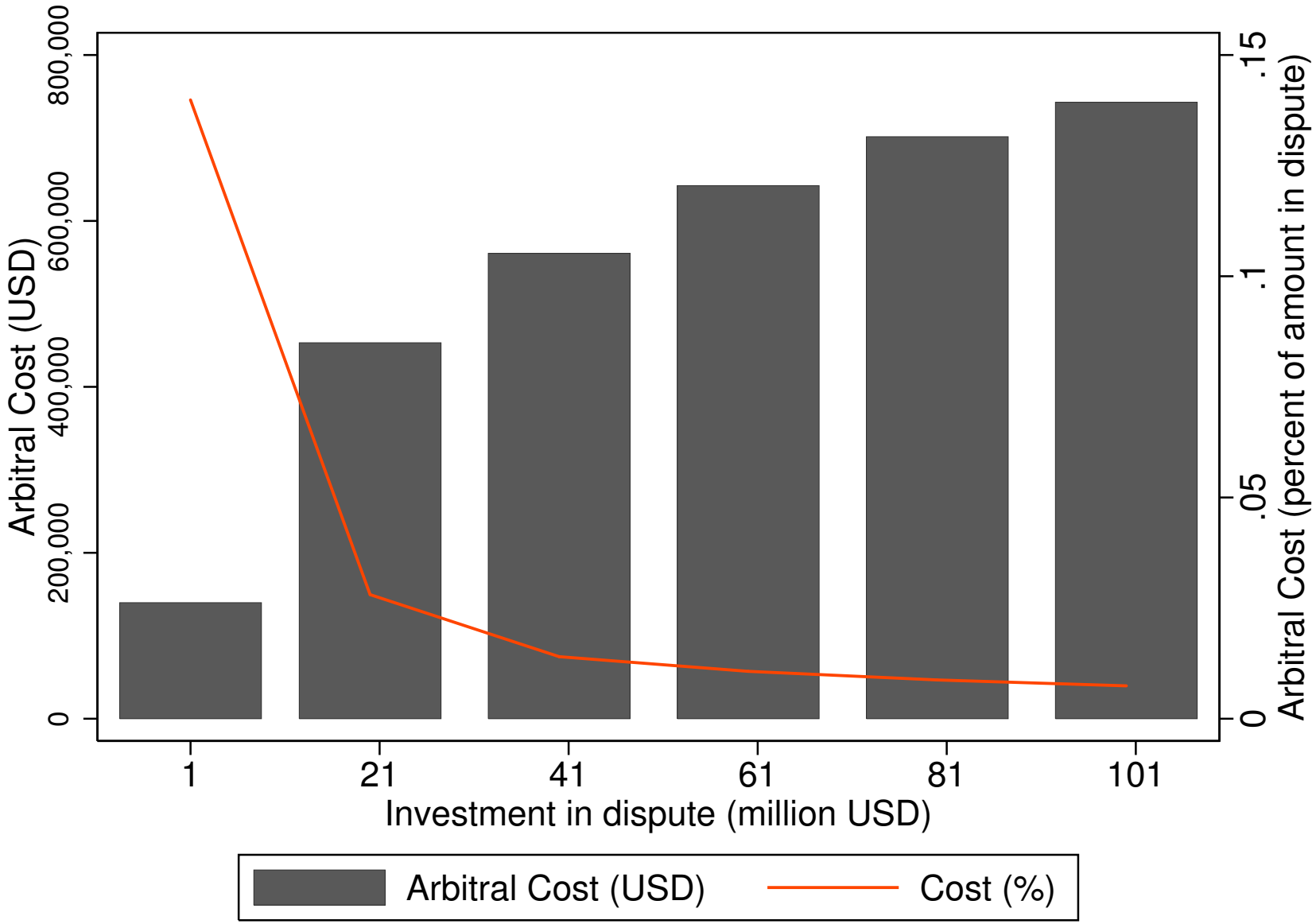
- Cherish Gravity
  - Get closer
  - Grow bigger
  - Be social
  - Be smarter
    - Use international commercial arbitration!

Sectors

Activity type	Activity	UNCITRAL's initiatives		
		NY Convention	Model Law on Arbitration	Model Law on Concilliation
Customer	Business services	+	+	
	Sales & Marketing	+		
	Customer care			
	Tech support			
	Shared services			
Complex	Headquarters			
	Design	+		
	ICT	+	+	
	RD			
	Education			
High Fixed costs	Maintenance			
	Extraction			
	Manufacturing			
	Logistics			
	Construction	+	+	

Costs of arbitration

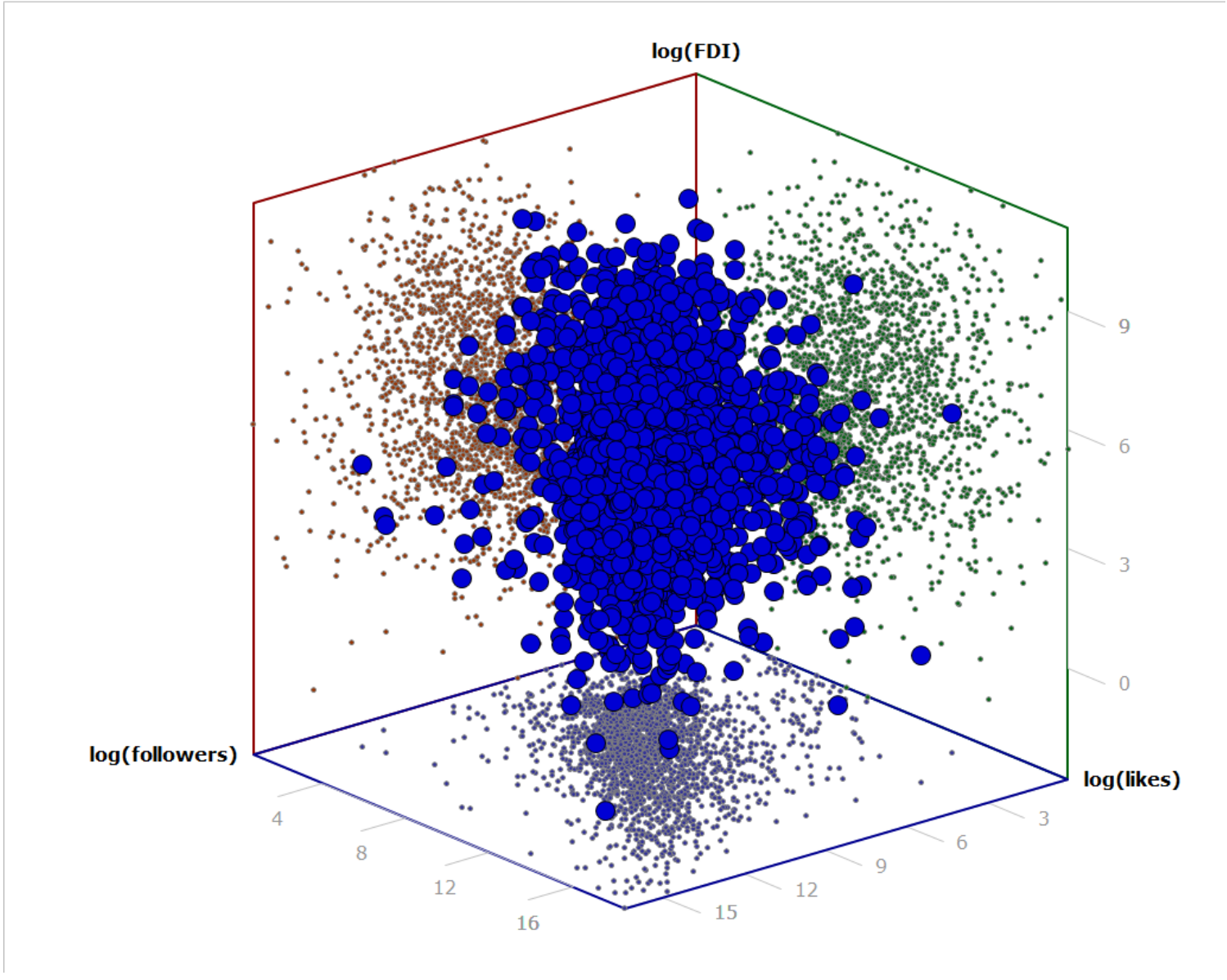
Myburgh & Paniagua (JLE, 2016)



Source: ICC arbitral cost calculator

Crossing borders with social media

Paniagua, Korzynski & Mas-Tur (2017)



Quantile regression

Myburgh & Paniagua (JLE, 2016)

	(1) Q(0.10) CY&CP FE	(2) Q(0.25) CY&CP FE	(3) Q(0.50) CY&CP FE	(4) Q(0.75) CY&CP FE	(5) Q(0.90) CY&CP FE
$\ln(Y_{it} \cdot Y_{jt})$	0.378***	0.417***	0.457***	0.500***	0.563***
	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)
FTA_{ijt}	-0.038*	0.013***	-0.059***	-0.023**	-0.186***
	(0.02)	(0.00)	(0.00)	(0.01)	(0.01)
BIT_{ijt}	-0.126***	-0.066***	-0.119***	0.067***	0.011**
	(0.01)	(0.01)	(0.00)	(0.00)	(0.01)
NYC_{ijt}	0.041***	0.131***	0.164***	0.204***	0.192***
	(0.01)	(0.01)	(0.00)	(0.01)	(0.00)
$NYC1_{ijt}$	-0.093***	-0.112***	-0.023***	-0.081***	0.043***
	(0.01)	(0.01)	(0.00)	(0.01)	(0.01)
Observations	39393	39393	39393	39393	39393
Average Project size (mUSD)	4.54	13.99	27.9	61.09	78.99

Bootstrap standard errors in parentheses,

Country pair, country*year (3 years) and year fixed effects included. Dep variable: ln(FDI+1)

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$