A study of legal aspects on Ethiopia-India Trade and Investment relations

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Abstract

According to RUNOKA (2016), "close relationships between Africa and early India have existed for more than two thousand years". India has close relationships with African countries in terms of historical, cultural, geographical, political, economic and commercial aspects.

In this trade relation between the two countries, the chronic trade deficit has remained the dominant feature of Ethiopia's external trade with India. Therefore, economic relations between Ethiopia and India are unequal and asymmetrical. The widening deficits in favor of India need the attention of both governments in order to sustain the trade relationships between the two countries. There is no Ethiopian Investment in India. Indian companies maintained their reputation as being in the top three foreign investors in Ethiopia with newer Indian multinationals marking their presence in Ethiopia.

There are more than 584 Indian companies in Ethiopia with licensed investments of over US$ 4 billion of which about US$ 2 billion is estimated to be on the ground. Indian companies have invested in various sectors like agriculture and floriculture, engineering, plastics, manufacturing, cotton and textiles, water management, consultancy and ICT, education, pharmaceuticals and healthcare. The trade imbalance remains a structural problem in the trade relations between the two countries. Indian agricultural investments in Ethiopia have positive impacts like providing job opportunities for many Ethiopians, technology transfer generate government revenue and bringing foreign currency.

Keywords: *Investment, Trade, laws, India, Ethiopia*

Introduction

Despite the fact that it is the second most populous country in Africa, Ethiopia has one of the fastest-growing economies in the world. In 2014, it was recorded that the country has GDP of 54.8 billion USD, exports amounting to an estimated 4.14 billion USD and imports amounting to an estimated 12.08 billion USD, making its mark in the international market. The country's economy was recorded to have averaged 10.7% growth over the last decade.

The government of Ethiopia has been investing great amounts in critical infrastructure which is the main reason for the country's speedy growth. This development is attracting many foreign investors to the country. After its first multiparty elections in 1995, Ethiopia became an ideal location for business establishments. The adoption of the new constitution led the country into countless developments thus making the country reach the peak of its economy. In a survey done in 2014, it was found out that the Ethiopian agricultural sector has the largest contribution in the economic output of the country comprising a total of 45% of its total output.

Economy of India

The economy of India is characterised as a middle income developing market economy. It is the world's sixth-largest economy by nominal GDP and the third-largest by purchasing power parity (PPP). According to the International Monetary Fund (IMF), on a per capita income basis, India ranked

145th by GDP (nominal) and 122th by GDP (PPP). From independence in 1947 until 1991, successive governments promoted protectionist economic policies, with extensive state intervention and economic regulation. This is characterised as dirigisme, in the form of the License Raj. The end of the Cold War and an acute balance of payments crisis in 1991 led to the adoption of a broad economic liberalisation in India.

Since the start of the 21st century, annual average GDP growth has been 6% to 7%, and from 2013 to 2018, India was the world's fastest growing major economy, surpassing China. Historically, India was the largest economy in the world for most of the two millennia from the 1st until the 19th century. The long-term growth perspective of the Indian economy remains positive due to its young population and corresponding low dependency ratio, healthy savings, and investment rates, increasing globalisation in India and integration into the global economy.

Review of Literature

In the opinion of Gebremehdn & Raju (2016), entrepreneurs influenced by personal factors fancy self-efficacy, locus of control, risk-taking capacity, and need for achievement; environmental factors for instance; information, social network, physical and institutional infrastructure, culture and lastly be demographic variables fancy leg over, age, education status, and experience. Similarly, other entrepreneurship scholars claim that family background, individual psychology, personal values, and social environments determine entrepreneurial success (Ana et al., 2017; Indarti & Rokhima, 2008; Krueger & Brazeal, 1994). Additionally, on the report of World Bank (World Bank, 2015), small firms face greater challenges in obtaining formal financing than large firms; they are much more likely to be rejected for loans and are less likely to have external financing due to a lack of collateral and credit history. In the same fashion, challenges include unfair competition in most industries; the market becoming a global village has posed its own challenges, as well as internal challenges within a firm. Most challenges are not predictable and may catch entrepreneurs unaware (Dea, 2013; Boeker & Wiltbank, 2005).

Habtamu (2020) study found that these days, academic institutions, students and the whole population outnumbered compared with the last 30 years in Ethiopia. As a result, the probability of getting jobs in the government organisation has been cumbersome. Due to these reasons, youths and students are forced to start businesses in the form of unions and small enterprises. There are two big standard factors that can challenge entrepreneurs in Ethiopia. These are, factors related to the entrepreneurs' personal qualities and external factors.

Research Methodology

The research methodology which we have used here is external secondary data research

Ethiopian Trade Agreements

Ethiopia has signed nearly 100 bilateral trade and trade-related agreements. Many of these agreements provide for most favoured nation (MFN) tariff treatment with countries that are already WTO members or are acceding countries. A number of agreements with neighbouring countries deal with transportation-related matters, such as road transport.

Developed countries are Ethiopia's most important trading partners. For this reason, the preferential access that Ethiopia enjoys in developed country markets under programs such as the EU. Everything but Arms and the U.S. African Growth and Opportunity Act is important to Ethiopia.

Ethiopian Bilateral Agreements

Regional Trade Ethiopia is a founding member of COMESA and as part of its commitment to regional integration applies tariffs on imports from COMESA countries that are 10% below the MFN tariff. Ethiopia has not, however, joined the COMESA Free Trade Area, which provides for elimination of duties on trade between COMESA members. Ethiopia has signed a regional agreement on economic integration with the Inter-Government Authority on Development (IGAD), which is composed of Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan, and Uganda. Ethiopia is also a member of the African Caribbean and Pacific European Union (ACP–EU) Economic Partnership Agreement and participates in negotiations to establish an Economic Partnership Agreement with the EU. However, regional trade does not account for a large percentage of Ethiopia's total trade. Because of chat exports, Djibouti accounts for 22% of Ethiopia's exports, but aside from chat, Ethiopia's recorded trade with its neighbours is relatively insignificant. State Trading Ethiopia still has a number of State enterprises engaged in the production and commercialization activities of goods and services. Ethiopian law provides that certain State enterprises or agencies have the exclusive right to import specified products. For example, the Petroleum Enterprise has the monopoly to import and distribute petroleum products; the Ethiopian Telecommunication Corporation has the exclusive right to import communications apparatus; the National Lottery Administration has the exclusive right to import gaming machines, lottery tickets, and games; the Ministry of Defence alone may import armaments, dynamite, and fire guns; and only the Ethiopian Tobacco and Cigarette Enterprise may import cigarettes.

Ethiopian Trade Laws and Investment Laws in Ethiopia

Both foreign and domestic private entities have the right to establish, acquire, own, and dispose of most forms of business enterprises. Land for investment purposes is obtained on lease and with prices set by periodic auctions. Land leasehold regulations vary in form and practice from region to region. Nonetheless, they all are best in attracting investments. Land could be obtained by paying nominal or fair charges. In some priority investment areas, land could be availed even free of charges. There are also industrial zones with adequate infrastructure facilities.

Labour Laws in Ethiopia

Ethiopia enjoys labour peace. The right to form labour associations and to engage in collective bargaining is granted by law. Workers who provide critical services like health care are not permitted to strike. The labour law has been revised to provide for strong work culture, discipline and efficiency while safeguarding basic labour rights.

Partnership Laws in Ethiopia

Foreign firms are welcome to invest in privatization efforts of the Ethiopian government. Since Ethiopia has launched the new market-oriented Economic Policy in 1992, it has embarked upon the privatization of state-owned enterprises as an integral part of the broader macro-economic reform. Domestic and Foreign investors are encouraged to participate in the privatization process. In order to accomplish the privatization process, the former Ethiopian Privatization Agency is fused with the Public Enterprises Supervising Authority and has been re-established as Privation and Public Enterprises Supervising Authority (PPESA) since August 2004. Under PPESA there are well over 110 public enterprises for partnership and privatization in almost all sectors of the economy.

PPESA is also working towards attracting foreign private partners for joint venture, management contract and lease arrangements with public enterprises. This is in addition to sale option for public enterprises. PPESA is looking for domestic/foreign public/private partners for most of the public enterprises it is supervising. In this regard, textile and garment, leather & leather products, food processing, construction and agro-industries are given priority for partnership. Those who are capable, experienced and committed investors are seriously looked for partnership. It is believed that working with the existing enterprises would reduce investment requirement and risks to new partners. There is also huge profit potential to be earned by proper utilization of time and resources. Of course, there is a challenge to be overcome.

Competition Law and Policy in Ethiopia

The Trade Practice Proclamation (Proclamation No. 329/2003) lists anti-competitive practices as ¯price fixing, collusive tendering, and consumer segmentation, allocation of quotas of production and sales, and refusal to deal or sell. Although the Commercial Code of Ethiopia contains articles on competition issues, such as Articles 130–134; the Commercial Code focuses more on preservation of the good will of a competitor. The new proclamation is relatively comprehensive and seeks to address competition problems arising between business competitors and between businesses and consumers. Competition policy issues are fully discussed in the section on Competition Law and Policy. The Trade Practices Proclamation identifies dumping as an anti-competitive practice, but the Proclamation does not require investigations to follow the procedures established by WTO rules. Ethiopia currently has no other trade remedies legislation.

Institutions Helping in Implementing the Law

Under the Ethiopian Constitution, the House of People's Representatives is the highest authority of the Federal Democratic Republic of Ethiopia (FDRE) and its authority includes the power to enact specific laws on inter-state commerce and foreign trade. The highest executive power is vested in the Prime Minister and the Council of Ministers. The Council ensures the implementation of laws and decisions adopted by the House of People's Representatives, and is also responsible for formulating and implementing economic and foreign policies. The Ministry of Trade and Industry (MoTI) has lead authority for implementing trade policies. Article 35 of the Commercial Registration and Business Licensing Proclamation No. 67/ 1997 provides that State institutions are to consult with MoTI before making policy decisions that may affect commercial activities, and MoTI may propose policies to promote trade and to coordinate trade policy. In addition to MoTI, the Ministry of Agriculture and Rural Development, the Ministry of Revenues, and the Ministry of Foreign Affairs are also responsible for implementing laws related to foreign trade. The Investment Authority, Quality and Standards Authority, and Export Promotion Agency also have roles in international trade, and are accountable to MoTI. Monetary policy, including policies on the availability of foreign exchange for international trade activities, are initiated by the Ministry of Finance and Economic Development, in cooperation with the NBE and related organizations. The Ministry of Revenues is the principal entity for initiating and implementing policies with respect to customs and duties, and the ECuA is accountable to the Ministry of Revenues.

Institutions Supporting the Law of Trade

This Report's section on Trade in Goods and Services details the institutions that support the implementation of trade policies in Ethiopia. Of particular note is the role of donors in supporting Ethiopia WTO accession. Donors, in consultation with the WTO Affairs Department of MoTI, have developed a WTO Accession Roadmap that identifies the activities that donors are planning to support WTO accession. The formulation of effective trade policies requires meaningful consultations with the private sector and other stakeholders. Although there are some public/ private sector consultation mechanisms in place, a more comprehensive and more elaborate system is probably needed to ensure effective and meaningful consultations. Fortunately, donors are supporting the strengthening of private sector institutions, such as the national and city Chambers of Commerce and other associations (e.g., Ethiopian Women Exporters Association), and this support should enable private sector associations to provide more meaningful contributions to the policy.

Social Dynamics Relating to the Law of Trade

The Government of Ethiopia places a high priority on the promotion of Ethiopian exports. Although supply-side constraints such as the transportation infrastructure and competitiveness of producers pose the biggest challenges to achieving the Government's export promotion goals, improving the policy environment for trade can make a positive contribution. WTO accession and the Economic Partnership Agreement (EPA) negotiations with the EU both offer the Government major opportunities for obtaining and focusing donor support on efforts to improve the trade policy environment. Both the private sector and the Government are becoming increasingly aware of the importance of these two negotiations. Fortunately for Ethiopia, the reforms and policy change that Ethiopia needs to undertake to join the WTO are the same reforms it needs to undertake to succeed in, and benefit from, the EPA negotiations, formulation process.

New Investment Regulations of India

Over the last several years, the rules relating to foreign direct investment ("FDI") in India have been progressively liberalized Companies and entities in most sectors can be 100% foreign owned and investments in several sectors can be made through the "automatic route". Historically, investors from only two of India's neighboring countries – Pakistan and Bangladesh – have been subject to stricter investment rules (requiring all investments to be approved by the Government). Notably, investors from the People's Republic of China ("PRC") have not been subject to such strict scrutiny other than in sensitive sectors such as telecom, defence and railway infrastructure. Based on Government data for the period between April 2000 and December 2019, PRC originated investments account for more than 99% of all foreign direct investments made by investors from countries sharing a land border with India. This does not include investments by PRC-based investors that are routed through investment gateways such as Mauritius and Singapore.

Under the Revised Rules, the following transactions will require prior Government approval (even if the sector is an "automatic route" sector)

1] Direct Acquisitions: any acquisition of a stake in an Indian entity by an Affected Investor, or

2] Indirect Acquisitions: any transaction that will result in an Affected Investor becoming a beneficial owner of an Indian entity.

Prior Government approval must also be obtained for any transfers of existing foreign investment, which would result in an Affected Investor securing beneficial ownership of an Indian company.

Foreign Incentives Provided in Ethiopia

To encourage private investment and promote the inflow of foreign capital and technology into Ethiopian, the following incentives are granted to both domestic and foreign investors engaged in areas eligible for investment incentives.

1. Customs Import Duty

One hundred percent exemption from the payment of import customs duties and other taxes levied on imports is granted to an investor to import all investment capital goods such as plant machinery and equipment, construction materials as well as spare parts worth up to 15% of the value of the imported investment of capital goods provided that goods are not produced locally in comparable quantity, quality and price. Exemptions from customs duties or other taxes levied on imports are granted for raw materials necessary for the production of export goods.

Investment Protection and Guarantee In Ethiopia

The following legal protection and guarantees are available under the Ethiopian legal system, to protect interests of an investor investing its assets on Ethiopia. The constitution of Ethiopia and the investment proclamation recognizes and protects private property of investors, foreign investors can repatriate their profit, dividends, interest on external loans, etc. Ethiopia is a member of the Multilateral investment Guarantee Agency (MIGA), a world Bank affiliate, which issues guarantee against non-commercial risks in signatory countries; Ethiopia is a member of the world Intellectual Property Organization (WIPO), Ethiopia signed the world Bank treaty, "The International Convention on Settlement of Investment Disputes Between States and Nationals of Other States (ICSID)".

Foreign Direct Investment Policies of Ethiopia

Foreign direct investment is one of the most striking features of the global economy today. The rapid growth in FDI over the last few decades has spurred a large body of empirical literature to examine the determinants and the growth enhancing effects of FDI.

The effects of FDI can be wide ranging since FDI typically encompasses packages of capital as well as technical, managerial and organisational know-how. FDI is particularly important for developing countries since it provides access to resources that would otherwise be unavailable to these countries. Its contribution to economic development and therefore poverty reduction comes through its role as a conduit for:

1] Transferring advanced technology and organizational forms to the host country;

2] Triggering technological and other spillovers to domestically owned enterprises;

3] Assisting human capital formation;

In their attempt to attract Foreign Direct Investment (FDI), most African countries have liberalised trade and attempted to create enabling environment in recent decades. Ethiopia, like many African countries, took some steps towards liberalising trade and the macroeconomic regime as well as introducing some measures aimed at improving the FDI regulatory framework. This paper attempts to study the nature and determinants of foreign direct investment in Ethiopia over the period 1974-2001. The study gives an extensive account of the theoretical explanation of FDI as well as reviewing the policy regimes, the FDI regulatory framework and institutional set up in the country over the study period. It also undertakes empirical analysis to establish the determining factors of FDI in Ethiopia. Our findings show that growth rate of real GDP, export orientation, and liberalisation, among others, have positive impact on FDI. On the other hand, macroeconomic instability and poor infrastructure have negative impact on FDI. These findings imply that liberalisation of the trade and regulatory regimes, stable macroeconomic and political environment, and major improvements in infrastructure are essential to attract FDI to Ethiopia.

Major Amendments to the 2020 Investment Proclamation and Draft Investment Regulations

One of the major changes the Investment Proclamation has brought is the restoration of the “negative listing” of investment areas that are open to foreign investors enabling foreign investors to enjoy a greater opportunity with regards to the areas that they can invest in. The negative listing approach employs the opening of all economic sectors to FDI except those that are expressly reserved /restricted by law. This approach aspires to cope with the ever-changing technological evolutions and pace of business in a globalised economic sphere. This approach is a reversal of the 2012 Investment Proclamation and Regulations which adopted the “positive listing” method that was restrictive by design. Under this method, all investment activities open for FDI were positively listed and foreigners could not directly invest in areas not specifically appearing on the list. This has now changed into a negative listing whereby foreigners can invest in all areas of investment except those explicitly reserved.

As part of the negative listing approach, the Investment Proclamation provides three categories of investment areas. These are areas exclusively reserved for joint investment with government, areas exclusively reserved for domestic investors and areas exclusively reserved for joint investment with domestic investors. All other sectors not reserved in the aforementioned sectors will be open for foreign investment. The Investment Proclamation avoided a category of sectors that will exclusively be held by the government and introduces a new category of sectors in which joint investment with domestic investors will be mandatory. Some of the areas of investment which were exclusively reserved for Ethiopian nationals under the previous laws are likely to be opened for foreign investments with the condition that foreign investors undertake these investments in joint venture with the government and/or domestic

Conclusion

The current trade and investment in Ethio-India relations demonstrates the priority India attaches to Ethiopia , pointing to the rising importance of the horn of Africa in India's foreign policy and economic diplomacy .The current high level visit is the first visit by an Indian president to Addis Abada in 45 years since President V.V. Giri 's visit in 1972 .During the visit, President Kovind announced New Delhi's decision to provide fresh lines of credit of USD 195 million for Ethiopia's power transmission and also provided medicines worth USD 2 million .

India is a supporting hand of Ethiopia in its energy security 'by helping to achieve the desired electrification targets and improve its energy infrastructure. Ethiopia is also one of the first countries to join the International Solar Alliance (ISA), where India is a founding member. India can push Ethiopia for more solar energy projects by sharing its major experiences with developing and better utilisation of solar energy.

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