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Foreign Investment and Technology: The Nepalese Experience

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INTRODUCTION

One of the earliest industrial establishments in Nepal has adopted foreign technology under foreign investment. Biratnagar Jute Mill was set up in the 1930s as an Indo-Nepal joint venture when there was no well defined regulation on foreign investment and technology. Though the country has not yet formally declared its technology policy, there are documents in the form of *Industrial Policy*, *Foreign Investment* and *One Door Policy* and *Industrial Enterprises Act*, and *Foreign Investment* and *Technology Transfer* Act (all promulgated in 1992) which throw some light on the subject. The present acts, promulgated after the restoration of multi-party democracy in Nepal, repeal the previous acts of 1981

This paper deals on prevalent environment for foreign investment and technology, its present status and observes some of the problems.

OPENINGS

Foreign Investment

Foreign Investment could be as investment in share equities, reinvestment to the earning derived from the investment or investment made in the form of loan or loan facilities. Large and medium scale industries could be set up as 100 percent foreign investment.

Industries with fixed assets valued between ten to fifty million Nepalese rupees (1 US$ - NRs. 49.50 and 1IRe = NRs 1.60)

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are scaled as medium industries. The fixed assets may consist of the costs for land and land improvement, physical infrastructures, office, factory building, godown, electric and water distribution system and residential buildings, machinery, equipment and tool , means of transportation, electrical equipment and office equipment, furniture, fixture, communication system and equipment and include expenses incurred or to be incurred in connection with technical consultancy and supervision prior to the making of investment in any industry or during different stage of construction and preinvestment and preoperation costs a well as the amount of interest during the construction period, which is to be capitalized. Investment is permissible in all sectors except related tobacco (bidi and cigarettes) and alcohol (except for 100 percent based) industries.

Technology Transfer

Technology Transfer is made under an agreement between an industry and a foreign investor on the following matters :

— Use of any technological right, specialization, formula precess,
— Patent or technical know-how of foreign origin;
— Use of any trade mark of foreign ownership; and,
—Acquiring any foreign technical, consultancy and management and marketing service.

Unlike the limitation for foreign investment, transfer of technology may be allowed in the cottage and small industries, with fixed assets worth less than Rs. ten million as well.

INSTITUTIONAL ARRANGEMENTS

Registration of medium and large scale industries are made at the Department of Industries of His Majesty's Government of Nepal. All cases of foreign investment and technology transfer have to be approved by the Industrial Promotion Board. The Department shall inform the concerned investor about the decision regarding his application for foreign investment within 30 days of its receipt and the application for registration of the licensed projects shall be entertained within 21 days.

A *One-Window-Committee* has been set up with a view to provide and expedite all services and to settle any bottlenecks relating to facilities guaranteed under the existing rule and regulations. The policy also guarantees availing time-bound facilities effective for the establishments against any amendments in future regulations.

Industrial Policy has proposed to establish a *Technology Tranfer Centre* which will provide information about state of technology for different industries.

A foreign investment project will get all the privileges granted to the other investors. A foreign investor, who at a time makes convertible currency investment in an amount of more than one million US dollar, shall be granted a residential visa until such investment is retained.

PRESENT STATUS

According to the Department of Industries, the status of joint venture industries, including financial and technical collaborations, as on July 15, 1993 is as follows :

Status	Total	Financial Collaboration
Operating	101	75
Under Construction	30	27
Licensed Only	67	62

Source : Department of Industries, MOI/HMG.

As obvious from the table most of the joint ventures in Nepal are on financial collaborations.

The technical collaborations are not for high-tech areas. Most of the technical collaborations are made with Indian companies. These include areas such as pump sets, beer, animal feed, readymade garment, briquette fuel and ice creams. Management collaboration has been made for hotels as well as ice cream. In one case, hotel management collaboration has been signed with an individual. Collaborations with Japan, Korea and Thailand include the areas such as radio, colour television, lubricating oil, noodle etc.

Composition of Investment

As of the year end of 1991, the authorized foreign direct investment in Nepal has been US$ 67.8 million. Of the, total share of India and Singapore has been 37.5 and 11.1 percent respectively. Of the total from the respective countries, investment from Singapore US$ 3791,000, China US$ 2161,000, UK US$ 1225,000, France US$ 1962,000, Denmark U$ 1358,000, and Philippines US$ 552,000 have been entirely on manufacturing sector. Similarly 99.10 percent of Indian investment has been in this sector.

Foreign Holdings

Earlier to the present amendment, foreign investors could have upto 80 percent holding in large scale industries in general and 90 percent for export based ones and upto 50 percent in the medium ones. A survey of the projects under foreign collaborations however reveals that foreign investors have majority share holdings in most of the cases. In the 75 projects out of a total of 101 having financial collaborations, foreign share holdings in 40 of them were on no less than 50 percent. Similarly, 16 out of 30 under construction and 35 out of 67 licensed projects have foreign shareholdings no less than 50 percent.

New Investments

A separate desk (Foreign Investment Promotion Division) under the Ministry of Industry promotes foreign investment. It has undertaken number of high level promotion mission headed by ministers and included local investors in most of them.

Sponsored by the United Nations Industrial Development Organization (UNIDO), Nepal hosted a Foreign Investment Forum, in Nov. 30-Dec. 4, 1992, where Letters of Intent were issued to foreign investors from 17 countries for 119 projects. The investors were from China, India and Germany. They issued 33, 32 and 22 letters of intent for investment worth US$ 215, 181, and 200 millions respectively. From the point of investment, areas such as construction, property development and hydro power attracted the maximum investment of US$ 151 million for 7 projects, followed by food and beverage and non-metalic mineral products.

Tourist motel and recreation facilities ranked fourth but in term of capital intensity it ranked second, US$ 16 million per project, to construction hydro power, US$ 21 million per project. Considering the capital intensiveness of the latter, in general tourist-based projects are definitely drawing serious considerations from the foreign investors.

Seriousness on the part of the signatories could be judged by the actual launching of the projects. From what has actually worked out in the days following the forum, one may doubt if even 50 percent of the projects is materialised within the next two years. At the national front, one major cause attribution to the short fall has been the shortage of power in the country. And at the international front, economic liberalization measures adopted in several countries of the region have diverted investors to other destinations.

OBSERVATIONS

There are a number of grey areas in the field of foreign investment in Nepal. It has not really picked up as quick as desired. One of the major reasons have been the limited market. India could have been a big market at the south. The policy of charging minimum duties much lower than that in India on import of machinery and raw materials could have made Nepalese products compatible there. But the condition of 80 percent Nepalese Indian labor material content for preferential treatment in the Indian market and selectivity of products subject to be defined at the latter period on a case-by-case was a bottleneck. Also, the preferential treatment would be valid for the treaty period which would normally be for a period of ten years. In the recent years the local content requirement has been reduced to 55 percent, but due to lack of an umbrella protection on all products otherwise qualifying, there has not been a breakthrough still. Certain aspects of foreign investment and technology transfer must be carefully looked into for healthier outcome from the two.

Foreign Investment

The Industrial Act defines medium and large scale industries by the amount invested in the fixed assets. As far as foreign investment is concerned this distinction is immaterial as upto 100 percent holding is permissible in industries of either scale. The fixed assets are valued in the local currency. Due to fluctuations in exchange rate and devaluation of local currency against the hard ones, the lower limit, unless periodically upgraded by revising the act, may be too low from the foreign investors' view point.

A number of items are included under the fixed assets. Land price, for example, in any location is not specific. There are no limits specified for investment in means of transportation, buildings, offices, factory and residential buildings and land holdings appropriate for the type of industry proposed. Due to the lack of the actual production capabilities of various etablishments of the similar nature, in spite of the same amount invested in either project. This very much affects the productivity which has been one of the objectives of promoting foreign investment in the country. Based on the fixed assets criteria foreign investor might actually be entering the sector normally covered under small scale industries. A better option would have been to prescribe a minimum of investment in machinery and equipment. This would have supported high tech/capital intensive industries. The projects under foreign investment are too a large extent of a smaller dimension. About the 101 projects defined as operational, only 51 have authorized capital exceeding NRS 20 million. A good number of the foreign investors have come in their personal capacities. A total of 63 out of the 101 joint ventures (operational) and 16 amongst the 30 under construction are corporate bodies.

There is no system to judge the financial soundness of a foreign investor, whether at individual or corporate level. Certain companies with capital less than a hundred US dollars are the authorized partners in joint ventures. On the other hand, there is no minimum limit which is a must for getting the status of a foreign investor. In a few cases, authenticity and sincerity of such investors have been questionable. Shareholders' Association of

Nepal in a few cases has questioned the representation of certain investors as promoters in the Board of Directors of certain public limited joint-ventures companies. Questions are also raised on the minimum investment that the foreign investors should have really made before calling in public money for shares of the public limited companies. The issues have been raised under certain provisions of the Company Laws. The act on foreign investment has not looked upon such aspects.

No efficient system has yet been developed to keep an account of the actual amount invited by the foreign investor. This has specially been the case for transactions through non-banking channels and the Indian currency which is openly convertible.

Transfer of Technology

There is a general tendency on the part of supplier to minimse effective transfer of technology. There are no standard guidelines/norms for technology. Regulatory provisions for effective transfer of technology such as grant back provisions, tying, exclusive sales, export restrictions, duration of the agreement, non-competition clause, restriction on R&D etc. are not spelt out clearly. In absence of effective government agencies, such as the *Technology Transfer Center,* or well recognized professional services within the country, local investors are hardly fully aware of the implications of the agreement which have not incorporated relevant provisions. A committee looks after the agreement and forwards it to *Industrial Promotion Board* with recommendations for approval. There is therefore, a lack of consistency in different agreements.

There is no body to effectively monitor the actual transfer of technology. No study has been carried out about the actual absorption and necessity to further extend the collaboration, In most cases, the Nepalese counterparts have requested for an extension than to really absorb the technology during the contract period and reduce the overhead cost. Wherever it is done, the knowledge transferred is more regarding the *how* aspect than its *why,* which is the basic knowledge. Also the industries are not serious about hiring compatible counterparts within their organizations to suitably absorb the technology.

Key areas of comparative national advantage have not yet been identified. It would have been much better to identify such areas and plan for absorbing appropriate technology related to the industries in such key areas. There has been no serious attempt to promote the domestic brand names side by side that of the imported product under contract.

Technology has not been given its consideration. In spite of passing more than two years, very little progress has been done in establishing the *Technology Transfer Center*. There is no institution like a technology bank wherein national investors could check for the appropriate technology/skill available at the national front. A beginning on providing expert services, technology transfer to small/cottage industries, has however, been made by small *Business Promotion Project* (SBPP). Advisory services for quality in bakery product is one such example.

There is no effective monitoring on the kinds of technology being transferred. Technical collaboration for icecream is one such case. In the same industry, management collaboration, which could be basically a marketing agreement on providing the trade mark, may, to some extent be permissible as a particular brand of the product which may be very popular amongst the clients in a particular region. An up-to date information about patented product which are now in the public domain is lacking. This is because the country has not yet joined the world body on Intellectual Property, (WIPO).

CONCLUSION

Except a few, the projects promoted as foreign investment are still of smaller magnitude. They do not have high technological contents and are serving the domestic market. Technical collaboration are more for technical consultation and guidance than for use of certain patented products. Industrial environment should first be made favourable for local investors before it can invite the foreign investors. Because of poor resource base for manufacturing industries and further handicapped in the recent days due to inadequate electric power supply large scale high tech industries may not reach Nepal for quite a few years.

By providing a number of special incentives, foreign investment should therefore, be attracted into certain specified areas such as hydro–power development which may invite a few power based industries in the future. Tourism related industries however, could be one of the potential sector for foreign investment and technical collaboration in Nepal.

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