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Screening of Foreign Investments and the Bilateral Investment Treaties of Bangladesh

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Research Note

Abstract
Since 1960, about 2852 bilateral investment treaties (BITs) have been signed. Of them, 2298 BITs are in force at present. In the last 61 years, the WTO members failed to conclude a global treaty to regulate FDI in host countries, consequently, the BITs have played a significant role to regulate FDI. As a member of the WTO, Bangladesh has signed 31 BITs so far with various states to allow and increase the inflow of FDI into the country. Bangladeshi foreign investment laws and BITs mainly protect foreign investors. However, neither of them has any specific provision regarding the screening of foreign investments in Bangladesh. Two questions have been addressed in this paper: (a) Do the BITs of Bangladesh allow the host state for screening of foreign investments at the entry stage? (b) Should the screening of FDI be required during the pre-entry stage in Bangladesh? In this paper, a doctrinal research method has been used to critically analyze 15 BITs to explore whether there is any reference for screening of foreign investments in Bangladesh. We find that the existing Bangladesh BITs have provisions to promote and protect foreign investments but have no reference in relation to the screening of foreign investments. Therefore, the author has recommended that the Government of Bangladesh can consider specific provisions for screening of FDI in future BITs.

Keywords: Bilateral Investment Treaties, World Trade Organization, Screening, Foreign direct investment, Bangladesh

1. Introduction

The bilateral investment treaties (BITs) are a kind of mutual agreement between two states importing and exporting capital, which regulates the foreign investment in the host state. The key objective is to safeguard the foreign investment against nationalization or expropriation and in case any of them occurs, obtain compensation as per international minimum standard.

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Depending on the individual investment concerned, the negotiators of both countries determine the terms and conditions of the BITs. So there may be many BITs between the same countries but they may have different terms and conditions to determine their obligations (Kishoiyian, 1993) (Subedi, 2008). When a BIT is concluded, it applies to companies under the local foreign direct investment (FDI) laws and policies. As BITs are mainly created by the negotiation of the two countries and by nature, differ from each other; therefore, there is no global treaty that could regulate all BITs in the world (Hossain & Rahi, 2018).

Since independence, Bangladesh has signed 30 BITs with different countries globally and has signed its first BIT with the United Kingdom in 1980 (UNCTAD, 2021). This paper analyzed the BITs signed by Bangladesh with 15 countries in order to find out if they cover the (wholly or partly) screening of foreign investments.

2. Literature Review

The OLI model of Dunning's states that "FDI is undertaken if ownership-specific advantages ("O") like proprietary technology be existent concurrently with location-specific advantages ("L") in host countries, *e.g.*, low factor costs, and potential benefits from internalization ("I") of the production process overseas" (Dunning, 1977 and 1988). Since the 1990s due to the growth of multinational enterprises, there is a rapid increase of BITs globally and as of June 2021, the total number of BITs reached 2852 (UNCTAD, 2021). Therefore, there has been a shift of analytical focusing of empiric models on the FDI determining factors from customary determinants of locational advantages to policy-oriented issues, such as governance, exchange rate, human development, and openness; and recently to liberalization under BITs, bilateral trade agreements (BTAs) and regional trade agreements (RTAs) (Ullah & Inaba, 2014).

There is an inadequate and alternate indication of the FDI effects of BITs, especially in the perspective of least-developed and developing host states. Egger and Pfaffermayr analyzed OECD data and found that the signing of BITs by the developing host states, encourages the foreign investors to choose to invest in the developing states (Egger & Pfaffermayr, 2004). Busse also concluded the same as Egger and Pfaffermayr (Busse *et al*, 2010). Plummer and Cheong reveal that BITs signed by the ASEAN states exercise affirmative but trivial effects on inward FDI (Plummer & Cheong, 2009); however, Ullah found an important negative effect for the complete example of 34 home and 74 host states (Ullah & Inaba, 2014). Mina asserts that FDI-seeking host states may perhaps make an effort to sign BITs in arrangement with improving their institutionalized functions (Mina, 2012). Hallward-Driemeier finds modest proof that BITs have encouraged FDI flows from the OECD countries to the least-developed and developing states (Hallward-Driemeier, 2003).

Blonigen and Wang contend that in the least-developed and developing states, the factors determining the location of FDI differ steadily so that the present FDI experimental model does not capture it (Blonigen & Wang, 2004). Chantasasawat analyzed Asian host states of both major FDI-making states (*e.g.* Singapore, Malaysia, and the Republic of Korea) and major FDI-seeking countries (*e.g.* Indonesia and Thailand) and found that countries' performances in hosting FDI differ significantly (Chantasasawat, 2010). Plummer and Cheong, and

Vogiatzoglou also concluded that the FDI effects of institutional characteristics and BITs are quite insufficient in the perspective of states that are principally FDI-receiving, instead of FDI-making (Plummer and Cheong, 2009) (Vogiatzoglou, 2007). Therefore, it is noticeable that there is a lack of consensus in the literature on the relationship between BITs and FDI.

The FDI is seen as producing unequal income distribution, which in turn may result in less growth. It is said that FDI is creating a foreign-dominated localized elite or high income-group and enacting laws and developing policies to protect the interest of foreign investors, thus ignoring various needs of the local people. The result is a lower standard of living and smaller income shares for the bulk of the local people in the host state (Rothgeb, 2016). In other cases, foreign investment is prohibited or discouraged from areas or activities where the host country believes domestic entrepreneurship and capability are adequate or developed, either because such activities do not require much capital investment or are relatively less complex (Seid, 2018). Proponents of state intervention argue that the protection of infant industries in developing countries from the competition of industries in already developed countries is essential for national development. This view is opposed by neoclassical economists on the ground that resources should be allocated according to comparative or relative advantage (Grabowski, 1994; Geda, 2017).

As the administrative, technical and managerial capabilities of host countries increased, they became more confident and sophisticated in their abilities to gain greater economic benefits from FDI, thus should make regulatory control of FDI a necessary alternative (Kennedy, 1992) (Jones, 2005). It is argued that a rapid increase in FDI stock could exacerbate the balance-of-payments problems of the host state. To avoid this problem, the state should constrain the rate of FDI to not exceed the growth rate of local investment (Khor, 1996, 2005).

Some governments that are very keen to attract FDI, are sometimes reluctant to put in place the proper regulatory mechanisms, which might deter foreign investors from investing in their countries (Seid, 2018). Among countries that had the fastest economic growth in the past decade, most of them were favorably disposed towards FDI (Dunning, 2013). In fact, it now appears that there is a broad emerging consensus among both developed and developing states that any possible adverse effects of FDI can be controlled and it can hasten economic growth in the host countries (Shihata, 1991, Puig & Shaffer, 2018). Therefore, to realize the full potential of FDI, any government needs to have an interventionist role and adopt a policy that is selective with respect to projects and the volume and timing of FDI inflows (Seid, 2018).

3. Methodology

This study aimed to identify whether bilateral investment treaties have any provision about the screening of foreign investments in Bangladesh. The questions of this study are:

(a) Do the bilateral investment treaties of Bangladesh allow the host state to screen foreign investments at the pre-entry stage?

(b) Should the screening of FDI be required during the pre-entry stage in Bangladesh?

In order to find out the answer to these questions, the author using the doctrinal research method analyzed 15 BITs of Bangladesh with various states. Our analysis focused on screening of foreign investments factor as well as foreign investment protections such as most-favored-nation treatment, national treatment, fair and equitable treatment, full protection and security, dispute settlement mechanisms.

4. World Trade Organization (WTO) principles and FDI

When World Trade Organization (WTO) came into existence in 1995, replacing General Agreement on Tariffs and Trade (GATT), provided guidelines on regulating FDI in host countries. The main objective of the General Agreement on Tariffs and Trade (GATT) was the liberalization of international trade, and that remains the main objective of the World Trade Organization (WTO) regime. The system aims to achieve the liberalization of trade by these principles: (a) most-favored-nation treatment (MFN); (b) national treatment (NT); (c) reciprocity; (d) non-discrimination and (e) dispute settlement mechanism (Hossain, 2018).

Table 1: Factors covered by different jurisdictions

Factor	Countries	Statutes
Screening of foreign investments	Australia	Article 25(1A) of the Foreign Acquisition and Takeovers Act 1975
	Iceland	Articles 3-4 of the Act on Investment by Non-residents in Business Enterprises 1991
	China	Article 4 of the Law on Chinese-Foreign Equity Joint Ventures 1990
	Indonesia	Article 12 of the Law Concerning Investment 2007
	Philippines	Sections 8 & 15 of the Foreign Investment Act of 1991
	Qatar	Article 2 of the Law on Organization of Foreign Capital in the Economic Activity 2000
	Saudi Arabia	Articles 3 & 18 of the Foreign Investment Law 2000

On the one hand, following the World Trade Organization (WTO) principles, the developing countries are liberalizing their national laws and policies on FDI but on the other hand, many developed countries (who are also members of the World Trade Organization) imposing restrictions on the flow and activities of FDI. The various laws and policies of the developed and other countries most commonly cover the screening of foreign investment (Sornarajah, 2010).

5. Screening of Foreign Investments and Its Importance in Bangladesh

The host often requires the foreign investment proposal to go through screening procedures before initiating any business operation to decide on the approval or rejection of the proposal. For example, Tanzania [the National Investment (Promotion and Protection) Act 1990], Uganda (the Investment Code 1991), Zimbabwe (the Promotion of Investment: Policy and Regulation, 1991). The host state applies this procedure to examine or evaluate the proposal to find out the potential impact on the local economy or suitable to fulfill the country's economic goals or fulfill the established guidelines as set out by the law and policies (Subedi, 2008). There are many BITs made in recent years that provide foreign investors the entry-right and also allow them to establish their businesses in the host states. However, this right is not recognized as an absolute right because the contracting parties continue to make wide limitations on entry into certain sectors through the BITs. The contracting parties through using appropriate formulas also

exempt some of their laws from the scope of the BITs. In the treaties, this is inserted as "made in accordance with the laws and regulations of the host state". (Sornarajah, 2010).
Generally, the host country has an administrative agency, which regards the impact of the FDI and ensures that it brings tangible benefits to the local economy. The agency also has the responsibility to ensure that local businesses do not suffer damage due to the entry of powerful MNEs into an industrialized sector. There are many sectors where the host states do not allow any FDI and few are reserved for localized business citizenry; also few sectors are only reserved for government corporations. There are also certain sectors where FDI is allowed only through a joint venture with local entrepreneurs. For example, the Mexican legislation reserves the petroleum sector for Pemex, a state monopoly, and other sectors are reserved for the national enterprise. When ratifying North-American Free Trade Agreement (NAFTA) pursuant to national laws, Mexico excluded reserved sectors from the scope of NAFTA, which included national treatment in both pre-and post- entry stages. (Chang, 2017).
However, if any host states take any measure before or after entry, then the question of discrimination against the foreign investor may arise. In such a situation, the discrimination could be justified for economic reasons unless there is any provision in the treaty to provide national treatment in similar circumstances. In developing host states, exclusion of certain sectors could be justified on the following grounds:

- local entrepreneurs should handle the basic industries in a host state, if not, it would be left stranded by the MNEs that relocate;
- When any giant MNEs enter into the host state, it may destroy infant industries or stifle the emergence of an entrepreneurial class within the country;
- Local entrepreneurs cannot handle high-technology industries without help from foreign multinationals, so this sector is open to foreign investors but local entrepreneurs are capable to deal with low technology, labor-intensive areas (Sornarajah, 2010).

Developed host states also adopt different policies to keep foreign investors out of specific sectors due to national security grounds or protecting local interest (Garcia-Amador *et al*, 1994). For instance, Australia's Foreign Investment Policy requires all foreign investments to go through the screening procedures and the Treasurer can apply his or her discretion to block any foreign investment proposal when it goes against the national interest of Australia (Article 25(1A) of the Foreign Acquisition and Takeovers Act 1975). The example also includes European Union, Iceland (Articles 3-4 of the Act on Investment by Non-residents in Business Enterprises 1991), China (Article 4 of the Law on Chinese-Foreign Equity Joint Ventures 1990), Indonesia (Article 12 of the Law Concerning Investment 2007), Philippines (Sections 8 & 15 of the Foreign Investment Act of 1991), Saudi Arabia (Articles 3 & 8 of the Foreign Investment Law 2000) and Qatar (Article 2 of the Law on Organization of Foreign Capital in the Economic Activity 2000).
In Bangladesh, the Companies Act 1994 requires any company including foreign-owned to complete the incorporation procedures at the Registrar of Joint Stock Companies and Firms; and then apply for registration in the Bangladesh Investment Development Authority (BIDA). Once any FDI proposal is approved, the BIDA maintains a certain administrative procedure that

requires registering it. Depending on the nature of the newly FDI project, the approval or registration procedures differ in BIDA.
For instance, to set up a unit by any joint ventures or 100 percent foreign equity investor, any no-objection certificate (NOC) or prior approval is not required from BIDA. Foreign investors are only required to register their investment if they wish to take benefit of any fiscal and financial incentives, institutional support, or facilities. Registration with BIDA is compulsory for foreign investors to acquire benefits if they want to import materials on the "restricted list" as mentioned in the National Industrial Policy 2016 (NIP 2016); or import machinery at concessionary duty rates. Nevertheless, BIDA requires obtaining the pre-registration clearance for investment in insurance companies, banks, RMGs, and other financial institutions (Islam, 2019).
In 2016, the Government enacted the Bangladesh Investment Development Authority Act 2016 (BIDA 2016) to encourage and facilitate private or foreign investment in Bangladesh. Under the Act, the BIDA has created a 'One Stop Service' cell to provide all types of services and assistance to private investments including FDI (Section 16 of the BIDA Act 2016). But, offering one-stop service to the existing and prospective investors in real terms is yet to materialize. The officials of several state-owned utility service providers, working for BIDA one-stop service, are less capable and less powered to provide necessary service. In this context, the extent of the administrative barriers is quite long-winded and inter-related (Section 16 of the BIDA Act 2016).
Poor policy design and implementation, competitive weakness, structural impediments, low quality of infrastructure and skills, weak institutions, poor governance, and administrative hassles represent the administrative barriers that discourage potential FDI. However, the main drawbacks in the bureaucratic system are inefficiency and corruption, turning the whole administrative functionaries into a harassing experience. Administrative barriers are also translated into different forms and vary from sector to sector. In Bangladesh, foreign investors face barriers in different regulatory bodies in the form of their policy, legislation, and functions.
Although existing regulations provide for equal treatment of domestic and foreign investors, certain discriminatory rules continue concerning foreign investment. Restrictions against capacity expansion, sanctioning requirements for particular categories of foreign investment, pay-as-you-earn-schemes, and special regulations for supplier's credit are some of the areas of differential treatment (Mahbub & Jongwanich, 2019). Moreover, the major quandary of administrative barriers lies in the gap between trade-related policies and investment. Due to the serious lack of coordination between the policy implementing agencies of the Government, investors' suffering goes up. This creates barriers for the investors in getting due incentives offered by the Government; induces a lot of hassles in the implementation process; and ultimately discourages foreign investors to proceed on (Mahbub & Jongwanich, 2019).
The BIDA 2016 does not provide any mandatory regulatory authority to BIDA, instead allows BIDA to request other Government departments to provide certain services (Section 8 of the BIDA Act 2016). All the departments have their existing own policy; most importantly, they fear that the Act is curtailing their authority and mandate, quickly leading to intensive turf battles within the Government bureaucracy. The Act also lacks to provide any regulatory authority to

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BIDA over certain services, such as tax holidays, reduced customs duties, guarantees against expropriation and sequestration, guarantees about the repatriation of capital, and profit (Siddiqui, 2019).

According to the 2016 Act, the mandate of the BIDA is restricted to industrial undertakings. Projects that do not fall within this category are neither required nor eligible to be registered by the BIDA and seek its services or associated incentives. Quite importantly, this leaves aside all the services sub-sectors that are not enumerated as "industries" in the National Industrial Policy 2016. These activities are left somewhat in a vacuum as they cannot get the support of the BIDA and are subject to relatively dispersed entry conditions under sectorial regulations (Guterres, 2018). Besides, the Act does not have any provision concerning entry requirements at the pre-entry stage of FDI to be fulfilled by foreign investors.

With respect to entry conditions and established procedures, the FPIA 1980 remains rather vague and non-committal (Moore, 2013). Although Bangladesh presents itself as open to FDI, due to the limited scope, lack of committal language, and a 'positive list' approach in the Act, there is space for introducing restrictive practices. Several past and present restrictions to FDI are contained in sectorial laws; regulations or policies are highlighted to illustrate this. They do not constitute an exhaustive list of restrictions to FDI but indicate how limits or constraints to FDI are implemented under the present framework (Moore, 2013).

The NIP 2016 has categorized the industries for private investment (either local or foreign) into three groups: thrust sectors, reserved sectors, and controlled sectors. The NIP 2016 states that any private investment in the 22 controlled sectors cannot be registered directly with BIDA or Bangladesh Export Processing Zones Authority (BEPZA). An approval or No-Objection Certificate (NOC) must be obtained from the Ministry of Industry and Commerce, or the related ministry or commission. In such a case, the Government retains the authority to fix the equity rate of local-foreign investors for any joint venture project. Moreover, if a domestic or foreign investor desires to set up a joint venture with a public sector corporation and the public sector's equity participation is less than 50 percent, then it should be registered with BIDA. In such a case, the public sector corporation in question has to obtain authorization from the relevant ministry to invest its own resources.

Even though BIDA is the central registering body for private investment, the foreign investor should register with the Bangladesh Export Processing Zones Authority (BEPZA) to set up its venture in an Export Processing Zones (EPZ) or industrial estate (Salahuddin, 2019). To make sure safety measures and good working conditions in the industry, any manufacturing company, which employs ten or more workers; the Bangladesh Labor Act 2006 (BLA 2006) require them to register with Chief Inspectors of Factories and Establishment. If there are less than ten workers in any manufacturing company, there is no requirement to register with Chief Inspectors of Factories and Establishment but workers will still receive protection under the BLA 2006.

According to the NIP 2016, export-oriented industries are only allowed to set up in the EPZ, which are required to export at least 80 percent of their material or product; or else supply 80 percent of their product as raw materials for exportable items. A similar condition also applies

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to service enterprises. The application requirements are not expressly laid down under any policy; rather follow the guiding principle that is provided by the Government from time to time. After receiving it, once the authority is satisfied with all the required documents, they permit the investor to set up the industry (Section 12 of the Bangladesh Export Processing Zones Authority Act 1980).

Being the central registering or approving authority, the BIDA has extremely lenient policies while considering any FDI proposal; and lacks any policy guideline in coherent with the directives of section 3 of the Foreign Private Investment (Promotion and Protection) Act 1980 (FPIA 1980). According to section 4(1) of the Bangladesh Private Export Processing Zones Authority Act 1996 (BPEPZA 1996), the Board has the power to formulate policies for the sponsor company and can issue the license for the establishment of a zone. This section seems vague and fails to provide any clear guidance on what set of issues should be considered before formulating policies and granting licenses. It has been reported that the board is corrupted and also politically motivated while taking a decision or dealing with the sponsor companies (Rahman, 2019).

For instance, it had been reported that Korean EPZ (KEPZ) was developed by Youngone Corporation, a South Korean company engaged in the manufacture and distribution of sportswear and shoes. An impasse between Youngone, the operator of the KEPZ, and the Government has been going on for a long time over delays in transferring the deed of the land. The Government has blamed Youngone for its failure to fully use the industrial land in the KEPZ. The Government even plans to take back 2,000 acres of the 2,500 acres of land it allocated to the KEPZ in 1999.

However, the KEPZ authorities say it has not received support from the Government as well as the local administration as promised (Rahman, 2019). The Act lacks to provide any institutional authority to supervise the private EPZ. The department under the Prime Minister's Office (PMO) also does not have enough workforce and capacity to supervise the activities of private economic zones (Rahman, 2019).

Moreover, Section 19(1) of the BPEPZA 1996 states maximum punishment is cancellation or withdrawal of the license of the sponsor company but is it sufficient? Section 19(2) allows the sponsor company to appeal to the Government if the license is canceled or withdrawn and the Government decision shall be final. In such a case, the Act does not define procedures of cancellation or withdrawal of license. The researcher argues that due to political reasons, the Government must not intentionally take action against the sponsor company; and the Act needs to have a specific provision regarding an appeal to the Court instead of the Government. In this relation, it is to be noted that there is no policy guideline available on the BEPZA website.

In Bangladesh, the current approach to entry and establishment generates a lack of legal commitment, certainty, and transparency regarding the country's degree of openness to FDI. As it currently stands, the Act can provide the ground for either a very open policy stance towards foreign investors; or a significantly more restrictive one, based on associated regulations and policies, including sectorial legislation. The stance at first glance is clearly towards a high degree

of openness, even though Bangladesh is not quite as unremittingly open as frequently claimed by the authorities (Islam, 2019).
From the above discussion, it can be concluded that the BIDA lacks the necessary screening method in constancy with widespread standards of admission prerequisite as available in legal and policy regimes across the world. The BIDA also does not have any proper screening method necessary to scrutinize the developmental feasibility of an investment project on the whole. The functions of BIDA are restricted to the registration of a new investment project and concerning it, to ensure that all the prescribed procedural requirements are fulfilled. For this reason, it could be related to any economic matter in part but not on a holistic basis (Rahman, 2019).

6. Bangladesh BITs with different countries

6.1. Austria

The Government of Bangladesh had signed the BIT with the Republic of Austria at Dhaka in 2000, which is still in force. This BIT provides complete and constant protection and security, most-favored-nation treatment, fair and equitable treatment, national treatment, as well as other benefits to the investors of the home state. The Preamble of the BIT reaffirms both contracting parties' commitment to the observance of the internationally recognized labor standards. Chapter two of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to the screening of foreign investment.

6.2. Belgo-Luxembourg Economic Union (BLEU)

The People's Republic of Bangladesh signed the BIT with the Belgo-Luxembourg Economic Union (BLEU) in 1981 at Dhaka, which is still in force. The Preamble of the BIT desires to create favorable conditions for greater economic cooperation and recognizes the reciprocal encouragement and protection under international agreements to promote investments for the mutual prosperity of the Contracting States. This BIT provides full protection and security, fair and equitable treatment, national treatment, most-favored-nation treatment, and other benefits to the investors of the home state. Article 6 and 7 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors through the International Centre for Settlement of Investment Disputes (ICSID). The BIT has no specific reference to the screening of foreign investment.

6.3. Denmark

The Government of Bangladesh had signed the BIT with the Kingdom of Denmark at Dhaka in 2009, which is still in force. The Preamble of the BIT desires to create favorable conditions for investments and recognizes a fair and equitable treatment of investment on a reciprocal basis. Article 2(2) of the BIT states that investment objectives should be achieved without relaxing health, safety, and environmental measures, and the Party who suffers any loss or damages, shall be accorded adequate and effective compensation as per its laws and regulations and if necessary, as per international law. This BIT provides full protection and security, most-favored-nation treatment, national treatment, as well as other benefits to the investors of the home state. Article 9 and 10 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to the screening of foreign investment.

6.4. Germany

The People's Republic of Bangladesh signed the BIT with the Federal Republic of Germany at Bonn in 1981, which is still in force. The Preamble of the BIT desires to escalate economic cooperation between both countries and intends to create favorable conditions for investments by recognizing promotion and reciprocal protection of such investments. This BIT provides full protection and security, fair and equitable treatment, national treatment, most-favored-nation treatment, as well as other benefits to the investors of the home state. Article 10 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to the screening of foreign investment.

6.5. India

The Government of the Republic of India had signed the BIT with the People's Republic of Bangladesh in 2009, which is still in force. The Preamble of the BIT desires to create conditions favorable for fostering greater investment by recognizing the encouragement and reciprocal protection under international agreement for such investment. This BIT protects in accordance with the local laws and policy, most-favored-nation treatment, fair and equitable treatment, national treatment, as well as other benefits to the investors of the home state. Article 9 and 10 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to the screening of foreign investment.

6.6. Democratic People's Republic of Korea

The Democratic People's Republic of Korea signed the BIT with the People's Republic of Bangladesh at Dhaka in 1999. The Preamble of the BIT desires to escalate economic cooperation to the mutual benefits of both States and intends to create and keep favorable conditions for foreign investments by recognizing to promote and protect foreign investment. This BIT provides protection in accordance with the local laws and regulations, most-favored-nation treatment, fair and equitable treatment, national treatment, as well as other benefits to the investors of the home state. Article 7 and 8 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to the screening of foreign investment.

6.7.Netherlands

The Government of the Kingdom of the Netherlands signed the BIT with Bangladesh in 1994, which is still in force. The Preamble of the BIT desires to extend and intensify economic relations between both States by recognizing to stimulate the flow of capital, technology, and economic development with desired fair and equitable treatment of investments. This BIT provides full protection and security following the local laws and regulations, most-favored-nation treatment, fair and equitable treatment, national treatment, as well as other benefits to the investors of the home state. Article 9 and 13 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. Article 14(4) only entitles the Government of the Kingdom of Netherlands to terminate the application of the present Agreement separately in respect of any of the parts of the Kingdom. The BIT has no specific reference to the screening of foreign investment.

6.8. Romania

The Government of the Socialist Republic of Romania signed the BIT with Bangladesh at Dhaka in 1987, which is still in force. The Preamble of the BIT desires to develop existing economic cooperation by creating favorable conditions and providing a guarantee for investments of the capital. This BIT provides protection and guarantees as per the Agreement, most-favored-nation treatment, as well as other benefits to the investors of the home state. Article 8 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to the screening of foreign investment.

6.9. Switzerland

The Swiss Confederation had signed the BIT with Bangladesh at Dhaka in 2000, which is still in force. The Preamble of the BIT desires to escalate economic cooperation to the mutual benefits of both States and intends to create and keep favorable conditions for investments by recognizing the need to promote and protect foreign investments. This BIT provides full protection and security per the local laws and regulations, most-favored-nation treatment, fair and equitable treatment, national treatment, as well as other benefits to the investors of the home state. Article 8 and 9 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to the screening of foreign investment.

6.10. Turkey

The Government of the Republic of Turkey signed the BIT with Bangladesh at Ankara in 2012, which replaced the earlier BIT of 1987. The Preamble of the BIT desires to promote greater economic cooperation and recognizes the treatment to be accorded to such investments. In the Preamble, both Parties desire fair and equitable treatment of investments without relaxing health, safety, and environmental measures of general application as well as internationally recognized labor rights. There is a separate provision under article 4 for the protection of public health and the environment. This BIT also provides full protection and security under the local laws and regulations, minimum standard of treatment under international law, most-favored-nation treatment, fair and equitable treatment, national treatment, as well as other benefits to the investors of the home state. Article 10 and 11 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to the screening of foreign investment.

6.11. United Arab Emirates (UAE)

The Government of the United Arab Emirates had signed the BIT with Bangladesh at Abu Dhabi in 2011. The Preamble of the BIT desires to strengthen and expand industrial and economic cooperation on a long-term basis and especially, to make favorable conditions for foreign investments by recognizing the need to protect such investment. Article 4(5) states that "Investor of a Contracting Party as far as possible shall comply with the international laws and regulations of the other Contracting Party concerning public health and/or environmental policies". This BIT also provides full and adequate protection and security according to the local laws and regulations, most-favored-nation treatment, fair and equitable treatment, national treatment, and other benefits to the investors of the home state. Article 9 and 10 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to the screening of foreign investment.

6.12. United Kingdom (UK)

The Government of the United Kingdom of Great Britain and Northern Ireland had signed the BIT with Bangladesh in London in 1980. The Preamble of the BIT desires to create favorable conditions for greater investment by recognizing the encouragement and reciprocal protection of such investment. This BIT also provides full protection and security according to the local laws, most-favored-nation treatment, fair and equitable treatment, national treatment, and other benefits to the investors of the home state. Article 8 and 9 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to the screening of foreign investment.

6.13. Uzbekistan

The Government of the Republic of Uzbekistan signed the BIT with Bangladesh at Tashkent in 2000, which is still in force. The Preamble of the BIT desires to promote more extensive economic cooperation for mutual benefit by recognizing the necessity of encouragement and protection of such investment. This BIT also protects under the local laws, most-favored-nation treatment, fair and equitable treatment, national treatment, as well as other benefits to the investors of the home state. Article 9 and 10 of the BIT have provisions to settle the dispute between the Contracting Parties or any investor. The BIT has no specific reference to the screening of foreign investment.

6.14. Vietnam

The Government of the Socialist Republic of Vietnam signed the BIT with Bangladesh at Hanoi in 2005. The Preamble of the BIT desires to prosper and deepen industrial and economic cooperation on a long-term basis and especially to maintain and create favorable conditions for investments by recognizing the need to promote and protect such investments. This BIT also provides full protection and security in accordance with the local laws, fair and equitable treatment, most-favored-nation treatment, as well as other benefits to the investors of the home state. Article 7 and 8 of the BIT has provisions to settle the dispute between the Contracting

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Parties or any of its investors. The BIT has no specific reference to the screening of foreign investment.

6.15. Malaysia

The Government of Malaysia signed the BIT with Bangladesh at Kuala Lumpur in 1994, which is still in force. The Preamble of the BIT desires to strengthen and expand industrial and economic cooperation on a long-term basis and especially to create favorable conditions for FDI by recognizing the demand to protect such investments. This BIT provides full and adequate protection and security in accordance with local laws, regulations, and national policies, equitable treatment, most-favored-nation treatment, as well as other benefits to the investors of the home state. Article 6 and 7 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to the screening of foreign investment.

The following table is the summary of the Bangladesh BITs with 15 different countries in relation to the screening of foreign investment:

Table 2: BITs of Bangladesh with different countries

Country	Signing date & present status	Screening of foreign investment	FDI protections	Dispute settlement provisions
Austria	22/12/2000 In force	No	NT, MFN, FET	Yes
Belgium –Luxembourg Economic Union	22/05/1981 In force	No	MFN, FET	Yes
Denmark	05/11/2009 In force	No	NT, MFN, FET	Yes
Germany	06/05/1981 In force	No	NT, MFN, FET	Yes
India	09/02/2009 In force	No	NT, MFN, FET	Yes
Korea	21/06/1999 Signed	No	NT, MFN, FET	Yes
Netherlands	01/11/1994 In force	No	NT, MFN, FET	Yes
Romania	13/03/1987 In force	No	MFN	Yes
Switzerland	14/10/2000 In force	No	NT, MFN, FET	Yes
Turkey	12/04/2012 Signed	No	NT, MFN, FET	Yes
UAE	17/01/2011 Signed	No	NT, MFN, FET	Yes
UK	19/06/1980 In force	No	NT, MFN, FET	Yes
Uzbekistan	18/07/2000 In force	No	FET	Yes
Vietnam	01/05/2005 Signed	No	MFN, FET	Yes
Malaysia	20/10/1994 In force	No	MFN, FET	Yes

NT=National treatment, MFN=Most-favored nation treatment, FET=Fair, and equitable treatment

7. Findings

From the above discussions and table-2, it can be seen that Bangladesh BITs have no specific reference to the screening of foreign investments. All the BITs mainly cover dispute settlement mechanisms and only a few BITs cover areas such as environment, human (labor) rights, and sustainable development. From the Bangladesh BITs, it also appears that all of them have specific provisions for most-favored-nation treatment, full and adequate protection and security, national treatment, fair and equitable treatment, compensation for expropriation, and nationalization as well as other benefits for the foreign investors.

Under the BIDA 2016, the Bangladesh Investment Development Authority (BIDA) has created a 'One Stop Service' cell to provide all types of services and assistance to private investments including FDI; but in real terms is yet to materialize. Poor policy design and implementation, competitive weakness, structural impediments, low quality of infrastructure and skills, weak institutions, poor governance, and administrative hassles represent the administrative barriers that discourage potential FDI. Foreign investors face barriers in different regulatory bodies in the form of their policy, legislation, and functions. Moreover, the BIDA has extremely lenient policies while considering any FDI proposal; and lacks any policy guideline in consistent with the directives of section 3 of the FPIA 1980. According to the 'Ease of Doing Business' Report 2020, Bangladesh ranks 168 out of the 190 economies in the world. This report shows that the present conditions are not investment-friendly and lack a significantly favorable regulatory environment for starting and operating the business in Bangladesh.

8. Recommendations

As can be seen from the above findings that Bangladesh BITs lacks to cover the screening of foreign investments. In absence of any global treaty, the BITs at present regulate the FDI in Bangladesh (Hossain, 2018). There are shreds of evidence that show that only liberalization does not necessarily result in the increased inflow of FDI in the host countries. The FDI-related laws are scattered and in most cases, not adequate to regulate foreign investments in the host states. For instance, China has a restrictive investment regime; even then it has been the largest recipient of FDI amongst the developing world since 1992. In contrast, in 1999 the United Nations Conference on Trade and Development (UNCTAD) reported that there are many African countries, which have a very liberal investment regulation but failed to attract the inflow of FDI. Likewise, Vietnam and Thailand have more strict regulations compared to the Latin American countries but they are receiving more FDI than the latter.

Therefore, the recommendations will be that the screening process of FDI should be strengthened further with widespread standards of admission prerequisite as available in legal and policy regimes across the world. The FPIA 1980 must be amended and should include two tests: (a) net economic gain; and (b) national policy compliance. The net economic gain test should include: whether the proposed FDI will bring to the economy new capital, employment, advanced skills and technology, local capacity building and export diversification, and so on. The national policy compliance test should include: whether the proposed FDI complies with its national policies pertaining to defense, security, terrorism financing, mining, the environment, heritage, revenue, and counter-terrorism law and practice.

Moreover, the BIDA must ensure that foreign investors comply with all procedural requirements under the BIDA 2016. Moreover, it should take necessary measures to improve rankings in the 'Doing Business' by adopting an investment-friendly and favorable regulatory environment for starting and operating the business in Bangladesh. To do the job, they should recruit experts in the field. Corruption is a huge problem in Government institutions; thus, BIDA must ensure that foreign investors are not affected or discouraged by any illegal activities. Bangladesh should consider the screening of foreign investments to insert into the BITs in order to protect its legitimate interest and at the same time protect the foreign investors' interest as per WTO principles. In practice, both liberalization and restrictive regulation could have positive and negative effects in Bangladesh, so it should design its BITs in a balanced way to meet its peculiar needs at any particular time. Therefore, well-balanced BITs need to be struck between liberalization and restrictive regulation to ensure sustainable development in Bangladesh.

9. Conclusion

In recent years, many academics and scholars also expressed their concern on protecting the national and socio-economic interests of host states and suggested strict regulation of FDI by minimizing liberal approach. The scholars, such as - Seid proposed 'regulated openness' of investment regimes where both openness and regulation co-exist in a pragmatic and balanced way (Seid, 2002). Sornarajah proposed a 'middle path' (Sornarajah, 2010); and Solomon and Mirsky opined that FDI legislation should be enacted in the consideration of several ordinary problems that are importantly related to the development goals of FDI (Solomon & Mirsky, 1990). The FDI laws of Bangladesh provide different incentives and protections to foreign investors and have provisions only to promote the inflow of FDI. In the absence of a global treaty or specific Act, regulating the FDI in Bangladesh is mainly dependent upon the BITs. Bangladesh should follow the WTO principle of 'reciprocity' and design its BITs in such a way that every party's benefits are preserved equally. Thus, the economic relations will prolong for a long period between them. Furthermore, it is essential to insert screening of FDI through policy or legal regime or BITs to control FDI in sensitive fields by setting conditions. Moreover, the FDI must satisfy national interest, free from exploitation, fulfill social and economic development objectives - a society in which the fundamental human rights and freedom, rule of law, equality and justice, economic and social and political issues will be secured for every citizen.

10. Limitations of the study

The main limitation of this study is that it lacks interviews on the subject matter. As mentioned earlier that Bangladesh has signed 30 BITs and in this paper, 15 BITs in total have been analyzed. Therefore, further research in this space would be strengthened by including interviews with government officials, foreign investors, and academicians. Another limitation is our focus only on BITs at the pre-entry stage but relevant FDI laws of Bangladesh should also be considered.

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