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Afghanistan's Regulatory Business Environment: Exploring the Impact on Trade

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Abstract

Following the recent regime change, Afghanistan is at a crossroads. Economic growth and international trade are key to its stability, yet many obstacles stand in its way. The study investigates the domestic, legal and regulatory landscape to understand the criticality of Afghanistan's regulatory business environment, identifying scope and hindrances to increasing exports and cross-border linkages. This case study outlines business challenges and offers clear policy solutions that will pave the country's way to revive, regenerate, and revitalise its economy. Alongside macroeconomic stability, this study argues that private sector development, technological progress, socio-economic balance, trade liberalisation, and a reinvigoration of exports can play an effective role in wealth creation for Afghanistan.

Introduction

Afghanistan's external environment is complex and volatile, with a diverse and rich resource base that has the potential to generate substantial export earnings. The Afghanistan National Trade Policy (2019-2023) aims to transform the economy's productive sectors towards high-value-added products, ensuring the availability of high-quality and affordable goods and services to Afghan consumers. The policy outlines key principles and strategies to guide the Islamic Republic of Afghanistan's strategic integration into global markets while ensuring the availability of high-quality and affordable goods and services. The government has aggressively addressed some basic constraining problems to trade development, focusing on creating and promoting a market-oriented, private sector-led, and competitive environment. The Ministry of Industry and Commerce (MoIC) will continue efforts to reduce corruption, which has impeded trade and investment in the country. The national trade policy aims to transform the policy into concrete actions and responsibilities, defining the role of the MoIC, the private sector, and all relevant stakeholders, including donor agencies' valuable support. As international assistance declines, the Afghan government faces a new challenge of enabling new growth drivers, such as trade. Decades of civil war and military occupation have devastated Afghanistan, destroying infrastructure, displacing a significant share of the population, incentivizing informal and illicit economic activities, and jeopardizing public service delivery. The current Afghanistan national trade policy comprises a rationale and objectives with vision and broad objectives, with the least guiding principles and unsolicited policy areas.

The core areas include promoting Afghan products' export competitiveness by addressing supply-side constraints, promoting domestic production and trade, enhancing tariff regime policy, increasing the efficiency of import and export administration, and customs and border-control measures. Strategies also include promoting market access for Afghan goods and services, making trade-enhancing institutions more effective, and implementing arrangements by augmenting the role of the Ministry of Industries and Commerce (MoIC) as a role actor. The provisions regarding the possible effects of environmental rules on the competitiveness of impacted enterprises have

been passed, but yet to be implemented. Businesses and policymakers worry that significant disparities in the strictness of environmental regulations may cause pollution-intensive production capacity to relocate to nations or regions with laxer regulations, changing the geographic distribution of industrial production and the ensuing flows of international trade. This has raised concerns, especially for spearheading the fight against climate change, and regulators need to be mindful of the possibility of regulatory divergence caused by preference variability. There is a need for policy dialogue to understand the narratives of development and benefits of Commercial Arbitration to Resolve Commercial Disputes in Afghanistan, thereby guaranteeing the regulatory mechanism in Afghanistan. Afghanistan has maintained its economic growth and commercial development at the level of Asia due to significant actions taken by the National Unity Government in response to pledges of trade and economic development.

Afghanistan needs a formal mechanism for resolving commercial disputes due to the country's inefficiency of commercial courts, growth of commercial relations, and adherence to international documents about commercial arbitration. A low-cost, effective system for settling business conflicts outside of court authority is necessary for Afghanistan to draw in international investment and attain sustainable economic growth. The public's faith in the court system is low due to poor accessibility, judicial corruption, excessive influence over the legal system, and expensive and time-consuming litigation. Therefore, it is imperative to establish a different, quick, accessible, and cost- and time-effective conflict resolution process to solve these issues. Afghanistan has accepted several international protocols and conventions, which serve as one of the primary arguments for the establishment of a robust commercial arbitration system in the country. Afghanistan is obligated under these agreements and conventions to pass laws, enforce them, and monitor conformity with the law to control commerce and guarantee legal compliance. The United Nations Convention on the Settlement of Investment Disputes was ratified by Afghanistan in 1968, and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards was ratified by Afghanistan in 2005.

Sustainable trade could be an important channel for accelerating growth in Afghanistan. A plausible trade-driven growth scenario for Afghanistan should promote economic and export diversification. This report brings new evidence on the opportunities and challenges for development in the areas of trade in goods, trade in services, and transit trade. It also provides recommendations for an appropriate sequencing of policy reforms and strategic infrastructure investment to support potential growth in these sectors. The World Bank presents a dismal and unclear picture for 2023, with over 90% of people living in poverty, inflation has risen to over 40%, and the nation's dire humanitarian needs are highlighted. The Taliban's ascent and the ongoing danger of terrorism further complicate the situation. Stability, progress, and the welfare of the Afghan people depend on resolving these problems. The five critical elements required for investment decisions in Afghanistan include access to capital and infrastructure, unambiguous regulations, reasonably enforced tax rates, political and economic stability and security, and a skilled labour force. These have not existed since the Taliban took power in 2021. The severe state of the economy is due to several reasons, including the World Bank, the International Monetary Fund, and Human Rights Watch stopping providing foreign aid to Afghanistan, the Taliban being unable to access the almost \$9 billion central bank, disruptions in the internal banking system and cash flow, decreased production and human capital, limitations on women's involvement and rights, and threats from terrorism and militancy by organizations like the Islamic State in Khorasan (ISK). In summary, Afghanistan is in a dangerous position due to its unstable past and the current Taliban takeover, which has resulted in a humanitarian and political catastrophe.

To comprehend the significance of Afghanistan's trading environment, the study conducts a comprehensive analysis of the domestic, legal and regulatory framework, identifying opportunities and obstacles to expanding exports and cross-border connections while bearing in mind the country's economic and social development. It is imperative to determine if the laws and regulations of Afghanistan bring forth any impediments to exporting products from Afghanistan to the world or help bolster trade relationships across the globe. Therefore, an analysis has been conducted with the implications of various laws enforced in Afghanistan to identify the impact of *Shari'ah* Law, private investment laws, labour law, and customs law, among others.

At present, Afghanistan's legal and regulatory frameworks and enforcement mechanisms through courts or presidential decrees remain fragmented and irregularly implemented (Musleh, 2023). The current Afghan government has not enacted much of the framework for encouraging and protecting private investment. The existence of three overlapping legal systems: Shari'ah (Islamic law), informal (customary law), and the formal statutory system instituted under the 2004 Constitution, can confuse investors and legal professionals.

Shari'ah refers to a form of Islam that draws "meaning from Islam applicable to problems of contemporary governance, society, and politics." It is, however, not clear whether these constitutional postulates imply that the ethical values of Islam govern the interpretation of the laws or whether the constitution and state-enacted law set the framework within which Islamic law must operate.

Following the US invasion of Afghanistan in 2001, the Bonn Agreement mandated the reconstruction of Afghanistan's legal system "by Islamic principles, international standards, the rule of law, and Afghan legal traditions" (Lau, 2003, Wani, 2018; Wani and Rasa, 2023). Therefore, to abide by the Afghan Constitution as well as the Bonn Agreement, *Shari'ah* Law is the presiding law of Afghanistan. Legal pluralism exists in various aspects of the regulatory environment in Afghanistan (Meininghaus, 2007). Despite their enforcement, various laws in Afghanistan have not been incorporated into mainstream practice or enacted. However, the country has developed several statutes focusing on commercial law, private investment, the sale of goods, the labour code, intellectual laws, copyright, patent, trademark, and industrial patent design, income tax law, press law, competition law, and arbitration and mediation law, amongst others.

2. Literature Review

Afghanistan's transition to a Taliban-led administration has significantly impacted the country's business climate, particularly in the mining industry. The country's precarious business environment, marked by political violence, lax property protection laws, a lack of skilled labor, underdeveloped financial markets, and inadequate infrastructure, has been significantly deteriorated since the Taliban took power in August 2021. This has led to a significant drop in foreign direct investment (FDI) inflows, with the UNDP report highlighting the negative economic effects on Afghanistan's GDP and per capita income.

The socio-economic obstacles and uncertainties in Afghanistan directly impact the investment climate, making prospective investors cautious and adopting a strategic approach. Despite the end of help and a drop in general demand, Afghanistan has maintained noteworthy levels of imports and exports, with the export sector benefiting from agricultural products, carpets, and minerals, while the import sector has been supported by a strong need for food and fuel. Border taxes, which make up 57% of Afghanistan's overall revenue, have a substantial impact on controlling inflation and stabilizing the currency rate.

The confluence of conflict and climate change in Afghanistan has important ramifications for the investment climate, with droughts and water scarcity harming agricultural and food production. Illegal activities like the opium trade exacerbate these problems. The political upheaval in Afghanistan has had a substantial influence on the investment climate, with the consequences of climate change worsening the situation. The Taliban's takeover of the nation has destroyed the water management organization and had no experience with climate change issues.

The occupation of Afghanistan by the Taliban has led to a severe economic crisis and sparked worries about the investment environment. The financial system freeze, suspension of international aid, and overall effects on the Afghan economy have exacerbated the negative investment climate. Financial assistance for business growth, capacity building, and infrastructure projects is diminished when Western nations stop providing foreign aid. Long-term investments may also be discouraged by the uncertain climate that comes with political instability. However, Afghanistan's economy shows indications of resilience and stability, according to the World Bank (2022). Foreign investors are recommended to focus on long-term participation, carefully evaluate risks, and explore possibilities specific to a certain industry while taking social impact concerns into account. Cooperation with regional organizations and global partners can greatly aid in navigating obstacles and promoting sustainable economic growth in Afghanistan. Byrd (2022) emphasizes the necessity of openness and oversight to guarantee efficient assistance deployment and public service delivery. Investors must have a thorough understanding of the financial dynamics and governance procedures of the Taliban administration. The well-being of the Afghan people in the investment climate depends upon engagement, transparency, and alignment of investments with sustainable development goals.

3. The Legal System of Afghanistan: Analysis and Output

The Afghan business environment has been analysed from a legal perspective to remain aligned with the various regulatory requirements necessary for export, import, and trade. The study has identified specific legal aspects to be considered by exporters and foreign investors when doing trade in Afghanistan (FDI inflows have remained very low in recent years. The difficulty in finding trade finance is a major impediment to business development and growth, placing Afghan exporters at a commercial disadvantage). These include an understanding of the legal impediments to expanding export trade or augmenting investments in Afghanistan; evaluating the benefits for exporters to participate in international trade; and understanding the impact of private investment law, banking law, and labour law on export trade development in Afghanistan.

3.1: Constitution of Afghanistan 2004

The 2004 Constitution proclaims in its very first article that 'Afghanistan is an independent, unitary, and indivisible Islamic republic state'. Article 3 contains a repugnancy clause stating that no law may be repugnant to the beliefs and ordinances of the sacred religion of Islam (literally: *'mokhālef-e moqaddātvaahkām-e dīn-e moqaddas-e eslām'*) or other values embodied in the constitution. This is not new, since all Afghan constitutions, except for the 1980 constitution, contained such a clause. No statutory law or presidential decree can overrule these practices and beliefs of Islam, which can consequently affect the ease of doing business in the country and the free growth of export trade.

3.2: Legal Pluralism

Legal pluralism in Afghanistan is characterized by multiple sources of law, including formal written law, informal customary law, and religious Shari'ah law. Informal institutions like Shuras and Jirgas

play a crucial role in the country's commercial legal system, based on local customs, traditions, and religious practices. Jirgas are gatherings of elders or leaders who resolve disputes or make collective decisions about community-wide matters. These institutions do not enforce civil or criminal laws but rather Islamic Shari'ah Law and customary laws. These informal institutions do not enforce the civil or criminal laws of Afghanistan, but rather Islamic Shari'ah Law and customary laws. As affirmed by Article 2 of the Commercial Code of the Republic of Afghanistan 1955, which asserts that "commercial disputes shall be settled by legally binding agreements and, in their absence, by reference to the explicit or implicit meaning of commercial laws, if the dispute cannot be settled through legally binding agreements or by reference to the explicit or implicit meaning of commercial laws, commercial customs and practices shall apply. General customs and practices shall take precedence over local and special customs and practices.

Culturally, people trust local or customary arbitration and dispute resolution outside the court more than litigation or court-based dispute resolution. This allows customary laws to overrule statutory regulations in disputes related to investment, export trade, and business enterprises. In practice, customary laws supersede codified laws, as locals trust traditional customary laws more than formal statutory laws. A lack of knowledge about formal statutory laws, such as copyright and trademark laws, leads to their non-enforcement, which can inhibit trade facilitation and restrain export market expansion.

The current Afghan government continues to modify existing legislation and draft new laws but has sometimes failed to complement new laws with implementing rules and regulations that translate into revamped administrative practices. This discrepancy in the regulatory environment has strengthened militant groups such as Daesh and ISIS. Taxes are collected at various checkpoints along national highways across Afghanistan's conflict-ridden landscape. To combat corruption and boost trade development efforts, the current Afghan authorities must give fresh impetus to combating corruption and bolstering trade development efforts.

4. Aiding International Trade: How

4.1: Incentives for Exporters as Per the National Trade Policy (2019-2023)

The Afghan National Trade Policy (ANTP) aims to increase and diversify exports, strengthen economic growth, reduce the trade deficit, and improve the export competitiveness of Afghan goods. The policy focuses on enhancing trade infrastructure, improving quality infrastructure, developing Special Economic Zones (SEZ), enabling trade finance, and fostering a conducive climate for foreign investments.

The National and Regional Resource Corridors Programme (NRRCP) leverages investments in minerals and natural resources sectors to develop the Afghan economy more broadly. The NRRCP upgrades trade and transport infrastructure, reduces waste, and facilitates the delivery of goods to domestic and export markets at reduced costs. The Afghanistan National Standards Authority (ANSA) has developed a regulatory framework for product standards to facilitate Afghan goods' access to foreign markets. ANSA helps producers follow rules and standards related to technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) requirements.

The government has taken steps to establish SEZs, such as transforming eight airfields into SEZs through the Presidential Decree. The government also plans to identify potential locations, priority products, and industries for these zones and conduct feasibility studies. ANTP plans to make sectoral interventions to improve the export competitiveness of Afghan products.

4.2: Benefits for Exporters as Per the Customs Act of the Republic of Afghanistan

The Customs Act of Afghanistan, as per Article 137, mandates that Afghan goods leaving the country's customs territory must be processed at the relevant customs office. The border customs office supervises the exit of exported goods. The declarant must complete a full customs declaration within five days of submitting a summary declaration. The Act provides a comprehensive framework for exporting goods, including prohibition, definite and temporary export, customs inspection, and clearance. Proper implementation can enhance Afghanistan's international trade participation and adjudicate its trade relationship with foreign countries, making their implementation crucial for export trade.

4.3: Enforcing Foreign Judicial Decisions in Afghanistan

There are no legal restrictions on resolving disputes outside of Afghanistan. In addition, alternative mechanisms of dispute resolution are recognised by Afghan law, as is litigation. The law also accepts arbitration and mediation outside Afghanistan and enforces arbitral awards and court decisions in the country. Thereby, in the event of a dispute between an Afghan exporter and a foreign enterprise, the latter may resolve the dispute in their home country or as decided in their contract.

Article 27(5) of the Law on Acquiring Rights, 2020, states that the final decision of a foreign court to resolve a dispute verified by the Ministry of Foreign Affairs (MoFA) is enforceable in Afghanistan and applicable to both legal and natural persons.

As far as the conflict of laws is concerned, Articles 18 to 30 of the Civil Code of 1977 elaborate on the different situations and conditions of the same. The Code in Article 18 asserts that the Foreign Law shall apply where the central administration or head office of a legal person or entity is located in a foreign country. The law of Afghanistan shall apply when companies, enterprises, partnerships, and other persons carry out their principal activities in Afghanistan.

According to Article 27 of the Civil Code, concerning obligations arising from contracts, the law of the state wherein parties to the contract reside shall apply. The law of the state where the contract is completed applies if the parties do not agree on the applicable law or if it is not evident from the contract that they intended another law to govern the contract concerned. Concerning contracts concluded on real estate, the law of the place where the property is located shall apply.

Article 28 of the Civil Code asserts that “concerning formal conditions of contracts, provisions of the law of the state wherein the contract is completed shall apply.” Article 29 declares that “concerning non-contractual obligations, the provisions of the law of the state wherein events creating the obligations have occurred shall apply.” However, “if the obligation is caused by an event that occurred outside Afghanistan, wherein it is considered illegal but legal in Afghanistan, the provisions of the first item of this Article shall not apply.

The courts of Afghanistan must follow a foreign law if it is chosen as the governing law of an agreement, according to Articles 34 and 35 of the Civil Code. This is true for both arbitration and court proceedings, as long as the foreign law does not violate public order or standards of decency in Afghanistan.

In addition to the above, Afghanistan is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958–2005. Therefore, it is obliged to: (a) recognise

and enforce awards made in another contracting state; and (b) apply the convention to commercial disputes.

According to Afghan law, the parties shall resolve any dispute regarding a contractor or other agreement entered into between an investor or a registered enterprise on the one hand and the state on the other. However, if a dispute arises between a foreign investor or registered enterprises with foreign equity ownership and the state regarding foreign investment, the parties shall endeavour to settle such dispute amicably through mutual discussion and negotiation. Failing such amicable settlement and unless the parties to such dispute otherwise agree, the parties shall submit such dispute to either:

- i. The International Centre for Settlement of Investment Disputes (“ICSID”) for settlement by arbitration according to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of March 18, 1965, as such may have been or may be amended from time to time; and
- ii. If the foreign investor can't go to arbitration under the ICSID rules or would rather go to arbitration under the UNCITRAL rules, Article 56 of the Commercial Arbitration Law says that foreign arbitral awards can also be enforced in Afghanistan.

If rightfully implemented, this can be an attractive incentive to increase foreign investments in Afghanistan, which in turn can support export trade facilitation.

In addition to the above, Afghanistan has a very comprehensive regulatory framework and procedural laws impacting domestic and foreign direct investments within the country.

5. Private Investment and Banking Law

5.1: Private Investment Law 2005

In addition to the above, Afghanistan has a very comprehensive regulatory framework and procedural laws impacting domestic and foreign direct investments within the country (Contractor et al, 2020). In the Private Investment Law of 2005 (PIL), investment is defined as currency and contributions in kind, including, without limitation, licences, leases, machinery, equipment, and industrial and intellectual property rights provided to acquire shares of stock or other ownership interests in a registered enterprise. The PIL permits investments in nearly all sectors of the economy except nuclear power, gambling establishments, and the production of narcotics and intoxicants. Additionally, there are limitations on the total value of service transactions or assets related to motion pictures, road transport (passenger and freight), and the total number of people that security companies can employ.

Our research findings identified various risks prevalent while investing in Afghanistan. For instance, at present, there is a lack of modern and required laws and procedural frameworks governing transit and trade activities, due to which FDI investments have decreased in the private sector or state-owned enterprises that are building transport infrastructure. Despite Afghanistan's accession to the WTO, donor assistance has been reduced in the aftermath of weak investment law enforcement.

According to Art. 18 of the Private Investment Law 2005 in Afghanistan, a registered enterprise shall receive an exemption from export duties on products it manufactures or assembles in Afghanistan, to the extent permitted in the Customs Code. An export licence shall be required for

such exports, but such licence shall be granted automatically upon submission of such documentation as is required by law, thereby waiving customs duties levied by the government, which can benefit a large number of exporters who are exporting items to India.

As per Article 22 of Chapter V of PIL 2005, it is mentioned that “A foreign investor shall be permitted to freely transfer out of Afghanistan without unreasonable delay distributions received from a registered enterprise in whatever foreign currency the foreign investor chooses, at the prevailing exchange rate for that currency.”.

As an outcome of the above private investment laws in Afghanistan, the Transport Master Plan (2017–2036) was a constructive response to the challenges of freight movement from Afghanistan. The Transport Master Plan is a USD 25.9 billion project that covers roads, railways, civil aviation, urban transport, trade logistics, and administrative responsibilities concerned with transport infrastructure and operations. It provides a programme of prioritised investments and recommends urgent capacity-building measures. As transportation in Afghanistan is central to social stability and peace-building efforts, the development results generated by the master plan will extend beyond the boundaries of the transport sector. For the proper implementation of domestic and foreign private investment in Afghanistan, it is necessary to plan the right mix of investments, their spatial distribution, and their sequencing over time. Despite the statutory regulations of PIL, the following practices prevail in Afghanistan that inhibit the expansion of international trade or the increase of foreign investment in the country.

5.2: Limits on Foreign Control

The HEC has never exercised its authority to limit the share of foreign investment in some industries, specific economic sectors, or specific companies. In practice, investments may be 100% foreign-owned. The PIL authorises the HEC, with the agreement of the relevant ministries, to provide, on a case-by-case basis, different terms from those generally applied to investments. If exceptionally large investments lead to significant economic growth and development within a limited timeframe, the HEC may grant different terms. While there is no requirement for foreigners to secure Afghan partners, the Afghan Constitution and the PIL prohibit foreign ownership of land. However, in practice, most foreign firms find it necessary to work with an Afghan partner, and many businesses cite a lack of land ownership as one of the greatest impediments to investment in Afghanistan. Foreigners may lease arable land for periods of up to 50 years and non-arable land for longer. Some businesses have negotiated leases with an automatic renewal clause for terms of up to 99 years. Therefore, despite the enforcement of the PIL, there are a few shortcomings in the practices of the market that inhibit foreign investment in Afghanistan.

5.3: Foreign Exchange

Private investors in Afghanistan have the right to transfer capital and profits out of the country, including for offshore loan debt service. There are no restrictions on converting, remitting, or transferring funds associated with investments into a freely usable currency at a legal market clearing rate. The PIL allows investors to freely transfer investment dividends or proceeds from the sale of an approved enterprise abroad. Afghanistan does not maintain a dual-exchange rate policy, currency controls, or capital controls on the free flow of funds abroad. However, transporting more than AFN 1,000,000 or the foreign currency equivalent out of Afghanistan via land or air is illegal, and amounts over AFN 500,000 must be declared. Enforcement of this law is haphazard, particularly for passengers in the VIP lounge at Kabul International Airport, where

belongings receive little if any inspection from Afghan authorities to ensure that they comply with reporting requirements.

5.4: Remittance Policies

There are no laws or regulations that restrict access to foreign exchange for investment. In practice, however, particularly in the provinces, many banks might not have the capacity to deal with foreign exchange. There are large, yet informal, foreign exchange markets in major cities and provinces such as Jalalabad, Kabul, Kandahar, Herat, and Mazar-e Sharif, where U.S. dollars, British pounds, and Euros are readily available. Entities wishing to buy and sell foreign exchange in Afghanistan must register with the central bank, Da Afghanistan Bank, but thousands of unlicensed money changers (*hawalas*) continue to practice their trade. Non-official money service providers often cite the lack of enforcement in the currency exchange sector and the resulting competitive disadvantage to licenced exchangers as a disincentive to becoming licenced.

5.5: Investor's Potential Liability

In the event of a partnership defaulting on a loan, the creditors can seek repayment from the segregated pool of assets owned by the partnership concerned, as opposed to sharing the assets of the individual partners with other creditors of that individual. When it comes to the assets of the partnership, creditors of the partnership have priority over creditors of individual partners (Article 85 of the Partnership Law).

Whereas if an individual partner has a personal debt that he or she is unable to satisfy with his or her assets, then the creditor may demand the partner's proportion of the profits from the partnership. However, the partner's proportion of the profits is to be distinguished from the partner's ownership interest in the partnership, which is immune from the individual creditor (Article 49 of the Partnership Law). Facilitating investment opportunities in Afghanistan encourages the establishment of market-friendly financing practices as well. Regulations on the banking sector in Afghanistan essentially highlight avenues to access finance and attract private investment players in the market.

5.6: Banking Sector Law

The Da Afghanistan Bank is the central bank of Afghanistan. Article 12 of the 2004 Constitution states that "Da Afghanistan Bank shall be independent and the central bank of the state. Currency issuance as well as formulating and implementing the monetary policy of the country shall be, according to the provisions of the law, the authority of the central bank. The central bank shall consult the economic committee of the House of People about the printing of money. The organisation and operation methods of the Central Bank shall be regulated by law.

The 2003 Law of Da Afghanistan Bank (DAB) authorises the Bank to define, adopt, and implement Afghanistan's foreign exchange policy; issue banknotes and coins; hold and manage official foreign exchange reserves; act as an advisor and fiscal agent of the government; and licence, regulate, and supervise all other banks throughout the country. The state grants DAB complete legal, operational, and administrative autonomy in the pursuit of its objectives. The Bank is required to make periodic reports to both the public and Parliament to ensure accountability.

The following are a few articles from the 2003 Law of Da Afghanistan Bank, which can have a direct impact on the exporters of Afghanistan:

Table 1: Impacts of the 2003 Law of the Da Afghanistan Bank

Article	Clause Subject	Clause Description	Impact
Art.45	Contracts	Unless Article 46 applies, individuals must make, execute, enter into, do, or carry out every contract, sale, payment, bill, note, instrument, and security for money, as well as every transaction, dealing, matter, and thing relating to money or involving the payment of or the liability to pay money, in the currency of Afghanistan.	During trade with Afghanistan, all importers purchasing products that have been produced or manufactured in Afghanistan will have to make payments to Afghan exporters in the currency of Afghanistan.
Art.46.1	Freedom of currency	Parties to a contract or any other voluntary transaction, including a party to a bill, note, instrument, or security for money, may denominate a payment obligation in any currency agreed upon.	In the event that transactions are made in foreign currencies, payment obligations must be agreed upon between both parties while entering into a contract.
Art.116	Prohibited Activities	Afghanistan Bank shall not grant any financial assistance, whether in the form of a direct loan or a contingent commitment, or by purchasing a loan, a loan000987654 participation, or another instrument of indebtedness, or through the assumption of a debt or a contingent liability, or in any other form, or engage in any other banking activity defined as such by the Banking Law	DAB does not hold the right to grant any form of financial assistance or sanction direct loans to Afghan enterprises. This inhibits the steadfast growth of Afghan businesses, and the licences of several private banks in Afghanistan get violated, which prevents enterprises from seeking domestic financial assistance from banks.

5.7: Labour Law

The Afghan labour code, enacted under Article 48 of the Constitution of Afghanistan, provides legal protections for workers to create a friendly working environment. However, the code has failed to translate into practice, particularly in respecting women's employment rights. The 2004 Constitution extends equality to both men and women, but the Labour Code of Afghanistan grants women non-discriminatory employment rights, except during pregnancy and childbirth. The only prohibitions are for physically arduous environments, underground work, and night shifts.

Afghanistan has a comprehensive regulatory framework for foreign direct investment, privatization, international trade, export shipments, financial support for farmers, and employment for women. However, the legal pluralism due to Shari'ah law, customary laws, and statutory laws creates an ambiguous judicial system, making adjudication complex. If Afghanistan can integrate statutory laws impacting customs, intellectual property, investment, and international trade, it has a high probability of strengthening its legal system and expanding its export market.

6. Conclusion and Inferences

The encompassing legal and regulatory bottlenecks along with increasing the viability and competitiveness of Afghan products in domestic and international markets, calls for the adoption of measures as per global standards and resolving issues deterring product growth. As the country is driven by donor agencies, pilot initiatives carried out in the case of product development, entrepreneurship, or even subsidised rates for goods movement, emphasis must be laid on adopting those practices in daily operations to achieve self-reliance.

The contours of this case study were premised on the conduciveness of the business environment laid out by the regulations and laws for commercial operations. Afghanistan is preceded by the *Shari'ah* Law and the existence of legal pluralism, which often makes legal procedures ambiguous. Although there are private investment laws, banking laws, customs laws, etc., their usefulness in terms of ease of doing business is minimal. Payments are preferred in Afghanistan's local currency, which directly dissuades foreign transactions. Commonality and integration of laws, which are

typically statutory, would smooth the processes of investment, trade, and finance. Safeguarding domestic interests in cases of product development occurring within the country will necessarily result in increased chain efficiency. Such areas, once regulated by law, would discourage producers and exporters from sending goods for value addition to other countries while maintaining self-reliance and generating more workforces endogenously.

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