論　説

FDI Policies of Developing Countries in South and Southeast Asia

――A Comparative Analysis――

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Abstract

This study reviews and documents a comparative analysis of FDI policy evolution in seven South and Southeast Asian countries that strive to attract FDI. An in-depth analysis of wide range of policy statements published by the national and international bodies uncovers that the sample countries launched opening to external capital at different points of time in the 20th centenary. They primarily opened their FDI policies and economic sectors unilaterally and then multilaterally. In recent years, they have emphasized more on opening under bilateral investment treaties. It is further found that smaller countries like Bangladesh and Vietnam opened their sectors in a quicker time than other countries. Nonetheless, investment policies of such countries have mostly been sharing similar features since the beginning of the 21st centenary. Although the contemporary policy frameworks of the sample countries represent subtle variation, remarkable gap prevails in their performance in FDI attraction. Hence, a mere declaration of opening to FDI stands out as dysfunctional.

Keywords: FDI, Developing Asia, Liberalization, International investment agreements, Bilateral and regional agreements.

1. Introduction

Foreign direct investment (FDI) is a well-acknowledged vehicle for technology transfer and of learning that can essentially contribute to bolster competitiveness of firms in the host country through spill-over effects and thus spur economic growth. The new classical growth model asserts that FDI fosters economic growth of a recipient country by augmenting stock of investment. The endogenous growth model supports that FDI brings technological diffusion from the developed world to the host economy that in turn causes

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recipient's economic growth (Borensztein et al. 1998). FDI is the largest source of external finance for developing countries. More importantly, one-third of global trade is intra-firm trade. Hence, more than ever before, countries at all levels of development seek to leverage FDI for development (UNCTAD, 2007).

Due to the positive growth effect of foreign capital, capital deficient countries heavily focus on attracting FDI by liberalizing investment regulations such as sectoral opening, investment ceiling, and tax incentives. Overtime, developing countries in Asia also went for extensive opening of their economies to foreign capital. Consequently, FDI regulations relating to sectoral opening, tax holiday, corporate tax rate, ceiling on equity holding, repatriation of capital and profits, employment of home country or third country nationals etc. were softened gradually. Internal and external economic shocks and policy prescriptions by the multilateral organizations has intensified investment liberalization in the region. However, FDI inflows to developing countries in Asia remarkably vary. In South Asia, India outperforms all other countries at an incomparable way. In the year 2015, India received the highest announcements of inward FDI in the world while three countries including India, China and Indonesia accounted 49% of FDI inflow in the Asia-Pacific Region (FDI intelligence, 2016). Also in Southeast Asia, large variations over time and between regional countries exist in inflows of FDI (Sjöholm, F. 2013). This study documents the journey towards FDI policy liberalization in seven Asian countries, namely Bangladesh, India, Pakistan, Thailand, Indonesia, Philippines, and Vietnam. The prime motivation of this research is to describe the gradual process of FDI policy liberalization and to evaluate the current stage of FDI policy in the backdrop of high flow of FDI in the region with sharp variation among countries within the region. Since countries differ greatly in their performance in FDI attraction, does it underscore that they stay at different phases of investment liberalization or degree of liberalization is comparable but performance is incomparable? Such analysis can postulate possible actions for policy makers to stimulate FDI inflow. The rest of the paper is organized as follows: Section 2 presents an assessment of FDI policies in seven countries; Section 3 discusses comparative scenario in FDI liberalization; and finally, Section 4 gives a concluding remark.

2. Assessment of Country Specific Policies

2.1 Bangladesh

After independence in 1971, government of Bangladesh nationalized all the medium and large scale industries with fixed assets exceeding Tk. 1.5 million. In the early years of sovereignty, the government adopted import substitution strategy placing sole emphasis on the public-sector led industrialization. Therefore, a very restrictive policy for private invest-

ment was in place in the 1970s. The first ever industrial policy in Bangladesh —The Industrial Investment Policy 1973— limited the ceiling of private investment within Tk. 2.5 million that could be exceeded with reinvestment of profits only. Under this policy, foreign private investment was allowed only in collaboration with the public sector and was narrowed to minority equity participation.

The government attempted to depart from a severe restrictive regime of private sector investment with the promulgation of the New Industrial Investment Policy 1974 which elevated the investment ceiling up to Tk. 30 million and launched tax holiday for private investment. Besides, the number of sectors restricted to private investment was minimized to 18. In December 1975, the revised investment policy was announced by further raising the limit of private investment up to Tk. 100 million, and designing export promotion measures along with a strategy of denationalization of state owned enterprises (SOEs).

In order to promote foreign investment, Bangladesh maneuvered formal policies from the early 1980s through the enactment of Foreign Private Investment (Promotion and Protection) Act 1980 and the Bangladesh Export Processing Zones Authority Act 1980. The former act opened the door for foreign investment in the form of wholly owned or joint ventures and guaranteed national treatment of foreign firms; while the later act liberalized investment provisions and offered incentives for investment in the export processing zones (EPZs). No expropriation was done in Bangladesh since the Foreign Private Investment (Promotion and Protection) Act 1980 was passed (UNCTAD, 2000).

Furthermore, investment provisions were gradually liberalized under the successive industrial policies began with the New Industrial Policy 1982. In fact, the New Industrial Policy 1982 provided a direction to export promotion rather than import substitution strategy and placed the central importance to private sector led industrialization. Since then, deregulation, privation, and liberalization were speeded up under the subsequent industrial policies set forth in 1986, 1991, 1999, 2005 and 2010. As a further move to facilitate and expedite the investment related functional process, the Board of Investment was set up in 1989 under the Investment Board Act 1989. Restrictive lists of industries for foreign investment were gradually shortened. The number of sectors closed for foreign investment was reduced to 7 in 1986 from 18 in 1974. Afterwards, the negative lists were narrowed to 5 in the Industrial Policy 1991 and 1999; and 4 in the industrial policy 2005.[1)] Industrial Policy 1991 lifted restriction on repatriation of profit and dividends, and granted tax exemption on royalty, interest on foreign loans and capital gains from the transfer of shares.

The latest industrial policy in Bangladesh emphasizes to induce foreign investment in the export oriented industries, backward linkage industries for the mainstream export sectors, and power sector. Nonetheless, Bangladesh offers wide range of fiscal, financial and other incentives to foreign investors that are summarized in Table-1.

Table 1: Fiscal incentives to promote FDI in Bangladesh

Incentives to FDI	Description
Tax holiday	(i) 5-7 years in most sectors
	(ii) Maximum 15 years in power sector
	(iii) 10 years exemption on income from industries in export processing zones (EPZ)
Number of sectors under tax holiday	24
Exemption of personal income tax	3 years for expatriate employees
Special incentives to designated sectors	(i) No import duty, no local tax such as municipal tax on any export oriented industries
	(ii) 15 years tax holiday in power sector
	(iii) leather industry: 80% exports of manufactured products is considered as 100% export
Special tax incentive to new industry	(i) 100% in first 3 years (in first 2 years for investment in Dhaka and Chittagong Divisions)
	(ii) 50% for next 3 years (in next 2 years); and 25% in 7th (5th) year
Import duty	(i) No import duty for export oriented industry
	(ii) 2.5-5% ad-valorem duty on the import of capital machinery by non-export based sectors
Cash subsidy	Cash subsidy for some thrust sectors
Management control	No restriction except Israel
Winding up of operations	Any time through a decision adopted in the AGM or EGM

2.2 India

India framed its first ever industrial policy in April 1948. Subsequent industrial policy resolutions/statements were enacted in 1956, 1973, 1977, 1980 and 1991. The policy reforms adopted after 1991 have been incorporated in the form of Press Notes by the Department of Industrial Policy and Promotion.[2] Industrial policy resolutions 1948 and 1956 exerted sole emphasis on public sector-led industrialization and economic growth. Furthermore, industrial policies until the early 1980s encouraged import substitution strategy. The Industrial Policy Resolutions (IPR) 1956 kept 17 industries fully restricted to private investment (Schedule A of IPR, 1956).[3] Over the years, India underwent through numerous changes and modifications that led to gradual reduction of government control and facilitated steady opening of the economy for private investment. In particular, the industrial policy statement 1973 recognized the importance of investment from large industrial houses and from foreign sources. Later on, growth of small-scale industries was focused in the policy statement of 1977.

India launched liberalization process through lifting restrictions on FDI from the early 1980s with the announcement of the Industrial Policy Statement 1980 that stressed hasten-

ing competition in domestic market, carrying out export-led industrialization, and promoting FDI in high-tech areas. The policy changes initiated during this decade included easing industrial licensing rules, offering incentives to investment, and granting exemptions on foreign equity ceiling under the Foreign Exchange Regulation Act for firms that exported all of their output (Kumar, 2004).

Trade liberalization and opening to FDI was substantially instituted in the early 1990s with the enactment of the New Industrial Policy 1991 that changed the role of government from being a regulator to a facilitator. At this time, the government undertook a package of policy reforms relating to trade, capital flows, and the financial sector (Kumar, 2004). Since then, FDI inflow to India has been booming (Chakraborty and Nunnenkamp, 2008). The main features of liberalization under the new industrial policy were (1) approval of FDI without conditions; (2) simplifying the process of granting import license; and (3) opening previously restricted sectors for private investment. Under the new policy, the number of sectors preserved for public investment was reduced to 8 from 17.[4] Later on, the power sector and mineral sectors were opened in 1992-93 and 1993-94 fiscal years, respectively; bringing the number of reserve lists to 6. Since 2009, only two sectors are kept for public investment, namely (1) atomic energy and (2) railway transport. Similarly, the number of industries requiring compulsory licensing was liberalized on an ongoing basis. The same IP kept only five industries in the list of compulsory licensing which were 18 in the Industrial Policy 1991.

The New Industrial Policy 1991 raised the limit of equity participation on foreign investment from 40% to 51% in 33 high priority industries that were mentioned in Annex III of the policy (Industrial Policy 1991, p. 5). In 1996-97 fiscal year, automatic approval of FDI up to 74 per cent by the Reserve Bank of India in nine categories of industries was allowed. The FDI policy was further liberalized through successive revisions in 2005-06 and 2007-08 fiscal years allowing foreign investment up to 100 per cent under the automatic route for all but a few specific sectors as such; (i) FM radio broadcasting (up to 20%); (ii) insurance, defence production, petroleum refining in the public sector, print and electronic media covering news & current affairs (up to 26%); (iii) air transport services, asset reconstruction companies, cable network, hardware for up linking, hub etc. (up to 49%); (iv) single brand retailing of products (up to 51%); and (v) atomic minerals, private sector banking, telecom services, establishment and operation of satellites (up 74%).[5]

Many other rules governing foreign investment were also liberalized since the early 1990s. Under the Industrial Policy Resolutions 1991, automatic clearance for the import of capital machinery was allowed for a maximum of Rs. 20 million or 25% of total value of plant and equipment. In other cases, imports of capital goods were required clearance from the Secretariat of Industrial Approvals. The new policy ensured national treatment to all approved foreign investments made by a multinational-enterprise, an overseas corporate

body, and a non-resident Indian.[6] Firms with foreign equity were freed from restriction on hiring of foreign technicians. The provision of automatic permission for payment fees and royalties on account of foreign technology agreements in high priority industries was put on up to a lump-sum payment of Rs.10 million, 5 % royalty for domestic sales and 8 % for exports, subject to total payments of 8 % of sales over a 10 year period from the date of agreement or 7 years from commencement of production. Although the 1991 policy imposed dividend balancing condition for repatriation, it was phased-out in 2000 (Kumar, 2004).

2.3 Pakistan

Industrialization in Pakistan has been characterized by repeated shifts of emphasis between private sector initiative and public sector intervention (Aftab, et al. 2000). During the 1950s and 60s, private sector investment played the pioneering role in Pakistan's industrialization process and the involvement of the public sector was limited to three out of 27 basic industries.[7] At that time, FDI was not allowed in service sectors including banking, insurance, and commerce (Khan and Yun-Hwan, 1999). Due to a dominant role of the private sector, Pakistan achieved considerable growth in export oriented manufacturing industries as such, by 1965 Pakistan's manufacturing exports were greater than those of Republic of Korea, Turkey, Thailand and Indonesia combined (Aftab, et al. 2000). However, the government embarked on a series of socialistic economic reforms in the 1970s and commenced nationalization process that severely restricted the pace of Pakistan's industrial growth. On 3 January 1972, the government enacted the 'Economic Reforms Order 1972' under which 31 major industrial corporations were nationalized and integrated them under 10 major basic industries[8] (Raza and Sani, 2008). Again in 1974, Government took over the life insurance industry, vegetable oil industry, banks, shipping companies, oil companies and wheat, rice and cotton processing units. Two years later, approximately 2,000 cotton and rice husking units came under the nationalization program in July 1976.

Realizing the dismantling performance of the economy caused by nationalization moves, Pakistan stepped down from its hard-line nationalization strategy and gradually moved to opening and deregulation from the early 1980s. The industrial policy statement of 1984 recognized the role of both private and public sector investment for enduring economic development. Nevertheless, process of privatization was not initiated and public sector investment retained stronghold control in major industries (Khan and Yun-Hwan, 1999). Liberalization efforts gained momentum since the early 1990s under the 'Protection of Economic Reforms Act 1992'. This act removed any room providing acquisition opportunity of FDI firms by the Federal Government. However, attitude to FDI did not change much and foreign investment was still kept open only to the manufacturing sector. Prior to 1997, 100% FDI was allowed only in the manufacturing sector without any permission of the

government (Board of Investment, 1998). Pakistan further softened FDI regulations by enacting the Investment Policy 1997 under which the government opened agriculture, service/infrastructure and social sectors for foreign investment with ceiling as such (i) service/infrastructure (up to 60%) and at least US$ 1 million; (ii) social sectors[9] (at least US$ 1 million); and (iii) agriculture sector (up to 60%) and at least US$ 1 million. Moreover, the government devised a number of fiscal incentives for four broad groups of industries, namely (1) value added or export industries; (2) high-tech industries; (3) priority industries; and (4) agro based industries[10]. Besides, the government announced reinvestment allowance at 50 % of capital expenditure /investment for BMRE (balancing, modernization, replacement and expansion); and enhanced depreciation allowance at 30% (in the first year) for investment in small and medium industries.

Over time, Pakistan deepened its investment liberalization by lifting restrictions and also continued to offer wide range of fiscal benefits and tariff concessions to motivate FDI inflows. No Government sanction is required for FDI except four sectors: (1) arms & ammunitions; (2) high explosives; (3) radio-active substances; and (4) security printing, currency and mint.

2.4 Indonesia

After its independence in 1945, Indonesia proceeded with a perception of distrust toward external influence, including foreign capital and investment owing to long persisted colonial rule for three centuries. Eventually such a tendency was diluted to some extent when the new government came to power in 1966 (Azis, 1998). Paucity in capital, experience, and technology for utilization of natural resources necessitated Indonesia to invite foreign investment from the mid-1960s that took the formal bidding after the enactment of the Foreign Investment Law 1967 (Law number 1). In a restrictive mode, this law conveyed a message on the incentives and concessions available for foreign investors as such; exemption of (a) company tax on profits for a maximum period of five years starting from the commencement of production (levy of company tax through a proportional rate of not more than 50% for additional five years); (b) tax on dividend paid to shareholders; (c) tax on reinvested earnings; (d) import duties on machinery, tools or instruments imported at the time of entry into Indonesia; and (e) capital stamp duties. Furthermore, firms having foreign equity were obliged to no restriction on repatriation of (i) profit (after tax) in the original currency of the invested capital; and (ii) remittance by foreign personnel; and (iii) compensation in case of nationalization. However, capital repatriation during the period of tax concessions and other levies was not allowed (Article 20, The Foreign Investment Law 1967[11]). The Act declared that the government shall neither undertake a total nationalization nor restrict management control except the interest of the State. It also laid down provision for compensation in case of any expropriation by the Government. Nevertheless,

this law did not make black and white provisions pertaining to the type of enterprises and forms of ownership allowed. FDI was permitted in the form 100% equity in some unspecified sectors while in the form of joint ventures and work contracts in other undefined areas to be determined by the Government. The act required wholly owned foreign enterprises to provide opportunities for participation by national capital following specified period and in proportions to be determined by the Government. However, FDI in the field of mining was allowed in cooperation with the Government only.[12)] Under this law, management control of the FDI firms was entrusted in the hands of the foreign investor while staffing by the host country nationals was mandatory unless personnel were unviable from local supply. Furthermore, the act conditioned human resource development by foreign firms through conducting regular and systematic training in technical and marketing fields for host country personnel for reaping the benefits of knowledge spillover. Moreover, life span of an FDI enterprise was delimited for a maximum period of 30 years.

In an attempt to create a more conducive fiscal climate for investors, the Government amended the Foreign Investment Law 1967 and adopted the Law Number 11 of 1970.[13)] Therefore, the new amendment extended the net of fiscal incentives offered under the previous law. In addition to earlier list of fiscal incentives, the amended law put in the incentive of compensation for losses during the first six years of operations (starting from the date of commencement). Moreover, the Ministry of Finance was empowered to extend the period of tax holiday considering significance and contribution of the FDI project in the host economy. Under the article 6 of the Foreign Investment Law 1967 (Law number 1), the fields of activity closed for FDI with full control were (1) harbors; (2) production, transmission and distribution of electric power for the public; (3) shipping; (4) telecommunications; (5) aviation; (6) drinking water; (7) public railways; (8) development of atomic energy; (9) mass media; and (10) production of ammunition, explosive and war equipment. In 1994 the Government permitted joint venture operations in all these areas with at least 5% ownership of host partner but continued to restrict wholly owned subsidiaries. From the beginning of the present century, foreign investment came under more limiting regulations. The Presidential Decree number 96 (released in 2000) restricted foreign investment in eight sub-sectors (attachment II of the decree); allowed joint ventures in nine sub-sectors limiting foreign equity between 45-95% (attachment III of the decree); and opened 20 sub-sectors for FDI on condition (attachment IV of the decree).

Since then, investment provisions in Indonesia was modified and improved through different government regulations, presidential decrees, ministerial decrees, and decrees issued by the Chairman of the Indonesian Capital Investment Coordinating Board until the enactment of Capital Investment Law on 28 March, 2007 (Law number 25 of 2007) that became effective from 26 April of that year.[14)] The new law removed the earlier provision of FDI for a maximum period of 30 years. It also widened the scope of the repatriation provision and

eased the condition of staffing by asking foreign firms to give priority to host country staffing which was mandatory in the earlier law. The new Act also designed a more liberal policy for import of capital goods and raw materials; and set market price as the basis for compensation in case of any nationalization. In the same year, the Government circulated the Presidential Regulation number 77 that spelled out the business fields close and open with conditions to investment. Under this regulation, 25 businesses in 7 sectors (agriculture, manufacturing, transportation, communication and information, marine and fisheries, forestry, culture and tourism) were outside the preview of private investment while foreign investment were allowed in 120 fields of activities with a ceiling of equity ownership ranging from 49 to 95%.[15] The sectors open to FDI has been revised again in 2010 (The Presidential Regulation Number 36 of 2010) that appeared to be more restrictive than it was in 2000 and 2007. Under this latest regulation, the list of sectors closed for investment was extended while the number of conditionally opened sectors was reduced to 17 from 20 in 2000.[16]

2.5 Thailand

Thailand witnessed a spectacular economic growth of about 8 percent for three and a half decades until 1996 and this growth was driven by inward FDI to a great extent (Tangkitvanich et al. 2004). However, FDI policies in Thailand have neither been highly restrictive nor unusually liberal compared to other countries in the region although all development plans since the early 1960s attempted to promote inflow of foreign capital (OECD, 1999). There has never been a major swing in Thai FDI policy (Hall, 2004). Thailand has been one of the prime movers to establish Board of Investment (BOI) in the 1950s to facilitate investment.[17] Thai government introduced tariff and tax concessions for both local and foreign investors under 'The Investment Promotion Act 1960'. Apart from that, the Government permitted foreign firms to repatriate profits and provided specific guarantees against nationalization (Phongpaichit and Baker, 1997). Until 1971, industrialization in Thailand was governed by import substitution policy (Tangkitvanich et al. 2004).

The government devised the 3rd Economic Development Plan for 1972–76 emphasizing on export promotion and revised the investment law in 1972 providing exemptions from import duty on raw materials and intermediate inputs for export oriented industries (Tangkitvanich et al. 2004). In 1972, The Alien Business Law was enacted that defined a business entity as a foreign company in which the foreign investor owns 50% or more share capital or of the value of the total capital invested. This law was quite restrictive to invite FDI. Under this Act, businesses were broken down into three categories: (1) category—A which included 11 sub-sectors and was closed for any participation of foreign investment; (2) category-B which consisted of 38 fields of activities and were closed to foreign investment unless promoted by the Board of Investment; and (3) category-C which specified 12 sub-sectors (and any other sector not included in the category A and B) and were open

to foreign investment.

The Alien Business Law of 1972 was revoked by The Investment Promotion Act 1977. This act is the central legislation relating to investment in Thailand (UNCTAD, 1986) and was amended in 1991 (Investment Promotion Act No. 2) and 2001 (Investment Promotion Act No. 3). This act also outlined the legal framework for the operations of the BOI and empowered it to delineate the list of activities eligible for investment promotion under the chairmanship of Thai Prime Minister. Moreover, BOI was given discretion to grant facilities and services to prospective investors for promoting investment. This act and its subsequent amendments offered a number of incentives such as (i) exemption of import duty on raw materials and machinery; (ii) exemption of fees for goodwill, copyrights or other rights from the computation of taxable income; (iii) tax holiday for certain years; (iv) special tax holiday in case of investment in the zones or areas designated by the BOI; (v) additional tax deductions for export oriented investments; (vi) repatriation of capital, dividends, and funds for payment of loan or fees; and (vii) guarantee against nationalization.

In 1999, the government enacted the Foreign Business Act that came into effect on March 3, 2000. Unlike the former business law, the new act also classified businesses into 3 separate groups; namely (1) businesses absolutely prohibited for foreigners to operate due to special reasons; (2) foreign companies may only engage with prior Cabinet approval; and (3) businesses in which Thai nationals are not yet ready to compete with foreigners and foreign company must apply for and obtain a Foreign Business License prior to commencing the activity. The first category contained nine sub-sectors[18]; the second type included 13 fields of activities in three broad groups[19]; and the third list mentioned 21 fields of businesses. The business that required licenses under the second and third category, must invest a minimum of three million Thai Baht. Moreover, a business listed under the second type must have at least 40% equity ownership from a host partner.[20] For the third category businesses, the Director General of the Department of Business Development has the power to allow ceiling on foreign ownership. There were also specific law for controlling ownership in certain sectors including banking and finance, insurance, airlines, shipping, and telecommunications. The foreign investment ceiling as specified under the sector specific law was as follows: (i) Up to 25%: banking and finance; and insurance and insurance brokers; (ii) Up to 30%: shipping; (iii) Up to 49%: land.

In order to keep pace with internal and external shocks and also to make FDI policies more liberal and attractive, the BOI announces new amendments of the Foreign Business Act almost in every year. Each successive amendment of the Act exempts different businesses from the restrictive list and the last amendment was made in the year 2013. Besides, the BOI offers a number of tax and nontax incentives to allure investors as such (a) import duty exemption on machinery; (b) exemption of import duty on raw materials if used in production for export, or re-export, or projects in Zone 3 (75% reduction) provid-

ed that imported materials are produced in Thailand; (c)8 year corporate income tax exemption without being subject to a corporate income tax exemption cap and loss carry forward after tax holiday period; (d)50% percent reduction of corporate income tax on net profit for five years after expiry of tax holiday; (e)double deduction of transportation, electricity and water supply costs for ten years from the date of income derivation from promoted project; (f)25% percent deduction of the cost of installation or construction of facilities in addition to normal depreciation deduction; (g)permission to own land; (h)permission to remit money abroad; (i)permission to recruit skilled workers and experts from other countries. The incentives generally differ depending on the location of the enterprises and a firm's belongingness to any specific industry classification of the BOI.[21)]

2.6 Philippines

Historical conjecture of Philippines played a key role in its investment policy formulation. After a prolonged colonial break of four centuries, Philippines became independent in 1946 and the philosophy of economic nationalism dominated legislative frameworks during the post-independence period.[22)] Consequently, FDI policy in Philippines can be seen as highly restrictive during the pre-1990 periods while highly liberal afterwards. In pursuance of implementing the objective of economic nationalism and to encourage domestic and limited foreign investment, Philippines instituted the Board of Investment in 1967 under the Investment Incentives Act. The Government also immediately promulgated further regulations for investment under the Foreign Business Regulations Act 1968. The later act authorized the BOI to implement legal provisions on foreign investment. The 1967 act encouraged foreign investment in capital intensive industries in the form of joint venture in which foreign partner could hold a maximum of 40% equity if the enterprise was registered or 30% otherwise.[23)] Under this Act, FDI in the financial sector was completely closed. This Act permitted repatriation of investment, earnings, and funds for loan payment.[24)] It also guaranteed against expropriation without just compensation. Investment in the preferred areas as declared by the BOI were entitled to receive a number of incentives as such (1)deduction of expenses incurred for pre-investment studies, startup costs, costs of initial recruitment and training and similar expenses from its taxable income for a period of 10 years; (2)accelerated depreciation; (3)carry-over of net loss; (4)seven year tariff exemption on imported capital machinery; (5)100% tax credit on procuring domestic capital equipment; (6)deduction of reinvestment of earnings from taxable income in the year of expansion; (7)anti-dumping protection; and (8)protection from government competition. However, employment of foreign nationals was allowed only in supervisory, technical or advisory positions not exceeding 5% of total personnel in each category. Moreover, pioneer enterprises were offered additional incentives over the earlier mentioned ones as such 100% exemption from all taxes for 3 years and at various rates for additional 9 years, flexibil-

ity to employ foreign nationals for 5 years, and post-operative tariff protection up to 50% of the dutiable value of the imported items. In order to stimulate investment in the export oriented industries, the Act designed special incentives, like double deductions of promotional expenses from taxable income, double deductions of shipping costs, special tax credit on raw materials at 7% of the total cost of raw materials. However, the export oriented firms were required to comply with at least 70% local content requirement and would export more than 50% of its total production.

During the reign of President Ferdinand E. Marcos, another important act relating to investment was enacted in 1969 (Republic Act No. 5490) that laid the foundation of foreign trade zone. Later on, this act was revised in 1972 under the Presidential Decree No. 66 under which the foreign trade zone authority was empowered to allow wholly owned foreign firms inside the zone (section 16). Furthermore, EPZ firms were entitled to additional incentives and the foreign trade zone authority had the discretion to grant any incentive to investors.

Investment regime in Philippines began to change after the assumption of state power by President Corazon Aquino in 1986. The new government promulgated a new investment law, the Omnibus Investment Code of 1987 which was more liberal toward foreign investment than those enacted by the former government (Pierce, 1992). The new law recognized private sector as the prime mover for economic development and encouraged domestic and foreign investment in industry, agriculture, forestry, mining, and tourism. The new law offered full tax holiday to new firms (6 years to pioneer-enterprises and 4 years to non-pioneer enterprises[25]); tax exemption for three years in case of expansion proportionate to expansion cost; deduction of 50% labor expenses for five years from taxable income; 100% duty exemption on imported machinery if such technologies were not produced domestically; 100% tax credit on purchase of domestic capital equipment; However, the earlier restrictive measures to FDI continued as such 40% maximum equity holding (Article 15); and no foreign equity in financial sector (article 11). Under this law, 100% equity was allowed in particular export pioneer enterprises and in enterprises registered with the Export Processing Zone Authority (Pierce, 1992).

In 1991, Philippines enacted a new foreign investment act marking a remarkable shift towards investment liberalization. The Foreign Investments Act of 1991 permitted 100% equity holding by foreign investors except in the areas contained in the foreign investment negative list (section 2 of the act). The act also eliminated restriction on the extent of foreign ownership of export enterprises.[26] The provision of divestment of foreign equity was repealed and foreign firms engaged in serving domestic market were encouraged to increase host participation gradually, electing host nationals to the board of directors and transfer of technology. Three years later since this act was enacted; the first negative list of foreign investment was framed in 1994 under the Executive Order No. 182 keeping the

provision of amendment after every two years. In the negative list, restricted fields of investment were categorized under three groups: List A, List B and List C.[27] Altogether, restrictions to foreign equity were imposed in the manner as such (i) no foreign equity (in 8 areas including mass media, practice of licensed profession,[28] retail trade, cooperative, private security agency, small-scale mining, utilization of marine resources, rice and corn industry); (ii) up to 25% (private recruitment, construction of public works); (iii) up to 30% (advertising); (iv) up to 40% (in 14 areas as such natural resources, private lands ownership, public utilities, educational institutions, financing companies, construction, manufacture of products and ingredients requiring Philippine National Police clearance, manufacture of products requiring clearance from Department of National Defense, manufacture of dangerous drugs, sauna and steam bathhouses including massage clinics and other like activities, gambling, domestic market enterprises with paid-in equity capital of less than US$ 500,000, and export enterprises which utilize raw materials from depleting natural resources).

On March 1996, the Foreign Investments Act of 1991 was amended which came into effect on 15 April 1996. At this time, section 8 of the 1991 act was amended with effect of reducing the negative list of investments from three to two: List A (manufacture or repair or storage of firearms, ammunition, lethal weapons, military ordnance, explosives, pyrotechnics and similar materials) and List B (manufacture and distribution of dangerous drugs, all forms of gambling, nightclubs, bars, beer houses, dance halls, sauna and steam bathhouses and massage clinics). As a consequence of this amendment, subsequent negative lists of foreign investment contained two lists (List A and B) of activities starting from the second negative list made in 1996. Over time, the negative list has been updated eight times for instituting further liberalization and the last amendment was promulgated in 2010 under the Executive Order No. 858. The 8th negative list put restrictions in the form of (i) no foreign equity (11 sectors); (ii) up to 20% (private radio communications network); (iii) up to 25% (3 sectors: private recruitment, construction of locally funded public works, construction of defense related structures); (iv) 30% (advertising); (v) up to 40% (10 areas under list A and 7 areas under list B); (vi) up to 60% (financing companies regulated by SEC, investment houses). Thus, Foreign Investments Act of 1991 became the core legislation governing foreign investment in Philippines. Apart from that, banking sector and retail trade was separately opened to foreign investors under the General Banking Law of 2000 and Retail Trade Liberalization Act of 2000, respectively.

2.7 Vietnam

Until the middle of the 1980s, Vietnam pursued the model of a centrally planned economy and maintained close ties with the COMECON bloc of communist countries while a very little contact with the West (Bui, 2004). Following a severe economic crisis in the early 1980s, Vietnam adopted its well-known economic reform — *dio moi* (*renovation*) — in

1986 leading to a market oriented economy that resulted in remarkable economic and social changes as such healthy economic growth, development of external sector, decline in poverty. In the process of economic uplift, inward FDI has played a key role.

In order to enhance economic cooperation with international communities, develop the national economy and facilitate export by injecting foreign capital and technology, Vietnam set forth its first law governing foreign investment on 29 December 1987. Although it was the maiden FDI policy, Vietnam framed some revolutionary provisions to attract foreign capital. Some of the key policy areas of this law were (a) accepting FDI in the form of joint venture or wholly owned foreign enterprises; (b) granting foreign equity in a wide range of economic activities[29]; (c) permitting non-equity joint ventures; (d) no limit on the sale of output in local and international market; (e) fair and equitable treatment of FDI enterprises; (f) allowing repatriation of invested capital, profit, technology agreement fee, and loan repayment; (g) remitting personal income by the foreign personnel working in Vietnam; (h) reduced tax rates ranging 15 to 25% except investment in oil, gas and other rare resource sectors; (i) tax holiday for minimum two years (from the year of making profit) and a 50 % reduction of tax for subsequent 2 years[30]; (j) loss carry over opportunity; (k) refunding tax in the event of reinvested earnings. The restrictive conditions included: (1) in case of equity shareholding by the foreign partner, the act required a minimum of 30% of combined capital of the two partners; (2) either the general director or the First Deputy General Director in a joint venture must be from the host country; (3) allowable life time of an enterprise with foreign capital was set to 20 years with provision for extension if necessary.

The government of Vietnam undertook a series of amendments of the 1987 law in 1990, 1992, 1996, 2000, and 2003. Successive amendments reaffirmed liberal attitudes to foreign investment by means of providing clearer clarification of various provisions, broadening the scope of investment and extending the length and mix of incentives. Nonetheless, administrative complexities and corruption greatly nullified the worth of FDI incentives in Vietnam (Hill, 2004). Although the private sector was encouraged officially, discrimination prevailed in practice (Bui, 2004).

1992 amendment of foreign investment law placed top priority on FDI in exportable production. The forms of ownership remained same as original but it brought some significant changes in other policy dimensions such as expanding the life span of an enterprise with foreign capital from 20 to 50 years which could be extended to a maximum of 70 years determined by the standing committee on a case by case basis (article 17); allowing wholly-owned foreign enterprises to open joint venture with local partner; granting repatriation of capital, profit, technology fee and loan repayment. Regarding the fiscal incentives, FDI firms were provided loss carry over opportunity until five years (article 40); partial or full refund of tax on reinvested profit (article 42). For especially encouraged fields, tax holiday was extended for a maximum period of eight years. However, in spite of having explicit

tariff and tax rules, the act maintained discretion for the state authority to extend such benefits. Furthermore, some restrictive provisions existed i.e. joint venture was restricted unless the foreign partner shared less than 30% of the legal capital; requiring foreign investors to make Build-Operate-Transfer (BOT) Contract, Build-Transfer-Operate (BTO) Contract or Build-Transfer (BT) Contract with the state only for constructing infrastructure. Foreign investment was closed in the areas that would cause harm to (i) national defense and security, (ii) historical relics, culture, good tradition, customs, and (iii) the ecological environment.

Vietnam devised its latest law on investment in 2005 which went into effect from July 2006[31] and the act was complemented by a separate government decree issued on 22 September in that year. The new law combined conditions for both domestic and foreign investment; softened the regulations relating to FDI; and devised special incentives for investment in specific sectors and geographic locations. Furthermore, this act and its subsequent decree elucidated the economic activities in which investment was prohibited, conditionally open, and eligible for special incentives.[32]

Among other things, the new law provided access to and use of sources of credit and use of land and natural resources equally by both domestic and foreign investors (Article 14). Foreign investors were completely freed from restriction on import of raw materials and capital machinery (Article 15). Unlike the preceding laws, the provision of holding a minimum of 30% share by the foreign partner in a joint venture was removed. The government also offered incentives for those who invest in geographic regions having difficult socio-economic conditions, industrial zones, export processing zones, high-tech zones, and economic zones. Investors undertaking projects in investment incentive sectors and regions were entitled to preferential tax rates, exempted from duty on capital and materials import (section 33), accelerated depreciation up to twice of the depreciation as stipulated by the regulations on depreciation of fixed assets (article 35), exemption from payment of or a reduction of land rent and land use fee (article 36), permission for land use up to 70 years with consideration for extension at expiry (article 36), permission to sell in the local market (article 60), no minimum export requirement, permission to hire international management organization, free to terminate the operation. Nonetheless, the new act requires foreign investors to obtain investment certificate the process of which depends on the sector and amount of investment (article 46 to 50), the operational duration of projects with foreign equity remained same as before.

3. Comparison of FDI Policy Evolution

FDI policies in the sample countries have undergone far-reaching changes in recent de-

cades. Capital deficient countries still vie for foreign investment by lowering barriers to capital inflows. Nonetheless, countries competing for inward FDI also devise competitive incentive packages to allure foreign investors that resulted in 'proliferation of incentives' (OECD, 2004). In order to keep pace with the changing business environment and global business rules, FDI opting countries amend investment statutes quite frequently. Table 2 summarizes the phases of FDI policy liberalization in selected counties and Table 3 provides various dimensions of current FDI policies. It is evident that investment liberalization at the country level began at different points of time at a varying degree. However, the phase of liberalization in Southeast Asia preceded the South Asia. In particular, three Southeast Asian countries namely Indonesia, Thailand and Philippines relaxed some regulations on FDI in the 1960s. Thailand pioneered the introduction of tax holiday in 1960 followed by Indonesia in 1967.[33] Indonesia stepped first in other areas as such eliminating ceiling on foreign equity participation, granting national treatment, guaranteeing against expropriation and allowing concessional duty on import. Likewise Indonesia, Thailand and Philippines also provided the similar kinds of flexibility by the 1970s. Vietnam joined to the club of liberal economy in the late 1980s and adopted a liberal FDI policy regime by the early 1990s.

Table 2: Evolution of Investment Liberalization in South and Southeast Asian Countries

Country	Pre-liberalization period	Period of slow/moderate liberalization	Period of rapid liberalization
Bangladesh	Until the end of 1970s	1980s	1990s
India	Until the early 1980s	1980s	1990s
Pakistan	Until the mid-1980s	Mid-1980s to mid-1990s	Late 1990s
Thailand	Until 1950s	Early 1960s to 1990s	Early 2000s
Indonesia	1945 to mid-1960s	Mid-1960s to early 2000s	Mid 2000s
Philippines	Until the mid-1960s	Mid-1960s to 1980s	Early 1990s
Vietnam	Until mid-1980s	Late1980s to early 2000s	Mid-2000s

In South Asia, liberalization of FDI policies commenced prior to broad based economic reforms. In particular, Bangladesh and Pakistan opened the door to foreign investors in the 1980s although these countries changed their growth direction from import substitution to export led growth strategy from the early 1990s. India was relatively restrictive to FDI until the 1990s. Although India opened its first EPZ in 1965 in Kandla which was also the first zone in Asia, FDI policy of the country at that time was highly restrictive and industrialization was controlled by protected domestic sectors with a focus on import substitution strategy. Investment policies in the EPZ were rigid and incentives for investment were not attractive (Aggarwal, 2005).

It appears that South Asian countries undertook rapid opening to FDI at an earlier time

Table 3: Current state of FDI Policies

FDI policy aspects / Countries	Bangladesh	India	Indonesia	Pakistan	Philippines	Thailand	Vietnam
Tax holiday	(i) 5-7 years in most sectors; (ii) 15 years in power sector; (iii) 10 years (in EPZ)	(i) 10 years in the power sector; (ii) 5 years in infrastructure sector	na	Tax cut (50% of plant, machinery and equipment cost)	3~8 years	8 years (in priorities activities)	2~8 years
Corporate tax rate in 2016	25%	40~42% (higher than local investors)	25%	32%~25%	30%	20%	20~10%
Ceiling on equity holding	No ceiling	Ceiling on few sectors	45-95% (ceiling on 17 sectors)	No ceiling (in manufacturing sector); 60% (in service and agriculture)	20% (5 sectors), 30% (one sector), 40% (19 sectors)	No ceiling (in manufacturing sector); 49% (maximum in some specified sectors)	No ceiling
Number of restricted sectors	4	2	25	4	11	na	12
Repatriation provisions	Full repatriation of capital, profits, and dividends	Repatriation of net profit after tax without restriction	Full repatriation	Full repatriation from manufacturing; 60% from service sector	No restriction on repatriation of investment, earnings, and funds for loan payment	Free to repatriate investment funds, profits, dividends and to repay overseas loans	Full repatriation
Number of BITs (until 01 December 2016)	31	85	59	52	36	44	53

Source: Adopted from Ullah and Inaba (2014) and updated the numbers of BITs using the database of International Centre for Settlement of Investment Disputes (ICSID), Online: https://icsid.worldbank.org/apps/ICSIDWEB/resources/Pages/Bilateral-Investment-Treaties-Database.aspx?tab=FtoJ&rdo=TCN. Accessed: December 21, 2016.

than Southeast Asian countries. During the period of rapid liberalization, all countries have substantially reduced the number of restricted sectors to FDI and increased the ceiling of investment. To encourage re-investment, most of the countries have introduced tax incentives. Besides, most of the counties abolished restriction on repatriation of profit and capital. They also have reduced corporate tax rates, tariff on import of raw materials and machinery.

4 . Conclusion

Developing counties in two sub-regions of Asia, namely South and Southeast Asia have been instituting investment liberalization at a varying degree over decades. Although opening to international investments was initiated unilaterally owing either to a perception of bolstering economic prosperity or to overcome economic crisis by injecting foreign capital and technology; the process has been complemented by devising bilateral and regional agreements and also by participating to international investment agreements under the auspicious of multilateral organizations.

A historical review of FDI related documents and data evidences that over time, all of the seven countries included in this study speeded up liberalization process unilaterally, bilaterally and multilaterally. Unilaterally, all countries have gradually widened the eligible sectors for FDI, simplified the import process, reduced import tariff, reduced corporate tax rates, and introduced tax incentives. As a result, their current FDI policies exhibit subtle variation. All of these countries still intend to design more liberal policies and attractive incentives in their efforts to attract more foreign investments by maneuvering a wide range of fiscal and non-fiscal benefits. Countries in both sub-regions also increasingly focus on entering into bilateral investment treaty (BIT). Thus, it appears that these countries have adopted far reaching liberalization policies primarily under unilateral schemes and secondarily under bilateral and multilateral agreements. Since unilateral liberalization has already reached to a peak level, future liberalization requires more initiatives on a regional basis especially in South Asia. Furthermore, low inflow of FDI in some countries amid high degree of liberalization calls for proper implementation of policies and focusing on the legal and regulatory environment that will affect invest flows in the future.

Notes:

1) The sectors closed to FDI in the Industrial Policy 1991 included (1)arms and ammunition and other defense equipment and machinery; (2)forest plantation and mechanized extraction within the bounds of reserved forests; (3)production of nuclear energy; (4)currency printing and minting; (5)air transportation and railways. The Industrial Policy 2005 opened air transportation and

railways to foreign investment.

2) For details, see the Handbook of Industrial Policy and Statistics 2008-09, Ministry of Commerce and Industry, the Government of India, New Delhi, p. 6.

3) The industries preserved for public sector investment were (1) arms and ammunition and allied items of defence equipment; (2) atomic energy; (3) iron and steel; (4) heavy castings and forgings of iron and steel; (5) heavy plant and machinery required for iron and steel production, for mining, for machine tool manufacture and for such other basic industries as may be specified by the Central Government; (6) heavy electrical plant including large hydraulic and steam turbines; (7) coal and ignite; (8) mineral oils; (9) mining of iron ore, manganese ore, chrome-ore, gypsum, sulphur, gold and diamond; (10) mining and processing of copper, lead, zinc, tin, molybdenum and wolfram; (11) minerals specified in the Schedule to the Atomic Energy (Control of Production and Use) Order; (12) aircraft; (13) air transport; (14) railway transport; (15) ship building; (16) telephones and telephone cables, telegraph and wireless apparatus (excluding radio receiving sets); and (17) generation and distribution of electricity.

4) The sectors preserved for public investment were (1) arms and ammunition and allied items of defence equipment, defence aircraft and warships; (2) atomic energy; (3) coal and lignite; (4) mineral oils; (5) mining of iron ore, manganese ore, chrome ore, gypsum, sulphur, gold and diamond; (6) mining of copper, lead, zinc, tin, molybdenum and wolfram; (7) minerals specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953; (8) railway transport.

5) The Handbook of Industrial Policy and Statistics 2007-08, Ministry of Commerce and Industry, the Government of India, New Delhi, p. 27.

6) Report of the Steering Group on Foreign Direct Investment, Planning Commission, Government of India, New Delhi, 2002, p. 69.

7) The three basic industries were (i) generation of hydroelectric power; (ii) arms and ammunition and (iii) manufacturing of railway wagons, telephones, telegraph lines, and wireless apparatus.

8) The 10 industries mentioned in the first schedule of the 1972 economic reform gazette were (1) iron and steel industries; (2) basic metal industries; (3) heavy engineering industries; (4) heavy electrical industries; (5) assembly and manufacture of motor vehicles; (6) tractor plants, assembly and manufacture; (7) heavy and basic chemicals; (8) petro-chemical industries; (9) cement industry; (10) public utilities including; (i) electricity generation, transmission and distribution; (ii) gas and (iii) oil refineries.

9) Social sectors included education, technical/vocational training, human resources development (HRD) as well as hospitals and medical/diagnostic services.

10) The list of industries under each category was mentioned at Annex IV, V, VI and VII of the Investment Policy 1997.

11) Article 12 of the capital Investment Law 2000 freed repatriation of capital and also repatriation for payment of loan installment. Article 8 of the capital investment law 2007 also permitted repatriation of capital, profit, dividend, loan payment, royalty payment and so forth without any binding.

12) The provision of FDI in the field of general mining in cooperation with the Government by virtue of work contracts remained unchanged in the Capital Investment Law 2000.

13) The new amendment came on August 7, 1970 having its name: Law Number 11 of 1970: Amendment and Supplement of Law No. 1 of 1967 Concerning Foreign Investment.

14) Law number 25 of 2007 concerning investment set the conditions for domestic and foreign investment together rather than separate as before. Until the promulgation of the Capital Investment Law 2007, domestic and foreign firms were governed by separate laws. However, both types of firms were subject to similar treatment in the areas of fiscal incentive and duties on imports.

15) The list of restricted fields of investment were mentioned in the Attachment I to the Presidential Regulation of the Republic of Indonesia, Number 77 of 2007; while the list of sectors with ceiling on equity participation were included in the Attachment II of the same regulation.

16) The business sub-sectors that were conditionally open to FDI included: agriculture, forestry, maritime and fishery, energy and mineral resources, manufacturing, defence, public works, trading, culture and tourism, banking, communications and information technology, education, finance, health, manpower and transmigration, transport, and security.

17) Board of Investment (BOI) was established in 1954. However, the BOI acquired its functional authority only after the implementation of the Investment Promotion Act 1977.

18) Businesses that were not permitted for FDI included: (i) newspaper business, radio-broadcasting station or radio/television business; (ii) farming, cultivation or horticulture; (iii) animal husbandry; (iv) forestry and timber conversion from natural forests; (v) fisheries, especially fishing in Thai territorial waters and in specific economic areas of Thailand; (vi) extracting Thai herbs; (vii) trade and auction sale of Thai antiques or objects of historical value; (viii) making or casting Buddha images and alms bowls; (ix) trading in land.

19) The three broad groups of businesses that require Cabinet approval prior to making investment are related to (a) businesses concerning national safety and security; (b) businesses that could have adverse effect on arts and culture, customs, and native manufacturing /handicrafts; and (c) businesses that could have adverse effect on natural resources or environment.

20) Under special circumstances the percentage of Thai shareholding can be reduced to as low as 25%. Such reduction requires special approval from the Thai Cabinet.

21) In order to facilitate balanced regional development, investments in Zone 3 (farthest from the capital city) are eligible for highest fiscal incentives. The latest list of incentives is available at: http://www.boi.go.th/index.php?page=incentive

22) For details on early legal frameworks and economic nationalism of Philippine, see de-Castro, C. and S. Monteroso (1977), *Foreign Business Enterprise in the Philippines: A Study of the Legal Framework in a Developing Economy,* Multiplex Publamark: Manila. Also see, Gonzaga, Leo P. (1989), Foreign Investment: Nationalistic Mood Begins to Change, *East Asian Executive Reports,* 11(5).

23) The provision of 30% equity holding for non-registered firm was delineated in section 2 of the Foreign Business Regulations Act 1968.

24) However, under the Section 74 of the Republic Act No. 265, the monetary board could suspend or restrict any kind of repatriation during an exchange crisis.

25) The notions of "pioneer" and "non-pioneer" enterprise were explained in the Omnibus Investment Code, 1987, section 17 and 18, respectively.

26) The term "export enterprise" shall mean an enterprise wherein a manufacturer, processor or service [including tourism] enterprise exports sixty percent (60%) or more of its output (section 3, Foreign Investments Act 1991).

27) In the List A, foreign ownership was limited by mandate of the constitution and specific laws; in the List B, foreign ownership was restricted for reasons of security, defense, health

risk and protection of local small and medium-scale enterprises; in the List C, foreign equity was restrained by capacity of existing enterprises. The specific restrictions relating to various fields of operations were included in "Annex A" of the Executive Order No. 182 of 1992.

28) Prohibited services involving the practice of licensed profession included: (a) engineering, (b) medical and allied profession, (c) accountancy, (d) architecture, (e) criminology, (f) chemistry, (g) customs broker, (h) forestry, (i) geology, (j) marine deck officer, (k) marine engine officer, (l) master plumbing, (m) sugar technology, (n) social work, (o) librarian, (p) law.

29) Article 3 of the law set forth the eligible areas of investment which were defined based on some broad criteria and a detailed list of sectors were left for specification under the subsequent government announcement.

30) Depending on the necessity of investment project, corporate tax rate could be reduced to 10 % and tax holiday period could be extended.

31) This Law replaced the 1996 Law on Foreign Investment in Vietnam, the 2000 Law on Amendment of and Addition to a Number of Articles of the Law on Foreign Investment in Vietnam and the 1998 Law on Promotion of Domestic Investment.

32) As per the article 22 and 23 of the Government decree issued in 2006 on guidelines for implementation on Investment Law, 26 fields of operations were entitled to special investment incentives (Appendix I, list A); 53 areas of activities were identified as investment incentive sectors (Appendix I, list B); Appendix II provides the list of geographical areas eligible for investment incentives; investment in 14 sectors were kept as conditional (Appendix III); and investment is prohibited in 12 sectors (Appendix IV).

33) Indonesia revoked tax holiday on FDI from the year 1984 under the Law number 7 passed in 1983. Since then, the government usually grants some tax concessions that ease tax burden of the investors.

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