

State Capacity in Promoting Trade and Investment: The Case of Bangladesh

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Acronyms

ADP	Annual Development Plan
BAC	Bureau of Anti-Corruption
BB	Bangladesh Bank
BCS	Bangladesh Civil Services
BMRE	Balancing, Modernisation, Rehabilitation and Expansion
BOI	Board of Investment
BSCIC	Bangladesh Small and Cottage Industries Corporation
CCI&E	Chief Controller of Exports and Imports
CPC	Civil Procedure Code
CrPC	Code of Criminal Procedure
DCCI	Dhaka Chamber of Commerce and Industries
DFDD	Duty Exemption and Drawback Department
EPB	Export Processing Bureau
EPZ	Export Processing Zone
FBCCI	Federation of Bangladesh Chambers of Commerce and Industries
FDI	Foreign Direct Investment
FPB	Export Promotion Bureau
FTA	Free Trade Association
FY	Financial Year
GATT	General Agreement on Trade and Tariffs
GoB	Government of Bangladesh
GSP	Generalised System of Preference
IEC	Import Entitlement Certificate
IFC	International Finance Corporation
IT	Information Technology
JATI	Judicial Administration Training Institute
MoC	Ministry of Commerce
MoF	Ministry of Finance
MP	Member of Parliament
NBR	National board of Revenue
SAARC	South Asian Association for Regional Co-operation
SOE	State-Owned Enterprise
VAT	Value Added Tax
WTO	World Trade Organisation

Executive Summary

Globalization is multi-dimensional and it can be broken down into numerous complex processes that have dynamism of their own, resulting in both varied and often interrelated and unpredictable effects. Countries with weak governance capacity, such as Bangladesh, remain vulnerable to such unanticipated effects. While developing countries of the world are competing to attract foreign investments, the rate of success varies widely. For example, although Bangladesh offers one of the most liberal foreign investment regimes in the world, its success to attract FDIs remains low. An in-depth analysis of relevant factors reveals that Bangladesh's below par performance even at the South Asian standard is not because of policy failures; rather it is a reflection of Bangladesh's structural weaknesses, which deter foreign entrepreneurs from investing in Bangladesh.

Bangladesh started its onward journey with a democracy in 1971. The system did not last long, and until 1990, Bangladesh was ruled by authoritarian governments both – civil and military. Democratic transition in the wake of popular upsurge in 1990 is yet to create democratic polity in the centre. In a parliamentary democracy, party politics is a must. But in the name of politicization, what is going on in Bangladesh during the last twelve years or so, is rapid expansion of clientalism. These clientalist treatments by ruling parties has created a serious problem of the lack of cohesion, mistrust, and partisan approach within the bureaucracy, which in turn resulted in escalation of inefficiency, corruption, and misuse of public office. As a result, the bureaucracy, instead of a legal rational as well as impersonal authoritative body, has become a conglomerate of persons, who are driven solely by personal interests. In such a bureaucracy strategic planning is nothing but a jargon to satisfy donor's demand. Moreover, from recruitment to training, transfers, i.e., the human resources management system of the GoB can not play an effective role in improving the efficiency of the bureaucracy. There is no relevance between the training – both pre-appointment, and on-job, and their postings. It is often found that an officer after acquiring a higher degree from abroad in Economics is being posted to the ministry of communications. With such a poor HR management, punishment or reward transfers further deter public officials to develop necessary negotiation skills required to effectively participate in multi-lateral agreements and regional treaties. All these led to below par performance standards, and waning professionalism in the service. As a result, policy analysis capacity of our public officials remains at the lowest, and explains why Bangladesh could not attract sizable FDI even after offering a very liberal investment regime.

In order to facilitate investment in Bangladesh, a Board of Investment (BOI) was formed, which provides one-stop services to the potential investors. Instead of *one-stop* service, unfortunately this wing has more often than not been termed a *full-stop* service.

Although during the last two decades Bangladesh consistently remains at the bottom of corruption indices provided by various agencies, including investment risk consultancies, so far no attempt has been carried out by any governments, including the so called “democratic” governments, apart from providing rhetorical service. Ironically, when Transparency International listed Bangladesh as the most corrupt country of the world, the ruling party and its main opposition got involved in a blaming game, instead of correcting the scenario, which is evident by the non-implementation of Ombudsman Act even after 23 years. Anti-corruption laws, and cross-border conventions are also not up-dated. The prevention of Corruption Act 1947 is still the main building block of corruption laws in the country. Moreover, the structure and mechanisms to curb corruption in the country continue to be ineffective. The main

enforcement agency in the country is the Bureau of Anti-Corruption (BAC), which is often termed as the *Bureau of Ante-Corruption*. First of all, the BAC is itself out and out corrupt. Second, BAC is controlled by the office of the Prime Minister. The BAC hence consistently plays a role to harass the political oppositions. No ruling party official has so far been convicted for involvement in corrupt activities, although Bangladesh has consistently been termed as the most corrupt country in the world. Moreover, the officials in the BAC can be transferred to other public sector agencies, and there is no watch dog agency to oversee BAC's activities.

As a result, foreign investors have to bear high pecuniary costs associated with the uninterrupted service of public sector amenities, including electricity, gas, policing. Moreover, all the export oriented industries have to work under time pressure. Hence, effective and uninterrupted supply of raw materials is also very important. So, although the GoB offers a very encouraging investment regime, all the other factors in turn pose a very high sales tax, which outweighs the benefits that could be accrued through investments in Bangladesh. In other words, the opportunity cost of investment in Bangladesh remains higher than its competitors, and thus discourages prospective investors to come in Bangladesh. This coupled with political instability is increasingly snatching off Bangladesh's competitive edge in the global investment market.

The situation further aggravated in the absence of independence of judiciary in Bangladesh. Although the higher courts of the country are in general respected for its impartiality, there is a huge backlog of cases. Moreover, it takes months even to resolve a very simple case. In addition to this mounting backlog of cases, and delay, the lower court is under total control of the government, and frequently alleged as an extension of the ruling party. Although the landmark decision of the *Secretary, Ministry of Finance vs. Masdar Hossain* (1999) ordered the GoB to facilitate the independence of judiciary as early as possible. The government, instead of separating the judiciary, took time extensions fourteen times without any visible attempt in the desired direction. Thus, there are no efficient mechanisms to protect property laws in Bangladesh, especially in the absence of independence of judiciary. Alarming, the judicial system of the country, especially the lower courts are also not free from allegations of corrupt practices. Appointments of public prosecutors on clientalist basis further aggravate the situation.

In the presence of rampant corruption, unprecedented clientalist attitude, political instability, lack of accountability of the political leaders as well as bureaucrats, thus contributed to a weak state- Bangladesh, which is seemingly incapable to reap benefits from globalization, and is also vulnerable to possible international currency crises due to sudden reversal of capital flows, for example.

In an era of globalization, and interdependence of economies, the following areas should be considered and strengthened seriously in order to increase the capacity of state in promoting trade and investment in Bangladesh:

1. Political Will, Commitment & Stability,
 - a. Institutionalizing democratic norms and values;
 - b. Ensuring Rule of Law
 - c. Initiating electoral reform;
 - d. Improving law and order situation;
 - e. Initiating reforms to strengthen local governments;
 - f. Mapping of local resources;

- It is evident that the bulk portion of weaknesses of the state emanated from the lack of commitment and will of the political leaders. So any reform designed to improve the state capacity should start from the ruling political party.
 - Opposition political parties can also play a vital role by participating in the political process in a democratic manner.
2. Good Governance to Minimize the Costs of Doing Business in Bangladesh,
- a. Streamlining bureaucracy (Training, Posting, Transfer, & Promotions);
 - b. Curbing Corruption;
 - i. Make BAC independent and more efficient;
 - ii. Strengthen and reform NBR and other relevant agencies for increased financial transparency;
 - c. Strengthening BOI to promote sectoral priority, and areas of comparative advantage by sector including export-oriented FDIs;
 - d. Promotion of economic diplomacy;
 - e. Introducing E-governance for increased transparency;
 - f. Engaged governance: Increased efforts to improve relationships between public officials at the grass root level and local business people;
-
- It is repeatedly noted that it is not policy failure but structural weaknesses of the state and its bureaucracy which is responsible for failure to attract FDIs in Bangladesh. This structural weaknesses work as an extra tax, and thus dissuades investors from coming to Bangladesh.
3. Conducive Infrastructure
- a. Improving service delivery of utilities, including electricity and gas;
 - b. Increasing efficacy of ports;
 - c. Development of information technology backbone;
-
- Bangladesh could never attract FDIs without adequate infrastructural support. It is however important to note that although expansion of public sector amenities is vital, it is even more important to ensure quality and prompt service delivery of what we already have.
4. Development of Capital Market
- a. Proper use of remittance (The prime source of foreign currency earning)
 - b. Transparency of the stock market.
5. Image Building of Bangladesh
-
- Chinese and Indian experiences suggest us that in general expatriate investors pioneer FDIs in a country. But Bangladesh is seriously suffering from an image crisis. Even the local investors are highly reluctant to invest in Bangladesh. Hence, the GoB has to take concerted efforts, along with aforementioned activities, to uplift the popular image of Bangladesh.

We believe that these steps would improve Bangladesh's performance in trade and investment. However, how and when these steps are to be taken are subject to further in-depth studies.

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Introduction

Globalization is not new to world civilizations. What is new is the pace of its growth. 50 years ago, the world traded around a billion dollars a day; today, the same one-billion-dollar-trade is happening every 90 minutes. Globalization is multi-dimensional and that it can be broken down into numerous complex processes that have dynamism of their own, resulting in both varied and often interrelated unpredictable effects. Hence, it has given rise to concerns in both developed and developing countries. Many developed countries fear competition from low-wage labor abundant countries, while local firms in developing countries find it difficult to compete with foreign firms with better technology, stronger capital base, and superior productivity, and especially against Multi National Corporations (MNCs) based in and supported by powerful states. Although theoretically it has been proved that globalization and social progress are positively correlated, the answer to the question is NOT straight forward “YES”. Had it been yes, we would not have to go through this exercise. In other words, different countries can reap different amounts of benefits from globalization, which is primarily determined by each country’s capacity to deal with unforeseen outcomes.

There is no denying that globalization is a multi-faceted and complex process, and is increasingly integrating this world economy. While globalization and economic liberalization bring economic benefits to developing countries, these are also exposed to new types of risks. For example, Shang-Jin-Wei noted, “the sudden reversal of capital flows, such as a recall of loans by international banks or a massive sale of emerging market stocks by international mutual funds, can spark or at least contribute to currency crises such as those in Asia and Latin America.”*

Developed countries with good governance capacity are well suited to protect and safeguard its consumers from the negative externalities of globalization. On the other hand, weak governance in developing countries not only restricts them to reap maximum benefits out of economic liberalization, but also remains the country vulnerable from both anticipated and unexpected outcomes.

This country study paper is divided into four sections. The first section delineates administrative capacity of the state in promoting trade and investment, the second section describes corruption laws and its enforcement mechanisms, the third section explains the legal and judicial framework to support property rights laws, and the final section identifies key recommendations that should be studied in-depth for further economic development of Bangladesh.

* Wei, Shang-Jin, 2001, *Corruption and Globalization, Policy Brief, No. 79, April, The Brookings Institution, Washington D.C*

1. BANGLADESH ECONOMY AND HUMAN DEVELOPMENT: OVERVIEW AND SETTING STAGE FOR TRADE AND INVESTMENT ANALYSIS

Economic and human development in Bangladesh is a mosaic of some achievements but many disappointments*. In the sphere of human development, the progress is noteworthy with certain reduction in poverty status (head count), population growth and fertility rates, infant mortality and overall death rates, and increase in life expectancy, adult literacy and gross enrolment rates – all represent important gains (Table 1). Bangladesh has continuously strengthened its disaster management capabilities. This enhanced capability, as well as the resilience of its long suffering people, was in ample evidence during the resolute and effective people's response in 1998 to one of the century's worst floods.

Trade and investment related development in the broader sphere of economy has shown both encouraging and less encouraging trends. The **good news** in the economic development associated with trade and investment include the following:

- An increasing integration with the global economy: in 1990's trade has been doubled and reached 31% of the GDP by 2001.
- Formulation of conducive-to-development industrial policy reforms (1982, 1986) which has lifted import controls, encouraged export, rationalized tariff.
- Shifting from fixed to floating exchange rate (limited to current account transactions and not to capital accounts).
- Deregulation of foreign investment, to a large extent.
- Boost in the accelerated repatriation of profit and income.

All these gains could not be realized to the desired level due to the **less encouraging** factors which include, among others, the following:

- Slow pace of reforms in the institutional and regulatory framework.
- Lost momentum of liberalization, especially in infrastructure.
- Less emphasis on prioritization and sequencing of liberalization.
- Stagnant divestment of state-owned-enterprises (especially, the manufacturing industries).
- High share of non-performing loans.
- Meagre foreign direct investment: about \$620 million annually during 1992-2000, which is one of the lowest in emerging Asia (3-7 times less than in Cambodia and Vietnam).
- Weak state capacity to govern and deliver services primarily attributed to the lack of transparency and accountability of public institutions, and deteriorated law and order situation, among others.

* For details see Abul Barkat (2003). "Right to Development and Human Development: Concepts and Status in Bangladesh", in Hameeda Hossain (ed), *Human Rights in Bangladesh 2002*, Ain O Salish Kendra, Dhaka.

Table 1: Economy and Human Development in Bangladesh: 1980-2002

	1980	1990	2000	FY 02
Progress in Human Development				
Poverty (head count; upper line)	-	58.8	49.8	
IMR (per 1000 LB)	101.4	94.0	66.3	
CBR (per 1000 people)	33.4	32.8	19.9	
CDR (per 1000 people)	10.2	11.3	4.8	
TFR	5.0	4.3	3.0	
Life expectancy	56.9	56.0	60.6	
Gross primary enrollment ratio	61.0	72.0	97.5	
Adult literacy	29.0	35.0	45.0	
Investment & Savings as % GDP				
Investment	17.6	16.9	23.0	23.2
Private	12.4	10.3	15.6	16.8
Public	5.2	6.6	7.4	6.4
Gross Domestic Savings	12.5	14.6	17.9	18.2
Gross National Savings	17.8	19.7	23.1	23.4
GDP Composition (%)				
Agriculture & fishing	32.3	28.7	24.3	24.1
Manufacturing	10.8	12.2	15.0	15.0
Others	56.8	59.1	60.7	60.9

Structural weakness deters trade and investment-mediated development process in Bangladesh. A conducive-to-development structure of inclusive governance acts as a powerful catalyst in promoting trade and investment. The present day situation of trade and investment is a matter of structure, which was formed in a historical process, and understanding of the content of that process is important to set the stage for a better future within globalized politico-economic system. From this standpoint, the following dimensions are in order:

- The initial 15 years (1975-1990) of development of trade and investment in Bangladesh can be denoted as development within mis-governance by authoritarian regimes including pure military rule and legitimised civil system of military rule. The outcomes of which were at least two-fold –
 1. Increased vulnerability to attract foreign private capital inflows in the form of FDI, portfolio investment, foreign currency loans and suppliers credit and loans
 2. Slowing down the process of democratic transition
- After twenty years of independence, in 1990, the development journey started with a deep-rooted corrupt system. The last 13 years (1990-2003) can be denoted as the time of “Parliamentary democracy” operating within an inherited corrupt system. The misfortunate indications, include among others, the following:
 1. Narrow party-based politicization which acts as both cause and effect of bad trade and investment situation
 2. Expanded clientism indicated through lack of cohesion, mistrust, partisanism in bureaucracy, escalation of inefficiency, misuse of public office etc. Bureaucracy, in today’s Bangladesh, can best be portrayed as conglomerate of persons driven solely by personal interests.

- The structure and extent of inefficiency in human resource management in the government has reached a level to act as a breeding ground for further inefficiency and wastage in the system. This could be seen as a factor retarding the process of engaged governance. The status of the relevant human resource management issues can be indicated as follows:
 1. The whole process of recruitment, training and placement (transfer, posting) is politicised.
 2. There is no compatibility between the training and posting of trade and investment personnel.
 3. The relevant trade and investment officials can be characterized by inadequate policy and negotiation skill to efficiently participate in the multilateral and bilateral agreements, regional treaties etc.

In addition to the above stated, in terms of sustained human development, many daunting challenges remain. First, despite some gains, massive poverty persists, particularly in the rural areas and urban slums; and the basis for dis-empowerment and inequality has broadened and increased. GDP growth rates averaging 5 percent per annum appear to be well below Bangladesh's potential. Bangladesh, with a GNP per capita of only \$390, remains one of the world's least developed HDI countries, 145 out of 173 in UNDP's Human Development Index. Growth with inequity certainly aggravates the poverty situation and the deprivation trap. Second, confrontational politics weakens the political will and social stamina needed to challenge the self-serving elite, bureaucracy, military, labor unions and corrupt business forces that block the potentials of progress critical for accelerating and broadening development. Third, poor governance, weak institutions and public resources, sector performance inhibit development and reduce the access of the excluded to public services and benefits. Fourth, foreign aid has been less effective than it could be, reducing its impact on growth and poverty reduction*.

Finally, on balance, in terms of both economic and human development perspectives, the following conclusions can be drawn to set the stage for an in-depth understanding about the state capacity in promoting trade and investment in Bangladesh:

1. In 1990's the real GDP growth averaged 4.8% (with declined volatility) credited to increased private investment and further integration with global economy reflected in the increased export, especially in the RMG sector (although the fate of RMG after MFA-phase out in 2004 is still unclear).
2. However, the GDP growth has fallen short of growth potential. Started with similar incomes (in per capita PPP\$), two decades ago, compared to a Bangladeshi citizen a typical Indian citizen receives 50% more incomes and a Chinese 3 time more. And, projections show that reaching MDG goals in Bangladesh will require a 7% GDP growth with distributive justice.
3. The obvious way out shall include, among others, the improvements in investment climate accompanying with mitigation of the structural weaknesses through various social, economic, administrative, and legal reforms.

* For details see Abul Barkat (2001). "How much Foreign Aid Does Bangladesh Really Need: Political Economy of Last Three Decades", Keynote paper presented at the National Seminar titled "How much Foreign Aid Does Bangladesh Really Need?" organized by Bangladesh Economic Association, Dhaka, February 10, 2001.

2. ADMINISTRATIVE CAPACITY OF THE STATE IN PROMOTING TRADE AND INVESTMENT

2.1. Political Leadership and Strategic Planning Capacities

a) Political Leadership-

Bangladesh is governed by a parliamentary democracy, where general elections are constitutionally required at least once in every five years. There are 300 elected members in the Parliament called the *Jatiyo Sangsad*. A candidate in the national parliamentary elections may contest a maximum of five seats in any one election, but may only hold one seat. By-elections are held in constituencies that are relinquished by MPs (members of the parliament) first having been elected from multiple seats. The parliament elects the country's President who is responsible for largely ceremonial activities, to a five-year term.

Political leaderships in Bangladesh have often been marked by overwhelming short-lived popularity, being followed by mostly violent change of governments where the earlier government usually falls victim to the snare of allegations of corruption and violation of democratic norms. The country has established a parliamentary form of government in 1991, after a long spell of frequent change of governments mostly characterised by *coup de tat* and military dictatorships. There is little information on whether the movement toward establishment of a democratic government has contributed to promotion of trade and investment in Bangladesh.

The early government in Bangladesh during 1972-1975, at the helm of its love for mass welfare and social equity, missed the essence of professional improvement in its administration of various enterprises that were nationalised. The spirit of service dominated that of profit maximisation, and the loss of individual ownership of these large enterprises replaced by state-owned management led to non-competitive business and finally loss of market at home to the newly emerging entrepreneurs and abroad. Since then until the year 1982, there had been several changes of governments that showed some little improvement in a limited number of business sectors where the positions of ministers were held by professional and technocrat incumbents. This positive contribution made by certain technocrat advisers-cum-ministers in the militarily led cabinet since 1976 was short-lived especially due to the induction of political leaders in these positions by way of efforts for democratisation of the government that had entry into power by way of a process of *coup de tat*. The administration during 1976-1980 moved toward privatisation or disinvestment of a number of state-owned enterprises apparently trying to engender competitive business in the country for competing in a market economy, following the terms and conditions determined by the donors as well.

The longest-lived regime in Bangladesh had been the 1982-1991 regime that politically followed most of the processes of democratisation after a *coup de tat* as its predecessor did. Despite the serious efforts that it needed to stabilise itself in the seat of power, it has been reported that there had been some, though limited, improvements in the scenario of trade and investment during that period.

Though there had been such improvements in trade and investment, there had also been numerous reports of lack of transparency and accountability in the newly approved investments made by the members of that military regime or people having access to that regime. Several instances of lack of transparency and accountability that took place during that regime may be at least apparently validated by indication of the fact that many senior members of that regime are being repeatedly convicted of such irregularities, even in the recent days.

The above paragraphs provide an analytical portrait of the changes in governments and concurrent policies and initiatives regarding countrywide trade and investment. The major political phenomena that led the country to its present state may be summarised as shown below.

Bangladesh held its first parliamentary elections in March 1973, following its war of independence in 1971 and the establishment of a new Constitution in 1972. These elections solidified the Awami League's ruling majority. The elected government of Sheikh Mujibur Rahman who was for long the most prominent leader in the nationalist movement was overthrown in August 1975 in the first of a series of military coups followed by military rule. Military regimes plagued the country for the next fifteen years. In the coup in August 1975, Sheikh Mujib and most of his family were murdered. Sheikh Mujib's daughter (Sheikh Hasina) was out of the country and survived. President Ziaur Rahman an army general (and founder of the BNP) who came to power in the turmoil following the death of Sheikh Mujib, was himself assassinated in 1981. His wife, Begum Khaleda Zia, then assumed the position of Chairperson of BNP. In December 1982, General H.M. Ershad, then the Chief of Army General Staff, seized power and declared himself President. In 1981, Sheikh Hasina came back to Bangladesh and became the Chairperson of Awami League. General Ershad remained President for eight years, forming the Jatiyo Party and attempting to legitimise his rule through political manipulation. He was forced to resign in December 1990, following months of popular demonstrations.

*In February 1991, the BNP won a parliamentary plurality of 140 seats in general elections and formed the government, with Begum Khaleda Zia becoming Prime Minister. The Awami League, Jatiyo Party and the Jamaat-e-Islam formed the bulk of the opposition. In March 1994, the opposition parties walked out of Parliament to protest an alleged insult by a BNP minister. The walkout became a boycott when the opposition alleged that the BNP rigged a March 1994 by-election and demanded Khaleda Zia hand over power to a neutral caretaker government before the next national polls. Opposition MP's resigned *en masse* from Parliament in December 1994. The political impasse dragged on for nearly two years, and the opposition parties boycotted general elections held by the BNP in February 1996. The BNP government lost credibility with substantiated reports of vote rigging in the one-party election. Following this election, increasing popular pressure compelled the BNP to pass a constitutional amendment to permit election under a caretaker government and dissolve the short-lived parliament on March 30. New polls were contested by all the major parties in mid-June 1996, and were declared generally free and fair by domestic and international observer groups. A new government led by the Awami League and Prime Minister Sheikh Hasina took its seat in late June 1996.*

In 2001, Awami League handed over power to the second caretaker government under which parliamentary polls were held and in which BNP came back to power by bagging more than 200 seats in a four-party alliance composed of BNP itself, Islamic Oikkyo Jote, Jamaat-e-Islam and Jatiyo Party (Manzur).

In Bangladesh, there is no possibility of having any major bilateral or international political issues affecting the country's business climate. But frequent strikes (*hartals*) have long been a deeply embedded culture as a crude and cruel instrument for negotiations in Bangladesh politics. Strikes have been called frequently until recently (up to the year 2001) by various political parties as well as trade unions and the associations of workers and businesspersons in diverse sectors on petty issues, as a way to press hard their demands, impeding business operations widely. Following a campaign of long-stretch *hartals*, the Awami League won a majority in

parliamentary elections in June 1996, forcing its predecessor to step down. The first two years of that Awami League Government was characterised by relatively few *hartals* or other disruptive agitation programs. There were 27 days of nationwide general strikes in 1999, and 13 full or part days of general strikes in 2000. In the first six months of 2001, there were 22 days of nationwide strikes during the build-up to parliamentary elections. The business houses in Bangladesh have partially adjusted to the *hartal* culture, but the disruptions inflict a severe cost on the economy and on individual businesses. Parochial focus on partisan allegiance and political confrontation by both the ruling and opposition parties contribute to poor governance, reducing the government's ability and willingness to focus on economic reforms and policy implementation. The Awami League government stepped down on July 13, 2001, successfully completing their five-year term. Both politics and business conditions still continues to affected by prevailing lack of good governance and a relatively low-level ability of the agencies involved in promotion of trade and investment.

The government during 1996-2001 tried several times to minimise the frequency and impact of strikes in various ways- the most innovative and significant among them being the attempt for application of the law preventing political parties from calling strikes. Awami League mentioned, as one of their mottos during its rule in 1996-2001, that they were committed to forego calling strikes once they would be placed in the position of the oppositionists. Awami League, since its immediately departure from power (in 2001) have so far complied with its commitment to minimise meaningless strikes. Records on strikes in the past prior to 2001 had been disappointing for the businesspersons. The Bangladesh Country Commercial Guide FY 2002 published by the US Trade Centre in June 2002 reads: "The [GoB] continued its gradual improvement of tax procedures and reduction of evasion in order to increase revenues instead of adding new taxes, although it does attempt to widen the value-added tax base. The government did not make reductions in overall tariff rates, as in past years, but did reduce import duties on some raw materials in an attempt to stimulate industrial activity and boost sluggish exports. The main opposition party boycotted the session and staged a one-day general strike to protest the "anti-people" budget, even though social sectors affecting the poor were treated relatively favourably in the budget."

Though *hartals* are quite frequent in Bangladesh, there have been no incidents of politically designed damage to foreign business or installations over the past few years. *Hartals* (Strikes) or blockades called by political parties, in general, affect businesses by keeping workers away with the threat of violence and blocking transport, resulting in productivity losses. Arson to vehicles and other property from vandalism and looting of shops has occurred during such programs. Strikes, besides causing productivity losses, have significantly led to obstacles to domestic investment as well.

b) Strategic Planning Capacities-

Bangladesh had been blessed with its First Perspective Plan (1995-2010). Besides, there were several five-year and bi-annual plans also. At present, the planning process is more myopic, and there is no perspective plan.

National Plans in Bangladesh: 1973-2007

Plan	Period
First Five Year Plan	1973-1978
Two Year Plan	1979-1980
Second Five Year Plan	1980-1985
Third Five Year Plan	1985-1990
Fourth Five Year Plan	1990-1995
Participatory Perspective Plan	1995-2010
Fifth Five Year Plan	1997-2002
Sixth Five Year Plan	2002-2007

The planning process has mostly been top-down, taking little note of the preferences of the people at large. But, with regard to the preparation of the annual budget, there is the provision for participation of members from various walks of life (in Dhaka, the capital city only) invited to discuss the draft annual budget. In almost every such case, the usual practice has been not to modify the annual budget after such open forum discussions. As in case of the large flock of nationalised banks, the usual practice for their budgeting is partially bottom-up, but that process is limited within the bank managers. At close of a financial year, they are asked by their supervisors to chalk out the budgets for their respective offices. Subsequently, these managers chalk out their respective annual budgets by themselves or by consulting their veteran assistants, if any. There is no concept or practice of sharing with the local beneficiary savers and investors. In addition, the management in such banks seems not aware of the need for participatory bottom-up approaches to planning. The same holds true for other departments of the Government. But there has been some progress toward participatory planning countrywide. Donors' emphasis on participatory planning have often resulted in the pursuit of such planning processes by the Government. One such example is the policy formulation for small and micro enterprises as carried out by the Bangladesh Planning Commission in the year 1999 under its project titled FONAP-NEGIB (Formation of National Action Plan for Non-Formal Employment Generation in Bangladesh).

2.2. Human Resources Management

Most of the public sector organizations, particularly the nationalized banks and various ministries have training institutes of their own, but these run on bureaucratic lines---a training scheme manual including the types and number of courses to be offered during the year, the target group, the resource persons, expected expenditure, etc., is drafted and put up by the junior level officer and this goes through the official tier up to the Head of the Division for approval. After approval, the manual and course routines are meticulously followed. However, these courses have two drawbacks:

- (i) the courses offered in one institution are usually chalked out in line with what other similar institutions are offering, and thus the efficiency level and particular training needs of that organization is hardly considered

- (ii) nomination of participants to the courses done in a haphazard manner, there is no fixed selection criteria
- (iii) the training cannot be called 'on-the -job-training' because the courses offered have little relevance to the participant's on-the-desk job.

Result: HRD training does not play an effective role in improving the efficiency of the target group.

Transfers: Transfers are mostly on the basis of seniority within a category. It is treated as a routine affair—has no relevance to organisation's need for transfers. Again, transfer of women officers entails particular problems, and this gives opportunity for discrimination against women, because generally transfers are associated with promotions, so no transfer (as in the case of women), no promotion.

Post-training placement: Available information suggest that under the management culture prevailing in these organizations, training and posting are generally uncorrelated. For example, an officer of the Ministry of Finance is sent for higher studies in Economics abroad. A few months or a year after completing his degree he is transferred to, say, the Ministry of Communications or Ministry of Science and Technology. So the foreign training is completely lost upon him.

2.3. Negotiating Skills required to effectively participate in multilateral agreements and regional treaties

One of the prerequisites of standing to gain from FDI or multilateral treaties for a country is having adequate skills at the negotiating table. This means having proper knowledge of in what areas FDI is beneficial in terms of comparative advantage, what are the international and domestic market conditions for that product, what are the safety measures, etc. in the treaties, what is the position of competitors, etc. Unfortunately, however, in most cases lack of proper negotiating skills paves the way for the foreign investors to dictate terms according to their advantage. However, of late, Bangladesh is gaining some expertise in this respect.

a) Outcome of Low Level Negotiation Skills

The outcome of a relatively low level of negotiating skills has given rise to terms of trade with participating countries or investors unfavourable for Bangladesh and several perplexities in the balance of payments of this country. Bangladesh Bank sources mentioned that the balance of payment of Bangladesh during 2000-2001, 2001-2002 and 2002-2003 appeared as shown below.

Balance of Payments of Bangladesh, 2000/2001 and 2001/2002

Items	2000/2001 July- June (in million US \$.)	2001/2002 July- June (in million US \$.)	Change	
			Absolute	Percentage
Current Account	-1018	240		
Trade Account (Net)	-2011	-1768	243	-12.08
Exports*	6419	5929	-490	-7.63
Imports (FOB)	-8430	-7697	733	-8.70
Services (Net)	-914	-499	415	45.40
Income (Net)	-264	-319	-55	20.83
Current Transfers (Net)	2171	2826	655	30.17
Capital and Financial Account	839	481		
Capital Account	432	410	-22	-5.09
Financial Account	407	71	-336	-82.56
Direct Investments	174	65	-109	-62.64
Portfolio Investments	0	-6	-6	
Other Investments	233	12	-221	94.85
Errors and Omissions	-47	-356		

* Excluding local sales by EPZ enterprises

Source: Bangladesh Bank

Balance of Payments of Bangladesh, 2002-2003

Exports from Bangladesh

The decade of 1990s saw a vital role played by the garments and knitwear sectors in the recovery of the manufacturing sector. The system of bilateral quota with developed country markets was a great panacea for phenomenal growth rate in the export of garments since 1994. The quota regimes of these countries limit the exports of many competing Asian suppliers. In addition, a relatively light load of government regulations, provision of customs bonded warehouses for imported fabrics, back-to-back letters of credit that which enabled the foreign banks to finance raw material inventories- all contributed generously to the growth in export of garments. All textile quotas in 2001 were given a 10% increase over the 2000 limits and a 13% increase for 2002. Despite these healthy interim performances in this sector, it is less clear as to what would be the situation here in the long-term, as the quota system under the Uruguay Round Agreement on Textiles and Clothing phases out. In absence of the quota system under the World Trade Organization (WTO) in 2005 and subsequent years, Bangladesh's garment export sector will be under increasing pressure to correct deficiencies and improve its performance and quality. Retention of such a performance rating would necessitate focus on the following major areas, such as:

- finance
- customs
- port
- transportation systems.

Exports on the first seven months of FY2003 amounted to \$3.7 billion- an increase of 5.4% from the corresponding period in FY2002. The major reason for this increase was large increases in frozen foods, agricultural products, jute and jute goods, and knitwear and hosiery products. Export earnings from tea, readymade garments, and leather have continued to decline. The US economy's sluggish nature, lack of growth in Japan and the European Union, and a relatively higher value of the currency as compared to Bangladesh's Asian competitors have constrained export growth. Exports in FY2002 and FY2001 stood at US \$. 5.9 billion and \$6.4 billion respectively. Innovations at the end of the entrepreneurs operating in or assisting the export base were less active, leading to failure to diversify the export base, with garments and knitwear continuing to account for around 75% of the total export earnings. In June 2003, the Government introduced a system of lower rates of interests for loans to the garments and frozen food sectors and offered cash incentives for some exports, and established a managed float of the currency in June 2003.

The amount of annual imports by US from Bangladesh remained static over the last several years, mainly due to a generous quota regime for the garment and knitwear sectors. In January-December 2002, the US imported nearly \$2.1 billion in merchandise from Bangladesh, slightly lower than the \$2.4 billion imported in 2001. In January-April 2003, exports to the US reached \$711 million compared to \$693 million for the same months in 2002. Approximately, 33% of Bangladesh's annual exports travel to the US.

Exports to Bangladesh

Exports to Bangladesh for the first six months of FY2003 at \$3.8 billion were nearly identical to the same period in FY2002. Large increases in imports of rice, edible oils, and petroleum products have offset declining imports of petroleum, textiles, and capital goods. In FY2002, Bangladesh's imports totalled \$7.7 billion.

U.S. exports to Bangladesh stood at nearly \$307 million in calendar year 2001, and \$269 million in calendar year 2002, with raw cotton, edible oils, wheat, generators, and textile-related machinery being the key exports. During the period January to April 2003, U.S. exports reached \$67 million compared with \$111 million for the same months in 2002. Imports of U.S. cotton will increase if prices remain competitive.

Current and Capital Accounts

Remittances by Bangladeshi workers abroad increased resulted in improvements in the current account. There was also a decline (to \$624 million) in the trade deficit during the first six months of FY2003 from \$788 million during the corresponding period in FY2002. The current account (minus aid grants) had a surplus of \$523 million during the first six months of FY2003. Sharp decreases in direct investment and medium and long-term loans have been offset by the improved current account.

Reserves

As of June 2003, Bangladesh had total foreign exchange reserves amounting to approximately \$2.0 billion, showing a gradual increase over the last few years mainly from increased worker remittances. This is enough to provide payment for about two months of imports. The

Government has taken a number of steps, such as establishing banks and exchange houses overseas and stepping up enforcement of its Money Laundering Prevention Act 2002, to increase the volume of remittances through official channels.

The causal relationships among the bleak situation of Balance of Payments, the low level skills of Bangladesh counterparts in negotiations with foreign countries and the structural or long-term barriers in negotiations can be further validated, as discussed below.

b) Skills in the Government Machinery

The foregoing description on the Balance of Payments is the cumulative reflection of the negotiation skills of the Government in promotion of trade and investment. In reality, emphasis on international economic relations in the ministries of foreign affairs and finance is only a relatively recent phenomenon. At home, both policy formulation and execution of policies have been dominated by priority to vested interests of the ruling party members or political interests. Scrapping off of a million-dollar project by a ruling party on the ground that it was initiated or patronised by another party's government in the past is a common feature of major investment decisions. Economic benefits for the mass people or national economic development are less considered in such major decisions. A highly debatable step like this is the cancellation of the permission to transmit of a highly popular private TV channel on the basis of a verdict from the court. The alleged TV channel has been termed as one that did broadcast politically biased propaganda. Sharply contrasting is the report that such allegations against this TV channel during the October 2001 Elections were also brushed aside as untrue by the Media Unit of the European Union Election Observers in a project with UNDP. The High Court has, again, asked the Government in June 2003 to explain why the TV channel's broadcasting has been stopped.

On another level, the lack of seriousness of negotiating government personnel (low-paid bureaucrats) on the tables of negotiation with the foreign trade-and-investment counterparts has been another common aspect of Bangladesh's weaknesses in negotiations. Reports of the relatively larger portions of time abroad being given by the negotiating government personnel by reducing time given to official matters have appeared repeatedly in the media.

There are two other elements that lurk as an inherent characteristic of personnel management in the governmental mechanism hampering growth of professionalism for efficient negotiations, such as:

- i) There is the informal system that any government personnel having completed his/her tenure for at least three years in a particular position renders him/her usually liable or likely to get transferred to another office or position. It has been observed that such transfers at this given frequency is not always congenial for enhancing efficiency for two reasons, that is
 - the said incumbent does not get enough opportunity (time) to attain skills required for negotiations with the foreign counterparts, if any, in an efficient way
 - changes in approaches to negotiations on particular issues also take place frequently with frequent transfers of incumbents handling the particular issues in an office.

ii) Low-paid government personnel compete seriously for positions that are likely to be lucrative by way of allowing opportunities for taking of bribes or for other irregular and hidden benefits. Cases of irregular transfers and promotions within the Government's rules for flexibility commonly create resentments among some group or the others. Reports of superseding of one personnel by the other are rife in the media. One or more of particular factors commonly act in favour of some of such cases of superseding, such as:

- expressed or real allegiance to the ruling party
- expressed or real allegiance to the immediately past ruling party
- payment of bribes to the transferring or promoting authority for placement in the coveted position.

Shortage of participation of the business class in various negotiations has often weakened the negotiating personnel. With exception of the time of the preparation of national budgets, there are only few occasions when various groups of traders or investors are invited to participate in discussions with the foreign counterparts. Even secretary-level discussions have been a development of the recent years.

There are also reports that the views and ideas of the business class expressed in a few policy formulation sessions often remain unheeded to and not reflected in various policy papers. One recent example of low profile and late consideration of businesspersons' preferences is given below:

A trade talk between Bangladesh and South Korea under the coverage of a Preferential Trade Agreement (PTA) among Bangladesh, China, India, Laos, South Korea and Sri Lanka took place in June 2003. An understanding was reached between the two countries (Bangladesh and South Korea) indicating it was likely that Seoul would confirm its decision to allow duty-and quota-free access of 132 items from Bangladesh to Korea, in return of Dhaka's allowance of duty-free access to some items from other nations in this PTA. When a member of the Bangladesh delegation to the trade talks was divulging these information to a journalist, the journalist asked him if the viewpoints were earlier shared with the business chambers in this country. In reply, the delegate mentioned that the issue would be, though late, shared with the chambers before final decision.

Source: The Daily Star, dated June 19 2003

A non-critical indication of the growing tendency against consideration of the views of the large lot of business class is the increasing number of supplications submitted by various groups of traders and investors to the Prime Minister and published boldly on the front pages of the newspapers. In such supplications, the business class requests the Prime Minister to reduce the weight of certain regulations or to provide subsidies to them. These issues often emanate from lack of participation and full expression by the businesspersons in different tables of negotiation both at home and abroad.

c) Long-Term Issues in Negotiation

While the negotiation skills of the government personnel are relevant factors for creation of an enabling environment for the investors to perform, there are also certain long-term factors that weaken the position of Bangladesh in negotiations on international trade and investment. A generally weakened economy, coupled with long-term issues of interest to the stronger economies, leaves little scope to utilise the personal skills of negotiating personnel from Bangladesh. An analysis of these long-term stumbling blocks is also necessary.

i) Preference of counterparts for *ad hoc* agreements

When a bilateral agreement on certain issues is not reachable by Bangladesh and a neighbouring country, the neighbouring counterpart has frequently resorted to *ad hoc* arrangements to keep on carrying out trade transactions with Bangladesh. Such steps erode the capability of the country's entrepreneurs to build up sustainable relationships with their foreign counterparts. Such preferences for *ad hoc* agreements on the part of India have frequently stopped Bangladesh from trying to strike balance of payments with India, against whom Bangladesh's position has been unfavourable for a long time.

ii) Demand for Transit and Transshipment Facilities

The issue of whether Bangladesh will permit transit and transshipment facilities to India through Bangladesh's land has been a long-standing issue of disputes between these two countries. Reports indicate diplomatic pressures having been built up by India over Bangladesh in various sectors for leverage to make Bangladesh agree to allowance of transit and transshipment facilities to India for transportation of goods to its seven north-eastern states. As such, it has been difficult for the Bangladesh negotiators to negotiate well on the table with their Indian counterparts.

iii) Unreliable List of Exportable/Basic Goods disclosed by Negotiating Foreign Counterparts

Sometimes a foreign counterpart would come up with a long list of items, which Bangladesh may be allowed to export duty-free to that country. A little analysis often shows that most of those items are not basic to Bangladesh or she can never produce such items and rather imports huge quantities of those items. In the first half of 2003, several talks for FTA (Free Trade Agreement) took place between India and Bangladesh. At close of the first leg of such talks, India put forward more than one hundred items which (as India maintained) Bangladesh could have liberty to export duty-free to India. Trade analysts were reported in the press saying that only a little more than one dozen of those more than one hundred items were being produced by Bangladesh as basic or exportable to India.

iv) Trade Gap Heavily Tilted toward Bangladesh against the US

In sharp contrast to the trade balance with India, Bangladesh is in a highly favourable situation as against US. As of June 2003, US had a total investment of US \$. 1.2 billion in different sectors. At the same moment, Bangladesh had a record of total annual exports of US\$. 2 billion against total annual import of a mere US \$. 300 million. The issue of the necessity for balance in trade transactions with the US surfaced heavily in the talks between the Secretary of State of the US with Bangladesh's Foreign Minister in June 2003.

v) Debatable Issue of Export of Gas

Though a significant number of oil and gas exploration companies are already working in Bangladesh for drilling, exploration and development of gas fields, the most discussed topic of international economic cooperation has been the issue of if Bangladesh should or will export gas. The subsequent question has been if and how export of gas would become truly profitable for Bangladesh. India and US has been strong supporters of export of natural gas from Bangladesh, especially via a gas pipeline which the US authorities eager to construct as soon as possible. Various civic and professional institutions have also been vocal on their stand on the

issue of export of natural gas. Bangladesh Economic Association, in one of its workshops in early 2002, has firmly stood against the export of gas. While the decision of the export of gas still remains un-voted by the common citizens in Bangladesh and the Government is out of a firm decision on this issue, it has been difficult to negotiate well with a number of foreign counterparts on issues of trade and investment.

2.4. Policy Analysis Capacity

The MoC, BOI and EPB are directly involved in promoting trade and investment; BB acts as a facilitator. The MoC and the BOI disseminate information for prospective investors and arrange seminars both at home and abroad to promote Bangladeshi products abroad. Often trade delegations including govt. officials as well as local entrepreneurs in the private sector are led abroad by the Minister of Commerce for promotion of exports and find markets abroad.

Regarding FDI, it is noteworthy that Bangladesh offers better facilities and incentives for investment than many South Asian countries. But the reality is that despite all this, its neighbours continue to be the major recipients—China tops the list, followed by India and Pakistan.

What is deterring FDI in Bangladesh?

Lack of stability, frequent shift of policy, high cost of doing business, corruption and lack of good governance, poor infrastructure, narrow market size, among others, give the wrong signals to prospective investors.

Bangladesh is a signatory to various international treaties relating to investment. But the picture ends there. The people involved in channelising FDI more often than not do not know what issues are covered by these treaties, and as such the risks of investment remain. For example, Bangladesh is a signatory to Multilateral Insurance Guarantee Agency (MIGA), an offshoot of the IFC which seeks to promote investment in developing and third world countries by covering country investment risks. But unless the coverage of MIGA operations in BD is advertised to the prospective investors, rapid flow of foreign investment will be a far cry.

The lopsided international trade of BD is evident from one glaring instance of bilateral trade: trade with neighbouring India. India exports Tk. 1200 millions worth of goods and services to BD annually. BD's annual exports to that country, however, amount to a meagre Tk. 70 million. A few reasons may be mentioned for this situation, such as lack of marketing skills, insufficient decentralized decision-making, etc. For instance, the “one-stop service” of the BOI, where a prospective investor was supposed to get all facilities provided by the BOI—land purchase/rent, registration, electricity and gas connection from one desk at the BOI office, fizzled out due to this process. The representatives of the line Ministries were not given authority to grant facilities such as electricity connection, etc. The procedural delay in getting the above-mentioned facilities to the investor naturally discouraged him, and in most cases, drove him away.

The Board of Investment brings out a comprehensive investment guide named "Bangladesh Investment Handbook". It provides a variety of useful information for would-be investors such as investment climate and incentives, a proposed list of sectors for investment, business set-up roadmap--the steps and procedures involved from 'intention to invest' to 'commercial operation'- and what assistance the BOI can give in this regard; costs of doing business in Bangladesh;

comparison of costs between Dhaka and neighbouring foreign cities like Bangkok, Hanoi, Jakarta and Karachi in respect of sub-heads like worker, industrial land purchase/rent, electricity rate for business use; etc.

Although the BOI handbook is quite exhaustive and full of propaganda about investing in Bangladesh, but it falls short of attracting FDI to desirable levels due to certain vital shortcomings.

Firstly, it does not contain sufficient sub-sector-specific or product-specific information such as size of the product market, what extent of the market Bangladeshi exports constitute, who are the competitors, what is the minimum outlay, what are the sources of raw materials, etc., ---- information which is of prime importance to any would-be investor in a product;

Secondly, although the Handbook gives an indication of the supposedly costs of doing business in Bangladesh as compared to neighbouring or competitive countries, it does not address the situation squarely. Investors explore opportunities in a country from the viewpoint of where they can get the most competitive edge. Things such as the difference in time-lags across countries between registering with the investment authorities and going into commercial operating, and the snags in between, are important factors for their consideration. It need not be expressed that Bangladesh is quite lagging behind others in this respect. This is an offsetting factor for many prospective investors.

Another important reason for poor FDI is lack of 'the view from the other side'. From the investors' perspective, despite all the incentives and allurements laid out, a multinational enterprise (MNE) before investing in a country, will always try to get first hand information from his country mate who have already invested in that country, just like before tasting something new, a person will asks others who have tasted it, how it tastes. The signals a prospective investor gets from existing investors about their business experience in BD more often than not discourages prospective investors from investing here. This image and reputation problem retards the positive decision making of investors.

Rigid bureaucracy and official hierarchy prevent decision-making at lower levels, and is a significant factor in adding to the costs of doing business here. Thus the representatives of the concerned Ministries and organizations involved in FDI in the one-stop service could not give on-the spot decisions to a would-be investors' roadmap, such as sanctioning of land, electric connection, equity, etc. Such issues had to be relayed back to their respective Head Offices and decisions came there. The undue delay caused by this process was a sufficient deterrent to FDI.

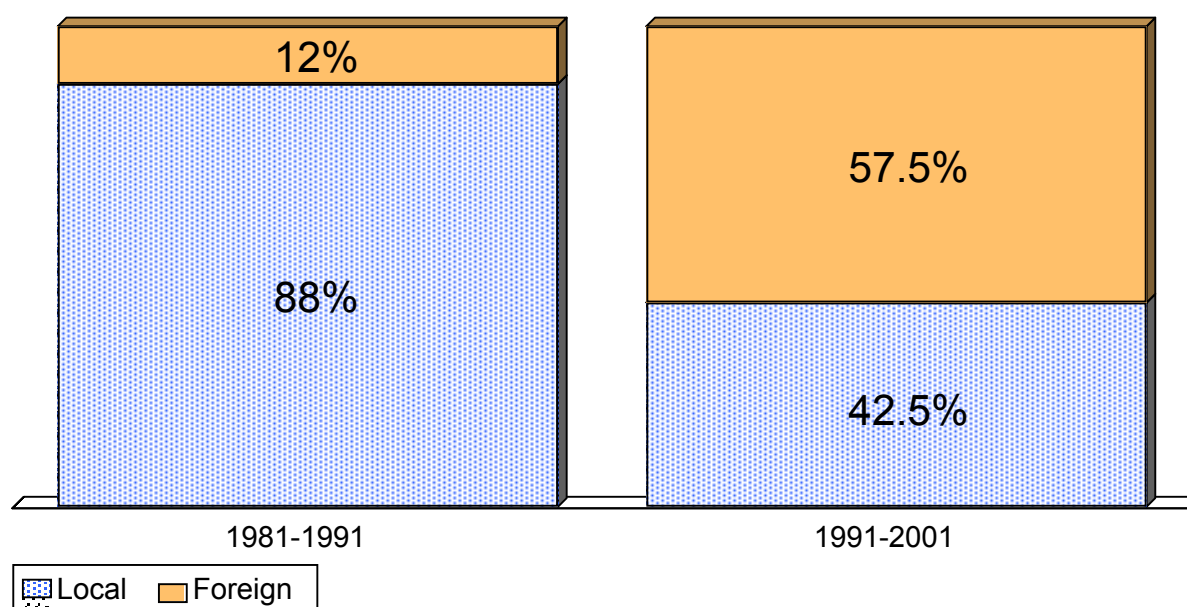
The following table shows FDI trends in BD in recent years:

Investment Projects (Local and Foreign) Registered With BOI

Year	Local investment registered		Foreign Investment registered		Total	
	No. of Units	US \$. (million)	No. of Units	US \$. (million)	No. of Units	US \$. (million)
'96-97	1247	1108	138	1054	1385	2167
'97-98	1448	1137	140	3440	1588	4577
'98-99	1535	1183	161	1926	1696	3109
'99-00	1428	1324	135	2119	1563	3443
'00-01	1788	1420	80	1271	1868	2691

As the above table shows, the number of investment units has increased significantly during 1996/97-2000/01. But the contribution made by such investments to the total economy of the country has been erratic and not grown enough. However, the participation of foreign countries in the growing investments in Bangladesh during 1981/1991-1991/2001 has been shared by foreign investors. The following graph well validates this fact.

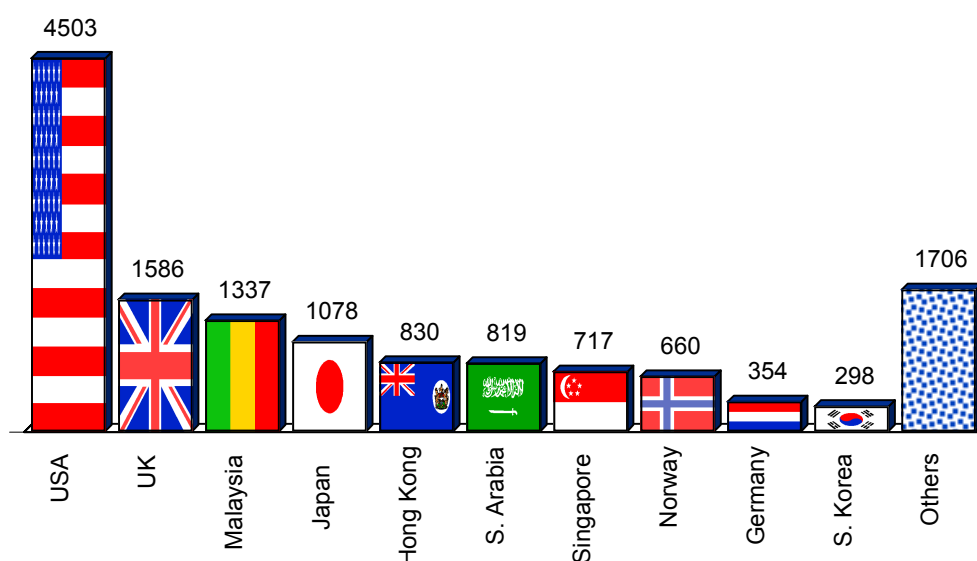
Figure 1: BOI Registered Investment Proposals: Trends in Local-Foreign Share



Source: Board of Investment

The other weakness in the management of investments, foreign or local, in Bangladesh has been dominated by love for approval of investment units owned or patronised by vested political quarters. The result of this lopsided favour to politically influential investors has been reflected in the minimal change of country-wise investment portfolio in Bangladesh even over a relatively long timeframe during 1991-2001. This fact is substantiated by the following graph, which clearly shows that the largest country-wise participation in investments in Bangladesh has been made by USA followed by UK, Malaysia and other countries.

Figure 2: FDI Inflow into Bangladesh-1991 to 2001: Distribution by Source Country (in Million US\$)



Source: Board of Investment

However, though the above data have been disseminated by BOI on various occasions, information related to how many of these registered investment units have come into operation and how many have been continuing their operations are not readily available with BOI. Knowledgeable quarters maintain that a very negligible portion of such registered investment units are into operations at any given point of time. Directives and initiatives for promotion of foreign investment have usually taken the shape of sales-oriented as a result of lack of tendency to look critically on the ramifications of the reasons for failures at the end of the overall domestic policy and practice scenario.

2.5. Performance Standards for Management Development

The prevailing standard for performance assessment of officers in SOEs like the Central Bank, Nationalized commercial banks, sector corporations and other govt./semi govt. entities is the confidential reports—usually in the form of Annual Confidential Reports (ACRs) of officers. The ACR of an officer is, according to laid down practice, given by his immediate superior officer and countersigned by the next higher authority—or in cases where relevant—by the CEO of the Division/Department. Various traits of an officer such as capability to do assignments singly and group-wise, overall honesty and integrity, quality of work, etc. are graded qualitatively in most organisations, although there is marking system in a few organizations. ACRs are a crucial factor in an officer's promotion to the next grade.

The chief drawback in such a system of performance assessment is that since it is based on qualitative judgment, it may vary in direct relation to the liberal/conservative attitude of the reporting official. Thus while an officer may get an 'excellent' report in his ACR, his colleague in another Department with similar efficiency level may get a 'very good' or just a 'good' report because of the conservative attitude of his boss. Again, external influence in writing ACR cannot be ruled out. The general effect such a reporting system has is that quite often, the

‘favoured person’ rises up through the ranks, while his efficient and honest colleague stay behind, and ultimately the morale and efficiency of the personnel in general deteriorates.

2.6. Public Service Professionalism

Recruitment in ‘purely government’ services – government officers in various ministries, teachers in govt colleges, doctors in govt hospitals – is through qualifying in a centralized exam conducted by the Bangladesh Civil Service (BCS). Recruitment in NCBs is through qualifying in exam conducted by the Bankers’ Recruitment Committee (BRC). Recruitment in other state-owned enterprises such as sector corporation, nationalized industrial units, etc. is generally through direct advertisement and recruitment by the concerned organization. Focus on discipline of study is uncommon, and mostly restricted to research organization and Departments like research departments of the central bank and NCBs, BJRI, BARI, BRRI, Atomic Energy Center, etc. The general impact of such uneven focus is that while technical and research organizations are manned by dedicated—and quite often honest—professionals, their respective controlling ministries are run by people coming from different disciplines, who have a bird’s eye view of the subject. Thus, major decisions regarding a research organization or institute are taken, not solely on the merit of the case, but in the larger interest of govt. priorities, ADP sectoral allocation, etc. The trade-off that arises almost always goes in favour of the concerned Ministry unless the CEO is able to swerve decisions his way because of his personal standing (senior most officer, etc.)

Professionalism in purely govt. service is limited to as long an officer is posted to a certain Ministry or a certain desk. An officer with M.A. in Economics may be posted to the MOF for some years, then to the Ministry of Telecommunications, and so on. A negative effect of this system is that officers trained abroad in one discipline, say Economics, lose their knack to practice what they have learnt in the foreign training when they are transferred to another Ministry or Department which has no relevance to the training.

Finally, professional efficiency and sincerity is also considerably hampered by poor salary structure of the govt. officials. Although they do receive noteworthy real benefits, the meager take-home salary forced them to look for supplementary sources of income. This way their devotion to work is divided. For those who cannot find avenues to supplement earnings, the ensuing frustration works as a factor that eats into their morale and work efficiency.

It was found by the principal author of this study while carrying out an assignment for UNDP/ UNOPS on Poverty Mapping and Development Possibilities of Sub-district level in 2003 at Gaibandha District that the Deputy Commissioner, his accompanying government personnel as well as those who came from the *upazila* (sub-district) level were less aware of what the preferences of the local businesspersons were. Nonetheless, these government personnel appeared to perform in the least for the private entrepreneurs. Excepting issuance of trade licences from *pourashabhas* or municipal authorities and occasions of meetings for concerted efforts to tackle natural disasters (e.g., floods, cyclones etc.), the local level administration had almost no communication with the private entrepreneurs regarding economic development of the area, or even, as to how to utilize the ADP allocation in the area. The necessity to communicate with the local businesspersons did not surface in course of normal discharge of duties by the government personnel. One of the prominent business persons said (others expressed full

agreement) “people in the government administration call us in meetings when some high officials or ministers come, and the purpose of calling us is to arrange finance to meet the cost of visit”. Another businessman said “you are the first group (of researchers) who have invited us to talk about our concerted efforts in development hand-in-hand with the Deputy Commissioner”. Knowledgeable informants have also reported that training curriculum of PATC (Public Administration Training Centre) do not contain issues/topics about roles and functions of the local administrators in accelerating local development, resource mobilization, and dealing with potential investors and associated stakeholders.

One elected representative of FBCCI angrily said “Do they (the District Commissioners and the Sub-district Executive Officers) know anything about how many people are employed in their respective jurisdiction? Are they aware about the resources available in their areas? Do they know anything about the number of industries by types and sizes, number of irrigation pumps available and problems thereof, etc”. He replied “they do not know, they do not need to know; they are not at all bothered about all these; they are concerned about their own fortune, which they very sincerely make during their tenure at the local levels”.

2.7. Information Technology in Government Operations

The Government has a loosely framed policy of encouraging use of IT in government offices. The large-scale distribution of PCs to various ministries and departments is evident enough—but there is little concerted effort to use IT in a way so as to improve efficiency of the officers and the quality of their work. Of course, any Ministry or Govt. bank can boast of the numerous courses on hardware/software participated by its officials, but that is all. Just like the fate of local and foreign trainings, officials are neither investigated upon to ascertain whether they have resorted to using computer in their daily work at the end of their computer training, nor are they given any extra recognition or benefit for using PC. It is a fact that in most govt. offices PCs are used just as a substitute for typewriters—there is little venture to use PC for econometric analysis or graphical representation. The real users of PC—research institutes/Departments like research departments of the central bank and the nationalized banks/BJRI, BARI, SPAARSO,—also do not get adequate computer facility on pretexts such as paucity of funds allocated to purchase of PCs, conservative attitude of officials, etc. However, it is to be noted that despite the overall dismal picture, some GOB organs like BOI, EPB, MOF, BB, etc. have made ample use of IT and internet. Most of them have their own websites with detailed information not only about their own organization but also about BD as a whole. Thus any would-be investor living abroad can get access to information about Bangladesh, its climate, infrastructure, possible avenues to invest, etc. by accessing these websites. For instance, the BB website allows users to download the Bank’s latest Annual Report as well as other stats. Such as exports, imports, bank regulations, foreign exchange regulations and remittance facilities, etc.

In July 2003, the Government initiated a project to introduce certain fundamental changes to the administrative system including e-policing and connecting the Prime Minister’s Office with the key ministries, divisional commissioners and police administration. It was stated in a press release that the project would also prepare guidelines and implements for online payment of income tax and utility bills, registration of land, ownership change, birth, death, marriage, vehicles, insurance, driving licence and posting of agriculture and commodity pricing information and international standard training. The Government will spend Tk. 1831.70 million for the “Support to ICT Taskforce Program” aimed at improving the efficiency, transparency

and accountability of the Government using the information communication technology (ICT). The Government has already allocated Tk. 13 million in the Revised Annual Development Budget for fiscal 2002-2003 and Tk. 250 million in the ADP (Annual Development Plan) for fiscal 2003-2004. As part of strengthening e-governance, an optical fibre local area network (LAN) will be set up at the Planning Commission connecting 472 locations including the Planning Division, the Planning Commission, the Implementation, Monitoring and Evaluation Division, and the Economic Relations Division. Under the project, an alternate communication network will be set up. It will provide maximum reliability and security of communication and enhance speed and efficiency in decision-making and follow-up of compliance status. The e-policing system will be established at five police stations in the capital for communication between citizens and police in all possible ways including online filing of general dairy and first information report.

2.8. Existence of Investment Councils and their Laws for Governance

BOI (Board of Investment) is the topmost governmental agency looking after foreign investment. It has laid down several legal provisions for investment protection and governance. BOI was established as per the Investment Board Act of 1989 for promotion of both domestic and foreign investments in the private sector. The Prime Minister is the head of BOI having members drawn in from various relevant ministries, the Governor of Bangladesh Bank, and Presidents of FBCCI (Federation of Bangladesh Chambers of Commerce and Industry) and BCI (Bangladesh Chamber of Industry). The chief executive officer of BOI is its Executive Chairman.

The *major functions of BOI* are:

- a) providing necessary facilities and assistance in the establishment of industries
- b) implementing investment-related governmental policies
- c) preparing investment schedule
- d) registering private sector industrial projects
- e) identifying competitive investment sectors and facilitating investment by providing information and services.

At BOI, the *major facilities available* are:

i) Pre-investment Information and Counselling

BOI provides all types of necessary information for undertaking the initial move toward investment. Professionals having knowledge and expertise in investment behaviour provide counselling to intending investors in person in BOI Office, over phone, via e-mail and fax and express mailing.

ii) Special Welcome Service to Foreign Investors

To the benefit of the foreign investors, BOI maintains a Welcome Service Desk at the Zia International Airport operating round-the-clock. It assists in obtaining necessary immigration and Visa on Arrival or Landing Permit, hotel accommodation and counselling arrangements.

iii) Investment Implementation and Commercial Operations

Once the intending investor decides to invest and forms a company, BOI provides following specific facilities and comprehensive services on confirmation of registration of the company with BOI:

- Obtaining Industrial Plot
- Obtaining Utility Connections
- Registration/Approval of Foreign Loan, Suppliers' Credit, PAYE (Pay as You Earn) Scheme etc.
- Import of Machinery and Raw Materials
- Obtaining Work Permit
- Remittance of Royalty, Technical Know-how and Technical Assistance Fees.

2.8.1. Terms and Conditions of Investments of Different Sizes- whether Domestic or Foreign

Under the Foreign Private Investment (Promotion and Protection) Act, 1980

- (i) the govt. may sanction establishment with foreign capital of any industrial undertaking which is likely to contribute to the development of capital , technical and managerial resources of Bangladesh or strengthen to balance of payments of Bangladesh increase employment opportunities or the economic development of the country in any other manner
- (ii) the Act also lays down that the terms of sanction of any foreign private investment will not be unilaterally changed so that it is accorded a less favourable treatment than similar local private investment
- (iii) foreign private investment shall not be expropriated or nationalized except for public purpose against adequate compensation
- (iv) the transfer of capital in respect of foreign private investment is guaranteed

2.8.2. Export Policy

The Export Policy 1997-2002 had been designed to operate in the imperatives and opportunities of the market economy with a view to maximizing export growth and narrowing down the gap between import payment and export earning. The principal objectives of this policy were:

- To achieve optimum national growth through increase of export in regional and international market
- To narrow down the gap between the country's export earning and import payment through achievement of the export targets
- To undertake timely steps for production of exportable goods at a competitive price with a view to exporting and strengthening existing export markets and making dent in new markets

- To take the highest advantage of entering into the post Uruguay liberalized and globalised international market
- To make our exportable items more attractive to the market through product diversification and quality improvement
- To establish backward linkage industries and services with a view to using more indigenous raw materials, expand the product base and identify and export higher value added products
- To simplify export procedures and to rationalize and solidify export incentives
- To develop and expand infrastructure
- To develop trained human resources in the export sector
- To raise the quality and grading of export products to internationally recognized levels.

The following strategies were planned to be undertaken to attain the objectives of the export policy 1997 - 2002:

- Simplifying export procedures, and helping the private sector achieve efficiency.

But tendency of the government personnel to hatch personal profit from giving services to the entrepreneurs has stopped the policy short of benefits to them.

- Enhancing technological strength and productivity and facilitating reduction of cost and attaining internationally accepted standard of quality of exportable products and thereby consolidating their competitiveness.

Though the government's bureaucracy often delays production processes in numerous export-oriented enterprises, the entrepreneurs themselves have to tackle such situations by way of their staff's and workers' extended work hours and cost acceleration. In such situations, the entrepreneurs make up for such cost accelerations by way of obtaining cash credit from their banks, but of course, resulting to reduced profits.

- Ensuring maximum use of local raw materials in the production of export goods and encouraging establishment of backward linkage industries.
- Participation in the international trade fairs, specialized fairs, single country exhibitions abroad and also sending out trade missions, with a view to consolidating our position in the existing market and creating new markets.
- Encouraging export of new category high value added readymade garments and also encouraging the concerned trade associations for establishment of a Fashion Institute.

The Fashion Institute has been established by BGMEA. The rate of enrolment of students has not been satisfactory, because of the fact that the cost of education/tuition is quite high and unbearable for the intending students. The Government has not come forward to patronise or support the establishment and/or operation of the Institute in any way.

- For promotion of high value added leather and leather goods export: providing various facilities including bonded warehouse facilities for import of materials such as raw hides, pickled, wet blue, crushed and finished leather, components and chemicals etc. to 100% export oriented leather industries.;
- For promotion of export of shrimp: Extension and modernization of traditional/semi-intensive method of shrimp cultivation and ensuring quality as per buyer's requirements.
- For promotion of export of jute and jute goods: Undertaking extensive publicity of jute and jute goods as environment-friendly natural fibre and diversification of the uses of jute products.

But Adamjee Jute Mills that used to consume 17% of the total raw jute of the country has been closed on two grounds, that is, (a) perpetuated financial loss, and (b) donors' terms.

- For promotion of export of tea undertaking programmes for establishing brand name and developing linkage with established blending and distributing agents.
- For promotion of export of agro based products: undertaking programmes for raising quality standard and expansion of market.
- For the promotion of export of electrical and electronic goods (including computer software and data entry): Building and ensuring conducive infrastructure.

But the lack of connectivity with the transoceanic fibre optic network has retarded both profitable investments and export of software, its overseas market being captured by more efficient entrepreneurs from countries like India.

- For the promotion of export of engineering consultancy and other services and sub-contracting involving, in a bigger way, Bangladesh missions abroad obtaining contracts.
- Organizing regularly international trade fairs and product-specific fairs with the country.
- Making appropriate development and expansion of infrastructure conducive to export.

But strikes/hartals, accompanied by unhealthy industrial relations practices, closure of ports due to strikes by port workers' trade unions, and unscientific flag rules often clogged the export sector with suspension of activities. In May-June 2003, several foreign flag vessels refused to anchor and load and unload at the Chittagong Port because they were required to procure a waiver certificate from the Ministry of Shipping. In a June 22 2003 parliamentary session, the Ministry of Shipping tabled and got approved a new ordinance that includes a waiver clause as the Bangladesh Flag Vessels (Amendment) Bill 2003. Under the new ordinance, major foreign operators will be allowed to load and unload cargoes at Bangladesh ports without taking waiver certificates for two years.

- Making arrangements for necessary technical and practical training for development of skilled manpower in the export sector.

There are certain institutes that grow now and then; but the level of tuition fees is usually very high and unaffordable on the part of the intending students.

- Ensuring maximum utilization of financial and other assistance extended by the World Trade Organization to the Least Developed Countries.
- Extending technical and marketing assistance for development of new products and for finding appropriate marketing strategies.
- Taking necessary steps to assist procurement of raw materials by the export-oriented industries at world price.

Export Promotion Councils/Committees

A National committee on export has been formed. The highest level committee on export promotion is headed by the Honourable Prime Minister and consists of the Honourable Ministers for Foreign Affairs, Finance, Commerce and Industries, Planning, Jute and Textile as well as senior government officials and representatives of important trade associations. The committee reviews the export situation, provides necessary directions and readily resolves problems. For immediate attention and action on export related problem a task force has been formed under the chairmanship of the Honourable Minister for Commerce. With a view to exchanging ideas with Chambers of Commerce and Industries, Exporters' Associations and private sector organizations in formulating export policy and strategies, and up lamenting policy decisions an export council has been formed. A task force shall also be formed to recommend practical measures for export increase and monitoring the implementation of incentives and facilities of thrust sector and crash programme items.

2.8.3. Industrial Policy

The Vision of Industrial Development

The Industrial Policy envisages an industrial sector where manufacturing will account for at least 25% of the GDP within a decade. It also envisions production of labour intensive manufactures with skill upgradation, to catch its competitive edge, with, at the same time, a niche of high-tech industrial sub-sector.

Objectives of Industrial Policy

The main objectives of Industrial Policy, 1999, are to expand production base' promote private sector and FDI, generate female employment, diversify exports, develop indigenous technology, etc. The Industrial Policy also outlines a range of broad strategies which include measures such as removal of all regulatory barriers to FDI as soon as possible, privatization of public SOEs as soon as possible, development of the capital market, development of the infrastructure including

port facilities, transport & communication and port facilities and human resource development, give special incentives to develop small and cottage industries, encouraging 'Build Operate Transfer'(BOT) and 'Build Operate, Own' (BOO) in these sectors, rationalization of tariff, encourage research and development and transfer of appropriate technology, availability of long-term industrial credit, etc.

2.8.4. Tax Holiday and Other Facilities

- a) *Tax holiday.* According to the investment policy, tax holiday facilities (THF) are available for an existing industry for 5 or 7 years depending on location of enterprise. If the enterprise is located in Dhaka or Chittagong Division (excluding 3 Hill Tracts Districts of Chittagong Division) THF is for 5 years, and if it is located in Khulna Sylhet, Barisal & Rajshahi Divisions or the 3 Hill Tracts Districts then THF is for 7 years. NBR issues the certificate.
- b) *Depreciation allowance.* Accelerated depreciation allowance can be enjoyed by a new industrial undertaking in lieu of tax holiday anywhere in Bangladesh @ 100 cost of the machinery, but for the first year only. From FY 02-03, initial depreciation allowance has been reintroduced to cover certain percent of the costs of machinery as also on the factory.
- c) *Duty exemptions and concessions on machinery.* No import duty is charged for 100% export oriented industry. For capital machinery and spares, import duty is upto 10% of their value. For other industries, import duty is charged at 5% *ad valorem*, on capital machinery and spares. VAT is not payable for imported machinery and spares.
- d) *Avoidance of double taxation.* Double taxation for foreign investors can be avoided on the basis of bilateral treaties to avoid double taxation. NBR arranges the tax avoidance facilities.
- e) *Remittance.* Remittance of royalty, technical know-how, technical assistance fee allowed for foreign investors. BB gives remittance approval
- f) *Repatriation.* Full repatriation of invested capital, profit and dividend is allowed for foreign investors. BB gives the approval.

2.8.5. EPZ Rules and Incentives

Export Processing Zones (EPZs) have been created in Bangladesh to assist establishment of export-oriented industries. Necessary infrastructural facilities including communication and utility connection have been provided to the investors by EPZ. The types of investment allowed in EPZs are of three types, namely: fully foreign –owned (type A), joint venture projects by foreign investors and Bangladeshi investors living in BD (type B), and fully locally –owned, by Bangladeshi investors living in BD (type C).

As Annex-III reflects, every government in Bangladesh has been all-out to extend all possible support to the EPZs toward gearing up exports. While the first EPZ was established in Chittagong in the year 1983, further establishment and growth of EPZs have taken place at other zones of the country, such as Dhaka, Comilla, Ishwardi, Mongla and Nilphamari. The total investment made by 23 countries in these six EPZs now stand at US \$. 550.73 million. The total goods exported from the EPZs in FY 2001-2002 were worth US \$. 1.2 billion, that is, around 18% of the country's total exports during the corresponding period. In addition, 123,927 workers (31% of them female) are employed at the EPZs.

In the present context Bangladesh is required to make huge structural adjustments to adapt to the new global trading pattern following introduction of WTO measures after 2004. Besides, Bangladesh enjoys large amounts of GSP facilities with USA. Bangladesh exported goods worth US \$. 43 million under GSP facilities to USA in FY 2001-2002. But the Government of Bangladesh is now swinging between two likely practical choices, that is:

- a) Bangladesh's choice to resume trade unionism in EPZs following an commitment made by the Government to AFL-CIO (American Federation of Labour and Congress of Industrial Organisations) in the early part of 2001, and
- b) Threats poised by the foreign investors in EPZs saying that, in case of resumption of trade unionism in the EPZs, they would stop their operations in the EPZs and sue the government, because it (Government) had committed to them earlier in writing that trade unionism had no space in the EPZs.

Therefore, however well the EPZs may have operated and contributed to the country's growth of trade, investment and employment, it is yet to be reckoned shortly as to how far effective the EPZs remain in promoting business in Bangladesh. The Government has a lot to contribute in this direction by way of its economic diplomacy.

2.8.6. Incentives against Exports

Every year, Tk.6000 million to Tk.7000 million is given to exporters as cash incentives. The budget for FY 2002-2003 provided Tk.6020 million for this purpose. The current budget for FY 2003-2004 contains Tk.14000 million in subsidy, a large portion of which will be spent as incentives.

Earlier, the Government had divided various exportable commodities into a number of groups following the item-wise benefits to be drawn by the country from item-wise exports. On conclusion of export of a specific amount of a specific item, the exporter had the right to apply to the Bangladesh Bank, through exporter's bank, for incentives in the form of IRCS (Import Entitlement Certificates) on the basis of which the exporter could import various importable items to the tune of a certain percentage of the total FOB value of the exports made. During the last few years, the earlier rule has been out of practice. The rule up to the middle of June 2003 had been for the exporters to receive cash incentives against exports (e.g., refund of VAT etc.). Since the third week of June 2003, a new rule has been introduced to provide incentives to the exporters. The change in the type of incentives has been changed reportedly because of the

Government's felt need to check misuse of export perks under the modality followed up to the middle of June 2003. There are allegations that export perks were misused to a significant extent by certain exporters using forged documents or raising unlawful claims and giving bribes to concerned officials (Example: Section 2.1- The Corruption Scenario). The newest order passed out in June 2003 states that from now onwards no export incentives would be given in the form of cash but banking instruments, which would be used as a priority to adjust loans of the exporters.

Under the new rules, the EPB (Export Promotion Bureau) has been made responsible for monitoring. A government-appointed auditor at EPB will monitor the system until EPB develops an oversight mechanism. The commercial banks have been advised by the Bangladesh Bank to follow a total of 14 rules in regard to giving of export incentives. The new rules enjoins on the exporters of high-priced cloth (US \$. 2 per metre, and at least 10,000 metres of cloth) will have to receive certificates from the watchdog entity (EPB) before shipment. Otherwise, they will not be entitle to the incentives.

3. TRANSPARENCY AND ACCOUNTABILITY IN TRADE AND INVESTMENT ACTIVITIES

3.1. The Corruption Scenario

Bureaucracy's infestation with corruption is all-pervasive. This point is one of the most serious concerns made by the prospective foreign investors in Bangladesh. According to the World Bank's estimates, corruption reduces growth rate 2-3% on annual GDP growth each year. Transparency International has listed Bangladesh as the nation with the highest level of corruption for two consecutive years. Both domestic and foreign investors frequently report their obligations to pay extra fees for obtaining such government services as allotment of post office boxes, provision of telephone lines, various licences, customs clearance etc. Examples of higher-level corruption are those that take place frequently in the fair awarding of public and private tenders, as in case of insider trading in the stock market. In this regard, business people consider Bangladesh Customs to be among the worst, a thoroughly corrupt organization in which officials routinely exert their power to influence the tariff value of imports and to expedite or delay import and export processing at the ports. A mandatory pre-shipment inspection system of import valuation was introduced in 2001 to help reduce discretionary power of customs officials, and lower costs and improve efficiency at Bangladesh's trade entry points. Annoyed over the introduction of this new system, the customs officials have the first to say that the valuation system is weak.

The US Trade Centre in Dhaka, in its Country Commercial Guide 2003-2004, claimed that an American firm had tried unsuccessfully to gain from Customs Inspector's approval for its US \$. 225 million container project while the US shareholder of a private television station had to protest the Government's revoking of its licence. There is delay in payment of dues as well. As for instance, a US exporter was waiting to be paid for wheat shipment it made eight years ago and international oil companies were owed US \$. 150 million in payment. The report also identified poor implementation of the country's liberal investment policy as the main drawback. A press report published in The Daily Star (June 30 2003) narrates the story of corruption in the Duty Exemption and Drawback Department (DEDD). In the reported incident of corruption, three cases were filed against four officials of the DEDD. The Daily Star (June 30 2003) narrates the story of this corruption case as follows.

"The cases state that the SCBDFL (South China Bleaching and Dyeing Factory Ltd.) in September last year applied thrice to the duty drawback department requesting a refund of the VAT against its gas bill. The applications were filed on the same date, including three PRCs (Proceeds Realisation Certificates). The BAC investigators flipped through the PRCs and found them fake. The SCBDFL drew a VAT refund of Tk.7 lakh (Tk.0.7 million) in the first PRC. Tk.14.30 lakh in the second and Tk.16.75 lakh in the third. The BAC filed the cases on the basis of a ledger it seized on May 21 from Customs Inspector Sohrab Hossain. The ledger exposed names of representatives of 50 companies who gave kickbacks to the department. This ledger also revealed that these officials took Tk. 6.47 lakh in bribes from the SCBDFL. The BAC filed another case on June 1 against Sohrab Hossain for collecting kickbacks methodically at 10-12 percent from tax exemption of various companies."

3.2. Anti-Corruption Laws

In Bangladesh, the Prevention of Corruption Act 1947 (Act No. II of 1947) is the basic law against corruption. The Criminal Law Amendment Act 1958 (Act No. XI of 1958) was enacted in the Pakistan period (on September 23 1958) with certain objectives and for more speedy trial of public servants.

The Prevention of Corruption Act 1947 has been included in the Schedule to the Criminal Law Amendment Act 1958. *The Act of 1958 empowers the Government to withdraw the case on any charge against all or any of the accused persons, with scope of application of the principle of “pick and chose”.*

Section 6(5) of the Criminal Law Amendment Act 1958 requires sanction by the Government for prosecution against a public servant. Sometimes, sanctions are withheld or refused by the Government in its discretion. In fact, the Director General of the Bureau of Anti-Corruption cannot start a corruption case against a Cabinet Minister without prior permission of the Prime Minister. Hence, the World Bank IMF are hammering for setting up of an independent and neutral Anti-Corruption Commission in Bangladesh.

3.3. Ombudsperson System

Article 77 of the Bangladesh Constitution provides for establishment of an Ombudsperson who will be an independent high level public official to receive complaints against government agencies, officials etc. and to keep watch and control over persons under his/her jurisdiction. Moreover, Ombudsman Act No. XV of 1980 had been enacted long ago, but almost every government of this country has so far avoided appointment of an Ombudsman, so that corrupt big fishes of the ruling party are not apprehended.

3.4. Conventions against Cross-Border Corruption

As mentioned earlier, the Prevention of Corruption Act 1947 (Act No. II of 1947) enacted in 1947, and the Criminal Law Amendment Act 1958 (Act No. XI of 1958) enacted on September 23 1958 together form the gamut of prevalent anti-corruption enactments in Bangladesh. To date, Bangladesh has not been blessed with any legislation *specifically against cross-border corruption*. However, these anti-corruption enactments cover the citizens in Bangladesh as well as the cross-border citizens. In absence of a full-fledged enactment for prevention of cross-border corruption (as in case of the Foreign Corrupt Practices Act of 1977 in the USA), the Prevention of Corruption Act 1947 and the Criminal Law Amendment Act 1958 is serving the interests of the country to a possible extent.

3.5. Agencies and Institutions Involved

A Bureau of Anti-Corruption (BAC) exists to combat higher-level corruption, but it remains a largely ineffective body due to reported corruption among its officials and lack of independence from the political authorities. At the May 2003 Development Forum, the Government pledged to replace the Bureau with an independent Anti-Corruption Commission.

3.6. Enforcement Mechanisms

BAC (Bureau of Anti-Corruption) is itself popularly believed to be a corrupt organization. Even if the popular belief is not considered acceptable, at least it may be safely concluded that the BAC has not been able to create any impact whatsoever on the country's effort to curb corruption. There has not been any instance of crackdown on corruption, initiated by BAC. Unlike independent commissions against corruption in the developed countries, BAC's activities are confined to investigating allegations of corruption only. It has no mandate for preventive or public educative function. It is a government department having no independence of action, although BAC has been armed with enough powers to fight corruption in all spheres of public life. There are a large number of Acts, Ordinances and Rules under which BAC operates and these are quite adequate and powerful legal instruments for BAC to combat corruption. But an anti-corruption agency, to be effective, must be independent of executive control. In Bangladesh, BAC is controlled by the Prime Minister's Office. The officials at BAC, from the top level to the bottom, are transferable in the manner the officials of other government departments are controlled and administered. No Government in Bangladesh has been seen initiating cases against any member of the ruling party. The agency does not have full power to decide on the basis of its findings as to if the case should be quashed or referred to the alleged's department for departmental action or be sent to a Court of Law. It is a mandatory requirement for BAC to seek permission from the Prime Minister before sending a case of middle to senior level officer to a Court of Law. As of now, the quality and skills of the investigating officers is usually sub-standard, and the overall recruitment system in BAC requires transparency. Finally, political will and commitment is seriously lacking in BAC, for which this institution cannot work independently.

4. LEGAL AND JUDICIAL FRAMEWORK

The roots of the development of the legal system of Bangladesh go back to ancient times of the Indian Sub-Continent. It passed through various stages and has gradually developed as a continuous historical process. The process of evolution has been partly indigenous and partly foreign, and the legal system of the present day emanates from a 'mixed' system that has a structure, certain legal principles and specific concepts modelled on both Indo-Mughal and English Law.

Bangladesh took its birth as an independent and sovereign state on December 16 1971. In order to ensure continuity in all legal spheres in independent Bangladesh, the Laws Continuance Order 1971, effective from March 26 1971, legalised and made effective all the existing laws inherited from Pakistan subject to the Proclamation of Independence 1971. Thereafter the judiciary of the country was set into motion with the appointment of the Judges of the High Court of the country on January 11 1972 by a Presidential Order No. 5 of 1972. Subsequently, by Presidential Order No. 91 of 1972, the Appellate Division was established before restoration of the original 1972 Constitution of Bangladesh. The 1972 Constitution of Bangladesh has set up at the apex of the Judiciary the Supreme Court of Bangladesh comprising the Appellate Division and the High Court Division. It is the sole supreme court of the country. The Chief Justice of the Supreme Court, who is appointed to the Appellate Division, is constitutionally known as the Chief Justice of Bangladesh.

In the recent years, some development took place in the legal system of Bangladesh. These are- the Ombudsman Act 1980 (Act XV of 1980), the Administrative Tribunals Act 1980 (Act VII of 1981), the Income Tax Ordinance 1984 (Ordinance XXV of 1984), the Land Reforms Ordinance 1984 (Ordinance X of 1984), the Family Courts Ordinance 1985 (Ordinance XVIII of 1985), and the Companies Act 1994.

The Law Reform Ordinance 1978 was promulgated amending the Civil and Criminal Procedural Laws, Laws related to Court Fees and the Law of Arbitration- based on recommendations of a Law Committee set up in 1976. At present, there is a permanent Law Commission in Bangladesh to suggest suitable changes of existing laws as necessary, so that the changed laws can meet the demands of the modern time.

4.1. Regulatory Framework for Trade and Investment

a) General Scenario

Governmental regulation of trade and investment since the early 1990s has been decreasing. Donors' advice, the wave of growing global trend toward market economy and a stronger domestic move toward democratic freedom made it possible for Bangladesh to opt for liberalised policies for promotion of trade and investment. Despite political commitment to the policy of liberalisation, various legislations failed to trigger significant trade and investment because of non-implementation of a number of regulatory changes. The stumbling blocks toward implementation of many of the policy changes have been the following:

- Apparent commitment of the bureaucracy and the political parties to reforms for deregulation of businesses has been ineffective in the face of opposition from many groups in the economy, including influential members of the business community having broad access to trade and investment through ownership or otherwise. Proliferation of enterprises has thus been stifled.
- Members of various chambers of commerce or industry are also the manufacturers in protected industries and well-connected commission agents pursuing government contracts. They, therefore, call for a greater voice for the private sector in government decisions and for privatization, but at the same time many support protectionism and subsidies for their own industries.
- The vicious culture of un-regulated political party nominations in national elections and other elections coupled with faulty election rules and faulty application of even certain correct election rules have opened the way for the richer business class people having vested business interests to find a way to power or affiliation with the ruling party. Finally, these classes of people influence policy formulation for regulation of businesses from the viewpoint of their own interests, often hindering open competition in domestic or foreign investment in this country.

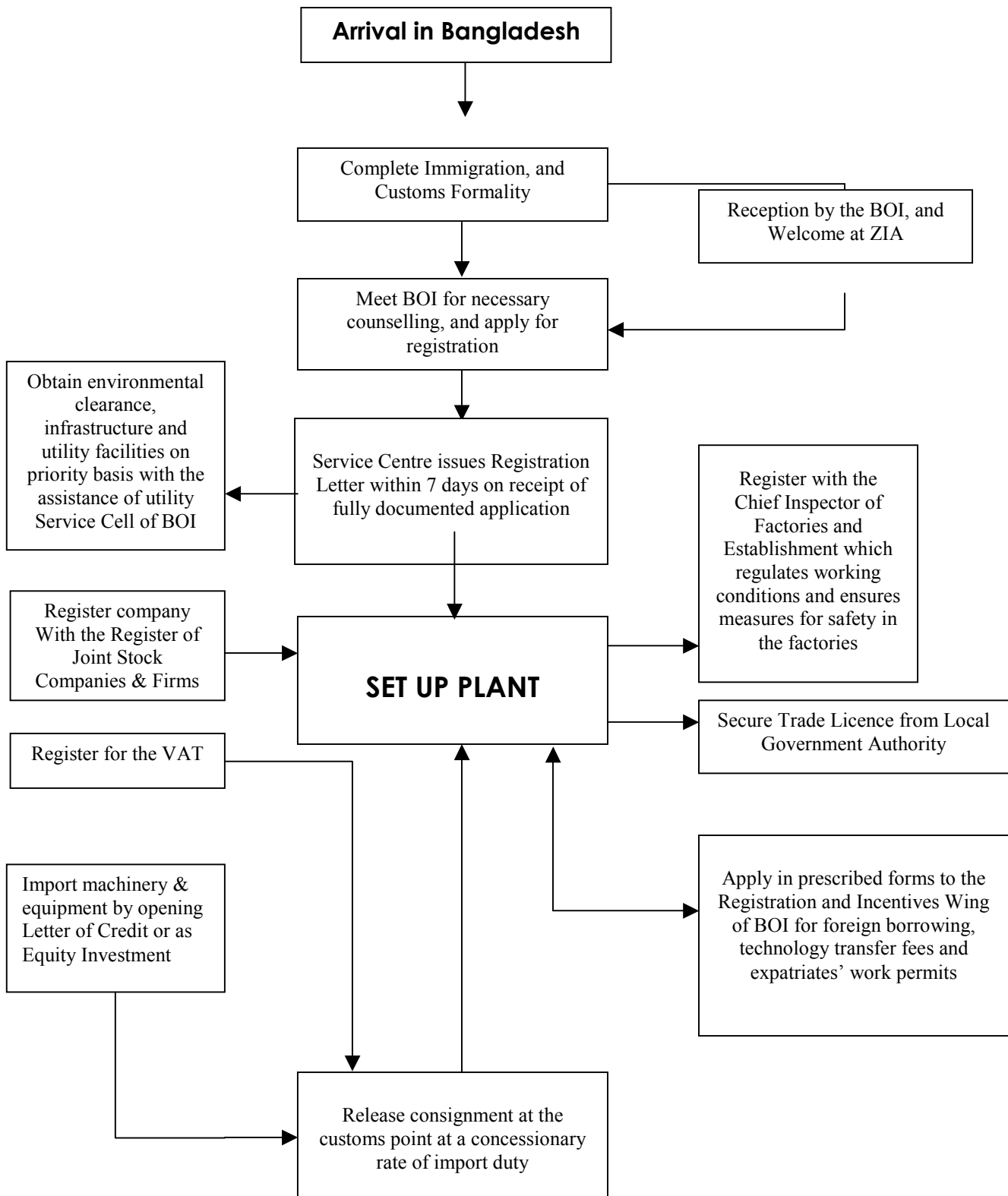
Rules pertaining to trade and investment in Bangladesh are usually not well-publicised or transparent. This lack of transparency is practiced by bureaucrats, businesses, professionals, trade unions and political parties having vested interests in a system by way of using confidentiality as an essential norm in policy formulation. Business persons have to seek support for action from the bureaucrats, but bureaucrats' support is impossible without the recommendations or intervention of the higher political levels. The poorly paid civil servants have regarded business people as exploitative, and regard themselves as having a near monopoly on economic acumen and patriotism. Despite fear from risks to their careers from illegal activities, the incidences of solicitation of bribes from foreign investors are rampant. Public administration reforms in Bangladesh has not yet been able to bring about optimum honesty and transparency in the bureaucracy, which is central to policy formulation and practices toward improved environment for trade and investment.

Generally speaking, the country's laws and regulations and their implementation are impediments to investment. Unfriendly treatment of businesses by some of the government officials and other negative elements in the investment scenario always add to the start-up and operational costs, risks, and broadly reduces the effectiveness of government's otherwise praiseworthy investment incentives. Here follows a report on how the government rules and their application have proved ineffective at times, even for the domestic investors.

Media reports in 2002-2003 indicate that a large group of company had once proposed to the Government for establishment of a factory for producing alcoholic drinks. The long-term claimer of the owner of that group of company pointed out that his papers submitted to the Government had crossed every hurdle necessary for obtaining the approval. He was also on the verge of saying that a simple approval from the Ministry of Home Affairs was keeping the overall approval process pending for years together. Press statements appeared saying that the Home Ministry had also indicated in some meetings with the said entrepreneur that approval was just imminent. As an excuse to the delay in the overall approval process, there were numerous reports from various departments of the government apparently trying to prove the reasons for delay in approval. Exchange of heated remarks between the industrialist and the Government reached a stage of reported threats and counter threats, finally the State Minister for Home Affairs filing general diaries against the industrialist at a police station in Dhaka City.

b) Concerned Offices and Regulations

Though the sole responsibility of promotion of trade and investment in Bangladesh rests on the Ministry of Industries, various activities in regard to trade and investment are regulated by the Government through mainly three ministries, that is, Ministry of Industries, Ministry of Commerce, and Ministry of Finance. On another level, there are a number of departments and directorates that operate as autonomous bodies performing specialised tasks toward both promoting and regulating trade and investment under the guidance of their respective ministries. The Parliament, with its related sub-committees and the lawmakers at large, stand out as the supreme law-making body for any legislation related to trade and investment or any other issue. The following flow diagram shows the required process for establishment of an enterprise in Bangladesh by any expatriate and/or for establishment of a very large enterprise by any Bangladeshi national. This diagram indicates the regulatory institutions assisting GoB for promotion and regulation of trade and investment in this country.



As of today, the following are some inexhaustive examples of the agencies involved in regulatory, facilitative and promotional activities for engendering trade and investment.

<i>Sl. No.</i>	<i>Overseeing Ministry</i>	<i>Name of Agency</i>	<i>Major Functions</i>		
			<i>Regulatory</i>	<i>Facilitative</i>	<i>Promotional</i>
1.	Ministry of Industries	Board of Investment	Application for Registration	Counselling, and Environmental Clearance	Clearance for Infrastructure and Utility Facilities; and Registration for Foreign Borrowings, Technology Transfer Fees and Expatriates' Work Permits
		EPZs (Export Processing Zones)	---	Infrastructure and Utility Facilities	---
		BSTI (Bangladesh Standards and Testing Institution)	Ensuring Adherence to Minimum Acceptable Standards	Testing and Advisory Services on Quality Control	---
2.	Ministry of Commerce	CCI&E (Chief Controller of Imports and Exports)	Regulation of Imports and Exports as per the existing foreign trade policies	Advisory services on import and export practices	Advisory services on export incentives and allowances for imports
		Export Promotion Bureau	---	Advisory services for expansion of export market potentials	Arrangements for and Information on Trade and Industrial Fairs or Pavilions
		Patents and Trade Marks Registration Bureau	Registration of Patents and Trade Marks	Advisory services on registration of Patents and Trade Marks	---
		Registrar of Joint Stock Companies	Registration of Firms	---	---
		Tariff Commission	Protection of the Interests of the Industry, Development of Exports, and Anti-Dumping Measures	Signing of Bilateral and Multilateral Agreements	---
		Duty Exemption and Drawback Office	---	---	Provision of duty drawback against PRCs (Proceed Realisation Certificates) to the exporters

Sl. No.	Overseeing Ministry	Name of Agency	Major Functions		
			Regulatory	Facilitative	Promotional
3.	Ministry of Finance	Bangladesh Bank	Regulation of the banking sector	Tax-free Import of Machinery and Equipment	Provision of Export Incentives
		Department of Customs, Excise and VAT			---
		Nationalised Banks	---	Remittance and Repatriation of Funds, Provision of Funds, and Facilitation of Other Financial Transactions	---
		Private Local or Foreign Banks	---	Remittance and Repatriation of Funds, Provision of Funds, and Facilitation of Other Financial Transactions	---
		Sadharan Bima Corporation (GoB's General Insurance Corporation)	---	Provision of Coverage to the Entrepreneurs	---
		Private Insurance Companies	---	Provision of Coverage to the Entrepreneurs	---
		Income Tax Commission	Administration of all Income Tax Rules	---	---
4.	Ministry of Labour and Manpower	Office of the Chief Inspector of Factories and Establishments	Registration on the basis of working conditions and safety measures in factories	---	---
		Minimum Wages Board	Control on Wage Patterns	---	---
		Directorate of Labour	---	Settlement of Labour Disputes	---
		Labour Appeal Tribunal	---	Settlement of Labour Disputes	---
5.	Ministry of Home Affairs	Department of Immigration and Passports	Immigration	Work Permit, and Citizenship	---
6.	Ministry of Environment	Department of Environment	Environmental Clearance	---	---

There are various chambers of commerce and industry at both localised and central level, formed with a view to coordinate the affairs of policy environment and execution of rules related to trade and investment acting as mediators between the entrepreneurs and the Government. Centrally placed chambers of commerce and industry are the FBCCI (Federation of Bangladesh Chambers of Commerce and Industry), DCCI (Dhaka Chamber of Commerce and Industry), MCCI (Metropolitan Chamber of Commerce and Industry), and BCI (Bangladesh Chamber of Industry). The other localised chambers of commerce and industry have their representatives in the FBCCI. Various product or service-based associations of traders and entrepreneurs in Dhaka have their representation in DCCI as well. Some of such large product or service-based associations are BGMEA (Bangladesh Garments Manufacturers and Exporters Association), BFFEA (Bangladesh Frozen Foods Exporters Association), BEMMA (Bangladesh Electrical Merchandise Manufacturers Association), Bangladesh Road Transport Owners Association, and others.

As in the case of CBAs and Trade Unions, representations to various chambers of commerce and industry as well as product or service-specific associations of entrepreneurs are dominated by influence from the political parties (as a result of a high level political orientation of the citizens of this country). It has been observed that manipulations by the ruling political parties have often led to top level management of such institutions by members having access to or being members of these ruling parties. As a result, professional leadership in the trade and investment sector by these institutions have run short of optimum success. On the other hand, whatever achievements they have made in negotiations with the Government on rules and practices in trade and investment, these achievements have not been poised at mass welfare, and have rather facilitated maximisation of profit of a limited few entrepreneurs. Though there are certain NGOs (non-government voluntary organisations) having the goal of protecting consumer rights and labour rights in Bangladesh, their activities have not spread beyond routine circulation of information on annual changes in prices of essentials, relatively less work on real change in consumers' income, savings and expenditure patterns, cost of living, dissemination of messages on labour rights- all for a number of years. Certain other NGOs operating in their respective operational areas have come to gain some strength in influencing rules and procedures for trade and investment in Bangladesh. Examples of such NGOs are:

- MSUK (Centre for Development of Human Potentials)- operating, in collaboration with the Michigan International Development (USA), a pilot project for finally designing a larger program aimed at improved health and family welfare rights of the garment factory workers
- BELA (Bangladesh Environment Lawyers Association)- working closely with the Government for creation of a legal environment conducive to maintenance of a healthy natural environment in Bangladesh
- *Nijera Kori*- having close networking activities with the London-based ISAN (Industrial Shrimp Action Network)

- BAPA (Bangladesh Environment Movement)- highly patronised and supported by expatriate Bangladeshis worldwide toward lobbying and advocacy for maintenance of countrywide ecological balance.

Activities in the trade and investment sector of Bangladesh are carried out under the purview of the country's legal environment as well as the ICC (International Chamber of Commerce) Brochure, international maritime rules and various regional and international trade and tariff agreements signed by this country. Though Section 2 and 3.2-3.8 dwell on various legal and judicial practices in Bangladesh indicating the type of governance in this country, it may be mentioned that there are certain laws that directly affect or influence trade and investment, such as:

- Emergency Services Act
- Banking Ordinance
- Negotiable Instruments Act
- Domestic Flag Rules
- Factory Law
- Workman's Compensation Act
- Industrial Relations Ordinance.

4.2. Property Rights Laws

Private ownership and investment is allowed in all sectors with exception in case of five sectors, such as

- a) Arms, ammunition, defence equipment, and machinery
- b) Production of nuclear energy
- c) Security printing and minting
- d) Forestry in the reserved forest areas
- e) Air transportation (except air cargo and international air transportation) and railways.

As the country's economy has remained stifled by many inefficient state-owned enterprises (SOEs) for long, efforts for privatization of the economy as a whole have been watched closely by various international bodies as a barometer of Bangladesh's attitude towards the private sector. The Privatisation Board's claimer, in written reports, goes that it has sold off 30 companies since the Privatization Board was created in 1993, primarily in the jute, textiles, sugar, and food sector. In reality, it has retained control of many of the firms reported to have been privatised. The Board, starting from its inception in 1993, has continued to remain slowed to a virtual standstill, despite the Government's appointment of a prominent local businessman in late 1997 as the Board's Chairperson. During July 2001-June 2002, no single company was privatized, but partial shares of 11 companies have been sold. Even following privatisation, some of the companies are yet being heavily regulated because of a number of reasons, such as the managements' failure to reduce employment rolls. A total of 150 companies were in the pipeline of the privatisation process at end of June 2002, but there was an anticipation that that any

achievements in privatization would not occur until after the coming national election, scheduled to take place in October 2001. The government is usually slow to privatize the state-owned enterprises in order to avoid the formation of unions, and subsequent disputes, which are an integrated component of any private or privatised company.

Though not clearly set out in writing, many sectors are reserved at least partially for the Government. In occasions of otherwise unmanageable situations of scarcity of certain commodities, the Government has often allowed discrete operation of the private enterprises to ensure quick and efficient supply of the commodities in scarcity. Such allowances, on the turn, have been dominated by decisions to offer opportunities to the members of the ruling party or their peerage to import goods or to distribute goods. Distributorship for sale of fertiliser from a large fertiliser factory in the Jamalpur District during the 1991-1996 regime was awarded to a member of the family of a senior member of the then ruling party. Alleged reports of numerous irregularities committed by that fertiliser dealer led to dissensions among the local farmers who led repeated demonstrations protesting the said irregularities. The law enforcement authorities intervened to quell the protests and demonstrations. This finally led to the death of more than half a dozen of innocent demonstrating farmers.

The occasional, discrete decisions made by the Government to bring in private operators in specific missions in trade and investment (e.g., for wheat and fertilizer imports and fertilizer distribution), have often been despised by the state-owned enterprises (SOEs). Under such public-private partnerships, the government is usually responsible for infrastructural and operational support to the private partners. The private partners carry out sales, marketing and general operations. This has resulted in the lack of cooperation of the state-owned authorities to the private partners as result of a sense of unhealthy and unethical competition from the government in order to undermine the image of the capabilities of the private enterprises. As for instance, low level care in provision of infrastructural and operational support from the governmental components of the Bangladesh Railway to the private operators of a limited number of privatised railway trains has been manifest as some of the reasons behind apparent but falsified weaknesses of the private operators. A combination of such tactical non-cooperation from various governmental institutions and the undermining of legal and policy reforms has virtually stifled private sector initiatives.

4.3. Mechanisms to Protect Property Rights

The mechanism of protection of property rights is not transparent and is a point of serious concern to the investors and prospective investors in this country. There are two particular reasons for the lack of transparency of this mechanism, such as:

- The ingrained culture of delay in disposal of legal cases (Section 3.7 of this report), especially the ones under the jurisdiction of CPC (Civil Procedure Code)
- Insufficiency of enactments necessary for addressing property rights issues.

Bangladesh, being a signatory to the Uruguay Round agreements and being a member of the World Intellectual Property Organization (WIPO) in Geneva since 1995, has also acceded to the Paris Convention on Intellectual Property in 1991. Following these affiliations, Bangladesh is obliged to bring its laws and enforcement efforts into TRIPS (Trade Related Intellectual Property Rights) compliance by January 1, 2006. Copyright conformity with the World Trade Organisation's TRIPS has been established by way of legislation in November, 2000. But absence of laws to enforce the new copyright legislation turned the bill to be ineffective at this moment. Land for purchase or lease has to be commonly transacted in by any investor; but the obsolete laws relating to land are complex and frequently give rise to chaos. Papers relating to land registration records are almost commonly spurious. Parties to transactions in land frequently avoid registering mortgages, liens, and encumbrances because related stamp duties and charges have been set at high levels. Instruments take effect from the date of execution, and not the date of registration. As such, a *bona fide* purchaser can never be certain of title. In brief, whatever provisions have been in writing, there is little enforcement of Intellectual Property Rights and other property rights laws in Bangladesh. In spite of these efforts by the Government to streamline Property Rights Laws in Bangladesh, there have been a few U.S. complaints to date. Legislation to update the Patents and Designs Act and the Trademarks Act is still pending final vetting by the Ministry of Law, Justice and Parliamentary Affairs. The Country Commercial Guide 2003-2004 published by the US Trade Centre in Dhaka indicated that Bangladesh's dispute settlement mechanism was a fundamental impediment to foreign investment. The Guide added that dispute settlement was also hampered by shortcomings in accounting principles and registration of real property.

"Special 301" Watch List of the U.S. Trade Representative, that identifies countries denying sufficient protection of intellectual property rights or fair and equitable market access for persons that rely on intellectual property protection, has never included Bangladesh. However, in 2003, a U.S. trade association proposed, though to no effect, adding Bangladesh to the Watch List. In this country, intellectual property infringement is common- especially of computer software, motion pictures, pharmaceutical products, CDs/DVDs, and audio and videocassettes. As a result of the rampant copying of CDs/DVDs and audio and videocassettes, there have been two particular impacts on the local economy:

- a) the violation of copyright laws, depriving the foreign producers of these audio-video materials of their entitlements in return of such copying
- b) poisoning of unhealthy competition to the local film and music industry when the very latest foreign films are available in the market within 24 hours of their release abroad.

The method of copying and distribution of such entertainment has been discovered by The Daily Star in its July 02 2003 issue as the following.

“The movies are recorded in theatres when they are released abroad. They are then mailed through the Internet to groups in Malaysia or Pakistan. Here, after some filtering and editing, the movies are burnt onto compact or digital discs. These are then distributed by smugglers to various destinations. Usually they travel by air and therefore, the very latest movies like Matrix Reload, X-Men 2 and Devdas are found in Dhaka only fifteen to sixteen hours after their release in foreign countries. But proof of their piracy is apparent in the viewing as the shadows of audience members can be seen at the bottom of the screen.”

4.4. Structure of the Judiciary

The country’s legal system comprises of Administration of Civil Justice and Administration of Criminal Justice regulated procedurally by two distinct sets of laws, that is, Civil Procedure Code (CPC) 1908 and Criminal Procedure Code (CrPC) 1898. Beside certain special laws enacted from time to time in specific urgent situations, the Penal Code 1860 deals with the offences in terms of definitions, extent of punishment and exceptions etc. Under the special laws, certain provisions of the Code of Criminal Procedure with regard to investigation, arrest, bail, seizure, attendance of witness etc. are applicable.

The Bangladesh Constitution 1972 includes a separate part (Part VI, Articles 94-117) dealing with the judiciary. The Supreme Court of Bangladesh comprises of the High Court Division and the Appellate Division headed by the Chief Justice of Bangladesh. The High Court Division, beside its appellate and revisional jurisdiction in civil and criminal matters, has extraordinary jurisdiction known as writ jurisdiction under Article 102 of the Constitution toward enforcement of fundamental rights. The Appellate Division is the topmost court that, besides having jurisdiction of appeal arising from the decisions of the High Court Division under Article 103, has been vested with the jurisdiction of doing complete justice under the Constitution’s Article 104 to prevent failure of justice. In addition, the Appellate Division has advisory jurisdiction on legal matters of public importance under Article 106 of the Constitution whenever sought by the President. The Supreme Court has the jurisdiction to decide the constitutionality of any law and it can also strike down any law that is *ultravires* or inconsistent with any provision of the Constitution. The decisions of the Appellate Division are binding upon the High Court as well as on the subordinate courts and the decisions of the High Court Division on all courts subordinate to it.

The subordinate judiciary consists of the courts of District Judges, Additional Judges, Joint District Judges, Assistant Judges and the Magistrates. The District Judges, Additional Judges and the Joint District Judges, apart from their civil jurisdiction are also vested with the criminal jurisdiction and are classified as the courts of Sessions Judge, Additional Sessions Judge and Assistant Sessions Judge. Below the courts of Sessions Judge, there are the Metropolitan Magistrates for the metropolitan areas and magistrates for other areas trying cases which cannot be tried by the Courts of Sessions. Offences punishable with imprisonment up to five years may be tried by different classes of Magistrates. Assistant Sessions Judges can try offences and pass

sentences not exceeding ten years. Sessions Judges and Additional Sessions Judges can pass any sentence authorised by law and also sentence of death subject to confirmation by the High Court Division (Sections 6, 31, 32 of the CrPC). Appeals against the judgements of conviction and sentences passed by the Magistrate are made to the court of Sessions, and appeals against the judgements of conviction and sentences passed by the Sessions Judges are made to the High Court.

Under the criminal administration of justice, offences are generally categorised into cognizable and non-cognizable with their classification as to arrest, bail, compoundability, courts by which to be tried, procedure of trial etc. shown in the Second Schedule of the Code of Criminal Procedure (CrPC). Criminal proceedings are initiated by either complaint or First Information Report (FIR). In cognizable cases, police can arrest the alleged offenders without warrant from the court. Prosecution in cognizable cases is the state's responsibility. A criminal proceeding comprises of investigation and trial during which offenders are detected and apprehended, evidences are collected and the case is made ready for trial. The foundation of the case is built during investigation. Detection of the real criminal and collection of proper evidence lay the real foundation of a criminal case because the success of the prosecution depends on the efficient handling of the cases by the investigators. The methodology for investigations to be conducted, and whether statements of witnesses, confessional statements of the accused and the dying declaration are to be recorded will all be regulated by specific provisions of law.

Magistrates are empowered to try summarily petty offences punishable up to two years imprisonment under Chapter XXII of the Code of Criminal Procedure (CrPC). The procedure of trial before the Court of Sessions is contained in Chapter XXIII of the CrPC.

4.5. Independence of the Judiciary

As per the provision of Article 94(4) of the Constitution, the Chief Justice and other judges of the Supreme Court are independent in the exercise of their judicial functions. Similarly all persons employed in the judicial service and all magistrates are independent in the exercise of their judicial functions as provided under Article 116A of the Constitution. The independence of the judiciary is the precondition of fair trial and fair justice. Another pre-requisite of sound and independent judiciary is the separation of the judiciary from the executive organ of the state. Article 22 of the Constitution contains fundamental principle of state policy to the effect that "the state shall ensure the separation of the judiciary from the executive organs." Although there is the constitutional commitment for the separation of the judiciary, no positive steps have been taken till today for the separation of the judiciary.

The landmark decision of the *Secretary, Ministry of Finance vs. Masdar Hossain* (1999) 52 DLR (AD) 82 was determined on the basis of how far the Constitution of Bangladesh had actually secured the separation of the judiciary from the executive organs of the State and whether the Parliament and the Executive had followed the Constitutional path. In brief, the case was decided following how far the independence of the judiciary is guaranteed by the Constitution and

whether the provisions of the Constitution had been followed in practice. The court identified five conditions of judicial independence, that is:

- ii) Security of judicial tenure
- iii) Security of judicial salary
- iv) Institutional independence of subordinate judiciary
- v) Judicial appointments by separate Judicial Service Commission
- vi) Administrative independence and financial autonomy of judiciary.

As a conclusion to the case on *Secretary, Ministry of Finance vs. Masdar Hossain* (1999) 52 DLR (AD) 82, the Appellate Division of the Supreme Court, in its judgement, gave 12-point guidelines to implement the separation of the judiciary from the executive organ of the state, as reported on Page of 52 DLR (AD). The Government took time fourteen times for separating the judiciary from the executive on permission in this regard from the Supreme Court. In the last week of May 2003, the Supreme Court allowed another timeframe of four months to the Government to implement separation of the judiciary.

The expectations of the common citizens are not only a judiciary separate from the executive organ of the state, but also a judiciary independence from the influence of ant ulterior quarters. The art of practising impartiality does not develop overnight, it rather results from understanding, appreciating and acknowledging the moral values, ethics and professional responsibility over a considerable period of time. It is basically a question of developing an attitude. In this regard, there is the need to look at the types of incumbents in the judiciary and the particular arrangements for their recruitment, codes of ethics and training in the judicial service.

4.5.1. Appointment and Term in Office

At present, the judges of the subordinate courts are under the administrative control of the Ministry of Law, Justice and Parliamentary Affairs which according to Article 116 of the Constitution exercises this control in consultation with the Supreme Court. However, the magistrates are under the administrative control of the Ministry of Establishment. The magistrates perform both executive and judicial functions. The dual administrative control over the judges and the magistrates has some adverse reflection on the independence of the judiciary affecting, sometimes, fair trial.

As a current practice, the judicial officers of the subordinate judiciary are appointed by the Public Service Commission, an executive unit of the state. The advice given to the Government in its conclusion of the case on *Secretary, Ministry of Finance vs. Masdar Hossain* (1999) 52 DLR (AD) 82, the Government also mentioned that the Government should appoint, in its process of separation of the judiciary, judicial officers of the subordinate judiciary by a Judicial Service Commission, instead of the Public Service Commission.

The vast majority of the judges and judicial officers are appointed from either the members of legal profession with long professional standing or the law graduates by way of judicial service examination intake. The legal educational institutes of Bangladesh do not teach its graduates the ethics or professional responsibility. There is no conceptual framework that a student needs to learn and develop good ethics to be a good lawyer. As such, there is no subject like legal ethics in the official curriculum of any of the law degrees in this country.

Though one may argue that the legal educational institutes do not produce professionals but academics, then the total responsibility shifts to the professional bodies (e.g., the Bangladesh Bar Council, the Bar Associations, JATI- Judicial Administration Training Institute etc.). It is their responsibility to ensure that their members, before joining their respective professions, undergo a proper system of training where they are carefully introduced to the issues of legal ethics and professional responsibility.

As per Rule 10 of *The Bangladesh Legal Practitioners and Bar Council Rules 1972*, the functions of the Bangladesh Bar Council includes, among others:

- i) admitting persons as Advocates on its roll
- ii) holding examinations for purpose of admissions
- iii) removing Advocates from its roll
- iv) laying down standards of professional conduct and etiquette for Advocates
- v) entertaining and determining cases of misconduct against Advocates on its roll and ordering punishment in such cases
- vi) promoting legal education.

Under the current policy of the Bangladesh Bar Council, every person shall, before being admitted as an Advocate, pass a written examination, viva-voce and a vocational training course of around 7 weeks. The syllabus for the written examination for enrolment includes a topic “Rules of Professional Etiquette” which is examined by assessing a candidate’s knowledge on *Bangladesh Bar Council Canons of Professional Conduct and Etiquette*.

These canons were framed in exercise of the power conferred on the Bangladesh Bar Council by Section 48(q) of the Legal Practitioners and Bar Council Act 1965 and are crucial for any legal practitioner as he (an Advocate) is expected to discharge certain high level duties in the society. In Bangladesh, the Advocates are expected to be role models of “integrity, imbued with the spirit of public service and dedicated to the task of upholding the rule of law and defending at all times, without fear or favour, the rights of citizens.” Therefore, as per the Bar Council Enrolment Examination Policy, every candidate is required to be familiar with these canons and are examined by way of answering a given hypothetical problem of ethical conflict situation. But this arrangement is not enough to ensure the target result of having an overall ethical and professionally responsible legal profession because:

- i) There is no system or institute to provide tutorials to explain or discuss the issues of ethics and professional etiquette to the aspiring candidates. Therefore, the candidates take preparation for the written examination on their own. The need for popularising legal ethics and basic professionalism cannot be treated so easily.
- ii) The materials on legal ethics provided and suggested to the candidates are insufficient. The candidates are provided with only the bare rules, no explanatory notes or case references are attached or suggested. As such, there is no way for a candidate of the average quality, to develop a critical mind while reading through the words of the ethical rules.
- iii) The candidates are not examined as to whether they are familiar with different grounds for which they can be disqualified for admission to be an Advocate. No materials are provided regarding actual cases of disqualification in the previous years.
- iv) The candidates are not examined on the basis of their knowledge in disciplinary proceedings of the Bar Council. No reading materials are provided for explaining to the candidates when they can be found guilty of professional or other types of misconduct. They also do not get to refer to previous decisions of the tribunal or court to find out different incidences of professional malpractices for which they can be reprimanded, suspended or even removed from practice or struck off the roll.

In addition, though the candidates answer a question on legal ethics in the written examination, there is no way to know whether they have written the right answers, once the results are published. Therefore, there is a danger that the candidates may fail to realise the importance of being professionally ethical, once they enter into the profession.

The current policy of the Bar Council is that every successful candidate (that is, those who have passed the written examination and viva-voce) would need to go through a compulsory training course known as Bar Vocational Course (BVC) to get a call to the Bar and the '*Sanad*'. BVC is conducted by the Legal Education and Training Institute (LETI) of Bangladesh Bar Council.

Within a span of seven weeks, the students of BVC have approximately 80-84 classes. In this course, only 3 classes (each having approximately one-hour duration) are allocated to have a discussion on the topic of Professional Ethics. The discussion is of general type and there is no specific syllabus available for these sessions. This is the first and only time the newly recruited Advocates get an opportunity to have a discussion on the most sensitive issue of their profession and that does not receive proper weightage in the induction mechanism.

The other element that plagues the judiciary of Bangladesh quite often are the increasing incidents of politicisation and superseding of one incumbent with another by the ruling political parties in appointments to positions of justices to the Supreme Court. Once such incident in July 2003 pushed the Supreme Court Bar Association at bay with the Government; and it also resulted in boycotting of the court (Supreme Court) by them.

4.5.2. Codes of Ethics

The Constitution of Bangladesh enjoins on the judges to perform their duties without fear of reprisal or influence of any person, institution or authority. Judges should also recognise their duty to uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their Judicial Office and to preserve the faith and trust that society repose upon them. Judges, among others, should follow the following principles in the performance of their judicial duties and in the conduct of their personal lives.

- a) Judges should discharge the duties of their Judicial Office according to the Constitution and the Laws of Bangladesh. They have a duty to apply the relevant law to the facts and circumstances of the cases before the Court and render justice within the framework of the law. Reasons for the judgment/order should be recorded in clear language so as to enable the litigants to understand the reasons behind the decisions.
- b) Judges must be impartial and objective in the discharge of their judicial duties. They should not be influenced by public pressure or fear of criticism. Judges shall not, by words or conduct, manifest favour, bias or prejudice toward any party. They need not do anything which is improper to earn popularity from any person or group.
- c) Judges shall endeavour to maintain order and decorum in courts. They must strive to remain patient, dignified and courteous in performing the duties of Judicial Office and shall carry out their role with integrity, appropriate firmness and honour.
- d) Judges should conduct court business with due diligence and dispose of all matters before them promptly and efficiently having regard, at all times, to the interests of justice and the rights of the parties before the court. There is no justice where delay is such that by the time the decision is rendered, it no longer has any practical meaning to the litigants. There is no such if the prohibitive cost of litigation prevents a citizen from seeking justice through the court system. In order to ensure speedy justice, the judges should devote the entire prescribed time for judicial work and discourage adjournment of hearing of cases on an insufficient ground.
- e) The primary responsibility of the judges is the discharge of their judicial duties. Subject to any restrictions imposed by law or rules, the judge may participate in law-related activities provided such activities do not interfere with the judge's judicial duties.
- f) The judges should maintain their personal conduct at a level that will ensure and maintain the people's trust and confidence. Judges must not abuse the power of their Judicial Office or use it inappropriately. In other words, judges should not involve themselves in any activity which is incompatible with their Judicial Office.

4.5.3. Training Process

As per the *Judicial Administration Training Institute Act 1995* (as mentioned Bangladesh Gazette Notification- Extraordinary Issue dated July 9, 1995), the Government of Bangladesh has set up a Judicial Administration Training Institute (JATI) to arrange for training of persons appointed in the judicial service, lawyers and some other professionals connected with the judicial system in order to enhance their professional efficiency. The JATI is now functioning in the Old High Court Building in Dhaka and the foundation for its new building has also been already laid down. The sources of JATI's funds are grants from the Government, grants from the local authorities loans obtained on prior approval of the Government and others. The establishment of JATI and the conversion of the Law Commission into a permanent entity have been rendered under a US \$. 2,000 million project with support from the World Bank.

Functions of JATI:

The gazette notification dated July 9 1995 outlines JATI's functions as the following:

- Impart training to the persons appointed in the judicial service, Law Officers entrusted with conducting of government cases, Advocates enlisted with the Bangladesh Bar Council and officers and staff of all courts and Tribunals subordinate to the High Court Division of the Supreme Court
- Arrange and impart training in legislative drafting and drafting of other legal documents
- Impart training in legislative drafting and drafting of other legal documents to trainees from abroad in cooperation with international donor agencies
- Conduct research and investigation in respect of court management and to publish the same
- Arrange and conduct national and international conferences, workshops and symposia for improvement of the Judicial System and quantity of Judicial work
- Publish periodicals, reports etc. on the judicial system and court management.

Curricula of JATI:

As in case of various courses at the Bangladesh Bar Council, the curriculum for the Basic Course at JATI does not have any module of ethics or professional responsibility. However, the curriculum for Judicial Administration Training Course for the District and Session Judges contains a module on Judicial Ethics and Code of Conduct of Judicial Officers. Under its current training policy, the Judicial Administration Training Institute (JATI) runs the following training courses:

- District or Joint District-and-Sessions Judges (6-day)
- Basic Course for Newly Appointed Assistant Judges (60-day)
- Senior Assistant Judges (21-day, and sometimes 3-day short courses)
- Public Prosecutors (6 days to 21 days)

- Government Pleaders (6 days to 21 days)
- In-Service Training Course for Ministerial Officers of the Subordinate Courts and Tribunals (One to 2 weeks).

Achievements of JATI:

In five years, from June 1997 to May 2002, JATI (the Judicial Administration Training Institute) imparted training to 1397 judges, advocates and court support staff. The institute introduced and conducted the first batch training for the court support staff (i.e., Administrative Officers, *Nazirs* and Bench Assistants) in the year 2000. Each of the training programs was different in nature and intensity. The curriculum was made the basis of training, but improvements were made as to their contents and methods to achieve optimum result in each course. Study tours were an integral part of JATI's judicial training. The trainee-judges visited the *Jatiyo Sangsad* (National Parliament), the Supreme Court, the Ministry of Law Justice & Parliamentary Affairs, UNICEF-Dhaka, Dhaka Central Jail, the Defence Staff College, the Islamic Institute of Technology, BARD (Bangladesh Academy for Rural Development National Juvenile Correction Centre at Tongi and other institutions of repute to make trainees aware of their activities and gain more knowledge on other important issues beside the law).

Faculty Development at JATI:

The Institute, from the beginning, gave significant impetus on faculty development. JATI's faculty members visited countries like Japan, India, Canada and Britain for gaining knowledge about judicial training and training-facilities there. The Institute's officers also received various types of training and project-related activities for better training management at JATI.

Danish Support to JATI's Development:

Support to Capacity Building of the Judicial Administration Training Institute of Bangladesh is a five-year capacity building project aimed at enabling the JATI to deal with well-structured professional training in order to increase judicial efficiency of the subordinate courts and make the judiciary understand its roles and responsibilities. The project constitutes a component of the World Bank-financed Legal and Judicial Capacity Building Project. The major activities include the following:

- management and institutional development
- development and application of training plans and training needs analysis tools
- development of training curricula, training materials, and audio-visual aids
- training of trainers
- development and implementation of training courses for the target groups.

In addition, the project also includes procurement of education and training equipment necessary for the function of an envisaged new Judicial Administration Training Institute.

4.6. Fairness in Trial and Sentencing Process

(a) Fairness in Trial-

To get fair and speedy trial is a fundamental right guaranteed in the Bangladesh Constitution. Article 35 of the constitution reads as follows:

35. Protection in respect of trial and punishment-

- (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from, that which might have been inflicted under the law in force at the time of the commission of the offence.
- (2) No person shall be prosecuted and punished for the same offence more than once.
- (3) Every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law.
- (4) No person accused of any offence shall be compelled to be a witness against himself.
- (5) No person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment.
- (6) Nothing in Clause (3) or Clause (5) shall affect the operation of any existing law which prescribes any punishment or procedure for trial.”

The question of fair trial presupposes fair investigation, fair prosecution and fair provision of the scope for the defence of the accused under legal dispensation. A person accused of an offence shall be presumed to be innocent so long he or she is not proved guilty by legal evidence beyond all reasonable doubt. This implies that even ten accused persons may be acquitted but not a single innocent person should be convicted. That a person shall have the protection of law is the inalienable right guaranteed in the Constitution in Article 31 and 33 which read as follows:

“Article 31. Right to Protection of Law- To enjoy the protection of law, and to be treated in accordance with law and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.”

“Article 33. Safeguards as to Arrest and Detention-

- (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall be denied the right to consult and be defended by a legal practitioner of his choice.
- (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest, excluding the time

necessary for the journey from the place of arrest to the court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate

As for the purpose of protecting social order and peace by preventing prejudicial activities against the state, the Special Powers Act 1974 was enacted. In the meantime, this law has been largely modified. There are a lot of arguments and criticism for and against this law which curtails the fundamental rights of the citizen. Instances are not rare when concerned agencies of the Government sometimes use the provision of this law arbitrarily. Despite this, the Supreme Court, in order to check this type of arbitrary arrests and detentions have so far granted anticipatory bails and directed the release of some detainees forthwith. Currently, the demand for the repeal of the Special Powers Act 1974 still persists at the end of the conscious sections of the people. However, after some modifications rendered to the Special Powers Act 1974, this law has been complemented by the enactment of other laws titled Speedy Trial Act (on October 24 2002) and the Anti-Terrorism Act.

Another socio-economically embedded factor that hinders fairness of trial in general is the high costs of hiring of lawyers. Access to the Government's support system for managing or attending legal suits by the relatively poorer sections of the Bangladesh population is extremely limited. As such, the poor victims are often compelled to avoid litigation or to stop appealing or attending legal suits after short-run efforts.

The recent rise in threats or other forms of coercion from *godfathers* of the crime world to the socially powerless victims have stopped them short of going for legal suits. Additionally, the weak and corrupt structure of the law enforcing agencies has also failed to provide protection to the justice-seeking socio-economically weak victims. Even the media has reported frequently on the murders of victims or their witnesses in the courts and court premises because they appeared there in order to attend the hearing sessions. This situation tells on the outcome of the corruption and weaknesses of the law enforcement agencies obstructing pursuit of fair trial and justice.

(b) Sentencing Process

Sentencing, the final and concluding part of trial in a criminal case, is deterrent and retributive in Bangladesh. The entire drama of a criminal proceedings ends with the verdict of the court in which the police/investigators, the witnesses, the prosecutors and the judges/magistrates play their respective roles. Apparently a criminal charge against a person in the society carries certain stigma; and for this reason, the people generally try to avoid criminal charge or otherwise being entangled in criminal proceedings.

Sentence of death, imprisonment for life, imprisonment (rigorous or simple), forfeiture of property and fine are prescribed by Section 53 of the Penal Code which may be awarded to the offenders according to the nature of charges. By Ordinance XLI of 1985, the term "transportation for life" has been substituted by the word "imprisonment for life" equivalent to thirty years of

rigorous imprisonment under Section 57 which the Government may commute into imprisonment not exceeding twenty years as provided under Section 55 of the Penal Code (Ordinance XLI of 1985). Sentence of death passed by the Court of Sessions shall have to be confirmed by the High Court Division under Section 374 of the Code of Criminal Procedure. It is well within the prerogatives of the President who can grant pardons, reprieves, respites, remit, suspend or commute any sentence passed by any court, tribunal or other authority under Article 49 of the Constitution.

In passing the sentence, the court must have full regard to the nature of the offence, status of the accused persons and overall the ends of justice in all fairness of things. Except in cases involving the sentence of death and imprisonment for life, the courts are given wide discretion in passing sentences of various terms. The cardinal principle is that the sentence must not be excessive or disproportionate to the nature and gravity of the offence. In practice, different courts pass different terms of sentences in similar types of cases which is poised at pricking the people's conscience and shaking their confidence in the judiciary. Accountability in the proper sense of the term on the part of every quarter engaged in the task of administering justice (e.g., investigators, prosecutors, judges or magistrates) is relatively low, and such deficiencies in the judicial system have often given rise to unwelcome public opinion about the honesty, attitude and role of the country's judiciary. As for instance, one may refer the case of Shima Chowdhury of Chittagong District which jolted the conscience not only of the people of Bangladesh but also of the people of many parts of the world. Similar mishap in the performance of the judiciary in passing sentences was visible in the case of Yasmin Murder Case in Dinajpur District. Therefore, it may be concluded that the laws and the practices in the delivery of judgment requires urgent improvement.

4.7. Speed of Trial vs. Backlog of Cases

It is the constitutional right of the people of Bangladesh to get speedy and fair trial under the legal dispensation. But, in the legal system of this country, delay in the dispensation of justice has been a chronic problem. The mounting backlog of cases in almost all tiers of the judiciary is the main cause of delay in disposal of cases. As a result of such delays in delivery of judgment, the people are also losing confidence in the fairness of the judiciary. In general, the causes of such delays may be classified under two broad heads, that is, the court's delay and the law's delay.

The fact that the laws of the land tend to delay the disposal of cases and that such delays are a good cause for bail in non-bailable offences have been well illustrated in an article titled "Undue delay in trial is good ground for bail in non-bailable offence" published in The Daily Star dated July 13 2003 in Dhaka. It was stated there that the particular Appellate Division Criminal Case between Captain (Retired) Nurul Huda (Appellant) vs. State (Respondent) had its judgment delivered on December 01 2002 after a long trial since October 1996 (High Court Miscellaneous Criminal Case No. 1965 of 1997 arising out of Ramna PS Case No. 93 dated October 21 1996 under Sections 149/448/326/307/302/34 of the Penal Code). The deliberations presented in the

newspaper article indicate that a relatively large number of Criminal Procedure Code (e.g., Sections 496, 497, 497, and 339C-4) were related with the disposal of the case from appeal for bail. The final verdict permitting the release of the accused on bail even contradicts the earlier verdicts given by the High Court on multiple occasions. The accused had to languish in jail with problems in his prostate glands, urinary tract infections and serious depression for being in custody for more than six years without disposal of the case.

While elimination of the problems causing the law's delay is a long-term issue, the types of factors causing the court's delay are relatively more visible. Case management in Bangladesh's courts is not satisfactory. The judges usually do not make a prior mental picture of the cases in hand. It is a prerequisite for every judge to look after the administration of the court besides disposing of cases, but the judges spend most of their time in certain routine jobs only. It is also argued that they are overburdened with huge piles of cases and that they do not have sufficient time to look into various aspects of the cases well before they come to the court for hearing. This carries the judicial system to the point that the number of courts is disproportionately fewer than the number of cases, irrespective of the levels of complexities of certain cases.

Apparently in a move to dispose of the formidably large backlog of cases, the Government enacted the Speedy Trial Act on October 24 2002. The political oppositionists termed it as an instrument to harass them and to stop them from full exercise of their political rights. The deployment of the Bangladesh Army with quasi-magistracy given to them coupled with the enactment of the Speedy Trial Act 2002 resulted in arrests of many terrorists reportedly patronised in the past by a number of political parties. Media reports have it that prior information sent to a number of the other terrorists from and by the ruling party led to the flight of these terrorists to India escaping the campaign by the army. Besides, a number of senior political leaders among the oppositionists were arrested, quizzed and reportedly tortured in the process. Besides, a number of arrestees faced quick deaths in custody even before the state initiated the process of trial. Despite appeals from various international human rights agencies to carry out investigations into these deaths, the processes and reasons for many of those deaths in custody still remains shrouded in mystery. There were many serious questions alleging the Government of having given the power of magistracy to the army and challenging the good intent of the Government behind the waging of this so-called military campaign terrorism.

In June-July 2003, several cases around mostly social crimes, were disposed of under the Speedy Trial Act, ending in verdicts sentencing the alleged criminals to at least life terms or deaths. When the majority of the cases are left hanging in the lower courts, the quick disposal of a few raises the question in the press as to whether the Act was just a face-saver for the Government.

4.8. Mechanism of the Poor's Access to Justice

As per findings of a survey conducted by the Transparency International Bangladesh Chapter and a report about a Special Cell published in the *Daily Muktakantha* dated May 24 1999- about 90% of the victims asserted that it was almost impossible to get help from the police without

money or influence. In the matter of court cases, engagement of a lawyer is very costly and a poor litigant cannot engage a good or senior lawyer. Generally, the lawyers charge higher fees than the prescribed fixed fees. Effective measures are necessary so that only prescribed fees are charged. Honesty and integrity of the lawyers and court employees are vital factors for the poor's access to justice. Moreover, the Civil Procedure Code (CPC) has been amended by way of amicable settlement between the parties to ensure quick disposal and the poor's access to justice.

5. KEY RECOMMENDATIONS

In an era of globalization, and interdependence of economies, the following areas should be considered and strengthened seriously in order to increase the capacity of state in promoting trade and investment in Bangladesh:

1. Political Will, Commitment & Stability,
 - a. Institutionalizing democratic norms and values;
 - Ensuring Rule of Law
 - Initiating electoral reform;
 - Improving law and order situation;
 - Initiating reforms to strengthen local governments;
 - Mapping of local resources;
 - It is evident that the bulk portion of weaknesses of the state emanated from the lack of commitment and will of the political leaders. So any reform designed to improve the state capacity should start from the ruling political party.
 - Opposition political parties can also play a vital role by participating in the political process in a democratic manner.
2. Good Governance to Minimize the Costs of Doing Business in Bangladesh,
 - a. Streamlining bureaucracy (Training, Posting, Transfer, & Promotions);
 - b. Curbing Corruption;
 - i. Make BAC independent and more efficient;
 - ii. Strengthen and reform NBR and other relevant agencies for increased financial transparency;
 - c. Strengthening BOI to promote sectoral priority, and areas of comparative advantage by sector including export-oriented FDIs;
 - d. Promotion of economic diplomacy;
 - e. Introducing E-governance for increased transparency;
 - f. Engaged governance: Increased efforts to improve relationships between public officials at the grass root level and local business people;
 - It is repeatedly noted that it is not policy failure but structural weaknesses of the state and its bureaucracy that is responsible for failure to attract FDIs in Bangladesh. This structural weaknesses work as an extra tax, and thus dissuades investors from coming to Bangladesh.
3. Conducive Infrastructure
 - a. Improving service delivery of utilities, including electricity and gas;
 - b. Increasing efficacy of ports;
 - c. Development of information technology backbone;

- Bangladesh could never attract FDIs without adequate infrastructural support. It is however important to note that although expansion of public sector amenities is vital, it is even more important to ensure quality and prompt service delivery of what we already have.
- 4. Development of Capital Market
 - a. Proper use of remittance (the prime source of foreign currency earning)
 - b. Transparency of the stock exchange activities.
- 5. Image Building of Bangladesh
 - Chinese and Indian experiences suggest us that in general expatriate investors pioneer FDIs in a country. But Bangladesh is seriously suffering from an image crisis. Even the local investors are highly reluctant to invest in Bangladesh. Hence, the GoB has to take concerted efforts, along with aforementioned activities, to uplift the popular image of Bangladesh.

It is most likely that all these steps would improve Bangladesh's performance in trade and investment. However, how and when these steps are to be taken are subject to further in-depth studies. Such research studies should be carried out on urgent basis both to formulate well-informed policies in a rapidly changing world and to identify implementation priorities for accelerated trade and investment in the era of globalization.

Annex I**RAS/01/061/A/09/01: Regional Initiative on HDRs in Asia and the Pacific –
Globalization and State Capacity****Terms of Reference of National Case Studies**

It is increasingly being acknowledged that the State is a key actor in the development process. It has a major role to play in making globalization work for all; alleviating poverty and income inequality; in advancing human rights and democracy; in protecting the environment and promoting sustainable development. One of the main conclusions, which can be extrapolated from the United Nations Millennium Declaration, is that reinforcing state capacity and promoting good governance is a paramount factor in implementing the Millennium Declaration Goals.

How the public sector is structured, how it is administered and how it operates, as well as the policies that are pursued have a great impact on people's well being. Managing the public sector in today's environment of constant change, particularly in view of globalization, has become an increasingly demanding challenge for national decision makers, policy advisors, service delivery managers and civil servants at large. Reforming public administration systems and strengthening state institutions are key factors in order to enable people to seize the opportunities of globalization. Unfortunately, globalization has benefited only a relatively small number of countries and some regions of the world are still not integrated into the world economy. Even in countries that may have significant advances due to globalization, there are huge disparities in the distribution of its benefits.

Experience has shown that States with effective public administration systems and strong institutions have the capacity to channel globalization to their own advantage and to minimize its costs. Without building strong institutions and effective regulatory frameworks at the national level, including independent and effective judiciaries, strong parliaments, accountable executives, mechanisms of transparency and accountability, and without adequate social policies, including those on health, education, and social security systems, there are too many risks that either a country will be marginalized or it will not be able to shield the most vulnerable groups of society from the negative effects of globalization.

Trade and investments provide opportunities for benefits to both developed and developing countries. In addition to the economic and financial contribution that trade and investments may provide, they are also a growing source of social goods and services. This is particularly true of developing countries especially the least developing countries where domestic resources are not adequate for the economy to provide the social needs of their constituents. The key consideration however is the institutionalization and appropriate application of the channeling of the potential benefits to be derived from trade and investments for social goods and services.

In light of the above, one of the outputs of this Project is a regional report centred on regional and country-level experiences and practices related to state capacity and globalization. The report will focus on three dimensions of state capacity that contribute to the promotion of trade

and investment: (a) administrative capacity of the State, (b) systems of transparency and accountability, and (c) legal and judicial frameworks. For this purpose, six national case studies will be commissioned in the following countries: Bangladesh, China, India, Indonesia, Mongolia and the Philippines. The results of these national case studies will form the basis of the regional report.

Each national case study will address the following topics (this is not intended to be an exhaustive list):

1. Administrative capacity of the State in promoting trade and investment:

- (a) Leadership and strategic planning capacities;
- (b) Human resources development, including negotiating skills required to effectively participate in multi-lateral agreements and regional treaties; policy analysis capacity
- (c) Performance standards for management development
- (d) Public service professionalism
- (e) Information technology in government operations
- (f) Existence of Investment Councils (like in Japan)

2. Transparency and accountability in trade and investment activities:

- (a) Anti-corruption laws
- (b) Conventions against cross-border corruption
- (c) Agencies and/or institutions
- (d) Enforcement mechanisms

3. Legal and judicial framework:

- (a) Regulatory framework for trade and investment
- (b) Property rights laws
- (c) Mechanisms to protect property rights
- (d) Independence of the judiciary
 - 1. Training and recruitment process
 - 2. Appointment and term in office
 - 3. Codes of Ethics

It would also be useful to provide some information on the overall structure and mechanisms of access to justice for the poor (for example, public legal assistance).

The final outline will be discussed with each identified national consultant by DESA prior to the preparation of the study. Consultants will be given six months to prepare their respective studies with the first draft (in electronic form – PC version of Microsoft Word) to be submitted at the end of the fourth month of the contract. The paper should be between 20 and 30 pages at 1.5 line spacing, excluding tables and graphs. Each consultant will have an opportunity to present his/her own findings at a Senior Policy Workshop in the region to be jointly organized by DESA and UNDP. The workshop is tentatively scheduled for February-March 2003. Each of the national case studies will become the property of the Project.

EXPORT POLICY 1997-2002

The Export Policy 1997-2002 has been designed to operate in the imperatives and opportunities of the market economy with a view to maximising export growth and narrowing down the gap between import payment and export earning. The principal objectives of this policy are:

- To achieve optimum national growth through increase of export in regional and international market
- To narrow down the gap between the country's export earning and import payment through achievement of the export targets
- To undertake timely steps for production of exportable goods at a competitive price with a view to exporting and strengthening existing export markets and making dent in new markets
- To take the highest advantage of entering into the post Uruguay liberalised and globalised international market
- To make our exportable items more attractive to the market through product diversification and quality improvement
- To establish backward linkage industries and services with a view to using more indigenous raw materials, expand the product base and identify and export higher value added products
- To simplify export procedures and to rationalise and solidify export incentives
- To develop and expand infrastructure
- To develop trained human resources in the export sector
- To raise the quality and grading of export products to internationally recognised levels.

The following strategies shall be undertaken to attain the objectives of the export policy 1997 - 2001:

- Simplifying export procedures, and helping the private sector achieve efficiency.
- Enhancing technological strength and productivity and facilitating reduction of cost and attaining internationally accepted standard of quality of exportable products and thereby consolidating their competitiveness.
- Ensuring maximum use of local raw materials in the production of export goods and encouraging establishment of backward linkage industries.
- Participation in the international trade fairs, specialised fairs, single country exhibitions abroad and also sending out trade missions, with a view to consolidating our position in the existing market and creating new markets.
- Encouraging export of new category high value added readymade garments and also encouraging the concerned trade associations for establishment of a Fashion Institute.

- For promotion of high value added leather and leather goods export: providing various facilities including bonded warehouse facilities for import of materials such as raw hides, pickled, wet blue, crushed and finished leather, components and chemicals etc. to 100% export oriented leather industries.;
- For promotion of export of shrimp: Extension and modernisation of traditional/semi-intensive method of shrimp cultivation and ensuring quality as per buyer's requirements.
- For promotion of export of jute and jute goods: Undertaking extensive publicity of jute and jute goods as environment-friendly natural fibre and diversification of the uses of jute products.
- For promotion of export of tea undertaking programmes for establishing brand name and developing linkage with established blending and distributing agents.
- For promotion of export of agro-based products: undertaking programmes for raising quality standard and expansion of market.
- For the promotion of export of electrical and electronic goods (including computer software and data entry): Building and ensuring conducive infrastructure.
- For the promotion of export of engineering consultancy and other services and sub-contracting involving, in a bigger way, Bangladesh missions abroad obtaining contracts.
- Organising regularly international trade fairs and product-specific fairs with the country.
- Making appropriate development and expansion of infrastructure conducive to export.
- Making arrangements for necessary technical and practical training for development of skilled manpower in the export sector.
- Ensuring maximum utilisation of financial and other assistance extended by the World Trade Organisation to the Least Developed Countries
- Extending technical and marketing assistance for development of new products and for finding appropriate marketing strategies.
- Taking necessary steps to assist procurement of raw materials by the export-oriented industries at world price.

Export Promotion Councils/Committees

A National committee on export has been formed. The highest level committee on export promotion is headed by the Honourable Prime Minister and consists of the Honourable Ministers for Foreign Affairs, Finance, Commerce and Industries, Planning, Jute and Textile as well as senior government officials and representatives of important trade associations. The committee reviews the export situation, provides necessary directions and readily resolves problems. For immediate attention and action on export related problem a task force has been formed under the chairmanship of the Honourable Minister for Commerce. With a view to exchanging ideas with Chambers of Commerce and Industries, Exporters' Associations and private sector organizations in formulating export policy and strategies, and up lamenting policy decisions an export council has been formed. A task force shall also be formed to recommend practical measures for export increase and monitoring the implementation of incentives and facilities of thrust sector and crash programme items.

Commodity Councils

Commodity Councils shall be formed for jute, tea, shrimp, readymade garments and leather & leather products.

Thrust Sector

Leather and leather goods industries, high and high value added readymade garments, computer software and agro-processing sectors have been identified as thrust sectors in this export policy. Although the leather and leather goods sector has enormous export potential the sector has not been able, till date, to achieve desired results. On the other hand, the readymade garments sector is expected to stage a breakthrough in the export of high-priced, high value added garments of newer categories after having survived successfully the initial phase of exporting low-end garments. Like wise computer software and agro-processing sectors could not record the desired level of export through the sectors offer bright prospects for earning foreign exchange. These four sectors have been declared, 'Thrust Sectors', in this policy to ensure priority with the following lines of actions:

Leather & Leather Goods-

Leather manufacturing units shall be modernised in order to enable them to produce increased quality of finished leather out of raw hides. With a view to reducing cost of production, steps shall be taken to establish accessories industries for producing necessary chemicals and other inputs within the country. The existing Leather Technology Institute shall be modernised for use as a 'Common Facilities Centre' for the country's leather units. Necessary credit facilities shall be extended for setting up of leather goods industries and efforts for marketing the produces shall be strengthened. Cluster industries comprising small units of leather goods factories shall be set up with a view to generating employment. A 'Leather Council' shall be formed. Industrial units having no bonded warehouse at the same time not interested to avail of duty draw back facilities shall be entitled to cash benefit in lieu of duty drawback. Import of raw hides including wet blue and pickled leather, shall continue with the prevailing customs duty (2.5%) and import licence

fee (2.5%) leviable on the importation of raw leather for three years. Uniform policy on bank loan as regards criteria and rate of interest shall be followed for credit to leather sector. The total credit excluded to the leather sector shall be brought under a single bank and export will also be effected through that designated bank. After careful revision of the overall situation prevailing in the leather industries, the time limit for export of crust leather has been extended up to the year 2000. Facilities for BMRE and other transformation process shall be made available to all tanning units to enable them to switcher by 2000, to processing crust/finished leather from wet blue leather.

Readymade Garments-

All out efforts would be made and steps taken for production and export of high priced readymade garments in the light of the prevailing market demand. Immediate steps shall be taken to establish a Fashion Institute pending establishment of the Fashion Institute measures will be taken, under special arrangements, to extend expert services to match the actual demand. Liberal credit may be considered for capacity building and hiring technology for producer of high quality garments.

Computer Software:

For the development of human resources in the software information of computer science, courses in all universities including B.I.T. and Polytechnic Institute and selected colleges shall be considered similarly for having a pool of skilled and trained instructors basic computer scheme at graduation level may be introduced. An Information Technology Village making multifaceted facilities shall be established as part of infrastructure development for promotion of export in this sector. As a fillip to effective software marketing appropriate provisions on protection of intellectual imports shall be incorporated in the existing Copyright Act.

Agro Processing:

For the development of the agro-processing industries 'Hortex Foundation' has already been established. Development activities of this sector under the Foundations programmes will go on.

Export Incentives:

In the light of the objectives and strategies of the Export Policy 1997-2002, several new incentives and facilities have been made available to the exporters. Besides, some existing incentives have been modified and improved to make them more workable. The rest of the existing facilities and incentives will remain unchanged. The incentives as offered are enumerated below.

Fiscal Incentives:

Restructuring of the Export Credit Guarantee Scheme (ECGS): At present, there are four schemes, namely, the Export Credit Guarantee (Pre-shipment), Export Credit Guarantee

(Post-shipment), Export Payment Risk Policy (Comprehensive Guarantee) and Whole Turnover Pre-shipment Finance Guarantee, available under the Export Credit Guarantee Scheme (ECGS) covering risks on export credit as well as probable commercial and political risks occurring abroad.

Convertibility of Taka:

Taka has been made convertible in the current account in lieu with the policy of export-led growth in the liberalised world market. As a result, earning from the trading account shall be freely convertible into foreign exchange for import of goods (barring a few banned items). Under this arrangement, exporters shall be allowed to retain their foreign exchange earnings in their respective foreign exchange accounts gradually at higher proportion.

Utilization of Foreign Exchange by Exporters :

- So long exporters were allowed to retain 20% of their FOB earnings in their respective foreign currency accounts in US dollar or Pound Sterling. From now on they will be entitled to retain either 40% of such earning or at a rate fixed by the government from time to time on proper review. However, in cases of export products where the import contents used in the manufacture of such items are relatively high (such as, naphtha, furnace oil, bitumen and other petroleum products, readymade garments and electronic goods) and in the case of export of services (legal advice, consultancy and similar professional services), the exporters concerned will be entitled to retain only 7.5% of their FOB export earnings. Immediately on realisation of export proceeds, the concerned banks will credit the exporters' foreign currency account in proportion to their respective entitlements. Exporters may utilise this foreign exchange for bona fide business purposes, namely, undertaking business trips abroad, participating in export fairs and seminars, importing raw materials, machinery and spares and even setting up overseas business offices. Foreign exchange may also be kept in the renewable fixed deposit account which will bear interest at the rate of 10% p.a.

Export Promotion Fund (EPF):

The following assistance and support would be provided out of the Export Promotion Fund to producers/exporters of new and non-traditional items including those under the crash programme for product development and product and market diversification:

- (a) Venture capital on easy terms and low interest rates
- (b) Assistance in obtaining foreign technology and consultancy for product development and diversification
- (c) Assistance in fielding marketing missions abroad and participating in international fairs for market compatibility of products
- (d) Assistance in Establishing Sales and Display Centres abroad and extending warehousing facilities
- (e) Assistance for participation in overseas training programmes on product development and marketing help develop technical skill and marketing expertise

- (f) Assistance in any other activity related to product and market development
- (g) Loan from GoB banks at a rate of interest of 7% p.a. for establishing factories as well as for operating capital (including LC money).

Extension of Time-limit for adjustment of Export Credit from 180 days to 270 days.

At present export credit is allowed at concessionary rate of interest for a maximum period of 180 days. A section of exporters however cannot enjoy the benefit of such concessionary credit facility due to structural characteristics of certain commodities. Under such circumstances, the time-limit for repayment of export credit has been extended from 180 days to 270 days in case of export of frozen food, tea and leather by way of relaxing the condition of submission of firm contract L/C, and considering working capital as export credit. The time limit for export credit under the Export Promotion Fund in certain cases shall be extended up to 270 days.

Export Financing:

- (a) Introduction of Credit Card: In view of the risks involved in carrying of cash foreign exchange/travellers cheque while undertaking business trip abroad, the practice of issuing credit cards to exporters against their respective foreign exchange entitlements will continue.
- (b) Limit of Export Credit: Exporters may obtain export credit from commercial banks up to 90% of the value of their irrevocable letter of credit/confirmed contract.
- (c) Credit to first time applicant: With a view to encouraging the new comers to enter into export trade the commercial banks will consider their credit proposals on a priority basis
- (d) Monitoring the Over-all flow of export credit: Bangladesh Bank will take necessary steps to ensure that normal flow of export credit is maintained. The C.C. limit of the exporters will be determined only on the basis of their export performance in the preceding year. This will not be subject to any general credit squeeze measure. Such credit facilities will also be available to new contracts
- (e) Overdue interest: No overdue interest will be charged by the commercial banks in cases of export against irrevocable letter of credit on sight payment basis. In such cases, however, exporters will be required to submit necessary export documents within the specified time.
- (f) Export credit cell: As special export cell to supervise and monitor the export financing has been functioning in Bangladesh Bank. Besides, in every commercial bank a special unit has been created for processing exclusive export credit proposals.
- (g) Export monitoring: A high-powered committee has been functioning to assess the export credit requirement and to review and monitor the flow of export credit to ensure that adequate and timely credit are made available to the exporters.

- (h) Inland back-to-back letter of credit: Authorised dealers may establish inland back-to-back letter of credit in favour of local suppliers of raw materials, against the corresponding master letter of credit.

Rebate on insurance premium:

Special rebates are allowed on premium covering fire and marine insurance to export-oriented industries (non-traditional items). Such rebates will be available also to the exporters of these items on shipment of goods.

- Incentives for export of non-traditional industrial products: Incentives will be provided for export of non-traditional/new industrial products, especially where value addition is 50% or more.
- Similarly, export firms having exceeded the proportionate export target set for that product-sector will be considered for incentives facilities.

Import facilities of raw materials for export-oriented leather industries:

To encourage increase in export of finished leather at competitive price, customs duty and import licence fee leviable on import of wet blue and pickled leather by export-oriented leather industries will be exempted.

Income tax rebate on export earnings:

Previously, 50% rebate on taxable income generated from export earning was admissible under the Finance Act every year. From now on 50% of the income tax on any income on export will be exempted through incorporation of a new provision in the Income Tax Ordinance itself rather than as a temporary relief hitherto granted under the Finance Acts on a yearly basis.

Lowering the rate of AIT at source :

Tax at source on all export earnings shall be deducted at the rate of 0.25%.

Payment of duty drawback through commercial banks :

For quick disbursement of duty drawback with a view to giving a competitive edge to our export in the international market, payments will be made by the commercial banks immediately on receipt of foreign exchange against all exports except the deemed exports, determined on the basis of the principles laid down by the National Board of Revenue.

Bonding facilities for export-oriented industries:

Bonded warehouse facilities have generated special enthusiasm among the import-led export-oriented industries. To sustain such interest the procedures for providing bonded warehouse facilities to such industries will be further simplified, and will be extended to all industries recognised as 100% export-oriented industries.

Duty-free Import of capital machinery by export-oriented industries:

Presently, items produced in the Export Processing Zones (EPZ) are entirely exported. Likewise 100% export-oriented industries located elsewhere in the country are also required to export their produces entirely from this point of view as the objectives and functions of the industries of both locations are identical. Duty free import facility of capital machinery has also been extended to the 100% export oriented industries out side the EPZ. As for export-oriented garment factories also, import duty is nil on import of capital machinery, fabric and accessories

Alternative facilities in lieu of customs bond or duty drawback for export-oriented domestic textile sector and garments industries:

During fiscal year 1995-96, the government, in an attempt to give incentive to the domestic textile and garments sector, allowed 25% compensatory assistance to the industries of this sector. In future also, these sectors will continue to receive reasonable facilities. Such compensatory assistance will also be admissible to a composite unit producing both fabric and garments or to the manufacturer only in case the exporter is not the producer of the local fabric provided no bonded warehouse or duty drawback facilities were availed of for such importation. If, however, the exporter is an intermediary buyer, the facility will go to the original producer of goods.

Tax holiday:

To encourage a rapid growth and attract entrepreneurs to export oriented industries tax holiday incentive will continue till the year 2000 in consonance with the Industrial Policy. The industrial enterprises enjoying the benefit of tax holiday shall be exempted from deduction of tax at source. After 2000, decision on tax holiday will be taken in the light of the government policy of that period.

Duty drawback scheme:

- (a) Exporters of manufactured products are entitled to draw back after the export is effected.
- (b) The rate of duty drawback payable on export of all traditional and non-traditional items will berenewed at regular intervals and more and more new products will be brought under the duty drawback system.

Value Added Tax (VAT) on packaging materials:

Should jute clothes and bags be used in the packing of export goods VAT paid on such products will be refunded.

Simplification of the procedure for refund of VAT:

To maintain competitiveness of export prices, VAT paid on export support services, namely, C&F service, telephone, telex, fax, electricity, insurance premium, shipping agent's commission/bill will be refunded under a simplified procedure.

Reduced airfreight for export of all crash programme items including fruits and vegetable:

- (a) Airfreight at lower rate will be changed for export of all crash programme items including fruits and vegetables.
- (b) Withdrawal of royalty from foreign airlines extending cargo services.

Settlement of trade disputes:

The Export Promotion Bureau will initiate steps for settlement of trade disputes through conciliation.

Recognising small and medium size agricultural farms as Industry

To encourage production of fruits, vegetables, fresh flowers, orchid etc. for export, agricultural farms of a minimum size of 5 acres have been recognised as 'Industry' and become eligible for all facilities of export-oriented industries.

Research and development

Marketing of products in the international market is becoming increasingly competitive due to globalisation and liberalisation of trade. To sustain in the face of such stiff competition, continuous quality improvement and market adaptability have become necessary. As for this purpose, industrial enterprises should be equipped with their own Research and Development (R & D) facilities.

Commodities under the Crash Programme

(a) At present toys, luggage and fashion items, electronics, leather goods, diamond cutting and polishing, jewellery, silk fabric, stationery goods, cut and artificial flowers and orchid, gift items, vegetables and engineering consultancy and services have been included under the crash programme. In order to boost production and export, promote goods/services under the crash programme, soft term credit will be provided for product development, market adaptation, and marketing. In addition assistance will be provided for market exploration obtaining joint venture. Fresh flower, fruits and bamboo, cane and wooden furniture shall be included in list of crash programming items apart from the items listed above.

(b) In order to increase the export of agro-based products, necessary assistance will be provided to the high value added agricultural products.

Participation in International Trade Fairs, Organising Single Country Exhibitions and undertaking market development programmes abroad

As part of export promotion Bangladesh regularly takes part in international trade fairs, organises single country exhibitions and undertakes market development programmes in different countries

of the world Private enterprises and organisations are encouraged to take part in such export-oriented events and are accorded various incentives. Besides, programmes to organise single country exhibitions in different countries through combined public and private initiatives will continue.

Strengthening training on export-related matters

Knowledge about the facilities and incentives available in the export trade leads to intensified export activities in the country. To apprise the country's exporters of the various facilities/incentives available, training sessions, seminars and workshops in different parts of the country under the National Export Training Programme of the Export Promotion Bureau will continue to be organised.

Establishment of World Trade Centre

The government has decided to establish a World Trade Centre in Dhaka in a bid to strengthen infra-structural facilities for the development and expansion of export. An area of 6.12 acres near Hotel Sonargaon has been earmarked for this purpose.

International Trade Centre

Simultaneously with the establishment of a World Trade Centre in Dhaka, it has been decided to set up, in Chittagong, an International Trade Centre at private initiative. Necessary land for this purpose has already been allotted.

Organising Local Fairs of International Standard

Organising trade fairs of international standard plays a very important role in the promotion of exports. Trade fairs, help product familiarisation on the one hand and establishment of closer contacts between foreign buyers and local sellers on the other hand. Considering this aspect general as well as specialised trade fairs of international standard will be organised within the country apart from participating in general and specialised International Trade Fairs abroad.

EXPORT PROCESSING ZONES (Source: Export Promotion Bureau's Website)

Introduction

In order to stimulate rapid economic growth of the country, particularly through industrialisation, the Government has adopted an 'Open Door Policy' to attract foreign investment to Bangladesh. The Bangladesh Export Processing Zones Authority (BEPZA) is the official organ of the Government to promote, attract and facilitate foreign investment in the Export Processing Zones.

The primary objective of an EPZ is to provide special areas where potential investors would find a congenial investment climate, free from cumbersome procedure. Two EPZs, one in Chittagong and the other one near Dhaka are now operational.

Following information is provided to the potential investors for investment in EPZs of Bangladesh:

Eligible Investors

100% foreign owned including Bangladesh nationals ordinarily resident abroad (Type-A), Joint Venture between foreign and Bangladesh entrepreneurs resident in Bangladesh (Type-B). 100% Bangladesh entrepreneurs resident in Bangladesh (Type-C).

Mode of Investment

Investment in convertible foreign currencies by foreign investors. Option to establish public/private limited companies or sole proprietorship/partnership concerns.

Investment Guarantee

Foreign Private Investment (Promotion and Projection) Act 1980 secures all foreign investment in Bangladesh. OPICs (Overseas Private Investment Corporation, USA) insurance and finance programs operable. Security and safeguards available under Multinational Investment Guarantee Agency (MIGA) of which Bangladesh is a member. Arbitration facility of the International Centre for the Settlement of Investment Dispute (ICSID) available.

Telecommunications

Telex, fax and International Dialing Services connected through satellite system available.

Communications

Adequate sea, rail, road and air communication services available.

ONE WINDOW SAME DAY SERVICE AND SIMPLIFIED PROCEDURE

BEPZA

- sanctions projects generally within one week.
- Issues required Import/Export Permits.
- Issues required Work Permits for foreign nationals working in EPZ enterprises.
- provides required infrastructure facilities in EPZs.
- Offers 'One Window Same Day Service' to investors in EPZs.

PRODUCTION-ORIENTED LABOUR LAWS

Law forbids formation of any labour union in EPZs. BEPZA is vested with responsibility to administer labour matters for all enterprises in EPZs.

Minimum Wages (Monthly)

- Apprentices/Trainees US \$. 22.00
- Unskilled US \$. 38.00
- Sem-skilled US \$. 45.00
- Skilled US \$. 63.00

Other benefits include Conveyance Allowance, House Rent, Medicval Allowance and Festival Bonus.

- Working Hours-
 - 48 hours a week in a factory
 - 40 hours a week in an office
 - 5 working days a week.

Employees' Leave

- 10 days Casual Leave
- 17 days Annual Leave.

FACILITIES AND INCENTIVES

FACILITIES:

- a. Land and factory building are available on rental basis.
- b. Electricity, water, gas and telecommunications are provided by the zones.
- c. Import and export permits are issued by EPZ within 24 hours.
- d. Work permits are issued by BEPZA.
- e. EPZ is a secured and protected area.
- f. Recreational facilities are available.
- g. Availability of foodstuff and beverage on payment of nominal tax for foreigners working in EPZs.
- h. Potential investors are required to deal only with BEPZA for investment and all other operational purposes.

INCENTIVES

Fiscal:

i. Tax exemption-

- a. Tax holiday for 10 years
- b. Exemption of income tax on interest on borrowed capital
- c. Relief from double taxation subject to bilateral agreement
- d. Complete exemption from dividend tax for tax holiday period for foreign nationals
- e. Exemption of income tax on salaries of foreign technicians for 3 years subject to certain conditions.

ii. Duty Free Import and Export-

- a. Duty free import of machinery, equipment and raw materials
- b. Duty free import of three motor vehicles for use of the enterprises in EPZs under certain conditions
- c. Duty free import of materials for construction of factory buildings in the zones
- d. Duty free export of goods produced in the zones.

Non-Fiscal:

i. Investment

- a. All foreign investments secured by law
- b. No ceiling on extent of foreign investment
- c. Full repatriation of profit and capital permissible
- d. Repatriation of investment including capital gains, if any, permissible
- e. Remittances allowed in following cases:
 - Savings from earnings, retirement benefits, personal assets of individual on retirement/termination of services
 - Approved royalties and technical fees
 - No permission for expansion of the project or product diversification.

ii. Project Financing and Banking

- a. Off-shore banking facilities available
- b. Local and international banking facilities also wide open.

iii. Import

- a. Freedom from national import policy restrictions
- b. Import of raw materials also allowed on Documentary Acceptance (DA) basis
- c. Advantage of opening back to back LC for certain types of industries for import of raw materials
- d. Import of goods from the domestic tariff area permissible.

iv. Project Implementation

- a. Re-location of existing industries from one zone to another within the country permissible.

v. Operation

- a. Sub-contracting within EPZ allowed
- b. Inter-zone and intra-zone export permitted
- c. All customs formalities done at the gate site of the respective factory building within the zone
- d. Permission for import/export given on the same day
- e. Repairing and maintenance of machinery and capital equipment from domestic tariff area allowed.

vi. Employment

- a. Liberal employment of foreign technicians/experts allowed
- b. Foreigners employed in the zones enjoy equal rights similar to those of Bangladesh Nationals
- c. Law forbids formation of any labour union in the zones. Strike within the zones prohibited.

vi. Support Services

Customs Office, Post Office, Medical Centre, Fire Station, Police Station.

DHAKA EXPORT PROCESSING ZONE

Location: Savar

35 km from Dhaka City Centre

25 km from Zia International Airport, Dhaka

Zone Area: 58 hectares (142 acres)

Land

Total number of plots: 100

Size of each plot: 2000 sq. m.

Tariff: US \$. 1.50/sq. m./yeart

Standard Factory Building

Space: 72,000 sq. m. in 16 blocks

Tariff: US \$. 2.00/sq. m./month

Warehouse

Space: 2,300 sq. m.

Tariff: US \$. 2.00/sq. m./month

Utility Services

Water Supply: DEPZ gets water from its own water supply system

Storage Capacity: 4,520,000 litres/day

Tariff: Tk. 13.56 per sq. m.

Power Supply: 11 KV, 3-phase, 50 cycles

Tariff: Tk. 2.86 per KWH (Industrial Use)

Gas Supply: 136,000 cubic metres/day or 5,667 cubic metres/hour

Tariff: Tk. 3.64 per cubic metre (Industrial Use)

CHITTAGONG EXPORT PROCESSING ZONE

Location: 2.40 km from the Chittagong Sea Port

5.63 km from the main business centre of Chittagong

7.24 km from the Chittagong International Airport

Zone Area: 255 hectares (630 acres)

Land

Total number of plots (planned): 430

Size of each plot: 2044 sq. m.

Tariff: US \$. 1.50/sq. m./yeart

Standard Factory Building

Space: 39,000 sq. m. in 16 blocks

Tariff: US \$. 2.00/sq. m./month

Utility Services

Water Supply: CEPZ gets water from Chittagong WASA

Tariff: Tk. 13.56 per sq. m.

Power Supply: 11 KV, 3-phase, 50 cycles

Tariff: Tk. 2.70 per KWH (Industrial Use)

Gas Supply: CEPZ gets gas from the Titas Gas Field

Tariff: Tk. 3.64 per cubic metre (Industrial Use)

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