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As US-China trade war escalates, India signals better investment protection for trade partners

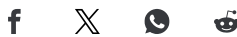
A revamp of the 2016 model BIT was flagged in the Union Budget after multiple Western trade partners cited burdensome norms during ongoing treaty negotiations.

Written by [Ravi Dutta Mishra](#), [Aggam Walia](#)
New Delhi | Updated: February 6, 2025 05:11 IST



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Experts believe that several countries, particularly in the West, may not even be willing to accept the three-year clause and would prefer easier norms. (AP Photo)

Amid an anticipated trade and investment shift away from China following the latest US-China trade war, India has signalled that better protection for foreign investors could be on offer for its trade partners as it begins the groundwork to



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revamp the 2016 model Bilateral Investment Treaty (BIT), which took a conservative stance and favoured the state over investors in [investor-state disputes](#).

A revamp of the 2016 model BIT was flagged in the [Union Budget](#) after multiple Western trade partners cited burdensome norms during ongoing treaty negotiations. India is currently in talks with the UK and the European Union for an investment treaty and is also expected to negotiate a BIT with the European Free Trade Association (EFTA) region, which has committed to investing \$100 billion in India over a 15-year period.

Ajay Seth, Secretary of the Department of Economic Affairs (DEA), told [The Indian Express](#) that groundwork for the BIT revamp has already begun and that the treaty with the UAE, which offers protection for foreign portfolio investors and includes entity-based protection, reflects the new approach towards more investor-friendly investment norms.

“The UAE BIT is already in the public domain. For instance, the model BIT talks about entity-based protection. An entity has to be registered in India. Whereas in the UAE, we have moved over to an asset-based definition. Investment coming through the Foreign Portfolio Investment (FPI) route will also get BIT protection. This is just one example. It could move in that direction, and a review has to be undertaken. Groundwork or homework has started,” Seth said.

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Nestle case & regulatory risks

Prabhash Ranjan, Professor and Vice Dean at the Jindal Global Law School, said that additional protection for investors is needed to attract investment, as investors face high regulatory risks while operating in India, the latest instance being the Nestlé case. In December, Switzerland suspended the Most-Favoured-Nation (MFN) clause in the Double Taxation Avoidance Agreement (DTAA) originally signed between India and Switzerland in 1994.

This decision followed a ruling by the Indian Supreme Court last year, which determined that the DTAA cannot be enforced unless it is notified under the Income Tax Act. As a result, Swiss companies such as Nestlé face higher taxes on dividends.

Ranjan said that most disputes brought against India were due to poor regulations. “If you change tax laws retroactively, as happened with Vodafone, or cancel licences

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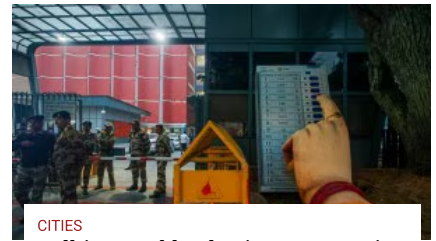


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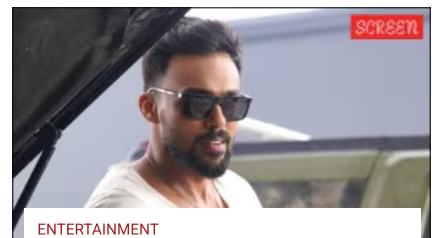


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without following due process, as happened with Devas, and your judiciary takes forever to decide on arbitration awards, what option does the investor have?" Ranjan said.

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Notably, the government had annulled BITs based on older model texts framed in 1993 after receiving adverse judgments in multibillion-dollar disputes in international courts. To prevent this, the model BIT included the clause "exhaustion of local remedies," emphasising state rights over investor rights.

Contention over emphasis on local remedy

One of the key elements in the UAE BIT was that UAE investors in India must exhaust domestic remedies for at least three years before commencing international arbitration, as per the treaty text. This contrasts with the model BIT, which required investors to attempt to resolve disputes through India's legal system for at least five years before seeking international arbitration.

However, experts believe that several countries, particularly in the West, may not even be willing to accept the three-year clause and would prefer easier norms. And much of the negotiations with the EU and UK are held up for years. India has been involved in trade negotiations with the UK for over two years and is yet to reach even close to signing a deal with the EU. In contrast, EU has signed a deal with India's competitors such as Vietnam giving it an advantage over India.

"In my opinion, India should do away with this waiting period requirement completely. What India should introduce is what is known as a fork-in-the-road clause. This essentially means that if an investor has a dispute with the state, they choose whether to submit the dispute to domestic courts or pursue international arbitration. Once that choice is made, it is final and irrevocable," Ranjan said.

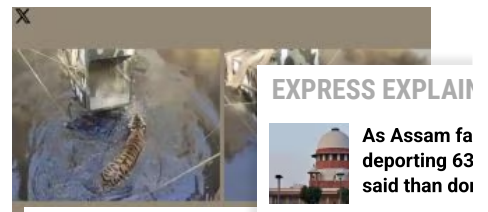
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Ranjan added that with this approach, India can argue that the state is neither stopping investors nor forcing them to go through domestic courts. "Now, it is quite possible that some investors may still opt for domestic courts because they do not want to antagonise the state by pursuing international arbitration. That would serve India's objective as well," he added.



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